# THE DEVELOPMENT OF THE LAWS AND CONSTITUTION OF CAMEROON

by

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## A NOTE OF PLACE NAMES

The spelling of Cameroon and other place names in the country often causes a great deal of difficulty because of their various origins. The name Cameroon is the English spelling for what is Camaroes in Portuguese, Camarones in Spanish, Kamerun in German and Cameroun in French.

There is also a difficulty in spelling place names like the present Yaoundé which appears in other documents as Jaunde or Yaunde.

We intend in this work to adopt the two spellings outlined in the Constitution of the Federal Republic of Cameroon. Since we are writing in English, we shall retain the English spelling and only use the French spelling where necessary. We will, however, retain the other spellings where it is important to do so.

With regard to place names, we intend to use the modern spellings which can be found on any current map of Cameroon, except where it is historically inexpedient to do so.

## ABSTRACT

The Federal Republic of Cameroon which came into existence on October 1, 1961, is made up of former Southern Cameroons which was administered by the British Government as an integral part of her Colony of Nigeria, and the Republic of Cameroon - a former trust territory under French Administration. Thus West Cameroon (i.e. former Southern Cameroons) was endowed with a legal system akin to that of Nigeria, and therefore of Great Britain, and East Cameroon (i.e. the former Republic of Cameroon) was endowed with the French legal system.

This thesis, the first of its kind, attempts to trace the development of the laws and constitution of Cameroon within the framework not only of these two major foreign legal systems, but also of the indigenous systems.

The work is divided into three Parts comprising of twelve chapters.

Part I, comprising only of Chapter I, deals with a general historical and ethnographic survey of Cameroon. An attempt has been made, particularly in connection with the historical introduction, to piece together the various treaties and agreements which gave Cameroon her present boundaries.

Part II comprises of Chapters II - IV. Chapter II deals with the administration, by the French and British Governments, within the framework of the Mandate and Trusteeship systems, of their respective parts of Cameroon.

Attention is also paid to the political and constitutional developments leading to independence and reunification. These include the United Nations conducted plebiscites in the Cameroons and the Cameroons case at the International Court of Justice which arose therefrom.

Chapter III is devoted to an analysis of the Federal and Federated State constitutions while Chapter IV deals with the courts and legal profession in Cameroon.

Part III comprises Chapters V - XII, each of which deals with a specific subject. Thus Chapter V traces the Sources of Law in Cameroon while Chapter VI deals with Procedure and Evidence. The five others deal respectively with Criminal Law, Civil Law (i.e. Contract and Tort), Commercial Law, Land Law and Family Law. Chapter XII deals briefly with the attempts, few as they are, which have been made to integrate the law.

In each of the chapters in this part, we have tried to deal with both the French and English law on each topic, the aim being to point out where they are different and to make suggestions for dealing with such differences. Although these suggestions have sometimes come out either in favour of French or English law where either system was thought better, we have not ceased to emphasize the tremendous advantage in being able to produce new laws based on the best from both systems.

ACKNOWLEDGEMENTS

We would like to express our profound appreciation to Professor A.N. Allott under whom we started this work, and to Mr. E. Cotran who took over the supervision of the rest of it. No less profound is our gratitude to Mr. N. Rubin who read some of the manuscripts and made very constructive suggestions. Our thanks are also due to Professors René David and P-F Gonidec of the University of Paris for their most helpful suggestions.

Obviously, there are many others who have helped in one way or the other with this work. Thus, we realize that just as it is tedious to mention everyone, so is it invidious not to, so we would like to say here that, if there are any whose names have not been mentioned, it is not because our gratitude to them is any the less profound.

May we also put on record our appreciation of all those who helped us in the various libraries and other places where we carried out research in London, Paris, Yaoundé and Buea. In particular, we would like to thank the staff of the library of the Institute of Advanced Legal Studies, University of London, for their [illegible] kind co-operation.

Our thanks are also due to the Government of Cameroon who sponsored us through all but the last year of our legal studies. During this last year we received very generous assistance from the Scholarship Committee of the School of Oriental and African Studies, London University, and the

Edwina Mountbatten grants to Commonwealth Students. To these we owe a life-long gratitude. We must also record our gratitude to members of our family who supported us both financially and morally at moments when we felt like Christian in the slough of despond.

Finally, it need hardly be emphasized that we remain responsible for all mistakes and omissions in this work.

J.N.M.

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# PART I

## CHAPTER I

## HISTORIC AND ETHNOGRAPHIC INTRODUCTION

### Historical Introduction

> "Here and elsewhere we shall not obtain the best insight into things until we actually see them growing from the beginning."
>
> Aristotle.

The purpose of this historical introduction is to attempt to establish how the frontiers of present day Cameroon came into existence. The frontiers of modern Cameroon, like those of most African countries, do not follow any geographical or human boundaries because they were arbitrarily carved out by the industrial nations of Europe during the scramble for territories in Africa.

Cameroon is roughly triangular in shape with its apex at Lake Tchad. It is bounded in the west by Nigeria, in the east and north-east by the Republics of Central Africa and Tchad respectively, in the south and south-west by the Republic of Gabon, Rio Muni and the Atlantic Ocean, and in the south-east by the Republic of Congo (Brazzaville).

The scramble for Africa, therefore, gave Cameroon its present shape, but the history of the people and the name Cameroon date much

further back. It is stated by old Greek and Latin texts that the Carthaginian, Hannon, claimed that he had sailed the coast of "the Lybric lands beyond the Pillars of Hercules". These records date as far back as the fifth century B.C. Hannon is said to have written that he saw a large volcano which he named "the Chariot of the Gods" and which was later identified by commentators as Mount Cameroon.[1]

This very early mention of Cameroon is perhaps not as important historically speaking as the discoveries in the fifteenth century made by Portuguese explorers. Fifteenth century Portugal is noted for its great voyages of discovery and it is recorded that, during this period, Portuguese seafarers reached the Bight of Biafra. The year 1472 is usually regarded as the possible date of the arrival of the Portuguese in the Bight. During this voyage they visited Fernando Po and in the course of this visit they sailed into the estuary of the Wouri River which, it was discovered, abounded in prawns. The prawns were easy to catch and delicious to eat, so the Portuguese named the river the Rio dos Camaroes which means river of prawns. They also took note of Mount Cameroon which rose from sea level to a height of about 13,350 feet and which they named Ambozes after the natives[2] of the region, a name which was

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1. Victor T. Le Vine, The Cameroons from Mandate to Independence, (University of California Press, 1964), p. 16.

2. The word "native" is one which is being frequently frowned at. Other words like "indigenous" and so on are preferred, but it is hoped to use native in most of this work not because one is unmindful of the misuse to which it can sometimes be put, but because it seems more appropriate than the others which will be used where appropriate.

later to form the place name Ambas Bay.

After this early discovery, the Portuguese do not seem to have done very much because they were concentrating their efforts on Sao Tome, Fernando Po and the lucrative trade in gold and ivory along the Gold Coast. The period between 1472 and 1530 is therefore one during which precious little is heard about Cameroon. Perhaps historians through future research may throw some light on this period.

After 1530, there was some renewal of interest in the West Coast of Africa and Cameroon once more came into the picture. By this date, the West Indian plantations had been developed and the need for labour was being felt. The West Coast of Africa was the place to turn to because the natives of this coast, it was felt, would be able to work in the West Indian plantations where climatic conditions were similar. At first, the Portuguese monopolised the trade in slaves which had thus developed and for this purpose they used Sao Tome and Fernando Po as collecting centres for the slaves. At a later date, the Dutch, the French, the English, the Swedish, the Danish and Bradenburgers joined in the slave trade. This brought the Europeans once more into Cameroon where their main centres for the slave trade were Douala on the estuary of the Worri River, the estuary of the Rio del Rey and towns like Bimbia. In this trade there was not much contact between the Europeans and the people of Cameroon because the Europeans were happy to stay on board their slave

ships and trade with native middlemen who were easily available, the people of Douala being most prominent among such middlemen.

Because of the inhumanity of the slave trade, certain philanthropists in Britain, among whom were well known figures like Granville Sharp, Thomas Clarkson and William Wilberforce, fought very hard to end it. By 1807 when the English had become the greatest slave trading nation on the Guinea Coast, the slave trade was declared illegal in England Henceforth, England concentrated her energies in bringing the trade to an end. For this purpose, she obtained permission from Spain in 1827 to use Fernando Po which she had captured in 1777 as a base from which to operate in the fight against the slave trade. One way of fighting the slave trade was to encourage traders to trade in other commodities. There were not only British citizens to be found on the island of Fernando Po, but also some freed slaves whose needs and interests brought missionaries into the island.[3]

The primary aim of the British settlement on Fernando Po was to fight the slave trade. Britain had no territorial ambition then and this is evidenced by the fact that in 1833 she refused an offer of cession

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3. Most of the material about the slave trade was collected from the Public Record Office from various volumes in F.O. 84 series.

of the mainland territory made by the natives. This lack of territorial ambition was destined to be short lived, for in 1845 the Baptist Missionary Society, spurred on by the missionary zeal to convert the natives on the mainland, founded the first English settlement near Douala. Later, Alfred Saker, a Baptist Missionary, founded a second settlement in Bimbia near Victoria.[4] When this station was founded, it was left in the hands of negro missionaries from Jamaica, and Aldred Saker himself returned to Fernando Po where he continued to work until 1858 when he was expelled. His expulsion was brought about by Spanish Jesuits who had arrived there to find to their disgust the presence of Protestant Missionaries and had therefore persuaded the Spanish Governor of the island to expel these missionaries.

Having thus been driven out of Fernando Po, Saker and his men moved to the mainland and settled on a strip of land in Ambas Bay. This strip of land, measuring ten miles long and five miles wide, was purchased from the natives and later became known as Victoria, after Queen Victoria. A few expeditions were then made up Mount Cameroon and in the surrounding area and reports made to the British Government, but nothing was done to establish a foothold in the area. The British Government was content to leave all affairs in the area to the missionaries, subject to supervision

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4. E.M. Saker, Alfred Saker (London, 1929).

by the British Consul for the Bights of Benin and Biafra. The British exercised this function partly through the Court of Equity which had been established by treaty in Douala in 1856.[5] This treaty was important because it was regarded as an international treaty which was aimed at settling disputes between the people of Cameroon and the English and German traders. The court was also charged with the responsibility of maintaining the peace, a responsibility which was frequently exercised because of the not infrequent quarrels among local chieftains. The establishment of this court is also important because it marks the beginning of English law in Cameroon, and we will be returning to this later.

British interest on the West Coast which had started in an attempt to suppress the slave trade soon increased. This increase is attributable to the trade rivalries between European traders on the coast.[6] The greatest rivals were the French and the Germans. The French had already established trading stations in Gaboon (now Gabon) and the Congo and were extending northwards. They also had interests in Lagos from where they were extending eastwards. Wherever the French went, they introduced high discriminatory tariffs which were aimed at pricing the English out of the markets.[7] Despite this competition with the French, the British continued

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5. See Appendix 1 for the full text of the bye-laws and regulations of the Court of Equity as contained in Volume X, pp. 30-33 of Hertslet's Treaties.

6. Public Record Office F.O. 84/1541-1660.

7. The present tariff system in Cameroon is the responsibility of the Federal Government. The tarrifs must, however, reflect Cameroons' Associate Membership of the European Economic Community and her membership of U.D.E.A.C. (Union Douanière et Economique de l'Afrique Centrale).

to enjoy the confidence of the natives and the other European traders. The result of this confidence was that the Douala King Bell Honesty wrote to Queen Victoria in 1864 asking to be allowed to visit England in order to be enlightened. Later in 1877, certain kings had written to the Queen indicating their willingness to cede their territories to Her Majesty. Again in 1881 King Bell wrote to Consul Hewett asking for British protection. In the same year Kings Bell and Akwa[8] wrote to Gladstone also asking for British protection. Gladstone's reply to this and similar requests from other chiefs was that the matter be referred for future consideration. The reason given is that the British Government was experiencing financial difficulties and the mood of the British public was one of indifference.[9] The views of Gladstone were not shared by every one. One of such dissenters was Consul Hewett. He favoured annexation. Indeed, he stressed the:

> "desirability of placing under British rule not only the countries of Kings Bell and Akwa, but all the territory commencing at some convenient frontier to the southwards of the Cameroons and extending as far as and to include Benin to the westwards."[10]

At this time Consul Hewett was home on leave. When he returned to his

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8. "Akwa" is the modern spelling for what appears in other documents as "Acqua".

9. Public Record Office; F.O. 84/1541-1660.

10. Harry R. Rudin, Germans in the Cameroons 1884-1914, (New Haven, Yale University Press, 1938), p. 21.

post, he found that German and French trade had increased at the expense of the English. He did his best to restore British influence by re-establishing the now defunct Court of Equity.

Besides Hewett, the Baptist missionaries had written to the British Government in favour of annexation, but the government attitude remained inflexible. After some persuasion by Consul Hewett, the government agreed to make treaties with the natives binding them not to cede territory to any foreign power without the consent of Her Majesty's Government. The consideration was that the natives would receive the protection of Her Majesty. Article VI of the draft treaty, however, accorded freedom of trade to all nationals.[11] Despite this compromise, one problem still remained unsolved and this was the problem of funds with which to finance the arrangements. A suggestion was made to the traders who had interest in the area to finance the arrangement but this was turned down.

It has been indicated above that French and German trade had increased considerably by this time, so one of the jobs which Hewett had to do on his return was to do everything possible with the help of the five British ships in the territory to thwart the efforts of the French and the Germans.

The plan of action was that Hewett was to visit several places

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11. See Appendix II for draft treaty as found in Public Record Office; F.O. 84/1641.

along the coast and conclude treaties with the natives while Captain Brooke was to proceed to Big Batanga where it was known that the chief preferred British to French protection. On his way to Big Batanga Brooke heard rumours of the presence of a German gunboat (The Mowe) which was on its way to the Cameroon River. Captain Brooke then ordered Captain Moore to proceed to the Cameroon River and to persuade Kings Bell and Akwa not to sign any treaties with any one because Consul Hewett was on his way with friendly messages from the Queen. Captain Moore proceeded to the Cameroon River on 10th July, 1884 and on the next day he sent a report to Captain Brooke stating that local representatives of the Hamburg firm of Adolf Woermann had, with instructions from their German superiors, made treaties with the natives. These treaties made at night and induced by bribes, offered the natives German protection. Moore then called on King Bell who told him that the people of Douala had waited too long for British annexation and that he was therefore contemplating giving over the land to the Germans because the task of governing was becoming increasingly difficult for him. Moore persuaded King Bell not to give his land over to the Germans till the arrival of Consul Hewett and the King accepted to wait for another week. When Consul Hewett heard of the presence of the German gunboat on the 14th of July, he cut short his other engagements on the Bonny River and made straight for the Cameroon River, but because of various other pressing matters,

he got there on the 19th of July only to discover that Kings Bell and Akwa had already concluded treaties with Dr. Gustav Nachtigal who arrived in the Mowe with instructions from Bismarck to set up German rule. Hewett could not conceal his bitterness for hitherto the efforts of the English had been directed against the French and not the Germans about whose arrival no one knew or even suspected.[12]

Thus sudden appearance of the Germans on the Cameroon River took everyone by surprise for until then, the Germans had not shown any imperialistic tendencies. Indeed, only a few years before, the Reichstag had shown its opposition to any such tendencies.[13] Despite the formation in 1882 of a Colonial Society, Bismarck had remained opposed to Colonies, so this dramatic change of mind was bound to cause a great deal of speculation. Several reasons have indeed been suggested to explain the new attitude adopted by Germany, but Professor Rudin argues quite convincingly that Chancellor Bismark had simply changed his mind.[14] It is not unlikely that this change of mind was brought about by the desire to protect German trade in the West Coast in the light of events taking place on that coast of Africa: events such as the great competition between the French and the English and the high discriminatory French tariffs. Besides other reasons which are often given for the annexation

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12. Le Vine, The Cameroons from Mandate to Independence, op. cit., Chapter II passim; Ardener S.G., Eye-Witnesses to the Annexation of Cameroon, 1883-1887 Government Printer, Buea, 1968; Ketchoua, L'Abbé Thomas, Contribution à l'Histoire du Cameroun de 450 avant Jésus-Christ a nos jours, Yaoundé (Circa) 1962.

13. There are references to German indifference to colonies to be found in Public Record Office F.O. 64/1140-50. This indifference was reported to Her Majesty's Government by Lord Ampthill, the British Ambassador in Germany.

14. Rudin, Germans in the Cameroons 1884-1914, op. cit., p. 30.

of Cameroon it is fair to say that the Germans, in keeping with the spirit of the time, wanted a market for their surplus goods and also some source of raw materials.[15]

The man charged by Germany with the responsibility of signing the treaties with the natives was Dr. Nachtigal who was thought suitable because of his six years experience in exploration in the Sudan and such other experience which he had gained by virtue of his job as the then German Consul in Tunis. He was to be assisted by Dr. Buchner. News of all these moves which had appeared in the German press was communicated to the British Government, but no action was taken because of assurances from Bismarck that both Nachtigal and Buchner were going to West Africa to check on the condition of German trade there.

In order to make the work easier for Nachtigal and Buchner, Adolf Woerman, the Hamburg trader, had instructed his representatives in Douala to negotiate treaties with Kings Bell and Akwa. Because of the long time that the natives had been made to wait for British annexation, it was relatively easy for the traders to negotiate these treaties, although the Germans very often had to bribe the natives heavily and to negotiate mostly at night because there was still a marked preference amongst the natives for British annexation. These are the nightly meetings to which we have referred above which Captain Moore referred to in

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15. Ibid, p. 33.

his report to Captain Brooke. Moore, of course, had arrived too late as the German traders had already concluded the treaties and were only waiting for the arrival of Dr. Nachtigal and subsequent ratification of these treaties. The treaties were aimed at regulating the relations between the natives and the Germans. The first treaty dated 12th July, 1884, stated what the natives wanted the European traders to do.[16] The second treaty, signed on the same day, stipulated the conditions under which sovereignty would be transferred to the Germans.[17] Both these treaties were ratified two days later by Nachtigal and when Consul Hewett arrived on July 19th, he was much too late, although it is often argued that even if Consul Hewett had arrived in time, he would not have concluded any treaties with the natives because Article VI of the draft treaty gave all Europeans freedom to trade with the natives,[18] a thing which the Kings and the natives did not like because it tended to deprive them of their position as middlemen, a position which they had taken steps to maintain by having it entrenched in the provisions of the second treaty of 12th July, 1884.[19]

Although the annexation by the Germans did not please the English, Kings Bell and Akwa did not hesitate to put the blame on their unwilling-

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16. See Appendix III for the terms of this treaty as contained in Appendix I of Professor Rudin's book, p. 423.

17. Appendix IV and Professor Rudin's book at p. 425.

18. See Appendix II, Art. VI.

19. See Appendix IV.

ness to annex Cameroon. As might have been expected, the annexation did not go without incidents, for as soon as the treaties were signed, some chiefs who did not like the Germans started trouble, but this was soon put down.

From now on, the Germans proceeded to set up a government under Dr. Buchner who had accompanied Nachtigal, but the English continued to supervise the Court of Equity[20] because, they argued, that it had been set up as a result of an international agreement and could not be abrogated by the Germans unilaterally.

The annexation and setting up of a government by the Germans ushered in a period of fierce competition between them and the English on the Cameroon Coast. This competition was assisted by the fact that the natives were not under any central authority so both powers had a relatively free hand to conclude treaties with individual chiefs. The only big problem which the English had to overcome was the provision of Article VI of the draft treaty. Since this tended to deprive the natives of their position as middlemen by providing for freedom of trade they were reluctant to sign treaties with the English. To overcome this predicament, the English decided to conclude treaties for an initial period of six months while hoping to find a solution before the expiry of such

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20. More will be said about the Court of Equity when we deal with the judicial system in Chapter IV.

period. The Germans got on well because they undertook not to deprive the natives of their position as middlemen and they also showed a greater willingness to bribe the natives. Another factor which created difficulty was the fact that the chiefs concluded similar treaties with both the English and the Germans. It has been argued that the natives did not fully appreciate the nature of the treaties, but this argument, when seen in the light of the fact that the natives frowned at treaties which whittled away their rights as middlemen, does not sound convincing.

At the beginning, the English found it difficult to carry out the treaty making exercise vigorously, but this was improved when the Cabinet made available some funds for this purpose. From then on, Vice Consul White, with the help of two Russian citizens whom he had employed, pursued this aim with vigour.[21] Rogozinski, one of the Russian employees, sometimes resorted to questionable means because of a deep-rooted hatred which he had for the Germans. Both the Germans and the Missionaries of Victoria did not like Rogozinski, so in order to lessen tension, Glanville ordered his dismissal. The Missionaries also resented the presence of the Germans, but because of the firm line which Bismarck had adopted in respect of Colonial matters, the English were forced to recognize Germany's claims and they in turn persuaded the missionaries to do likewise. England had to adopt this line of action because she did not want to be friendless at the Berlin Congress on Africa.

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21. For the various treaties signed see Public Record Office, F.O. 93/2/10-14.

Despite this conciliatory attitude of the English, there was a clash in December 1884 between pro-German and pro-English natives. This incident, coupled with others such as South West Africa and the Congo, angered the Germans very much and they unilaterally abolished the Court of Equity after making strong representation to Her Majesty's Government.

From now on, events took a more conciliatory form. Britain, having dismissed Rogozinski and recognized Germany's claims, sought to demarcate British and German spheres of interest. The area to the right bank of the Rio del Rey, then erroneously believed to be a river, was to be English territory. This area stretched as far west as Lagos. The English also retained the Mission Station at Victoria. The Germans, on the other hand, got back all the territory acquired by Rogozinski since by this time the six month period covered by the treaties referred to above had already expired and there was no possibility of negotiating new ones.

After all this, Victoria which was still in the hands of the English missionaries was the next problem to be tacked. The missionaries were unwilling to hand over this territory which they had bought in 1858. In doing this they were not oblivious of the fact that their station in Douala was already in the hands of the Germans. In this connection, they feared that they might be driven out of Douala as they had earlier been driven out of Fernando Po. Notwithstanding this, the missionaries pledged their support to the Germans in exchange for recognition. The Germans, however, were not happy with the presence of English

missionaries in their midst, so after some diplomatic negotiations, Victoria was finally bought for £750, a sum much reduced from the original estimate of £4,700. The purchase was made by the Basel Mission with the aid of some of its wealthy members.

We have already referred to the fact that Rio del Rey was established as the boundary between British and German territory, but this boundary was only a point on the coast and since Germany had now taken control of most of the area to the left bank of the Rio del Rey, it became necessary to extend this boundary inland. The inland boundary was fixed at a point referred to in the British Admiralty maps as the "rapids". This was later extended to a point on the right bank of the Benue River, east of Yola.

Having thus settled the western boundary, the next thing was to turn to the south and east and work out the boundary problem there. The French, it has been observed, were already in Gabon and the Congo, so the Germans had to deal with them next. This proved an easier task because both the French and the Germans resented the action by the Portuguese and the English in the Congo. The Germans thus easily got the co-operation of the French in return for a promise not to interfere with territory in French hands. The boundary discussions which started between the two in 1884, ended by Protocol on 24th December, 1885. By this Protocol

the Germans surrendered any rights they had south of the Campo River to the French while the French did likewise in respect of any rights which they had north of the river.[22] The boundary followed the Campo River to 10 degrees east longitude and then continued longitudinally to 15 degrees east latitude.

Hitherto, the discussion has been centred around the coast and the few establishments to be found there. Once the Germans had firmly established themselves within a defineable coastal boundary, they turned their attention to the problem of interior exploration. There was not only a general desire to know more about the hinterland and to extend the German protectorate but also a general awareness of the fact that the interior abounded in valuable articles such as ivory. This knowledge of the interior wealth had been got from the reports of English explorers and also from those of the German explorer Flogel who had, under the auspices of the German Geographical Society, explored the Benue with a view to proceeding from there to the Congo River. Even though the Germans knew of the great wealth that abounded in the interior, they were not forgetful of certain disabilities from which they suffered, the most important being the treaty signed with the natives and ratified by Nachtigal on 12th July, 1884, which recognised the rights of the natives as middlemen.[23] Among the other difficulties was the fact that the

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22. Protocol relating to German and French Possessions on the West Coast, Berlin 24th December, 1885. Map of 'Africa' by Treaty, Volume II, pp. 653-55.

23. See the provisions of Appendix III for terms of the treaty.

natives of Douala, most prominent among the middlemen, had acquired superior weapons from European traders and could use these weapons against any interior natives who might attempt to break their monopoly. Again there was no comfort in knowing that most of the interior wealth either went to the English in Nigeria through the Benue, or southwards to French hands in the Upper Congo, both of which river systems were monopolised by the English and French respectively. At this time, too, the Germans had begun to open up plantations in the coastal area and a need for workers was already being felt.

Since the Germans were thus hemmed in on the west and east by the English and the French respectively, the only alternatives open to them were either an overland route to the interior, or a positive policy of discouraging the natives from selling to the English and the French, both of which alternatives were prohibitive in cost. The Reichstag had for a long time frowned upon the idea of spending large sums of money on colonial affairs, and in order to overcome this the advocates of such expenditure got round the situation by saying that the money would be appropriated for scientific work or for purposes of suppressing the slave trade. Missionaries were encouraged to go into the interior so that any military protection given them would also be extended to the traders.[24]

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24. This is the type of situation which lends support to the arguments that missionaries have in the past been used as tools of imperialism.

Having overcome these initial difficulties, the Germans were thus set for effective exploration of the interior which was undertaken in two directions, namely, northwards across the hills and southwards. Before the first major northward exploration was undertaken, there were a few which were limited to the coastal area. Jesko Von Puttkamer explored the area around Mount Cameroon and discovered that Buea had a healthier climate than Douala, so the capital was removed from Douala to Buea. Zintgraff also explored this area. These early explorations were of great importance because they enabled the Germans not only to establish themselves firmly, but also to discover the fertile soil on the mountain slopes. It was also because of these early explorations that it was discovered that the Rio del Rey was not a river as had been thought. Zintgraff then proceeded to find a route into the interior. On this expedition he founded Barombi and later Bali in 1889.[25] He made treaties with the Fon of Bali and after establishing a station there he proceeded to Ibi on the Benue River.

At the same time as Zintgraff was trying to find a route across the highlands into the interior north, two other explorers Kund and Tappenbeck were busy in the south. They succeeded, after severe fighting for several years with the Bakokos who wanted to retain their position as

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25. Chilver, E.M., Zintgraff's Explorations in Bamenda, Adamawa and the Benue Lands, 1889-1892, Government Printer, Buea, 1966.

middlemen, to establish a station at Yaoundé.[26] They discovered that contrary to popular thought, the Sanaga and Nyong Rivers were not navigable and that the Benue and Congo Rivers were further inland. Once Yaoundé had been established it became an important junction town in the interior and it was through here that Morgen in 1890 made a journey into the interior which carried him as far north as Banyo in Adamaoua and gave the Germans their first knowledge of inner Cameroon. This is the heart of Moslem country and when Morgen tried to raise the German flag he was told that he could not do so without the approval of the Emir of Yola, the overlord of the northern rulers who was himself responsible to the Emir of Sokoto. The Emir of Sokoto was at this time under English control. This awakened the Germans to a realization of the fact that the English could have a firm grip over the hinterland of Cameroon. Added to this grim realization of English influence was the fact that the French were interested in the area between Lake Tchad and the Congo River. Indeed, the English and the French had made declarations in 1890 defining their respective boundaries near Tchad.[27]

The realization of this situation gave rise to a race for the Tchad between the English, the French and the Germans. In this race the Germans did not hesitate to draw on the experience of Zintgraff. His

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26. Yaoundé is referred to in German as Jaunde.

27. Herslet's Commercial Treaties, Volume XVIII, p. 438. Article 2(2) of the declaration is relevant.

estimate of the expenditure needed if Germany was to compete successfully in the race was considered too high by both Chancellor Caprivi and Zimmerer, the German Governor of Cameroon. Dr. Kayser, the head of the Colonial Division, did not share this view, so he tried to negotiate a secret loan from the Hamburg traders, but the Reichstag got wind of this and since they were determined to remain in control of affairs in Cameroon, they finally agreed to provide funds and to recover the same by means of levies on the Cameroon budget.

With this assurance that the expenditure would be met, the Germans then set to prepare for the struggle with the French and the English, but they suffered the initial set back that their expedition never got off the mark for other reasons. While this was going on, the French to the disappointment of the English and the Germans, were actively engaged in making treaties with the natives. This meant that the Germans might not have the foothold which they very much desired in the Tchad area. In 1893, however, this dream was realized, for in that year, they concluded treaties with the English which extended the Anglo-German boundary from Yola to the Tchad.[28] In order to achieve this the Germans lost Yola to the English. In the same year they began negotiations with the French who were in a stronger position because their claims to territory in the north

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28. Herslet's Commercial Treaties, Vol. XIX, pp. 253-255. This treaty retraces the boundary from the "rapids" through Yola to Lake Tchad.

were based on treaties signed with the natives. These negotiations lasted till 1894 when a boundary not too unfavourable to the French was agreed upon. The English and the German people were not very happy with the agreement because it was too much in favour of the French. Even the Italians complained that the result of the agreement was to cut into the hinterland of Tripoli which was then their territory. But be that as it may, 4th Feb., 1894 was an important date because it meant that for the first time Cameroon was bounded on all sides.[29]

After this date there is one more important historical date which ought to be mentioned in connection with our attempt to establish the boundaries of Cameroon. The date is 4th November, 1911, a date on which Germany surrendered her rights in Morocco to the French in return for territory in the French Congo to the disappointment of many Germans.[30] The result of this treaty was to increase the area of Cameroon from 19,000 to 292,000 square miles.

By 1911, therefore, Cameroon had got a defined boundary and was ruled by the Germans. What the Germans did to consolidate their rule in Cameroon does not come within the scope of this work except in so far as

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29. Protocol between the French and German delegates for settlement of their spheres of interest in the Lake Tchad area. Map of Africa by Treaty, - Herslet, Volume III, pp. 999-1003.

30. Franco-German Convention of 4th November, 1911 as contained in "Cameroon:" Handbook prepared under the direction of the Historical section of the Foreign Office, 1919.

they resorted to the machinery of law to achieve this aim and to this we shall return later.

It will have, we hope, been noticed that the discussion has hitherto been limited to the various European attempts, mostly from the coast, to gain control of what is now Cameroon. Little, if anything, has been said about another type of invasion, namely, that of the Hausas and Fulanis from the north, not because it is irrelevant, but because it will be treated under the next section which deals with the ethnic structure of Cameroon.

The Ethnic Structure of Cameroon

Cameroon, like most African countries, consists of various racial groups or tribes.[31] Indeed, she has been referred to as the meeting point of the peoples and races of Africa.[32] The question of tribes and races is not only limited to the people of Africa, but extends in varying degrees to other countries in the world. In this respect one might mention countries like Canada where it is not uncommon to hear outbursts of pro-French sentiments amongst a predominantly Anglo-Saxon population, or Cyprus where the bitterness between the Greeks and the Turks is still fresh in our minds, or Ceylon where there have been incidents between the

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31. The word "tribe" is not popular today. Other words like group, society, indigenes are to be preferred. We intend in this work to use all these words where it seems appropriate to do so.

32. E. Mveng, Histoire du Cameroun (Presence Africaine, Paris, 1963), p. 211.

Tamil and Sinhali majority, to mention just a few. This living together of various racial groups or tribes is not altogether trouble free and sometimes great skill is needed in balancing the conflicting interests. The recent Nigerian situation is a reminder of how delicate the task can be and what can be the result if anything goes out of balance. The situation resulted from a clash of interests between the three big tribes in the country, namely, the Hausas, the Yorubas and the Ibos. It is argued however, that on account of their populations, these tribes ought to be regarded as nations.[33]

Cameroon, therefore, is also faced with this difficult job of balancing various tribal interests, but the magnitude of the problem is perhaps not as great as elsewhere because there is no particularly large tribal group which can easily dominate the others as has been the case in Nigeria. In this connection we would agree with Dr. Busia that tribalism is not necessarily a bad thing, for although it tends:

> "to retard the process of national unification, it is not a barrier to their survival, nor is it necessarily unhealthy in terms of the development of competitive societies. The multiplicity of tribes within a state is not everywhere an obstacle to the creation of a broader political nationality. Indeed, the larger their number and the smaller their size the better are the chances of effective amalgamation. Moreover, it could be argued that such a rich pluralism

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33. T.O. Elias, Nigeria: The Development of its Laws and Constitution, (London, Steven and Sons, 1967) p. 1.

> makes dictatorship less likely by providing countervailing power centres which cannot be coerced into a single authoritarian system."[34]

Perhaps one of the root causes of tribalism lies in what Roy Lewis said in the Times in August:[35]

> "The British" he said, (and one would add the European nations) "imposed on Africa pre-conceptions they brought from India, classifying the tribes on a system all their own.
>
> On the analogy of Pathons and Madrassis, they sought out a warlike and a clerkly tribe in colony after colony."
>
> "It was usually assumed that a tribe from the mountains was tougher than one from the plains, that one from the north was more virile than one from the south; pastoral tribes were finer types than tillers of the soil; and moslems were more militant and manly than pagans or christian converts. In Kenya, to take an example, the British decided that the Kikuya could not fight but could be taught to write and read, the Masai were the warriors. In Nigeria the warriors were the Hausas and the Ibos the clerkly people."
>
> "The effect of Colonial rule was indeed often to give western education to the meek and to withhold it from the proud; the meek then multiplied and learnt to use the maxim gun."

Whatever the case, Cameroon is fortunate to answer the situation which Dr. Busia describes above.

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34. Busia, K.A., Africa in Search of Democracy, Routledge and Kegan Paul, London, 1967, pp. 121-122.

35. The Times, 25th August, 1967.

It has been indicated above that Cameroon is the meeting point of all races of Africa. There are three great races in Africa south of the Sahara and these races are represented in Cameroon.[36] The southern part of the country is inhabited by the Bantu speaking peoples: they occupy the area south of a line:

> "starting in the west from the sea coast at the mouth of the Rio del Rey (separating Southern Nigeria from the Cameroons) the line runs north-east along the boundary thence south and east with many irregularities to the south-east corner of the Cameroons."[37]

The Doualas, the Bakokos and the Ewondo speaking people of the Yaounde area are among the most important people in this part of the country. They were the first to come into contact with the early European traders and slavers and for many years they enjoyed the position of middlemen between the European and the hinterland natives. It is perhaps appropriate here to mention also the fact that there are about 6,500 Pygmies in this part of the country. They are found mostly in the south-eastern area which borders on the Congo. Most of them are dispersed about the forest and live in bands in much the same way as those of the Congo forest.[38]

To the north of this line live the Sudanese negroes who have been variously called the West Atlantic group[39] or the Nigritic people.[40]

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36. Africa South of the Sahara only refers to the non-European races.
37. C.G. Seligman, Races of Africa, (Oxford University Press, 1959) p. 162.
38. C.M. Turnbull, The Forest People, (Chato and Windus, London, 1961).
39. J.H. Greenberg, Studies in African Linguistic Classification, (New Haven, 1955).
40. G.P. Murdock, Africa: Its People and their Culture History, (new York, McGraw-Hill Book Co., 1959).

They occupy the central area of Cameroon with the largest concentration around the Bamileke region, the Bamenda grasslands and Bamum which places incidentally form a sub-linguistic group generally designated as Semi-Bantus or Bantoid. They occupy some of the most densely populated areas of Cameroon.

The northernmost part of Cameroon is inhabited by people of Hamito-Semitic origin who were once said to have come either from North Africa or from the Nile Valley.

This classification is based on linguistic basis because as Greenberg says:

> "it it the common sense recognition that certain resemblances between languages can only be explained on the hypothesis of genetic relationship."[41]

We need hardly emphasise the fact that this classification is done on as broad a base as possible,[42] the main purpose being to give us a general understanding of the broad linguistic groups in Cameroon and in no way represents the ethnographic picture of Cameroon which is shown by recent tabulations as consisting of 136 identifiable ethnic groups in East Cameroon and about 63 in the West.[43]

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41. J.H. Greenberg, Studies in African Linguistic Classification, (New Haven, 1955), p. 1.

42. This caveat is entered here because we do not want to be drawn into the controversies amongst ethnographists as to the basis for classification.

43. Victor T. Le Vine, The Cameroons from Mandate to Independence, op. cit., p. 6.

Living among the Nigritic people in North Cameroon are the Hausas and Fulanis about whose early history a word ought to be said here. Closely associated with the Hausas and Fulanis is Islam the spread of which in North Cameroon is due to them. The whole history of the spread of Islam by the Hausas first and later by the Fulanis is traceable to the Great Empires of the Western Sudan such as the Empires of Ghana, Mali and Shongai, the Sosso Empire and the other powerful states which sprang from these empires. They were founded between the fourth and nineteenth centuries largely by invaders from the north and later by negroes who had acquired the techniques of war and government. The alien northern influence came primarily from Morocoo, Algeria, Tunisia and sometimes further east. The Moroccans and Algerians concentrated their efforts in the area of the River Niger around Timbuctu while the Tunisians and the invaders from further east were busy in the area between the Niger and Lake Tchad. It is this group that interests us for it is their influence that extended into Cameroon.

One difference between the two groups was that while the states around the Niger were constantly at war with one another, those between the Niger and Lake Tchad were reasonably quiet. The states in this area were Kanem-Bornu around Lake Tchad, the Hausaland to the west in what is now Northern Nigeria.[44] There is some conflict in the story about the

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44. The former Northern Nigeria now comprises of 6 states which were created by the Federal Military Government on 27th May, 1967.

origins of these two states. The first theory is that about the eighteenth century A.D., negro groups came from the east and north-east and established a number of small kingdoms over the agricultural natives living in the area around Lake Tchad and Bornu and formed the state of Kanem-Bornu. This state was ruled by kings who, it is suggested, originated from the Nile or at least from an area which was under the influence of the negro kingdom which flourished in the Nile until the fourth century A.D. The kings who ruled over this state were regarded as divine. The second theory is that there were already existing in this area small negro city states and that desert pastoralist infiltrators from the north merged with the ruling native families and used their superior cavalry to fuse the original small states into large ones which became expansionist and tended to move southwards. By the end of the eleventh century the Kingdom of Kanem-Bornu had become very powerful and had had contacts with Tripoli and Egypt and its kings had become Moslems by accepting the teaching of Islam.

The seven Hausa states (Daura, Kano, Zaria, Gobir, Katsina, Rano, and Biram) on the other hand came into existence about the tenth century A.D. They were much smaller than the others and were constantly struggling amongst themselves for power and this made them vulnerable to the stronger states like Mali and Shonghai to the west or Kanem-Bornu to the east. The position of the Hausa states had given rise to conflicting stories about their later history and subjection to Islam. One source of authority

states that Islam came to the Hausa states through merchants from Mali in the west. These merchants are said to have reached Kano about the fourteenth century. Another source states that Islam spread to Hausaland from Kanem in the east. Evidence of early Kanem influence makes this story equally credible, if not more so because of the proximity of Hausaland to Kanem. The general preponderence of opinion, however, is that Mali being more powerful than Kanem must have exerted more influence on Hausaland. The Fulani jihad about which more will be said later and which seems to have spread eastwards from the west, lends support to this opinion. It is perhaps this trade connection with Mali that made the Hausas a great trading people by the fifteenth century. This trade brought the Hausas, particularly those of Bornu, to the area around the Mandara Mountains where strong states had been established by the natives who, after resisting incorporation into Bornu, had been captured by the sixteenth century and islamized. By the turn of the sixteenth century Islam had spread as far as the Mandara Mountains in Northern Cameroon.

The Hausa states, however, did not remain in their original form, for by the thirteenth century the Fulanis had already begun to appear in Hausaland. The origin of the Fulanis is a matter of great controversy, a few of which are indicated below by Kirke-Greene:

> "One claim", he says, "is that they are of the same Polynesian stock that colonized Madagascar (now Malagasy Republic); another connects them with the Zingari or gypsies of Europe and traces both races back to a common Indian origin; while a third imaginatively relates them to the Hyksos or shepherd Kings who were expelled from Egypt in the year 1630 B.C. There are still more fantastic hypotheses, ranging from a connection between them and the lost Roman legionaries to the ascription to the Fulani of the original colonization of Canada. Certain it is that the lighter skin, thin lips, narrow nose, long straight hair and generally refined facial features of the Fulani indicate a non negroid descent."[45]

Professor Fage on the other hand thinks that the Fulani are people who originally came from "white" North Africa in about the second century and settled in the Empire of Ghana. Through intermarriage, they became thoroughly African and dark skinned and spoke African languages, but their characteristic height and aquiline features as well as the similarity of the Fulani language to Serere and Wollof are indivative of their origin.[46] Both authors agree that the Fulanis are very much unlike the Negroes. However this may be, it seems that an authoritative statement will have to await future research. One thing, however, seems certain, namely, that their penetration eastward into Hausaland was from a westward direction.

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45. A.H.M. Kirke-Greene, Adamawa Past and Present, (Oxford University Press, 1958), p. 22; our parenthesis.

46. J.D. Fage, An Introduction to the History of West Africa (Cambridge University Press, 1964), p. 18.

The Fulanis, a nomadic people, had by the eighteenth century penetrated into Hausaland and further east into Adamaoua. In this eastward move some of them settled down to the life of the town which seemdd more attractive and became converts of Islam. By the end of the eighteenth century, a class of Fulani divines had arisen. This class was very critical of the Hausa ruling class whose behaviour they said was no different from that of the pagan peoples. The ruling classes were subjected to the greatest criticism because Islam had been introduced through them. One of such divine Fulanis was Usuman (also Osman) dan Fodio. He criticised the debased Islamic religion practised by the Hausas and this brought him into conflict with the Kings. He started in Gobir where he enjoyed the confidence of the Fulani Gida (settled Fulani) and proclaimed himself Sarkin Musulmi (that is Commander of the Faith) and declared the jihad (holy war) which was aimed at rectifying the debased Islam. At this point even the pagen Fulani herdsmen rallied around him more on kinship rather than religious basis. He set up his headquarters in Sokoto and between 1804 and 1810 the Fulanis conquered all the Hausa States and much of Bornu. The declaration of the jihad had marked the passage of the Fulani from peaceful settlers among the Hausas and other groups to warriors. They won most of their victories because they fought on horseback and used superior weapons.

The conquests led them to Northern Cameroon. The man in charge of this area was Adama, a Fulani noble who lived in South-west Bornu. In 1806, he came back from Sokoto with news of the jihad and with the aid of a flag from Usuman Dan Fodio he persuaded the Fulani in his area to join the crusade. In the letter appointing Adama, dan Fodio conferred on him the title of Lamido Fumbina (that is, Lord of the South) and he was charged with the responsibility of propagating the faith from the Nile to the Bight of Biafra. He was also allowed to recruit Fulani volunteers (Toronkawa) in Sokoto.[47] The ranks of the Fulani were filled with Hausa mercenaries who saw in this the prospect of slaving. This formed the nucleus of the army which Adama was to raise on his arrival in Adamaoua. He made Yola his headquarters (Yola still is the headquarters of the Adamaoua Emirate). In his campaigns he extended the emirate as far south as the Sultanate of Rumban in which is included Banyo and other neighbouring towns. He then moved on to Ngaoundere and Rei on the Benue River and then northwards to Maroua, Bogo, parts of Bornu and the Mandara Kingdoms.

When Adama died his sons Lawal and Zubeiru continued to consolidate his work. In this process the Empire of Bornu fell to Fulani domination.

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47. A.H.M. Kirke-Greene, Adamawa Past and Present, op. cit., pp. 125-130.

When Zubeiru finally came to the throne in 1890, the Germans had already established their protectorate over Cameroon and were advancing overland to the interior.[48] The French too had at this time occupied the land to the north-east of Lake Tchad while the English were pressing in from the west along the Benue River. It was Zubeiru's misfortune to watch the land which had been conquered by his father pass to the Germans.

The misfortune of Zubeiru concludes the marathon journey through this introductory chapter, the aim of which is twofold. Firstly, it attempts, in the first part, to put in historical perspective the map of Cameroon as we know it today.[49] Secondly, there is an attempt, coupled with some history, to make a broad general classification of the ethnic groups in Cameroon. It is hoped that both parts and in particular the second will help us to understand both the customary and imported laws better. In this connection one recalls that it was Savigny (1779-1861) who said that law is the unconscious product of the volksgeist. He has since been criticised for not taking into account such considerations as what constitutes the volksgeist and the fact that customs are not based on any popular consciousness but on the interest of a strong

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48. Reference has already been made to Morgen's expedition inland which brought him as far as Adamaoua in the same year.

49. Cameroon in this context includes what is now Sardauna Province. Something will be said about this later.

minority as seems to be the case in South Africa or Rhodesia today, nor did he consider the fact that some rules develop unconsciously while others are the result of a conscious effort as is the case with modern trade union law. He also ignored the creative function of judges and jurists, the fact that many nations (like modern Japan) have borrowed their laws from others, and the part played by conscious law reform. However that may be:

> "it must be admitted that the historical school had at least, if in a most confusing manner, grasped the important truth that law is not an abstract set of rules simply imposed on society, but is an integral part of that society, having deep roots in the social and economic habits and attitudes of its past and present members."[50]

or to put it in other words:

> "the historical school considered law in direct relationship to the life of the community and thus laid the foundation on which the modern sociological school has been built."[51]

One of the reasons therefore of attempting the broad ethnic classification has been the desire to try and understand the influence which each group has had in the development of the law.

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50. D. Lloyd (Baron Lloyd of Hampstead), Introduction to Jurisprudence with Selected Texts, 2nd Ed. (London, Stevens & Sons, 1961) pp. 330-331.

51. G.W. Paton, A Textbook of Jurisprudence, 3rd Ed. by D.P. Derham, (Oxford at the Clarendon Press, 1964), p. 18.

Different ethnic groups have different politico-socio-economic patterns which influence the growth of the law. In this connection recourse must be had to a classification of African societies into three types.[52] Firstly, there are:

> "those very small societies in which even the largest political unit embraces a group of people all of whom are united to one another by ties of kinship, so that political relations are co-terminus with kinship relations and the political structure and kinship organization are completely fused."[53]

This type is represented in Cameroon by the Pygmies of the south-eastern forests. Studies on similar people in the Congo forests show that they are pre-occupied with restoring the balance of their society and this serves as a guiding principle in the settlement of disputes.[54] Secondly, there are the chiefless or acephalous societies:

> "in which the lineage structure is the framework of the political system, there being a precise co-ordination between the two, so that they are consistent with each other though each remains distinct and autonomous in its sphere."[55]

This type of segmented society lacks a centralized authority or a chief. It also lacks an administrative authority or recognisable regular courts.

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52. M. Fortes and E.E. Evans-Pritchard, African Political Systems (Oxford University Press, 1940).
53. Ibid, at p. 6.
54. C.M. Turnbull, The Forest People, op. cit.
55. Fortes and Evans-Pritchard, op. cit., p. 7.

It would appear that the people of Bantu origin in the south of Cameroon come under this group. There are chiefs and leaders but they do not enjoy the prestige and influence which the chiefs in the more centralized groups enjoy. There are striking similarities in this respect between some people in this part with the Ibos of Nigeria who are generally quoted as a typical example of the acephalous society. It has been observed that the Bassa are assertive and extremely individualistic and this is not too unlike the Ibos.[56] Thirdly:

> "there are societies in which an administrative organisation is the framework of the political structure."[57]

This type is generally referred to as the centralized society. These are large empires like the Ashanti Confederation of Ghana, the Fulani and Hausa emirates in North Cameroon, the sultanate of Foumban, and the great centralized societies like the Bamiléké or the Bamenda grasslands. Here one witnesses large centralized societies with complete hierarchical structures such as the type very vividly described by Gerald Durrell in his Bafut Beagles.[58] These societies answer the description of states in any sense.

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56. D.E. Gardinier, United Nations Challenge to French Policy, (Oxford University Press, 1963), p. 42.

57. Fortes & Evans-Pritchard, op. cit., p. 7.

58. See generally Fitzenthaler P. & R., Cameroons Village, An Ethnography of the Bafut., Milwaukee Public Museum Publications in Anthropology, 1962; Ritzenthaler P., The Fon of Bafut, Cassell, London, 1966; Chilver, E.M., and Kaberry P.M., Traditional Bamenda. The Pre-Colonial History and Ethnography of the Bamenda Grassfields, Government Printer, Buea, 1967; for a more popular source see Durrell, Gerald, The Bafut Beagles, Penguin, 1954 pp. 64-69.

This clear cut classification has not gone uncriticised. It is argued, for instance, that the political unit in the African society does not consist mainly of kinship relationships for there are societies to be found which transcend the blood relationship. Societies are also known to have territorial units.[59] It is also not uncommon to find that societies belonging to one group do not all have similar institutions.[60]

Despite these criticisms, it seems to us that the situation in Cameroon broadly answers this classification, and therefore, that any survey of the law in the past and any future developments cannot ignore it completely. Indeed, talking about the past and the future reminds us of what a former Cameroon Minister of National Education said in the first issue of Abbia.[61] He said:

> "It shall be the task of Abbia to extract an original substance from the zone of heterogenous acculturation between two cultures, the imported culture serving as a vehicle of technical progress, and the indigenous culture remaining quasi stationary in the best of cases." "Abbia, therefore", he continued, "shall have for first duty to put the essential traditional values in evidence, to promote knowledge of them and to restore them to their position of privilege; it will then have as its next duty to help integrate these values smoothly into the new structures with a view to achieving, in the end, that synthesis that symbiosis, which, far from being a cultured estrangement, is a rich restitution of dignity."

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59. I. Schapera, Government and Politics in Tribal Society, (Watts, London 1956).

60. J. Middleton and D. Tait, Tribes without Rulers - Studies in African Segmentary Systems (London, Routledge and Kegan Paul, 1958).

61. W. Eteki-Mboumoua, Abbia No. 1, Cameroon Cultural Review, (Centre de Production de Manuels et d'Auxiliarés de l'Enseignement, Yaounde, Cameroon, 1963), pp. 11-12

Dr. Fonlon, in the same issue of Abbia re-echoed the same sentiments when he said that:

> "The mission of Africa's men of science and letters and art, today, is to salvage what can still be salvaged from our disparate, disintegrating, fast-disappearing past, to observe the forces, the influences working on their generation, to observe the reaction of the said generation to the said forces, to see what the dialectic of need commends us to borrow from the stranger, and then to weld these diverse elements together so that, from this welding may emerge one dynamic culture for the African peoples."[62]

The need for a fulfilment of these sentiments is felt no less strongly in law, and we will be coming back to this later.

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62. Dr. B.N. Fonlon, Abbia, No. 1, op. cit., p. 20.

PART II

General Outlines of Constitutional and Political Developments.

CHAPTER II

The German Colonial Constitution of 1886

In the first chapter we considered the struggles for mastery over Cameroon and the emergence of Germany as the victor. Following this success the Germans then consolidated their hold over Cameroon by carving out an internationally recognised entity with legally defined boundaries. This entity is what we know today as Cameroon.[1]

Once their position had been consolidated, the Germans turned to the job of administering the Cameroons. At first this job presented some difficulties among which finance figured very prominently. The financial problem was one of how to raise money to finance the colonies of which Cameroon was one. This problem was made even more difficult by the fact that the Reichstag was opposed to the idea of colonies and this meant that no reliance could be placed on them for financial support for these colonies. It is often said that Bismarck had taken a single handed decision in the acquisition of colonies, so the Reichstag's

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1. Perhaps it is important to point out here that present day Cameroon excludes what is now Sardauna Province in the North East State. This part was separated from Cameroon as a result of a plebiscite held in 1961. More will be said about this plebiscite later.

only way of showing disapproval for being presented with this fait accompli was to oppose any financial arrangements for this purpose. Perhaps in his action, Bismarck was relying for financial support from the commercial interests for whose benefit the colonies were founded. Here too he was to meet with disappointment, for the commercial interests argued that colonial administration was too big a matter to be left to private enterprise.

The arguments of the traders were so convincing and consistent that Bismarck finally decided in 1885 to ask the Reichstag formally for funds for the colonies. This immediately raised the question of the legal status of Cameroon and indeed all the colonies because there was no provision for the Colonial Empire in the German Constitution, although it has been argued, and not unconvincingly, that the German Constitution was not silent about colonies as the Reichstag thought. Dr. Townsend mentions in her book that:

> "there is some evidence before 1871, which shows that the idea of future colonies for Germany was not absent from Bismarck's mind. Article"IV"of the Constitution for the North German Confederation which he prepared reads: 'the law of the Kingdom shall be extended over the colonies and the settlements in the lands overseas', a clause whose purport later appeared in the Constitution of the Empire in 1871".[2]

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2. Townsend Mary E. "The Rise and Fall of Germany's Colonial Empire 1884 - 1914, New York, Howard Fertig, 1966, p. 66.

Despite this reference to colonies in the Constitution, it seemed essential to find a place for them in the German economic or legal structure - a place that would be more specific than this oblique reference to colonies in the Constitution. To this end, Bismarck proposed a measure which aimed at laying "the constitutional foundations on which the colonial structure could rest".[3] With the rather indifferent or hostile attitude of the Reichstag and indeed the German people to colonies, the Constitution was bound to reflect the attitude of the Chancellor and the traders as these were the only people who seemed manifestly to show an interest in the colonies. The proposals made provision for a centralised control to be exercised through the Kaiser. The reason for this was that since the German nation had no colonial experience such central control was necessary until experience that would make it possible to work out a more flexible constitution was gained. Furthermore, it was argued that this system was similar to that of the Orders-in-Council which had worked very successfully for England.

This system was welcomed by the traders because it was one which would overcome the thwarting influence of the Reichstag but it was severely criticised by the latter. The result was a modified form of

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3. Rudin, op. cit., p. 127.

the original proposal. Instead of legislating for the colonies by decree, the law of consular jurisdiction was introduced mutatis mutandis because of the special circumstances of Cameroon. The final Constitution, however, conferred great powers on the Kaiser to legislate by decree for the order and good government of the colonies.[4]

Cameroon had thus had its first Constitution and in the years that followed, German law and consular procedure were applied as modified by the Reichstag from time to time. This continued to be the situation till the outbreak of the Great War which resulted in the defeat of the Germans and ultimately in the end of German rule in Cameroon.

## The League of Nations and the Mandates over the Cameroons

### The British Cameroons

German rule having thus ended, the Allied Powers were faced with the problem of dealing with her colonies in Africa, the Pacific and the non-Turkish Provinces of the Ottoman Empire. One thing that had emerged during the war was the realisation of the fact that in order

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4. Rudin, op. cit., p. 129. Enonchong, H.N.A.: Cameroon Constitutional Law, Yaoundé Centre d'Edition et de Production de Manuels et d'Auxilaires de l'Enseignement, 1967, p. 50

to preserve world peace it was important to internationalise colonial policy if only to allay the fears that political control of colonies on a national basis would lead to commercial control of such colonies by the nationals of the controlling state - a question which had dominated the relations of the powers - particularly with backward territories.[5] But, of course, preserving international peace through the colonies was not the most important issue of the day. The burning question was how to ensure for a lasting peace. This was the question that gave birth to the League of Nations, but fascinating as the early history of the League is, we shall not concern ourselves with it here because it lies outside the province of this work, nor are we concerned with the interesting arguments about the origin of the Mandate system. Our interest is centred around the application of the Mandate system to the colonies and here it seems paradoxical that it should have been suggested by none other than General Smuts.

His proposals for the Mandate system with regard tothe German colonies in Africa was that they be annexed by Europeans as mandates because they were inhabited by barbarians who were unfit for political

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5. Upthegrove Campbell L., Empire by Mandate, Bookman Associates, New York, 1954.

self-determination in the European sense. The Mandatory state would then administer her trust on behalf of the League as far as possible, with the consent of the population concerned. This suggestion appealed to President Wilson who had been advocating an equitable distribution of such colonies.[6] What finally emerged from the suggestions of General Smuts, although in a greatly modified form, was Article 22 of the League of Nations which provided that for all German colonies inhabited by people not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well being and development of such peoples form a secret trust of civilization and that securities for the performance of this trust should be embodied in the covenant. Under this system Mandates were classified as A, B and C. The class B Mandates, of which Cameroon was one, included those less advanced German colonies in Central Africa which the Mandatory was to administer under conditions prescribed in the Mandate. These conditions included inter alia, definite guarantees to the League for the well being of the inhabitants.[7]

Before the members of the League could meet to decide the future

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6. Upthegrove, Campbell L. op. cit., pp. 13-15.

7. Upthegrove, Campbell L., op. cit., p. 17; Walters, F.P., History of the League of Nations (Vol. I), Oxford University Press, 1952, p. 58.

of these colonies after the cessation of hostilities and the signing of the Peace Treaty at Versailles on 28th June, 1919, it was already quite clear where the future of the Cameroons lay, for the Allied campaign against Germany in Cameroon had been won by the joint effort of British and French forces and so they were bound to figure prominently in any arrangements affecting that colony.

By September 26, 1914, Douala had already fallen to the British and French forces and the task of administration had been taken over by a condominium between Britain and France. The main purpose of the condominium which existed in principle rather than in practice was to provide some form of ad hoc administration pending the ultimate collapse of German resistance in the colony.[8] This final collapse came in February 1916 and thereafter the French and the British proceeded to conclude the agreement of 4th March, 1916, by which the colony was partitioned.[9] This partition which was originally intended to be provisional soon acquired an air of permanency.[10] On 10th July, 1919, a final delimitation was carried out by a Franco-British declaration which was signed for the respective governments by M. Henry Simon,

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8. Le Vine, Victor T., op. cit., p. 32.

9. Proclamation No. 10.

10. Gifford P. and Louis W.R., Britain and Germany in Africa-Imperial Rivalry and Colonial Rule. Yale University Press, New Haven, 1967, p. 283.

Minister for the Colonies of the French Republic and Viscount Milner, Secretary of State for the Colonies of the British Empire.[11] The foundations for this declaration had been laid at a meeting held in Paris in May 1919 between Lloyd George, Clemenceau, President Wilson and Signor Orlando, at which it was agreed that France and Great Britain should make a joint recommendation to the League of Nations with regard to the future of Togoland and Cameroons.[12] The joint recommendation which these powers made to the Council of the League of Nations made provision that Togoland and Cameroons be administered as Mandates according to Article 22 of the League Covenant. Britain was to administer that part which, according to the delimitation, fell to her lot and France the other. The joint recommendations took the form of draft Mandate Agreements with identical terms.[13] These were accordingly confirmed without any alteration as the British and French Mandates for Cameroons respectively. Article 2 of the Mandate provided that:

> "The Mandatory shall be responsible for the peace, order and good government of the territory and for the promotion to the utmost of the material and moral wellbeing and social progress of its inhabitants."

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11. The Declaration provided as follows: "The undersigned (i.e. M. Simon and Viscount Milner) have agreed to determine the frontier separating the territories of Cameroons placed respectively under the authority of their Governments, as it is traced on Moisel's 1:300,000 Map ..."

12. Cmnd. 1350.

13. Ibid.

Article 9 provided further that:

> "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 and subject to the above provisions.
>
> 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 a customs, fiscal or administrative union or federation with the adjacent territories under his sovereignty or control, provided always that the measures adopted to that end do not infringe the provisions of this Mandate."[14]

These recommendations were confirmed by the Council of the League on 20th July, 1922. Thus the Council of the League had by virtue of the two sections quoted above given Britain and France almost a carte-blanche in the administration of the mandated territory of the Cameroons, the only check being the provision that "a permanent Commission shall be constituted to receive and examine the annual reports of the Mandatories and to advise the Council on the matters relating to the observance of the Mandate" which was embodied in Article 22 of the League Covenant. This Commission could not do very much to influence the

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14. The provisions of the Mandate out of which the sections above quoted are taken are found in C. 449(1) C.M. 345(C) 1922, VI - British Mandate for the Cameroons, League of Nations Genève le 1er Aout, 1922.

Mandatory's administration of the territory as demonstrated by the events in South West Africa.

After the confirmation of the Mandate for Cameroon, the Mandatories were now ready to start administering their Mandates. The British Government relying on Article 9 of the Mandate and on the powers conferred on her by the Foreign Jurisdictions Act of 1890,[15] enacted the Cameroons Under British Administration Order-in-Council No. 3 of 1923 which provided that the British Cameroons was to be administered as though it formed part of Nigeria. The British Cameroons was, however, not administered as a whole for the schedule to this Order in Council makes provision by Articles 3 and 4 for a division of the territory into a northern sector to be administered as part of the Northern Provinces of Nigeria and a Southern Sector to be administered as part of the Southern Provinces.[16] This Order-in-Council

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15. State Papers LXXXII (1889-1890), p. 656.

16. The line referred to in Arts. 3 and 4 shall be drawn as follows:

1. From a point on the old Anglo-German frontier in approximately Lat. 7°34'44" N, southwards along the 'Bezirksgrenze' to its junction with the River Donga.

2. Thence the River Donga upstream to its junction with the tribal boundaries between Kaka and Mambila.

3. Thence the tribal boundary between Kaka and Mambila to the point where it meets the parallel of Lat. 6°40" N.

4. Thence following the parallel of Lat. 6°40" eastwards to the point where it meets the Franco-British frontier.

with slight amendments in title continued to be the basic document under which Cameroon was governed till 1946.

During this period, as indicated above, Northern Cameroons was administered as if she formed part of the Northern Provinces of the Protectorate of Nigeria and it was made lawful for the Governor and Commander-in-Chief for the time being of the Protectorate hereinafter called the Governor, from time to time by Ordinance to provide for the administration of justice, the raising of revenue, and generally for the peace, order and good government of the said portions while the Southern Cameroons was to be administered as if it formed part of the Southern Provinces of the Protectorate and it was also made lawful for the Governor by and with the advice of the Legislative Council of Nigeria from time to time by Ordinance to provide for the administration of justice, the raising of revenue and generally for the peace, order and good government of the said section.[17]

These two sections formed the basis of all legislation in the Cameroons till the introduction of the Richards Constitution in 1946, but by this time the second world war had been fought and won and the Mandate system had been replaced by the Trusteeship System to which we will return after considering very briefly how the French Cameroons

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17. Sections 3 and 4 of the Order-in-Council.

faired under the Mandate system.

The French Cameroons

The authority of France as Mandatory power over French Cameroons was confirmed when France signed the Mandate on 20th July, 1922. France, like Britain, was at this time not a new comer to the colonial scene. Using Article 9 of the Mandate agreement as a basis, France proceeded to administer her sector of the Cameroons on the same basis as the neighbouring colonies of French Equatorial Africa.[18] Although French connection with colonies dates back to about 1535, they did not occupy an important place in the French Constitution until 1795. Article 6 of the Constitution of that year proclaimed that the colonies were an integral part of the French Republic and would be governed by the same constitutional law as the Republic.[19] This Constitution therefore established assimilation pure and simple between the metropole and the colonies.[20] The Constitution of 1848 prepared the way for further assimilation for it provided by Article 109 that the territory of Algeria and all the other French colonies would be governed by particular laws till such time that a special law would place them under the regime of the Constitution. There was, however, no special law and the decrees

18. Gonidec, P.F., Droit d'Outre-mer (Tome I) Editions Montchrestien, Paris, 1959, para. 133, p. 200.

19. Lampué P., Droit d'Outre-mer et de la Co-opération, Dalloz, Paris 1969, para. 48, p. 48.

20. Luchaire F., Manual de Droit d'Outre-mer Receuil Sirey, 1944, para. 268.

and arrêtés of Commissioners General of the Republic became almost and exclusively the source of legislation. The course of events was modified by the constitutional arrangements which were introduced after the coup d'etat of 1851. By these arrangements a Senatus-Consulte was to regulate colonial affairs.[21] This meant that power over the colonies was exercised by both the Senate and the Emperor.

The Third Republican Constitution of 1875 which consolidated the previous ones reaffirmed the policy of assimilation which had now been regarded as superior to any other. It was, however, under this Constitution that Cameroon became a Mandate of France. In the light of this policy of assimilation and by virtue of the powers conferred on her by Article 9 of the French Mandate for Cameroons, France decided to administer the Cameroons jointly with French Equatorial Africa.[22] This incorporation of Cameroon into French Equatorial Africa was effected soon after the partition of the territory between Britain and France.

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21. See the Senatus-Consulte of 3rd May 1854 in Jurisclasseurs de la France d'Outre-mer-Textes, Législatif et Reglementaires.

22. The group of territories known as French Equatorial Africa was formed in 1910 following the successful example of French West Africa which came into existence in 1895. The experiment of grouping territories in this way started in Indo-China in 1887.

The Cameroons was administered by a Civil Governor who was responsible to the Governor-General for French Equatorial Africa whose headquarters were in Brazzaville. It was, however, not long before the administration of Cameroon was separated from that of French Equatorial Africa. This was done by a Decree of 23rd March, 1921.[23] This decree established a Governor and Advisory Council for Cameroon, but no Cameroonian sat on the Advisory Council till two Orders of 13th April, 1927 and 29th September, 1928 offered them two places. This separate administration was motivated by a desire to comply with the provisions of the Mandate because incorporation of Cameroon into her poorer neighbours would have been against the Mandate.[24] Perhaps one ought to add here that the withdrawal of Cameroon from French Equatorial Africa was not complete because Cameroon still retained considerable links with Brazzaville. Thus was Cameroon governed till the outbreak of the second world war in 1939.

## The United Nations Trusteeship and the Constitutional and Political Developments leading to Independence and Reunification.

### The British Cameroons. Post War Arrangements and 1946 Constitution.

The period from 1939 to 1945 was taken up by the second world wa

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23. Journal Officiel du Cameroun (J.O.C.) 1921, p. 88; Buell, Raymond L., The Native Problem in Africa, Vol. II, New York (The Macmillan Company) 1928, p. 279.

24. Buell, Ibid.

in Europe and to a lesser extent in the colonies. Despite this preoccupation with war there was still room for some political activities in the colonies. Most of these activities were aimed at emancipating colonial peoples - an aim which drew from Churchill the curt remark that he would not preside over the liquidation of the British Empire.[25]

The end of the war, however, ushered in a new era of constitutional developments in Nigeria, with whom Cameroon had now been almost completely integrated administratively. In 1945, the year in which 50 nations gathered at San Francisco to see the demise of the League of Nations the basis of which had been destroyed by the war, there were constitutional proposals in Nigeria which were ultimately passed into law and came into operation on January 1st, 1946.[26] These two events were of great importance to the British Cameroons.

The 1946 Constitution, often referred to as the Richards Constitution, following the name of Sir Arthur Richards, its author, who was then Governor-General of Nigeria, not only provided for a Legislative Council for Nigeria, which was to be expected, but went further and introduced a unique feature. This was the idea of

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25. The Times, 11th November, 1942; Ezera Kalu, Constitutional Developments in Nigeria, Cambridge University Press, 2nd Edition, 1964, p. 41 ; Kale, P.M., Political Evolution in the Cameroons, Government Printer
26. Buea, 1967, p. 19.

26. Ezera Kalu, op. cit. pp. 67-8; Wheare, Joan, The Nigerian Legislative Council, Faber and Faber, London, 1954, pp. 214-247.

regionalism.[27] This provided that there were to be in addition to the Nigerian Legislative Council, three Regional Councils for the North, West and East. The effect this had on Cameroon was that the Southern Sector was grouped along with the Eastern Region while Northern Cameroons stayed on with the North. Southern Cameroons was represented in the Eastern House of Assembly by two Native Authority Representatives in the persons of Chief Manga Williams of Victoria and His Higness Galega II, the Fon of Bali.[28]

While these constitutional changes were being introduced the peace conference was meeting at San Francisco to work out another system of ensuring world peace to replace the old League of Nations. The result was the Charter of the United Nations which was signed on June 26th, 1945. Article 75 of this Charter provided for the establishment of:

> "an international Trusteeship system for the administration and supervision of such territories as may be placed hereunder by subsequent individual agreements."

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27. See Nigeria (Legislative Council) Order-in-Council 1946. No. 1370.

28. Chief Manga Williams had represented Cameroon in Nigeria since 1942. This early appointment seems to have been based on the provisions of Section VII of Nigeria (Legislative Council) Order- in-Council, 1922.

The Charter further provided by Article 77 that the international trusteeship system would be applied among other territories to those "now held under the Mandate system".[29] Britain and France were asked to prepare individual agreements according to Article 75. Both countries prepared these individual Trusteeship Agreements which were approved by the United Nations General Assembly on 13th December, 1946.[30] In 1949 the Nigeria (Protectorate and Cameroons) Order-in-Council was passed. It provided for the administration of the territory in accordance with the provisions of the new Trusteeship Agreement.[31]

The Trusteeship Agreement, like its predecessor the Mandate Agreement, gave Britain powers of administering the Trust Territory in words which were almost identical to Article 9 of the Mandate Agreement when it provided by Article 5(a) that the Administering Authority:

> "shall have full powers of legislation, administration and jurisdiction in the territory and shall administer it in accordance with his own laws as an integral part of his territory with such modification as may be required by local conditions and subject to the provisions of the United Nations Charter."[32]

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29. United Nations Charter Articles 75 and 77(b) and see generally Chapter XII of the Charter for the International Trusteeship System.

30. Government Notice No. 545 in Nigeria Gazette (Extraordinary) No. 26 of 23rd April, 1947; United Nations Trusteeship series No. 20 (1947). Cameroon Under United Kingdom Trusteeship, Cmnd. 7082.

31. Enonchong, op. cit. p. 55.

32. Trusteeship Agreement, Article 5(a).

In pursuance of British policy under the Agreement, the Southern Province of Cameroons was in 1948 divided into two, namely, Bamenda and Cameroon Provinces and both continued to be administered as part of the Eastern Region of Nigeria. This division of the Southern Cameroons into two provinces was followed by the creation of the post of a Commissioner for the Cameroons with headquarters at Buea. His functions were twofold. Firstly, he was responsible to the Lieutenant Governor of the Eastern Region for the administration of Cameroon and Bamenda Provinces. Secondly, although he had no direct administrative responsibility for the Northern Cameroons, he was directly responsible to the Nigerian Governor for the Trusteeship affairs in the whole Trust Territory.[33]

Northern Cameroons, of course, had no need for such divisions as it had already been divided into two provinces by geographical features. The Benne River divided this sector into two, the Northern part being administered as part of Bornu Province and the Southern sector as part of Benue and Adamawa Provinces.

The appointment of a Commissioner for the Cameroons meant that for the first time the Trust Territory had a separate administrator responsible to the Nigerian Government.[34]

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33. Enonchong, op. cit. p. 58; United Nations Visiting Mission Report, 1952, United Nations Document T/1109.

34. Le Vine, op. cit. p. 201.

These changes were effected under the Richard's Constitution. Elsewhere in Nigeria there were violent protests against the passage of certain ordinances which derived their validity from this Constitution.[35] These protests contributed partly to the convening of a conference of African Governors in London in November 1947 in which Nigeria was represented by Sir Arthur Richards, the out-going Governor, and Sir John Macpherson his successor. This conference prepared the way for major constitutional reforms in Nigeria and the Cameroons.

The Macpherson Constitution

When Sir John Macpherson assumed office in 1948, he promised to reform the constitution much sooner than the time laid down in the Richards Constitution. He was, however, eager to broaden the basis for consultation since this was the principal charge against the Richards Constitution.

It was Sir John's wish that all shades of opinion should be

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35. These Ordinances were:
(a) The Minerals Ordinance, 1945.
(b) The Public Lands Acquisition Ordinance, 1945.
(c) The Crown Lands Amendment Ordinance, 1945, and
(d) The Appointment and Deposition of Chiefs Amendment Ordinance, 1945.
See Ezera op. cit., p. 78.

consulted. The method adopted was announced by the chief Secretary, Mr. Hugh Foot (later Sir Hugh Foot and now Lord Caradon) and involved the setting up of an electoral college system beginning from the village as base and ending at the central legislature which formed a sort of apex. The village would be informed about what was happening through village meetings. From these village groups people would be chosen through the medium of the village council to go to Divisional meetings which in turn chose representatives for the Provincial meetings after consultation with the Divisional Officer who acted in an advisory capacity. The provincial meetings were made up not only of the divisional representatives but also of the representatives of minority groups and other shades of opinion. Representatives of the Provinces went to the Regions where they sat in conference with all members of the Regional Houses. There were two other conferences among which was one for Lagos. After all these meetings representatives were then sent to a Drafting Committee and General Conference. At all levels of the structure an attempt was made to explain the issues at stake to the people. The ultimate result of this elaborate consultative machinery was the Macpherson Constitution of 1951 which made provision for a House of Representatives with:-

(a) a President;

(b) Six ex-officio members;

(c) 136 Representative Members elected from Regional Assemblies, and

(d) Six special members elected by the Governor-General to represent interests or communities not adequately represented in the House.[36]

Under this constitution, elections were to be held according to the electoral college system. For this purpose Southern Cameroons was divided into six political units or divisions, namely, Victoria, Kumba, Mamfe, Bamenda, Wum and Nkambe.[37] Each of these divisions, other than Bamenda, sent in two representatives while Bamenda, on account of its size, sent in three representatives to the Eastern House of Assembly where six of these thirteen representatives were chosen for the House of Representatives in Lagos. The Northern Cameroon did not enjoy this type of representation in the Northern Region.

Despite these changes, the Macpherson Constitution, like its predecessor, was destined to be short lived. The breakdown was due, firstly, to lack of effective political control at the centre because

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36. Nigeria (Constitution) Order-in-Council, 1951.

37. Kale, op. cit., p. 37.

the representatives there were drawn from political parties with a strong regional allegiance.[38] This state of affairs produced a sort of centrifugal force at the centre. The second cause of the breakdown was the crisis in the Eastern Region. The cause of the crisis was due largely to the failure of Dr. Azikiwe to achieve his ambitions.[39]

At the time of the elections following the Macpherson Constitution Dr. Azikiwe was resident in Lagos where he contested the elections in the Western Region. The result was that he, along with four other N.C.N.C. members, were elected into the Western House of Assembly. All these five N.C.N.C. members, four of whom were Yorubas, wanted to be selected to represent the N.C.N.C. in the House of Representatives. In the selection which followed, Dr. Azikiwe failed to be selected to fill either of the two seats in the House of Representatives which were reserved for the West Regional Branch of the N.C.N.C. Dr. Azikiwe interpreted this defeat as an act of tribalism. This meant that the

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38. These parties were the National Council of Nigeria and the Cameroons led by Dr. Azikiwe in the East, the Action Group led by Mr. Obafemi Awolowo (later Chief Awolowo) in the West, and Sir Ahmadu Bello, the Sardauna of Sokoto's Northern People's Congress in the North. These parties will be referred to hereafter as N.C.N.C., A.G., and N.P.C. respectively.

39. Ezera, op. cit., p. 153. Odumosu O.I., The Nigerian Constitution, History and Development, London, Sweet and Maxwell, 1963, pp. 82 - 142.

leader of the N.C.N.C. could neither lead his party in the House of Representatives nor in the Eastern Regional House of Assembly. Thus he was not directly connected with policy making in Nigeria and the Eastern Region. This state of affairs was unsatisfactory both to Dr. Azikiwe and many members of his party. These events came to be regarded as the remote causes of the Eastern crisis.

The Eastern Crisis

The immediate causes of the crisis are traceable to the attempt to remove the Gandhian, Professor Eyo Eta who, as Deputy Leader of the N.C.N.C. led the Eastern Regional Government and whose authority many Eastern legislators would have questioned if they were given any cause to do so.[40] The cause seemed to have been provided by an N.C.N.C. meeting held at Jos in late 1952. At this meeting most of the N.C.N.C. representatives at the centre were absent, so it was decided to expel them, but their Regional colleagues were against this move, a decision which angered the Parliamentary Committee of the N.C.N.C. in the East, so at a meeting in Enugu on 28th January, 1953, they called for the 9 regional Ministers to resign because they had turned down a request to

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40. Ezera, op. cit. p. 161.

reshuffle the Ministers.

These Ministers promptly obeyed and tendered their resignations to the Lieutenant-Governor but barely six hours later six of them got wind of a decision to leave them out of the new cabinet, so they wrote to the Lieutenant-Governor withdrawing their letters of resignation. The letters of withdrawal were received before the resignations and this gave rise in the months after to very controversial and interesting legal problems. The Ministers held that since their letters of withdrawal were received before the resignations, this operated to invalidate the resignations while the Parliamentary Committee contended that the resignations were effective the moment they were tendered. The Eastern House was ultimately dissolved and fresh elections held. The N.C.N.C. returned with an increased majority and Dr. Azikiwe emerged as leader of the House.

## The Policy of Benevolent Neutrality

How, one may ask, did the representatives from the Southern Cameroons fare during the crisis period? According to the Constitution, there were to be two Cameroon Ministers, one of whom was to be chosen from amongst the seven in the Eastern House of Assembly and the other

(a Federal Minister) was to be chosen from amongst the six Cameroonians in the House of Representatives. All the thirteen Cameroon representatives in Nigeria, while remaining under their own small party, the Kamerun United National Congress under Dr. Endeley's leadership, had taken shelter under the wings of the N.C.N.C. in both the Eastern House of Assembly and the House of Representatives in Lagos. During the crisis, nine of the Cameroonians had kept out of it partly because they did not want to get too involved with the N.C.N.C., so they declared what was known as the policy of "benevolent neutrality". This policy was not entirely the result of their fear of "the highly sophisticated N.C.N.C. Government in the Eastern Region", nor was it the result only of their consciousness of "the backwardness and political immaturity of their small territory".[41] This was certainly a factor, but it is fair to say that there was more to it than that. As early as 1948, Dr. Endeley had indicated his desire to see the Kamerun reunited.[42] Besides, the fact that within the N.C.N.C. the Cameroonians maintained their own party, the K.U.N.C., meant that in times of difficulty they were bound to stick together. No less

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41. Ardener, E.W. The Political History of Cameroon, The World Today, Vol. 18 No. 8 of August 1962, p. 345.

42. Gardinier, David E., Cameroon: United Nations Challenge to French Policy, Oxford University Press, 1963, p. 61; U.N. Doc. T/1426 of 20th January 1959. A footnote in this document confirms the fact that this Kamerun consciousness existed during the 1949 U.N. Mission visit to Cameroon.

important was the part played by the long felt aspirations of the Cameroonians for a separate region.

The Eastern crisis helped to bring all these Cameroon desires to the fore. On the day following the crisis Dr. Endeley sent a message to the Cameroon people in which he told them what had happened and the neutral stand they had taken. This stand was aimed at boycotting any future elections or dealings with the Eastern House of Assembly.[43] But the boycott was, however, supported by nine of the thirteen Cameroonians. The rest remained loyal to the N.C.N.C. The majority then went back to the electors and after consultation with them Dr. Endeley was given the mandate to go to London and demand the creation of a separate and autonomous legislature for the Trust Territory.

By May, 1953, the whole of Nigeria was in a "crisismania", so the Secretary of State for the Colonies announced the intention of Her Majesty's Government to redraw the Constitution of Nigeria so as to create greater regional autonomy.[44] The result of this announcement was the summoning of a constitutional conference to meet in London in July and August that year.

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43. Kale, op. cit. pp. 37 - 41.

45. House of Commons Debates, Vol. 515, Cols. 2263 - 2264 of 21st May, 1953.

At the conference the Trust Territory was adequately represented by delegates from the North and South. The Northern Cameroon delegate "made it quite clear, however, that the Northern Cameroons wished to continue their present association with the Northern Region even at the price of the Northern Cameroons ceasing to have a share of any revenues accruing from the Southern part of the Trust Territory".[45] It is arguable whether the delegate had enough authority to take this firm stand in the light of the fact that, unlike the Southern Cameroons, there was no consultation with the people. The Southerners, however, repeated their demand for a separate and autonomous legislature within a separate region.

The Secretary of State accepted the stand of the Northern Cameroons delegate, but with regard to the South, he said that as a result of the dissolution of the Eastern House of Assembly, an election was pending in the Southern Cameroons, and that if Dr. Endeley's party won the elections on the separate regional issue, he would be prepared to listen to him.[46] The conference was adjourned to a resumed conference in Lagos in January and February the following year. It was hoped that the wishes of the Cameroon people would be known when the conference

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45. Report of the Conference on the Nigerian Constitution held in London in July and August, 1953. Cmnd. 8934, Annex VI, p. 22.

46. Cmnd. 8934, Annex VI, p. 22.

resumed. On the return of the Cameroon delegation, Endeley and his supporters mounted a strong campaign on the issue of a separate region for the Trust Territory. The result was an overwhelming victory for Endeley whose party won 12 of the 13 Cameroon seats and the pro-N.C.N.C. faction won only one.

The conference resumed in Lagos on 19th January, 1954, and the Secretary of State for the Colonies, who was the Chairman of the conference, had private discussions with the Cameroon delegates. The result was that the position of the Northern Cameroon remained unchanged. Dr. Endeley, on the other hand, announcing that his party had won the Southern Cameroons elections, renewed his call for a separate regional house for that part of the Trust Territory. His intention, however, was not to sever connections with the Federation of Nigeria. To many political observers, that statement represented a shift from his initial pro- reunification statements - a shift which was later to cost him the political leadership of the Southern Cameroons. It has been said, and not without justification, that Endeley's initial involvement with the reunification movement "was to find political leverage with which to pry the Southern Cameroons loose within but not away from Nigeria",[47] the main aim, of course, being to carve out a

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47. Le Vine op. cit., p. 203.

nice niche for himself and to place himself in a better position to secure the transfer of some Cameroons Development Corporation lands to the Bakweris.[48] But be that as it may, Endeley's party had, by winning the elections, played the ball into the Colonial Secretary's court.

A Constitution for the Southern Cameroons

The Colonial Secretary therefore recommended and the Conference approved that:-

(a) The Southern Cameroons would cease to be part of the Federation of Nigeria and would be a quasi-Federal Territory.

(b) The Federal Legislature and Executive would have jurisdiction in the Territory with respect to matters in the Federal and concurrent list.

(c) The Territory would have a Legislature of its own consisting of the Governor-General, who would be the authority to assent to bills on Her Majesty's behalf and an Assembly made up as follows:

(i) Commissioner of the Cameroons (President);

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48. Gardinier, op. cit. p. 61.

(ii) 13 elected members;

(iii) 6 representatives of Native Authorities;

(iv) 2 representatives of special interests or communities not otherwise adequately represented, and

(v) 3 ex-officio members who would include an officer with duties corresponding to those now performed by the Civil Secretary of a Region who would have the title of Deputy Commissioner, an officer concerned with financial and development matters and a Legal Officer.

(d) The Territorial Legislature would legislate for the Territory on matters in the concurrent list and on residual matters (i.e. matters in neither list). It would have power to raise revenue from those sources open to a Regional Legislature. It would consider an Annual Budget and pass an Appropriation Bill based on the Budget. This Bill would, like any other Bill, come to the Governor-General for assent.

(e) There would be an Executive Council which would consist of the Commissioner, the three ex-officio members of the Legislature, and four members nominated by the Governor-General after consultation with the Commissioner. These four members would be selected

from among the 21 unofficial members of the Assembly and the Commissioner, before submitting recommendations to the Governor-General, would be obliged to consult the Executive Council, except in certain specified circumstances, but he would be authorised to act against the Council's advice if he deemed it right to do so.

(f) As agreed in London the year before, the Southern Cameroons would be represented in the Federal Legislature by six members one of whom would be in the Council of Ministers.[49]

This conference marked a turning point in the constitutional history of Cameroon. She had attained a quasi-Federal status and henceforth the energies of the leaders would be directed towards the attainment of the next status on the climb to eventual independence.

The 13 representatives who had been elected in the elections prior to the Lagos Conference became the first members of the Southern Cameroons House of Assembly and Dr. Endeley as leader of the majority group was designated leader of Government Business. For a while the popularity of Dr. Endeley and that of his party soared so high

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49. Report by the Resumed Conference on the Nigerian Constitution held in Lagos in January and February, 1954; Odumosu op. cit. pp. 106-108; Ezera op. cit. pp. 194-6; Enonchong op. cit. pp. 63-4; Kale op. cit. p. 43.

thatwhen the Federal elections were held his party won all the six seats. This soaring popularity, however, was soon to become dwindling unpopularity. These great achievements which he had won for the Cameroons and for himself seemed to have encouraged him to come out more against reunification. These events could not have taken place at a worse moment than this, for this was the period when the influence of the pro-unificationist Unions des Populations du Cameroon (U.P.C.) was spreading over from the French Cameroons to the British Cameroons. Further, Dr. Endeley, as if this unpopularity was not enough, sought an alliance with the Action Group. This action coming from the man who had barely three years before campaigned against Nigeria was too much for the Cameroon people, but they needed someone to lead them against the Endeley trend and this man was none other than John Ngu Foncha.

Mr. Foncha's break away from Dr. Endeley's party came in March 1955. The breach seemed to have deprived Endeley not only of leadership but also of his charisma which now seemed to have been transferred to Foncha who grew in popularity very rapidly. One reason given for the rapid growth of Mr. Foncha's party (the Kamerun National Democratic Party, K.N.D.P.) was that the numerically powerful Bamenda rural

population, from where the party started, were suspicious of the polished remoteness of Endeley and the coastal intelligentia.[50] This may well have been true, but it certainly was not the whole truth, because the party, though starting in the grasslands, soon penetrated into the forest areas and indeed had a very strong hold in Mamfe.[51] Besides, not all of the people in the grassland areas joined the K.N.D.P., for the Nkambe people remained faithful to Endeley for a long time afterwards. Again Endeley's party did not enjoy the absolute privilege of having the intelligentia, for Ardener's admissionthat the younger intellectuals soon joined the K.N.D.P. does indicate that it held out more than a rural appeal.[52] Foncha's popularity seems to have resulted from three factors. Firstly, his persistent and unshakeable stand on the reunification issue which was beginning to grip the majority of Cameroonians both in the British and French sectors. Secondly, the K.N.D.P. realised that the traditional chiefs still had a great role to play and so spared no effort in attempting to win the confidence of these chiefs. Thirdly, Foncha was determined to make his party that of the common man and made every effort to remain in touch with him.

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50. Ardener op. cit., p. 346; Le Vine op. cit. p. 206.

51. Kale op. cit., p. 59.

52. Ardener op. cit., p. 348.

Despite Foncha's popularity, success was yet a little way away, for the elections which took place in 1957 resulted in a victory, albeit a narrow one, for Endeley.[53] He had 6 seats as against the K.N.D.P.'s 5 and the K.P.P.'s 2. The K.P.P. (Kamerun People's Party) was the group which had stayed loyal to the N.C.N.C. after the Eastern crisis.

The Nigerian Constitutional Conference in London in 1957

Shortly after the Cameroon elections the leaders of Nigeria and the Cameroons found themselves packing once more for London. This time it was to revise the Constitution. One of the issues raised with the Cameroons delegation was the future of the Trust Territory when Nigeria became independent. "One possibility", the Colonial Secretary said, "would be that the Cameroons should remain part of it", after termination of the Trusteeship Agreement. Whatever the case, it was for the people of the Northern and Southern sectors to decide their own future, although the Colonial Secretary almost ruled out the possibility of a continued Trusteeship, by warning that the Cameroonians "would not thereby be given the golden key to the Bank

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53. The resumed conference in Lagos had also provided that all the Cameroon members elected after the dissolution of the Eastern House of Assembly would constitute the first Cameroon Legislature which had to end not later than 31st December, 1956. This was the reason for the 1957 elections.

of England". It is, however, arguable whether Cameroon needed this golden key to survive.[54] But however that may be, the Colonial Secretary felt that the happiness and prosperity of Cameroon lay in continued association with Nigeria.[55]

After this statement of the British opinion of the future of the Cameroons after Nigerian independence, the conference then adopted some constitutional recommendations in respect of the Cameroons.

Cameroons: Further Constitutional Advances

These recommendations provided that:

(a) The term "quasi-Federal Territory" would be dropped and the Territory would be known as Southern Cameroons.[56]

(b) In view of the Governor-General's position as the principle representative of Her Majesty in the Federation and his special responsibilities in relation to Her Majesty's Government's

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54. See article by Abanda, [illegible] in West Africa, 1954.

55. Report of the Nigerian Constitutional Conference held in London in May and June, 1957. Cmnd. 207, p. 30, para. 63.

56. The term 'Southern Cameroons' which has hitherto been used indiscriminately was accorded legal recognition. Before that the territory was referred to in various ways, e.g., Trust Territory of Cameroons, Cameroons Under United Kingdom Administration etc.

obligations under the Trusteeship Agreement, the Governor-General would remain responsible for matters within the competence of the Southern Cameroons Government. In discharging those responsibilities he would be styled High Commissioner for the Southern Cameroons. The Commissioner of the Cameroons would remain responsible to the High Commissioner.

(c) The Commissioner would continue to be Her Majesty's Government's Special Representative at the United Nations for the Trust Territory as a whole.

(d) The elected membership of the House of Assembly would be increased from 13 to 26. The ex-officio members would remain and there would continue to be provision for 2 special members to represent interests or communities not otherwise adequately represented. There would be no Native Authority members. The Commissioner would be empowered, after consultation with the Premier, to appoint a Speaker, either from within or without the House, who would normally preside. The Commissioner would continue to preside until a Speaker was appointed.

(e) There would be a House of Chiefs consisting of approximately 20 members but in any event not less than three members from each

Division. The Commissioner, after inquiry and consultation with those concerned, would determine the number of members and their method of selection and would establish the House as soon as practicable. The functions of the House would be to consider and, by resolution, to advise on any questions referred to it by the Commissioner or matter introduced by a member. The House would consider proposed legislation and other important matters of policy, and its resolutions would be laid on the table of the House of Assembly when it would be open to the Government or any member of that House to take them up. Members of the Executive Council would be entitled to attend the House of Chiefs but not vote. The life of the House of Chiefs would be coterminus with that of the House of Assembly and at least, initially, the Commissioner would preside.

(f) The Executive Council would have an unofficial majority. It would consist of the Commissioner as President, three ex-officio members, and five unofficial members of whom one would be styled Premier and the others Ministers. The High Commissioner, in his discretion could increase the number of Ministers following a recommendation from the Commissioner after consultation with his

Executive Council. He would appoint the Ministers on the recommendation of the Premier.

(g) The Executive Council would be the principal instrument of policy for the Southern Cameroons and the Commissioner would have reserved executive powers similar to those of Regional Governors under the 1954 Constitution with the addition that he would be required to comply with any directions given him by the High Commissioner in the interests of the Federation or because of the United Kingdom Government's responsibilities under the Trusteeship Agreement.

(h) Public Officers in the Southern Cameroons would remain members of the Federal Public Service and provision would be made to enable a sub-committee of the Federal Public Service Commission to be set up in the Southern Cameroons to advise on certain appointments provided for in the Southern Cameroons estimates. (The Governor-General undertook to keep in mind the possibility of finding a suitably qualified Southern Cameroonian for appointment to the Federal Public Service Commission).

It was provided that the Southern Cameroons would be adequately represented in the Senate.

The delegate from the Northern Cameroons stated, as he had done in 1953, that he wanted that part of the Territory to remain part of the Northern Region of Nigeria.[57]

On the return of the Cameroon delegation with what was a full plate when compared to what they won in 1953, Endeley's party had another set back. This time, it came from Mr. Muna who crossed to Mr. Foncha's party because of his disillusionment with Endeley's policy of integration with Nigeria. This event reduced the strength of the Kamerun National Congress (K.N.C.), i.e. Endeley's party to par with the K.N.D.P. (i.e. 5 seats each). Endeley's Government was thus able to continue because of support from 4 of the 6 Native Authority members. His real strength came, however, when there was an alliance between his party and the K.P.P.

With this new strength, Endeley's Government introduced the Ministerial Government which was recommended by the London conference despite protests from the K.N.D.P. By May 1958, Endeley had become the first Prime Minister of the Southern Cameroons.

By September, 1958, they were all back in London again to resume discussion on certain outstanding matters. At this resumed conference,

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57. Cmnd. 207, paras. 64 - 66, pp. 31 - 32.

the Secretary of State for the Colonies held separate talks with the Cameroon delegation. Both Endeley and Foncha repeated their respective stands and the discussions which ensued produced constitutional recommendations but because the Cameroon leaders were not all agreed on the issue of a separate Southern Cameroons Region within Nigeria, it became important to find some form of compromise. Since there were elections pending for January, 1959, it was agreed that the party which won the elections would introduce the changes if it so desired. The Secretary of State gave the undertaking that Her Majesty's Government would give immediate attention to requests of any party that won the elections.

Proposed Regional Constitution for Southern Cameroons.

If the victorious party so wanted, it could ask for the introduction of the following Regional Constitution which needed no further amendments.

(a) The Executive

(1) The Deputy Commissioner should cease to be a member of the Executive Council and the House of Assembly.

(2) The Legal Secretary (or Attorney-General) should continue to

be a public officer and to be a member of the Executive Council and House of Assembly.

(3) At a convenient time after the 1959 budget, the post of Financial Secretary should be abolished and instead a Minister of Finance should be appointed.

(4) There should be provision that the number of Ministers in addition to the Premier, should be not less than 4 nor more than 7. Provision should be made for the appointment in addition of not more than three Parliamentary Secretaries.

(5) The Commissioner should appoint the Premier and should on his recommendation, appoint other Ministers and Parliamentary Secretaries.

(6) The Commissioner should continue to preside over the Executive Council, but this arrangement should be reviewed towards the end of 1959. The legal instrument should be so drawn as to make this possible without further amendment.

(b) <u>The reserve Legislative and Executive Powers</u>.

These should be directly vested in the Commissioner, although there should continue to be provision empowering the

Governor-General as High Commissioner for the Southern Cameroons to give the Commissioner directions as to the exercise of the powers vested in him. If and when the Southern Cameroons becomes a self-governing Region, the position of its constitutional head would be similar to that of the Governors of the existing Regions in an independent Nigeria.

(c) Assent to Legislation

Subject to the High Commissioner's power to give him directions, the Commissioner should assent to legislation.

(d) The Judiciary

One of the judges appointed for the High Court of Lagos and the Southern Cameroons should be specifically assigned to the Southern Cameroons so that he would spend as much of the year as was necessary in the Southern Cameroons and be available in Lagos only for such time as he was not required in the Southern Cameroons.

(e) The Public Service

There should be a separate Public Service for the Southern Cameroons. All Southern Cameroonians serving in the territory

would automatically be transferred to this service. The remaining officers serving in the Southern Cameroons both Overseas and Nigerian, should remain on the Federal establishment and be seconded to the new Public Service. It should thus be possible in the course of the next two years or so to build up the nucleus of a separate Public Service, even though it might have to rely in part after that period on officers from outside the Cameroons. It would, of course, be open to any Cameroonian now serving anywhere in Nigeria, either in the Federal or a Regional Public Service to apply for transfer to the Cameroons service.

(f) There should be an advisory Public Service Commission for the Southern Cameroons exercising the same functions in relation to the members of the Southern Cameroons Public Service as the Federal Public Service Commission now exercises in relation to the Federal Public Service.

The conference further recommended that the Southern Cameroons House of Chiefs, whose members should continue to be appointed by the Commissioner of the Cameroons, should continue to be an advisory body until such arrangements were reviewed between the Secretary of State and the Southern Cameroons Government towards the end of 1959.[58]

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58. Report by the Resumed Nigeria Constitutional Conference held in London in September and October, 1958, Cmnd. 569, pp. 30 - 32, paras. 65 - 70.

The Cameroon delegation again returned from London with these achievements, but because they had adopted different stands about the future of the Cameroons at the conference, they could not implement any of these recommendations until after the general elections which had been scheduled for January, 1959. After these elections it would then be open to the victorious party to implement the constitutional provisions in the light of its policy.

The elections were fought on the two issues of integration with Nigeria as advocated by the K.N.C./K.P.P. alliance and secession from Nigeria and ultimate reunification with the French Cameroons which was the K.N.D.P. plank. In the elections which took place on 24th January 1959, the K.N.D.P. won 14 of the 26 seats,[59] while the alliance won 12 seats. Such results could not be regarded as decisive for an election which was fought on such vital issues. Indeed, the United Nations Visiting Mission to the Trust Territory concluded:

> "that the results of the elections cannot be regarded as decisive as far as the future of the Southern Cameroons is concerned. If general agreement should develop in the newly elected House of Assembly concerning the future of the Cameroons a formal popular consultation may prove to be unnecessary, but if no such agreement emerges, it may be only through a consultation

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59. The House of Assembly had by now been increased to 26 seats following the recommendations of the 1957 London Conference. Cmnd. 207, pp. 31 - 32.

at some appropriate future date, probably a plebiscite, that it will be possible to resolve the basic issues."[60]

The Mission then suggested that the timing of any such plebiscite and the questions to be put should be decided by the General Assembly and the Administering Authority "in consultation as far as possible with the political parties in the Southern Cameroons".[61]

Despite Mr. Foncha's narrow majority he became the Premier of the Southern Cameroons soon after the elections.

Foncha and Endeley at the United Nations

As soon as Foncha took office, the now travel accustomed leaders were off again, but this time it was to the 1959 Spring Session of the United Nations where the future of the Cameroons Trusteeship was to be decided.

In the ensuing discussions, the United Nations General Assembly relied to a large extent on the report of the 1958 Visiting Mission. The Mission as indicated above, recommended a plebiscite for the Southern Cameroons.[62] With regard to the Northern Cameroons, they came to the conclusion that it was manifestly the opinion of the

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60. Report of the United Nations Visiting Mission to Trust Territories in West Africa, 1958; United Nations Document T/1426 of 6th February, 1959, pp. 9 - 10.

61. United Nations Document T/1426, Add. 1, p. 10; United Nations Review, March 1959, vol. 5, No. 9, pp. 31 & 37.

62. Supra. pp. 102-103

Northern population as a whole, as far as it can be expressed at present, and in the foreseeable future, that they should become permanently a part of the Northern Region of the Federation of Nigeria when the latter attains independence. The Mission accordingly recommends that:

> "if the General Assembly accepts such a union as the basis for the termination of the Trusteeship Agreement, no further consultation need be held".[63]

The General Assembly, however, was not going to rely entirely on the recommendations of the Visiting Mission, so on 13th March, 1959, Resolution 1350 (XIII), recommending that separate plebiscites be held in the Northern and Southern parts of the territory was adopted. The main aim of the plebiscites was to ascertain the wishes of the inhabitants of the territory concerning their future.[64]

There was no difficulty in dealing with the Northern Cameroons. It was agreed that a plebiscite would be held there on 7th November, 1959, at which the people would decide on two alternatives, namely, whether they wished the Northern Cameroons to be part of the Northern

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63. U.N. Document T/1426 para. 181, p. 82; United Nations Review, March 1959, Vol. 5, No. 9, pp. 36 - 37.

64. U.N. Document A/4240 of 14th October, 1959, p. 1; Enonchong Op. cit. p. 66.

Region of Nigeria when the Federation of Nigeria became independent or whether they preferred to defer the decision on the future of the Northern Cameroons to a later date.[65]

The situation with regard to the Southern Cameroons was not as easy. The Visiting Mission had recommended some form of tripartite consultation between the General Assembly, the Administering Authority and the major political parties in the Southern Cameroons.[66] It was this process of consultation that brought Endeley and Foncha to the United Nations. During these consultations Foncha and Endeley failed to agree on the terms of the plebiscite. They were then sent home to consult the people on the issues. As soon as they got back to the Cameroons, they convened an all party conference at Mamfe for August 10th - 14th, but the result was a dismal failure.

By September both Foncha and Endeley were back at the United Nations again with still no solution. By this time, however, pressure was mounting on them, so they produced a document to the Fourth Committee of the Trusteeship Council. The document called for

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65. U.N. Plebiscite Report, U.N. Documents T/1491, T/149/Corr. 1 and T/1491/Add.1 of November 25th 1959; Le Vine op. cit. p. 208; Enonchong op. cit. p. 67; West Africa of November 15th 1959; United Nations Review Vol. 6, No. 5, Nov. 1959, p. 10; Legal Notice No, 175 in Supplement to special Gazette No. 50 of 13th August, 1959 which is a reprint of a Special Ordinance in Council published in the United Kingdom as Statutory Instrument No. 1304.

66. Supra. p. 50.

the separation of the Southern Cameroons from Nigeria when the latter achieved independence and a continuation of the Trusteeship till 1962.[67] This statement got a very cool reception from the members of the 4th Committee, not to talk of the attitude of the African members which was even more so. There were therefore more talks in which both Foncha and Endeley obviously participated. The result was a draft resolution presented by Ghana, Guinea, Liberia, Libya, Mexico, Morocco, Sudan, Tunisia, the United Arab Republic and the United States of America which was aimed at assisting the General Assembly:

> "(1) To decide that arrangements for the plebiscite referred to in resolution 1350(XIII) should begin on September 30th, 1960, and that the plebiscite should be concluded not later than March 1961.
>
> (2) Recommend that the two questions to be put at the plebiscite should be:
>
> '(a) Do you wish to achieve independence by joining the independent Federation of Nigeria?
>
> (b) Do you wish to achieve independence by joining the Independent Republic of the Cameroons'.
>
> (3) Recommend that only persons born in the Southern Cameroons or one of whose parents was born in the Southern Cameroons should vote in the plebiscite.
>
> (4) Recommend that the Administering Authority, in consultation with the Government of the Southern Cameroons take steps to implement the separation

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67. U.N. Document A/C 4/414 of 30th September, 1959.

of the administration of the Southern Cameroons from that of the Federation of Nigeria not later than 1st October 1960.[68]

Both Mr. Foncha and Dr. Endeley made statements to the effect that they had accepted these proposals only as a compromise solution.

The draft resolution was then forwarded to the General Assembly where it was accepted without alteration. The resolution was in political terms a defeat for Mr. Foncha who had set out for the United Nations with the avowed intention of bringing back an extension of the Trusteeship for at least a further three years. This desire for an extension of the Trusteeship has been interpreted, and not without justification, to mean that Mr. Foncha, the protagonist of unification, had developed cold feet about "unification immédiate" as advocated by his erstwhile allies of the U.P.C.[69]

While all these discussions about the Southern Cameroons were taking place in the United Nations, arrangements for the Northern Cameroon plebiscite were being made. The plebiscite took place on 7th November 1959, and out of a total of 113,859 votes cast, 70,546 voted to defer their decision till a later date, while 42,788 voted

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68. U.N. Document A/4240 of 14th October, 1959, United Nations Review, Vol. 6, No. 5 of Nov. 1959, pp. 28 and 96.

69. Mr. Foncha flirted with the U.P.C. for a while after his break away from Endeley's group.

for integration into the Northern Region of an independent Nigeria. The United Nations Prebiscite Commissioner, Dr. Djalal Abdoh of Iran thought that the votes went the way they did because a majority of the voters had apparently registered what was a protest vote against the system of local government prevailing in Northern Nigeria - a view which was also expressed by Sir Andrew Cohen on behalf of the British Government at the United Nations.[70] Because the results went this way, the General Assembly decided to have another plebiscite in the Northern Cameroons to coincide with that in the South.

The Plebiscite of 11th February, 1961

As soon as they returned to Cameroon, both Foncha and Endeley launched fierce campaigns for the plebiscite which was fixed for 11th February, 1961.[71] One can, in retrospect, look at the Southern

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70. Report of the U.N. Plebiscite Commissioner in the Cameroons under United Kingdom Administration, Part I, Organisation and Conduct of the plebiscite in the Northern Cameroons; U.N. Document T/1491, pp. 88 - 90; U.N. Review, Vol. 6, No. 7 of January 1960, pp. 34 - 35; Le Vine, op. cit. p. 211.

71. Because of the difficult conditions in the North, the plebiscite was spread over two days (11th and 12th). Article 2(2) of the Southern Cameroons Plebiscite Order in Council gave the Commissioner of the Cameroons the right to fix the date. The date of 11th February, 1961 was notified in Southern Cameroons Gazette No. 1 of 7th January, 1961. (See Notice No. 6). The notice for the Northern Cameroons Plebiscite was published in Northern Cameroons Notice No. 22 published in Gazette No. 6 of 31st December, 1960. (See U.N. Doc. T/1556, p. 233, paras. 553 - 557.

Cameroons Plebiscite from two points of view, to wit, the issues at stake and the method of campaigning.

In as far as the issues at stake were concerned, the Cameroon people got a fuller and more logically argued explanation from Dr. Endeley. He advocated integration with Nigeria and told the people in no uncertain terms what he was offering them by this choice. He was campaigning for integration into a Nigeria that was peaceful, progressive, democratic and potentially rich - a Nigeria with whom we had had more than forty years of peaceful association during which we had witnessed tremendous constitutional advancement. What he offered the Cameroon people is well summarised by a speech broadcast by Sir Abubakar Tafawa Balewa which was designed for the Cameroon voters. Sir Abubakar said that if the Cameroon people chose the Nigerian alternative then they were choosing:

> "an honourable status as an integral part of a big nation in Africa with your future assured". "With Nigeria", he continued, "you can look forward to sharing in the tremendous economic development of our country, to sharing in the massive schemes for expanding education to an extent hitherto beyond our dreams, and to social benefits which we are now beginning to enjoy."[72]

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72. West Africa, 28th January, 1961, p. 1103; Odumosu, op. cit. p. 138.

He further put out assurances of security, the rule of law and the protection of human rights. With regard to the alternative for reunification he said that the Southern Cameroons would be throwing in their lot with a country

> "whose government has made no firm promises to you and has given no undertakings, a country which, unfortunately, has been torn in recent years by civil wars. If you vote against Nigeria, you would be putting yourself under a country which has different laws and completely different attitudes."[73]

Assuming that there were no prophets in Cameroon to foretell of Nigeria's recent plight, this was a very formidable case.

Could Mr. Foncha offer anything as cogent and as consistent? The answer unfortunately was in the negative. It was perfectly true that the new Republic of Cameroon was torn by civil strife, that it had different laws and attitudes, that the problems of human rights were not always understood in the way we understood them,[74] and that there were no firm promises from the government of the Republic of Cameroon. Indeed it is not uncommon to hear that West Cameroon forced herself into the Union - a point which Le Vine seems to confirm when he says that:

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73. Ibid.

74. Even today the Habeas Corpus writ is unknown in East Cameroon despite reunification.

> "there is considerable evidence that Ahidjo hoped that the additional potential votes for the Union Camerounaise to be found in the Northern Cameroons would strengthen his hands in the negotiations with Foncha as well as offset any possible deals between Foncha and the Southern opposition groups".[75]

Mr. Foncha's strongest point seems to have been his call for a return to the Cameroon that existed till 1918.

Despite this rather weak case, Foncha's party won the plebiscite. The reason for this perhaps lies in our second point, namely, the method of campaigning. In this respect, Le Vine has neatly summed up the reasons for the success of the unification alternative. He says that three factors contributed tothis victory, namely:

> "(1) The skill of the K.N.D.P. leadership in translating local ethnic economic and political issues into votes;
>
> (2) The ineptness, compared to the K.N.D.P., of the C.P.N.C.[76] and its leaders in presenting the case for continued association with Nigeria; and
>
> (3) The cumulative effect of the Southern Cameroonian nationalism in which reunification was for long a major programmatic goal."[77]

These shrewd campaign methods led to a big K.N.D.P. victory in the Southern Cameroons while in the North the integration alternative won. The results were as follows:

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75. Le Vine, op. cit. p. 213.

76. The K.N.C./K.P.P. alliance had by now merged together to form the Cameroon People's National Congress (C.P.N.C.). More will be said about the political parties later.

77. Le Vine op. cit. p. 212.

Southern Cameroons.

Votes for first alternative (Federation of Nigeria) 97,741.

Votes for second alternative (Republic of Cameroon) 233,571.

Northern Cameroons:

Votes for first alternative (Federation of Nigeria) 146,296.

Votes for second alternative (Republic of Cameroon) 97,659.[78]

These results finally decided the future of the Trust Territory of British Cameroons and what remained was to implement these expressed wishes of the people. In his concluding remarks, Dr. Abdoh the plebiscite Commissioner said that the people of the Southern Cameroons had expressed their wishes and so "it was for the General Assembly to avaluate the results and take the appropriate decision".[79] His comment about the Northern Cameroons was that:

> "in spite of the defects and weaknesses inherent in the situation prevailing in the Northern Cameroons, I am satisfied that the people had the opportunity to express their wishes freely and secretly at the polls concerning the alternatives offered in the plebiscite."[80]

Dr. Abdoh did not spell out what the "inherent weaknesses" were.

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78. U.N. Document T/1556 of 3rd April, 1961, p. 246, para. 591.
79. U.N. Document T/1556 para. 315, p. 145.
80. Ibid, para. 602, p. 249.

Despite protests from Cameroon and other countries, the United Nations General Assembly, by resolution 1608(XV) of 21st April, 1961, approved the results of the plebiscite. A time-table for terminating the Trusteeship Agreement in accordance with Article 76(b) of the United Nations Charter was then drawn up. This time-table provided that the Trusteeship in the Northern Cameroons would end on 1st June, 1961, the day on which she was to be permanently integrated into Nigeria while that in the South was to end on 1st October, 1961, the day on which reunification was to be effected.[81]

In the eyes of Cameroon, resolution 1608(XV) was certainly not the final word as far as Northern Cameroons was concerned, for a month later a motion was filed in the International Court of Justice, but in order to understand the outcome of this motion we must relate it to developments in the Cameroon Republic.

## The United Nations Trusteeship in the Cameroons Under French Administration.

The last mention made of the French Cameroons was in 1939, the year in which the Second World War broke out.

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81. Gardinier op. cit. p. 116; Enonchong op. cit. p. 68.

By June of that year, Germany had conquered most of Europe, won Italy on her side and overrun the greater part of France. The German victory had brought into the French political scene Marshal Pétain, a veteran of the First World War. To him and a number of French leaders further resistance to the Germans seemed futile. It was therefore the wish of his government to sign an armistice with Hitler. At first, Hitler was in no hurry to do this, but on June 21st, he received the French delegates and the armistice was signed, the terms of which were most humiliating to the French and included, inter alia, an attempt to use France to overthrow England and to step up anti-Semiticism in France. In order to carry out these undertakings the Pétain régime got rid of the Third Republic and assumed dictatorial powers.

This humiliation angered many French people, and not least, General de Gaulle who was then in London on a military mission. It was his belief that even though France had been conquered on the continent her destiny lay in fighting as an ally of Great Britain and continuing to use her navy, her air force and her vast colonial empire. To him France had lost a battle but not the war.[82] On June 23rd, he issued a radio appeal urging all French people outside

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82. L'histoire du Cameroun by Mveng, E., 6e Partie, Chapter IV, pp. 401 - 406.

France to fight to continue the war against Hitler. The interest of France demanded that all the French should fight wherever they were. He appointed himself leader of all French men outside France. This call by the General had the effect of rallying people both in France and the Overseas Empire to the Free French movement.[83] One of the most significant indications of support to the Free French cause came from the African province of Chad where the enlightened Governor, Felix Eboué, a West Indian of African descent, cabled his adherence to General de Gaulle.

Furthermore, encouraging information came in from French Equatorial Africa where officials and leading citizens were refusing submission to the representatives of the Pétain régime. From Douala in the Mandated Territory of Cameroons, the British Consul sent word that the majority of the people wished to come over to de Gaulle, but were held down by the local Governor on the instructions of a French admiral flown out from Vichy.[84] This immediate response from the French Empire came partly as support for the course for which

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83. Berns, F. Lee, Europe since 1914 in its World Setting, Indiana University, 6th Edition, F.S. Crofts and Co. New York, 1964, pp. 518-522.

84. Grinnell-Milne, Duncan, The triumph of Integrity - A Portrait of Charles de Gaulle, Bodley Head, London, 1961, p. 115.

General de Gaulle stood and partly perhaps as a reaction against the racism of the Vichy régime for it is recorded that:

> "a marked form of racism was practised. If several White and Black members of the resistance were condemned to death, it was arranged that the Whites should be overlooked, but the Blacks were shot. Local assemblies were suppressed. The régime of the indigénat was more rigidly enforced. Arbitrary punishment increased. The tolerance which was formerly sometimes shown in regard to right of association and meeting was no longer permitted."[85]

No less important was the part played by:

> "the realization that capitulation to Vichy would also mean the eventual incorporation of the territory into Hitler's Grossdeutschland. After all, had not much of Hitler's colonial propaganda centred on the return of African Mandates to Germany."[86]

Nor indeed was this propaganda without foundation, for it is recorded that Chamberlain thought that Germany should at least be allowed some access to raw materials in African colonies. He thought that:

> "the least objectionable course would be for France to join with us in the surrender of the whole or part of Togoland or the Cameroons, or both."[87]

This scheme had to be effected behind the back of the League of Nations because Germany was no longer a member.

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85. Hodgkin, Thomas, West Africa, 1954, pp. 31 - 32.

86. Le Vine op. cit. p. 131.

87. The Sunday Observer, 5th January, 1969.

The joint and concerted effort which resulted either directly or indirectly from these motives led to the liberation of the French Empire by the beginning of 1943.

After the war, France was bound to rethink her colonial policy in the light of events elsewhere in Asia and Africa and those brought to the surface by the war itself. These events were the increased international roles of the Soviet Union and the United States of America, the appreciation of the role played by the African colonies, the general growth of anti-colonialism and the break up of the British and Dutch Empires in the East.[88] The first fruits of this rethinking were realised by the convening of a conference at Brazzaville by the Free French from January 30th - February 8th, 1944.

The Brazzaville Conference, 1944

The main participants in this conference were the Colonial Administrators from Tropical Africa. Also present was an important delegation of the provisional consultative assembly. There were also representatives from North Africa as well as specialists in Administrative matters, technicians and politicians.[89] Despite this wide represent-

88. Gardinier op. cit. p. 18; West Africa 1954, p. 53.

89. La Documentation Française, Notes et Etudes Documentaires No. 1847 of 11th March, 1954, p. 4.

ation the conference:

> "represented essentially the point of view of the colonial administrators concerned with tropical African territories."[90]

Two things emerged from the discussions at the conference. In the first place there was a rigid adherence to the policy of assimilation. The conference affirmed that:

> "the object of the task of the civilization accomplished by France in her colonies rules out any idea of autonomy, any possibility of our evolution outside the French bloc of the Empire; the eventual creation even in the distant future of autonomy for the colonies should be ruled out."[91]

Secondly, the question was raised of the experience of all French Governors during the war. This:

> "had been that overseas territories were pleased to be free from a certain form of narrow tutorship exercised in peace-time by the Ministry of Colonies, and that a large measure of administrative freedom was required in the interest of the colonial peoples and territories. They should be associated with the government and administration of their territories".

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90. Hailey (Lord), An African Survey, revised Edition 1956, p. 210.

91. Catroux, General George, International Conciliation No. 495 of November, 1953. The French version is reproduced in Hailey op. cit. p. 210. The whole passage is taken out of the proceedings of the conference.

The recommendations made were very clear:

> "Firstly, the colonial territories should be represented in the Constituent Assembly which would be called to draft the new French Constitution. Secondly, the participation of the Colonial territories in the political representation in France should be much larger and more powerful than in the past. Thirdly, the conference did not think the proper way to attain this aim was by seats reserved for French overseas territories in the French Chamber of Deputies. Fourthly, the conference felt that a new body was necessary, either a Colonial Parliament, or preferably a Federal Parliament but on the condition that the powers given to the local authorities or assemblies and those reserved to the Federal Authority should be very clearly defined. Fifthly, as regards the organisation of the overseas territories the conference was in favour of creating everywhere local assemblies composed partly of Europeans and Natives elected as far as possible, but representative, when election was difficult, of the traditional élite. Sixthly, the conference wanted a system allowing a larger degree of administrative decentralisation, permitting technical and economic planning, but excluding political independence."[92]

Other important results of the conference were the abolition of the indigénat and prestation and the endorsement of Governor Eboué's circular letter on native policy which showed signs of leaning towards Lord Lugard's policy of Indirect Rule. This circular advocated the creation of an African bourgeoisie and a respect for traditional institutions.

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92. Robinson, Kenneth. The Public Law of Overseas France since the War. Reprinted from Journal of Comparative Legislature (3rd Series, Vol. XXXII, 1950) as Oxford University Institute of Colonial Studies. Reprint Series No. 1, pp. 6 - 7.

An examination of the Brazzaville Conference shows the prevalence of two distinct views which were, as indicated above, the prevention of immediate or eventual independence, and the promotion of political advancement for Afrique Noire. These two rather conflicting views are, as pointed out by Gardinier,[93] a confusion between political decentralisation and administrative deconcentration with federalism which had become anathema to the French since the defeat of the Girondin's in 1789.

These then were the basic recommendations of the conference, but how many of these recommendations were embodied in the Fourth Republican Constitution is a matter which we shall examine presently.

The French Constitution of 1946.

Until the outbreak of war in 1939, France was governed according to the provisions of the 1875 Constitution which was itself a consolidation of previous ones. Cameroon, along with all the other colonies, was governed according to the provisions of this Constitution, although France, on account of the Mandate system, had to recognise the role of the League of Nations in the affairs of Cameroon.

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93. Gardinier op. cit. p. 19.

By 1940, the Vichy régime was already talking of constitutional reform, but the liberation of France in 1945 saw the end of this régime and brought to the fore, the Free French movement under General de Gaulle. The provisional government which had been formed under the General carried out some reorganisation and held elections in 1945. At these elections there was an overwhelming vote to draw up a new Constitution, the first of which was rejected in a referendum, and after new elections there was another draft which was approved by popular vote on October 13th and came into effect on October 27th, 1946.[94]

This Constitution was definitely a landmark in French constitutional history, but it is intended here to discuss only those provisions of the Constitution which affected the colonies generally, and Cameroon in particular.

It is not unnatural to expect that the 1946 Constitution, following as closely as it did on the heels of the Brazzaville Conference and the liberation of France in which the colonies played a large part, would show signs of a willingness to bend over backwards in favour of the colonies. The signs of this attitude appeared in

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94. Peaslee, A.J., Constitutions of Nations, Vol. II, France to Poland, 1950, Rumford Press, Concord, N.H., pp. 1-4.

the presence of representatives from overseas in the Constituent Assembly. This was a sign of a willingness to associate these countries with the democratic drawing up of the Constitution,[95] although the final document did not reflect this optimism.

Articles 60 - 62 of the Constitution made provision for the setting up of a French Union which would comprise France and all her former colonies which had now become departments of France on the one hand and associated states and territories on the other.[96] The associated territories comprised the two Trust Territories of Togo and Cameroon.[97] The wording of these sections give one the impression that France intended to maintain what she "called her traditional mission" of guiding the peoples for whom France has assumed responsibility toward freedom to govern themselves and democratically to manage their own affairs. Even the organisation of the various organs of the French Union were definitely in favour of the French. The Constitution provided that the President of the Republic would be President of the French Union.[98]

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95. Notes et Etudes Documentaires op. cit. p. 5.

96. For the English translation of the Constitution I shall use A.J. Peaslee op. cit. and Wright, Gordon, The Reshaping of French Democracy, Metheun and Co. Ltd., London, 1950, both of whom got their translations from French Embassy sources.

97. Catroux, General, op. cit. pp. 209-210.

98. Articles 64 - 66 of the Constitution.

All members of the French Union, however, enjoyed the citizenship of the Union. This provision, when read in connection with the rest of the Constitution, presents some difficulty. Article 80 declares that:

> "all nationals of overseas territories are citizens on the same basis as French nationals of the mother country or of overseas territories: special laws shall determine the conditions in which they will exercise their rights as citizens."

Article 81 then goes on to say all French citizens and nationals of the French Union are citizens of the French Union, a right which ensures for them the enjoyment of the rights and freedoms guaranteed by preamble to the Constitution. Article 82 provides that citizens who do not enjoy French civilian status preserve their personal status so long as they do not renounce it. This seems to indicate that all nationals of France and the overseas territories are French citizens with equal guarantee of all the rights set forth in the preamble, but Article 82 provides that some enjoy a "statut francais" and others a "statut local". This can only mean that the electoral rights of citizens cannot be the same everywhere.[99] As if this confusion is not enough, Article 81 introduces yet another type of citizenship, namely, that of the French Union. It is under this article that inhabitants of Trust Territories of Togo and Cameroon were brought

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99. Robinson, Kenneth, op. cit. p. 16.

under the citizenship brackets. Thus, while the inhabitants of the Trust Territories were not French citizens, they were administrés francais and "as such enjoyed the somewhat shadowy status of French Union citizens."[100] However shadowy this provision may have been, it provided France with the opportunity of implementing the Constitution so as to treat Togo and Cameroon as if they were overseas territories of the Republic.[101]

The Cameroons, as mentioned above, was to be administered as an associated territory of the French Union. This meant that she had to be represented in the organs of the union as well as those of the French Republic. Besides, Article 77 of the Constitution made provision for local assemblies, so it was necessary to consider this as well in terms of representation.

At the centre Cameroon was represented in the French National Assembly by four deputies elected by direct vote. They also had three representatives on the Council of the Republic and five on the Assembly of the French Union, all of whom were elected by the Territorial Assembly of the Cameroons.

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100. Robinson, K., Constitutional Reform in French Tropical Africa, Institute of Commonwealth Studies, Reprint Series No. 2, p. 46.

101. Gardinier, op. cit. p. 21 - 22.

There were also representatives from the Cameroons on other minor organs. These representatives took part, albeit insignificantly, in the preparation of the laws which governed them.[102] This central representation, however, raised some quite legitimate questions. It was argued by the N.P.C. that this assimilating of the Trust Territory to French overseas territories would hamper its development and remove any hope of independence. They further argued that Cameroonian representation in the metropolitan assemblies was not enough to ensure the protection of the Territory's interest. These were but a few of the objections raised about the relationship between Cameroon and France. There was also evidence that the United Nations had queried French assimilation policies. In this connection, the 1952 Visiting Mission to Cameroon remarked that:

> "in its special report to the United Nations, the Trusteeship Council, while expressing the opinion that the relationship of the Cameroons to the French Union appeared to be consistent with the provisions of the Charter and the Trusteeship Agreements, did not feel itself competent to appraise the theories of constitutional law which might underlie the arrangements between the Cameroons and the French Union."[103]

Thus, even the Trusteeship Council was not quite certain about the relationship. There was, however, opinion in the Cameroons which

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102. United Nations Visiting Mission to West Africa Report on French Cameroon, U.N. Doc. T/1110 para. 72 p. 11.

103. U.N. Doc. T/1110 op. cit. pp. 11 - 12.

held the contrary view. It was argued that such a relationship would prepare the Cameroonian members for leadership and give them a greater awareness in the politics of their country. It is not clear where this training or the experience gained would have led to, as the Constitution had ruled out independence for all French Overseas territories.

The Constitution also, by Article 77, provided for the institution of an elective assembly in each territory or group of territories. In Cameroon this elective assembly, known as the Representative Assembly, was set up by a decree of 25th Octoberm 1946. Elections to the Assembly were based on the dual college system. There was one college made up of citizens of "statut français", who elected 16 members into the Representative Assembly, and the second college made up of citizens of "statut local", who elected 24 members. By a law of 6th February, 1952, the name Representative Assembly was changed to Territorial Assembly and the number of councillors increased to 18 and 32 respectively. There was, however, no change in the powers of the Territorial Assembly. These remained as in 1946 and were as follows:

Powers of full and complete decisions

The Territorial Assembly had power to discuss and approve the

budget and taxes; it took decisions on a certain number of administrative financial and economic matters, especially on questions relating to acquisition, administration and alienation of property belonging to the territory. The French Government could not annul the Assembly's decisions except for legal reasons, and after consultation with the Council of State (Conseil d'Etat). It could, however, annul decisions regarding financial questions for reasons of expediency. Any annulments it effected were always preceded by a report showing the technical mistakes made and suggesting the solutions to be adopted.

Consultative Powers

The Assembly was to be consulted on a certain number of questions listed in the decree of 25th October, 1946. These included the grant of rural and forestry concessions of more than 200 and 500 hectares, the administrative organisation of the territory, regulations of public works and so on.

Other Powers

The Assembly could, through its President, submit direct to the Minister for Overseas France, any comments it wished to make in

the territory's interest, with the exception of political questions, as also its opinion on the condition and needs of the various public services.[104]

Both the structure and power of the Territorial Assembly were the subject of criticism. The dual college system was criticised on the ground that it was racialist. Besides, the single college system had been established in Togo, so there was no reason to exclude it from Cameroon. Answers such as the protection of French interest convinced neither the people nor the United Nations Visiting Mission who recommended the establishment of the single electoral system in their report. Despite these criticisms, change was long in coming, but there were signs such as the growth of nationalism which were evidence that change could not be delayed any longer.

The Loi-Cadre of 1956.[105]

The immediate outcome of this growth of nationalism and the mounting criticisms was the proclamation of Law No. 56-619 of 23rd June, 1956, which was known as the Loi-Cadre or Enabling Law. This law signalled the beginning of large scale reforms in the territory.

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104. U.N. Document T/1110 pp. 8 - 16, paras. 46 - 71.

105. U.N. Document T/1427 (Report of the United Nations Visiting Mission to Cameroons under French Administration in 1958).

It introduced three major changes. Firstly, it removed the delays in the parliamentary process which had hindered institutional reforms.[106] Secondly, the law recognised the possibility of the Cameroons developing along lines different from those in the French Overseas Territories proper. Thirdly, there was provision for all future elections to be on the basis of universal adult suffrage.[107]

These recommendations formed the basis of a new statute for an enlarged Territorial Assembly of 70 members. The new statute went into operation on 9th May, 1957. On this date the Territorial Assembly of Cameroon was transformed into a Legislative Assembly and André-Marie Mbida, the Cameroon Deputy in the French National Assembly, who had played an important part in drafting the statute was designated Prime Minister by the French High Commissioner in the Cameroons. Since there was no political party with a majority the resulting government under Mr. Mbida had of necessity to be a coalition government between Mbida's Democrates Camerounais, Ahidjo's Union Camerounaise and the Paysans Indépendants.

The elections which brought Mbida to power were marked by violence in the Sanaga Maritime region. These acts were attributed to the U.P.C. When Mbida came to power he adopted a very rigorous

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106. Article 9 of the law provided for the inauguration of institutional reforms by means of decrees.

107. Article 10.

attitude towards the U.P.C. This attitude, coupled with his rather negative approach to the problems of independence and reunification which had almost become the password of most Cameroonians, made him very unpopular. His position with regard to independence and reunification was that the time was not yet ripe for that. He thought that would come at the end of a ten year period of economic, social and political development. In as far as unification was concerned, he thought that the matter could be studied in connection with a possible plan for a "United States" of Tropical Africa.

This programme led to the resignation of several members of his cabinet. An attempt to replace them with members of his Démocrates Camerounais did not get the approval of the French High Commissioner, so he resigned.

He was replaced by the Deputy from Garoua and leader of the Union Camerounaise (U.C.), M. Ahidjo who had been Deputy Prime Minister in the Mbida Government.

Time-Table for Independence

In his investiture speech, Ahidjo proclaimed the year 1958 as "the year of decisive policy, to prevent Cameroon from wandering aimlessly, if not adrift."[108] Having said this was a year of decisive

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108. Investiture speech 18th February, 1958. "As told by Ahmadou Ahidjo himself" , Paul Bory Publishers - Monaco, 1968, p. 15.

policy, Ahidjo decided to set to work immediately, but in order to do so, he needed the mandate of the people. He tabled a motion in the Assembly, the purpose of which was to amend the first statute of Cameroon. As soon as the motion was passed, he set off for Paris for talks with representatives of the French Government. The talks were long and difficult, but he managed to wring from the French Government the formal recognition of Cameroon's option for independence in 1960. Agreement was also reached on the broad outlines of a new statute for Cameroons which provided for the transfer to Cameroons on 1st January, 1959, of all powers except external affairs, defence, and monetary and foreign exchange policy.[109]

The statute came into effect on 1st January, 1959, as Ordinance No. 58 - 1375 of 30th December, 1958.[110] Having thus attained internal self-government, the next target was independence. The Legislative Assembly of the Cameroons had in a resolution of 12th June, 1958, set 1st January, 1960 as the date for independence. This date was also mentioned in the preamble to the statute of 1959.

Having got the approval of the Legislative Council of Cameroon and the French Government for the proposed independence date for

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109. U.N. Document T/1427 para. 79.

110. U.N. Document T/1427 Appendix II.

Cameroon, Ahidjo set off for the United Nations to express the wishes of the majority of the Cameroon people whom he represented. He appeared before the Fourth Committee of the United Nations Trusteeship Council and before the General Assembly from late 1958 to early 1959. Ahidjo appeared before the United Nations in a rather strong position. Cameroon had been left out of the French community in the referendum of 28th September 1958. For Cameroon this meant the abandonment of France's assimilation policies.[111] Furthermore, there was the statute of 1959 which granted internal self-government to the Cameroons. The preamble to this Constitution stated in no uncertain terms that it marked:

> "the last stage in the evolution of institutions before the termination of the Trusteeship Agreement."[112]

Despite this rather strong position, the negotiations were by no means easy for Ahidjo for he had to reckon with Dr. Moumié, the leader of the exiled U.P.C. who had won many anti-colonialists to his side. The basic differences between Ahidjo and Moumié were of a procedural nature. Moumié and his supporters, most notable among whom were

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111. Gardinier op. cit. p. 21-22.

112. Le Vine, op. cit. p. 173; U.N. Document T/1427 para. 134. Preamble to the statute of 1959.

Ghana and Guinea, argued that before independence there ought to be

(a) a total and unconditional amnesty as the basis for national reconciliation;

(b) the repeal of all statutory provisions enacted against any of the territory's political movements;

(c) reunification of the two Cameroons on the basis of a popular consultation held under United Nations supervision before January 1st, 1960; and

(d) the proclamation of independence, the termination of the Trusteeship and the admission of the French Cameroons to the United Nations on 1st January, 1960.[113]

Ahidjo's answer to this was very much on the same lines as the recommendations of the 1958 Visiting Mission to the French Cameroons. He thought, as the Visiting Mission did, that

(a) Cameroon should accede to independence on January 1st, 1960;

(b) the Trusteeship Agreement should be terminated concurrently with the attainment of independence;

(c) no referendum need be held on the question of independence.

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113. Le Vine op. cit. p. 176.

The Mission found this position supported by a great majority of the members of the Legislative Assembly, so it was thought that there was no necessity to consult the population before the termination of the Trusteeship.[114] On the issue of reconciliation the Mission had recommended that the Cameroon Government should make suitable provisions within the framework of its policy of reconciliation for the repatriation of all Cameroonians who wish to return, and to that end, since the majority of such persons were in the Cameroons under United Kingdom Administration, the collaboration of the authorities in the latter should be sought.[115] The Mission curtly dismissed the question of reunification by saying that there was such a unanimity of views on the matter that it was unnecessary to consult the people.[116] Ahidjo held his views which were very much the same with great firmness and frankness.

This firmness and steadfastness won him tremendous admiration. The result was that he won the day, though not without difficulty as he himself acknowledges. He attributes the success to the fact that the position which he held was firm and founded on truth. On 12th May, 1959, a draft resolution which was submitted to the United

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114. U.N. Document T/1427, para. 122.

115. Ibid § 160.

116. Ibid § 166.

Nations by 12 nations received the approval of 60 nations. This resolution (1349(XLII)) provided that on 1st January 1960, the Trusteeship Agreement of 13th December 1946 would cease to be in force. It further recommended that on accession to independence on 1st January, 1960, Cameroon should be admitted as a member of the United Nations in accordance with Article 4 of the Charter.[117]

Ahidjo returned to Cameroon with what he had set out to achieve at the United Nations. With independence round the corner, it was obvious that the statute of 1959 would have to be changed. He introduced two bills in the Legislative Assembly one of which sought to give the Government power to legislate by decree for a period not exceeding 6 months. During this time the new institutions of the country would be put into effect. The law would further empower the Government to write a constitution with the aid of a consultative committee of 40 members. In this way the Government was asking for "pleins pouvoirs". There was, therefore, little wonder that this request met with very strong resistence from the members of the opposition who interpreted it to mean that the Government was asking for dictatorial powers. Besides, the demand for "pleins pouvoirs" was contrary to Article 6 of the 1959 Constitution which provided that:"

> "Legislative powers shall be vested in the Legislative Assembly which shall be elected by universal direct

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117. "As told by Ahmadou Ahidjo" op. cit. p. 28.

suffrage for a term of five years."

To ask for "pleins pouvoirs" was to override the Constitution.

The other bill was for a grant of full and unconditional amnesty to all persons in the Sanaga-Maritime and Nyong-et-Sanaga departments who had been convicted of political crimes or who had been connected with the political unrest in that area.[118]

Despite these objections, the Government motion was carried and the machinery for drawing up a new constitution set in motion. All these powers were granted to the Government by law No. 59-56 of October, 1959.

One of the results of the exercise of the powers so conferred on the Government was its new constitution which except for the size and special circumstances of Cameroon was a replica of the French Fifth Republican Constitution. This new constitution was approved by a referendum of 21st February, 1960, and came into effect on 4th March of the same year.[119]

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118. Le Vine op. cit. p. 187.

119. Journal Officiel de la Republique du Cameroun, numero supplémentaire du 4 Mars, 1960.

The Constitution of 1960

The Constitution starts with a Preamble which is much longer than that of the Fifth Republican Constitution because it reproduces the whole of the Universal Declaration of Human Rights of the United Nations and reaffirms the adherence of the Cameroon Government to these principles. The text of the Constitution which is made up of 52 Articles is divided into 12 titles.

Because this Constitution formed part of the "travaux préparatoires" of the Federal Constitution of 1961, it will be useful to make a few comments on it.

Title I which covers Articles 1 - 3 deals with Matters of Sovereignty.

Title II comprising Articles 4 - 10 deals with legislative power (pouvoir législatif). This power is to be exercised by the National Assembly. The members of the unicameral legislature enjoy very wide immunities both in and out of parliament (Article 9).

Title III, covering Articles 10 - 20, contains some of the most important sections of the Constitution. These sections are among those which are almost identical to the Fifth Republican Constitution and provide that the President of the Republic is the guardian of the

Constitution. He ensures the smooth functioning of public powers and the continuity of the state (Article 11). This makes him a sort of impartial referee.

He is elected by an electoral college system in much the same way as the French President is elected. Besides the rather enormous powers conferred on the President, Article 20 goes even further and confers on him power to act in exceptional circumstances and even to proclaim a state of emergency (l'état d'exception). These powers are again almost identical to those of the French President under the 1958 Constitution (Article 16). It is difficult to understand why it was thought fit to give the Cameroon President all these powers. The circumstances under which General de Gaulle took power were rather unusual and at least offer an explanation for some measure of emergency powers, but the Cameroon situation being very unlike that in France did not call for these powers. One possible explanation lies in the fact that some emergency powers were needed to cope with the sporadic outbursts of terrorist activities which had caused great concern since 1955. This is not, of course, to ignore the explanation that has since been offered by several members of the Consultative Committee, namely:

> "that the Government was more interested in producing almost any document and having it adopted as soon as possible than in encouraging wider discussion of its basic provisions."[120]

This is not too unconvincing if seen in the light of the general reluctance in Cameroon to discuss in public major issues which are of general public interest. An example which comes easily to our mind is the recent labour code.[121] The public only knew about it when it had been passed into law and some attempt was being made to explain it to them over the wireless.

Title VI deals with the Government and its function both of which are directed by a Prime Minister (Articles 21 - 22).

Title V regulates the relationship between the National Assembly and the Government and comprises Articles 23 - 38, which are subdivided into three sections. The first section (Articles 23 - 25) deals with the respective domains of the law. Article 23 makes provision for 6 matters which are within the legislative competence of the National Assembly. These matters include;

(a) The guarantees to and fundamental obligations of citizens;

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120. Le Vine op. cit. pp. 226 - 7.

121. Law No. 67-L.F.-6 of the 12th June, 1967.

(b) The status of persons and property;

(c) The political, administrative and judicial organisations concerningthe functioning of the National and Local Assemblies, general rules concerning the organisation of national defence, the creation or suppression of administrative jurisdictions, criminal and civil procedure, the magistracy and civil service;

(d) Financial and budgetary matters, social and economic programmes, and

(e) The policies and programmes of education.[122]

The second section, Articles 26 - 34 deals with the elaboration of the laws and the third section (Articles 35 - 38) elaborates on the political responsibility of the Government and the Assembly.

Title VI (Articles 39 - 40) contains provision for dealing with treaties and international agreements, the negotiation and ratification of which are within the competence of the President.

Title VII (Articles 41 - 43) deals with judicial authority. Article 41, like Article 64 of the French Constitution, declares in almost identical terms that the President is the protector of the independence of the judiciary. It is further provided that organic

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122. Le Vine, op. cit. p. 226.

laws will regulate the position of lawyers and the administrative jurisdiction.

Title VIII provides for the establishment of a High Court of Justice while Titles IX, X, XI and XII deal respectively with the economic and social council, local communities, the revision of the Constitution and transitory arrangements.

By the time this Constitution came into force on 4th March, 1960, Cameroon had been independent since 1st January. On independence day, Ahidjo in his speech said:

> "We rejoice, but also we measure the distance that remains to be covered and we muster our strength."[123]

Independence had at last come, but there indeed remained a distance to be both measured and covered. This included the violence of which there had been fresh outbreaks on independence day, as well as all the problems of underdevelopment. President Ahidjo was elected President on 5th May, 1960, and he took the oath of office on the 7th, so it fell to his lot to lead in measuring the distances that remained to be covered, one of which was the question of reunification.

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123. "As told by Ahidjo himself" op. cit. p. 29.

Negotiations for Reunification

Soon after the appointment of Ahidjo as President of the Independent Republic, talks about reunification started, but because of the uncertainty about the results of the forthcoming plebiscite, nothing much could be done. On February 12th, 1961, it was almost clear what the wishes of the people in both sectors of the Cameroons were. As indicated above, the results were overwhelmingly for reunification in the Southern Cameroons and integration with Nigeria in the North.[124] This decision received the blessing of the United Nations General Assembly by means of resolution 1608(XV) of 21st April, 1961. This resolution drew up a time-table for effecting integration and reunification.

The result of all this was the intensification of the pre-reunification talks which had begun after the accession to power of President Ahidjo. These talks were usually held between Mr. John Ngu Foncha, the Prime Minister of the Southern Cameroons and President Ahidjo of the Cameroon Republic. The talks showed signs of a lack of preparation by both parties. The reason for this lies in the fact that Foncha's time was taken up with the campaigns for reunification,

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124. Supra p. 60.

so that he had no time to address his mind to the real issues of reunification while Ahidjo on his part could not define in specific terms the type of union he wanted until the results of the plebiscite were known.[125] This, however, does not sound very convincing, because the decision to hold the plebiscites and the alternatives to be put were known and should have provided a basis to start constructive thinking about what would happen if the reunification alternative won. There is, as we shall see later, some consistent evidence that Ahidjo did think about reunification, although he did not do anything positive about it. When the results of the plebiscite were finally known both leaders seemed to develop cold feet about the desirability of the union between the two Cameroons. It has been suggested that Ahidjo would have been much happier with unification if it involved both sectors of the British Cameroons.

Mr. Foncha, on the other hand, made a fruitless journey three months before reunification to London to ask for the continuation of Trusteeship in an autonomous Southern Cameroons for a period of up to 5 years.[126] He had perhaps forgotten the many warnings from the Colonial

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125. Johnson, Willard R. The Cameroon Federation: Political Union between English and French Speaking Africa in French Speaking Africa: The Search for Unity: Edited by Lewis, William H., pp. 206 - 220 passim.

126. Johnson op. cit. p. 206; Le Vine, op. cit. p. 213.

Secretary at various constitutional conferences about the inadvisability of adopting this course of action. The Southern Cameroons could opt for a continuation of the Trusteeship, but she could not expect to be given the golden key to the Bank of England.[127] But however that may be, the results of the plebiscite had pushed both Foncha and Ahidjo, and indeed the Cameroon people, to a point where returning, apart from being tedious, had become impossible, so they had to get on. The option for reunification had been complete, so there was no going back.[128]

The leaders, therefore, had only one alternative and that was to think in terms of a new constitution for Cameroon. In this respect there was, as indicated above, a certain inconsistency in the speeches of Ahidjo which gave the impression that even though he may have been cold about reunification, he was fairly certain in his mind about the form it should take if it did come about. In his investiture speech before the Legislative Assembly on 18th February, 1958, he had reaffirmed his belief in the "reunification of the Cameroons into a single Cameroon."[129] Implicit in the word "single" was the idea of a unitary state. Again on 6th May, 1959, Ahidjo, in another speech in the Legislative Assembly, intimated that he was all for reunification provided it would be within the framework of an independent Republic of Cameroon.[130] In

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127. Cmnd. 207, para. 63, p. 30.
128. Johnson, op. cit. p. 208.
129. "As told by Ahmadou Ahidjo himself" op. cit. p. 33.
130. Ibid.

this respect the Southern Cameroons was regarded as a small portion of the country rejoining "the mother nation".[131] This was bound to mean that there could be no equality in the bargaining positions of the two sides, a thing which Foncha suspected when he made his belated demand for an autonomous Southern Cameroons which would be in a stronger position to bargain with the Republic of Cameroon.

Although Mr. Foncha felt this way, his pre-reunification speeches showed signs of a lack of consistency about what he wanted the reunified Cameroon to look like, nor did he quite understand the mind of the Government in Yaoundé.[132] The explanation which has been offered for this is that Mr. Foncha had carried out the campaigns for secession and reunification with such Pauline enthusiasm that there was hardly any time left to think about anything else. This may well have been true, but his failure to introduce the Yaoundé proposals on the form of the Federation to an all party conference in Bamenda, left much to be desired. This slip meant that all the delegates from the Southern Cameroons had to go into any future constitutional conference without knowing the mind of the Cameroon Government in Yaoundé. This is indeed what happened at the Foumban conference, which settled on the final form of the

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131. Ahidjo A. Contributions to National Construction, Presence Africaine, Paris, 1964, p. 22.

132. Johnson, op. cit. p. 207.

of the Federal Constitution

If Foncha had played his cards wisely, he would have perhaps got more concessions for the formation of a loose federation, but as he did not, the resultant federation was anything but loose.[133] Ahidjo had always advocated a federation with a strong centre and being in the strong position of President of an independent Republic of Cameroon which he called the "mother nation", it was not unlikely that he would adopt a very strong position in the bargain. Besides this, he came to the final constitutional meeting in Foumban fully prepared. Foncha and indeed most of the Southern Cameroonians wanted a loose federation, but they went to Foumban without any concrete plans about the type of federation they wanted and Ahidjo easily got his way. He accepted only those Southern Cameroons recommendations which he found compatible with his view of the federation. The result was that the ultimate Constitution which was produced was not only more centralised than Foncha would have liked, but want even further than the Cameroon Republican Constitution of 1960.[134] The Foumban Constitution, about which more will be said in the next chapter, was adopted on 1st September by a majority of the National Assembly of the Republic of

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133. Gardinier, op. cit. p. 117.

134. Johnson, op. cit. pp. 208 - 209.

Cameroon and unanimously by the Southern Cameroons House of Assembly, and it came into operation on 1st October, 1961, the day of reunification. The reunfied Cameroon then became the Federal Republic of Cameroons in which the former Southern Cameroons became West Cameroon and the Republic of Cameroon became East Cameroon. The date of reunification had been fixed by the General Assembly of the United Nations by resolution 1608(XV). By this same resolution, the Northern Cameroons was to be integrated into Nigeria on 1st June, 1961. This day had been declared a national day of mourning in Cameroon because of the loss of part of her territory. This loss, however, had not been accepted as a fait accompli by the Cameroon Government which had protested to Britain and the United Nations about the conduct of the plebiscite in the Northern Cameroons, but to no avail, so the only way left open was to take the matter to the International Court of Justice.

The Case Concerning the Northern Cameroons.[135]

The basis of this case was summed up rather nicely by President

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135. International Court of Justice (I.C.J.) Reports, 1963, p. 15. The case has been discussed in a long and exhaustive article by Professor D.H.N. Johnson in Volume 13 of the 1964 International and Comparative Law Quarterly, pp. 1143 - 1192. The article is particularly interesting because Professor Johnson was Counsel for Her Majesty's Government in the case.

Ahidjo in one of his speeches after the rejection by the United Nations General Assembly of the protests which Cameroon made with regard to the resolution to integrate Northern Cameroons into Nigeria. In this speech he said:

> "In the Northern zone, by reason of manoeuvres which varied from intimidation, open persecution and obstruction of all kinds, to shameless rigging, the plebiscite gave the result that we now know.
>
> To render these manoeuvres invalid, to put the situation back under the rule of justice, to satisfy the aspirations of our Northern Cameroons brothers, we mobilised all lawful means of action".

These were firstly, a complaint to Her Majesty's Government and secondly, to the United Nations.

> "After the rejection by the United Nations of our legitimate claims, in spite of the unqualified support that we had from nations that stand for justice and liberty, we appealed anew for arbitration to the I.C.J. at the Hague whose decision we are still awaiting."[136]

The appeal to the I.C.J. stated that there was a dispute between the Cameroon Government and the Government of the United Kingdom and prayed the Court:

> "to adjudicate and declare that the United Kingdom

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136. Ahidjo, Ahmadou, Contributions to National Construction, Presence Africaine, Paris, 1964, pp. 21 - 22.

has, in the interpretation and application of the Trusteeship Agreement for the Territory of the Cameroons Under British Administration, failed to respect certain obligations directly or indirectly flowing from the said Agreement, and in particular from Articles 3, 5, 6 and 7."[137]

The complaints were that:

"(a) The Northern Cameroons have not in spite of the text of Article 5, paragraph B of the Trusteeship Agreement been administered as a separate territory within an administrative union, but as an integral part of Nigeria.

(b) Article 6 of the Trusteeship Agreement laid down as objectives the development of free political institutions, a progressively increasing share for the inhabitants of the territory in the administrative services, their participation in advisory and legislative bodies and in the government of the territory. These objectives in the opinion of the Republic of Cameroon, have not been attained.

(c) The Trusteeship Agreement did not authorise the Administering Power to administer the Territory as two separate parts, contrary to the rule of unity, in accordance with two administrative systems and following separate courses of political development.

(d) The provisions of paragraph 7 of Resolution 1473 relating to the separation of the Administration of the Northern Cameroons from that of Nigeria have not been followed.

(e) The measures provided for in paragraph 6 of the same Resolution in order to achieve further decentralization of governmental functions and the effective democratization of the system of local government have not been implemented.

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137. I.C.J. Reports, 1963, p. 26.

(f) The conditions laid down by paragraph 4 of the Resolution for the drawing up of electoral lists were interpreted in a discriminatory manner by giving an improper interpretation to the qualification of ordinary residence.

(g) Practices, acts or omissions of the local Trusteeship authorities during the period preceding the plebiscite and during the elections themselves altered the normal course of the consultations and involved consequences in conflict with the Trusteeship Agreement."[138]

This appeal was based on Article 19 of the Trusteeship Agreement.[139]

The British Government naturally objected to all the points raised by the Cameroon Government. Their Counter-Memorial which was in two parts was developed at considerable length during the oral hearing. Part I of the Counter-Memorial raised a number of preliminary objections and Part II dealt with the merits of the case. The Counter-Memorials are rather long and cannot be gone into here now.[140] The definitive submissions of the United Kingdom, however, summarise the basic points of the British Counter-Memorial and were as follows:

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138. I.C.J. Reports, p. 26.

139. Article 19 of the Trusteeship Agreements provides that, "If any dispute whatever should arise between the Administering Authority and another member of the United Nations relating to the interpretation or application of the provisions of this Agreement, such dispute, if it cannot be settled by negotiation or other means, shall be submitted to the International Court of Justice, provided for in Chapter XIV of the United Nations Charter."

140. Johnson op. cit. pp. 1170-1171 admirably summarises the British counter memorials.

"For the reasons given in the Counter-Memorial and the oral statements presented on behalf of the United Kingdom during the present hearing, the United Kingdom makes the following submission:

(1) that there has not at any time been a dispute as alleged in the application in this case.

(2) that there has not been or was not on May 30, 1961 as alleged in the Application, a dispute falling within Article 19 of the Trusteeship Agreement for the Territory of the Cameroons under United Kingdom Administration.

(3) that, in any event, there is no dispute before the Court upon which the Court is entitled to adjudicate. May it, therefore, please the Court:

Having regard to each and all of the above submissions, to uphold the preliminary objections of the United Kingdom and to declare that the Court is without jurisdiction in the present case and that the court will not proceed to examine the merits."

The Government of Cameroon in its definitive submissions prayed the Court:

"(1) To dismiss the preliminary objections of the United Kingdom to the effect that the Court should declare that it has no jurisdiction.

(2) to declare that it has jurisdiction to examine the merits of the claim of the Federal Republic of Cameroon to the effect that the Court should adjudge and declare that the United Kingdom has, in the interpretation and application of the Trusteeship Agreement for the Territory of the Cameroons under British Administration, failed to respect certain obligations directly or indirectly flowing from the said agreement and in particular from Articles 3, 5, 6 and 7 thereof."[141]

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141. I.C.J. Reports, 1963, p. 19. Johnson op. cit. pp. 1172-1173.

The Court delivered its judgment on 2nd December, 1963. By a majority of 10 to 5 it found that:

> "it cannot adjudicate upon the merits of the claim of the Federal Republic of Cameroon."[142]

But, of course, the Cameroon Government was seeking for:

> "a declaratory judgment of the Court that prior to the termination of the Trusteeship Agreement with respect to the Northern Cameroons, the United Kingdom had breached the provisions of the Agreement."[143]

The Court, because of the possibility of Cameroon using such a judgment for political reasons, refused to give one. It said that:

> "it is not the function of a Court merely to provide a basis for political action if no question of actual legal rights is involved. Whenever the Court adjudicates on the merits of a dispute, one or other party, or both parties, as a factual matter, are in a position to take some retroactive or prospective action or avoidance of action, which would constitute a compliance with the Court's judgment or a defiance thereof. That is not the situation here.
>
> The Court must discharge the duty to which it has already called attention - the duty to safeguard the judicial function. Whether or not at the moment the Application was filed there was jurisdiction

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142. I.C.J. Reports, 1963, p. 38.

143. Ibid. p. 36.

> in the Court to adjudicate upon the dispute submitted to it, circumstances that have since arisen render any adjudication devoid of purpose."[144]

Earlier in the judgment the Court said its function:

> "is to state the law, but it may pronounce judgment only in connection with concrete cases where there exists at the time of the adjudication an actual controversy involving a conflict of legal interests between the parties. The Court's judgment must have some practical consequences in the sense that it can affect existing legal rights or obligations of the parties, thus removing uncertainty from their legal relations. No judgment on the merits in this case could satisfy these essentials of the judicial function."[145]

This judgment came as a surprise to most Cameroonians who had been hoping that the Court would carry out its function if one understands the function of a court as being twofold, namely,

(a) to determine the issues before it by the application of rules and procedure; and

(b) to contribute to the development of the law because every decision is a precedent and contributes to legal development - a view which came out in the powerful dissenting judgment of Judge Bustamante.

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144. I.C.J. Reports, 1963, pp. 37-8 ; Johnson op. cit. pp. 1178-9.

145. I.C.J. Reports, 1963, pp. 33-4; Johnson, Ibid.

It would seem, with respect, that the Court limited itself rather narrowly to the question of retroactive or prospective effects of actions, and did not explore fully the question of contributing to the development of the law. Nor did it concern itself with the psychological effect on the applicant of knowing that justice has been done.

Even more significant was the apparent indifference of the Court towards decided cases. Judge Badawi in his dissenting judgment referred to the declaratory judgment in the Corfu Channel Case in which the question before the Court was whether the United Kingdom had violated Albanian Sovereignty. The Court had in that case decided that there was a violation of the sovereignty of Albania and that the declaratory judgment which it gave was in itself "appropriate satisfaction",[146] just the sort of remedy which Cameroon sought from the Court. Once the Court had made up its mind not even the powerful dissenting judgments of Judge Bustamante and Judge ad hoc Beb a Don could move it. Thus the International Court of Justice had at last put the final nail in the coffin of the Northern Cameroons. As President Ahidjo said,"the I.C.J. had declared our petition to be inadmissible, thus sanctioning once again the injustice committed

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146. I.C.J. Reports, 1963, p. 151.

against our country following the plebiscite which was improperly managed right from the start.""In certain periods of history, it has happened and it will happen again, that certain peoples suffer from acts of injustice." "But we also know that history ends up undoing what it has done". Perhaps history will undo everything, but "in a world in which force wins over justice and equity, and in which the reasoning of the strong is best" [146A] it might take a long time before history reverses the acts of injustice.

Growth of Political Parties in the Cameroons

This section has been included in order to give a complete picture of the various parties mentioned in the preceding pages.

Political Parties in the Southern British Cameroons.

Political consciousness in the Southern Cameroons owes its origin to the Cameroon Youth League which was founded in Lagos on 27th March, 1940, by a group of Cameroon students.[147] These students who were in Nigeria to study soon became politically conscious as they

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146A. As told by Ahidjo himself, op. cit. p. 36.
147. Kale, op. cit. at p. 50. It is important to mention here that the Cameroons Youth League was not the only one of these groups. It was perhaps the most influential of these groups, the other two of which were the Bamenda Improvement Association and the Bakweri Union.

came into contact with political leaders like Dr. Nuamdi Azikiwe. Indeed in 1944 Dr. Enderley, Messrs. Kale, Mbile and Namme who were all leaders of the Cameroons Youth League took part with Dr. Azikiwe in founding the N.C.N.C.

Once this seed of political consciousness had been sown, it grew rather rapidly and when Dr. Endeley returned to the British Cameroons in 1946, he took with him these political ideas which were now taking firm root. The result was the formation of many Bakweri tribal groups which coalsced in 1947 into the Cameroons Federal Union. As soon as this was done, Endeley began the reunification war cry because he saw in this a good opportunity to gain the support of a new organisation which was known as the French Cameroons Welfare Union. This new group was made up of native immigrants from Douala and other parts of the French Cameroons under the leadership of Mr. R.J.K. Dibonge.

In 1949, several groups from the French and British Cameroons met in Kumba to discuss common problems and to prepare to meet the United Nations Visiting Mission of that year as a single group. In the same year Dibonge's group formed an alliance with that of Dr. Enderley's and the result was the Kamerun United National Congress. This group was quite different from the Cameroon National Federation (C.N.F.) which

was the product of the Kumba meeting.

The Kamerun United National Congress led by Dr. Endeley was the first political party in the Southern Cameroons which drew members from all parts of the territory. It was the party under which all the 13 representatives from the Cameroons entered the Eastern House of Assembly in 1951 under the Macpherson Constitution.[148] In 1952 there was an alliance between the K.U.N.C. and C.N.F, the new party being known as the Kamerun National Congress (K.N.C.).

The 1953 crisis in the Eastern region, which has already been discussed, also brought a minor crisis to the K.N.C. and saw the B Cameroon representatives split into two groups. Nine members refused to be involved in the crisis but 5 of them remained faithful to the N.C.N.C. These five broke away from the K.N.C. and formed another party which they named the Kamerun People's Party (K.P.P.)

The K.N.C., however, remained the dominant party in the Southern Cameroons until 1955 when there was yet another breach. This time the break came as a result of disagreement about the future of the Cameroons. Dr. Endeley enjoyed the unqualified support of all Cameroonian representatives and members of the K.N.C. as long as he remained committed to

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148. Supra, pp. 82-83.

the policy of reunification of the two Cameroons, but once he had been assured of a quasi-Federal status for the British Cameroons and eventual regional status within the Federation of Nigeria, he abandoned the policy of reunification. This reversal of policy forced Mr. John Ngu Foncha to break away from the K.N.C. and form his own party which he called the Kamerun National Democratic Party (K.N.D.P.) The K.N.D.P. remained committed to the policy of reunification until it was achieved.

Foncha's break from Endeley forced the latter to seek an alliance with K.P.P. This did not present any difficulty since Endeley's K.N.C. had now adopted a pro-Nigerian policy which was what the K.P.P. had always stood for. This alliance produced the Cameroon People's National Convention (C.P.N.C.),[149] and helped to keep Endeley in office till the elections of January 1959 when he was defeated by Foncha who took over the Premiership of the Southern Cameroons. Endeley took his place as opposition leader in a very calm and peaceful manner and in this way displayed statesmanship which has yet to be equalled in Tropical Africa.

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149. The K.N.C./K.P.P. alliance came as a result of the weak position in which Endeley's Government found itself when Mr. S.T. Muna, a staunch member of the K.N.C. crossed to Foncha's K.N.D.P. on the ground that Endeley had moved away from the goal of unification. Until the formation of the C.P.N.C. most of the parties used the word "Kamerun" rather than Cameroons" in their names. The "Kamerun Idea" i.e. the idea of a pre 1918 Kamerun under Germany gave rise to the "Kamerun" nationalism just like ancient Ghana gave rise to nationalism in the Gold Coast. In this respect see West Africa Nos. 2147 and 2148 of 1958 in which Ardener has written about the Kamerun Idea. Also see the World Today No. 8, Vol. 16 of 1962, p. 345.

West Cameroon continued to be dominated by the K.N.D.P. and the C.P.N.C. until 1965, when disagreement in the K.N.D.P. about the appointment of Mr. Augustine Ngom Jua as Prime Minister led to the formation of a new party known as the Cameroon United Congress (C.U.C.) under the leadership of Mr. S.T. Muna.

In the meantime, President Ahidjo had called upon all political leaders in the Federal Republic of Cameroon to join hands together in the formation of a national party. In September 1966, all the parties came together and formed the Cameroon National Union.

In discussing the parties we have left out some small ones which sprang up during the plebiscite campaigns and died almost as soon as the plebiscite was over. These include Kale's Kamerun United Party, Nyenti's Cameroon Commoners Congress, Mallam Sule's Cameroon Moslem Congress and Jesco Williams' Cameroons Indigenes Party. There was also the one Kamerun Party which was formed to replace the banned U.P.C., but unlike the U.P.C., it never really became a political force.

The Northern British Cameroons

This part of the Trust Territory was much less politically active. Even as late as 1952, the United Nations Visiting Mission reported that the activities of political parties were negligible.

All political activities were controlled by the main Northern Nigerian parties. There was a branch of the Northern People's Congress (N.P.C.) in Dikwa and a branch of the Northern Elements Progressive Union (N.E.P.U.) in Bama. When the 1958 Visiting Mission arrived in the Northern Cameroons political activities were still negligible, although there were signs of the presence of one more Nigerian party. This time it was the United Middle Belt Congress/Action Group Alliance.

By the time of the first plebiscite in Northern Cameroons on 7th November, 1959, there had grown a native party known as the Northern Kamerun Democratic Party (N.K.D.P.). This party which started in February that year, had very tenuous connections with the K.N.D.P. in the Southern Cameroons and stood for much the same thing as the latter, namely, the reunification of the Cameroons. At the time of the 1961 plebiscite which decided the future of the Northern Cameroons there was really no strong party which supported reunification. The N.K.D.P. was assisted by another small party which was formed in 1960. This party, the Kamerun Federal Party, which started off in favour of integration, later switched over to the reunification movement. These two parties either started too late or were just no match for the big Nigerian parties which had declared by a letter of 28th October 1960 to the Administrator of the Northern Cameroons that it was their

intention to work together "in order to seek the vote for joining Nigeria".[150] Together the Nigerian parties seemed to have worked to achieve their aim either by just or unjust means. The result was an unjustified victory for the integrationists - a victory which sent Cameroon to the International Court of Justice in an attempt to seek redress, but the knot had been tied and no one could undo it. After integration the N.K.D.P. and K.F.P. seemed to have died a natural death.

The French Cameroons

It has been relatively easy to track down the political parties in the British Cameroons because there was not a large proliferation of them as there was in the French Cameroons. Indeed, one commentator observed that an article in the issue of Le Monde of 21st February, 1959 had pointed out that there were then as many as 84 political parties in the French Cameroons.[151] This state of affairs in a country which 10 years before could not quite appreciate what a political party was, could not be regarded as satisfactory. The article by Le Monde must have been too favourable to Cameroon because it is reported elsewhere

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150. U.N. Document T/1556, op. cit. p. 186.

151. Zang-Atangana, J.M., Les Partis Politiques Camerounais. Recueil Penant 196 p. 681.

that unofficial estimates stated that there were 117 parties while official estimates gave the number of parties as 150.[152] This bewildering number of parties must make the task of studying them look Herculean even to the student of politics, let alone the layman for whom it is a will-o-the-wisp or a sort of fata Morgana, so one can only attempt to treat the party structure in the French Cameroons in a very general way.

The approach which I intend to adopt is that used by one of the United Nations Visiting Missions in its report in which parties were grouped into three, namely, those which had connections with a metropolitan party, purely local parties, and customary groups.[153] In Cameroon, unlike elsewhere in French West Africa, or French Equatorial Africa, there were not many parties with a metropolitan connection and the few that existed had a short lease of life. The first of these was the Socialist Section Française de l'Internationale Ouvrière (S.F.I.O.) which was formed in 1947. By 1952 this party had given way to a succession of local groups which lasted till 1959. Then there was the Rassemblement du Peuple Français - the Cameroonian branch of the Gaullist Party which was organised in Douala in 1947 and which, though popular among Europeans was extinct by 1954.

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152. Le Vine op. cit. pp. 235 - 246; Mveng op. cit. pp. 431 - 444.

153. U.N. Document T/110, p. 13. It is not intended to discuss the customary groups like the Douala Ngondo or the Bamiléké Kamsze because there were too many of them to make for a sensible discussion within the limits of this work.

The local parties formed the majority of parties in the French Cameroons, but because of their large numbers and ephemeral nature, only those which had any significant impact on the political life of the French Cameroons will be discussed. The first of the local parties was the Jeuness Camerounaise Française (Jeucafra) which was formed at the beginning of the second World War in order, according to Zang-Atangana, to maintain French tutelage over Cameroon. The membership was open to both French and Cameroonian citizens. This party disappeared after the cessation of hostilities. Then came the Rassemblement Camerounais which took a firm line in support of the Cameroons developing towards independence according to the provisions of the United Nations Charter and the Trusteeship Agreement. In this connection they attacked the interpretation of Article 4 of the Trusteeship Agreement by France to mean that Cameroon was an integral part of French Territory. Because of this strong anti-French attitude, the party was banned during its first year of its existence.

The disappearance of the Rassemblement Camerounais coincides with the birth of the U.P.C. which stood for the same things as the former. Because of the very important if sometimes disreputable role which the U.P.C. played in the political life of Cameroon, it would be unfair not to spend some time on it. The U.P.C. started with the good intention

of grouping and uniting the inhabitants of the territory in order to permit the most rapid evolution of the people and the raising of their standard of living. This initial basic policy of grouping the people was a very plausible one, but at the time of independence one got the impression that the U.P.C. was still groping around in an attempt to force acceptance of its policies. But be that as it may, it seems fair to say that the U.P.C. was the only pre-independence party in Cameroon which had a national following. This makes it even more difficult to understand why the U.P.C. never really succeeded.

It started as a party devoted to the people of Cameroon as a whole. In this respect it was interested in seeing not only that the artificial boundaries created in 1916 were suppressed but also that France abandoned her policy of assimilation by preparing the people for independence. With these aims, it was doomed, like its predecessor the Rassemblement Camerounais, to come into conflict with the administering authority. Its initial affiliation with Houphouet-Boigny's Rassemblement Democratique Africaine (R.D.A.) did not help the situation either. The R.D.A. which was allied to the French Communist Party was dedicated to fighting colonialism in Africa. This affiliation laid the U.P.C. open to accusations that it was communist inspired and supported. This gave the administering authority enough ground to treat the U.P.C. harshly. It

is said that on two occasions the U.P.C. was the victim of manifest electoral sabotage from the colonial administration.[154]

The U.P.C. was not only exposed to the hostility of the administering authority, but also to that of rural parties which were usually formed with the connivance of the administration, the main purpose being to take the sting out of the U.P.C. As if this was not enough, the Catholic Mission also joined the anti U.P.C. bandwagon. All these events constituted a threat to everything which the U.P.C. stood for, so in 1955 they resorted to violence. The result was that the party was banned from the French Cameroons. For a while they sought refuge in the British Cameroons, but there being no respite for the violent, they were also banned in 1957. They then tried to operate from outside the country as well as from the forests within, but it was never the same again. Even the general amnesty declared after independence could never produce the U.P.C. that existed before independence and so one finds today that the U.P.C. is a party operating within the pages of books on history and politics.

As indicated above, the administration had actively encouraged certain parties in an attempt to counteract the U.P.C. influence. Most of these parties had a ~~very~~ short life. The only one which held

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154. Zang-Atangana op. cit. p. 691.

on for a while was the Bloc Democratique Camerounais (B.D.C.) This party, which was founded in 1951 when the U.P.C. was at its best, lasted till 1955. The only possible reason for this long life when compared with the other parties of this nature was the part played by the Catholic Church and Dr. Anjoulat, its founder.[155] Dr. Anjoulat's party marked the end of the pro-Administration parties and beginning of another line of nationalist parties.

This reawakening of nationalism is traceable to the advanced constitutional arrangements introduced by the Loi-Cadre. This compelled Cameroonians to regroup around a common idealogy namely, the attainment of self-government and independence.[156] Of these parties, only a few are of any significance. The Mouvement d'action Nationale (M.A.N.C.), the first of these parties, came into existence in 1956 as a result of the amalgamation of two tribal groups under Charles Asalé and Soppo Priso. It tended to flirt with U.P.C., but finally merged with the Union Camerounaise (U.C.) in 1961. At about the same time, there was another party, the Partie Démocratique Camerounais (P.D.C.) which

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155. Dr. Louis-Paul Anjoulat came to Cameroon as a Roman Catholic Medical Missionary in the mid-1930s. Between 1946 and 1955 he played an influential role in the political life of the Cameroons. He represented French residents in Cameroon in the Cameroon Representative Assembly from which he was chosen as Representative in the French National Assembly. He held various posts in the French Government between 1951 and 1955.

156. Zang-Atangana, op. cit. p. 701.

flourished under André-Marie Mbida, the first Prime Minister of Cameroon, but when Mbida resigned from office in 1958, the party began to decline until its final merger with the U.C. The Union Camerounaise under Ahidjo came into existence as a political party after the elections of 1956. The early history of the U.C., like that of the others is connected with local groups. The party had started as far back as 1948 as the Association Amicale de la Benoué (A.S.A.B.E.). A.S.A.B.E. was dissolved after the elections of 1956 and its place was taken by the U.C.[157] The Union Camerounaise started off as a party which catered for the interest of the Northern Cameroons. This narrow base for the party did not satisfy Ahidjo, so he made every effort to bring together all Cameroon parties and to broaden out the base of the U.C. Gradually, but surely, he fought and won his battle for a united party in the French Cameroons. After independence he extended his activities to West Cameroon by asking everyone to unite with the U.C. for the great task of national construction, the success of which could not be ensured by a multiplicity of parties.[158] This goal was attained on 1st September, 1966, the day on which all the political parties in Cameroon voluntarily came together to form the Cameroon National Union, thus making Cameroon a one party state.

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157. As told by Ahidjo, Ahmadou, himself op. cit. p. 13.

158. As told by Ahidjo himself op. cit. p. 20.

The phrase "one party state" is one which has attracted the attention of much of the Western world. There are all the arguments about the dangers inherent in the one party state, so one is bound to ask whether Cameroon has done the right thing. The answer to this question, after a brief review of the pre-independence political structure in the Cameroons, is bound to be in the affirmative. The basis of a large number of parties in Cameroons was either tribalistic or as a result of personal pride and because this pattern was likely to last for a long time, the only sensible thing to do was to try and bring these parties together. In his plea for unity, Ahidjo seemed to summarise the situation well when he said that:

> "in our Africa where tribal reality is still deeply rooted and where the sense of ideological loyalty remains still in embryo, the political party has a strong tendency to identify itself with the tribal group to give voice to personal ambitions or to turn itself into a committee for the defence of the interests of special limited groups. Political life then becomes an ineffectual sequence of tribal struggles under the cover of minor political groups devoid of any national ideal and acting with utter irresponsibility. It goes without saying that, in such a context, there is a question of national interest. The end of political action is henceforth to secure the supremacy of one tribe over the others or to serve the secessionist ambitions of one tribe or another, and those are situations which, because they inevitably invite the reaction of the other ethnic groups, create an endemic state of divisions, struggles and intrigues ever so detrimental to the strengthening of the institutions and development of a country.[159]

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159. As told by Ahidjo himself, op. cit. p. 41.

## Conclusion

It does offer some relief even to the writer to come to the end of this excursion into the various pre-independence developments in Cameroon, but one cannot conclude without making a passing remark on the respective British and French policies of Indirect Rule and Assimilation.

The British policy of Indirect Rule which was founded by Lord Lugard is too well known to need any repetition. Stated in brief, it was a system by which the tutelary power recognised existing African societies, and assisted them to adapt themselves to the functions of local government.[160] The system was built around three aspects of government, namely, judicial, executive and financial. The judicial aspect recognised the native law and a native court system. The executive recognised the existence of a chief or chief in council or council of elders which was usually referred to as native authority. The financial aspect involved the establishment of native treasuries which were responsible for managing the funds earmarked for local developments.

On the basis of what has been said above a centralised society would seem to be the ideal situation in which Indirect Rule could work. It was indeed founded in the strong centralised societies of Northern

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160. Perham, Margery, Colonial Sequence 1930 - 1949. Metheun & Co. Ltd. London, 1967, pp. 92 - 93.

Nigeria where it worked very successfully, and as a result the British Colonial Administration decided to introduce it elsewhere. It did not work as well in chiefless or acephalous societies, so the colonial administrators introduced "warrant chiefs" who were given the same functions as the chiefs or Emirs in the centralised societies of Northern Nigeria.

Indirect Rule being the keystone of British policy in Africa, it was introduced in Cameroon when the British Government was granted the Mandate to administer the British Cameroons. Northern Cameroons and the Northern part of Southern Cameroons was inhabited by centralised societies which made the introduction of Indirect Rule easy, but the Southern part of Southern Cameroons which like Iboland, was inhabited by acephalous societies presented the British with the type of problems which they had faced in the Eastern Region of Nigeria. They, however, overcame these problems, not by creating warrant chiefs, but by grouping together a number of villages under an influential village head. This had to be done because the English regarded themselves as trustees respecting the property of the beneficiary "and training him to be worthy of independence at his majority".[161] On the whole Indirect Rule worked successfully despite the short comings, but it seems to us that

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161. Perham, op. cit. p. 76.

this policy was partly responsible for the tribalism which has been the curse of Africa because it tended to make the various Native Authorities develop an inward looking attitude. This resulted from the fact that the various Native Authorities were usually self-contained and had very little contact with the central authority or neighbouring native authorities. When independence came it was very difficult to break these local authorities and to make them look at problems from a national rather than a local point of view. It is this insular way of looking at problems which normally produces tribal sentiments.

The French Cameroons, on the other hand, was dominated by the French policy of assimilation which unlike Indirect Rule has been difficult to define. It comprises political, administrative and personal assimilation as part of the French "mission civilisatrice"[162]

This policy dates back to the abolition of Negro slavery and the declarations about the equality of man contained in the declaration of the rights of man.[163] It was based on the belief that through education the native could enter into the cultural heritage of France and become a Frenchman himself - ideas which were quite

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162. Crowder, Michael, Sénégal. A Study in French Assimilation Policy. Metheun & Co. Ltd., London, 1967, p. 3.; Roland et Lampué, Droit d'Outre-mer, Dalloz, 1959, para. 43, p. 40.

163. Lampué P., Droit d'Outre-mer et de la Coopération, Dalloz, Paris, 1969 p. 48, para. 48.

egalitarian but became more and more difficult to work because of the increasing African Empire. France could no longer bear the high costs of educating the natives, a thing which they had to do in order to ensure the success of assimilation. Besides the financial problem, there was a dichotomy in the French attitude which could not be conducive to assimilation. In principle, they advocated equality between all men, but in practice this was often modified in such a way that it amounted to saying like the pigs did in "Animal Farm" that some animals were more equal than others.[164] Gradually the paternalistic voice of the more equal men began to come to the surface and finally found expression in the introduction of the system of indigénat - the special legal régime for non-citizens.[165] It was harsh and deprived the natives of many basic rights. Thus the assimilation and paternalism worked side by side, although assimilation remained the order of the day. The aim of the policy was to create among the less equal men a gallicised élite which could help to diffuse French culture among the masses who would some day help in the administration of their territory.[166] Despite

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164. Orwell, George, Animal Farm, Penguin Modern Classics, p. 114.
165. The system of indigénat was introduced by a decree of 8th August, 1924.
166. Gardinier, op. cit. p. 13.

the fact that this was the policy, the type of education which the natives got was aimed at feeding them with stories about the greatness and generosity of France and in training personnel who would become assistants in all domains. No less important was the part that the educated African was to playas tomorrow's producers of raw materials and consumers of manufactured goods.[167]

While assimilation had been the hobby horse of the revolutionary egalitarians the conservative authoritarians did not believe in the African's capacity to learn and progress. Gradually, this view, coupled with the financial problems crystalised into the policy of association.[168] This policy was a recognition of the difference between European and non-European cultures and the belief that if this difference were respected a positive union for the mutual benefit of both colonizer and colonized could be built up.[169]

Assimilation was strongest in Cameroon during the inter-war years. The modified policy of association advocated respect for traditional institutions, but in practice only those institutions which were easily adaptable to the French way of life were tolerated while those

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167. Mbuagbaw, T., A Comparative Study of the Development of Education in East and West Cameroon 1920 - 1945. Unpublished. M. Ed. Thesis.

168. Gardinier, op. cit. pp. 13 - 14.

169. Crowder, op. cit. p. 19; Luchaire F, Droit d'Outre-mer et de la Coopération, Paris, p. 123; Robinson, The Public Law of Overseas France, op. cit. p. 1.

which failed to meet this test were ruthlessly discarded.

After the war, one began to discern even in the gallicised elite signs that they were already beginning to protest against the extreme metropolitan paternalism. Then came the Popular Front Government in France with its liberal attitude - an attitude which tended to nurture the movements in Africa which stood for the political, economic and social emancipation of French speaking Africans. This was the period when liberating forces like the R.D.A. began to find their feet.[170]

With the outbreak of the second world war, all these movements went into abeyance, but the end of the war brought not only their revival but also their rapid ascendance. Gradually opposition to French rule increased. There were two factors which contributed to this. In the first place, the wind of political change that was blowing over Asia began to be felt in Africa and French African countries were not going to be blown away from the general direction.[171] Secondly, there was greater resentment against the system of indigénat and the semi-autocratic administrative and judicial powers which it gave the local administrator. Equally strong were the protests against the prestation or compulsory labour service, the replacement of vernacular

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170. Hodgkin, Thomas, Political Parties in French West Africa, West Africa, 1954, p. 157.

171. Ibid, p. 53.

by French, the weakening of chiefly power by the introduction of the system of appointed chiefs and the suppression of the native courts.[172] Events like the Brazzaville Conference, the Constitution of 1946 and the Loi-Cadre played their part in furthering this growing spirit of nationalism. In addition to these movements, Cameroon had recourse to the Trusteeship Agreement which held out the promise of eventual independence which really came in 1960, and so ended France's policy of assimilation in Cameroon. Indirect Rule, too, came to an end eighteen months later with the reunification of the Cameroons.

This coming together of two territories governed under different colonial policies raises interesting questions which we do not intend to go into, but it seems to us that a nice way to end this chapter will be to discuss briefly whether these policies of indirect rule and assimilation were really as different as they have been made out to be.

The British policy of indirect rule which has sometimes been called the policy of colour bar was intended to enable the natives to develop within the framework of their own institutions under the stimulous of sympathetic administrators. On the whole this policy worked well, but as time went on, the natives through trade and education

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172. Hogdkin, Thomas, France in the Cameroons, op. cit. p. 1133.

made money and became influential. They then began to attack the claims of British conservation which had found expression in this system. These attacks gradually snowballed into the demands for and ultimate independence.

The French, who on the other hand were bent on pursuing their policy of assimilation, were soon forced by the realities of the situation to ~~wrest many qualities from~~ moderate this policy and to rename it "association". Though association partook of the basic qualities of assimilation, it was not dissimilar to indirect rule in so far as it advocated that Africans should preserve their own customs and institutions.

Despite this similarity between the two systems, they remained basically different and even after independence one could see in Cameroon certain distinguishable characteristics between the Africans brought up under indirect rule and the "évolué". One of such characteristics is the French "centredness" of the French-speaking African. To him everything revolves around a metropolitan axis. The reason for this lies in the French educational system which was intended to turn the African into a Frenchman. The result is that today one still finds people in Cameroon who still refer to France as home - people who are either Gaullists and Socialists, Catholics and anti-Catholics, as opposed to the English speaking people whose nationalism has always been native born. Our task today is one of having to blend these two types together.

# CHAPTER III

## THE FEDERAL CONSTITUTION OF OCTOBER 1961

### The Nature of the Constitution

> "When the supreme power .... coincides with the greatest wisdom and temperance, then the best laws and the best constitution come into being but in no other way."[1]

This seems the most appropriate preface to a discussion of the constitution - a topic on which many gallons of ink have flowed down the pens of many eminent lawyers both in the practical and academic world. They have all attempted to explain the nature of constitutions, so it is with some hesitation, indeed trepidation, that one attempts to add to this formidable list. Perhaps one can take refuge in the fact that there cannot be - nay, need not be, any permanent solution to our constitutional ills because we live in a constantly changing world which seems to know no sense of permanency - a situation which is reminiscent of romanticism.

No small amount of the gallons of ink has gone on the question of trying to define a constitution. This is even more difficult when one attempts to define a federal constitution. The problem of definition is, of course, a semantic one, so despite all the difficulties, we must attempt one.

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1. Plato: The Laws

Every definition does one or both of two things. It tells us about the de facto nature of the thing (i.e., how the thing is) or its "de ferenda" nature (i.e., how it ought to be). Set within this framework definitions are either lexical or stipulative. The lexical meaning of a word is that which one gets by looking up the word in a dictionary. This meaning can either be right or wrong according to whether it does or does not reflect the current usage. A stipulative definition, on the other hand, is normally what is conceded to people. In this connection, a person can use a word in any sense so long as he indicates or stipulates what that sense is. This type of definition can only be assailed on the grounds that it is misleading, inappropriate to the purpose, or inconsistent in use. A stipulative definition of a word does not preclude others from using the same word in another sense. This idea can, of course, be carried to the extent where we find ourselves saying that arguments about definitions do not make much sense. This would be a wrong conclusion to draw because each definition is useful in itself.

Having said all this, one is no nearer a definition of a federal constitution because it does not make much sense to consider a constitution in isolation from the practice.[2] Furthermore, the study

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2. Wheare, K.C. Federal Government, 4th Edition, Oxford University Press, 1963., p. 20.

of federalism is not merely a legal and constitutional study, but a rather wider examination of federal societies, federal constitutions, federal governments and their interaction.[3] Indeed, a definition of a federation ought to appeal

> "to the sociologist studying the phenomena of social integration and diversity, to the economist examining the role of political institutions in fostering or hindering economic growth, to the geographer concerned with territorial distribution of social interests, to the historian interested in the genesis and evolution of federal societies and institutions, and to the political theorist analysing political concepts and their implication."[4]

This, while still not making the task of definition any easier, makes it much less compelling to rely on the classical definitions, so we have adopted the definition which is offered by Dr. Watts which is as follows:

> "By the federal concept I mean the principle of organization whereby a compromise is achieved between concurrent demands for union and for territorial diversity within a society, by the establishment of a single political system, within which, general and regional governments are assigned co-ordinate authority such that neither level is legally or politically subordinate to the other."[5]

The advantages of this definition are twofold. In the first place, it

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3. Watts, R.L. New Federations: Experiments in the Commonwealth, Oxford at the Clarendon Press, 1966, p. 13.

4. Ibid.

5. Ibid, pp. 13-14.

is possible to fit a wide variety of institutions with co-ordinate authorities into this structure. Secondly, it is broad enough to allow for other considerations other than just constitutional law. This definition therefore embraces the classical "dual federalism" and the current "co-operative federalism".

Broad as this definition is, we must turn to the classical federations for basic information about what they constitute. The United States offers the best classical example. Federalism in the United States, as indeed should be the case in all federal unions, embraces the following:

(i) the union of a number of autonomous political entities (the States) for common purposes;

(ii) the division of legislative powers between the national government and the constituent States, a division which is governed by the rule that the former is a 'government of enumerated powers', while the latter are governments of 'residual powers'.

(iii) the direct operation for the most part of each of these centres of government, within its assigned sphere upon all persons and property within the territorial limits;

(iv) the provision of each centre with the complete apparatus of law enforcement, both executive and judicial, and;

(v) the supremacy of the national Government within its assigned sphere over any conflicting assertion of state power.[6]

It is not impossible that this elaborate statement of the nature of a federation can lead to the erroneous conclusion that the powers of the federal and state governments are clear cut and can be fitted into independent pigeon holes. This is far from being the case, for there are twilight areas which cannot, and perhaps need not be, properly delimited. One of such borderline cases came out clearly in the now famous American case of McCulloch v. Maryland.[7] In this case John Marshall, the great American Chief Justice who has made no small contribution to the development of constitutional law said that:

> "among the enumerated powers, we do not find that of establishing a bank or creating a corporation. But there is no phrase in the instrument which, like the articles of confederation excludes incidental or implied powers and which requires that everything granted shall be expressly and minutely described."[8]

The case in question arose from an action in which the State of Maryland denied the validity of a law passed by the Federal Legislature. The decision does indicate, inter alia, that state law is subordinate to

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6. Schwartz, Bernard. American Constitutional Law, Cambridge at the University Press, 1955, p. 30.

7. McCulloch v. Maryland 4 Wheat 316 (U.S. 1819) 54 reported in Constitutional Law Cases and other problems by Freund, Paul A., Sutherland, Arthur E., Howe, Mark de Wolfe and Brown, Ernest I., Volume I, Little Brown and Co., Boston Toronto, 1954, p. 126.

8. Ibid, p. 128.

federal law. This therefore means that the federal government can assume almost any power about which the constitution is silent. Indeed, it is possible to argue that in the new federations the twilight area has been left deliberately vague in order to give the federal government pre-eminence,[9] at least this seems to us the case in the Cameroon Federation.

While the classical federations provide us with the basic structure of a federation, they also provide us with the reasons for federating and these range from a feeling of insecurity arising from outside threat or pressure, a desire to be independent of colonial power, hope of some economic advantage, political subjection to the same colonial power, similarity of political institutions, to modern ideas like the influence of history.[10] Some of these,no doubt, gave rise to the Cameroon Federation, although the influence of history played no small part. So much for the general structure of a federation, but one more thing must be said before passing on to a more detailed consideration of the Cameroon Constitution. This is the question of autochthony.

Autochthony is a constitutional principle of Commonwealth origin which stresses that in order to receive the force of law a

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9. d'Arboussier, Gabriel: Developments in French-Speaking Africa in Federalism and the New Nations in Africa. Edited by Currie, David P. The University of Chicago Press 1964, p. 121 (referred to hereinafter as "in Currie").

10. Wheare, K.C., op. cit. p. 23. Watts, R.L., op. cit. p. 42.

constitution must be "home-grown" and not imported. This means that each constitution ought to have in Kelsenian terminology, its own grøundnorm from which it derives ultimate authority. The question about autochthony as a legalistic concept, has been better dealt with elsewhere,[11] but before we leave this topic it is essential to state that the Cameroon Constitution is autochthonous because it derives its force from home Authority. As we saw in Chapter II above, the federal constitution was the result of the deliberations of the constituent assembly which met in Foumban in the summer of 1961. The Foumban draft constitution became law when it was approved by majority of the National Assembly of the Cameroon Republic and unanimously by the Southern Cameroons House of Assembly. Thus to all intents and purposes, the constitution of the Federal Republic of Cameroon is autochthonous and the federation is itself democratic, lay, and social.

The Powers of the Federal Authorities.[12]

When seen against the general background of the classical

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11. Wheare, K.C.: The Constitutional Structure of the Commonwealth, Oxford, 1960, Chapter 4, passim: Robinson, K.: Constitutional Autochthony in Ghana, Journal of Commonwealth and Political Studies 1 (1961), pp. 41-55.: Robinson & Madden Essays in Imperial Government, Oxford, 1963, pp. 249-287.

12. Gonidec P-F. la république fédérale du Cameroun. (Encyclopédie Politique et Constitutionnelle publiée par l'Institut International D'Administration Publique). Editions Berger-Levrault, 1969, Paris (VI$^{e}$), pp. 36-39. For an English translation of the Federal Constitution see Peaslee, A.J. Constitutions of Nations, Volume I, Africa, 3rd Edition, Revised 1965.

federations outlined above, the federal government of Cameroon, unlike that of India, is one of enumerated powers, while the Federated States enjoy the residue of the powers, although it is possible to argue, as we shall attempt to do later, that these residuary powers are so ill defined that the central authorities can take them over with very little difficulty. The powers of the Federal Government are, however, set out in articles 5 and 6 of the Constitution. The powers in article 5 include nationality, the status of aliens, regulations concerning the conflict of laws, national defence, foreign affairs, internal and external security of the federal state, emigration and immigration, development planning, guidance of the economy, statistics, the control and organisation of credit, external economic regulations (including trade agreements, the monetary system, the preparation of the Federal Budget and the establishment of taxes and revenue of all kinds to meet federal expenditure), higher education and scientific research, information services and radio, postal services and telecommunication, aviation and meteorology, mining and geological research and the geographical cover of the national territory, regulations governing the Federal Civil Service and the Judiciary, the organisation and functioning of the Federal Court of Justice, the territorial boundaries of the Federated States, and organisation of services pertaining to these

matters. The powers thus outlined were to be assumed by the Federal Government immediately on unification. Article 6 also contained powers which were to be taken over by the Federal Government gradually. The powers in this list included public liberties, the law of persons and properties, the law of obligations and contracts in civil and commercial matters, judicial organisation including the rules of procedure and jurisdiction of all courts (with the exception of the Customary Courts of West Cameroon, save as regards appeals from the decisions of such courts), criminal law, transport of federal importance (roads, railways, river, marine and air transport) and ports, prison administration, legislation relating to state lands, labour legislation, public health, secondary and technical education, administrative organisation, and weights and measures. These powers were to continue to be exercised by the States until taken over by the Central Government. Subject to consultation with a Federal Co-ordination Commission, the States could legislate on any article 6 matter. The Co-ordination Commission was to be made up of persons appointed by the President and presided over by a Federal Minister.[13] These temporary powers of the states to legislate on Article 6 matters ceased as soon as the Federal National Assembly or

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13. Article 7 of the Federal Constitution.

the President decided to take them over. They were really created partly because they presented difficult problems of adaptation and partly because there was no urgency to take them over.[14]

This list of powers of the Central Government is formidable and seems, as we shall see later, to have left little or practically no powers to the Federated States, although the States did not question the distribution from the outset. It is possible that the States assumed, and not unreasonably, that they would exercise jurisdiction over the powers for at least a long enough time, to allow for a smooth transition. This seemed a fair assumption because there was no time-table for taking the powers over. Almost all these powers have now been taken over, and are exercised by federal organs under the supervision of the Federal National Assembly and the President.[15] The take-over was done in a piecemeal fashion.

The President of the Federal Republic [16]

In order to understand the nature of the powers of the President of the Federal Republic of Cameroon, one must look into the

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14. Le Vine, Victor T., The Federal Republic of Cameroon in Five African States, Edited by Carter, Gwendoline M. (referred to hereinafter as Le Vine in Carter), Pall Mall Press, London, 1964, p. 315.

15. Article 4 of the Federal Constitution.

16. Gonidec, La republique Fédérale de Cameroun, op. cit. pp. 39-40.

sources from which the Federal Constitution derived its inspiration. The federal constitution did not make any significant changes from the Republican Constitution of 1960 which, like the constitutions of almost all Francophone Africa, bore a remarkable resemblance to the French Fifth Republican Constitution in providing for an executive president and embodying no "entrenched safeguards that would bear comparison with Westminster's export models".[17] This significant lack of Westminster influence on the federal constitution came as a great disappointment to the West Cameroonians who had always hoped that the constitution of a reunified Cameroon would embody the best of Westminster and Republican traditions.[18] Thus the constitution which emerged from the Foumban talks gave the President even more powers than he had enjoyed under that of 1960. The point has been raised elsewhere that if President Ahidjo and his advisers gave West Cameroon the amount of freedom they wanted, this would have raised a call 'for reciprocal treatment' from East Cameroon. Any similar concessions to East Cameroon could have been used by political groups to detatch the Presidency from the popular base.[19] This argument is very forceful because, up to and

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17. de Smith, S.A., The New Commonwealth and its Constitutions (referred to hereinafter as the New Commonwealth), 1964, p. 231.

18. The West Cameroonians expected to find evidence of their Westminster modelled Constitution, namely the Southern Cameroons (Constitutional) Order in Council No. 1654 of 1960 in the Federal Constitution.

19. Ardener, E.W., "African Integration and Disintegration (The Nature of the Reunification of Cameroon)" in Case Studies in Economic & Political Union. Edited by Hazlewood, Arthur, Oxford, 1967, p. 310, referred to hereinafter as "Ardener in Hazlewood".

after the constitutional negotiations, there was always a possibility of rebellion against the North from where President Ahidjo came, but it appears that this fear alone, without more, was not sufficient ground for the strong centralized constitution giving the President very extensive and wide powers.

The powers of the President are to be found throughout most of the Articles of the Constitution but more particularly in Articles 8 to 15. The President, as both head of the Federal State and the Federal Government is elected for 5 years and is charged with the responsibility of seeing that the Federal Constitution is respected.[20] In the exercise of these duties, he is assisted by a Vice-President elected for the same term, whose powers are somewhat anomalous particularly in the case of the termporary absence abroad of the President.

The President appoints Ministers and Deputy Ministers from among the Nationals of each of the Federates States. They are responsible to him and he relieves them of their duties when he thinks fit.[21] The powers of the Federal Government in matters of international affairs are exclusively within the competence of the President. He is also

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20. Article 8 of the Federal Constitution.

21. Ibid, Article 11.

responsible for the regulation of all internal matters.[22] In this connection, the Federated States must consult him before they take any measures which may affect the life of the Federation.[23] By Article 14, he has power to refer to the Federal Court of Justice either Federal laws which he considers are contrary to the Constitution or Federated State laws which he thinks have been adopted in violation of the provisions of the Constitution or of Federal law. He also has very wide emergency powers to which we shall return later.[24]

In addition to these rather wide executive powers, the President also wields considerable influence over the Federated State Governments. He is responsible for the appointment of the Prime Ministers and Cabinets of the Federated States, but in the case of the latter he consults with the Prime Ministers.[25] He also has power to issue regulations on all matters not expressly reserved to Parliament and to execute Federal and Federated State laws on transitional matters.[26]

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22. Ibid, Article 12.

23. Ibid, Article 13.

24. Article 15 of the Federal Constitution.

25. Ibid, Article 39.

26. Gonidec, P-F., Institutions Politiques de la Republique Fédérale du Cameroun Civilisation. Volume XII, 1962, p. 25. The transitional powers are contained in Articles 48-60 of the Constitution.

These powers seem quite extensive, but in order to appreciate their true extent, we must take a quick look at the other agencies.

The Federal Legislature

The Cameroon Federal legislature, unlike those of the older federations is unicameral in nature. Unicameral legislatures seem to be favoured by most developing countries. They argue that bicameralism is a luxury they cannot afford. This theme was in the minds of the Cameroon Constituent Assembly at Foumban for President Ahidjo is recorded to have said that:

> "the pace that we wanted to give to our national construction and the need for financial austerity appeared to us inconsistent with a plurality of heavy unwieldy and burdensome political institutions. It was likewise these considerations which led us to choose the one chamber system, that is, the regime of a single federal assembly."[27]

The powers of this federal assembly are contained in Articles 16 to 22 of the Federal Constitution. The life of the Federal National Assembly is five years. It is made up of deputies elected by direct universal suffrage from each Federated State. Each constituency of 80,000 voters returns one deputy.[28]

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27. Ahidjo, A., Contributions to National Construction, op. cit. p. 25.

28. Article 16 of the Constitution.

Only a simple majority vote of the deputies is needed to pass any laws, although in the case of constitutional changes and amendments the simple majority, as we shall see later, must include a majority of the representatives in the Federal Assembly of each of the Federated States. The President, however, reserves the right, either on his own motion or on request by the Prime Ministers of the Federated States, to send back a bill to the National Assembly for a second reading before its promulgation. On such a second reading, a majority vote of the deputies from each State is necessary to secure the passage of the bill.[29]

The Federal National Assembly holds two yearly sessions, each lasting for a period not exceeding 30 days, and at one of which the federal budget is passed.[30]

The Federal National Assembly has the power by virtue of Article 22, to establish its own rules of procedure, but the emoluments, immunities and privileges of deputies, the grounds for ineligibility for office of deputy and the offices with which that of deputy shall be incompatible are to be laid down by federal law.[31] One of such laws, Ordinance No. 62-OF-15 of 12th March, 1962, granted very wide immunities

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29. Ibid, Articles 17 - 18; Devernois, Guy, Civilisation, Vol. XI, 1961, pp. 466-469.

30. Article 19.

31. Article 22 of the Constitution.

to the deputies of the Federal National Assembly.[32] Article 1 of this Ordinance absolves deputies from prosecution for anything said by them in the exercise of their functions as such. Nothing is said about what these functions consist of, but from a case which we will be discussing presently, it seems that the immunities extend to all the activities of the deputies. The only case in which a deputy is not covered by such immunity is when he has been arrested committing an offence against the internal security of the State.[33] The Ordinance further provides that the detention of any deputy shall be suspended on the requisition of the Federal National Assembly by the competent Parquet in East Cameroon or by the Attorney-General in West Cameroon or by the Minister of the armed forces in matters within military jurisdiction.[34]

All these regulations relating to the privileges and immunities of elected representatives were extended to members of the Regional Assemblies by Ordinance No. 62-OF-22 of 31st March, 1962, but their extent still remained a matter for determination by the courts.

The opportunity for the Courts to clear up this matter came in

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32. See Standing Orders of the Federal National Assembly, 1964, pp. 110-113.

33. Article 2 of Ordinance No. 62-OF-12 of 15th March, 1962.

34. Ibid, Art. 3. The title of Attorney-General for West Cameroon has now been replaced by Procurator-General.

1964 in the West Cameroon case of Sona v. Commissioner of Police.[35] The appellant, a federal deputy, was convicted of corruptly receiving and conspiracy and sentenced to 9 months imrpisonment with Hard Labour on each count. The facts of the case against which the appellant was appealing were as follows:

(a) The appellant, Vice-President of the Kumba Federation of Co-operative Produce Marketing Societies Limited, corruptly received from one Paul Tabia Makia, the sum of £70 as an inducement to employ him and others as truck drivers of the organisation, and

(b) That he conspired with other members of the Committee to corruptly receive this money as an inducement for doing "Various acts in relation to the affairs of the said Federation."

At the time the offences were committed, the accused was a deputy of the Federal National Assembly and a member of the West Cameroon House of Assembly,[36] and that in both capacities he enjoyed the parliamentary immunities referred to above. As a result of these immunities, deputies, except those arrested in flagrante delicto or charged with an offence

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35. Suit No. WC/16CA/1964 reported in West Cameroon Law Reports (referred to hereinafter as W.C.L.R.) which comprises Select Judgments of the Supreme Court of West Cameroon for 1962-1964, p. 54.

36. This curious situation of membership in both the Federal and Regional Houses was possible because of the transitional arrangements made shortly after reunification. By these arrangements both regions selected some members of the existing regional houses to make up the membership of the Federal House. The members so selected did not relinquish their membership of the regional houses.

against the internal or external secutiry of the state, could not be prosecuted for a felony or misdemeanour except with the prior authority of the Federal National Assembly during session and of "the bureau" if the Assembly is not in session.

On the date of his arrest, the appellant had ceased to be a deputy of the Federal National Assembly, but he was still a member of the West Cameroon House of Assembly. A letter of 10th June, 1964, signed by one C.M. Inglis as head of the legislative bureau of West Cameroon, purporting to lift the parliamentary immunity of the appellant, was admitted by the Magistrate in the Court below as relevant authority for the proceedings.

The question before the court was that the learned Magistrate had erred in law in holding that Mr. Sona's parliamentary immunity had been effectively lifted. The trial Magistrate had misdirected himself in accepting the letter from the West Cameroon House of Assembly and acting on it as a valid document effectively lifting Mr. Sona's parliamentary immunity. The final ruling of the case was based on the fact that proceedings against Mr. Sona began over two months before the letter of 10th June, 1964, was received. Since the letter could not have and was not intended to have retrospective effect, the court found no difficulty in

coming to the conclusion that the proceedings against the appellant having been begun without the relevant authority were bad ab initio.

A number of interesting problems are raised in this case. There is first the interpretation of the word "bureau". Does the Clerk of the West Cameroon House of Assembly constitute the bureau? It does seem that although this was not challenged, a resolution of the House would be preferred to a letter from the Clerk of the House.[37] The next question which again was not raised, is whether the appellant's duties as Vice-President of a Co-operative Society were co-extensive with his duties as a member of the West Cameroon House of Assembly to avail him of parliamentary immunity in their exercise. The decision leaves one in no doubt that except where a member of any of the Assemblies in Cameroon breaks security law or is caught in flagrante delicto, he enjoys absolute immunity from all proceedings.

These two exceptions are contained in Article 2 of Ordinance No. 62-OF-15 of 12th March, 1962 - which was promulgated in accordance with the provisions of Article 22 of the Federal Constitution. Article 2 of the Ordinance provides that:

> "except in the case of a deputy who has been arrested while committing an offence or charged with any offence against the internal or external security of the State

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37. See the Editor's note in the report at p. 56.

> as specified in Articles 75 to 108 inclusive of the Penal Code of East Cameroon and Chapters VI and VIA of Part II of the Criminal Code of West Cameroon, no proceedings for felony or misdemeanour shall be commenced against any deputy without the authority of the Federal National Assembly during a session and of the "bureau" if the Assembly is not in session."

The provisions of the criminal legislation of East and West Cameroon were, however, repealed by the new Penal Code to which we shall return later, but it seems that this immunity is still valid, for Section 127 of the new Penal Code provides that:

> "any judicial, legal or investigating police officer who contrary to any law conferring immunity prosecutes, arrests or tries a member of the Federal or a Federated Government, or of the Federal or Federated Assembly, shall be punished with detention for from one to five years."

Since Ordinance No. 62-OF-15 of 12th March, 1962 is such an immunity conferring law, parliamentary immunity must remain as at the time of Sona's case.

The Ordinances conferring these wide immunities on parliamentarians seems to have been drawn, except for ~~very~~ little modification, almost entirely from Article 26 of the French Constitution of 1958. These immunities are quite different from English ideas of parliamentary privileges which should ideally have been represented in the Cameroon Constitution and the Ordinances of 1962. In England a Member of Parlia-

ment is exempt from civil arrest, for a period of forty days before and forty days after the meeting of Parliament. There is no protection from arrest in a criminal charge or from preventive detention by order of the executive authority under statutory powers.

The general history of privilege shows that the tendency has been to narrow its scope[38] in order not to insulate parliamentarians from all legal proceedings. The measurement of immunity ought still to be what Lord Denman C.J. laid down in Stockdale v. Hansard,[39] namely, that:

> "privilege, that is, immunities and safeguards, are necessary for the protection of the House of Commons in the exercise of its high functions. All persons ought to be very tender in preserving to the House all privileges which may be necessary for their exercise, and to place the most implicit confidence in their representatives as to the one exercise of those privileges. But power and especially the power of invading the rights of others is a very different thing: it is to be regarded, not with tenderness, but with jealousy, and unless the legality of it be most clearly established, those who are under it must be answerable for the consequences

It is only a reliance on ideas like this that can bring cases

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38. Wade and Phillips, Constitutional Law, 7th Edition by Wade, E.C.S. and Bradley, A.W., Longmans 1965, pp. 149-150.

39. Stockdale v. Hansard (1839) 9 A & E 1. (See English Reports Vol. 112, p. 1112 at p. 1192); Kerr and Lawson. Cases on Constitutional Law, 5th Ed. Oxford, 1967, pp. 282-283.

such as the one under consideration properly before the courts. This seems a far cry in as far as Cameroon is concerned. In talking about parliamentary immunities one should ideally turn to the French rather than English Constitutional law for examples because the Cameroon Constitution is based on that of France, but Article 26 of the French Constitution and the Sona case show that immunity in the Franco-Cameroon systems are extremely wide and can sometimes be exercised to the detriment of others. It is in this light that we have drawn heavily from English ideas which seem on the whole more acceptable.

Relation between the Federal Executive and Legislature

The relation between the executive and the legislature raises interesting problems such as the separate existence of an executive and a legislature and the overall general question of the separation of powers. These were questions which the Cameroon Constitution makers had to grapple with. The constitutional discussions revolved around two schools of thought. One favoured a constitutional president acting on the advice of a council of ministers. This school found a spokesman in Mr. Foncha. The other, with President Ahidjo as its spokesman, favoured an executive president on the pattern of France, the United States

or Ghana. This school won the day and the result was a constitution which provided for a strong executive president in true French tradition, although it has been argued that:

> "though the Cameroon Presidency as at present constituted, is by modern constitutional evolution an offspring of the American idea, it is remotely a direct descendant of the French Fifth Republic."[40]

This statement is also surprising because it comes from the author who has more than once drawn attention to the fact that certain articles in the Cameroon Constitution are almost identical to articles in the French Constitution of 1958. Besides, the author has negatived his own statement by saying a few lines later:

> "that the first Cameroon Republic modelled this institution, namely, the Presidency along the lines of the Presidency of the Fifth French Republic, and the framers of the Federal Constitution at the Foumban Constituent Assembly were unanimous in transferring the idea, albeit in a considerably modified form, to the new constitution."[41]

Indeed, President Ahidjo had stated quite categorically on several occasions that all he wanted was an amendment of the first Republican

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40. Enonchong, op. cit., p. 129.

41. Ibid

Constitution in order to make room for West Cameroon.[42] A fortiori, the legislative committee of the Cameroon National Assembly which reported on the draft of the new Constitution defended the portion of the document referring to the presidency by a reference to France and the virtues of what it termed "Presidential democracy".[43] It seems therefore that if the Cameroon Presidency bears resemblance to anything at all, it is to the French Presidency. This does not, of course, mean that there are no similarities between the Cameroon and American Presidencies. There are, on the contrary, many similarities to which we shall return after a consideration of the general question of separation of powers, albeit in a cursory manner.

In considering this question we shall limit ourselves to an examination of three questions raised in Wade and Phillips the classic textbook on English Constitutional Law.[44] The first question attempts to establish whether the same persons or bodies form part of both the legislature and executive. The answer to this question in as far as Cameroon is concerned, is a qualified negative. Unlike England, where the Executive is selected from the legislature, the Cameroon Executive,

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42. Article 59 of the Constitution.

43. Le Vine in Carter, op. cit. p. 311.

44. For a discussion on the three questions see Wade and Phillips, op. cit. pp. 27 - 30.

like that of America, is quite distinct from the legislature. The President who is the head of the Executive is elected for a term of five years, and unlike the American President who is entitled to no more than two terms, he is eligible for re-election in perpetuity. Indeed, except in the case of treason, there is no procedure by which he can be removed once he has been elected. The President appoints his Ministers and Deputy Ministers from among the Nationals of the Federated States. These Ministers are responsible to him. The Ministers chosen are usually not members of the legislature, but mostly civil servants, the reason being to have a Cabinet made up of experts. The Ministers from West Cameroon are, on the other hand, chosen from among the elected members of West Cameroon in the Federal National Assembly. The explanation for this curious situation seems to be that the President bends over backwards in favour of the Cabinet system of government for the benefit of West Cameroonians. This, of course, is practice rather than law. With the exception of this qualification, the Executive is very much like that of America in which there is a complete separation of powers between the legislature and the Executive.

This separation, however, is not without its weaknesses. The strong position of the President and the relative freedom he has in changing his Ministers can lead to a situation where these Ministers do

not last long enough to initiate a policy and carry it through. Another weakness is that such an Executive, though made up of powerful individual ministers, can sometimes produce an [illegible] of unco-ordinated government of technocrats far removed from public opinion. Again, the right of Parliament to defeat a government is altogether non-existent and the members of the Assembly are very often deprived of the political power which most politicians seek.

The second question is whether the legislature controls the Executive or vice-versa. In Britain, where there is a recognition of the principle of ministerial responsibility, the House of Commons can be said to have ultimate control over the Executive, although in the light of party politics, it is extremely unlikely that a government could be brought down by the House of Commons. The situation in Cameroon is similar to that of France or the United States, where the President owes his responsibility to the electorate and not to Parliament, but, unlike France, the Cameroon President does not submit major policy decisions to a referendum. The Executive is not accountable to the National Assembly, except perhaps for minor questions which the Assembly or one of its Committees can from time to time address to individual members of the Cabinet. There is therefore a complete absence of legislative control over the Executive in Cameroon. Indeed, "the political responsib-

ility of the Federal Executive cannot be invoked by the National Assembly nor impeached by it".[45] The President, not being responsible before the Assembly, cannot dissolve it, although he has many ways of bringing pressure on it. He has the right of suspensive veto over it.[46] He initiates laws just as frequently as the National Assembly, if not more so. He addresses messages to the Assembly which often amount to a declaration of policy. The National Assembly on the other hand, has reserved rights of legislation in certain ~~reserved~~ fields[47] such as the budget, although here again, the President can interfere by insisting on monthly allocations if the whole budget is not adopted before the end of the year.[48] Thus, while the Executive can bring much pressure to bear on the legislature, there is no direct means by which the latter can control the former, nor is there any way in which the legislature can censure the Executive.

The final question is based on whether the legislature and Executive exercise each other's functions. The answer to this question in as far as Cameroon is concerned is definitely in the affirmative. Article 23 of the Federal Constitution provides that:

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45. Devernois, Guy, Civilisation, Vol. XI, 1961, p. 468.

46. Article 18 of the Constitution; Gonidec, Civilisation, Vol. XII, 1962, p. 26.

47. Article 24 of the Constitution.

48. Article 19 of the Constitution; Gonidec, Ibid.

> "the power to initiate legislation shall belong equally to the President of the Federal Republic and the Deputies of the Federal Assembly."

Article 12 further entitled the President to regulate the administration of the country by means of decrees promulgated by him or arrêtés promulgated by Ministers and other responsible Federal officers, whose powers are delegated to them by the President. To this extent then, one can say that the Executive exercises functions which normally belong to the legislature.

The Judicial Authority

The importance of the judiciary in any state cannot be over-emphasized. There is indeed no doubt that the Cameroon Government attaches great importance to the independence of the judiciary. Indeed, in a speech in 1959, President Ahidjo said that:

> "with your collaboration, the Executive and legislature will create the conditions which promote both high quality and impartiality in the decisions of the courts. The essential element will be the independence of the judiciary vis-a-vis the other two powers... I intend the Cameroonian judicial system to be unassailable. But a spiritual counterpart, freely accepted by each of its members, will have to correspond to the material guarantee of independence given to the judiciary. This counterpart is absolute political neutrality - no impartiality of the judge without his neutrality in the independence of his duties."[49]

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49. The Political Philosophy of Ahmadou Ahidjo, Paul Bory Publishing Company, Monte-Carlo, 1968, p. 114.

These very lofty ideals which President Ahidjo set for the judiciary in 1959 are put in operation by Article 32 of the Constitution which provides, inter alia, that the President of the Federal Republic shall be the guardian of the independence of the judicial authority and shall appoint the members of the judiciary of the Federated States. He is assisted in this task by a Federal Council of Magistracy which gives him its opinion on all proposed appointments of judges and acts as the disciplinary court for the latter. Article 33 lays down the duties of the Federal Court of Justice while Article 34 provides for its membership in cases where it is called upon to give a ruling in accordance with the provisions of Articles 14 and 29. Article 35 makes the orders of any court in either of the Federated States enforceable throughout the Federal Territory.

A High Court of Justice was also established.[50] This court has jurisdiction in respect of all acts carried out in excess of their functions by the President of the Federal Republic, in the case of high treason, and by the Federal Vice- President, the Ministers of the Federal State, and the Prime Ministers and Secretaries of the Federated States. The section, however, does not spell out the acts which constitute treason,[51] although there is a provision that a federal law

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50. Article 36 of the Constitution.

51. It would seem that treasonable offences come under the provisions of the Penal Code.

would prescribe the composition of the court and the procedure by which cases may be brought before it.[52]

To these Articles of the Constitution[53] which provide for the judicial authority and establishment of a High Court of Justice for the Federation must be added the various laws establishing various military tribunals in the country. Although the Constitution is silent on the question, military tribunals were first established by a Federal Ordinance No. 61-OF-4 of 4th October, 1961. By this Ordinance, a number of standing Military Courts were established in the country. These Courts were perhaps established in imitation of the Haut Tribunal Militaire which was created by President de Gaulle in 1961, but which unlike the Cameroon Military tribunals was abolished soon afterwards because of its contradictory verdicts in the trials of Generals Salan and Jouhaud. This court was then substituted by the Cour Militaire de Justice which was also condemned by the Conseil d'Etat "on the ground that its composition and procedure were not in conformity with the general principles of law guaranteeing public liberty."[54] This led to a replacement of the military court of justice by what was this time

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52. Ordinance No. 61-OF-18 of 27th December, 1961, provides by Article 14 that an absolute majority of the Federal National Assembly ascertained by secret ballot is necessary to invoke the provisions of Article 36 of the Constitution.

53. Articles 32 - 36 of the Constitution.

54. Pickles, Dorothy, The Fifth French Republic. Institutions and Politics, Methuen & Co., London, 1968, pp. 155-156.

called Cour de Sécurité de l'Etat. Although this too was criticised, it not only survived but also legalized the Cour Militaire de Justice. Thus, while the French military courts were subjected to a great deal of criticism from within France, those in Cameroon were never criticised except by the International Commission of Jurists.[55] Perhaps this lack of criticism was due largely to the fact that it would be interpreted as subversion. Indeed a few months after the issue of Ordinance No. 61-OF-4 of 4th October, 1961, another one was issued (Ordinance No. 62-OF-18 of 12th March, 1962), "for the repression of subversive activities."[56] A later law (Act No. 63-30 of 25th October, 1963) supplemented the Ordinance of 1961 and amended that of 1962.

The spirit of the new law was to transfer the trial of all offences of the slightest political hue to the military courts and to enable these courts to administer exceptionally swift and rigorous punishment. The military courts have competence over most offences relating to the internal and external security of the state or to the law concerning arms.[57] One result of this Act is that the most serious offences under ordinary law can be brought before the military courts

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55. Bulletin of the International Commission of Jurists, No. 20 of September, 1964, pp. 5 - 12.

56. Ibid, p. 8.

57. Ibid.

either initially or after proceedings have started. There is no appeal from the decision of a military tribunal, but the Minister of Justice may with the consent of the Minister for the Armed Forces, order a retrial by another military court or by the same court with different judges where judgment has been ordered by the standing military court in Buea.

The establishment of these military tribunals derogates from the picture of the judiciary which President Ahidjo painted in his speech in 1959. A lawyer, and indeed anybody would find it difficult to understand the reason for the wholesale transfer of the functions of the ordinary courts of law to military courts. What greater training have soldiers had which makes them better judges than the legally trained judges of the ordinary courts? If even one accepted for a moment the arguments that most of the offences triable in military courts are of a political nature, there would still be need to explain why soldiers are better judges of political issues than legally trained judges. These measures must raise doubts in the minds of many people. They show either that the judiciary in Cameroon is incompetent to deal with these matters or they point towards a strong-arm policy. Whatever the case may be, these military tribunals are there so one can only hope that whereas there may have been a case for them at some time, the time

has now come for them to be gradually dismantled and the judiciary restored to its proper place. Perhaps we ought to bear in mind the fact that it may not be wise to get the army too involved with politics the contageous game that it is. It is quite possible that this matter about military tribunals has been blown out of proportion because there are no concrete statistics to show exactly how many cases are handled by the military courts. But before we leave this subject, mention must be made of a recent case if only to get an idea of the kind of matter that comes before a military court. Whether a matter is decided before a military tribunal or not depends, of course, on whether it happened in an emergency area or whether it comes within the provisions of Ordinance No. 61-OF-4 of 4th October, 1961 and/or Law No. 63-40 of 25th October, 1963. In the cases other than emergency ones, the juge d' instruction, about whom we shall hear more later, decides whether or not the case should be tried by a military court.

The case in question, however, is that of Procurator-General v. Kanga in 1966.[58] The defendant, who at the time was Federal Minister of Information and Tourism, was alleged to have conspired with four others and published an anonymous publication in a foreign and local press alleging that he had lost the more senior job of Minister of Finance

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58. Enonchong, op. cit., pp. 137-140.

because he insisted on the prosecution of certain individuals for defrauding the government. He was convicted and sentenced under the laws referred to above even though the case seemed to come within the jurisdiction of the High Court of Justice. In addition to being sentenced, a confiscation order was made on all the property of the defendant. It may well be that the reasons for this were quite sound. None the less, the provisions for confiscation under the Law No. 63-30 of 25th October, 1963, leave room for concern.[59]

It would appear that our best solution to these problems lies in a strict adherence to the doctrine of separation of powers which is vital if we want to ensure the independence of the judiciary. At the moment, one cannot say with great conviction that the judiciary in Cameroon is independent. In the first place, the President, who to a large extent is the Executive, is not only guardian of the independence of the judiciary, but is also responsible for the appointment of its members, although in so doing he acts on the advice of the Council of Magistracy. This situation is, of course, similar to what happens in France where a similar council set up under the Fourth Republic had as

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59. The Law provides that a military court may order confiscation of property both present and future which is lawfully acquired. This provision, if enforced, would not only be unjust, but could cause considerable hardship to the dependants who would not only have lost the breadwinner, but also the means of livelihood.

one of its main functions the prevention of political influence in promotions and other aspects of the judiciary. It would follow from this that the greater the independence of the council, the smoother its functioning. By doing this we would be adopting a situation which is less extreme than that in America where neither the Executive nor the legislature has any connection with the judiciary.[60] This ought to be the ideal situation, but perhaps not so realistic in our case which is closer to the French than the American Constitution. Secondly, the material from which the judiciary, particularly in East Cameroon, is appointed is different. Unlike West Cameroon where magistrates and judges are appointed from amongst lawyers with considerable experience, the judiciary in East Cameroon is, like its continental counterpart, just another arm of the civil service under the Ministry of Justice. This situation makes it difficult to have a judiciary which is independent. Indeed, it has often been argued, and with good reasons too, that this situation can produce a judiciary which easily bows to the Executive in order to remain on its pay role.

The Federated States

The Cameroon Federation consists of two states which according

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60. Schwartz, op. cit., p. 19.; Article 3 of the Constitution of the United States.

to President Ahidjo were created:

> "because linguistic, administrative and economic differences do not permit us to envisage seriously and reasonably a state of the unitary and centralized type. It was because a confederal system, on the other hand, would not favour the close coming together and the intimate connection which we desire."[61]

As we indicated above, the regional governments are those of residual powers. The basis on which the powers were divided seemed to have been dominated by a desire "to create a federal state with powers akin to those of a unitary state."[62] By the constitution, the Federal Government enjoys all the powers stated in Articles 5, 6 and 24. The residue of powers not mentioned in these Articles belongs to the Federated State Governments provided that the regulation of these residual powers is not specifically entrusted by the constitution to federal law.[63] The States were also empowered by the Constitution to adopt their own constitutions, but these were modelled on the skeleton provided by Articles 38 - 46 of the Federal Constitution and did not indicate the extent of state power, although these were generally thought to include the customary courts of West Cameroon (excluded from Federal jurisdiction by name), and primary education which by inference

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61. Welch Jr., Claude F., "Cameroon Since Reunification: 1, The Constitution of the Federation," West Africa, 9th October, 1963, p. 1175.

62. Enonchong, op. cit., p. 169.

63. See Article 38 of the Constitution.

was not included under secondary and technical education. These two powers have some constitutional claim to the state subjects. It was also assumed in the early years that by convention certain other powers were left to the State Legislatures. Such powers included Local Government, Social Welfare, Archives and Antiquities, Agriculture, Forestry, Co-operatives, Internal Trade, State Public Works and some minor functions.[64] No list can, however, be made which has any constitutional validity. Indeed, it has been argued elsewhere that the only significant powers left to West Cameroon are Local Government and Primary Education,[65] although even these or at least one of them is questionable as a state power as we shall see later. But however that may be, each State has a constitution of its own which must be operated within the framework of the Federal Constitution.[66]

The East Cameroon Constitution, which is no more than a watered down version of the Constitution of 4th March, 1960 came into effect as Law No. 61-LO-1 of 1st November, 1961 while that of the West which was enacted on 1st October, 1961, bears some resemblance to the Southern Cameroons (Constitution) Order in Council of 1960-61.

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64. Ardener in Hazlewood, op. cit., p. 309.

65. Welch Jr., Claude F., Dream of Unity: Pan-Africanism and Political Unification in West Africa. Cornell University Press, New York, 1966, p. 248 (footnote 105).

66. Articles 41 - 42 of the Federal Constitution.

Each Federated State has provision for a Legislative Assembly which is elected for a period of 5 years by direct universal adult suffrage. The East Cameroon Legislature, on account of its greater size and population, has 100 members while that of West Cameroon has 37, in addition to the House of Chiefs which is retained. The membership of the House of Chiefs is to be not less than 18 nor more than 22.[67] This makes the West Cameroon Legislature bicameral as opposed to the unicameral chamber in the East and at the centre.

Each State Legislature has legislative competence within the powers reserved to it where these can be discerned. State powers were considerably more at the beginning of the Federation when they had legislative competence over Article 6 powers. At the moment almost all the Article 6 powers have been taken over by the Central Government.[68]

The legislature of each State is headed by a Prime Minister who is appointed by the President of the Federal Republic and invested by a simple majority in the State Assembly.[69] The Prime Minister is

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67. Article 9 of the West Cameroon Constitution.

68. Welch, Jr., Claude E., Dream of Unity, op. cit., p. 248.

69. See Article 2 of the West Cameroon Constitution and Article 10(2) of that of East Cameroon. It would appear that it is necessary for the Prime Minister to be an elected member of the State Legislature. The present Prime Minister of West Cameroon was not elected at the elections into the present Assembly. Prior to his appointment he was an elected member of Federal National Assembly and also a Federal Minister.

both head of the Executive and the government in the State, In the execution of his duties, he is assisted by Ministers who, in order to avoid confusion with Federal Ministers, are called Secretaries of State. The Secretaries of State are chosen by the Prime Minister subject to approval by the President. The Prime Minister together with these Secretaries form the Executive.

Despite the elaborate procedure, the States do not really enjoy any real power, except perhaps the rare privilege that any amendment of the Federal Constitution must receive the approval of the representatives in the Federal Assembly of each Federated State.[70] It is the President who wields all the powers. He promulgates all laws passed in the State Assemblies.[71] He can either on the proposal of the Prime Minister or of his own motion dissolve the State Legislative Assemblies.[72] He has a suspended veto over State laws if he thinks that they are contrary to the Constitution or to Federal law.[73]

Local Government

This seems to be the most appropriate place to say a word about

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70. Article 47 of the Constitution of the Federation.

71. Article 47 of the Federal Constitution; Luchaire, op. cit., p. 219.

72. Article 45 of the Federal Constitution; Article 16 of West Cameroon Constitution.

73. Luchaire, Ibid; Article 44 of Federal Constitution; Article 21 of West Cameroon Constitution; Article 23 of East Cameroon Constitution; Articles 14 and 34 of the Federal Constitution; Gonidec, P-F., Les Constitutions Africaines. Librairie Général de Droit et de Jurisprudence, Paris, 1968, p. 127.

local government because this is one of the powers which is by convention left to the Federated States. Besides, it does bring out, very clearly, even at this very low level of the governmental structure, the type of conflict of powers that can exist between the Central and the State governments. Furthermore, it is one of the most effective means by which the man in the village can exercise political power. True it is that the elaborate structure of the Cameroon National Union (C.N.U.) which in many ways resembles that of the now defunct Union des Populations du Cameroun, does give everyone a chance to share in the politics of the nation provided that everyone belongs to the C.N.U, but this cannot always be expected because there is provision in the Constitution for the establishment of more than one party.[74]

But is there really scope for the man in the village to participate in local government? In so far as West Cameroon is concerned the answer for the time being must be in the affirmative. We say "for the time being" because this may not always be the case if centralization which is noticeably in ascent is not arrested. Local government in West Cameroon was based on the general policy of British administration which was aimed at stimulating local initiative through Native Authorities. Each Native Authority was run by an elected council, and authority

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74. Article 3 of the Federal Constitution.

flowed upwards from these councils to the central government. This was the basic theory that efficient and representative local government provided the foundation on which the central administration was founded.[75] This theory, of course, operated within the general framework of indirect rule.

The management of local affairs in West Cameroon was entrusted into the hands of the traditional authorities on the understanding that these authorities were to be gradually developed on democratic lines into bodies comprising of educated and progressive elements of the society. In the Forest Zone comprising of the divisions of Victoria, Kumba and Mamfe[76] which were peopled by acephalous societies, the British Administration was faced with the difficult problem of grouping its populations into different Native Authorities because the traditional political unit scarcely extended beyond the confines of the village. This was overcome by grouping various villages into Native Authority Units. The grasslands on the other hand were peopled by centralised and chiefly societies

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75. Welch Jr., Claude F., West Africa, op. cit., p. 1175.

76. These three divisions have undergone some changes since reunification. There was first of all a structural change which divided Kumba into the two divisions of Kumba itself and Ndian. In this reorganisation several sub-districts were created. Recently, these have been renamed as follows. Victoria is now Fako, Kumba is Meme, Ndian remains unchanged and Mamfe is Manyu. The old names remain as the chief towns of the division which formerly had those names.

whose traditional authorities extended beyond the confines of the village. Indeed, the not infrequent interchange of royal visits between chiefs does emphasize the fact that the chiefs, and through them, the villagers of the various divisions in Bamenda[77] have more in common than their counterparts in the forest area. There is, for instance, more in common between the man in Bali and the man in Nkambe than there is between the man in Ekona and the man in Muyuka although the two former places are separated by 170 miles while the latter are separated by about 10 miles.

It follows from this that the practice of local government is bound to be more successful in the grassfield areas where there are greater and more centralized traditional institutions which are ideal as local government units.

The functions of local government in each division are exercised by a popularly elected divisional council. The council's function under the guidance and advice of the Divisional Officer who is now called the Prefect or Sub-Prefect.[78] The local authorities are responsible for the

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77. These changes also affected the division in the grassfield areas. The structural reorganisation resulted in Bamenda being split into three divisions namely, Bamenda, Nsaw and Gwofon. These divisions have also been renamed as follows: Bamenda is now Mezam, Nsaw is Bui, Gwofon is Momo. The two other grassfield divisions Wum and Nkambe have been renamed Metchum and Donga & Mantung respectively. The old names remain as chief towns.

78. Le Vine in Carter, op. cit. p. 340.

smooth running of the Customary Courts. They also supervise the running of their own treasuries - a function which is sometimes carried out jointly with neighbouring local authorities. They also maintain numerous establishments and institutions and undertake public works such as the building of roads, cement-lined wells, dams, schools, dispensaries, court houses and agricultural stations. All these activities help to create a sense of duty and civic responsibility[79] among the ordinary citizen who in this way takes his rightful part in the politics of his immediate environment and of his country at large. There are, in addition to the area based local authorities, a number of townships like Victoria, Kumba and Mankon which have municipal governments composed of elected municipal councils. This process will increase as more towns grow in size and importance.

Finally, local government in West Cameroon comes within the competence of the Ministry of Interior. Since the present Secretary of State for Interior[80] took up office early in 1968, he has spared no effort to place local government on a sound footing and to rid it of nepotism and corrupt practices.[81]

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79. Report of the 1952 United Nations Visiting Mission to the British Cameroons (U.N. Doc. T/1109) p. 10.

80. The present Secretary of State for Interior is Mr. B.T. Sakah.

81. For a more detailed work on Native Administration in West Cameroon recourse should be had to Mrs. Chilver's contribution in Essays in Imperial Government by Robinson and Madden, Oxford, 1963, pp. 89-139.

In East Cameroon local government which was based on:

> "the French system, relied not on development from below, but on direction from above. The High Commissioner as dépositaire des pouvoirs de la Republique governed through arrêtés according to general policy directions from Paris. The conseils de notables and communes rurales mixtes introduced in East Cameroon never achieved the importance of their West Cameroon counterparts; local government was much more subject to direction and regulation from the centre. Indigenous institutions were not developed. The tendency was to substitute institutions based on the French model as soon as the population was deemed ready."[82]

This resistance to the establishment of local government was due as much to the extention to Africa of the centralized traditions of metropolitan France as to a special imperial device for discouraging African autonomy.[83] Thus, rather than encourage the development of local government, centralization was the order of the day.[84] It was not long, however, before the French Administration realised that some form of co-operation with the local population was necessary in the interest of good government.

At the beginning, the High Commissioner regulated local affairs by means of arrêtés. These arrêtés did recognise the position of chiefs

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82. Welch Jr., Claude F., West Africa, op. cit. p. 1175.

83. Gray, L.G.: Local Government in West Africa, Columbia University Press, New York, 1958, p. 112.

84. Thompson, Virginia and Adloff, Richard: French West Africa, George Allen and Unwin, 1958, p. 179.

as essential to the working of local government. The first arrêté in this direction was that of 1928 which made provision for the consultation of local opinion before the appointment of chiefs.[85] Then came the decree of February 4th, 1933, which defined the status of the chiefs and divided them into three groups, namely, chef supérieurs, chef de groupement and chef de village.[86] With the basis thus laid, the High Commissioner proceeded to regularise a system of communes which was already a growing feature in French West and Equatorial Africa.[87] He did this by means of arrêtés. These local arrêtés defined the regimes of the communes in the Cameroons. They were administered either by a nominated municipal commission or an elected municipal council with a nominated mayor in charge in either case.

The most important law dealing with local government was undoubtedly the decree No. 537 of 21st August 1952, which created a new type of communes known as the communes mixtes rurales, the boundaries of which were identical to those of the twelve sub-divisions of the regions

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85. Labouret, H., Le Cameroun, Paris, 1937, p. 20.

86. U.N. Doc. T/1110, op. cit., p. 4; U.N. Doc. T/1427, op. cit., p. 12.

87. See Decree No. 47-2235 of 19th November, 1947 published in Journal Officiel of 22nd November, 1947.

of Nyong-et- Sanaga, N'Tem and Dja-et-Lobo. Each of these communes was administered by a mayor - administrator appointed by the High Commissioner. He was assisted by an elected municipal council of between 16 and 40 members. The councils had deliberative powers in budgetary matters and were consulted on all questions affecting the community.[88]

Elections to the councils were conducted on the single electoral college system. A number of seats were, however, by decree of the High Commissioner reserved for candidates of statut civil who in most cases were French men.

The purpose of these communes was to provide Cameroonian farmers in the villages with a means of expressing their views and ensuring for their greater participation on democratic basis in the management of local affairs. The sub-division was chosen as a unit because its boundaries often coincide with ethnic or political units such as the lamidat or sultanate in the north or the tribe and clan in the south.

These communes mixtes rurales existed side by side with urban communes mixtes of which there were already nine by the end of 1952.[89] These nine included Douala, Yaoundé, Ebolowa, Edea, Nkongsamba, M'Balmayo,

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88. U.N. Doc. T/1110 op. cit. at p. 6.

89. Ibid, p. 8.

Kribi, Sangmélima and Garoua. These too, like the rural communes, were directly under a mayor-administrator appointed by the High Commissioner.

With these two types of communes existing side by side, there was bound to be a conflict which in most cases was solved by merging the smaller urban communes into the neighbouring rural communes.

It will be noticed that with the exception of the urban communes of Garoua and later Ngaoundéré, most of this evolution in local government took place in the South. This was because it was thought that these changes were a bit premature for the North, where the Sultans and lamidos were being persuaded to make their rule more representative. Thus while the British found the centralized societies ideal for the development of local government, this was not the case with the French.

By the time of independence, there had been general progress in the development of local government institutions in the East. A few of the urban communes (Douala, Yaoundé, Nkongsamba, Ebolowa, Edea, Kribi, Mbalmayo and Sangmélima) had progressed to the status communes de plein exercice, i.e., communes with full power.

The situation today rests on a three-tier structure beginning with Prefect at the top and going through a complex system of communes

to a base made up of various major and minor chiefs. There are today in East Cameroon 25 departments each of which is headed by a Prefect. These departments (départements) which correspond roughly to the divisions in West Cameroon, are divided into arrondissements which, if large enough, are further subdivided into districts. These smaller units are placed under Sub-Prefects and district heads. The whole prefectoral system is under the 6 Federal Inspectors of Administration who ought ideally to work closely with the Secretaries of State for Interior in the two States, but they owe greater allegiance to the Federal Minister charged with responsibility for Territorial Administration who is himself responsible to the President. In this way the President controls the working of the local government system.

The communes have, however, survived the various administrative reorganisations since independence. They retain their dual rural and urban nature, although because of general progress, the urban communes are now divided into two categories namely, communes urbaines de plein exercice and communes urbaines de moyen exercice or communes mixtes urbaines de moyen exercice. The basic difference was that the former had full powers while the latter had limited powers. Those with full powers are the older established urban centres such as Douala, Yaoundé, Nkongsamba and so on. They have complete control over municipal finances

and services. Those not deemed to have attained this degree of maturity have limited powers. One major difference between the two groups is the method of electing a mayor. In the full communes he is elected while in the others he is nominated by the Minister in charge of Territorial Administration. As outlined above, the communes with limited powers are of two types, namely, communes urbaines de moyen exercice and communes mixtes urbaines de moyen exercice. The difference between these two limited communes is that in the latter an ethnically mixed population may require special rules to determine the selection and composition of the municipal council. An example of this is the municipal council in Garoua where $\frac{2}{3}$ of the members are elected at large and $\frac{1}{3}$ appointed from amongst the notables or chiefs by the Minister of Territorial Administration on the advice of the Prefects.

Also surviving in the post-independence reorganisations are the rural communes. They are normally created by Presidential decree and are usually coterminus with the arrondissement and co-existent with the urban communes. They are headed by mayors appointed by the Minister.

The chiefs in both East and West Cameroon still play a role, the importance of which very often depends on the part of the country from where they come [illegible]. The Northern lamidos and emirs wield considerable

power while the power of the chiefs in the Southern part of East Cameroon depends on whether they are chefs supérieurs, chefs de groupements or chefs de villages.

The situation in the West Cameroon follows very much the same pattern as in the East with the chiefs in the north wielding more power than those in the south.[90]

As was mentioned above, this elaborate system of local administration together with what happens in the West Cameroon comes directly under the supervision of the Federal Inspectors of Administration. The Federal Inspectors came into existence with the creation of the six Administrative Regions. The creation of the regions is the result of two decrees. The first one - decree No. 61-DF-15 of 20th October, 1961, established the territorial organisation of the Cameroon Federal Republic. Then came decree No. 62-DF-83 of 12th March 1962[91] which created the system of Federal Inspectors to supervise the six administrative regions into which the Cameroon had been divided by the decree of 1961. These administrative regions are West Cameroon which forms a region, the West of East Cameroon, the Littoral region, South-Centre region, Eastern and

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90. On local government in East Cameroon see generally Le Vine in Carter, op. cit. pp. 339-342.; Notes et Etudes Documentaires No. 1847 of 11th March, 1954, p. 32.; U.N. Documents T/1110, T/1240 and T/1427.; Gray op. cit., pp. 112-118 and Chapter X passim.; Mintya, Samuel, Les Commune du Cameroun Oriental. Revue Juridique et Politique, 1967, pp 351-362.; Thompson & Adloff, op. cit. Chapter 7 passim.

91. Journal Officiel de la Republique Fédéral du Cameroun (J.O.R.F.) of 1st April, 1962, p. 253.

Northern regions.

West Cameroon, while being an administrative region is also a Federated State. This peculiar position is bound to present difficulties. Indeed there have been conflicts due partly to the initial difficulties of adaptation and partly to the ambivalence in the functions of the Federal Inspector vis-à-vis the Federal and the Federated State governments.

One of the areas of conflict has been in local government in West Cameroon. Hitherto, the Federal Inspectors in West Cameroon have been East Cameroonians who because of their French upbringing have quite a different attitude towards local administration. To them local administration is subject to detailed scrutiny by Prefects and Sub-Prefects who are agents of the central government. To the West Cameroonian the Native Authorities and the local councils form the basis of central government.[92] This situation places the Federal Inspectors and Prefects in a difficult position. In the first instance, they are Federal officers and therefore exercise their functions in respect of local administration on behalf of the Federal Government. Local government, however, is one of these functions which come within the competence of

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92. Welch Jr., Claude F., West Africa op. cit. p. 1175.

the West Cameroon Government. In fact, there is a Secretary of State for Interior whose responsibilities include local government. This means that the Federal Inspector or at least the Prefects and Sub-Prefects who deal directly with the Native Authorities owe some allegiance to the West Cameroon Secretary of State for Interior. These officers who find themselves in the rather difficult position of exercising their local government functions on behalf of both the regional and central authorities are very often faced with questions of allegiance. In such situations the tendency has always been to settle in favour of the central authorities whose servants they are. This is only one example of the type of conflicts which can arise between the Federal and Federated Governments.[93]

Individual Freedoms and Fundamental Rights

The discussion of the rights of an individual to participate in local government leads naturally into the general discussion on the wider

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93. There are other situations of conflict between the Federal Inspector as representative of the Federal Government and the West Cameroon Government. These conflicts sometimes arise because the powers of the Federal Inspector vis-a-vis the West Cameroon Government and certain Federal Government departments in West Cameroon have not been properly delimited. One example of conflict occurred in early 1968 when the Federal Inspector insisted on inspecting a guard of honour at the opening of the assizes - a function usually performed by the Chief Justice of West Cameroon or his deputy. It was only the wise and firm handling of the situation by the Chief Justice of West Cameroon and the President that prevented a showdown.

On the question of conflict between Federal and State authorities see generally Ardener in Hazlewood op. cit. pp. 325-328 and Johnson in Lewis op. cit. pp. 212-213.

issues of individual freedom and fundamental human rights - a subject which has come much to the front since the Nazi atrocities in the Second World War. Despite the fact that this subject has been discussed extensively both nationally and internationally, we are no nearer a solution. There are still differences between us and the South Africans as to what constitutes rights. One of the reasons for these differences is that there is no objective criteria for determining human rights which is internationally accepted. As long as we use subjective criteria, we will continue to be faced with this problem. There will still be people who like Jeremy Bentham, consider natural rights to be "simple nonsense", and others like Dicey who have a kind word for constitution makers who include declaration of rights clauses in their constitutions.[94] Happily, however, the process thus commended by Dicey has grown so rapidly that today we not only have constitutions with natural rights clauses, but a United Nations Declaration of Human Rights which has played no small part in making men and nations aware of their rights and in assisting them to have these rights respected. True it is that the United Nations Declaration and the various constitutional instruments have not only attempted to concretise ideas which

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94. de Smith, S.A., The New Commonwealth op. cit. p. 164. The same author in the I.C.L.Q., 1961, Vol. 10, p. 84.

have always been with us, but have attempted to put in more positive form what these rights are. Thus in attempting to say a word about human rights in Cameroons it would be reasonable to start from a point where they began to receive some concrete form. The best starting point would therefore be the rights clauses entrenched in the League of Nations Mandates for Cameroon because the introduction of the Mandate not only gave new dimensions to human rights in Cameroon, but saw the end of German rule which was very often harsh and brutal and disrespectful of the basic rights of the Cameroonians.

The Mandate over Cameroon granted to Britain and France provided by Article 7 that the:

> "mandatory shall ensure in the territory complete freedom of conscience and the free exercise of all forms of worship which are consonant with public order and morality... it being understood, however, that the Mandatory shall have the right to exercise such control as may be necessary for the maintenance of public order and good government, and take all measures for such control."[95]

This Article laid the basis for all questions of human rights in Cameroon, while forums like the Permanent Mandate Commission ensured for the free

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95. Article 7 of the League of Nations Mandate for Cameroon.

exercise of the rights thus guaranteed. Despite this sound beginning, later developments of fundamental rights tended to follow the basic thinking of the Mandatory power.

In the French Cameroons, all developments tended to follow the reasoning behind the French revolutionary Declaration of the Rights of Man. This declaration had been incorporated into every French Constitution since 1791. This was then extended to the colonies by virtue of the declarations which made all the colonies an integral part of the metropole.[96] Each succeeding French Constitution proclaimed adherence to these rights which were finally confirmed and completed by their inclusion in the preamble of the 1946 Constitution. These ideas gradually filtered into the various colonial constitutions which came into existence after the promulgation of the Loi-Cadre in 1956. Thus when the French Cameroons became independent in 1960, the new Constitution had a very long preamble which was made up of the French Declaration of the Rights of Man and the United Nations Declaration of Human Rights which had come into existence after 1948.

The developments in the British Cameroons were slightly different. Initially they were influenced by the general British attitude towards bills of rights. The British, because of their unwritten constitution

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96. Luchaire op. cit. p. 48.

tended to look at these with a certain amount of disfavour. This attitude gradually changed and after 1959 many countries with British ~~Saxon~~ influence had constitutions with bills of rights clauses. The last British constitutional document for the Southern Cameroons had sections dealing with fundamental rights.[97] Thus when the makers of the Constitution of the Federal Republic met at Foumban, they had before them two written constitutions each of which had fundamental rights provisions. These rights ranged from those which were detaily spelt out in the Southern Cameroons Constitution to the more general Declarations of the Rights of Man and the United Nations Declaration of Human Rights which were adhered to in the Constitution of the Republic of Cameroon. The choice was therefore either one of adopting the Southern Cameroon or that of the Republic of Cameroon or breaking new ground. The Constituent Assembly decided to break new ground and this they did by simply declaring adherence to the United Nations Declarations of Human Rights,[98] and in this way they ousted the:

> "justiciable set of fundamental human rights with which the Southern Cameroons were endowed."[99]

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97. The reasons for the change in the British attitude towards bills of rights clauses have been discussed fully elsewhere.. See generally de Smith, S.A. The New Commonwealth op. cit. Chapter 5 passim. The same author in the following: Federalism and Human Rights in the New Nation, Edited Currie, David P., University of Chicago Press 1964, Chapter II passim; Fundamental Rights in the Commonwealth, I.C.L.Q. 1961, Vol. 10 pp. 83-102 and 215-237; Wheare, K.C., Modern Constitutions, Oxford 1964, pp. 55-74; Southern Cameroons (Constitution) Order-in-Council 1960-61, Chapter VII, Articles 72-87.

98. Article 1 of the Federal Constitution.

99. de Smith S.A., in Currie op. cit. p. 301.

The choice made, however, raises some quite fundamental problems which merit a brief consideration. The first problem is the whole question of embodying human rights clauses in written constitutions. What, for instance, is the best way of doing this? There are constitutions like that of India, in which human rights provisions are embodied in statements of the objectives which should be pursued under the constitution. These objectives either form part of the policy or the legal order in the countries concerned. Then there are the constitutions which contain assertions to the effect that individual liberties and fundamental rights will be respected. Again, there are those in which there is an adherence to some form of human rights which in most cases are either the Fundamental Declaration of the Rights of Man or the Universal Declaration of Human Rights or both. The Cameroons and most of Francophone Africa fall into this group of countries. Finally, there are constitutions with bills of rights which take the form of rules of strict law conferring actionable rights on an individual.[100] When all these alternatives are considered, one must come to the inevitable conclusion that the strict rights which are accorded to an individual must be ideal. True it is that the philosophical and moral basis of these rights sometimes elude rationality, but because they confer concrete rights on an individual, they must remain the best form. This must be so, because the history of human rights is

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100. de Smith S.A., The New Commonwealth, op. cit., pp. 165-1966.

tied up closely with the desire to protect the individual from abuse. In France, for instance, the Declaration of the Rights of Man was aimed at meeting specific ills to which Frenchmen were subjected at the end of the monarchy. This great desire to protect the rights of the individual is even more urgent today in the new nations of which Cameroon is one and these rights can be better protected if they are fully spelt out in the form of bills of rights. It is true that in Cameroon and, indeed, in most of la Francophonie there is a system of administrative law, but how well this works in a situation where the line between the Executive and Judiciary is not always very clear remains to be seen. This perhaps represents the ideal and not the practical situation as it is in Cameroon.

As was observed above, Cameroon has affirmed adherence to the fundamental freedoms set out in the Universal Declaration of Human Rights and the Charter of the United Nations. What exactly does this mean? According to Dr. Enonchong, it means, firstly, that the Declaration has assumed the status of a bill of rights, and secondly, that the Federal Constitution must be read as if all the provisions of the United Nations Declaration of Human Rights form part of it.[101] This raises the further question as to whether the Declaration is a bill of rights, and if so, whether it is applicable to states. This is not to ignore the problem

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101. Enonchong, op. cit., Chapter Vll, passim.

of enforcement. Fortunately these questions, which lie outside the limits of this work, have been better dealt with elsewhere,[102] but before we end the discussion on this subject, a word must be said about the appropriateness or otherwise of using the declaration which covers a large area of human conduct as a bill of rights.

The question of human rights figured prominently in the Charter of the United Nations,[103] but these provisions did not amount to very much in legal terms. It was not possible for any one to allege at any time that something happened to him which was contrary to human rights. In order to overcome this situation an attempt was made to lay down seriatim the rights referred to in blanket terms in the Charter. This attempt yielded the Universal Declaration of Human Rights in 1948. Although this was an improvement on the provisions of the Charter, it remained a declaration and still does not create legal rights. The signing of the European Convention of Human Rights in Rome in 1950 was, indeed, an admission of the fact that the United Nations Declaration did not, without more, offer enough protection to the individual. The European Convention sought to protect the individual by providing a protocol for the protection of the rights of the individual. In this way, the

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102. Lauterpacht, H.: International Law and Human Rights, London, 1950.

103. United Nations Charter, Articles 1, 13, 55(c), 62(2).

European Convention has "avoided the vague generalities that characterised the Universal Declaration of Human Rights."[104] If the provisions of the United Nations Declarations are very rightly referred to as "vague generalities", then one must come to the inevitable conclusion that they are inappropriate for inclusion in constitutions. It is true that provisions of a bill of rights are difficult to enforce, but the Universal Declarations are even more so. There is, of course, the added advantage that a bill of rights:

> "defines beliefs widespread among democratic countries and provides a standard to which appeal can be made by those whose rights are infringed."

It is true that:

> "a government determined to abandon democratic courses will find ways of violating them. But they are of great value in preventing a steady deterioration in the standards of freedom and the unobtrusive encroachment of a government on individual rights."[105]

Emergency Powers.

The exercise of emergency powers is one of the ways in which the fundamental rights of an individual, where these are discernible, can be

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104. de Smith, S.A., The New Commonwealth, op. cit., p. 183.

105. Ibid, p. 179. Cmnd. 505 of 1958, paragraph 97. With a bill of rights, it should be possible for an individual to challenge the right of a military tribunal to order the confiscation of property. See Note 58 at p.197 above.

infringed. Article 15 of the Federal Constitution provides for emergency powers in words which are almost identical to Article 16 of the French Constitution of 1958. The powers in Article 15 go much further than their counterpart in the Cameroon Republic Constitution of 1960[106] under which the President could only declare a state of emergency through a Council of Ministers. Any special powers which he exercised were determined by legislative enactment. Under the Federal Constitution he no longer requires the approval of the Council of Ministers. Although Article 15 provides that the President may consult the Prime Ministers of the Federated States, it seems as if he can ignore this if he so wishes.

These wide emergency powers raise some quite fundamental questions. One may ask whether these powers were really necessary. In the case of France, it was argued that the powers were intended to be used solely as reserve powers in the event of a national disaster such as the defeat of 1940. This reason sounds very logical but perhaps not very convincing because of the counter-argument that even with such powers, a situation such as that in 1940 could not be avoided because it was not the weakness of Presidential authority that was responsible for capitulation.[107] If there was thus no justification for France then there would be none for Cameroon. It has been suggested that the terrorist activities in Cameroon

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106. Articles 20 and 40 of the 1960 Constitution; Enonchong, op. cit., p. 81; Johnson in Lewis op. cit. p. 209.

107. Pickles, Dorothy, op. cit. pp. 146-156.

which went on intermittently between 1955 and the early 60s were enough justification for these emergency powers.[108] It is true that terrorism, while it lasted, was a menace to the security of the state and needed to be curbed, but it must be remembered that terrorism started because certain sectors of the population felt the government was obstructing their political programme, If it is conceded that emergency powers were necessary in the circumstances, then the necessity for their severity must remain an open question. It is possible that the makers of the Federal Constitution saw West Cameroon as a potential bed-fellow for the terrorists and so they needed very extensive powers to cope with any situation that might arise. However that may be, we still have the emergency powers as well as many unanswered questions with us - questions such as what happens when the President, in the exercise of these powers, does not consult the Prime Ministers?; Who determines when it is right to exercise them?; the form of the measures to be taken?; how long after the disappearance of the emergency can the powers be exercised?; can they be used for other constitutional measures?; what determines the end of the emergency measures and how is it made known, and what happens if the National Assembly does not meet? These questions have yet to be answered. In the case of France the emergency powers were tested in the Algerian situation in 1961, and may offer some experience, albeit inadequate, on the whole question of the exercise of emergency powers.

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108. Le Vine, op. cit., Chapter Vll.

Finally, it must be pointed out that these questions are raised not because a situation of emergency cannot arise, for one did really arise in Tombel from late 1966 to early 1967, but because there is need for greater clarification as to their extent and exercise. One must, however, give due tribute to President Ahidjo whose handling of the situation made these questions largely theoretical. Somehow, one cannot easily get rid of the haunting thoughts as to what another person could do with these powers.

Nationality and Citizenship

In Chapter II we said much about citizenship and nationality in relation to the French Constitution of 1946. It is intended here to trace the enacted laws governing the subject from colonial times to the developments after independence.

The laws governing nationality and citizenship derive their inspiration from various colonial statutes. The Germans were not in Cameroon for long enough to have any impact in this respect. Their short period was devoted towards trade and the consolidation of their rule. The legislation in this respect was therefore left to the British and the French.

The first law on the subject of citizenship which was passed by

the French administration was the decree of 7th November, 1930,[109] which laid the conditions under which all the inhabitants of the mandated territories of Cameroon and Togoland could become French citizens. These conditions included inter alia, an ability to read and write French and residence in the territory. A year later another decree was passed laying down the conditions to be fulfilled by non-natives of the Mandated Territories who wanted to become French citizens. In general, some form of naturalization was necessary for those falling into this category.[110] There were a few more decrees[111] before that of 1956 which consolidated all previous legislation on the subject.[112]

This decree outlined the method of applying the French Nationality Code to Cameroon and Togo. With the exception of Articles 80 to 83 and 113 to 114, the French Code[113] was to apply to Cameroon. This Code continued to apply in Cameroon until the coming into effect of the Constitution of 1958, when it became necessary to have a separate Nationality Code for Cameroon. It had indeed become apparent to the French

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109. Journal officiel du Cameroun (J.O.C.) 1931, p. 4.

110. J.O.C. 1931, p. 292.

111. For these others, note decree of 5th August, 1937 (J.O.C.) 1937 p. 794) which provided the procedure of obtaining French citizenship by French subjects who were not nationals of Algeria or Morocco. Another decree of 1939 (J.O.C. p. 1166) regulated the procedure for naturalization elsewhere by natives. Another decree of 1944 (J.O.C. p. 322) accorded French citizenship to all Metis,

112. J.O.C. 1956, pp. 1037 and 1042.

that Cameroon was never going to become part of the metropole. This therefore led to the passage of Ordinance No. 59-66 of November 1959, promulgating a Cameroon Nationality Code. This Ordinance came into operation on 31st December, 1959.

The policy with regard to nationality was worked out within the context of the overall policy of assimilation. Prior to the 1959 legislation, the aim had always been to lead the Cameroonians gradually to assume French nationality.

The British Cameroons on the other hand developed different nationality rules in their sector of the Cameroons. During the Mandate and early Trusteeship period, the natives in the British Cameroons were not treated as British citizens, although, as British Protected persons, they enjoyed the protection of the British Government. As British Protected persons they received diplomatic protection abroad, but were treated as aliens whenever they came to Britain. This curious situation is demonstrated by the case of R. v. Ketter.[114] The accused who was born in Palestime when that country was still under the Suzerainty of Turkey. Later Palestine became a British Mandate and Ketter was issued with a British

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113. The French Nationality Code referred to above in the Ordinance of 19th October, 1945.

114. R. v. Ketter [1940] 1 K.B. 787.

passport by the British High Commissioner in Palestine. He came to England on the strength of the passport, but was held to be an alien. This situation was improved by the British Nationality Act of 1948. Sections 30 and 32(1) enable the Crown by Order in Council to declare the Protectorates and Protected States to which the Act applies, and to define who are British Protected Persons by virtue of their connections with such territories.[115] This Act applied to the British Cameroons until reunification in 1961. By the Act of Reunification, all the people of the Southern Cameroons opted out of the operation of the British Nationality Act of 1948 and lost their status as British Protected Persons. This however was compensated by the general provision in the Federal Constitution that:

> "Nationals of the Federated States shall be citizens of the Federal Republic and shall possess Cameroonian nationality."[116]

It was, however, the specific laws of East Cameroon which tended to operate in the whole Federation until the passage of Law No. 68-LF-3 of 11th June, 1968. This law which is known as the Cameroon Nationality Code lays down details about the mode of acquisition and renunciation of

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115. Phillips, O. Hood, Constitutional and Administrative Law, Sweet and Maxwell, London, 1967, chapter 34 passim.

116. Article 1 of the Federal Constitution.

of Cameroon nationality. It further accords Cameroon nationality to any East Cameroonians who possessed that status on 1st January, 1960, and to West Cameroonians who were natives of the Territory on 1st October, 1961. The new law repeals Ordinance No. 59-66 of November, 1959, and the British Nationality Act of 1948.

Immigration and Aliens

It has sometimes been said that when Bismarck finally yielded to pressure from merchants to join in the mad rush for colonies in Africa he had a completely different notion about colonies. To him they were places to be taken over and peopled by the Germans. This idea did not materialise because the stay of the Germans in Cameroon was short.

When the British and the French were granted their Mandates over Cameroon by the League of Nations, one of the conditions for their exercise of power as Mandatories was that they were not to prevent all other nationals and particularly members of the League from entering the Territory for the purposes of legitimate trade. This did not, of course, prevent the Mandatory powers from passing laws on immigration and aliens.

The French administration in Cameroon had to pass emigration laws as early as 1925 because of the large-scale emigration of natives from the Territory.[117]

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117. Buell, op. cit. pp. 330-331 of Vol. II. This was the Labour Decree of 9th July, 1925.

The large-scale emigration was occasioned by the introduction of forced labour in the building of the railway between Douala and Yaoundé. The decree aimed at arresting the large flow of Cameroonians from the French to the British Cameroons. No one was allowed to leave the territory without authority from the Commissioner of the Republic or from the authorised district head. It was at this time that most of the natives in French Cameroons and particularly those in the Sanaga area through which the railway passes, emigrated to the British Cameroons.[118]

After bringing emigration from the French Cameroons under control, the next step was to pass laws regulating immigration and emigration in general. The first law in this respect was the decree of 7th October, 1930, which was brought into effect by an arrêté of December, 1934.[119] This decree laid down the conditions of admission and stay in Cameroons of French nationals. The most important of these conditions included the production of regular passports and evidence of compliance with the necessary health regulations. It was also necessary to state the reasons for staying in Cameroon and the time of departure. A few years later, another decree was passed. This laid down the law of emigration and immigration in respect of natives.[120]

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118. See Ardener in Hazzlewood, op. cit., p. 298, Note 29, in which he makes reference to Njeuma's [illegible], "Origins of Pan-Africanism, Buea, 1964" in which the author traces the Ewondo element in West Cameroon to refugees from the railway construction in the early French period; Le Vine, op. cit., pp. 196-7.

119. J.O.C. 1930, p. 789 and J.O.C. 1935, p. 10.

120. J.O.C. 1937, p. 1005. This decree was put into operation by an Arrêté of 13th October, 1938.

The immigration laws in the British Cameroons, as indeed, all other laws were similar to those of Nigeria. Although the Immigration Ordinance[121] does not mention Cameroon specifically, it was made applicable to the Colony and Protectorate of Nigeria, and Protectorate as defined in the Interpretation Act :

> "means the Protectorate of Nigeria and includes the Cameroons under British Mandate."[122]

The Immigration Act lays down the basic rules with regard to the subject. These rules were applicable in the Southern Cameroon until reunification. Since then, the law in this respect has been regulated by the central authorities of the Federal Republic of Cameroon in whom nationality and the status of aliens has been vested by the Federal Constitution.[123]

The present law on immigration and emigration in the Cameroon Federation rests largely on the decree of 7th October, 1930 and an arrêté of 6th April, 1967 issued by the Director of Federal Security with the approval of the President.[124] The provisions of the arrêté referred to above were communicated to all the competent immigration authorities through Circular No. 76/P.S./S of 13th May, 1967 which laid down the terms of

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121. Cap. 89 of the 1948 Laws of Nigeria. This Ordinance repealed the Immigration Ordinance No. 11 of 1939.

122. Cap. 94 of the 1948 Laws of Nigeria, This Ordinance repealed the Interpretation Ordinance Cap. 2 of 1923.

123. Article 5 of the Federal Constitution.

124. Arrêté No. 50/CAB/PR of 6th April, 1967.

application of the Arrêté. All these instruments lay down the condition under which people can be admitted into Cameroon for long or short periods.

Before leaving this section, a word ought to be said about two other laws which were passed with a view to preventing or at least limiting the unrest in the country on accession to independence. These laws were directly aimed at terrorists although they were made applicable to everybody. The first law was the decree No. 62-DF-23 of 17th January, 1962, which laid down the form of a Cameroon visa. Then came law No. 64-LF-14 of 26th June, 1964, which made it necessary for every Cameroonian leaving the country to have an exit visa in the form prescribed by the law of 1962. The purpose was to ensure that people leaving the country were doing so for worthy causes and not just to study the art of terrorism.

Extradition

The already highly complicated law of extradition has been made even more so by recent developments in England. An example of the complication was brought out by the case R. v. Home Secretary, Ex parte Soblen.[125] In this case Dr. Soblen, a naturalized American citizen, was convicted in the United States of spying on American defences for Russia.

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125. R. v. Home Secretary Ex parte Soblen [1962] 3 All E.R., pp. 373 and 641.

He was released on bail pending appeal, but he did not surrender to his bail and fled to Israel. On the request of the United States Government, Soblen was deported to the United States. During the course of the journey he inflicted very severe wounds on himself and on the basis of medical advice, he was left in London for treatment. When Soblen's condition improved, the British Home Secretary sought to extradite him, but since no extradition warrant had been served on Her Majesty's Government, this could not be done. The only way out was therefore to issue a deportation order against Soblen. Thus this case, rather than throw light on the difference between deportation and extradition, has tended to blurr it. Fortunately, however, Dr. O'Higgins has thrown light on the differences between deportation and extradition. According to him:

> "deportation in international practice is essentially a unilateral act of the deporting state. The motive behind it is to protect the interest of the deporting state and not co-operation in the international suppression of crime. In contrast, extradition, it is submitted, is the process whereby one state delivers to another state, at its request, a person charged with a criminal offence against the law of the requisitioning state in order that he may be tried and/or punished."[126]

This definition does help us to discern the essential feature of both deportation and extradition as we apply them in the Cameroon context.

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126. See Dr. O'Higgins, P., 1964 27 Modern Law Review, pp. 521-539.

Extradition in the French Cameroons was first regulated by a decree of 29th September, 1928,[127] the provisions of which were applicable only in cases where there was no extradition treaty, or if there were one, on those matters not covered by it. The decree which falls into four parts, covers conditions of extradition, the extradition itself, the effect of extradition and some accessory procedures.

The law was not as precise and clear in the British Cameroons; although the British Extradition Act of 1870[128] as amended, was by section 17 extended to the British possessions. The most important legislation in as far as the colonies were concerned was the Fugitive Offenders Act of 1881 which provided for the arrest and surrender of persons accused of crimes within the commonwealth, the colonies and the British dependencies. The provisions of this Act as shown by the Enahoro case were not very satisfactory.[129]

This untidy position of the law which applied in the British Cameroons was brought up to date shortly after reunification by the passage of a Federal law on extradition which draws a great deal of inspiration from the decree of 1928.[130] The new law lays down the circumstances under which extradition may be considered and the procedure

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127. J.O.C. 1928, p. 774 .

128. Cap. 70 of the 1948 Laws of Nigeria.

129. R. v. Governor of Brixton Prison and another Ex parte Enahoro [1963] 2 Q.B. Div., p. 455.; Phillips, Hood, op. cit. pp. 426-8; Roberts-Wray, Sir Kenneth, Commonwealth and Colonial Law, London, Stevens & Sons, 1966, pp. 604-610.

130 Law No. 64-LF-13 of 26th June, 1964.

to be adopted. Any country wishing to have its national extradicted must address the proper documents through the diplomatic representatives in Cameroon to the Minister of Foreign Affairs who, after scrutinizing the documents, forwards them to the Minister of Justice where they are examined in order to ensure that the legal requirements have been complied with. If all the documents are in order, the Minister of Justice then consults with the District Procurator (in the case of East Cameroon) or the Chief Magistrate (in the case of West Cameroon) of the area in which the alien lives. All recommendations for extradition are then forwarded to the President who makes the extradition order by means of a decree.

The new law, like the old one of 1928, applies only in the absence of international treaties or where such treaties are silent "on the issue in question."[131]

Administrative law[132]

Droit administratif has been said to comprise of three branches. Firstly, it is "devoted to the organic structure of public administration";

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131. For a more detailed account of the new law on extradition see Enonchong, op. cit., pp. 239-246.

132. On the subject of Administrative law see generally Dicey, A.V., Introduction to the Study of the Law of the Constitution, London, Macmillan and Co. Ltd., 1961, Chapter XII and Appendix I passim; see also generally de Smith, S.A. , Judicial Review of Administrative Action, Stevens & Sons. 1968

secondly, it "is devoted to the operation of public administration"; and thirdly, it "is devoted to the study of the control of administrative authorities by administrative courts."[133] It is with the third aspect that we are here concerned.

The development of this aspect of the law has followed different patterns in the two sectors of the country. In East Cameroon, they partake of the nature of administrative law in the metropole. The introduction of administrative law in the French Cameroons was not without difficulty for there were two schools of thought. One school advocated the institution of special courts charged with the responsibility of settling disputes arising from administrative action, while the other suggested that the ordinary courts be given the competence to handle administrative matters. The advocates of the first school of thought won easily because colonial legal policy which was largely inspired by that of metropolitan France, was dominated by the principle of separation of powers between the administration and the judiciary. Thus droit administratif was introduced in the colonies by the creation of an institution called the "conseil du contentieux administratif". There was such a conseil in each group or individual territories. Although the system of droit administratif was recognised in Cameroon in 1927,[134] the real

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133. Ibid 476-477.

134. J.O.C. 1927, p. 342.

foundations of the system as known today were laid by the decree of 8th July, 1952. This decree established the Conseil du Contentieux which was to be presided over by a magistrate representing the judiciary and two others chosen from among the administrators. The conseil which owes its origin to the French decree of 5th August, 1881, enjoyed very wide powers.[135]

The developments in the British Cameroons were very unlike those just discussed. Until the Crown Proceedings Act of 1947, the predominant notion was that the Crown could not be sued, nor could any of its representatives. For sometime this was the dominant notion in Nigeria and the Cameroons, but the passage of the Petition of Rights Ordinance gave the individual an opportunity to bring an action against constituted authority.[136] The application of this Ordinance was extended to the British Cameroons. It was indeed on its basis that Efange and Onan brought their cases against the West Cameroon Government.[137] The plaintiffs, two senior civil servants, were suing the West Cameroon Government for wrongful dismissal. Their actions were based on the Petition of Rights Ordinance, although the decision of the case was based on the fact that by virtue of Section 53(1) and (4) of the West Cameroon Constitution of 1961, the Petition of Rights

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135. See generally Luchaire op. cit. pp. 245 - 6.

136. Cap. 149 of the 1958 revision of the Laws of Nigeria.

137. Eric Dikoko Quan & Peter Moki Efange v. Attorney-General for West Cameroon WC/12/64 and WC/13/64 reported in West Cameroon Law Reports 1962-64, pp. 45 - 46.

was still applicable and so the procedure laid down therein should have been followed.

Happily this situation has now been set right. Section 7 of Law No. 65-LF-29 of 19th November, 1965, repealed the Petition of Rights Ordinance. The new law sets up a Federal Court of Justice in Yaoundé with branches in both Buea and Yaoundé.

The Federal Court of Justice has jurisdiction over all administrative actions against the Federal Republic, the Federated States, local authorities and public corporations.

The matters which can be brought before the court are set out in Section 3 of the law.[139] The full Bench which normally sits in Yaoundé comprises of the First President of the Federal Court of Justice; four Federal Judges, substantive or alternate, but excluding any who has heard the case at first instance; the Procurator-General or Advocate-General at the Federal Court of Justice; and a Registrar. Each of the Benches in the branches shall be constituted by a Federal Judge, substantive or alternate

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138. These two subsections of the West Cameroon Constitution, i.e., Sect. 53(1) and (4) the laws in the Territory before reunification were to continue to operate subject to the provisions of the whole section.

139. See also Article 33 of the Federal Constitution; Lampué, Pierre, La justice administrativ dans les Etats d'Afrique francophone. Revue juridique et politique 1965, pp. 3 - 31.

presiding with two assessors with equal votes who shall be styled special Federal Court Puisne Judge, a representative of the Procurator General's or Attorney General's[140] office and a Registrar.

The procedure to be followed by the Bench in Yaoundé shall be that in force in the state court while the Bench at Buea shall be governed by the procedure applicable in civil proceedings under the ordinary law between private parties. The full Bench shall be governed by procedure prescribed by Decree No. 64-DF-218 of 19th June, 1964.[141]

Revision of the Constitution

It seems appropriate to end this general discussion on the Constitution by drawing attention to the machinery laid down in it for revision. Article 47 of the Federal Constitution lays down a simple procedure by means of which it can be amended.

The power to initiate any such revision belongs equally to the

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140. Since the passage of Law No. 65-LF-29 of 19th November, 1965, the title "Attorney-General" has been changed to "Procurator-General". See Law No. 67-LF-5 of 12th June, 1967 published in the Official Gazette of the Federal Republic of Cameroon (Supplementary Issue) of 15th September, 1967, p. 163.

141. For a more detailed account of the Act see general Law No. 65-LF-29 of 19th November, 1965. Also see Ouandji, André Ngongong, La commune personne moral en République Fédérale du Cameroun, in Revue juridique et politique 1967, p. 343.

President subject to consultation with the Prime Ministers of the Federated States and to the Deputies of the Federal National Assembly, one third of whom must sign any proposals for revision.

Any such proposals for revision must be adopted by a simple majority vote of the members of the Assembly. The majority needed is one which comprises a majority of the representatives of each of the Federated States.

The President can, as with other Federal laws request a second reading of the law revising the Constitution.

The procedure, in as far as the constitutional machinery is considered is simple, but when considered in political terms, this simplicity seems somewhat deceptive . Article 47 starts off by saying that any proposals for constitutional revision must be such as do not impair the unity and integrity of the Federation. There is, of course, no laid down procedure for determining what constitutes impairment, nor is there any indication as who decides that a particular proposal is caught by this proviso. Presumably this task falls on the President who, by Article 8 is charged with the responsibility of upholding the Constitution and ensuring the unity of the Federation. In such circumstances, it could be difficult to effect any amendments which did not meet with the approval of the

President, particularly where such amendments tended to deprive him of some of his powers. With the present holder, there can be no difficulty, but one cannot altogether dismiss the possibility that there may be difficulty in the future.

Before concluding our discussion on constitutional revision, it seems essential to venture to make some suggestions in respect of such revisions.

Any constitutional revision in a Federation must respect the sovereignty of the people and the federal principle. This respect is adequately maintained in Cameroon by the fact that the people have delegated their sovereignty to their elected representatives (Article 2 of the Constitution) and by the requirement in Article 47 that the simple majority of members of the Federal Assembly required to amend the Constitution must include a majority of the representatives in the Assembly of each of the Federated States. There is a further provision in Article 2 that the national sovereignty can be exercised by way of referendum. There are therefore enough safeguards with respect to national sovereignty. What is worrying, however, is the fact that no one knows what exactly amounts to "any proposal for revision of the present Constitution which impairs the unity and integrity of the Federation" (Article 47). It is therefore suggested that some more indication be given of what can constitute such

impairment or else the whole question of constitutional amendment be vested in a constituent body quite distinct from the legislature and executive. Such a body, though performing different functions, would be similar to the French Constitutional Council for which there is provision in Articles 56 to 63 of the Fifth Republican Constitution. Further, it ought to be possible to make use of the machinery of referendum in the event of major constitutional amendments.

## Conclusion

In this conclusion, it is hoped to make a few comments on the Constitution as a whole. The first question which comes readily to mind is whether Cameroon is in a strict sense a federation. It seems to us that when everything is considered she does answer the definition of a federation, and is not just "a decentralised unitary state",[142] as Professor de Smith puts it. Some concession must however be made to him. In this connection, one must admit that Cameroon is by no means an ideal federation. There is considerable evidence of centralisation. If this is the case, then why do we try to maintain the structure? Why

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142. de Smith, The New Commonwealth, op. cit., p. 263.

not take Sir Ivor Jenning's advice and abolish it?[143] Perhaps the answers to these questions lie in the fact that a federation is still the best form of government for people of multi-national and multi-cultural states which desire some form of association. It provides the best via media "between the centraliser and the provincialist",[144] although in Cameroon and indeed most modern federations, there is evidence that the former is gaining over the latter.

The first signs of this movement which were apparent in Cameroon shortly after reunification, concerned the question of revenue allocation between the central and state governments. There was no provision in the Constitution or any other law providing for this. For a long time the erstwhile Prime Minister of West Cameroon tried in vain, while he was Minister of Finance, for that state and later as Prime Minister to get the Federal Authorities to agree to a system of revenue allocation.[145] Thus West Cameroon has continued to dance to the tune of the Federal government which pays the piper. The Cameroon Bank affair merely helped to exacerbate the situation.[146]

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143. Sir Ivor Jennings, Some Characteristics of the Indian Constitution, Madras 1953, p. 55 where he said,"Nobody would have a federal Constitution if they could possibly avoid it."

144. Watts, R.L., op. cit. p. 7.

145. See Ardener in Hazlewood op. cit. p. 310.

146. The Cameroon Bank affair which considerably weakened the position of West Cameroon is usually said to have resulted from the fact that several big long term unsecured loans were made usually as a result of some pressure and sometimes contrary to banking regulations. The result of this was that the bank, at one stage, could not make legitimate payments.

It seems too late now to talk about revenue allocation. On the contrary, things might, in the context of the drive to streamline the budget become even tighter. It is indeed possible to argue that the federation should be sacrificed on the alter of financial and budgetary expediency - a formidable argument which partly won the battle against the creation of a senate at Foumban in 1961.

The next sign of centralisation can be seen in the undefined powers of the state governments. One cannot, without using a tooth comb, discover what powers belong to the state governments. The states exercise a few powers now, but it seems as if they do so at the sufferance of the Federal Government. With the exception perhaps of primary education, all the other powers cover matters in which the Federal Government is either actively or potentially interested.

The introduction of the Federal Inspectorate is just another step towards the centre. The consequences of this for West Cameroon are not only that she, as a Federated State, has been equated in size and importance to a region, but also that through the Federal Inspector she comes under closer Federal control. Perhaps it is fair that this should be done in order to ensure that there is peace, security and national unity. If this is so, then it seems equally fair to remark that there is growing

awareness amongst, not only the people in West Cameroon, but also some international observers that, not only has the West given up more in order to make the Federation a success, but has tended to be swallowed up.[147]

This leads inevitably to the tempting conclusion that the country would be better off as a unitary state - a temptation which must be resisted because we have not yet overcome the bi-cultural differences which made a federation necessary, nor have we lost sight of the tremendous importance which our experiment holds out to Africa and the world at large. Greater centralisation would amount to putting the clock back in a world which is moving in the opposite direction. In this connection, we have the example of France from which we draw a good deal of our inspiration and institutions. The memory of de Gaulle's bid for decentralisation is still fresh in our minds. No less important is the talk about regionalism which is gaining ground in England - again another country from which we draw great inspiration.[148]

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147. See Bloom's article in the Survey on Cameroon published in Financial Times of 19th February, 1969 at p. 20.

148. See Hogg's New Charter for Constitutional Reform, and also the summary of his proposals published in The Times of 16th April, 1969.

Centralisation produces administrative slowness and this seems largely true of Cameroon although the taste of it must be bitter to any one with national pride. How can we expect efficiency in a situation where one man carries a weight of responsibility which is sometimes heavier than that of Hercules? Perhaps none but President Ahidjo can carry the burden put on him by the Constitution. With him things get done, but as one goes down the corridors of power this centralisation repeats itself in a smaller scale at various levels beginning with ministers right down to the bottom. Unfortunately, however, the efficiency at the top decreases gradually as one goes down. Besides the fact that centralisation leads to slowness, it tends to remove the government away from the ordinary man and therefore from public opinion. This can produce some estrangement between the government and the people, particularly in a situation where the press, as seems to be the case with us, is not as efficient as could be expected.

When all is said and done, one must agree that in Cameroon "the supreme power has coincided with the greatest wisdom" and thus produced what has been in many ways a good Constitution, but it is very rare to get these two superlatives coinciding, so while we have them, we must utilise them fully in order to lay a firm foundation. The year 1970-71 will be a great year for Cameroon as the President emphasized in his Presidential

address to the C.N.U. Congress in Garoua on 10th March, 1969. He said that:

> "the year 1970 not only stands as the phase of completion of our second five year plan, but it is also election year, the year for the renewal of the nation's fundamental institutions."

This year will also mark ten years of our reunification and may be a good time to look on ten years of our federation and constitution and perhaps by way of revision cut out what experience has shown to be useless. There could not be a better time to do this. As said above we have in Cameroon a coincidence of power and wisdom to which must be added the experience which we have gained and what better moment can there be for a revision than the momentous 1970.

Finally, we must conclude by saying that we are conscious of the fact that we have at times been somewhat critical. This is because we share Senator Fulbright's view that:

> "to criticise one's country is to do it a service and pay it a compliment". "Criticism may embarrass the country's leaders in the short run but strengthen their hand in the long run; it may destroy a consensus on policy while expressing a consensus of values ..." "Criticism, in short, is more than a right; it is an act of patriotism, a higher form of patriotism, I believe, than the familiar rituals of national adulation."[149]

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149. Fulbright, J. William, The Arrogance of Power, 1967, Jonathan Cape, 30 Bedford Square, London, p. 25.

# CHAPTER IV

## THE COURTS AND THE LEGAL PROFESSION

The subject of the development of the judicial system in any African country normally presents many difficulties, some, if not most of which are due largely to the dual system of courts which was characteristic of colonial Africa. This feature still persists in many countries. This dual system of Native and European modelled courts produced the further complication that the law practised in them tended to adopt a strong racialist content - a native law for the natives or evolués and European law for the Europeans. This pattern not only prevailed in Cameroons, but was made even more difficult by her chequered colonial history. The Germans, the British and the French tended to approach the problem from slightly nationalistic points of view. The Germans geared the law and the system of courts towards benefiting the traders who played no small part in founding the colonies. The French on the other hand were bent on seeing their policy of assimilation through, while the British spared no effort in implementing the policy of indirect rule.

It is from this background that one has to attempt to reconstruct a systematic development of the courts in Cameroon. This therefore means

that any such reconstruction must of necessity be cast in a historical mould.

The Earliest Courts

It is perhaps easier and less controversial to start from the earliest European Courts and trace their development up to the present, but this will give us only one side of the picture, as it would ignore the origin of what came to be known as Native Courts.

Native Courts derived their inspiration from what existed by way of courts before the advent of the Europeans. These ranged from the secret societies of the acephalous villages of the coastal areas of the Cameroons which are inhabited by Bantu speaking people to the chiefly courts of the centralized societies of the grassfield areas and the Moslem north. It is important here to make a few general comments about the characteristics of these courts. In the segmentary societies such as the pygmies, there are hardly any organised institutions which one can refer to as courts. The settlement of disputes in these societies depends largely on the reliance placed on the supernatural. What comes nearest to an institutionalized form of trial is the co-operative thrashing of wrong-doers.[1]

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1. Turnbull: The Forest Peoples, op. cit. Chapter 4.

In the acephalous societies on the other hand the various village heads were primarily responsible for keeping peace and order, although a great deal of the court work was done by secret societies such as the Douala "Ngondo" which was barred by the Germans. This society, in addition to its responsibility for settling inter-personal disputes, was also responsible for settling disputes "between the component chiefdoms of the tribe".[2] The Bakweri elephant society performed similar functions. Although these secret societies enforce the legal norms of the group, they are distinguishable from tribal associations in that membership of such societies is either hereditary or dependent on the fulfilment of the financial and other requirements of the society.

Secret societies are also an important feature of the centralised societies, but here, they very often enjoy the confidence of the chief who sometimes presides over their meetings. Societies like the "Kwifon" or "Ngumba" to which we will return in a later chapter when dealing with procedure and evidence, carry out police and judicial duties in certain categories of crimes. These judicial functions are quite different from those performed by the chief and his councillors.

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2. Ardener, E. Coastal Bantu of the Cameroons (Ethnographic Survey of Africa edited by Daryl Ford/ London. International African Institute, 1956, p. 67.

It will have emerged from what has been said that the personnel in these courts comprise either of the chief and his councillors or members of the secret societies.

While the natives remained undisturbed, these forums constituted a satisfactory means of settling disputes, but, with the advent of the colonizers, this could no longer be so. New courts had to be found to cater for the new situation.[3]

The Courts of Equity[4]

One of such new courts was the Court of Equity which was created by an Order in Council of 21 February, 1872. It was aimed at settling disputes between British traders inter se and also any disputes involving the natives and other nationals. The Order in Council authorised the British Consul to reorganise and reconstitute certain local courts within the territories of Old Calabar, Bonny, Cameroons, New Calabar, Brass, Opobo, Nun and Benin Rivers, or of any part of the said territories.

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3. The fact that new courts had to be found is based on the presumption that the Native Courts were not regarded as courts - a presumption which has been rebutted by a great many people as being based purely on semantic grounds.

4. The courts of Equity derived their validity from the Foreign Jurisdictions Act of 1843.

Traders in these areas were to serve the court, and the penalty for refusal to serve was to be the forfeiture of Her Majesty's protection during the period of such refusal.

The British Consul was empowered to lay down rules and regulations for the smooth functioning of the Courts, but such rules had to comply very strictly with the provisions of the Order in Council.[5]

Consular Courts were also established by the same Order in Council. Their main function was to:

> "make and enforce, by fine, banishment, or imprisonment, Rules and Regulations for the observance of the stipulations of any such Treaty, Convention, or Agreement, and for the peace, order, and good government of Her Majesty's subjects being within the said territory."[6]

Both these courts enjoyed very wide jurisdiction over British traders, those of other nationals and natives.

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5. Most of the material about the Court of Equity comes from the London Gazette of 27 February, 1872 which contains the provisions of the Order in Council of 21st February, 1872. See Public Records Office Document F.O. 84/1681 (referred to hereafter as Document F.O. 84/1681. The regulations which were issued by the British Consul can also be found in this document. See also Elias, T.O., The Nigerian Legal System. Routledge & Kegan Paul, 2nd Edition, 1962, Chapter 4 passim.

6. See Article 1 of the Order in Council of 21st February, 1872, F.O. 84/1681.

The German Courts[7]

When the Germans declared a Protectorate over Cameroon in 1884, one of their first targets was to abolish these courts which had for a long time exercised jurisdiction over their nationals. Each attempt to do so was staved off by the British argument that the courts had been established as a result of an international agreement and could not be abrogated unilaterally by Germany. For the meantime, this argument was very compelling, so the Germans had to wait for an excuse. This came in December, 1884 and the occasion was an insurrection in Douala. The Germans lost no time in abolishing the court as they were eager to demonstrate to the natives that they, and not the British, were the masters.

Having thus abolished the Court of Equity, some other means for the administration of justice had to be found. Germany's answer to this was to establish two sets of courts. One set was to serve the interest of the Germans. This set comprised of a court of first instance known as the Bezirksgericht which was presided over by a judge who was assisted by four lay assistants. Then there was also

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7. The information on German Courts comes mostly from Rudin, Harry R. op. cit., pp. 198 - 206. Also see 1922 Report to the Permanent Mandates Commission, Cmd. 1647.

a higher court known as the Obergericht which sometimes served as the Court of Appeal for Togo. The law in force was the German Criminal and Civil Law as embodied in the respective codes. The procedure was that practised in Consular Courts.

The second set of courts, which was designed to serve the native Cameroonians, also followed the two-tier pattern. There was a court of first instance in which the chiefs were to adjudicate according to native law and custom. Their jurisdiction in civil matters was limited to cases in which damages did not exceed 100 marks, while their criminal jurisdiction was limited to crimes which attracted a fine of not more than 300 marks. Appeal lay to a native Court of Appeal which was made up of a number of chieftains appointed by the governor. There was a further right of appeal to the Obergericht.

This system operated in Cameroon till the outbreak of the First World War when the Germans were forced to give up their rule. Once more, the British appeared on the Cameroon scene, but this time they were not alone. The French, who had together with the British helped to drive the Germans out of Cameroon, wanted a share of the territory, so both powers, with the blessing of the League of Nations, divided the territory into two unequal parts. Britain took the smaller western

strip while France took the longer eastern part. From now on, the judicial system took a distinctly British or French pattern.

## The Courts in the British Cameroons[8]

According to the text of the Mandate Agreement, the British Cameroons could be administered as "an integral part of the territory of the mandatory power." The British Government interpreted this to mean that she could and did administer Cameroon along with her adjoining territory of Nigeria. This integration of the British Cameroons into Nigeria came at a time when there had just been a major judicial reorganization in the latter.

This reorganisation was necessitated by the amalgamation of Southern and Northern Nigeria in 1900 - a political act which also saw an amalgamation in 1914 of the courts. The result was the creation of three types of courts which were to operate throughout Nigeria. These were the Supreme Court, the Provincial Courts and the Native Courts. They were introduced under the Supreme Court Ordinance No. 6 of 1914.

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8. Elias, T.O., op. cit. Chapter 8 passim. See generally Nwabueze, B.O., The Machinery of Justice in Nigeria, Butterworths, London, 1963.

The Supreme Court

The origin of this court, of course, goes much further back than 1914. It was first established as a Court of Record in the Settlement of Lagos by the Supreme Court Ordinance No. 11 of 9th April, 1863. Later, by Ordinance No. 4 of 31st March, 1876, its jurisdiction was extended beyond Lagos to include the adjacent territories in which Her Majesty had acquired power. The court was then empowered to apply the common law, the doctrines of equity and statutes of general application in England on 24th July, 1874. After the declaration of a Protectorate over the Northern Provinces, the jurisdiction of the Supreme Court was extended to the north by the Protectorate Courts Proclamation No. 4 of 1900. The northern branch was called the Supreme Court of Northern Nigeria. The function of Ordinance No. 6 of 1914, which has been referred to above, was to amalgamate the two Supreme Courts and to provide for the application of the common law, the doctrines of equity, and the statutes of general application in force in England on 1st January, 1900. This date is usually taken to be, that on which the principles of English law were first applied in Nigeria as a whole.[9]

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9. Dr. Elias points out and quite rightly too that this statement is correct in so far as Nigeria as a whole is concerned, because as we have already seen English law was introduced in Lagos in 1874. See Nigerian Legal System op. cit. 127.

The Provincial Courts

These were also established by the Protectorate Courts Ordinance No. 4 of 1900. In the hierarchy of courts they came next to the Supreme Court and had jurisdiction over all types of offences. There was to be one in each Province. It was presided over by the Resident or District Officer or his Assistant - a feature which was bitterly criticised.[10] The Provincial Courts were also affected by the reorganizations in 1914. The Provincial Courts Ordinance No. 7 of that year, established their civil and criminal jurisdiction.

The Native Courts

The origin of the Native Courts is none other than the traditional tribunals which existed before the advent of the Europeans. For a very long time during the colonial period they remained undisturbed. This was due as much to their traditional role in the settlement of disputes as to the inaccessibility of the villages from the main central areas and the lack of trained legal personnel to take them over. But while they existed in their traditional form, they constituted a target for attack by the European administrators as well as missionaries.

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10. For the pros and cons of the Provincial Courts see Elias, T.O., op. cit. pp. 128 - 134.

The chief attackers argued that the traditional notions of justice did not always tally with European ideas of natural morality and humanity.

This situation led in 1900 to the Native Courts Proclamation No. 9 which was applicable only to the Southern Provinces of Nigeria and which established two classes of Native Courts. These were the Minor Courts presided over by Native Authorities and Native Councils presided over by a European officer. The Minor Courts applied native law and customs and had jurisdiction over natives as well as non-natives who had consented to the court's jurisdiction. They exercised limited civil and criminal jurisdiction. The only main difference between the Minor Courts and the Native Councils was that the latter was presided over by a European officer and enjoyed slightly higher status than the former.

Proclamation No. 9 was superceded by the Native Courts Proclamations No. 25 of 1901 and No. 7 of 1906, both of which made some slight modifications in the existing structure of Native Courts.[11]

The development of Native Courts in the Northern Provinces follows very much the same pattern as in the south. There was a long history of Moslem dominated native tribunals which was broken only by the

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11. Elias, op. cit. pp. 96 - 104.

Native Courts Proclamation No. 5 of 1900. This proclamation provided for the better regulation and control of the native tribunals. It also laid down the procedure for establishing the native courts, their jurisdiction and the law to be applied. A later proclamation of 1906[12] established various categories of courts similar to those which were created by Proclamation No. 9 in the south. In addition, a unique tribunal known as the Alkali Court was also set up. Its main function was to administer Islamic law.

These two systems operated in their different spheres till the general reorganization of 1914 - 1933. A Native Courts Ordinance of 1918 which was amended in 1922 introduced considerable changes into the existing Native Court structure. The Native Courts in the North and South were unified and reclassified into four grades A - D.

Grade A courts had full judicial powers, in civil and criminal cases, but no sentence of death could be carried out without confirmation by the Governor after consultation with the Executive Council.

Grade B courts dealt with civil actions in which the debt, demand or damages did not exceed £100, and criminal causes which could be adequately punished by two years' imprisonment, 24 lashes, or a fine

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12. See Native Courts Proclamation No. 1 of 1906.

of £50 or its equivalent by native law and custom.

In Grade C courts, civil action was limited to cases in which the debt, demand, or damages did not exceed £10, while criminal action was limited to causes punishable by six months imprisonment or 12 lashes or a fine of £10 or its equivalent in native law and custom.

Grade D courts dealt with civil actions in which the debt, demand or damages did not exceed £5 and criminal cases which could be adequately punished by three months imprisonment or 12 lashes or a fine of £5 or its equivalent in native law and custom.[13]

Each Native Court was enjoined to keep a Judgment Book, a Cash Book and a Cause Book and to record as fully as possible all land cases.

This basic structure, with few modifications, existed in Nigeria when Cameroon was, by virtue of the Mandate Agreement, integrated into her. By the British Cameroons Order in Council of 1923 which came into operation in February of the following year, it was provided that those parts of the Cameroons under British Mandate which adjoined the Northern and Southern Provinces of the Protectorate be administered as an integral part of the Northern and Southern Provinces respectively.

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13. Elias, op. cit. pp. 120 - 137; Report of Her Majesty's Britannic Government to the Council of the League of Nations for the year 1927.

The definition of Protectorate was later amended to include the Cameroons under British Mandate.[14] The Ordinance of February, 1924[15] also provided that all Ordinances of Nigeria enacted after 28th February 1924 were applicable to the Cameroons under British Mandate. It was in this way that the judicial structure in Nigeria which has just been described was transplanted into Cameroon. From now on, all judicial developments in the British Cameroons were closely tied to those in Nigeria - an affinity which has survived most of the reorganizations since independence.

The New Changes in 1933 - 1934[16]

These changes were due largely to the initiative of Sir Donald Cameron who has been described as one of the ablest governors to have served in Nigeria. The changes affected the whole of the judicial structure in Nigeria and the Cameroons. Because of their fundamental nature, it will be useful to consider the most important of these.

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14. The definition of Protectorate was amended by Ordinance No. 5 of 1924. See now the Interpretation Ordinance, Cap. 94 of the 1948 Laws of Nigeria.

15. This Ordinance was later amended by Ordinances Nos. 1 of 1925, 13 of 1925, 1 of 1927, 13 of 1928, 19 of 1941 and 12 of 1948. See now generally Cap. 27 of 1948 Laws of Nigeria.

16. Elias, op. cit., Chapter 9 passim. Also the Report of Her Britannic Majesty's Government to the League of Nations for the year 1934.

At the base of the judicial system were the Native Courts which were reorganized by the Native Courts Ordinance No. 44 of 1933. This law made two fundamental changes in the structure of the Native Courts. The first change was jurisdictional and modified the Native Courts by the addition of matrimonial causes other than those arising from or connected with a Christian marriage to the jurisdiction of the Grade A courts. There were also slight modifications in the other grades of the Native Courts. The second change was the introduction of a Native Courts appeal system. There were two Channels of such appeal. In the first place, appeal lay to a native court of appeal and then to a final court of appeal. It was also possible to appeal direct to the Magistrate Courts or the High Court. Secondly, appeal lay to a District Officer, and then to a Resident and finally to the Governor.

The next important change concerned the Provincial Courts. By the Protectorate Courts Ordinance No. 45 of 1933, two types of courts were created to replace the much criticised Provincial Courts. These were the High Court which had quite a wide jurisdiction and the Magistrate Courts which dealt with the summary offences outside the competence of the Native Courts.

Next in the hierarchy came the Supreme Court, the position of which was adjusted by the Supreme Court (Amendment) Ordinance No. 46

of 1933. The purpose of the adjustment was to make for proper functioning of the newly created High Court and Magistrate Courts.

Over and above this structure, there was established by Ordinance No. 27 of 1933 a Court of Appeal for West Africa,[17] the purpose of of which was to ease the expenses involved in appealing to the Judicial Committee of the Privy Council. This tribunal, however, remained the final court of appeal. These changes, with some amendments, lasted till 1954.

The Changes between 1954 and Independence

The year 1954 marked another landmark in the development of the judicial system in Nigeria and the Cameroons. That year saw the coming into force of the Nigerian (Constitution) Order in Council which provided for the regionalisation of the judiciary. There was to be a High Court for each of the Regions, one for Lagos and one for the Southern Cameroons. Above these High Courts was the Federal Supreme Court which took over the jurisdiction which was previously exercised by the

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17. The establishment of a Common Court of Appeal for West Africa goes as far back as 1867 when an Order in Council of that year set up a West African Court of Appeal in Sierra Leone which dealt with appeals from Lagos, the Gold Coast (Ghana), Sierra Leone and Gambia. After suffering a few eclipses, this court was reanimated in 1928 only to be abolished for good in 1954.

West African Court of Appeal. The Constitutional Order in Council also provided for the establishment of Magistrate Courts in each of the Regions as well as Lagos and the Southern Cameroons. Most of these changes were effected in the Southern Cameroons by December 31st, 1955 and have survived most of the post independence changes. Thus the present structure in West Cameroon, which we must now consider, owes much to these changes.

## The High Court[18]

This court was formally constituted by the Southern Cameroons High Court Law. It was a superior court of record and exercised:

> "all the jurisdiction, powers and authorities other than admiralty jurisdiction, which was vested in Her Majesty's High Court in England. This included all Her Majesty's civil and criminal jurisdiction which immediately before the coming into operation of this law was, or at any time afterwards may be exercisable in the Southern Cameroons."[19]

The High Court had no original jurisdiction in suits which involved title to land or to any interest in land, nor had it any

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18. See Southern Cameroons High Court Law, 1955, S.C. No. 7 of 1955, as amended by the Southern Cameroons High Court (Amendment) Law, S.C. Nos. 9 of 1955 and 3 of 1958 and the Customary Courts Law, 1956, S.C. No. 9 of 1956.

19. Southern Cameroons High Court Law (S.C. H.C.L.) Sections 7 and 8.

jurisdiction over matters relating to marriage, family status, guardianship of children, inheritance or disposition of property after death. These matters were subject to the jurisdiction of Native Courts.[20]

The law to be enforced in the High Court was the Common Law doctrines of equity and the statutes of general application in force in England on 1st January, 1900. These laws were to operate subject to the provisions of any written law.[21] The court was also charged with the responsibility of enforcing native law and custom[22] provided such law and custom was neither repugnant to natural justice, equity and good conscience nor incompatible with any law for the time being in force. Native law and custom was to be applied in disputes, the parties to which were natives or non-natives and particularly where it appeared that substantial injustice would be done to either party by strict adherence to the rules of English Law. No party was allowed to claim the benefit of any native law or custom if it appeared either from express contract or by implication that such party had agreed to

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20. S.C.H.C.L. Section 9(1)(a), (b).

21. S.C.H.C.L. Section 11.

22. Native Law and Custom includes Islamic Law, S.C.H.C.L., Section 2.

be bound by English law or that the transaction was unknown in native law.[23]

The High Court had appellate jurisdiction in respect of appeals from Magistrates' Courts in civil and criminal matters and from Native Courts where prescribed by law.[24] Appeals lay from the High Court to the Federal Supreme Court.[25]

This was the basic structure of the High Court in the Southern Cameroons before reunification. The structure was, however, modified by Federal Cameroon Ordinance No. 61 - OF - 9 of 16th October, 1961, which established a Supreme Court of West Cameroon consisting of the High Court and the Court of Appeal of that state.

The High Court of West Cameroon has unlimited jurisdiction in civil and criminal cases,[26] but it cannot hear cases in constitutional matters or in matters which question the administrative Acts of Federal or State Governments because these come within the provisions of the law

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24. S.C.H.C.L. Section 30(1); Southern Cameroons Order in Council 1960 Section 54; Customary Courts Law (Southern Cameroons) No. 9 of 1956, 2nd Schedule.

25. S.C.H.C.L. Section 52.

26. The High Court of West Cameroon derives its authority from the S.C.H.C.L., 1955 as amended by Federal Ordinance No. 61-OF-9 of 16th October, 1961, the Southern Cameroons (Constitution) Order in Council 1960/61, West Cameroon Constitution 1961, Article 53(4) and Federal Constitution, 1961, Article 33.

which set up a Federal Court of Justice.[27] Appeals lie from this court to the Court of Appeal for West Cameroon whose decisions are final, except in so far as interpretations of Federal law and constitutional points are concerned. In such cases, further appeal lies to the Full Bench of the Federal Court of Justice. Three or more Judges usually sit in the Court of Appeal with the Chief Justice of West Cameroon as the President.

The Magistrates' Courts

These too were reconstituted under the 1954 Constitution. The structure of the Magistrates' Courts as laid down by the Magistrates' Courts (Southern Cameroons) Law of 1955[28] has, except with regard to the appointment of Magistrates and their general conditions of service and the removal of administrative functions of the Chief Magistrate to the Chief Registrar, survived the constitutional changes consequent upon reunification. The position today is that most of the Magistrates' Courts which were established in 1955 are still dispensing justice daily. Magistrates, all of whom are trained lawyers are divided into

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Federal Constitution 1961 Article 33;

27. Federal Ordinance No. 61-OF-6 of 4th October, 1961 and Federal Law No. 65-LF-29 of 19th November, 1965.

28. Magistrates' Courts (Southern Cameroons) Law No. 6 of 1955 as amended by Magistrates' Courts (S.C.)(Amendment) Law Nos. 8 of 1955 and 4 of 1956. Customary Courts Law No. 9 of 1956.

three classes based mostly on the jurisdiction, both criminal and civil, which they exercise. In practice, however, only two of these classes operate, if we treat the Chief Magistrate as a class sui generis. In civil cases, Grade I Magistrates have jurisdiction to deal with cases where the actual or estimated value of the subject matter in dispute does not exceed 140,000 francs C.F.A.,while the limit for Grade II Magistrates is 70,000 francs C.F.A.[29] In Criminal cases, there is a similar limit of the amount that can be imposed by way of fines while the maximum terms of imprisonment are 2 years and 1 year respectively. The Chief Magistrate can deal with civil and criminal cases involving damages or fine of up to 350,000 francs C.F.A. and they can pass sentences of imprisonment for periods of up to 5 years.

The Minister of Justice can, on the recommendation of the Chief Justice, increase the jurisdiction of Grade I Magistrates to that of Chief Magistrate.

Magistrates have no jurisdiction in cases relating to land or wills or matters within the jurisdiction of Customary Courts. These include matters such as marriage, family status, guardianship of children,

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29. Since the French devaluation approximately 660 Francs C.F.A. = £1 sterling.

inheritance or disposition of property on death. Magistrates' Courts may, however, exercise jurisdiction over these matters if they have been transferred from the customary courts or come by way of appeal. Appeal lies from the Magistrates' Courts to the Court of Appeal.

Customary Courts[30]

They were established within the framework of Native Courts Ordinance (Cap. 142 of the 1948 Laws of Nigeria) by the Customary Courts law of 1956.[31] They are usually set up by a Warrant of the Prime Minister and fall into three grades A, B and C. Their jurisdiction which is normally indicated in the Warrant of establishment included until the promulgation of the New Penal Code, a limited criminal jurisdiction.[32] In civil cases, they have an unlimited jurisdiction in matters concerning land or any interest therein, provided such land lies within the area of the court's jurisdiction. They also exercise wide powers in cases relating to inheritance,

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30. The name Customary Courts is a substitute for what was formerly known as Native Courts. The change was effected by West Cameroon Legal Notice No. 23 of 1964 which brought into force the Adaptation of Existing Laws Order.

31. Customary Courts Law 1956, S.C. No. 9 of 1956 as amended by Customary Courts (Amendment) Law No. 5 of 1959. Also see Native Courts Ordinance Cap. 142 of the 1948 Laws of Nigeria, Customary Courts Law 1962.

32. The criminal jurisdiction has been repealed by the Penal Code.

testamentary dispositions and the administration of estates in which no claim is made for and which do not relate to money or other property and all matrimonial causes other than those arising from a Christian marriage. They also have jurisdiction to enforce the provisions of certain Ordinances.[33]

Appeals lie from the Customary Courts to Customary Courts of Appeal which constitute first Courts of Appeal, and then to the Sub-Prefects, Prefects and the Prime Minister who constitute second, third and final Courts of Appeal respectively. There are also provisions for the transference of cases from these courts to Magistrates' Courts and to the High Court. Appeal also lies from the Customary Courts or the various Customary Courts of Appeal to the Magistrates' Courts, the High Court and finally to the Court of Appeal for West Cameroon.

The authority for the various appeals just mentioned is contained in Section 51 of the Customary Courts Law, 1962. This provides as follows:-

> "51(1) Any party aggrieved by a decision or order of a Customary Court may, within three months from the date of such order or decision, appeal therefrom to a Customary Court of Appeal.

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33. The Customary Courts also enjoyed some jurisdiction under the Labour Code Ordinance Cap. 91 of the 1958 Laws of Nigeria. This jurisdiction has also been repealed by the New Labour Code (Law No. 67-LF-6 of 12th June, 1967).

(2) Any party aggrieved by the decision or order of a Customary Court of Appeal may, within three months from the date of such order or decision appeal therefrom to a Superior Customary Court of Appeal.

(3) Any party aggrieved by the decision or order of a Superior Customary Court of Appeal may, if the Secretary of State in any particular class of cases shall by an endorsement on the warrant of such Superior Court of Appeal so direct, and the case in which such order or decision was given is one of such class, appeal, within a period of three months, to a Magistrate Court or to the High Court as the Secretary of State, by such endorsement shall prescribe."

It is also possible with the leave of the Secretary of State, to remove a case from a Customary Court to a Magistrate's Court.

Operating side by side with the Customary Courts are the Alkali Courts which deal with matters affecting Moslems. Appeal follows very much the same channel as for the Customary Courts.

Both the Alkali and Customary Courts come within the competence of the West Cameroon Ministry of Interior. In the exercise of this function in connection with the Courts, the Secretary of State for Interior is assisted by a Customary Courts Commission.

Other Courts

The discussion about the courts does not seem complete without mentioning three other tribunals which operate in West Cameroon. The

first of these is the Buea Bench of the Federal Court of Justice. As already mentioned, this court was set up by Federal Ordinance No. 61-OF-6 of 4th October, 1961, as amended by Federal Law No. 65-LF-29 of 19th November, 1965. This court deals mostly with the interpretation of Federal law and the constitution and with complaints against the administrative acts of the Federal Government or the Federated States. Appeal lies to the Full Bench in Yaoundé.

The next tribunal is the Permanent Military tribunal for West Cameroon which came into existence as a result of Federal Ordinance No. 61-OF-4 of 4th October, 1961, Decree No. 62-DF-125 of 17th April, 1962 and Federal Act No. 63-30 of 25th October, 1963. This court which was set up for security purposes is outside the ordinary court system although the procedure followed therein is that of the Magistrates' Courts. Its sittings comprise of a Judge or Magistrate as President and two military officers.

There is, strictly speaking, no appeal from the decision of a Military Tribunal although there exists provision whereby the Supreme Court of West Cameroon and the Federal Court of Justice can conduct a re-trial of any matter brought before this tribunal.

Finally, there is now a Labour Court in West Cameroon. It owes its origin to the practice in East Cameroon where different courts

are set up to handle different matters, quite unlike the previous practice in West Cameroon where labour problems came before the ordinary courts. The Labour Court deals mostly with disputes which arise out of contracts of employment between workers and their employers or between particular workers who are within the jurisdiction of the courts.

Except on matters of jurisdiction, the judgments of the Labour Court are final and without any right of appeal, particularly in cases relating to applications for delivery of pay slips or certificates of employment or those in which the amount claimed does not exceed 45,000 francs C.F.A. Where the amount claimed exceeds this sum an appeal against the judgment may be made either to the Cour d'Appel of the area or the High Court in West Cameroon and where appropriate, to the Court of Appeal.[34] It would seem from this that the Labour Court is of the same category as the Magistrates' Courts in West Cameroon.

The French Cameroons (East Cameroon)

France, like Britain, had traded along the Cameroon Coast long

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34. See Article 163 of the Labour Code. The provisions with regard to the Labour Courts are contained in Articles 141 - 168.

before the appearance of Germany. Unlike Britain, she had not established any judicial organisation comparable to the Court of Equity. During the German occupation, her trade with Cameroon seems to have declined considerably although she had territories in neighbouring French Equatorial Africa. With the outbreak of the Great War she found herself once more playing an important part in Cameroon, for together with Britain, she helped in the defeat of the Germans in Cameroon. For a while the Government of the Cameroons fell into the hands of the allied army of occupation, but in 1916 the territory was divided into two unequal parts - the larger eastern part going to France and the smaller west going to Britain.

From now on the French continued to govern their part of the territory on the basis of the Hague Convention of 1907.[35] Justice was administered in the German styled courts according to German law, but this became increasingly difficult because of a lack of judicial instruments and personnel properly trained in German law. This led the French army in Cameroon to exercise some judicial functions. In order to assist the army in the exercise of these functions, a tribunal was

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35. Le Vine, op. cit., p. 34; Buell, Vol. II, op. cit. p. 308.

set up in Douala in 1916 by a Decree of that year.[36] This tribunal was similar to the Justice de Paix (Justice of the Peace Courts) which had been set up in French Equatorial Africa by a decree of 16 April, 1913.[37] Appeals lay from this tribunal to the Cour d'Appel for French Equatorial Africa which was in Brazzaville, and to the maintenance of which Cameroon contributed. Another decree of 13 April, 1921, provided that all the provisions of the decree of 1913 would apply in Cameroon.[38] This meant rather inconveniently that the judicial structure in Cameroon was subordinate to that of French Equatorial Africa. No less inconvenient was the delay and the cost of having to take all appeals to Brazzaville. Thus one of the first acts of the French Colonial administration in Cameroon after signing the Mandate Agreement was to remedy this unsatisfactory position. This was done by the promulgation of a decree which provided for a separate judicial structure in Cameroon.

A hierarchy of courts was set up to administer French law in all matters involving French citizens, strangers belonging to nations recognised diplomatically by France, and natives of French or other colonies who enjoyed a metropolitan status in their countries of origin. The hierarchy of courts comprised of the following:[39]

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36. Report of the French Government to the League of Nations for 1923, p. 83 and 200 - 204.

37. The Report of the French Government for 1924, p. 53.

38. Ibid, p. 53.

39. The hierarchy of courts was set up by a decree of 29th December, 1922, which was promulgated in Cameroon by an Arrêté of 17th March, 1923. Report on French Cameroons for 1923, pp. 200 - 204.

The Conseil d'Appel

This court whose jurisdiction extended to all the territory had its seat in Douala. It was presided over by a President who usually was a career magistrate. He was assisted by two assessors who were chosen each year by the French Commissioner. These assessors, who very often were civil servants were proposed to the Commissioner by the Procurator of the Conseil d'Appel. The President also made use of the services of a Registrar and one or two Assistant Registrars. The judicial functions of the Government were performed by the Procurator who was chief of the judicial service.

This court heard appeals against judgments which were given by the Tribunals of first instance and the Justice of the Peace Courts.

The Criminal Court (Cour Criminelle)

This too was seated in Douala, although it could be moved temporarily to other places if need be. Such temporary movements needed the authority of the French Commissioner which was usually given by means of an arrêté after consultation with the Procurator.

The Criminal Court was composed of the members of the Conseil d'Appel and two assessors chosen from an annual list of 10 by drawing lots.

The list was made up of civil servants and notables resident in the area and enjoying full civil and political rights. The assessors had a deliberative right on questions of culpability, the type of punishment to be given or the damages to be awarded. A majority verdict was acceptable. Questions of competence, the law and procedure were matters for the judge.

The Tribunal of First Instance (Tribunal de Premier Instance)

This, like the others, was also to be found in Douala. Its composition and competence with regard to persons was determined by a decree of 8th August, 1920.[40]

The functions of the public prosecutor were exercised by the deputy of the Procurator while those of a Registrar were filled by the Registrar of the Conseil d'Appel.

The court had both civil and commercial jurisdiction with or without a right of appeal up to the value of 2,000 francs. It could hear appeals against judgments given by the Justice of the Peace Courts, particularly those with ordinary jurisdiction. It also had, like metropolitan

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40. This decree created the first tribunal of first instance in Cameroon, the purpose of which was to relieve the army of occupation of some of its judicial functions.

tribunals, jurisdiction over all misdemeanours and minor police offences. All judgments given in such cases were not susceptible to appeal.[41]

Justices of the Peace (Justices de Paix)

The functions of a Justice of the Peace were often assigned, by means of arrêté of the French Commissioner taken after consultation with the Procurator to the administrators, officers or civil servants in charge of various administrative circonscriptions. Their jurisdiction in civil and police matters corresponded to that in the metropole. Their jurisdiction was, however, limited to infractions committed against the local authority. The French Commissioner could, by arrêté after the usual consultation, invest the justices with power to deal with summary offences.

They were assisted by a Registrar who was chosen by themselves from among civil or military Europeans, employees or well-read local natives.

This hierarchy of courts continued to function in Cameroon and to dispense justice according to French law. Some slight modifications

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41. Career magistrates usually presided over these courts. Sometimes, particularly where there were no career magistrates, they were presided over by civil servants chosen by the French Commissioner after consultation with the Procurator. This was similar in many ways to the situation in British Colonies where Administrative officers were appointed Magistrates Grade III.

were introduced by two decrees of 11th May and 22nd June 1934.[42] These modifications suppressed the Conseil d'Appel in Cameroon making it once more necessary for appeals to go to the Cour d'Appel in Brazzaville. A Justice of the Peace Court was also set up in Yaoundé. Most of these modifications, which were taking place in the judicial organization in both Cameroon and French Equatorial Africa, crystalised in the Presidential decree of 30th June 1936. This decree which reorganized the courts of French Equatorial Africa was extended to the Cameroons by an arrêté of 15th February 1936.[43]

This situation lasted till the post war developments which were in part due to the recommendations of the Brazzaville Conference of 1944. The result of these developments was another reorganisation of the courts. The changes were effected by a decree of 27th November, 1947.[44] which, though intended primarily for French Equatorial Africa, was with certain modifications extended to Cameroon. The decree provided that justice would be dispensed in Cameroon by a Cour d'Appel (Court of Appeal), a Cour Criminelle (Criminal Court), Tribunaux de premier instance (Courts of first instance), and Justices de paix (Justices of the Peace).

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42. Annual Report of the French Government on the Administration of Cameroon for 1935, p. 35; Codes et Lois de Cameroun Tome I, p. 275.

43. Report for 1936 pp. 149 - 163.

44. Bouvenet, Gaston-Jean and Bourdin, René, Codes et Lois du Cameroun, Tome I, pp. 276 - 285; J.O.C. 1947, p. 1397 and 1948, p. 118.

Except with a few changes such as transferring the Cour d'Appel from Douala to Yaoundé in 1951,[45] this remained the structure until the pre-independence reorganisations in 1959. Before we consider these changes, a word must be said about the Native Courts which were developing simultaneously with the French orientated courts.

## The Native Courts

In the French Cameroons, as in the British Cameroons, there was a dual system of justice, one of which was meant to operate French Law for the benefit of Europeans or assimilés and the other served the interests of Africans or sujets. This system which was to a large extent responsible for the much criticised system of indigénat provided that French law would apply to all French citizens as well as certain categories of natives.[46]

## The "Tribunal de Races"[47]

The system of native justice was first introduced in Cameroon by a decree of 13th April, 1921. This decree established one or more of these tribunals in each administrative district. Each tribunal was

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45. Ibid, p. 289; J.O.C. 1952, p. 37.

46. The categories of natives were outlined in a decree of 8th August, 1924.

47. See Buell, Vol. II, op. cit., pp. 311-320; Le Vine, op. cit., pp. 100-103; Doumbé-Moulongo, Maurice, L'Evolution de Coutumes et le Droit, Edition Bory, Paul, Monaco, 1967, p. 31.

presided over by a European administrator who was assisted by two native chiefs or notables appointed by the Commissioner of the Republic. The assessors had a deliberative vote in civil matters and an advisory one in criminal matters. They could not be challenged and their opinion was usually recorded as a judgment.

The procedure adopted in these tribunals was that prescribed by local custom provided such custom conformed with the principles of French civilization.[48] They exercised both civil and criminal jurisdiction.

This system produced a number of problems. In the first place, there was no right of appeal from the judgments of the tribunals. This meant that the often irregular and sometimes irrational penalties imposed by the administrators could not be appealed against except in cases where they exceeded three years imprisonment. In such cases, there was a right of appeal to a special tribunal of homologation in Douala, but this tribunal could not do very much because it passed judgment on the records. Secondly, the European administrators who were charged with this responsibility very often knew ~~very~~ little, if anything, about native law and custom. As a result of this, they often

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48. This provision was in many ways similar to the "repugnancy" clauses built into the provisions of all British enactments with regard to Native Law and Custom.

made use of native interpreters. The result, of course, was often unsatisfactory. There is an interesting case which illustrates this very vividly. A European District Officer was once addressing a group of native chiefs through an interpreter. The chiefs were dressed in their colourful and flowing gowns as they were wont to do whenever they had an audience with the District Officer. The object of the interview was to explain to chiefs the need for keeping local government expenditure within means. He did this by exhorting them to cut their coats according to cloth. The interpreter officiously told the chiefs that the District Officer was quite angry with their flowing robes and wanted them cut to size. But for the amazement on the faces, the officer would never have known the extent of the misinterpretation and the damage this could have caused. Thirdly, the native ideas about punishment as well as what constituted crimes and civil wrongs were sometimes ~~very~~ diametrically opposed to those of the French administrators.

These difficulties were therefore responsible to a large extent for the major reforms which were introduced by the decree of 31st July, 1927.[49] This decree introduced the reforms which have survived till today. The new structure which was effected by an arrêté of 11th September, 1928 introduced the following reforms.

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49. Rapport du Cameroun for 1928, pp. 100-109; Le Vine, op. cit., pp. 103-104; Doumbé-Moulongo, M., op. cit., pp. 31-38; J.O.C. 1927, p. 429.

Tribunaux de Conciliation (Conciliation Tribunals)

These were not entirely new, but rather an improvement of a conciliatory machinery which had been set up under the decree of 13th April, 1921. By this machinery, the local chiefs had been authorised to make every attempt to persuade litigants to try to settle their disputes by conciliation before resorting to the local Tribunal de Races.

It was this function that the Tribunaux de Conciliation were to fulfil. The decree of 31st July, 1927, emphasized the need to attempt a conciliation in all civil and commercial matters. In this connection, the village or tribal chiefs were given power to try and reconcile all litigants who came before them. The power of conciliation was also given to the assessors in the court above. Any agreement which was arrived at as a result of such conciliation was usually regarded as a binding contract in accordance with the provisions of a decree of 29th September, 1920,[50] if such agreement was recorded. If there was no record of it, then it had the binding force usually accorded to contracts by local law. Whatever form it took, any such agreement could be annuled by the Chambre Spéciale d'homologation about which more will be said later. Only the more important chiefs or the civil servants

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50. J.O.C. 1928, p. 629. This decree established a procedure by which agreements entered into by natives could be registered.

in charge of subdivisions dealt with conciliation in matters where the case was capable of having some administrative or political leaning, or where the question of competence was raised, or those which involved an examination of written proof or a verification of accounts. Where the civil servant acted as conciliator, he was usually assisted by two assessors chosen from the same class as the disputing parties.

### Tribunaux de Premier Degré (Tribunals of First degree)

Appeals lay from the conciliation tribunals to these. Each one of them was instituted by an arrêté of the Commissioner of the Republic. He was responsible for selecting the various places in which to set up the courts. He could establish as many in each subdivision as there was need for. The courts were usually established on ethnic basis or in defined areas.

Each tribunal of first degree was composed of a president and two assessors whose role was purely one of debating the issues. The functions of the president were very often performed by the chief of the subdivision or by a civil servant, designated by the Commissioner of the Republic. The assessors had, of necessity, to be natives.[51]

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51. Articles 9 - 10 of the decree of 31st July, 1927 made elaborate provision for the method of selecting assessors and replacing them where necessary.

These courts had civil and commercial jurisdiction. They could, of course, exercise very limited criminal jurisdiction. Local and customary procedure was adopted in civil and commercial matters.

Tribunaux de Second Degré (Tribunals of second degree)

These tribunals were established in the chief town of each sub-division and circonscription (later region). These courts, like those below, comprised a president and two native assessors who only had a consultative voice.

The tribunals of second degree had jurisdiction in civil and commercial as well as criminal matters. Their jurisdiction in the former covered mostly matters coming by way of appeal from the courts below, while in the latter case they did hear limited criminal appeals, although the bulk of their criminal activity was centred on dealing with offences such as murder, armed robbery, arson, rape, slavery and crimes committed by native officials against the administration.

Chambre Spéciale d'homologation (Special Chamber of homologation)

Above the structure of Native Courts which we have just been describing, there was a special chamber of homologation which formed

part of the Cour d'Appel. The main function of this chamber was to ratify or annul the decisions of the tribunals of first and second degree. With regard to annulment, which was often the case if it was felt that there was a defect in the judgment resulting from an improper enunciation or a wrong interpretation of the custom involved, the case was often sent back to the appropriate subordinated jurisdiction which had tried it.

The chamber was presided over by one of the judges of the highest French courts in the territory. He was assisted by two assessors, one of whom was a European civil servant and the other a native notable.

Tribunaux Coutumiers (Customary Courts)

On 26th July, 1944,[52] a decree was passed creating a Customary Court with the unique purpose of handling matters of property, debt, succession, marriage consideration and so on.

The decisions of this court were subject to appeal before the Tribunal of Second Degree. Chairmanship of the Customary Courts was conferred on cantonal chiefs or those of the more influencial groups who were more or less lettered. They were assisted by a secretary and assessors who were named each year.

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52. J.O.C. 1944, p. 276.

These courts applied local customs in their pure state.

The Reorganizations of 1959[53]

The native court system just described above continued to exist until the reorganizations of 1959 which preceded independence. These modifications which were aimed primarily at modernising and integrating the judicial system resulted in an almost total overhaul of the judicial institutions, their framework, functions and jurisdiction. The following structure was thus the result of the reforms.

(a) Tribunaux de Conciliation (Tribunals of Conciliation)

These tribunals were put on a more independent basis and do not now function as part of the tribunals of first degree.

The president of this tribunal, who can either be a chief, a retired civil servant or a respectable person in the locality is normally chosen by the Minister of Justice on the recommendation of the president of the court above.

The tribunal has competence to deal with all matters except those resulting from personal work conflicts. Conciliation is always optional but a judge may send litigants to a conciliation tribunal or himself attempt to pacify them.

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53. See Ordinance No. 59 - 86 of 17th December, 1959; Doumbé-Moulongo, Maurice, op. cit., pp. 103 - 114.

The tribunals apply the customs of the parties. According to the new law, there are no permanent assessors, although persons with a respectable knowledge of the customs involved can be heard at any time.

Tribunaux de premier Instance (Courts of first instance)

These are also instituted by a decree of the Minister of Justice. In principle, there should be one in every arrondissement (administrative division), the composition of which is fixed by the decree establishing it. All judgments are rendered by a judge who is assisted by two assessors.

The courts of first instance deal with common law as well as civil and commercial matters.

The court has various chambers each dealing with specific matters.[54] Besides these various chambers, there are other courts which are of the same rank as the Court of first instance and these include the Labour Courts about which something has already been said.[55]

Tribunaux Coutumiers (Customary Courts)

As was mentioned above, one purpose of the reforms envisaged by

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54. There is for instance a chambre correctionnelle, a chambre social, a chambre civil, and a juge d'instruction.

55. See pp. 22 - 23 supra.

Ordinance No. 59 - 86 of 17th December, 1959, was to streamline the judiciary by integrating the Native Courts into the main judicial system. The provisions of this decree were, however, not carried out as originally envisaged because subsequent legislation (Decree No. 59 -247 of 18th December, 1959) provided that these provisions would take effect at a later date to be fixed by decree. Decree No. 59 - 247 further provided that the old courts would be temporarily maintained as under the old law, the only exception being the disappearance of the Tribunals of second degree. The structure of the Native Courts was therefore, with few modifications, maintained. Thus there are the conciliatory tribunals which are optional. Above them are the Customary Courts (Tribunaux Coutumiers) which are set up in various areas according to the need and convenience of the people. These Courts are, however, not very popular because they have no criminal jurisdiction and what civil jurisdiction they have is limited to native laws and excludes such matters as marriage, adoption, custody of children, and succession which are the things which attract most litigation.

The most important of the Native Courts are the Tribunaux de Premier Degré. These rank pari passu with the Tribunaux de premier instance. A Tribunal de premier degré is established in the principal

town of each subdivision. If there is a magistrate in the subdivision he presides but failing that, the court is presided over by the Prefect or sub-Prefect. The President and two assessors form a panel.

The Tribunal de premier degré has no criminal jurisdiction, but it has civil jurisdiction which is wide enough to cover all matters of personal status such as marriage, divorce, adoption, custody of children, and succession if they are governed by native law and custom.

Appeals from this court lie direct to the Customary Chamber of the Cour d'Appel in the manner prescribed by decree of 31st July, 1927 as amended by decree No. 66-DF-402 of 16th August, 1966.[56]

Other Courts of first instance

Article 2 of decree No. 59-247 also provided that certain categories of the Justices de paix (Justices of the peace) would be maintained. Most of them handle minor criminal offences.

Cours Criminelles (Criminal Courts)

These do not fit easily into the structure which we have so far discussed. There are in the first place, the Police Tribunals which

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56. This decree unified the rules of appeal from the decisions of the local law courts temporarily maintained in East Cameroon.

deal with summary offences such as minor traffic contraventions. Normally there is no appeal from these police courts although the accused has a right to appeal to the correctional chamber (Chambre Correctionnelle) of the Court of first instance. These chambres correctionnelles deal mainly with délits (misdemeanours). Appeal lies from them direct to the corresponding chamber in the Cour d'Appel.

The bulk of criminal offences are dealt with by the Cour Criminelle. The accused is taken first to the juge d'instruction which is one of the chambers of the Tribunal de premier instance. Here the magistrate ascertains whether or not a crime has been committed. If he considers that a crime has been committed, he then sends the documents to the chambre de mise en accusation which is a special branch of the cour d'appel. If it is proved here that a crime has really been committed, the matter is then sent to the Cour Criminelle. This court which is similar to the French Cour d'Assise is established in the principal town of each district. There is, however, provision that they can, by Presidential decree, be held in other localities if need be.

The Criminal Court is, as of right, presided over by a member of the Court of Appeal, but a magistrate of the Court of first instance, who has not dealt with the particular case before, can preside. There

are also 4 jurymen chosen from a list which is compiled annually by a special commission made of representatives of the local inhabitants and the administration both municipal and prefectoral.

Cour d'Appel (Court of Appeal)

Appeal lies from all the courts so far discussed to the Court of Appeal which was instituted by Ordinance No. 59-86. There were four of them to be established in Douala, Dschang, Garoua and Yaoundé.

The Court of Appeal is divided into various chambers which correspond to those of the Court of first instance and the Customary Courts. Thus an appeal from a Customary Court would go to the customary chamber of the Court of Appeal.

La Cour Suprème (The Supreme Court)

The Supreme Court has its seat in Yaoundé. It is composed of a First President, 4 Counsellors, a Procurator-General, an Advocate-General and a Chief Registrar. It is the final Court of Appeal for East Cameroon. It hears appeals mostly on grounds of incompetence of the court below, mistake in law, and miscarriage of justice. Complaints about judges acting in excess of their powers are also lodged in the Supreme Court by the Procurator-General on the advice of the Minister of Justice.

Other Special Courts of East Cameroon

Apart from the courts which have just been discussed, there are others which are often referred to as Tribunaux de compétence d' exception (Courts with exceptional competence). Among these are the Military Tribunals which, like the one in West Cameroon referred to above, came into existence by means of Ordinance No. 61-OF-4 of 4th October, 1961 and Federal Law No. 63-30 of 25th October, 1963. Their jurisdiction covers offences of a military nature which are committed by members of the armed forces under the provisions of the Military Code of Justice as well as breaches against internal and external security and any offences committed during a state of emergency or against any legislation on arms.

Another court with exceptional competence is the tribunal pour enfants which deals with offences committed by children and young persons.

Federal Courts

These are courts which were established after reunification. Except the special Federal Courts which serve specific purposes, most of these courts act as the final courts of appeal for the highest Federated State Courts.

## The Federal Court of Justice

By Article 33 of the Federal Constitution, there was set up a Federal Court of Justice which was charged with the responsibility of performing the following duties:

(1) To settle any conflict of jurisdiction which may arise between the highest courts of each Federated State.

(2) To give final judgment on appeals under Federal Law against decisions given by the higher courts of the Federated States in any case involving Federal Law.

(3) To give judgment in appeals for damages or on grounds of excess of authority against administrative acts by the Federal Authorities.

(4) To give judgment in disputes between the Federated States or between either of them and the Federal Republic.

It was further provided that the organisation and rules of this court would be prescribed by Federal Law.

## The Federal High Court of Justice

This was created by Article 36 of the Federal Constitution. Its organization and rules were prescribed by Federal Ordinance No. 61-OF-18 of 27th December, 1961.

The court has jurisdiction in respect of all acts carried out in excess of their functions by the President of the Federal Republic in the case of high treason, and by the Federal Vice-President, the Ministers of the Federal State and the Prime Ministers and Secretaries of the Federated States, in the case of conspiracy against the security of the State.

Cour Fédérale des Comptes

This is a special Federal Court which was created by Ordinance No. 62-OF-4 of 7th February, 1962, for the purpose of regulating the mode of presentation and the conditions of execution of the Federal Budget. This court deals with all matters pertaining to the public accounts of the Federation.

Finally, one might mention under this head the special Criminal Court (Tribunal Criminal Spécial) which was instituted by Law No. 62-10 of 9th November, 1962, with the sole purpose of dealing exclusively with offences involving public funds.

The Legal Profession

It seems most appropriate to follow the discussion on the judicial system with a word on the legal profession because, if these courts are

to function effectively and efficiently, they must be staffed by properly trained lawyers. This is not, of course, to underestimate the contribution which can and must be made by commercial, corporation and property lawyers if we are going to achieve an economic take-off in the shortest possible time, nor the need for bilingual international, comparative and constitutional lawyers if we are to operate successfully as a state within the African, and indeed, international legal and economic framework. No less important is the demand for lawyers with great courage and integrity if we must eradicate for ever the cancer of nepotism and corruption and perhaps put a check on the rather rapid growth of military and police powers. Thus we need lawyers who, as Professor Gower puts it, "are something more than journeymen practitioners"[57] if they are to perform not only the functions mentioned above, but also to contribute to the reform and modernisation of the almost chaotic state of the law as it exists in Cameroon today.

These are fine objectives which ought to be born in mind by all lawyers both students and practitioners, and all those responsible for all policy matters with regard to the legal profession. It need hardly

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57. Gower, L.C.B.: Independent Africa: The Challenge to the Legal Profession, Harvard University Press, Cambridge Massachusetts, 1967, Chapter III passim.

be said that we are still far from the attainment of these goals. Nevertheless, there is in Cameroon a legal profession which is coping quite well with the situation. This profession, like the courts, still retains the colonial heritage, so we will discuss the position as it is and indicate where possible what the future developments are likely to be.

West Cameroon

The legal profession in West Cameroon is derived from that of Britain, but unlike the latter, it is a fused profession and does not therefore maintain the dichotomy between Barristers and Solicitors.

As in most things, the legal profession in West Cameroon was closely connected with that of Nigeria from where most of the legal personnel came. At first these were mostly British lawyers serving in the colonial service. Later on Nigerian lawyers too found themselves in the British Cameroons. The lawyers came into the Cameroons either as law officers of the Nigerian Government or members of the judiciary or as practitioners.

The law officers of the Government were usually known as officers of the Crown and represented the Crown in all criminal matters and other

disputes in which the Crown was a party.[58]

At first, these officers operated from Lagos and later on from the Regional headquarters after the creation of the regions. Finally, in 1954, when a separate region was conceded to Cameroon, it was provided that one of the ex-officio members of the new Cameroon legislature would be a legal officer. This title was later changed to Attorney-General for the Southern Cameroons whose powers were finally embodied in Article 49 of Southern Cameroons (Constitution) Order in Council, 1960.

The next group of legal officers came as members of the judiciary. Most of these were Magistrates because, as yet, no judgeship had been created for the Southern Cameroons. The magistrates, who were often appointed from among practising members of the bar were responsible to the Chief Justice of the Federation of Nigeria who was head of the judiciary. The London Constitutional Conference of 1958 recommended that one of the judges of the High Court of Lagos be specifically assigned to the Southern Cameroons where he would spend as much of the year as was necessary.[59]

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58. The law officers of the Crown included the Attorney-General, the Solicitor-General and Crown Councils. These were declared Law Officers by the Law Officers Ordinances Nos. 4 of 1910 and No. 40 of 1936. Later a Legal Secretary was added to this list by the Nigerian (Constitution) Order in Council of 1951.

59. Report of the resumed Nigerian Constitutional Conference held in London in September and October, 1958. Cmnd. 569, para. 68(d).

Finally, the Southern Cameroons Constitution of 1960 provided for the appointment of a separate judge of the new High Court which was set up in the territory.[60]

The last group of lawyers who came from Nigeria to the Cameroons were the practising Barristers. The basic qualification for Barristers was the same as for the legal and judicial officers. In order to practise law, it was essential to be called to the Bar of one of the four Inns of Court in London or to be a member of either the Scottish or Irish Bar. Qualifications from other Commonwealth countries as well as those from other countries with recognized legal training facilities were acceptable, although most lawyers were invariably members of the English Bar. Because of the fused nature of the profession, solicitors could also practise if they had been properly enrolled. Almost all the practitioners, however, were Barristers, because it was shorter, less expensive and perhaps even less difficult to study for the bar qualification than that of the solicitors. Besides, it was usually difficult for the African students to find suitable offices in which to serve their articles of clerkship.

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60. See Southern Cameroons (Constitution) Order in Council 1960 - 61, Articles 50 - 53.

The law for the admission of persons to practice as Barristers goes as far back as the Supreme Court Ordinance No. 4 of 1876. Under this law, the Chief Justice was empowered to admit and enrol to practise as Barristers and Solicitors of the Supreme Court, persons who had been admitted as Barristers and advocates in Great Britain or Ireland and those admitted as Solicitors of any Court in London, Dublin and Edinburgh. These regulations underwent modifications until they culminated in the pre-independence Legal Practitioners Ordinance[61] which operated in conjunction with the Supreme Court Ordinance.[62] These laws, having been extended to the British Cameroons continued to regulate the practice of the legal profession in the territory until reunification. Shortly after reunification, however, Federal Law No. 63-37 of 15th November, 1963 was passed to organise the practice of the Bar of West Cameroon. This law lays down rules which in many respects are substantially the same as those in Nigeria. The law provides by Article 3 that:

> "admission to the Bar shall be granted by the Chief Justice when satisfied that the applicant:
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> 1. Is of good character; and
> 2. had not been removed from the Bar under Section 20 of this law; and

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61. See Cap. 110 of the 1948 Laws of Nigeria and Cap 101 of the 1958 revision. The laws with regard to Legal Practitioners were extended to the Cameroons under British Mandate by Ordinance No. 1 of 1925.

62. Cap. 211 of the 1948 Laws of Nigeria.

3. is shown to be fit for the Bar by:

a) A degree in the legal system in force in West Cameroon given by the Federal University of Cameroon or by a University accepted by the Chief Justice, followed by at least one year's pupillage with a member of the West Cameroon Bar, or

b) Call to the Bar, or admission as a Solicitor, without having been removed from such profession, in any country having a sufficiently analogous system of law and sufficiently high standards for such call or admission."

The new law is divided into five chapters. Chapter one deals with the qualifications and the manner of enrolment as a member of the West Cameroon Bar. Chapter two then deals with the relationship between Counsel and client. Chapter three is devoted to matters of discipline while the fourth chapter deals with the penalties which can be imposed on any one who acts in breach of the regulations. The final chapter deals with transitional matters. This chapter also provides that the Nigerian Legal Practitioners' Ordinance no longer extends to West Cameroon. The Chief Justice of West Cameroon is responsible for the successful operation of this law, although he receives directions on matters of policy from the Minister of Justice.

The Legal and Judicial Services on the other hand have also been modified by Federal Decree No. 66-DF-205 of 28th December, 1966.[63]

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63. Official Gazette of the Federal Republic of Cameroon for 1st May, 1966, pp. 683 - 702.

The legal profession in East Cameroon , like that in the West, is fused. The distinction between Avocats and Avoués which corresponds roughly to that between Barristers and Solicitors[64] in England is maintained in France but not in Cameroon. Thus in East Cameroon there exists only a corps d'avocats-defenseurs (a corp of practising lawyers).

Despite the existence of this corps, the practice of the law in East Cameroon, and indeed, in all Francophone Africa, is not the monopoly of the legal profession. One finds here and there people engaged either actively or otherwise in giving advice to others on legal matters. It is not uncommon to pay such people for the advice they give. What advice they give is such that does not encroach on the matters reserved to the professionally trained lawyers.

The general legal practice in East Cameroon is, however, in the hands of a corps of lawyers who alone enjoy the privilege of representing litigants in all proceedings in the French orientated courts. Their practice is regulated by an arrêté of 20th April, 1936[65] which was slightly modified by one of 8th October, 1948.[66] Both these arrêtés

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64. Amos and Walton's Introduction to French Law, 3rd Edition by Lawson, F.H., Anton, A.E., Brown L. Neville, Oxford at the Clarendon Press, 1967, pp. 22 - 23.

65. J.O.C. 1936, p. 384.

66. J.O.C. 1948, p. 1131.

which were promulgated by the Colonial administration and which are now hopelessly out of date and need reform, are still operative in East Cameroon.

The Law of 1936 made provision for the setting up in Cameroon of a corps of lawyers without any limitation as to numbers. These lawyers were to appear before the French Courts in the territory. Their basic qualifications were very often those required for practitioners in France. Indeed, it was provided that only lawyers who were listed in a bar of the metropole or some other colony could be permitted to practice in the territory.

Certain basic requirements had to be fulfilled before any one could be allowed to practise. Candidates for admission to the bar had to be 25 years of age, of good moral character, citizens of France or naturalized persons, which presumably included the assimilés, holders of a degree in law (licence en droit) awarded by a university faculty, possessors of aptitude for the profession and payment of the relevant fees.[67] The law also made provision with regard to dress while in practice, the records to be kept by each lawyer and various disciplinary measures which could be brought against any one in default of the regulations.

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67. See Arrêté of 20 April, 1936, arts. 4 and 5.

The Judicial and Legal Services

In conformity with French tradition, Cameroon has a career judiciary. This means that judges are not appointed from among the practising lawyers as is the case in England and Anglophone Africa, but come to their posts through the civil service structure. The judiciary, according to Professor Clarence-Smith:

> "is a kind of civil service in which the new entrant will find himself very easily on the Bench. This is the system prevailing in Cameroon and while in France the young man has little real chance of influence because he is always one of three. there is not enough personnel in Cameroon for that, and there will not be in the near future. The rest of the reason lies in the continental judiciary, which is reproduced in the greater part of Cameroon. The judiciary is not only a civil service, but in many respects an inferior civil service, its salaries being aligned to those of administrators who are far too powerful to allow any alteration in this."[68]

This admirably sums up the judiciary in East Cameroon.

This section of the legal profession is divided into two distinct branches. There are on the one hand those who are known as "Magistrature assise". These comprise of the judges and magistrates who preside over the courts and decide the issues in question before them. On the other

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68. The Cameroon Penal Code by Clarence-Smith, J.A., in the International and Comparative Law Quarterly 1968, Vol. 17, pp. 651 - 671 at p. 665.

hand, there are "magistrats du parquet" who are appointed in the same way as the former although their main function is that of representing the executive branch of government. They are generally referred to as representatives of the ministère public. They are usually assigned to the various courts under such title as procureur genéral (procurator-general), avocat genéral (advocate-general) and so on.

Before appointment, these officers must possess a degree in law (licence en droit) as well as some period of practical training.

The present position with regard to qualification for appointment into the judicial and legal services is regulated by decree No. 66-DF-205 of 28th April, 1966. This decree provides by Article 3 that:

> "no one may be appointed a member of the Judicial and Legal Services unless he:
>
> (a) Fulfils the various conditions prescribed by the Public Service rules and regulations;
>
> (b) Holds the degree of "Licence en droit" of the Federal University of Cameroons, or failing this a foreign law degree recognized as equivalent or has passed the Bar Final Examination at one of the Bars appearing on the list drawn up by decree after consultation with the Committee provided for by Article 42;
>
> (c) And either holds the Diploma of the National School of Administration and Magistracy (Judicial Section) or failing this has completed a probationary period as Legal Assistant in accordance with Article 8 hereinafter, or, under the conditions laid down by the decree, has an adequate professional experience as Barrister-at-Law, Defending Counsel, Secretary to the Defending Counsel, "avoué", Notary or Solicitor".

## Conclusion

One must heave a sigh of relief at the end of what has been, for the most part, a journey through a maze of a judicial system. This relief is almost immediately followed by a cry for reform. Reform of the judicial system is badly needed. In this connection, it may well be a blessing in disguise that the reforms of 1959 to which reference has already been made were not carried out, but deferred to a later date. One can only hope that when the time is right, we will, in the light of fresh experience, take a new look at those reforms and produce a judicial system which will not only be more efficient, but much less bewildering to the average litigant.

It follows from what has been said above that one is not quite happy with the situation, particularly in East Cameroon where there exist a multiplicity of tribunals. This system, besides being incomprehensible to a layman, whether educated or not, and one might venture to say even to some lawyers, is more expensive to maintain and less efficient to operate. It therefore seems essential to streamline the judiciary in such a way that it includes features of the present systems in East and West Cameroon. Thus we must have a structure which is in essence like that of West Cameroon but which should incorporate the Customary Courts as has been done in the East. Such a structure would have several advantages.

In the first place, it will do away with the dual system of courts which is still operative in both West and East Cameroon, although legislation which is not yet in force has been passed to abolish this system in East Cameroon. Secondly, a simple unitary system of courts is bound to work more efficiently and dispense justice more expeditiously. This will help to inspire the confidence of the litigants in the system of justice for they will more easily understand the progress of their cases and save on time and costs. Thirdly, there will also be a saving for Government in that it will no longer be necessary to pay extra personnel to man the several special tribunals. Fourthly, in a young country like Cameroon which will for a long time have to make do with inadequate legal personnel most of whom would be young and inexperienced, a simple judicial system must be something to strive for.

One is perhaps encouraged to think that these reforms are possible because of steps which have already been taken in West Cameroon by the appointment of a committee for the harmonisation of the Customary Courts system. A meeting of this committee held on 27th November,1967 had to decide whether to introduce the East Cameroon Customary Court system in West Cameroon, or to introduce the system of the West in the East or to integrate the two systems.[69] The committee, which had been formed

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69. Minutes of the meeting of the Committee on harmonisation of Customary Court System held on 27th November, 1967.

as a result of communications between the Prime Minister of West Cameroon and the Minister of Justice, came down on the side of introducing the East Cameroon system into the West. In doing this they were presumably motivated by the desire to abolish the dual system of courts in the West. In coming to this conclusion, they were not oblivious of the fact that this would put some strain on the already short-staffed judiciary.

This introduces us to the next thing which emerges from this chapter as being in need of reform, namely, the training of lawyers. Hitherto, the training of lawyers has been narrowly concentrated on producing practitioners and men to man the legal and judicial services. No attention was ever paid"to the importance of a legal training for those whose career lies in public service or in business." [70] This can no longer be the case in today's world - a world torn between two giant powers, a world of ever increasing giant economic combines which are struggling daily to amalgamate and form even greated combines, a world which, with the rapid development of air and space travel, is contracting daily. Quite apart from the world scene, the conditions in each individual country are such that we must break loose from the traditional ideas about legal education and provide such legal training as would cater

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70. Allott, A.N., Forward to the Journal of African Law, Vol. VI, No. 2 of 1962, p. 75.

not only for the legal profession in all its ramifications, but also provide an opportunity for specialization in various branches of law and related disciplines; for research into all aspects of law and administration; for experiment in new fields; for the provision of law teachers who, where possible, should be given assistance to write law books and comment on the ever changing context of the law.[71] This aspect is important in Cameroon and indeed in all developing countries if we are not to witness "the disappearance of precious libraries of documents of eternal value" which are preserved "now by the frail and capricious memory of weak old men on the point of death."[72]

Cameroon has answered the situation by the establishment of the Faculty of Laws in the Federal University of Yaoundé and the National School of Administration and Magistracy. These two institutions train people, one fears, in the traditional ways. There does not yet seem to be an awareness of the need to reorientate our whole programme of legal education. The result is that the University of Cameroon which is bilingual and which should ideally produce lawyers who can fill legal

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71. Graveson, R.H., Training for the Law - The University Contribution, Journal of the Society of Public Teachers of Law, June 1968, pp. 2 - 3.

72. Eteki-Mbonmoua, Williams, West Africa, No. 2687 of 30th November, 1968, p. 1405. Mr. Eteki-Mboumoua, a former Cameroon Minister of Education said these in an address to a U.N.E.S.C.O. meeting in Paris last year on the occasion of his appointment as Conference Chairman.

posts in any part of the Federation is not yet realising this. The reason lies partly in the fact that the University is relatively new and partly in the fact that the Cameroonians are still arguing about which system is better - an argument which ought really to have no place if law is seen in its true international perspective. Perhaps it is too premature to make any prognostication in this direction. It seems clear, however, that the type of research which is necessary to capture our traditional laws has not, to the disappointment of Eteki-Mboumoua and others who feel like him, been put in motion yet. At least, there is no evidence of this in the laws which have hitherto been passed.

However that may be, the establishment of the legal institutions in Cameroon is a positive step in the right direction. The University prepares students for a three year degree course. After that they can either go into the Public Services of the Federation or else proceed to the Judicial section of the National School of Administration and Magistracy for two years. Graduates of other universities whose qualifications are recognised as well as those called to the English Bar are also required to spend two years at the School of Administration. Those who have degree and professional training from a country whose qualifications are recognised need spend only one year in the School. On successful completion of this course, the students are appointed

as Assistant Magistrates or Assistant Federal Counsels. The question for enrolment of successful students into the local Bar Association and particularly that of West Cameroon is still under consideration. In the meantime, the qualifications which have always been accepted for practice in West Cameroon are still acceptable.

To the eye of one who sees the job of the Magistrate as beginning with the Police Constable and going beyond the doors of the court into the gaols, one thing is conspicuously missing from the programme for the training of Magistrates. It seems to us essential that the students in the School of Administration who are being prepared for posts in the legal and judicial services should be given some basic training in penology. This would, while helping them to be familiar with the difficult problems of sentencing, also prepare the way for research into and a possible overhaul and integration of the prison structure. The once popularly held view that heavy sentences, of which there have been several cases in Cameroon, deter, is no longer unanimously accepted. Besides, it seems very important that Magistrates and Judges who sentence people to terms of imprisonment ought to know what goes on behind the prison bars.[73]

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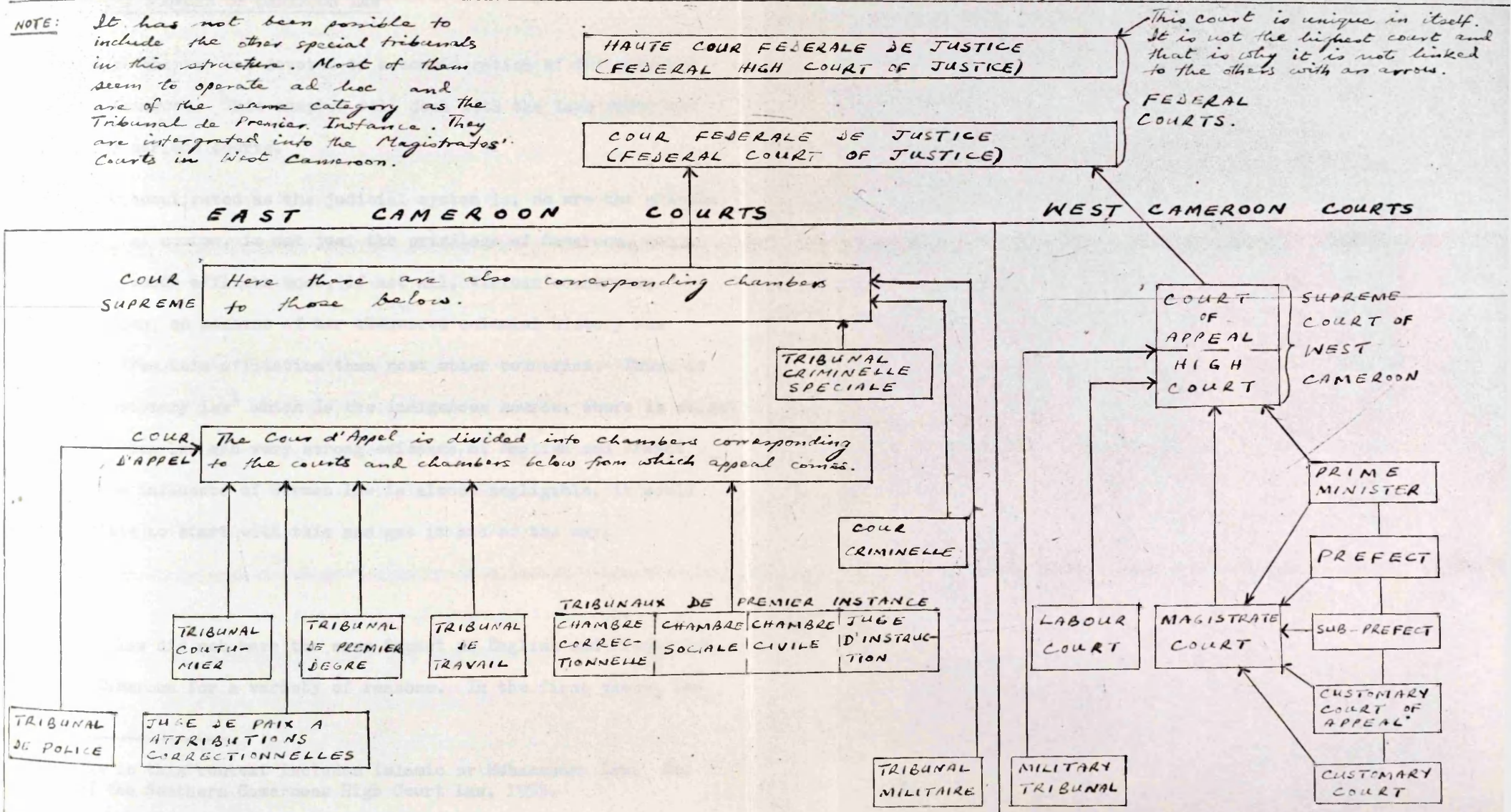
73. There is a diagram immediately after this page showing, in a simplfied form, the judicial system in Cameroon.

# THE JUDICIAL SYSTEM IN CAMEROON (SIMPLIFIED)

NOTE: It has not been possible to include the other special tribunals in this structure. Most of them seem to operate ad hoc and are of the same category as the Tribunal de Premier Instance. They are intergrated into the Magistrates' Courts in West Cameroon.



# PART III

## CHAPTER V.

## THE SOURCES OF CAMEROON LAW

The last chapter was devoted to a consideration of the judicial structure in Cameroon. This chapter will deal with the laws which are applied in the various courts.

Just as complicated as the judicial system is, so are the sources of law. This, of course, is not just the privilege of Cameroon, but a common malaise which afflicts most, if not all, African countries, although Cameroon, on account of her chequered colonial history has suffered more from this affliction than most other countries. Thus, in addition to customary law[1] which is the indigenous source, there is slight evidence of German law and very strong evidence of English and French law. Since the influence of German law is almost negligible, it would seem appropriate to start with this and get it out of the way.

### German Law.

German law did not have the same impact as English and French law have had on Cameroon for a variety of reasons. In the first place, the

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1. Customary law in this context includes Islamic or Mohammedan Law. See Section 2 of the Southern Cameroons High Court Law, 1955.

Germans had only 30 years in Cameroon which were spent mostly in exploration and the establishment of plantations on the slopes of Mount Cameroon. These preoccupations meant that they did not have the same contact with the people of Cameroon as did the English and the French. Their preoccupation with exploration and the establishment of plantations was perhaps due largely to the fact that they went to Cameroon motivated by the financial considerations which gave rise to the "scramble for Africa" rather than by any concern for the people of Cameroon. With this background, they were bound to have connections with the Cameroon people only in those fields which furthered their motives, such as the expropriation of land and the use of the natives to work on the plantations. This contrasts sharply with the motives, at least superficially, of the English and the French in Cameroon. The territory was handed over to them by the League of Nations, and they were enjoined to administer the same as a sacred trust of civilization. Since the aim of the administration was to lead the natives ultimately to independence, there was bound to be greater contact between them and the mandatories. Secondly, both the French and the English put an end to the operation of German law almost immediately after the departure of the Germans from Cameroon. The French were the first to do this, their reason being that there was a dearth of German legal material and a lack of personnel

trained in German law to cope with its administration. The reason for the lack of legal material was partly that it had either been destroyed by the Germans or taken away to Germany.

The British on the other hand persisted a little longer with the administration of German law. Indeed in 1918, the Secretary of the Southern Provinces of Nigeria sent a telegram to the Resident of the Cameroons Province in which he conveyed the Governor's wish that:

> "German law is administered in Cameroon, and he is only justified in introducing modifications in circumstances of great urgency. He cannot see that any such necessity exists in this case and in consequence is not prepared to issue the proclamation asked for."[2]

This situation was, however, reversed in 1924. The British Cameroons Administration Order No. 3 of that year provided for the Cameroons to be administered as an integral part of Nigeria and for the application of Nigerian law in the territory with effect from 28th February, 1924, the date on which the proclamation came into effect. This date can therefore be regarded as the date of reception of English law. All proclamations in force in Cameroon prior to this date therefore ceased to be in force:

> "provided that nothing herein contained shall unless the contrary intention appear -

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2. This information was collected from the early administrative files of the British Administration now lodged in the West Cameroon Archives in Buea. Document Pg. in File No. 200 of 1920. The telegram itself was dated 1st October, 1918.

(a) affect the previous operation of any such Proclamation or anything duly done or suffered under any such Proclamation; or

(b) affect any right, privilege, obligation or liability accrued or incurred under any such Proclamation; or

(c) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any such Proclamation; or

(d) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding, or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if such Proclamations remained in full force and effect."[3]

The operation of this provision enabled rights acquired under German law to be retained. Such rights are still subsisting till today in Cameroon. These rights, to which we shall return in the appropriate place, deal mostly with land. Although a very remote possibility, it would seem that if there was litigation involving some of these rights, German law would be resorted to. Indeed:

"the Court of Appeal for Eastern Africa in the case of Attorney-General v. Noti bin Ndugumbi and others,

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3. Report of His Britannic Majesty's Government on the Administration of the Cameroons for 1924. Also see p. 13 of the Preface to Volume I of the 1948 Laws of Nigeria; Section 3(2) of Cap. 27 of the 1948 Laws of Nigeria. This chapter repealed Ordinance No. 3 of 1924.

> which arose out of an application for first registration, as freehold, of a plot of land the subject of a "sale contract" made in 1903. Worley V-P, basing his conclusion on the terms of the Mandate in relation to the continuance of pre-existing land titles, held that there must be a presumption that a Tanganyika Ordinance would not have the effect of prejudicing a German title and that once it was established that a certain title would have been registerable in the Grundbuch under German law (the effect of which was, under German law, to confer on the owner an indefeasable title) it must be accepted for registration under Cap. 116."
>
> "If necessary the strict application of English law of real property must yield to the overriding obligation to recognise and, if so required, to register, a title which would have been registerable under the German Government."[4]

It would seem from this that German law would have been the proper law if the contract itself was in dispute. Thus there can be cases in Cameroon where German law is resorted to. These would, of course, be extremely rare.

It follows therefore that, except in the case of land law, the German law introduced in Cameroon did not take root. One reason for this was the fact that it applied to Germans and other European Nationals. The German Penal and Civil Codes were applied at first to Europeans only,

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4. Cole J.R.S. and Denison W.N., Tanganyika: The Development of its Laws and Constitution, London, Stevens & Sons 1964, p. 217; Allott A.N., Essay in African Law op. cit. pp. 16 - 17.

but as contact with the natives increased, the law tended to have a more general application. The procedure applied in the courts was that of Consular jurisdiction.

The natives, as observed above, were at first left to their systems of customary law but towards the close of German rule there were noticeable developments in which both native and European litigants were tried in the same courts, and sometimes German and customary law were administered in the same litigation. This applied to both criminal and civil cases. Natives were sometimes prosecuted under the German Penal Code for offences such as rape, and if convicted, they were usually subjected to more savage penalties than their German counterparts. It is recorded that:

> "the largest number of whites called into court was 114, in the year 1901 - 10. Of the whites charged with a violation of the law a rather large number were usually acquitted. Imprisonment was a far less common policy than the imposition of the fine."[5]

The reason must lie in the fact that it was usually claimed that:

> "the whites in the colony would be certain to suffer a loss of respect among the natives"

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5. Rudin, op. cit. p. 203.

if put in goal with them. On the other hand:

> "the number of natives punished for violating the laws grew from 773 in 1900-1 to 11,229 in 1912-13."[6]

Most of those punished were whipped even though whipping had been regulated as a penalty by the Reichstag. Between 1900 and 1913 the number of whippings grew from 351 - 4800.

English Law.

As already observed, English legal ideas were known in Cameroon as early as 1872, when the Court of Equity was formerly established, but the impact of English law was not great because it was limited to regulating the relationship between the natives and the supercargoes. These Courts of Equity were also short-lived because they were abolished shortly after German occupation of Cameroon in 1884.

By 1922, the English had once more found themselves in Cameroon, this time not only as traders, but also as administrators with the backing of a reputable International Organization, namely, the League of Nations. Article 9 of the Mandate agreement had given the Mandatories a blank cheque to administer the Mandates in like manner as their adjacent

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6. Ibid, p. 204; See generally Rudin. op. cit. pp. 198 - 206; Report on the British Sphere of the Cameroons for 1922; Meyer M., Le Cameroun, Document TA-Z, paragraph 15, National Archives, Yaoundé.

territories and to introduce laws they thought expedient to help in the administration, provided such laws were modified to suit local conditions.

The British Cameroons, as we already know, was integrated into Nigeria, and it was provided that the Ordinances of Nigeria:

> "shall, so far as they are applicable and local circumstances permit, be in force and apply to the Cameroons under British Mandate and for the purpose of facilitating such application the said Ordinances shall be construed with such verbal alterations and other modifications not affecting the substance as may be necessary to render them applicable."[7]

In this way English law was introduced into the British Cameroons through Nigeria, and the link thus created remains today. This link has not been affected very much by unification. The laws of West Cameroon are still bound as it were by an umbilical cord to those of Nigeria. It is true that with time, this connection might grow thin. Such time, barring a miracle, is still a long way away.

However that may be, it is essential to take a general conspectus

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7. Cap. 27, Section 2 of the 1948 Laws of Nigeria - Cameroons Under British Mandate Administration. This Ordinance is the final form of various earlier ones, namely, British Cameroons Order in Council No. 3 of 28th February, 1924, Ordinance No. 1 of 1925 and Amending Ordinances Nos. 13 of 1925, 1 of 1927, 13 of 1928, 24 of 1929, 19 of 1941 and 12 of 1945.

of the introduction of English law in Nigeria as this helps in understanding the Cameroon situation. As mentioned in the last chapter, English law was first introduced in Nigeria by Ordinance No. 3 of 4th March, 1863.[8] It provided by Section 1 that:

> "all laws and statutes which were in force within the realm of England on 1st January, 1863 not being inconsistent with any Ordinance in force in this colony, or with any rule made in pursuance of any such Ordinance, shall be deemed and taken to be in force in this colony, and shall be applied in the administration of justice so far as local circumstances will permit."

Later, in 1874, when the administration of Nigeria was temporarily linked with that of the Gold Coast (now Ghana), the provisions of Ordinance No. 3 were superseded by those of Ordinance No. 4 of 1876 which provided by Section 14 that:

> "the common law, the doctrines of Equity, and the Statutes of General Application in England at the date when the colony obtained a local Legislature, that is to say, on the 24th day of July, 1874, shall be in force within the jurisdiction of the court.

Section 19 recognised the observance and enforcement of native law

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8. English law was thus introduced in Nigeria by a local Ordinance. This contrasts with the East African situation where English law was introduced by various Orders in Council.

and custom provided it was not:

> "repugnant to natural justice, equity and good conscience, nor incompatible either directly or by implication with any law for the time being in force."[9]

These provisions which were at first limited to the colony of Lagos were gradually extended, first to the Protectorate of Southern Nigeria and later to that of the North. On the amalgamation of the Southern and Northern Provinces of Nigeria, these provisions were re-enacted as Section 19 of the Supreme Court Ordinance of 1914, and finally as Section 45 of the Interpretation Act.[10] The relevant subsections read as follows:

> "45(1). Subject to the provisions of this section and except in so far as other provision is made by any Federal Law, the Common Law of England and the doctrines of equity together with the Statutes of general application that were in force in England on the first day of January, 1900, shall be in force in Lagos and, in so far as they relate to any matter within the exclusive legislative competence of the Federal Legislature shall be in force elsewhere in the Federation."
>
> "45(2). Such Imperial laws shall be in force so far only as the limits of the local jurisdiction and local circumstances shall permit and subject to any Federal law."

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9. See Supreme Court Ordinance 1914, Section 19.

10. Cap. 89 of the 1958 Laws of Nigeria.

> "45(3). For the purposes of facilitating the application of such Imperial laws, they shall be read with such formal verbal alterations not affecting the substance as to names, localities, courts, officers, persons, moneys, penalties and otherwise as may be necessary to render the same applicable to the circumstances."

This was the main statutory provision with regard to the reception of English law in Nigeria when the British Cameroons entered the Nigerian scene.[11] The responsibility of administering the law thus received was that of the Supreme Court of Nigeria, but the introduction of regional government in 1951 brought with it separate regional High Courts. At first, the two sectors of the British Cameroon came under the jurisdiction of the Eastern and Northern Regional High Courts. When the Southern Cameroons broke away from the Eastern Region, she was given a separate High Court.

Section 11 of the Southern Cameroons High Court Law of 1955 provided that:

> "the general law applied by the High Court consists of:-
>
> (a) the Common Law;
>
> (b) the doctrines of equity; and
>
> (c) the statutes of general application which were in force in England on January 1st, 1900, so far as these relate to any matter with respect to which the legislature of the Southern Cameroons is for the time being competent to make laws."

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11. See Note 5 supra.

Section 27 further provided that:

> "(1). The High Court shall observe, and enforce the observance of every native law and custom which is not repugnant to natural justice, equity and good conscience, nor incompatible either directly or by implication, with any law for the time being in force, and nothing in this law shall deprive any person of the benefit of any such native law and custom."
>
> "(2). Such laws shall be deemed applicable in causes and matters where the parties thereto are natives and also in causes and matters between natives and non-natives where it may appear to the court that substantial injustice would be done to either party by a strict adherence to the rules of English law."
>
> "(3). No party shall be entitled to claim the benefit of any native law or custom, if it shall appear either from express contract, or from the nature of the transactions out of which any suit or question may have arisen that such party agreed that his obligations in connection with such transaction should be regulated exclusively by English law or that such transactions are transactions unknown to native law and custom."
>
> "(4). 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."

It will have been noticed that the English law to be received was expressed in general terms, no attempt being made to spell out the rules of law to be introduced. This was, of course, not always so, for in a limited number of cases, the Nigerian legislature enacted in

full as part of Nigerian law, all the English rules on a particular aspect. One such case is the Companies Ordinance which is almost identical to the English Companies Act of 1929.[12]

Despite this general lack of detail as to the received English law, there was sufficient indication,as we have seen above, about the sources of law applied in the Southern Cameroons. Briefly, this comprised the common law, doctrines of equity, statutes of general application in England on 1st January, 1900, legislation passed by the Nigerian Legislature between 1900 and 1954 and those passed by the Southern Cameroons Legislature after 1954, and native law and custom. We shall therefore examine these sources individually.

The Common Law

It will be observed from Section 45(1) of the Interpretation Act quoted above that the Common Law in force in Nigeria and the Cameroons was that of England. There seems to be little if any disagreement about this. What seems to have raised considerable controversy is the question whether the Common Law to be applied was the Common Law of

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12. Park, A.E.W., The Sources of Nigerian Law, Lagos, African Universities Press, London, Sweet and Maxwell, 1963, p. 17; Cap. 37 of the 1958 Laws of Nigeria. This Ordinance is still applicable in West Cameroon.

England as it was on 1st January, 1900, or as it had been modified by decided cases since then. In other words, was the Common Law thus adopted ambulatory? Various views have been sufficiently expressed elsewhere, and little would be gained by going through them all over again, but for the purposes of consistency and continuity we shall allude to them in passing.[13]

Professor Allott takes the view that the limiting date refers to the Common Law, equity and statutes of general application as at 1st January, 1900. The common law decisions up to and including the limiting date are binding while the decisions coming after that date are only persuasive. This view which was put forward in his "Essays on African Law" has been buttressed up by an article in the Supplement to the International and Comparative Law Quarterly for 1965. This article was written partly in an attempt to reply to Mr. Park's opposing view which is that the Common Law and doctrines of equity introduced in Nigeria were not just those in 1900, but those in force from time to time in England. This view would receive considerable sympathy if seen in the light of the now discredited opinion which prevailed at the time, namely, that the Common Law was timeless. A third view has also been

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13. Allott, A.N., Essays in African Law, London, Butterworths 1960, p. 31. The same author - International & Comparative Law Quarterly 1965 (Supplement) pp. 31 - 49; Park, op. cit. pp. 19 - 24; Nwabueze, B.O., The Machinery of Justice in Nigeria, London, Butterworths 1963, pp. 19-22.

put forward by Mr. Nwabueze. He thinks that the Common Law applicable in Nigeria is neither that of 1900 nor that in force from time to time in England but that it is:

> "'the legal system and habits of legal thought that Englishmen have evolved. In this sense it is contrasted with systems of law, derived from Roman law.' It is in this sense that the Common Law is applied in some of the older Commonwealth countries and in America and, it is submitted, should be applied in Nigeria."[14]

It seems, with respect, that Nwabueze has missed the point which is the subject of the controversy. It is not about the type of Common Law, ideal or otherwise, that is being practised in Nigeria, but whether the Common Law received in 1900 was ambulatory or static. Both Professor Allott and Mr. Park have adduced good concrete evidence to support their individual stands, but one fears that these arguments have a great theoretical and academic bias. It would appear that the real situation is reflected by the decisions of the Nigerian courts which by their conflicting nature lead one to the conclusion that the courts have adopted a less rigid stand. This is hardly surprising, since the court's duty is to do justice rather than adhere rigidly to rules. In any case, it would appear that these arguments which may have been very relevant

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14. Nwabueze op. cit., p. 21. The learned author drew his ideas from Jackson's Machinery of Justice in England, 3rd Edition, p. 15. Also see generally Allott's "New Essays"

at some stage, are not nearly as relevant in an independent Nigeria. Indeed, it has been suggested in a recent article that Nigerian judges tend to rely increasingly on the judgments of Superior Nigerian courts and tend to treat:

> "Common Law decisions of the courts of England in the same category as judicial decisions from other Commonwealth countries or a common law country such as the United States."[15]

This, therefore, makes the decisions of British courts merely persuasive which is what Professor Allott has always thought them to be after the date of reception.[16]

Most of these arguments were true of Cameroon until very recently when there appeared a positive indication that in future greater reliance would be placed on Cameroon decisions. In writing the foreword to the first volume of the West Cameroon Law Reports, the Deputy Minister of Justice[17] expressed the hope that:

> "judging from its origins, its principal features and operation in practice, it would hardly be wrong to say that our decided cases would be the most suitable when adopting and applying the doctrine of the binding force of precedent. Indeed, some cases decided under our system may be the only proper authorities to be cited."

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15. Williams, Chief F.R.A., Legal Development in Nigeria 1957-1967. A practising lawyer's view. Journal of African Law 1967 p. 77-85 at p. 82.

16. Allott, Essays in African Law, op. cit. p. 33.

17. See Foreword by Mr. Egbe, E.T., Cameroon Deputy Minister of Justice, to the first volume of the West Cameroon Law Reports 1962 - 1964.

It would seem that the Minister was perhaps expressing his personal view rather than laying a general policy to be followed by the judges. Such a policy, were it the case, would no doubt be resisted by the judges as being peremptory and restrictrive. Besides, it would be contrary to the essentially healthy practice being followed in West Cameroon and indeed in most common law countries of regarding decisions of English or other courts administering the Common Law or statutes in pari materia as being persuasive.[18] The close affinity between the laws of Nigeria and West Cameroon makes this practice very important. How much longer there will continue to be a Common Law in Cameroon is a matter which must,for the time being, remain in the realms of speculation. It is,nonetheless, fair to observe that with the talk about codification of the law in Cameroon, and indeed, throughout all Africa, there is bound to come a time, sooner or later, when Common Law will perhaps play a less significant part than in the past.

Having said so much about Common Law, it seems essential to advert, even if generally, to the meaning of the phrase itself. The expression "common law" means more than one thing in English law. It can be used in contradistinction to civil law which comprises

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18. Allott, A.N., Essays in African Law, Chapter 2 passim.

mostly enacted law. It is also used in juxtaposition to Equity,[19] and not least, in connection with most of the Anglo-American and Commonwealth systems. We have and shall be using it mostly in connection with that part of English law which is unenacted and which has been developed through the decisions of the courts.

The Common Law which derives its origin from custom is contained in the decisions of the courts as developed by the judges. This does not, of course, ignore the part which legislation has played in its development. On the contrary, legislation still plays a large part, and almost always takes the upper hand in the event of a conflict between the latter and the Common Law. The great merit of the Common Law, however, lies in its development through cases.

The Doctrines of Equity[20]

Like the Common Law, Equity has been developed through the courts, but unlike the former, its development came much later in time.

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19. Allott, Essays in African Law, op. cit., p. 8.

20. Snell's Principles of Equity, Ed. by Megarry R.E. abd Baker P.V., London, Sweet & Maxwell, 1966, Chapter 1 passim; Potter's Historical Introduction to English Law and Its Institutions, 4th Edition by Kiralfy, A.K.R., London, Sweet & Maxwell, 1958, Part four, passim; Allen C.K., Law in the Making, Oxford University Press, (Oxford Paperbacks), Chapter V, passim.

From the time of the Norman Conquests to the 13th century, the Common Law was administered by the King's justices in the three common law courts of the King's Bench, Common Pleas and Exchequer. Gradually these courts became greatly fettered by the strict and formalised writs which had been developed, and could no longer dispense justice in a society that was changing because the writs could no longer cover all the possibilities. The Chancellor too, was prevented from issuing any new writs by the Provisions of Oxford of 1258. The rather limited justice dispensed by the Common Law courts produced a situation whereby aggrieved parties who were unable to get any justice, could apply to the King in Council to exercise his extraordinary judicial powers in order to ensure that justice was done to them. There thus grew up the custom of referring all cases which did not fall within the known writs to the King in Council. His function in this respect was exercised by the Chancellor. From this the Court of Chancery developed as an institution independent of the King.

At first, the Chancellor, in the exercise of his jurisdiction, was guided by conscience which to a large extent had a strong ecclesiastical bent as most chancellors were ecclesiastics. The conscience was, however, exercised in the name of the reigning monarch.

Gradually, the Chancellorships passed into the hands of non-ecclesiastics and the rules which became formalised grew into the rules of modern technical equity whose administration was fused with that of the Common Law by the Judicature Acts of 1873 - 1875. But this was merely a mixing of streams running in the same channel but keeping their waters unmixed. Equity has thus continued to be the medium by which justice is done in situations where the strictness of the Common Law produces injustice. As Park says:

> "The rules of the Common Law, in general, apply directly to persons, actions and things, whereas the doctrines of equity, in general, operate directly upon the rules of the Common Law, and only indirectly upon factual situations."[21]

It was not only this technical equity which was introduced in the Southern Cameroons, but also the early equity which lay in the conscience of the chancellors. This was done by providing the machinery in Section 27 of the Southern Cameroons High Court Law, by which native courts could either disallow some rules of native law and custom on the grounds that such rules were repugnant to natural justice, equity and good conscience, or seek recourse to the principles of justice, equity and good conscience where there were no express rules

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21. Park, op. cit. p. 10.

of native law and custom [illegible] applicable in a particular situation We shall come back to this when we deal with native law and custom. Suffice it to conclude here that the questions which were raised above about the general reception of English law apply to Equity as well as the statutes of general application.

The Statutes of General Application in England on 1st January, 1900.

Cameroon, and all the other British colonies, did not only adopt English Common Law and Equity, but also the statutes of general application in force in England on 1st January, 1900. These acts were mostly those enacted before the establishment of local legislatures in the colonies.

The adoption of statutes of general application raises fundamental questions. What, for instance, constitutes a statute of general application? The answer to this question seems to have been left to the judges.[22] The first reported attempt at an interpretation of the phrase is to be found in the judgment of Osborne, C.J., in the Nigerian case of Attorney-General v. John Holt and Company Limited[23] in which

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22. Ekow Daniels, W.C., The Common Law in West Africa, London, Betterworths 1964, Chapter 12 passim.

23. Attorney General v. John Holt & Co. Ltd. [1910] 2 Nigerian Law Reports 1 at p. 21.

the Chief Justice said that:

> "no definition has been attempted of what is a statute of general application ....., and each case has to be decided on the merits of the particular statute sought to be enforced. Two preliminary questions can, however, be put by way of a rough,-but not infallible test, viz., (1) by what courts is the statute applied in England, and (2) to what classes of the community in England does it apply? If, on the 1st of January, 1900, an Act of Parliament were applied by all civil or criminal courts, as the case may be, to all classes of the community, there is a strong likelihood that it is in force within the jurisdiction. If, on the other hand, it were applied only by certain courts (e.g., a statute regulating procedure), or only to certain classes of the community (e.g., an Act regulating a particular trade), the probability is that it would not be held to be locally applicable."

Both Professor Allott and Dr. Elias subscribe to this view.[24] Mr. Park, on the other hand, feels that "some other test is needed to set the limits to the category " of statutes of general application. This other test would include a geographical factor as well as one whereby an:

> "act qualifies if it applies either to all classes of the community or to all members of either one or more classes."[25]

This is useful in so far as it is treated only as a suggestion, but until more specific interpretation is put on the phrase "the rough, but not infallible test" of Osborne C.J. which has received the support of

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24. Allott, Essays in African Law, op. cit., p. 9; Elias, the Nigerian Legal System, op. cit., p. 19.

25. Park, op. cit., p. 28.

two eminent lawyers such as Professor Allott and Dr. Elias remains the one by which we must be guided.

Another problem arises from the provision that such Imperial statutes shall be enforceable only in situations where local circumstances permit. The type of problems which this proviso creates are exemplified by the recent Nigerian case of Lawal v. Younan.[26] The case concerned the application of the Fatal Accidents Act of 1846 and 1864. These Acts were designed to assist widows whose deceased husbands had been killed by the tort of another to sue that other in tort. There was a proviso that such a right was lost if the widow did certain things, one of which was to remarry. The local circumstance raised in this case was the customary rule of levirate which provides that a widow can be inherited by one of her late husband's brothers or relatives. The question was therefore raised whether this rule would operate in the present case to bar the widows' right of action. This was pertinent because the widows who were suing were all married polygamously under customary law. While admitting the difficulties, it was held that the widows' right to sue was not barred. This case shows quite clearly the type of difficulty that the proviso can give rise to.

The question might be asked whether it is necessary to go into all these problems in a work on independent Cameroon where the future

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26. Lawal v. Younan [1961] 1 All N.R. 245.

of the Common Law is within the realm of doubt, to say the least. The answer to this question must be in the affirmative because the West Cameroon Constitution, the validity of which depends on the Federal Constitution, provides by Article 53(1) and (4) as follows:

> "53(1). Subject to the provisions of this section, the existing laws shall have effect after the commencement of this constitution and shall be read and construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with this constitution."
>
> "53(4). For the purpose of this section "existing laws" means all Ordinances, Laws, Proclamations, rules, regulations, orders, and other instruments having the effect of law made or having effect as part of the law of the state immediately before the first day of October, 1961."

The laws in the state before 1st October, 1961, were none other than the laws in operation in the Southern Cameroons before that date which were in many respects similar to or the same as those in operation in Nigeria. These laws, of course, included the statutes of general application in England on 1st January, 1900. Thus these statutes can in this circuitous way still apply in West Cameroon. In any case, it will be the statutes which were passed on or anterior to 1st January, 1900, that can still present this problem, for those passed later tended to be expressly extended to the colonies, or adopted by an act of local legislature, or re-enacted locally. With an independent status

now most legislation is passed locally, so this becomes even more a pre 1900 question.

This has been put briefly, not because we want to ignore the immense practical problems which were created by the post 1900 Nigerian legislation. Such legislation falls into three rough groups.

The first group comprises the laws which were passed by the central legislative council in Nigeria. These include the Proclamations and Orders in Council from 1900 to 1922, and then those passed by the Legislative Council which was set up under the 1922 Constitution. It was during this period that the laws of Nigeria were by virtue of the British Cameroon Order in Council No. 3 of 1924[27] extended to the British Cameroons. The changes introduced by the Constitution of 1946 did not affect the legislative system very much.

The second group owes its origin to the Macpherson Constitution of 1951.[28] This Constitution strengthened the regions of Nigeria by creating Regional legislatures with powers to legislate on certain enumerated subjects. The Central legislature which had specific powers could also legislate on its enumerated subjects. This meant that, in

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27. This Order in Council was amended by the Cameroons Under British Mandate Administration Order (Cap. 27 of the 1948 Laws of Nigeria) the first schedule to which outlined the existing Nigerian laws that were to be applicable in the British Cameroons.

28. See The Nigeria (Constitution) Order in Council, 1951, No. 1172.

Cameroon, the laws in force were either those of the Central legislature or those of the East Regional legislature of which Cameroon was a part.

Lastly, Cameroon had its own legislature in 1954 after their break away from the Eastern Region following the Eastern crisis of 1953.

The situation where there were Central and Regional legislatures passing laws on different and sometimes the same subject was bound to create some difficulty, for this situation was bound to produce local conflicts between laws of the Central legislature vis-à-vis those of the Regions as well as those of the Regional legislatures inter se. It was perhaps in recognition of this situation that the Interpretation Ordinance provided by Section 53 that:

> "Where any act or omission constitutes an offence under two or more Ordinances, or under an Ordinance and under a Statute or Order in Council, the offender shall, unless the contrary intention appears, be liable to be prosecuted and punished under either or any of such Ordinances or under such Statute or Order in Council, but shall not be liable to be punished twice for the same offence."[29]

This, of course, meant that the average citizen did not know what law regulated his affairs. All he had was the assurance that he would not be punished twice.

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29. See Section 53 of the Interpretation Ordinance (Cap. 94 of the 1948 Laws of Nigeria).

Another difficulty was the provision making Central and Regional laws coextensive. This was bound to produce inconsistencies particularly where Regional and Central laws dealt with the same matter. In order to minimize the effects of this situation, Section 107 of the 1951 Constitution provided that:

> "(1). Where any Regional law is consistent with any provision of existing Nigerian law, the Regional law shall prevail and the existing Nigerian law shall, to the extent of the inconsistency, be void.
>
> (2). Where any Regional law is inconsistent with any Central law, then:-
>
> (a) if the Central Law was enacted before the Regional law, the Regional law shall prevail and the Central law shall, to the extent of the inconsistency, be void; and
>
> (b) if the Central law was enacted after the Regional law, the Central law shall prevail and the Regional law shall, to the extent of the inconsistency, be void."[30]

This provision which operates to give validity to later enactments is based on the assumption that such later laws were passed with the knowledge of the former - an assumption which can sometimes be erroneous.

The laws we have discussed above together with those passed by

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30. See Section 107 of the Nigeria (Constitution) Order in Council, No. 1172.

the Southern Cameroons legislature before 1961 comprise the "existing laws" which were by Section 53(1) and (4) of the West Cameroon Constitution of 1961 to apply in that state. As we have just seen, the "existing laws" themselves were far from precise, so one cannot say with great certainty the extent to which Central and Regional Nigerian legislations will be applied in Cameroon and how the Cameroon courts will treat a conflict problem emanating from the Nigerian legislation. This is a matter about which the courts must sooner or later say something.[31]

Native Law and Custom

The Southern Cameroons High Court Law 1955 provides by Section 27 that native law and custom shall be enforced provided such law and custom is not repugnant to natural justice, equity and good conscience. It further provides that where there is no express rule applicable to the matter in controversy, the court shall be governed by justice, equity and good conscience.

Provisions like this, though not uncommon in most colonial legislation, particularly those dealing with the establishment of High

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31. See generally Elias T.O., The Nigerian Legal System, pp. 166-171.

Courts, are not without their problems. They raised just as many, if not more, problems as were raised by the legislation with regard to the reception of English law. The problems raised by this provision were, however, of a different nature. One such problem which easily comes to mind is the question of determining by what name to call the type of law which was to be thus enforced. Various names have been suggested. These include names such as primitive law, early tribal law, pre-law, folk-law and customary law, to name just a few. Most of these names are either inappropriate or highly objectionable for one reason or another so one is almost irresistably drawn to the conclusion that we need not bother about a name because the question of christening native law and custom, like any other system, is bound to be tied up with problems of semantics. This, however, will not do because if one is going to talk intelligently about a particular system, one must be able to refer to it as a genus. In this respect, it seems that the name "customary law" is, on balance, the most acceptable for it is the least objectionable of the various names used and it describes quite satisfactorily the particular law we are talking about, namely, law which is basically customary, although one might remark here that this customary nature might not remain forever. Work on the problem of "recording", "restating" and "codification" of customary law is being

carried on in most African countries with varying degrees of enthusiasm. In this connection one might mention the splendid work which Mr. Cotran has done for the Kenya Government.[32] Indeed, the name "customary law" is inappropriate where there is already some form of legislation on the subject.[33]

Having decided to settle on the words "customary law", we are then faced with the further and more important question of the content of such law. Here again, opinion is very varied. Bentham, representing the extreme view, had this to say:

> "Written law is the law for civilized nations: traditionary law, for barbarians: customary law for brutes .... , the customary law is a fiction from beginning to end."[34]

There are others like Sir Henry Maine who saw customary law or "primitive law", as they called it, only in its historical perspective,[35] while Driberg, adopting a functional approach to customary law, regarded it as a means of restoring the social equilibrium.[36] Others tended to

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32. Cotran, E.: Kenya: Restatement of African Law, Volume I, The Law of Marriage and Divorce, Sweet & Maxwell, 1968.

33. Allott, A.N., Law and Language: An Inaugural Lecture delivered on 2nd March, 1965, School of Oriental and African Studies, University of London, 1965, p. 4.

34. Ibid, p. 1, note 1.

35. Ibid, p. 5.

36. Driberg, J.H., The African Conception of Law: Journal of Comparative Legislation, 1934, pp. 230-245.

set customary law up against the mirror of Western written law and to argue that because there were no courts[37] or law enforcement officers,[38] one could not sensibly refer to customary law as law strictu sensu.

Most of these arguments seem to miss the central issue about customary law for they are interested in peripherial matters rather than the real content of customary law which is the existence of normative rules of behaviour and a machinery for settling any breach of such norms. In talking about norms, one is not unmindful of the further problem of differentiating between legal and social norms. Be that as it may, it would seem that most of the arguments about customary law are today basically academic for as Professor Allott points out:

> "the study of law, especially that of Africa, is increasingly recognised today as a central portion of the general comparative study of legal institutions."[39]

Despite these arguments, the British colonial administration (and indeed the Germans and the French), recognised the existence of customary law which was to be enforced in Cameroon with the proviso that it was not repugnant to natural justice, equity and good conscience

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37. Middleton and Tait: Tribes without Rulers, London, 1958.

38. Hoebel E.A., The Law of Primitive Man, Harvard University Press, Cambridge, Massachusetts, 1964, p. 28.

39. Allott, Law and Language, op. cit., p. 5.

nor incompatible with any law for the time being in force. This raises yet the further question of determining the criteria by which individual rules of customary law can be caught by this proviso. The courts which were charged with the responsibility of pronouncing on the repugnant rules of customary law were obviously the superior courts which were initially manned almost entirely by colonial judges. It is therefore little wonder that they used British ideas of justice, equity and good conscience. Indeed, Sir Sidney Abrahams is recorded as having said in a speech which he delivered at the London School of Economics in 1948, that:

> "Morality and justice must of course mean British and not African conceptions of these. Were that not so British justice would be looking in two different directions at once."[40]

A contrary view was, however, expressed by Sir James Marshall when he said:

> "My own experience of the West Coast of Africa is that Government has for the time succeeded best with natives which has (sic) treated them with consideration for their native laws, habits and customs instead of ordering all these to be suppressed as nonsense and insisting on the wondering negro at once submitting to the British Constitution and adopting our ideas of life and civilization ... What I wish to say is that the natives of the Gold

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40. Ekow, Daniels op. cit. p. 283 quoting from the speech of Sir Sidney Abrahams in the Journal of Comparative Legislature and International Law, 1948, No. 30, 3rd Series at parts 3 and 4, pp. 1 - 11 at p. 8.

> Coast and the West Coast of Africa have a system of laws and customs which it would be better to guide, modify, and amend, rather than to destroy by Ordinance and force."[41]

This dichotomy of views runs through the judicial pronouncements and perhaps supports the conclusion drawn by Park from decided cases that:

> "the courts decide whether a particular rule is to be rejected for repugnancy rather in an ad hoc manner."[42]

It certainly "would be unwise to attempt to formulate generalisations",[43] but it would take a lot of persuading to turn one's sympathy from the argument that English judges and administrators largely decided the problems of repugnancy on English ideas of natural justice, equity and good conscience. If Africans trained in English law tend to see this problem from the point of view of English ideas, then a fortiori, this must be even more so with English judges. In saying this, one is not unmindful of situations such as were observed by the Judicial Committee of the Privy Council in Danmole v. Dawodu, that:

> "the principles of natural justice, equity and good conscience applicable in a country where polygamy is generally accepted should not be readily equated with those applicable to a community governed by the rule of monogamy."[44]

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41. Ibid, op. cit. p. 284.
42. Park, op. cit. p. 72.
43. Ibid
44. Danmole v. Dawodu [1962] 1 W.L.R. 1053 at p. 1060.

Since we cannot formulate any general criteria to be used in testing repugnancy clauses, it might be useful to consider seriatim the three components of the repugnancy clause. If treated in great detail, this would perhaps involve belabouring a point which has been fully treated elsewhere,[45] so we must here confine ourselves to a cursory mention of the striking elements in the clause.

The term "natural justice" raises both philosophical and theological problems. Is there a natural justice or a natural law? Is this justice written on the hearts or in the conscience of all men and therefore one and indivisible, or are these questions raised simply because man seeks some anchorage as refuge from the upheavals with which the world is ridden?[46] Whatever the answers to these questions, it seems that the notions of natural justice are uppermost in the minds of men after an upheaval as was shown by the post war revival of natural law thinking. Be that as it may, the idea of natural law is, notwithstanding the lex talionis, as old as the human race, and has influenced the development of both domestic[47] and international law.[48]

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45. Allott, Essays in African Law, op. cit., pp. 197-201; Park op. cit. pp. 69-75; Ekow Daniels op. cit. pp. 266-29.

46. Allen C.K., Aspects of Justice, London, Stevens & Sons, 1958, p. 8.

47. Quite a lot has been written about natural law and natural justice. Some quite interesting accounts can be found in Professor Lord Lloyd's Idea of Law, 1964, Penguin, Chapter 4 passim, and Bodenheimer: Jurisprudence, The philosophy and Method of Law, Harvard University Press, Cambridge, Massachusetts, 1962, Chapter 9 passim.

48. Grotius and Hobbes and other founders of Modern International Law were able to do so because they believed, like the stoics, that there was a natural law the source of which derived from the nature of man.

Thus, in English domestic law one ~~very~~ often finds that natural justice is sometimes raised as a plea by defendants. When it is so raised, it almost invariably means that the defendant has not been treated according to the due processes of law.[49] In such situations, the courts usually arrive at decisions which in most cases do substantial justice. Recourse to natural justice, however, can never cover up all the loopholes. In this connection, one can mention cases involving unjust enrichment or the duty to rescue those in danger. On the whole, people have always turned to natural justice to solve situations such as the one which was solved in the recent West Cameroon case of Njume and Paul Ngeh v. Gustav Etone Ngome.[50] This case was an appeal from an order of the Appeals Officer of the Native Court to the West Cameroon High Court. The plaintiffs were asking for an order made by the Kumba Native Court Appeals Officer to be declared unconstitutional and unofficial. The case itself is very interesting, but we shall limit ourselves to that part of it which deals with natural justice. Briefly, the defendant and one Pauline Mekong had been married according to native law and custom for 10 years without issue. In 1952, Paulina Mekong left and eventually went to live with one Ngeh in the same house. On January

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49. See generally Allott's Essays op. cit. p. 198

50. West Cameroon Law Reports 1962-1964, pp. 32-33.

28th, 1953, she gave birth to twin sons, the plaintiffs, and she and Ngeh and the twins lived together till the defendant brought a suit in the Kumba Native Court against Paulina Makong for a declaration that the twins were his. He was successful as Ngeh had not paid the full bride price. On appeal to the Special Appeals Officer, the decision of the Native Court on the paternity of the children was upheld. This decision led to the further appeal to the High Court where Gordon, C.J., relying on the Nigerian case of Edet v. Essien[51] gave judgment on behalf of the plaintiffs.

> "Apart from this aspect of the case, it was also considered that the children who were close to 11 years at the time when the order was made were not parties to the suit. The circumstance in itself clearly indicates, that neither the elements of natural justice nor the constitutional provisions were adhered to. The omission of the court to give these children of 10 years an opportunity to be heard in a matter which vitally concerned them and their future life, was in flagrant breach of the accepted principles of natural justice."[52]

"Natural justice" is here being used in the sense of audi alteram partem. It follows from this that natural justice must have played a big part in assisting the judge to grant the plaintiffs' prayer.

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51. Edet v. Essien, 11 N.L.R. 47

52. Allott, Essays in African Law, pp. 195 - 197.

It is also possible to argue that the exclusion of the children was contrary to equity. In this context and, indeed, in that of the proviso, equity must import the general idea of fairness otherwise it would be tautologous if it meant the technical equity already referred to above.

"Good conscience" which has strong moral, religious and philosoplical connotations does not lend itself easily to explanation. The word "conscience", as we have already seen, played no small part in the development of equity.[53] The morality, theology and philosophy which played a large part in moulding the conscience of the judges was Western orientated. This meant that the judges tended to see the African situation through the eye of an alien morality, theology and philosophy. These were bound to weigh heavily whenever a judge decided to use his conscience to dispense justice where all other means had failed. Such decisions were therefore bound to be strongly influenced not by the ethos of the people, but by the ethics of the judge.

Customary law was to be dispensed with not only when it was caught by the repugnancy clause, but also if it was felt to be incompatible either directly or by implication with any law for the time being in force. This proviso does not lay down any machinery for determining incompatibility by implication. It was probably left to the judges to

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53. Allen C.K., Law in Making, op. cit., pp. 406 - 407.

determine this. What is more interesting is the question whether the incompatibility in this respect was limited to the local written law (i.e., local statutes and other legislation). It seems that this was the intention, otherwise it would have made nonsense of the general recognition given to customary law if this law had to comply with the English Common Law and statutes of general application as these were never developed with customary law in view.[54]

There is a further provision in Section 27(4) of the Southern Cameroons High Court Law, 1955 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."

This simply means that in such situations the judge will exercise fairness in arriving at a decision.

Having got so far in what seems to have been a great hurdle race, we are still faced with the question of establishing the content of customary law and deciding on those who qualify as natives. We shall come back to the question of the content of customary law when we deal with specific aspects of the law in later chapters. For the moment

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54. Allott, Essays in African Law op. cit. p. 196.

we must limit ourselves to the passing observation that the questions of the content of customary law and those to whom such law applies raise problems of internal conflict, not only between the adopted law and customary law, or between the various customary laws *inter se*, but also between these and Islamic law which by Section 2 of the Southern Cameroons High Court Law, 1955, is to be treated as customary law. It is, however, not intended here to spend too much time on the question of internal conflict of laws, partly because this has been better dealt with elsewhere[55] and partly because this chapter is devoted to pointing generally to the various sources from which the law of Cameroon is derived. Suffice it to say that on the whole, customary law has worked well. It has usually been established by taking judicial notice of cases, through assessors and referees, and even through legislation such as the Land and Native Rights Ordinance[56] which operates in West Cameroon. The decisions of the Native Courts, as well as those of the Higher Courts, have also played an important part.[57] No less important has been the contribution made by books such as Meek's "Land Tenure and Land Administration in Nigeria and the Cameroons" to which recourse is often had in land matters. One might add here that there is as yet a dearth of material of this nature.

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55. Ibid, part II passim.

56. Cap. 105 of the 1948 Laws of Nigeria.

57. An example is the case of N. & K. Ngeh v. Ngome referred to in Note 42 supra.

Islamic Law

It seems tedious to spend time talking about Islamic law which has already been included under the general title of customary law, and invidious not to do so because Islamic law is in its own right a well developed system of law and therefore merits some discussion, even if generally.

In Cameroon, as in most West African countries, Islamic law is regarded as a variety of native law and custom,[58] rather than as a distinct legal system as in East Africa. Generally, opinion seems to favour the spplication of:

> "Islamic law under the umbrella of native law and custom, since this allows for an infinite variety of gradations within a fairly strict application of Islamic law in strongly Moslem areas, an application of purely pagan laws in entirely pagan areas, and any variety of amalgam in the areas in between."[59]

Islamic law in itself consists of:

> "a body of rules which gives practical expression to the religious faith and aspirations of the Moslem. Total submission to Allah is the fundamental tenet of Islam, and the law which is associated with the religion defines the will of Allah in terms of a comprehensive code of behaviour covering all aspects

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58. See Note 1 supra.

59. The Future of Law in Africa. Record of the proceedings of the London Conference of 28th December, 1959 - 8th January, 1960. Edited by Professor Allott A.N., Butterworths & Co., London, 1960, p. 7.

One hopes that the word "pagan" is used in this context purely in contradistinction to the religious basis of Islamic law.

> of life. Known as "Sharia", a derivative of an Arabic root word meaning "track" or "road", this law constitutes a divinely constituted path of conduct."[60]

In this respect, Islamic law is a personal law with its roots firmly founded on the Islamic religion. It is therefore, in origin, not a territorial law like customary law, although it seems fair to remark here that customary law has tended as a result of its being limited by various Ordinances to natives only, to partake more and more of the nature of a personal law.

In West Cameroon, where Islamic law forms part of the customary law, there are two types of people who come under its jurisdiction. Firstly, there are those who are traditionally Moslems, and secondly, there are the natives who have embraced Islam as a religion. There is no difficulty with the first group who are under the jurisdiction of the Alkali. With regard to the second group, there can be some difficulties because they occupy a somewhat hybrid situation in which they are governed by both Islamic law and native law and custom. The Nigerian case of Mariyama v. Sadiku Ejo[61] highlights the type of problems that can arise. The case concerned an Igbirra couple who had become Moslems. It was suggested that because of their religion, the question of the custody of their child on the dissolution of the marriage should

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60. See Islamic Law by Coulson N.J. in "An Introduction to Legal Systems", Edited by Derrett J.M.D., Sweet & Maxwell, London, 1968 pp. 54-79 at p.54; David R. and Brierley J.E.C. "Major Legal Systems of the World", London, Stevens & Sons 1968, Part 4, Chapters 1 - 3.

61. Mariyama v. Sadiku Ejo [1961] N.R.N.L.R. at p. 81.

be governed by Islamic law. The court arrived at a contrary decision because they had shown by their conduct, namely, that the wife did not observe chastity for 90 days after dissolution of the marriage as required by Islamic law, that they intended to be governed by Igbirra customary law. Perhaps a few comments ought to be made about this case, which raises some quite interesting points. The first question concerns conflicts within customary systems. The parties to the action were Moslems by conversion, so the question was whether their affairs were to be governed by Moslem law or by Igbirra native law and custom. Moslem law was ruled out because the child, coming as it did 10 months after dissolution of the marriage, meant that the period of 90 days enforced chastity which is imposed by Moslem law on a divorced wife for the purpose of detecting any pregnancy was not observed. Thus the proper law to apply was Igbirra native law and custom. The second question was whether custody of the child should be granted to the respondent. The court thought that in the interest of the child, which was paramount, this could not be done. Besides, such an order would be contrary to natural justice and good conscience.

The Islamic law applicable in Cameroon is that developed by the Maliki School.[62]

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62. There are 4 schools of Islamic law, namely the Maliki's, the Hanafi's, Shafiis and Hanbalis. These Schools are in essence the same. They vary in characteristics which were fashioned largely by their circumstances or origin and growth. See Anderson J.N.D., Islamic Law in Africa, London, Her Majesty's Stationery Office, 1954, p.172.

Local Legislation

Hitherto we have concentrated on the two main sources of law, namely, the received English law and native law and custom. Before leaving the general subject of the sources of law in West Cameroon, we must say a word about local legislation as one such source.

The Imperial Statutes of general application which we have just considered had, in order to be effective in Nigeria, to be re-enacted locally or adopted by an express local enactment. This was the practice at the beginning of British rule in the country. At first, all the legislation was done by means of Ordinances and Proclamations. The distinction between these two is that an Ordinance is a statute which is enacted by a body with a legislature which is anything but sovereign, while a Proclamation is a personal decree from a non-sovereign ruler of a British Colonial Protectorate. Both these means of legislation were usually supplemented by Orders in Council and regulations and rules made by the Governor or Governor-General with or without the advice of the legislative council. These forms of legislation were, as shown above, extended specifically to the British Cameroons.[63]

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63. First Schedule to Cap. 27 of the 1948 Laws of Nigeria.

From 1947 to 1951, when Cameroon formed part of the Eastern Provinces, it was governed by laws passed by the Central Legislative Council of Nigeria. During the period 1951-1954, when Nigeria was divided into Regions, the laws of Cameroon came from two sources. They were either passed by the Central legislature or the East Regional legislature of which Cameroon was a part. The Central legislature passed laws on an enumerated list of subjects while the Regions dealt with the rest of the matters. As we have seen above, it was not uncommon to find Central and Regional legislation dealing with the same subject. The Regional laws, however, only applied within the Region. From 1954 till reunification, Cameroon had its own legislature. It would appear that during this period Central, Eastern Regional and Southern Cameroons laws were applied side by side.

It would therefore seem that this position still applies in Cameroon by virtue of Section 53(1)(4) of the West Cameroon Constitution. This is not, of course, to ignore the Federal legislature which is now the main legislative body in the country.

Case Law

Finally, a word must be said about the place of case law as a source of law. Implicit in the statement of the Deputy Minister

of Justice referred to above,[64] is an admission of the fact that the decisions of Cameroon courts are as yet not playing their full part in the development of the law. They are, however, even if in a small way, beginning to provide binding precedent and thus making their contribution as a source of law. But the paucity of the case law and the ever increasing bulk of legislation must afflict any lover of the common law with a certain uneasiness about its future in Cameroon. Until there is a more positive indication about the future, case law will continue to play an important part as a source of law in Cameroon. At the moment, Nigerian, British and the decisions of the former West African Court of Appeal have a great persuasive force. This is, of course, in keeping with the growing tendency in the common law world to rely on decisions on statutes or cases in other countries which are in pari materia. While this is a worth while practice, it cannot be a substitute for the development of Cameroon case law.

French Law

As we saw above, the French were the first to take action in suppressing German law in Cameroon and replacing it with a system which could be better and more easily operated by French personnel. Since France was not a new comer to the colonial scene, she naturally must have developed a system of colonial laws. In order, therefore, to

64. Supra p. 341.

understand the introduction of French law in Cameroon it seems essential, even at the risk of being boring, to put into historical perspective, the introduction of French law in the colonies generally and in the Cameroons in particular.

The Charter of 4th July, 1814, recognising the right of the Central government to legislate for the colonies provided that they would be governed by particular laws and regulations. Since there was no constitutional provision for the division of the powers between parliament and the executive, it fell to the lot of the King to legislate for the colonies by means of Ordinances. This exclusive monopoly of legislating for the colonies was viewed with disfavour by many. This led to a provision in the Charter of 1830 that the colonies would be governed by particular laws. Although this was not the end of legislation by Ordinance in respect of the colonies, parliament used the opportunity to reassert her right to legislate for them. This right was first exercised in 1833 when parliament passed a law relating to the legislative regime of the colonies. The law distinguished two groups of colonies which were submitted to two distinct regimes.

In the first group were the older colonies of Martinique, Guadeloupe, French Guiana and the Reunion which were often referred

to as the great colonies. For them, the law of 1833 reserved certain matters for parliament and the rest for the King. The local assemblies also had a secondary and limited right to pass legislation on certain minor matters. The initiative for such minor legislation lay with the local Governor or Governor-General. The affairs of the other colonies were still regulated by means of Ordinances of the King and the Central legislature.

The whole system did not work well because the Metropolitan authorities still had a strong paternalistic attitude towards the colonies which were peopled mostly by slaves.[65]

The Constitution of 1848, in keeping with its egalitarian principles, brought the colonies under the same regime as the Metropole. It provided by Article 109, that the colonies would be declared French territory and would be governed by particular laws until such a time as a special law would bring them under the regime of the present Constitution. In reality, matters remained as under the Charter of 1830, and the arrêtés of the Commissioners-General became almost the only source of legislation. This course of events was only changed by

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65. Gonidec P.F., Droit d'Outre-mer, Tome I, De l'Empire Colonial de la France à la Communauté, Editions Montchrestien, Paris 1959 para. 90, pp. 122-125; Rolland L. et Lampué P., Droit d'Outre-mer, Troisième Edition par Lampué P., Dalloz, 1959, para. 153, pp. 132-133; Lampué P. Droit d'Outre-mer et de la Co-operation, Dalloz, Paris 1969, para. 50-53, pp. 49-52.

the Coup d'Etat of 1851, for the 1852 Constitution which emerged after the Coup, revived an earlier colonial principle, namely, that the Senate would regulate colonial matters by means of a Senatus-Consulte which in this case was that of the 3rd May, 1854.[66]

As before, this Senatus-Consulte distinguished two groups of colonies on much the same basis. It laid down the sources of law for the former group of colonies. These were to include Imperial decrees (Article 3), legislation by the Senate by means of Senatus-Consulte, and local legislation. Each of these organs had jurisdiction to legislate on specific matters, but the Emperor reserved the right to legislate on all matters during a state of emergency. There were, however, certain subjects (Article 6) on which the Emperor could decree only after consultation with the Conseil d'Etat.

The local governor still had power to pass minor secondary legislation. He used this power to give effect locally to the Central laws and to regulate the local administration.

With regard to the other colonies the system was simply authoritarian, for Article 18 of the Senatus-Consulte provided that

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66. Senatus-Consulte of 3rd May, 1854. Juris Classeurs de la France d'Outre-mer, textes législatifs et Règlementaires.

they would be governed by Imperial decrees under a new Senatus-Consulte to be brought out on their behalf later. This, of course, never happened, so any colonies which were acquired thereafter were placed under the regime of Imperial decrees. The changes of 1870 affected neither the status of the colonies nor the laws passed under the regime of the Senatus-Consulte.[67]

The developments leading up to the Constitution of 1878 coincided with the scramble for Africa which for France saw the expansion of a great colonial Empire. Thus while Germany was establishing her claims over Cameroon, France was strengthening her hold on French Equatorial Africa. These new colonies of France, however, continued to be governed under the Senatus-Consulte of 1854.

This period also witnessed the intensification of French assimilationist policies, the mouth-piece of such policies being the organs of the Third Republic. There was an increasing demand for a "common law" for the colonies and the Metropole. In order for such common laws which were usually passed in France to apply to the colonies, they had to be promulgated afresh by the local Governor. Such local promulgation was not intended to give the laws validity as this they

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67. Gonidec op. cit. Tome I op. cit. para. 91-92, pp. 125-130; Rolland et Lampué op. cit. para. 154-157 pp. 133-137; Lampué op. cit. para. 55-56.

had by virtue of their metropolitan origin. The aim of the local promulgation was to ensure, firstly, that the local governor verified the contents of such laws and their applicability in the locality, and secondly, to ensure that they were published in a local public document, usually the Journal Officiel (Official Gazette) in order to bring the new law to the notice of everybody.[68]

The authority for such local promulgation was granted to each colony or group of colonies by a metropolitan decree. That for French Equatorial Africa was the decree of 15th January, 1910.[69]

There were, however, two types of laws which could be promulgated in this way. In the first place, there were laws of a purely metropolitan origin. These, of course, had to be promulgated as modified by local conditions. That it was necessary to go through this procedure, posed some problems such as the relative importance of metropolitan law and the local promulgations. The problem was usually solved in favour of the metropolitan law because the local act merely affirmed the existence of the former. Also of some importance was the question whether the local governor could refuse to give

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68. Lampué op. cit. para. 113-116 pp. 102-105; Ibid La Promulgation des lois et décrets dans les territoires d'Outre-mer, Annales Africaines 1956, pp. 7 - 26; Gonidec op. cit. Tome I, op. cit. para. 93-94, pp 130-132; Rolland et Lampué op. cit. para. 172-177, pp. 150-154.

69. Lampué, Annales Africaines, p. 11.

validity locally to such metropolitan laws. Constitutionally the governor had no powers to do this.[70] Another problem was created by the situation where a number of territories, each with an individual governor, were grouped together as in French Equatorial or French West Africa. In such cases the responsibility of enacting metropolitan laws was usually in the hands of the governor-general for the group of territories, although in certain cases the individual territorial governors could exercise the right over their territories. This was what was done in Cameroon which was initially administered as part of French Equatorial Africa, although in this case, there was the additional plausible argument that Cameroon deserved a separate administration because it was richer and more advanced socially and morally than the neighbouring states with which she was administered. This may have been a convenient way of putting it from the point of view of the French Administration, but it certainly was not the only reason. Indeed, Cameroon being a Mandated territory was to be administered according to the terms of the Mandate agreement. This meant that she could not be treated like the other colonies of France.

The second type of promulgation arises usually after the acquisition of new territories. In such a situation the Central government can decree that the laws to be applied in the new colony

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70. Ibid, pp. 15-17.

will not be netropolitan laws, but those which govern an older colony. This was the case with the associated States of Cameroon and Togo. A decree of 22nd May, 1924, extended to these territories respectively, the laws and decrees in force in French Equatorial and French West Africa.[71]

In this way there was introduced into Cameroon, a dual system of law similar to that which was already in operation in French Equatorial Africa and French West Africa. The dual system of law was based on the policy of differentiation which found expression in the administrative separation of the inhabitants of the colonies into different categories. Individuals were either français, assimilés or evolués.[72] The laws were applied along these lines. All Europeans and assimilated Africans were "citoyens" and so were subject to French law while all the natives otherwise known as "sujets" were subject to native law and custom. The colonial "citoyens" were not governed by the entirety of metropolitan law, but only by those which had been declared applicable in the colonies.

The natives on the other hand were subjected to the much criticised system of indigénat which gave the administrators very wide powers

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71. Ibid, p. 19.

72. "Français" was the name used for white Frenchmen or non-Africans; assimilés were Africans who were assimilated or as close as an African could come to being European, while the evolués were the Africans who were educated and considerably Gallicized.

which they used in treating the natives very harshly. They were punished for such trivial things as failing to take off one's cap in the presence of the local administrator.

The division between persons of "statut français" or "citoyen" subject to French law and those of "statut local" or the "sujets" who were subject to native law and custom, was not always clear cut, for there were usually cases of overlap. Firstly, there were situations in which it was expressly provided that only French law would apply.[73] One such case was the suppression in Cameroon of customary criminal law by a decree of 30th April, 1946.[74] Secondly, any local principle considered inappropriate on grounds of public order would be suppressed. Thirdly, local customs not easily amenable to legal rules were ignored. Fourthly, certain natives who were subject to native law could opt for French law.[75]

The system of "indigénat" which was attacked very severely at the Brazzaville Conference of 1944 was abolished by two decrees of the French Government of 8th December, 1945 and 20th February, 1946. These decrees did not do away with the dual status of "citoyens" and "sujets". That had to await the Constitution of 1946. The Constitution did not abolish this distinction completely. The distinction between

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73. Cagan R, Contribution à l'histoire de la Justice am Cameroun, Recueil Penant, 1956, pp. 5-18.

74. Journal Officiel du Cameroun 1946, p. 705.

75. Rolland et Lampué op. cit. paras. 250-268, pp. 209-223.

citizens of "statut francais" and those of "statut local" remained, although the latter were given more rights than they previously had. Unlike before when they were by race classified as "sujet", they could now opt for the citizenship of their choice. These rights together with the internal autonomy granted by the Loi Cardre paved the way for eventual independence.[76]

The various constitutional changes which took place in Cameroon before independence enabled all the people in the territory to take a greater part in all aspects of life than heretofore. The distinction between "citoyens" and "sujets" disappeared, but the dichotomy between "droit français" and "droit local" remained, but now "droit local" existed in its own right and not as before when its existence depended on the rather negative criteria that it was not "contraires aux principes de la civilisation français" - the French equivalent of the repugnancy clause in British Africa. Thus on independence, East Cameroon like the West, had a dual system of law, but unlike West Cameroon, East Cameroon had already integrated the two systems of courts which administered French and customary law.[77] This action was the first step in the unification of all the laws in Cameroon which remains the Government policy.

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76. See Article 82 of the French Constitution of 1946 and the Loi Cardre (Loi No. 56-619 of 23 Juin 1956).

77. See Ordinances No. 59-86 of 17 December, 1959 and No. 59-247 of 18th December, 1959.

## Conclusion

We have seen from this chapter something more than the typical post-colonial legal pluralism which is characteristic of most African countries. Cameroon, like Somalia, is faced with the various customary laws as well as three imported laws although the influence of one of these is very slight. The imported laws are French, English and German law, this last being the one with the least influence. This already complicated situation is made even more so by the addition of Islamic law, and the new laws being passed by the Federal and Federated state governments. To this must be added the developments of case law in West Cameroon and jurisprudence constante in the East.

One is tempted after such a diagnosis to attempt the almost impossible task of prescribing a cure, but this must wait till a later chapter when we consider the attempts which have been made at integration But even if one could prescribe a cure, that would not lead to the quick extirpation of the Cameroon legal hydra because the legal policy of Cameroon seems to be one of gradual development as dictated by social change, or put more simply,a policy of "wait and see". This is indeed a plausible policy provided one does not have to wait in perpetuity. In any case, attempting to integrate the various customary,Islamic, French, English, and to a lesser extent, German laws, is a task which cannot be done too hurriedly.

# CHAPTER VI

# PROCEDURE AND EVIDENCE

## Procedure in the Early Traditional Courts

It is appropriate to begin this chapter by considering the procedure adopted in settling disputes in the traditional courts. These courts vary in size and structure according to the type of society which we are considering.

As we saw in Chapter I, Cameroon answers the threefold classification of most African societies into segmentary, acephalous and centralised groups.[1] The procedure for settling disputes in each of these groups is bound to be different.

Within each group, there are noticeable differences between criminal and civil procedure. These differences are distinct in the more centralised societies and much less so in the others. There is also a distinction in the procedure as between various tribunals in a particular society. Thus in a centralised society, there would be differences between procedure in the chief's court and that in the court of a sub-chief.

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1. This threefold classification follows that put forward by Fortes and Evans-Pritchard in African Political Systems, op. cit. pp. 6 - 7.

Having said this by way of a general introduction, we may now consider in detail the various modes of dispensing justice in the traditional courts. For purposes of convenience, we must first deal briefly with the segmentary societies in Cameroon which are small and unrepresentative and then go on to consider the others in slightly more detail.

In Cameroon, the segmentary societies are represented by pygmies who inhabit that part of Cameroon bordering on the Congo. They have four distinct modes of settling disputes.[2] In the first place, there is great reliance on the supernatural in the treatment of offences like incest which are considered to be grave. This supernatural element to which we shall be returning later in connection with other societies, is considered very important. Secondly, great reliance is also placed on the spirit of the forest which often comprises disguised young men who act against any evil doer. Thirdly, there is a practice by which those who have done wrong can be thrashed, and fourthly, it is always possible to take the law into one's hands and solve any disputes by argument and fighting. In all these ways, an attempt is made to ensure that peace reigns in the society, and so there is hardly any distinction between criminal and civil procedure.

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2. Turnbull, The Forest Peoples, op. cit. Chapter 4 passim.

The procedure in the other societies is not as simple as the one outlined above. This is particularly so in the centralised societies. We shall, however, consider the procedure in the acephalous and centralised societies together paying attention where necessary to marked variations. In order not to wander too far afield, we shall consider the procedure under the following headings:

(a) Ways of initiating proceedings.

(b) How the trial is conducted.

(c) The adduction of evidence.

(d) Representation of the parties.

(e) Judgments, punishments and remedies.

(a) Ways of Initiating Proceedings.[3]

These vary according to whether the society is acephalous or centralised, and whether the action is civil or criminal.

In chiefly or centralised societies, it is the duty of every one to report all crimes to the chief. Where this happens, the criminal is tried by the normal procedure in the chief's court which is usually held in the open. Criminals can, of course, also be apprehended in

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3. Elias T.O., The Nature of African Customary Law, Manchester University Press, pp. 215 - 222.

flagrante delicto. Such criminals are also triable in the chief's courts, although they can sometimes be tried by a secret society. It will have emerged from this that there are two types of tribunals in which criminals are tried. In the first place there is the chief's court which is made up of the chief as president and a number of his leading councillors. Secondly, there are secret societies which are also charged with the responsibility of trying criminals. Sometimes the chief presides over such societies, although more often than not they are presided over by a head elder. There are a variety of these secret societies such as the "Ngumba Council"[4] of Ndop area, the "Nworong"[5] of Nsaw area and the "Kwifon"[6] in the Bafut area.

Most of these secret societies dispensed justice in the chief's name. Servants of the society acted as a police force and apprehended all criminals, "policed the markets, inflicted punishments imposed by the King and his council, tried cases of witchcraft, murder and adultery with the King's wives referred to it by the King, disciplined its own members and dealt with infringements of its injunctions."[7] Secret

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4. See Assessment Report for the Clans of Bandop (now Ndop) area which was compiled by J.C. Drummond-Hay, Assistant District officer in 1925, West Cameroon Archives, Buea.

5. Re-Assessment Report, Banso District, Bamenda Division by Bridges, W.M., Assistant District officer, West Cameroon Archives, Buea.

6. Assessment Report on the Bafut area, Bamenda Division by Hawkesworth, E.G., Assistant District officer 1926, West Cameroon Archives, Buea.

7. Also see generally Chilver, E.M. and Kaberry P.M., Mimeographed "Notes on Precolonial History and Ethnography of the Bamenda Grassfields (West Cameroon) 1966 at p. 123.

societies like this are found in almost all societies whether centralised or acephalous, but they differ in their organization from the very powerful ones in the chiefly societies mentioned above which have the backing of the chief or Fon[8] to the less rigid ones in the smaller chiefdoms. Even the acephalous societies have their secret societies such as the Bakweri "elephant society" or the Douala "Ngondo".

The justice administered is mostly criminal justice. The criminals are usually arrested either in the act of committing the crimes or detected by members of the secret police which form an integral part of such societies. Other matters like breach of taboo, high treason, or cases affecting the person of the chief or members of his household are also triable by the secret police.

The majority of the other cases which come before the chief's court follow a well defined procedure. In the first place, a complaint is usually made to the wrongdoer and his family by the injured person, after due consultation with his own family. The reason for all this is to get the parties and their families duly involved in the proceedings. Cases started in this way can then proceed by means of appeals through a hierarchy of courts which Kwayeb enumerates as the family court, the sub- chief's court and the chief's court.[9] This hierarchy of courts is a feature of most centralised societies.

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8. Most of the important chiefs in Bamenda are referred to as Fons. In this work we shall maintain the generic term "chief".

9. Kwayeb, E.K., Les Institutions du Droit Public du Pays Bamiléké. Evolution et Régime Actuel, Paris, Librairie Général de Droit et de Jurisprudence, 1960, pp. 78 - 79.

Where the injured person does not want to adopt this complicated procedure, he can take the law into his own hands and seize the property of the wrongdoer. Such action, which is intended to settle the matter and which in many ways is similar to the Roman Law procedure of seizure,[10] sometimes helps to draw public attention to the case and makes private settlement impossible. Once the matter has been brought to public notice, it must go to the courts for a decision.

Disputes are also settled by the imposition of a conditional curse either on the wrongdoer himself or his entire family. The condition usually is that the curse would be automatically lifted if the wrong is remedied.

If the parties to a dispute do not want to go through the above procedures, they can submit their dispute to conciliators or arbitrators. In the former case the parties invoke the aid of two or more outsiders with a view to reaching a settlement while in the latter the matter is referred entirely to arbitrators who are chosen by the parties. Such steps are always taken when private negotiation has failed.

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10. Buckland, W.W. and McNair, A.D., Roman Law and Common Law. A Comparison in Outline, 2nd Edition, Cambridge 1952, p. 404. The difference between the customary and the Roman Law procedure is that in the latter the magistrate had to authorize the seizure.

(b) How the Trial is Conducted.[11]

Here we can only discuss the trial in the chief's court because all the other methods are irregular and that before a secret society is always done in secret.

When a matter is reported to the chief, and he considers that there is a proper case for adjudication, he fixes the time for the hearing and orders the arrest of the wrongdoer or the person against whom the complaint is made. On the day fixed for the hearing, which in most cases is the native day of rest, all the dignitaries and as many people as can afford the time, gather in the chief's courtyard, if the weather is fine, or else in his great court. The chief and councillors together with the messengers or "Nchindas" as they are called, sit on one side. The people sit on the opposite side, but within hearing distance. The parties sit in the middle facing the chief and councillors.

The case is then opened by the complainant who states the substance of his complaint, often with utter disregard of the dictates of brevity. He usually concludes his case by repeating certain generally recognised statements such as, "if I lie, may I drop dead here", or "if I lie, may my deceased parents reappear alive", or "if I lie, may the

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11. Elias, op. cit. pp. 222 - 238; Kwayeb. op. cit., pp. 80 - 81.

gods of my mother and father curse me".[12] These statements, although coming after the witness has given evidence represent the oath. Indeed, in other societies, they come before his statement or are replaced by some form of oath. These statements or the oath, whether made or taken before or after the evidence, ensure that the witness is speaking nothing but the truth.

When the complainant has finished giving his evidence, the defendant is called upon to give evidence in rebuttal. He does this at length and also concludes by repeating phrases which are intended to give credibility to his story.

While all this goes on, the chief and his councillors, as well as the people listen attentively in order to enable them to arrive at a conclusion which is based on full knowledge of the case. Perhaps such attentiveness is a necessary part of the proceedings, and is not put on just in order to acquaint the chief, councillors and people with the facts, for more often than not, the facts of the case will have been known by everybody before the hearing. A vivid example which comes to mind is one such occasion which took place at the palace of the chief in Mbem on which a man was being tried for theft, and many others were willing to come forward and give evidence, not because they had seen

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12. Kwayeb. op. cit., p. 80.

the accused steal the property in question, but because it was a known fact that he was a notorious thief. But be that as it may, the evidence given by the witnesses does sometimes help to clear up doubts.

When the complainant and defendant and their witnesses have given their evidence, the matter is then thrown open to the public or as Schapera would say:

> "When the parties concerned and their witnesses have all spoken ..... the matter is given to the dogs to bark at."[13]

Such public participation, which is carried out to a greater extent in civil rather than criminal matters, is of great benefit to the people, for besides the fact that it ensures that a fair and just solution is arrived at, it has a twofold educative effect on the people. In the first place, it trains the young in the art of public speaking, and secondly, it enables the members to learn at first hand and in detail the norms by which they are governed.

Although the procedure outlined above may be applicable in both acephalous[14] and centralised societies, it is more a characteristic

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13. Schapera, I., A Handbook of Tswana Law and Custom, London, International Institute for African Languages and Cultures, 1938, pp. 289 - 290.

14. See Abbia No. 16, 1967, p. 168. This document describes procedure in an acephalous society (Boulou) which is similar to what has been described for centralised societies.

of the latter.[15] When all the witnesses have been heard and an opportunity given to the people to air their views on the matter, it becomes almost certain which of the parties is likely to win. Lastly, the judges who consist of the chief and councillors give their views usually in an ascending order of seniority - a procedure which is not dissimilar to that adopted in a British courtmartial. The chief gives the final decision after taking into consideration all the views expressed. His judgment is usually followed by a judicial homily which is delivered in Aesopian fashion.

(c) The Adduction of Evidence[16]

As was mentioned above, the facts of the case are usually quite notorious by the time the case is heard. This means that the judges would themselves be familiar with such facts. This, however, does not prevent them from calling witnesses to give evidence because this remains the most important means of proving the veracity or falsity of the matter in dispute. The witnesses called are usually the litigants and their respective supporters as well as any others who may have any knowledge of the subject matter of the dispute.

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15. See Schapera, op. cit. p. 289; Gluckman, M., The Judicial Process among the Barotse of Northern Rhodesia, Manchester University Press, 1955, pp. 83 and 213; Bohannan, P., Justice and Judgment among the Tiv, Oxford University Press for the International African Institute 1957, p. 18 ff.

16. Elias, op. cit. pp. 243 - 256. Also see generally Allott, A.N., Evidence in African Customary Law, 1964. Les Editions de la Librairie Encyclopédique S.P.R.I. Bruxelles. (Extrait de Recueils de la Société Jean Bodin, Tome XVIII La Prenue).

Also of great evidential value are the symbols, tokens and circumstances which mark certain occasions. In most of the Donga and Mantung Division of West Cameroon, marriages are started by the sharing of a glass of palm wine.by the bride, her father and the bridegroom in the presence of friends and members of both families. This practice, though varying in detail, is quite common in those parts of Cameroon where palm wine is plentiful. In other areas marriages are started by other methods such as the sharing of Kola nuts which is common in North Cameroon or the giving of gifts. Such people as are present at such occasions are usually regarded as competent witnesses in the event of a divorce. Children of the marriage may even be exhibited in court.

Quite apart from this, there is usually a resort to supernatural or preter-natural forces as a means of eliciting the facts of the case or establishing the guilt or innocence of the parties. These super-natural means of proof fall into three rough groups, namely, oath and conditional curses, ordeals and divinations.

Some mention has already been made of the curses which witnesses sometimes bring on themselves at the end of their evidence in order to give some credibility to what they say. Oaths are another way of ensuring that nothing but the truth is spoken. There are various ways of administering the oath. In the Ndop area the oath consists either

in placing both hands in the place where the chief's stool stood and repeating certain expressions to the effect that death would befall any one who told a lie, or in stepping over a gun or a knife and saying that the same would kill the witness if he did not tell the truth.[17] If any party refuses to take one of the oaths of which these are just a few examples, he would be presumed guilty. Where both parties take the oath, the decision is then left to the supernatural. In such a case, it normally takes a long time before results, if any, are forthcoming.

Ordeals are the next supernatural means of eliciting the facts of a case. An ordeal is a very ancient mode of deciding whether a suspected person is guilty or innocent by subjecting him to an intrinsically dangerous physical test, the safe endurance of which is regarded as divine acquittal. Ordeals are almost non-existent today, but while they lasted, they tended to be used primarily in detecting crime or withcraft, particularly where the wrongdoer was unknown. The ordeal took various forms, although that by sasswood seems to have been very popular in almost all African societies. A few examples of other ordeals must now be given. Among the Bamiléké who are centralised, Kwayeb records a

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17. See the Assessment Report on the Bandop (Ndop) by Hawkesworth referred to above.

number of ordeals under the title, "judgments of god". These include, among others, the ordeal whereby the suspect has to carry a red flaming sword and cover a certain distance. If he drops the sword before covering the distance, he is adjudged guilty, but if he successfully covers the distance with the sword in his hands he is acclaimed innocent. Before the suspect undertakes such an ordeal, the palms of his hands are usually treated with an unctuous liquid prepared by a sorcerer. There is another ordeal which is performed by the suspect having to drink a large quantity of water mixed with certain concoctions. The water is drunk within a [illegible] limited time. If the suspect brings up the water, then he is innocent, but if he does not, he is guilty.[18] Ordeals are also recorded among the acephalous Boulous. One of them consists of thrusting a grain of corn specially prepared by a sorcerer into the eye of the suspect. If he is innocent, the grain will fall out, but if not, it remains in the eye. Again, a suspect may be made to drink large quantities of water after having been made to urinate. In order to be acclaimed innocent he must urinate again immediately after having drunk the water.[19]

The third category of preter-natural means of detecting crime is divination which consists in the use of natural and preter-natural

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18. Kwayeb, op. cit., pp. 81 - 82.

19. Abbia No. 16 1967, op. cit. pp. 168 - 169.

occurrences to discover an unknown criminal. Many people, particularly those in the grassfield area of West Cameroon believe that:

> "a supernatural object, associated with the spirit of thunder, can be invoked against an unknown offender."[20]

These words were used by Dr. Elias when commenting on a similar belief by the Ibo of Umueke Agbaja. This, of course, can only be carried out by special experts for a fee. Recourse is had to this means of punishment only in the cases of theft.

Among the Bamiléké , the tortoise is regarded as a very sacred animal which can detect the guilty party in an action. It is usually used in cases of theft, of withholding property belonging to another, and of adultery or abduction. Whenever a case in one of these categories is reported to the chief he must summons the parties to attend before him. Both sides then state their respective cases after having been questioned. In stating his case, the accused or defendant in a civil action holds the tortoise in his hands. When he has finished, he spits on it and puts it on the ground with its head pointing towards the chief and any notables who may be present. The tortoise then gives the verdict by its movement. If it moves towards the people then the

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20. Elias, op. cit., p. 231.

defendant is said to be innocent, but if it moves in the opposite direction that establishes his guilt. The functions of judge and jury in such cases seem to be no more than to ratify the verdict of the tortoise. If would seem that the defendant is always guilty in all such cases because the tendency would be for the frightened tortoise to move away from people in an attempt to escape rather than to establish guilt. Another way of using the tortoise to detect crime or establish the guilt of a suspected person is for that person to kill the tortoise and pronounce a curse of death on himself and his family. He then gives the carapace to the complainant who prays daily for doom to befall the suspect. If the suspect or any member of his family takes ill or dies, this is usually attributed to the tortoise. In such a case the suspect must pay for the wrong complained of as well as for the services of a sorcerer who stops the calamity.[21]

There are, of course, many other forms of divination, but two which are closely associated merit special mention. These are the spider and "Ngam" divination which are well known in the Nwa district of Donga and Mantung Division in West Cameroon, and indeed among all

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21. Egerton, F. Clement C., African Majesty. A record of refuge at the Court of the King of Bangante in the French Cameroons, London, George Routledge and Sons Ltd. 1938, pp. 196 - 199, 243 - 244.

the Tikar tribal groups in Cameroon. Most of the Tikar tribes are centralised. There is recorded evidence that this form of divination was also known in Upper Bassa - an acephalous group.[22]

In order to settle big and complicated cases, recourse is usually had to the spider. It lives in a burrow and normally comes out at night in search of food. Whenever a diviner discovers a burrow, he clears and levels the area around it and places a large clay pot which has no bottom over it. He then puts into this pot about 200 leaf cards on each of which is carved a particular pattern representing a particular phenomenon or thing. He then covers the bottom of the pot with plantain leaves in order to keep the area covered by the pot dry and to prevent the escape of the spider. The poor spider comes out at night to look for food and because it is caged in, it makes the best use of the area available to it. In this way it scatters all the leaf cards around. At dawn, the spider, perhaps hungry and in disgust, retires into the burrow. The diviner then comes around and interpretes various events from the displaced cards.[23] Sometimes the diviner plays these cards himself and interpretes the events from them. It is not

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22. Gebauer B., Spider Divination in the Cameroons. 1964. Milwaukee Public Museum. Publications in Anthropology 10, 1964, p. 151.

23. Gebauer, op. cit., pp. 42 - 45, 39 - 42.

customary for the diviners to be called upon to give evidence in disputes, but there may be rare occasions where their final word in the solution of a difficult matter is greatly appreciated.[24]

In the old days, torture was not unknown as a means of eliciting facts, but like the ordeal it has fallen into desuetude.[25]

There has grown up, with the appearance of writing in recent years, a form of documentary evidence which features very prominently in cases involving contracts of apprenticeship. An illiterate mason, carpenter, tailor or indeed any tradesman who wants to take on an illiterate apprentice normally acquires, on payment of an agreed amount, the services of someone literate. The job of the literate man is to write down the conditions of the contract of apprenticeship. In the event of a breach of such a contract, the document is always tendered in evidence before the chief or the appropriate tribunal. This practice seems to have grown so rapidly, that it is now a common habit for an illiterate father to secure the services of someone literate who writes down what he has received as bride price for his daughter. Even illiterate bridegrooms and sometimes brides too have been known to do the same.

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24. Ibid, pp. 148 - 151.

25. Abbia No. 16 1967, op. cit., p. 169.

Such documents are usually accepted in evidence by the chief or the native courts if they contain enough evidence to show that the parties had signified their acceptance of the contents. Such acceptance is usually signified by the right thumb print of the parties or party on whose behalf the document is made. In order for such documents to be accepted as evidence in other courts, they must comply with the provisions of the Illiterates Protection Ordinance (Cap 88 of 1948, Laws of Nigeria) which provides by Section 3 that:

> "Any person who shall write any letter or document at the request, on behalf, or in the name of any illiterate person shall also write on such letter or other document his own name as the writer thereof and his address; and his so doing shall be equivalent to a statement -
>
> (a) that he was instructed to write such letter or document by the person for whom it purports to have been written and that the letter or document fully and correctly represents his instructions; and
>
> (b) if the letter or document purports to be signed by the signature or mark of the illiterate person, that prior to its being so signed it was read over and explained to the illiterate person, and that the signature or mark was made by such person."

These provisions do not apply to Barristers or Solicitors acting in the course of business.

(d) Representation of the Parties

The practice of representing parties in litigation is not unknown in African customary law. "The origin of this widespread practice", says Dr. Elias;

> "may possibly be traced to the indigenous principle that the head of the family alone is responsible for the wrongs of members of his household vis-a-vis third parties. A wronged person would consult his elder brother in minor cases and his father in major ones; in either case, it is the head who will take the matter up with the village elders. For the same reason, it will be noticed that in all chiefly societies, the chief it is who represents his community in all dealings with other communities. Driberg has noted the interesting Chagga practice according to which, besides the recognised elder of the clan, there is someone called 'the Great one in Legal Matters'. It is his duty to represent the clan not as a paid advocate of an independent litigant, but as a legal guardian. 'It is a small step', wrote Driberg, 'from this to the direct representation by feed council which we find as an established custom over wide areas in the Congo and in Sierra Leone where (according to Drapper) pleaders wore masks to avoid recognition'. These champions-at-law are to be found in almost all African Societies, from the most highly centralised down to the most segmentary. This explains why in every Native Court Ordinance enacted by the British Administration in Africa one invariably finds provision for voluntary legal representation of a litigant before a native court by the husband, wife or other relation though never by a qualified advocate."[26]

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26. Elias, op. cit., pp. 240-241. Also see Section 27 of the Customary Courts Law of 1962 which makes provision for litigants in the Customary Courts in West Cameroon to be represented by relatives.

Lambert, writing about the Kikuyu in Kenya, said that the:

> "Muthamaki wa chira i.e., the pleader in law or the legal expert establishes his position by skill. As his reputation for skill in the determination of suits and for knowledge in precedent grows he will become known over a wider and wider area both as a discerning judge and an expert advocate."[27]

In some cases, the legal representation is a group affair for Gebauer remarks that:

> "in legal matters the entire family shares in bringing an accusation; all appear in court to stand up together with the accused to share in his guilt."[28]

(e) Judgments Punishments and Remedies

As we have seen above, disputes are settled not only in the chiefs' courts or secret societies, but also by means of negotiation and arbitration. It is not unusual for the parties to negotiate a settlement of any dispute between them. Where they do so, it is usually because of pressure brought on them either by their relatives or the public. This means of settling disputes is not nearly as popular as arbitration which involves the willing submission of a

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27. Lambert H., Kikuyu Social and Political Institutions, International African Institute, Oxford University Press, London, 1956, p. 104.

28. Gebauer, op. cit., p. 151.

dispute to an independent party whose solution is bound to be respected by both parties because it is more likely to be fairer. Besides that, it is better to submit to an independent party as that is more face saving and dignified than having to yield to an opponent. Parties to such arbitration normally indicate their acceptance of the decision by drinking out of the same cup or doing something to that effect.

In the traditional societies, judgments are given with a view to righting wrongs, adjusting claims and defending norms - a view which is true of judgments in all societies the world over. Judgments of this nature help to maintain the social equilibrium by preventing a permanent break in relationships. This is indeed a worthwhile purpose which the people in the industrialized societies with their atomized families could welk emulate. Indeed, there has been talk in Britain that every attempt ought to be made to reconcile marriages which are at the point of breakdown. No less similar in function are the tribunals which have been and are still handling employer/employee disputes.

Judgments of the traditional courts are, as we have seen above, given with a view to keeping the society in tact. The verdict, however, normally prescribes the type of punishment with which the guilty party would be visited. These vary according to whether the offence is criminal or civil. In sum, the punishments are all aimed at reconciliation

between the offender and victim, as the harsher ones were all abolished by the colonial administrations. Sometimes, in this process of reconciliation, it is important to do something to the person or property of the victim. This might involve thrashing of the wrongdoer or fining him or confiscating his property. The fine has, since the introduction of money, become very popular.

The procedure and evidence which we have considered above would be equally applicable in the traditional courts in both West and East Cameroon. These courts have, however, been substantially altered because of the introduction of statutory Native Courts to which we must now turn.

West Cameroon: Criminal and Civil Procedure in Native Courts.

We have already seen that when Britain introduced English law in the British Cameroons, every effort was made to preserve the traditional legal institutions which were not "repugnant to natural justice, equity and good conscience". At first , this amounted to an acceptance of the customary law, the traditional courts in which this law was applied and the procedure adopted in these courts, but with time these institutions were brought under stricter control by means of regulations and statutes, and today they have either been superseded

or completely transformed in such a way that they no longer reflect their traditional past. The ordinances which are instrumental to such transformation are intended:

> "to make better provision for the administration of justice and the constitution of customary courts."[29]

The ordinance which regulated these courts in the British Cameroons and which, like most other ordinances, came through Nigeria, was the Native Courts Ordinance (Cap. 142 of the 1948 Laws of Nigeria) which has now been superseded by the Customary Courts Law of 1962. This law provides by section 64 that:

> "the Secretary of State may declare that all or any Native Courts established by the Native Courts Ordinance in any specific district or area shall be deemed to be customary courts established under this law, and to be severally of such grades as he may specify, and thereupon the jurisdiction conferred upon such courts by the Native Courts Ordinance shall be deemed to have been conferred upon such courts under this law and shall be exercised in all respects and may be determined or varied in accordance with this law and nothing in the Native Courts Ordinance shall apply to such courts."

It is by virtue of this section that most of the rules of procedure worked out under the Native Courts Ordinance continued to be applied

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29. See the title to the Customary Courts Ordinance (Cap. 142 of the 1948 Laws of Nigeria) and that of the Customary Courts Law in West Cameroon of 1962.

in the Customary Courts in West Cameroon after 1962. These procedural rules were worked out in accordance with the power given to the Commissioner of the Cameroons[30] to make rules providing, inter alia, for the practice and procedure of customary courts.[31] The customary rules thus drawn up were modified in 1965. The 1965 rules, which are in statutory form, consist of 21 parts.

Part I deals with definitions and Part II with the constitution of the courts while Part III is devoted to the institution of causes or matters. This is usually done by summons in civil matters and a summons with a warrant of arrest in criminal causes. There is, of course, adequate provision made to cover situations where arrests are made without warrants. Part IV deals with issue, service and execution of process or other documents. Provision is also made for service and execution out of jurisdiction, but within West Cameroon as well as for the service of process or other documents forwarded from the High Court or Magistrates' Courts of West Cameroon (Part V). The next three parts deal respectively with bail, the procedure to be adopted in the case of non-appearance of the parties at the hearing,

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30. After 1961, all references to Commissioner of the Cameroon were replaced by Prime Minister of West Cameroon.

31. Section 49 of Native Courts Ordinance (Cap. 142 of the 1948 Laws of Nigeria).

and interlocutory applications. The proceedings at the hearing are laid down in Part IX. At such hearings, the subject matter of the claim or charge is read out by the clerk of the Native Court to the defendant or the accused who can plead "guilty" or "not guilty". In the event of an accused in a criminal charge not entering a plea to the charge, one of "not guilty" is entered on his behalf. If the defendant or accused admits the claim or offence, the court then proceeds to give judgment, but if he does not, then the plaintiff or complainant must adduce evidence to prove his case. The court has to decide whether any case has been made out or not at the close of the complainant's evidence. If it is considered that no case has been made out, the charge is dismissed and the accused discharged and acquitted. Where the decision is otherwise, the accused is then called upon to make his defence and adduce all the necessary evidence in support of such defence. Much the same procedure is followed in civil cases. During such proceedings, the court can, on its own motion, or at the request of the parties, adjourn the hearing. The next part appropriately deals with evidence. Every witness who gives evidence at a trial must do so on oath or affirmation and any such evidence must be recorded. The next six parts deal with judgments and their execution, while the last four deal respectively with appeals,

records of proceedings, costs, fees and fines, and the accounts to be kept by the court clerks.

These rules which are in many ways similar to the rules of procedure in a Magistrate's Court, are fairly complicated and technical to be operated by court clerks who have been described by a Secretary of State for Local Government as men who:

> "suffer from the handicap that not only are their educational qualifications not high, but also that they have up to now had little if anything in writing to guide them in their work."[32]

These words were said in the foreword of a "Manual of Practice and Procedure for Court Clerks" which was produced with the sole aim of assisting these rather ill-equipped clerks. It covered "virtually everything which a court clerk needs to know regarding the day to day conduct of his work and should lead, if studied and followed, to much greater efficiency."

Perhaps an example of one of the provisions of the manual will illustrate its importance as a guide. Chapter one deals with the first steps in any case. These include the preliminary inquiries by the Court Clerk and the issue of process. The preliminary inquiries

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32. See Manual of Practice and Procedure for Court Clerks published by the Ministry of Local Government, Buea, at p. 1. The Secretary of State at the time was Mr. J.N. Lafon.

are designed to ensure that the plaintiff is acting properly either on his own behalf or in a representative capacity. These rules do not, of course, have the authority of law.[33]

Before concluding this section, it is essential to point out that the New Cameroon Penal Code has suppressed the limited criminal jurisdiction of the Customary Courts, so most of the procedure so far discussed is applicable only in civil matters.

Procedure and Evidence in Alkali Courts.[34]

It is not our intention in this section to deal in detail with procedure in Alkali Courts as that would amount to a repetition of what has already been said since these courts are treated as a species of the Customary Courts. The personal nature of Islamic law, however, introduces pecularities into the general rules of procedure which we have just considered. "The essence of the Islamic law of procedure", it has been recorded,

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33. Ibid, pp. 1 and 4.

34. Anderson, J.N.D., Muslim Procedure and Evidence, Journal of African Administration, 1949, volume 1 part 3, pp. 23 - 29 and part 4 pp. 176 - 183; Anderson, J.N.D., Islamic Law in Africa, H.M.S.O. Colonial Research Publication No. 16 1954, pp. 171 and 191-4; Schacht, J. An Introduction to Islamic Law, Oxford at the Clarendon Press, 1964; Also see generally The Report on Native Courts (Northern Provinces) Commission of Inquiry, Lagos 1952.

> "consists of instructions to the Kadi (Alkali) whose duty is to act in a certain way e.g., to treat both parties equally, not to distort their statements nor suggest answers to the witnesses, but beside this, the aspect of validity too is recognised."[35]

This means that a great deal of the procedural matter in an Alkali Court depends to a large extent on the Alkali who is usually a man of great learning and respectability. In his job, he is assisted by clerks (Mallams) who are trained in the law.

Proceedings in an Alkali Court begin, as in the other customary courts, by the claimant laying his complaint before the Alkali who has to decide whether or not there is a cause of action for which the defendant can be sued. If the defendant, on being questioned, admits his guilt or liability, then the case is decided there and in favour of the plaintiff. If the defendant does not admit his liability, then the plaintiff must produce his evidence, the usual way being for him to call his witnesses. At this stage, circumstantial evidence also plays an important part, for it is sometimes treated as conclusive of the facts alleged.[36] If there are no witnesses to call, the defendant may, on the request of the plaintiff, take an oath in relation to the facts only. Failure to do this might lead to

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35. Schacht, op. cit. p. 189.

36. Anderson, Islamic Law in Africa, op. cit., p. 193.

a ruling against him. In the event of a claim and counterclaim, both parties must take the oath. Such a situation is productive of great difficulties which are usually resolved by turning to the procedural rule which provides that presumptions operate in favour of the party denying. Thus where:

> "A instructs B to buy a slave for 1000 (dinars) and hands the money over to him, the slave whom B has bought is worth 1000, but A claims that B has paid 500; then the presumption operates in favour of B."[37]

This is only one example of the operation of such presumptions.

As already mentioned, the testimony of witnesses is the most important form of evidence. There need not be many witnesses as two are sometimes enough. Certain categories of persons such as relatives of the party in whose favour, or enemies of the party against whom the evidence is sought are inadmissible as witnesses.[38] This is quite apart from the fact that the Alkali relies heavily on his own knowledge of the facts.

Criminal Procedure in the Magistrates' and Higher Courts.[39]

Criminal Procedure in West Cameroon is embodied in the Criminal

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37. Schacht, op. cit., p. 191.

38. Ibid, pp. 193 - 4.

39. For a detailed consideration of Criminal Procedure see Brett, Sir Lionel and McLean, L., Criminal Law and Procedure of Lagos, Eastern Nigeria and Western Nigeria, London, Sweet & Maxwell Ltd., 1963 paras. 107-720.

Procedure Ordinance[40] which contains a comprehensive set of rules governing procedure in both the Magistrates' and Supreme Courts. Although the ordinance may be embarrassing and the draughtsmanship misleading,[41] it deals satisfactorily with the problems of Criminal Procedure to which we must now turn.

There are usually two parties to a criminal action. These are the prosecution and the defence. Most criminal actions in Cameroon are usually brought in the name of the people either by the Procurator-General or the Commissioner of Police. The former deals with the more serious crimes while the latter deals with the others. This is just for the purpose of expediency because the Procurator-General is responsible for most criminal prosecutions.

The more serious crimes are usually tried in the High Court and the others summarily by a Magistrate's Court.

It is a cardinal point of the criminal procedure that all trial must be started by a complaint. In the Magistrate's Court proceedings are usually begun by the police laying a complaint before the magistrate, although theoretically they could be begun by any one. Where this is

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40. Cap. 43 of the 1958 Laws of Nigeria.

41. See R. v. Zik's Press Ltd. [1947] 12 W.A.C.A. 202. The ordinance was described in this case as embarrassing and the draughtsmanship misleading.

the case, the magistrate issues a summons stating the complaint and the time and place at which the accused is required to appear. The summons is served either by a police officer, a court officer or a public servant. If the accused fails to appear then the magistrate can issue a warrant authorising his arrest. Such a warrant may, of course, be issued in the first instance if there is clear evidence (usually a sworn oath) that the accused is likely to disregard the summons. Quite apart from these two methods, an accused can also be arrested without warrant. Although this method is more often resorted to by police officers who must charge the accused on a charge sheet stating the offence specifically and duly signed, private persons may also arrest any one committing an offence or suspected of having committed one.

In the High Court, on the other hand, criminal actions are commenced in one of the following five ways:

(i) by information of the Attorney-General (Procurator-General in the case of West Cameroon);

(ii) by information filed in the court after the accused has been summarily committed for perjury by a judge or magistrate;

(iii) by information filed in the court after the accused has been committed for trial by a magistrate;

(iv) on a complaint whether on oath or not; and

(v) it would seem that under the provisions of Section 340(2) of the Criminal Procedure Ordinance, a state council can file an action.[42]

It is important to say here that we have used the word information to mean an indictment charging the person named in it with the offence which is described in the information.

When a charge has thus been preferred against the accused, the next thing is to consider whether he can be granted bail pending the trial. Bail is almost automatic in cases of misdemeanour, but the court may, on good reason to the contrary, refuse bail. In the case of felony, the courts have an absolute discretion with regard to the question of bail.

One of the conditions of any bail is that the accused should appear at the time and place stated for the trial. A trial is either summary or on indictment. Most trials in the Magistrates' Courts are summary, although there may be occasions where cases are

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42. See Sections 77, 275 and 340(2) of the Criminal Procedure Ordinance (Cap. 43 of the 1958 Laws of Nigeria).

tried summarily in the High Court. A summary trial is one in which there is a minimum of formality, the main aim being to enable the court to deal quickly with all matters coming before it.

A summary trial is begun by reading and explaining the substance of the charge to the accused and asking him whether he pleads guilty or not guilty. If he pleads guilty, that disposes of the case and he is then punished either by fine or imprisonment or both. If he pleads not guilty then the proceedings continue. The prosecution opens the case by first stating the charges against the accused and then proceeding to call witnesses who are each examined in the absence of the others unless the court orders otherwise. This usually happens in the case of expert witnesses. This procedure is called examination in chief. The purpose of such an examination is to prove the allegations against the accused. After examination in chief, the defence or his council is given an opportunity to cross-examine each prosecution witness if he so desires. This is an opportunity which ~~very~~ few accused persons would not utilize for it enables them to discredit the evidence of the prosecution witnesses. In all such examination and cross-examination, there must be compliance with the provisions of the Evidence Ordinance. There are various rules about ensuring that all such witnesses attend.

At the close of the prosecution's case, the court must decide whether a prima facie case has been made against the accused. If no such case has been made, he must be discharged, but if a case has been made, then the accused person must be called upon to defend himself. If he makes a statement on oath from the witness box, he renders himself liable for cross-examination, but if he makes a statement without being sworn he avoids such cross-examination. All this is, of course, explained to him before he makes his statement. The accused, having made his statement, is then asked to call his witnesses, if any. Where there are witnesses, they are examined in chief, and cross-examined by the prosecution. The accused, or his counsel, then addresses the court, again subject to the prosecution's right to answer.

As we saw above, a magistrate's court can discharge an accused at the end of the prosecution's case if no prima facie case is made. Where this does not happen, the case goes on until the innocence or guilt of the accused has been determined. The result will be to convict where guilt has been proved or to dismiss the charge if the contrary is the case.

The procedure at a trial on indictment is similar to what we have just discussed, the only difference being that it is more

elaborate. Most trials on indictment are started by means of a preliminary investigation. This is a procedure which is in many ways similar to what takes place in a magistrate's court. At this stage, the prosecution witnesses are examined by the magistrate in the presence of the accused. Their evidence is taken down and forms the deposition. When the deposition has been taken down and the magistrate is satisfied that a prima facie case has been made out, he must then read the charge to the accused who can call witnesses or make any statement he likes provided he has been warned that any such statement, coming either from him or his witnesses, will be taken down and may be given in evidence against him at his trial. If he proceeds to make a statement after such a warning, it must be taken down and read to him by the magistrate who must, as well as the accused, sign it. If all the witnesses for the prosecution and accused depose, such deposition must be read to the accused and signed by him and the magistrate. The witnesses are then bound over to attend at the trial and give evidence. This binding over is done by means of recognisances (i.e. a formal undertaking to pay a specified amount in the event of failure to attend at the trial and give evidence).

At the close of all this, the magistrate must commit the accused for trial before the High Court if there is enough evidence

to this effect or else discharge him. Where it is decided to commit the accused for trial all the documents (i.e. the written charge, the depositions, the statements of the accused and the recognisances must be forwarded to the High Court. Pending trial, the magistrate may grant or refuse bail to the accused. Where the latter decision is taken the accused may appeal to a High Court judge.

The procedure in the High Court is basically the same as that in the Magistrate's Court. Only one High Court judge sits during such trials, at the end of which he must give a written judgment which states the reasons leading to the particular decision. This is what is always referred to as a reasoned judgment - a thing which the magistrates, to the disappointment of many, do not have to do. If the judge decides to convict, he must then prescribe the penalty. These include imprisonment, fine, the death penalty and some form of corrective training for those under twenty-one for whom there is, of course, a special procedure.

When the judge has delivered his judgment, the prosecution or accused can appeal against it provided they do so within the rules laid down for appeals.

We have here attempted to give in a nutshell the rules of criminal procedure in the Magistrates' and High Courts. One central

theme running through the whole of the criminal trial is its accusatorial nature. This operates to put the burden of proof of the matters alleged on the prosecution. The court's function is that of an umpire or impartial referee who decides whether the prosecution have satisfactorily discharged this burden of proof. This procedure must inspire a great deal of confidence in the litigants, particularly when it is compared with the inquisitorial method in which the judge assumes the role of an investigator - a role which leads him to cross-examine the accused and his witnesses and which does damage to his role as umpire.

Civil Procedure in the Magistrates' and Higher Courts.

Civil Procedure in West Cameroon, like Criminal Procedure, is closely connected with that of Nigeria. This is so even though the Southern Cameroons High Court Law of 1955 provided by Section 94 that separate rules of civil procedure could be drawn up for the Southern Cameroons.

The West Cameroon Civil Procedure rules, however, contain a curious mixture of those applicable in Nigeria and Great Britain. The rules of civil procedure in West Cameroon are traceable to those which were made under Section 56 of the Supreme Court Ordinance (Cap. 211 of the 1948 Laws of Nigeria). The 1958 revision did not affect these rules because of a provision in Section 18 of the

Interpretation Ordinance (Cap. 94 of the 1948 Laws) which provided that:

> "When an Ordinance or part of an Ordinance is repealed, all orders, regulations, rules of court, proclamations and notices issued or made in virtue thereof shall remain in force, so far as they are not inconsistent with the repealing ordinance, and, the contrary intention appears, until they have been repealed or have been replaced by orders, regulations, rules of court, proclamations or notices, as the case may be, issued, or made under the provisions of the said repealing ordinance."

Thus the rules which were made according to Section 56 of the Supreme Court Ordinance are still in operation.

These, however, are not the only rules of procedure operating in West Cameroon, for, besides the power to make new rules under Section 94 of the Southern Cameroons High Court Law of 1955, Section 10 of the same law provides that where any law, rule or regulation governing practice and procedure in the High Court is silent on any point, the High Court shall exercise its jurisdiction in substantial conformity with the practice and procedure for the time being of Her Majesty's High Court of Justice in England. Such rules would, of course, be those in force on 1st January, 1900, as received in Cameroon through Nigeria on 28th February, 1924.

The current rules of civil procedure in West Cameroon, however, are those currently in force in Nigeria which were extended to West Cameroon by virtue of Section 46 of the Constitution of the Federal Republic of Cameroon. This section provides that:

> "previous legislation of the Federated States shall remain in force so far as it does not conflict with the provisions of this Constitution."

At the time when the Federal Constitution came into force, the rules of procedure which were in force in Nigeria were those contained in the Federal Nigerian Supreme Court Ordinance of 1961 and the Federal Supreme Court Rules made thereunder. We may now consider the important provisions of these rules.

There are always two parties to a civil action. Such parties can be either persons, companies, government departments or even governments. Where the parties are persons, they may sue or be sued in their individual capacities or in a representative capacity.

All civil actions must be started within a specified period from the time when the cause of action arose if they are not to be declared statute-barred. The purpose of this is to ensure that there would be sufficient evidence when actions are brought. The limitation of actions is governed by English statutes of general application.[43]

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43. It would seem that the English Limitation Act of 1623 rather than that of 1939 is applicable. See Nwabueze's Machinery of Justice in Nigeria op. cit., p. 247, especially notes 15 and 16.

In general the period of limitation for torts and actions on simple contracts is six years. The period for actions on contracts of specialty is twenty years.[44] There are, however, cases where the courts will not adhere rigidly to the provisions of the Limitation Acts. If, for instance, it is found that a defendant is guilty of fraud, it would be inequitable to let him benefit from the fraud simply because the limitation period has run out.

Most civil actions are begun by the plaintiff. He takes out from the court a writ of summons which must comply with the prescribed rules. In practice, there usually is a standard form. The writ must contain certain particulars. These include the serial number of the writ, the defendant's name and address and a statement asking him to enter an appearance within a specified period. There is also in the writ a warning to the defendant that if he fails to enter such appearance, the plaintiff may enter judgment against him. The writ must, of course, be endorsed with the particulars of the claim against the defendant so as to acquaint him with the substance of the claim. The writ is then ready for service according to the rules laid down.

When the writ has been duly served, the defendant will normally be required to enter an appearance, although failure to do so will

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44. Ibid, pp. 247 - 248.

not to be treated as seriously as in England. The most important thing is that he should appear at the trial.[45]

If the action is going to be heard in court, then the applicants must exchange pleadings. These are a series of documents which attempt to establish various preliminary matters. These include the plaintiff's statement of claim which, in most cases, is an expanded version of the statement of claim in the writ, and the defendant's answer to all the allegations in the plaintiff's pleadings. The pleadings must deal precisely with matters of fact and not law or evidence. Pleadings serve a dual purpose. Firstly, they ensure that only relevant facts are brought before trial. Secondly, they assist the court in ensuring that any evidence which is adduced must be relevant to the facts pleaded.

Between this stage and the trial, there may be other intermediary stages such as third party notices, set-off and counter-claims and interrogations, to name a few.

At the trial, the plaintiff or his counsel, opens the case by explaining the background to the issues involved and the sequence of events which led up to the present situation. The next step is to

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45. Nwabueze, op. cit., p. 251.

call the witnesses for the plaintiff who are then examined in chief by the plaintiff's counsel. The plaintiff is usually the first witness to be so examined. After examination in chief, all the plaintiff's witnesses are then cross-examined, the purpose being to weaken the credibility of the plaintiff's story and to put the case of the defence.

At the close of the case for both sides, the court must give its decision. The successful party is usually the one who proves his case by a preponderance of evidence; it need not be proved beyond reasonable doubt as in criminal cases.

The party who loses the case is usually requested to comply with certain orders of the court. The usual order is for him to pay damages which are assessed on the basis of the wrong suffered by the plaintiff as a result of the defendant's action. Subject to the right of the parties to appeal, the final matters including such matters as the assessment of damages, the payment of costs, and the execution of judgment are left to the court to settle.

Evidence

The law of evidence in West Cameroon is that contained in the Evidence Ordinance.[46] This ordinance is a consolidation and amendment

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46. Cap. 62 of the 1958 Laws of Nigeria.

of previous ones which trace their origin from that of 1st June, 1945, which was itself based on Stephen's Digest of the Law of Evidence. Before 1945, most of the law of evidence followed in the Southern Cameroons was based on the English law of evidence.

The Evidence Ordinance has been fully outlined and examined by two eminent lawyers,[47] so we must here confine ourselves to a very general comment on it.

Too many definitions of the law of evidence have already been attempted so it would not serve any useful purpose to add to the list, were it possible to do so. Stephen himself, from whose digest the Nigerian Evidence drew its inspiration, defined evidence as:

> "that part of the Law of Procedure which, with a view to ascertain individual rights and liabilities in a particular case, decides;
>
> I. What facts may and what may not be proved in such cases.
>
> II. What sort of evidence must be given of a fact which must be proved.
>
> III. By whom and in what manner the evidence must be produced."[48]

The Evidence Ordinance[49] attempts to supply a set of rules for

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47. Brett, Sir Lionel and Mr.Ian McLean.

48. Brett and McLean op. cit. p. 267.

49. The Evidence Ordinance is now by virtue of Section 2(1) of the Designation of Ordinances Act referred to in Nigeria as the Ordinance Act. In West Cameroon the title of Evidence Ordinance has been retained.

dealing with these propositions.

Having said so much about the background to the law of evidence in West Cameroon, we must now consider some general principles of the law itself.

As we have seen above, evidence is the means by which facts are proved. The law of evidence therefore consists of those legal rules which help in the proof of facts. These rules determine who must assume the burden of proving the facts of the case, the type of facts which must be proved, those which must be excluded and the method of affecting this onus of proof.

As a general practice, all facts in a case must be proved by him who advances them. Thus, it is in the interest of justice that if A accuses B of fraud, A must prove the fraud. Since it is very difficult for A to produce absolute proof, he will be taken to have discharged his burden of proof if the evidence he produces is, on balance, [illegible] probable. This is the requirement in civil cases. In criminal cases he must, in fairness to the accused, prove his case beyond all reasonable doubt.[50]

In order for the party proving to establish his case, he must

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50. Any proof beyond "reasonable doubt" is proof to such a degree of certainty as would be required by any one before making important personal decisions.

prove everything on which he relies. There are, however, a number of situations in which he will be exempted from such proof. For instance, he will not be required to prove a matter that is judicially noted. Judicial notice involves the acceptances by a court of the truth of a fact without proof on the ground that it is within the court's own knowledge. These include matters of great notoriety, matters of history or geography, or the period of gestation. This category also includes certain presumptions which the court may make until the contrary is proved. A presumption is:

> "a conclusion which may or must be drawn until the contrary is proved."[51]

It is, for instance, a presumption of the law that any one who has not been heard of for seven years is dead.

What has been said above must lead to the inevitable conclusion that all facts which support the allegations advanced and which are not exempted from proof must be permitted. This is not really the case. Only relevant facts or facts in issue may be permitted. The facts in issue are the facts which appear in the charge or the pleadings. The evidence required to prove the facts in issue is

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51. Phipson's Manual of the Law of Evidence, Ninth Edition by Elliott, D.W., London, Sweet & Maxwell, 1966, p. 15.

called direct evidence. Such direct evidence must, of course, be relevant. The question of which facts are relevant to a fact in issue is a matter of reason and experience.

We have considered above the general question of proof without adverting to the kinds of proof recognized by the law. Only certain kinds of proof will be recognized by the law and these include proof by oral evidence, documentary evidence and real evidence. Oral evidence is the evidence given by a witness upon oath or affirmation. Subject to a few exceptions, such evidence must not be "hearsay" evidence. Documentary evidence, as the name implies, is evidence contained in documents. There are certain rules for proving these documents which may be public or private. Real evidence is afforded by the production of material objects other than documents.[52]

We have attempted only to summarise as briefly as possible the skeleton around which the rules of evidence are built. Before we leave this subject, we must attempt a comparison, even if briefly, of the rules of evidence in civil and criminal cases. Basically, the rules of evidence are the same in both criminal and civil cases, although the following differences are noticeable:

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52. Phipson's Manual of the Law of Evidence, op. cit., p. 15.

"(i) In civil, but not in criminal cases, the rules of evidence may be relaxed by consent of the parties or order of the court. Thus the parties may agree to try their case upon affidavits.[53]

(ii) In criminal cases the judge has a wide discretion to disallow admissible evidence if it would operate unfairly against the accused.

(iii) The standard of proof is different. In civil cases, the plaintiff may prove his case by a balance of probabilities. In criminal cases the charge may be proved by the prosecution beyond reasonable doubt.

(iv) In civil cases, a complaint by the plaintiff in the absence of the defendant is not admissible in evidence. Complaints by the victim of an offence is sometimes inadmissible in criminal cases.

(v) Dying declarations are not acceptable in civil cases while they are in criminal cases for murder and manslaughter.

(vi) Evidence of the good character of the defendant is admissible in criminal cases, but generally not in civil cases.

(vii) Both parties and their spouses are compellable witnesses in civil cases, but in criminal cases the accused or his spouse is not generally a compellable witness."[54]

It will have been noticed from the foregoing that there is one basic trend running through all the rules which we have discussed, namely, that all facts must be proved in court if they are to be of

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53. Ibid, pp. 13 - 14.

54. Phipson on Evidence, para. 1489.

any probative value. There are, as we have seen, a few exceptions to this rule.

East Cameroon: Procedure in the Local Courts.

As we indicated above, the procedure in the traditional courts would, with variations as to detail, apply in the traditional courts in East Cameroon. These courts, however, in the face of French assimilationist policy, witnessed far greater suppression than did their counter-parts in West Cameroon.

This suppression, as we have seen in an earlier chapter, was carried out partly by the integration of the traditional courts into the French controlled system of the justice de droit local. Under this system which was consolidated by a Decree of 31st July, 1927,[55] a hierarchy of local courts, beginning with des tribunaux de conciliation (conciliation tribunals) and finally ending with the Chambre Spéciale d'homologation (homologation chamber), was set up. The chamber of homologation which was part of the Court of Appeal (Cour d'Appel) was the meeting point between the customary court system and the system of French courts.

Procedure in this hierarchy of local courts was different from that in the French courts.

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55. J.O.C. 1927, p. 429; Codes et Lois du Cameroun, op. cit., p. 293 ff.

Civil Procedure in the local Courts.

The decree of 31st July, 1927, was very emphatic in its provision that in all civil and criminal matters, every attempt at reconciliation must be made. The duty to bring about such reconciliation was put squarely in the hands of the village or tribal chief who exercised jurisdiction over the parties. Failing that, the duty to reconcile fell on an assessor of the tribunal of first degree (tribunal de premier degré). Such reconciliation, if successful, resulted in an oral or written agreement which was bidding on the parties and could only be challenged in the chambre d'homologation.

If conciliation failed then the matter went to the tribunal of first degree (tribunal de premier degré). Here the procedure adopted was local. The case was introduced either by an oral or written request addressed to the president of the tribunal who invariably was the chief of the district, although a civil servant could sometimes be appointed president. The president was assisted by two assessors.

Cases come to the tribunal of first degree either directly from one of the parties or as a result of the failure by the conciliation tribunal to effect a reconciliation of the parties. The procedure in this court is governed by the customary law of the area of

jurisdiction. The parties must appear in person, but in a case of incapacity, a party may be represented by parents or relatives or notables of the tribunal group. The mode of adjudication follows customary law rules and procedure. An interpreter may be used where necessary. There is provision for an appeal to the tribunal of second degree (tribunal de deuxième degré).

This tribunal was instituted in the chief town of every subdivision or district. It comprised either the principal civil servant or the chief of the subdivision as president and two local indigenous assessors whose function was consultative, that is, they had to be consulted in every case as of right. The tribunal had original as well as appellate jurisdiction. The procedure was the same as in the court below.

Appeals lay from this tribunal to the chambre d'homologation of the Court of Appeal where procedure was according to the Code of Civil Procedure to which we will return later. The chambre d'homologation however, sat with indigenous assessors whenever it heard appeals from the customary courts. The function of the assessors was to inform the court on any matters of customary law or the procedure thereof.

Criminal Procedure in the Local Courts

The tribunals which were created by the decree of 31st July, 1927,

referred to above, were given a very limited criminal jurisdiction by Articles 17 - 24. This limited jurisdiction was completely abolished by a later decree of 30th April, 1946,[56] but while it lasted, the procedure adopted in most cases was governed by customary law. It was in part the difficulty encountered in trying customary crimes that led to the suppression of this limited criminal jurisdiction - a move which was certainly the easiest way out, though by no means the best solution. Indeed, suppression of difficulties has never been the best way of solving them.

From then on, all criminal law and procedure came under the jurisdiction of the French courts which applied French law and procedure either modified or otherwise. We shall deal with the procedure later in this chapter.

The rules of procedure mentioned above lasted till the promulgation of Ordinance No. 59-86 of 17th December, 1959, which aimed at reorganising the judiciary in Cameroon, although the reorganisation has not yet been put into operation. The Ordinance was followed by decree No. 59-247 of 18th December, 1959, which outlined certain temporary measures for applying the above ordinance. By these measures,

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56. J.O.C. 1946, p. 705.

the law and procedure in the customary courts remained substantially as it was under the decree of 31st July, 1927.[57] There was, however, a provision that all the évolués and Europeans would be subject to French law and procedure while the natives were given an opportunity to opt for the law and procedure of their choice.[58] A later decree No. 66-DF-402 of 16th August, 1966, has unified the rules for appealing against the decisions of the customary courts temporarily maintained in East Cameroon.

Evidence in the Local Courts.

We have seen from the discussion above that customary procedure was applied in litigation in the local courts. The evidence used in these courts was also customary in nature. In sum, it was basically the same as we have discussed at the beginning of this chapter with regard to the early courts, the only difference being that the French administration suppressed all such means of adducing evidence at a very early stage. This was done as part of the administration's general policy of suppressing anything which was thought to be contrary to the ideas of French civilization.

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57. See Article 2 of Decree No. 59-247 of 18th December, 1959.

58. Ibid, Article 13.

Procedure and Evidence in trials under Islamic Law.

In the French Cameroons, as we have seen, there were no separate courts dealing with Islamic law as was the case in the British Cameroons. Thus, whenever there was any case in which one or both parties was a Moslem, the president of the local tribunal in which the case was heard was assisted by assessors who were themselves Moslems, and therefore versed in Islamic law. In this way, justice was done to everybody.

Civil Procedure in the French Courts

Civil Procedure in the French Colonial Courts was a matter which was usually left to the local administration to regulate. Very often the local administration did no more than declare that the simplest procedure of a metropolitan court would be applied.

In French Equatorial Africa, however, rules of procedure were drawn up by means of local arrêtés. Article 29 of the decree of 27th November, 1947,[59] which reorganized justice according to French Law in French Equatorial Africa, provided that in civil and commercial matters, the procedure to be followed, in the courts of first instance (des tribunaux de premier instance) and by the Justices of the Peace (Justices de Paix), would be determined by arrêtés of the Governor-

59. J.O.C. 1948, p. 118.

General on the proposal of the Chief of the Judicial Service. In this way, procedural rules were drawn up by the local administration. These rules provided for the way in which all processes should be started.

The plaintiff in any action must address his complaint to the court stating clearly his names, profession, if any, domicile or place of residence. He must also state the names, profession and domicile of the defendant. Besides these, he must state the reason for his action, the manner proposed for adducing all his evidence, and the day of trial. This document had to be signed by the defendant before it was remitted to the judge. The judge could call for oral evidence if the parties were illiterate.

These procedural matters which were at first included in the body of the decree of 27 November, 1947, were finally codified and emerged as the Code de Procédure Civil et Commerciale.[60] The code which also borrowed heavily from its metropolitan counterpart is still in operation in Cameroon.

The Code of Civil Procedure is rather long and elaborate and is drawn up so as to conform with French practice which tends, like

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60. Details of all the main and subsidiary legislation on Civil and Commercial Procedure are outlined in the Codes et Lois du Cameroun, Tome II, pp. 513 - 641.

the practice in the International Court of Justice, to rely heavily on written rather than oral evidence.

There is a provision that all parties must first attempt a reconciliation before they go to court. In court they can defend themselves or be represented by council.

Most actions are started by a document called the assignation. It is served on the defendant by an officer of the court called a huissier.[61] The assignation is more than a summons for its contents include the matter complained of and also provides for a return of service. It must contain certain vital information, the most important being the date, the name, occupation and domicile of the plaintiff (demandeur); the name and address of the huissier serving, and the defendant's name and domicile. Also included in the assignation are a summary of the action, the court in which it is to be heard, and the time and date of appearance.

The next stage in the procedure is the voluntary appearance of the parties before the judge at the time and place indicated in the assignation. The appearance which is similar to a preliminary hearing in English law, is usually a mere formality. There is a procedure

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61. See generally Herzog, P. with the collaboration of Weser, Martha, Civil Procedure in France, Martinus Nijhoff, The Hague/The Netherlands, 1967, Chapters 7 - 8 passim.

whereby the parties plead by means of written memoranda if they live out of the jurisdiction.

At the close of these preliminaries, the case is then ready for hearing. In court the parties may argue the case themselves or through counsel. The usual practice, however, is to have counsel. At this stage of the case (i.e. in the court of first instance) the State is usually represented by counsel, and at appeal level the Procurator-General and Advocate-General represent the Ministère public. Such a representative can speak at the trial if he considers that there is something which ought to be said in the interest of society. Even where he does not speak, certain matters must be communicated to him. Such matters include, inter alia, those concerning public order, status, the cases involving women acting without the authority of their husbands, and matters involving absent parties.[62]

When all the arguments have been heard, the judge then announces that the judgment will be given in public, and the time and date of such judgment. The announcement must contain the name or names of the judges if more than one, the name of the registrar of the court (greffier), the names professions and domiciles of the parties, a summary of their contentions as well as the motif (i.e. an opinion

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62. See Articles 36 - 37 of the Code for the matters which must be communicated to the Procurator.

indicating the court's judgment) and the dispositif[63] (i.e., a paragraph which is formulated like a decree in which the court awards relief or otherwise disposes of the case. The judgment should also mention whether the parties were present in person or represented or whether they pleaded by means of written memoranda.

When the judge finally gives judgment, the registrar must take down the dispositif in his minute book when it is being read to the public. This is then signed by the judge as well as the clerk, for no judgment is valid until it has been properly authenticated by the appropriate signatures.

We have so far used the word judgment (jugement) in its proper context because judgments of the higher courts are often referred to as arrêts. There are, of course, various categories of judgments. These include "jugement définitif" (i.e. where they decide the merits of a case), or "jugements avant dire droit" which are the same as judgments pendente lite (i.e. interlocutory judgments) or "jugement par défaut" (i.e. judgment by default).

All decisions of the court of first instance are, of course, subject to appeal to the Court of Appeal (Cour d'Appel). It is

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63. Herzog, op. cit. p. 288.

important at this point to say a word about the meaning of the word "appeal" as understood in the French-style orientated courts in East Cameroon. In French law, the word has, by common law standards, a rather narrow meaning and covers only appeals from a court of first instance to an intermediate appellate tribunal which in East Cameroon is the Court of Appeal. Appeal to the Supreme Court (Cour Suprême) is by means of what is known as "pourvoi". The distinction between the two is that the former leads to a fresh examination of the whole case while the latter leads to a re-examination of the points questioned. There are, of course, rare cases where a "pourvoi" gives rise to a fresh examination of the case. In Cameroon appeals in all civil matters go from the minor courts and all the courts of first instance to the Court of Appeal (Cour d'Appel).

When all the preliminaries such as time of appeal, the information to be contained in the document of appeal, and the names to be included therein have been complied with, the request for appeal is then lodged at the registry of the Cour d'Appel where it is duly registered and the respondent is requested to produce his defence. He is also informed of the date of the appeal.

The procedure in the Court of Appeal is similar to that in the court below. If the judgment of the lower court is confirmed, then

it is sent back to the original tribunal for execution, but if the appeal is invalidated, the execution of such a decision is a matter for the Court of Appeal. There are also certain procedures to be followed by the Court of Appeal in the case of partial invalidity. The Court of Appeal can either order execution, send it to a different judge in the tribunal below from which the case came or to a completely different tribunal of the same grade. There is ample provision for nullification or invalidation on appeal of a decision of a lower court which was partly "definitif" and partly "avant dire droit". There are also provisions for dealing with decisions which are nullified for other reasons such as violation of the rules of procedure (vice de forme).

Appeal lay by means of "pourvoi" from the decisions of the Cour d'Appel and all the other inferior courts to the Cour de Cassation in Paris, which until the establishment of the Cour Suprême (Supreme Court) in Cameroon was the final court of appeal for the territory.[64] According to the metropolitan statute the Cour de Cassation could entertain "pourvoi" on all matters referred to as "moyens de cassation" and these matters include violation of the rules of substantive law,

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64. The jurisdiction of the Cour de Cassation was replaced in Cameroon by that of Cour Suprême by virtue of Ordinance No. 59-86 of 17th December, 1959.

violation of prescribed procedural rules (vice de forme), inconsistent judgments (contrariété de jugement) and any act by which the court exceeds its lawful powers (excès de pouvoir).

The Cour Suprême, which must deal expeditiously with all matters coming before it, adopts a different procedure from the courts below. If the court rejects the "pourvoi", then the decision of the court below becomes final and unimpeachable; but if there is a reversal of the decision, then all the rights and liabilities are also reversed, and the case is then sent back to another court of the same jurisdiction as that whose decision has been reversed.

Besides the skeleton procedure thus outlined, the Code of Civil Procedure makes provision for special procedures to be adopted in matters of succession and divorce, to name only two.

Criminal Procedure in the French Courts

The whole question of Criminal Procedure is more complicated than civil procedure, so it is important to say a few words by way of introduction in order to get everything in correct perspective.

A decree of 29th December, 1922, provided that the procedure, both criminal and civil, to be adopted in the Appeal Courts and those

of first instance would be determined by arrêtés of the Commissioner of the Republic. Later, an arrêté of 26th December. 1925, declared that the criminal procedure to be followed would be that applied in France during the period. Under this provision Sections 55 - 216 of the Metropolitan "Code d'Instruction Criminelle" became applicable in Cameroon. But, of course, another decree of 22nd May, 1924, had rendered applicable in Cameroon all the laws and decrees promulgated in French Equatorial Africa on 1st January of that year. The effect of this decree was therefore to extend to Cameroon the French Ordinance of 18th February, 1838, rendering applicable the Code d'Instruction Criminelle in Senegal and later in French Equatorial Africa by decrees of 28th December, 1897 and 17th March, 1903. However, there were provisions in the decree of 22nd May, 1924, to the effect that the Metropolitan Code d'Instruction Criminelle would only apply to the extent that it was not inconsistent with previous legislation designed specifically for Cameroon. The solution to this confused situation was the decision to comply with the provisions of the arrêté of 26th December, 1925, and the decree of 29th December, 1922, and those parts of the Code d'Instruction Criminelle which were not inconsistent with these laws. Finally, the decree of 27th November, 1947, which reorganised the French courts in French Equatorial Africa and which was

extended to Cameroon provided that the application of certain sections of the Code d'Instruction Criminelle would be extended to Cameroon. The decree of 27th November, 1947, introduced a further complication when it provided that the Criminal Courts in Cameroon would follow the procedure used by the correctional courts (minor criminal courts) in France. The difficulties thus created were well handled by the judges and legal practitioners.[65]

This complicated situation with regard to criminal procedure was not made any simpler by the hierarchy of the criminal courts which as shown in Chapter IV is far from straightforward. We shall endeavour in the following pages to put as simply as possible the basic rules of criminal procedure in East Cameroon. In order to understand these rules, we must stress at the beginning that French law as practised in Cameroon groups all criminal offences (infractions) into three categories, namely, felonies (crimes), misdemeanours (délits), and petty offences (contraventions de simple police). The gravity of each offence is measured according to the type of punishment prescribed with serious offences calling for the severest punishments.

It is possible for the police dispensing what might be called road-side justice to fine offenders for minor traffic offences. Such

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65. Most of the introduction material comes from a note by the authors at p. 947 of Tome II of the Codes et Lois de Cameroun.

offenders, however, have a right to refuse to pay. In such circumstances, they would then be taken to the stage where most trials begin. This is the investigation (information) stage which is always conducted by an examining magistrate (juge d'instruction).[66] The procedure whereby all offenders are brought before the juge d'instruction is a very important part of the trial. The examining magistrate does not proceed as soon as the complaint is laid before him, except if the complaint involves certain civil matters. He must make sure that all matters are immediately referred to the local prosecutor. If the local prosecutor gives the green light by means of a document known as a requisitoire (indictment), then he has the power to proceed with the investigation.

There are several conclusions which the magistrate can arrive at. To name a few, he may say that there is no case against the accused, or that the matter is a petty offence triable by the police. If, on the other hand, he decides that the matter is a misdemeanour, then he must make an order transferring it to the appropriate criminal court of first instance; but if he decides that it is felonious, then it is not transferred to any court but to the indicting chamber of the

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66. The function of juge d'instruction is usually performed by a Justice of the Peace or a Magistrate. See Section 20 of the decree of 27th November, 1947, J.O.C., p. 118. Also see Code d'Instruction Criminelle Articles 56 - 58.

Court of Appeal (Chambre des mises en accusation) which has sole jurisdiction to order the trial of all felonies. This chamber, which must act quickly, considers the report of the examining magistrate, the petitions of the prosecutor and the briefs submitted by counsel for the accused and other parties who may be interested in the case. After examining all these records, the "Chambre d'accusation" can do one of four things. In the first place, it can order further investigation if this is thought necessary. Secondly, it may decide that there is not enough evidence or substance for the charge and so discontinue it. Thirdly, it may decide that the offence with which the accused is charged is not a felony. In such a case, the accused will be sent back to a minor court or police tribunal, depending on whether the offence is judged to be a misdemeanour or a petty offence. Lastly, and this is the usual cause, the "chambre" may render a decree of indictment and transfer the case to the Criminal Court (Cour Criminelle) which corresponds to the French "Cours d'Assises". Once the decree is issued it cures all flaws which may have initiated the proceedings in the courts below.

All we have done so far is to follow the movement of criminal offences to the Criminal Court. We must now consider in brief, the trial procedure in the various tribunals. In the "tribunal de police" which deals with summary offences there is usually a single judge who

presides at all trials. The case is normally brought to court by a petition of the victim or the local representative of the "ministère public" who in most cases is the local prosecutor. The two parties may also voluntarily submit themselves to the court. Cases may also be sent back from the juge d'instruction to the police tribunals. The next stage is to send an order to the accused asking him to appear and stating the time for such appearance. If he fails to appear, he can be tried in absentia or a verdict of judgment by default given. There is, of course, a right to object to such a judgment.

The trial is conducted in public. The written statements, if any, are read out by the registrar. The accused, usually through his counsel, then gives further evidence, if any. The same thing is done by the local prosecutor who is the representative of the ministère public. Then the accused, who almost always has the last word, makes his final observations if he so wishes. The judgment is then given.

Appeal lies direct from the "tribunal de police" to the "chambre correctionnelle de la cour d'appel" (correctional chamber of the Court of Appeal), as also do those from the "justice de paix à attribution correctionnelle" (justice of the peace with correctional powers) in which the procedure is similar to that in the police tribunals.

These two tribunals only handle petty offences (contraventions de simple police). Most délits (misdemeanours) are tried in the chambre correctionnelle des tribunaux de premier instance (correctional chambers of the courts of first instance). Cases can be brought into this chamber by a direct summons (citation directe), although the usual way is for them to be transferred to the court after investigation by the "juge d'instruction". The court consists of the judge, two assessors, the registrar and a prosecutor, who represents the ministère public who in this case is usually the procurator. The court is seised of jurisdiction in respect of any case either when the procurator has filed with the registrar the proper case file (dossier) received from the juge d'instruction or after a direct summons has been duly replied to. During the sitting, procedure is much the same as in the minor courts already discussed.

Appeal lies to a corresponding chamber in the cour d'appel.

The Cour Criminelle which is the tribunal in which most felonies are tried, corresponds, as already indicated, to the French Cour d'Assise. There is one in the chief town of every department of East Cameroon. The court comprises a President who is usually a member of the Court of Appeal, although a magistrate from the court of first

instance who has not heard the case before may be made president. Other members include a jury of four.

This court may only try cases transferred to it by the "chambre des mises en accusation". The procedure is slightly more elaborate, but basically the same as in the courts below. When all the arguments have been heard, the judge and jurors retire to consider their verdict which is usually given by means of a majority vote.

Appeal lies from here to the Cour Suprême (Supreme Court) of East Cameroon. As in the case of civil matters, appeal is by means of "pourvoi". The parties may appeal against the judgment of the criminal court on grounds of incompetence, violation of the law or forms of procedure. The Supreme Court comprises a first president, four councillors, a Procurator-General, an Advocate-General and a Chief Registrar.[67]

Evidence in the French Courts

When we turn to consider the law of evidence in East Cameroon

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67. On the subject of Criminal Procedure in East Cameroon see Code d'Instruction Criminelle (Codes et Lois du Cameroun, Tome II, p.947 ff). Drumbe-Moulongo M., op. cit. pp. 103-114. Also see generally David R. and de Vries H.P., The French Legal System. An Introduction to Civil Law Systems. Oceana Publications, New York, 1958, Chapter 8 passim; Bodington O.E., Outline of the French Law of Evidence, London, Stevens and Sons Ltd. 1904; The French Code of Criminal Procedure, No. 7 in the American Series of Foreign Penal Codes, Sweet & Maxwellm London, 1964.

we are immediately faced with the difficult problem as to whether there is a law of evidence. If it has been said of French law from which Cameroon draws a great deal of inspiration that:

> "those rules paralleling the Anglo-American rules of evidence are even more neglected as a cohesive subject of study," then what hope is there to find cohesion in such rules in Cameroon .
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> "If procedural law", continues the statement, "is to some extent dealt with as separate branches of civil, criminal and administrative law, the rules of evidence are a minor chapter in each of these branches, but in reality there is no French 'law of evidence'; the last important study purporting to cover as a whole the droit des preuves is over one hundred years old."[68]

This means that there is no specific discipline in East Cameroon law to which we refer as evidence as in the case of West Cameroon. The reason always advanced for this is that the law of evidence can only thrive in a system which recognizes trial by jury. This may well be true, but it certainly is not the whole truth. It would seem that the reason lies as much in this as in the distinction between the "accusatorial" and "inquisitorial" systems.

The "accusatorial" system of English law which operates in West Cameroon is based on the underlying asumption that:

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68. David R. and de Vries H.P., op. cit. pp. 74-75.

"provided both parties have competent legal advisers, justice will be best effected by extending to each the fullest opportunity of stating his own case and attacking that of his adversary. The court will listen to both sides and then decide between them..... It follows from this that the Court will reach its decision on what it is told by the parties. It will not itself investigate the matter. A party is free to call any evidence or raise any point which will assist his case, but if he fails to do so he must not expect the court to make good his default..... The proceedings take the form of a dispute between two parties, the prosecution and the defence, and although the burden of proof upon the prosecution is heavier than that upon a plaintiff in a civil action, the verdict still takes the form of a decision between two contending parties, after listening to the evidence and argument on both sides, The witnesses are examined, cross-examined and re-examined by the respective parties or their counsel, and although the judge may ask a question of a witness, the normal assumption is that all the relevant questions will be asked by the parties."[69]

"In France, on the other hand, the function of the criminal court is conceived as being to ferret out for itself the truth of the matter..... The examining judge (the juge d'instruction) is an official whose function is to seek out all the facts and as much of the evidence as possible. Not unnaturally (and in the best of faith) the juge d'instruction tends to feel that he has been more successful if he has built up an overwhelming case against the accused or secured a confession. These proceedings take place in private, and amount in fact to an interrogation by the investigating authority.... The accused and the witnesses are each allowed to make their statement, but they are then questioned by the President of of the court. The other judges may put questions, but

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69. Archer, Peter, The Queen's Courts, Penguin Original, 1965, pp. 269-270.

> counsel on each side may ask their questions only through the President, whose responsibility for discovering the truth involves him much more directly than an English judge. Such an interrogation may easily become a cross-examination, and the most dispassionate judge is in danger of becoming a prosecuting counsel."[70]

Although the picture which we have painted represents the situation in French law, it is equally true of East Cameroon law. Thus, rules such as those about relevancy are unknown. Opinions or evidence as to character are easily admissible. The elaborate machinery for examination in chief, cross-examination and re-examination is unknown. The whole question of evidence can therefore be reduced to a consideration of the comparatively few and simple rules of proof contained in the various codes of law and procedure.[71] It is often argued that these meagre rules are sufficient in a system which distinguishes quite clearly between substantive rules of law and procedure, but in English law where the distinction is not always clear, more elaborate rules of procedure and evidence are essential. This may well be true, although it must remain a matter of surprise that the French, with their strong Cartesian tendencies, have not been able to draw up more precise, even if meagre, rules of evidence.

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70. Ibid, pp. 270-271.

71. Bodington, op. cit., p. 6.

The method of proof in Cameroon,as we have already indicated, is similar to that in France. Indeed, the Sections dealing with proof in the Cameroon Civil Code[72] correspond to those of the French Civil Code since the former was adapted from the latter. Various other codes such as the Code of Civil Procedure,[73] the Code of Commerce,[74] and the Code d'Instruction Criminelle[75] contain rules governing the method of proof.

The various ways of proof include in descending order, proof by written evidence, oral testimony, presumptions, confessions and oaths.[76] All of these can be further regrouped into documentary and oral evidence. The rules with regard to acceptance of such evidence are not very strict. There is, for instance, no necessity to prove documents, nor is heresay evidence excluded. Thus the fundamental distinction between West and East Cameroon law of evidence, or indeed English and French law on the subject, is that French law:

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72. See Sections 1316 - 1369 of the Code Civil (Codes et Lois du Cameroun Tome II, pp. 97 - 101).

73. Ibid, p. 522.

74. Ibid, p. 331.

75. Ibid, p. 947.

76. Giverdon C., The Problem of Proof in French Law, 1956, 31 Tulane Law Review, pp. 29 - 48.

> "attaches exaggerated importance to documentary as distinguished from oral evidence .... Witnesses are not heard in open court in civil actions, but their testimony is taken before a judge in chambers under an 'enquête'."[77]

In criminal trials, as we have seen above, there is some oral evidence in court although the questioning is done by the judge rather than the counsels for the parties. Notwithstanding this, the East Cameroon judge relies largely on written evidence while his West Cameroon counterpart relies on that as well as the evidence given viva voce. Thus one can conclude, not without hesitation, that the West Cameroon system is slightly superior to that in the East, if only for the simple reason that there is no better way of getting to know the truth of a situation other than the mouth of a living human being particularly when the statements coming from such a human being can be straightened out by means of skilful corss-examination. This indeed ensures that we are dealing with human beings, as an anatomy teacher deals with his subject not only by means of diagrams, but also by practical dissections and demonstrations with due reliance on those diagrams.

Procedure in other Courts.

This chapter would not be complete without mentioning the procedure in the Federal Court of Justice and the other special

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77. Bodington op. cit. p. 127 - 128. An "enquête" is an inquiry which is usually carried out in the judge's chambers for the purpose of taking oral evidence.

tribunals to which reference was made when we were dealing with the judicial system. The rules of procedure in the Federal Court of Justice, as indeed in all the other special tribunals, are usually embodied in the law establishing the court or tribunal. There are, however, situations where the law establishing the tribunal provides that the rules of procedure to be adopted in such a tribunal would be the subject of another law. This is indeed the case with procedure in the Federal Court of Justice, for Law No. 65-LF-29 of 19th November, 1965, relating to the administrative contentious matters, provided that:

> "save for the matters regulated below, all provisions necessary for the application of Sections 14 - 17 of this Ordinance and in particular the form of petition and of notices to be served, the procedure at the trial and for the decision of the complaints, the scale of court fees, the scale of counsel's fees, legal aid, shall be made by decree in accordance with the opinion of the Federal Court of Justice."[78]

It was further provided by Section 5 that until such new procedural rules were promulgated, the Yaoundé Bench of the Federal Court of Justice:

> "shall be governed by the procedure formerly in force in the state court;" and the Buea Bench "by the procedure applicable in civil proceedings under the ordinary law between private parties."

The Full Bench was, of course, to be governed by procedure prescribed by an earlier decree No. 64-DF-218 of 19th June, 1964.

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78. See Section 3 of Law No. 65-LF-29 of 19th November, 1965. This section amends Section 18 of Federal Ordinance No. 61-OF-6 of 4th October, 1961.

The procedure in the other special courts is, in most cases, prescribed by the law establishing the special court. Thus, law No. 67 - LF-6 of 12th June, 1967, instituting the Labour Code provides for special labour courts and the procedure to be followed in them.[79]

Conclusion

We have in this chapter endeavoured to piece together all the rules of procedure and evidence in both West and East Cameroon. In this process we have got a glimpse, even if hazily, of the many rough edges of this aspect of the law which are in need of reform. Reform is needed in order not only to bring the systems in East and West Cameroon into some form of harmony, but also to enable the average litigant, particularly in the East to take a greater part in the litigation as this helps towards a better understanding of the justice which is being provided by the courts. Under the present rules, the average litigant hardly ever participates in the litigation. In this connection we can look to the common law for inspiration because under it a great deal of attention is paid to procedure and evidence as separate branches of study. These branches of the law reflect:

> "a deep-rooted pragmatic approach which tests the very existence as well as the effectiveness of rights by their enforceability in practice."[80]

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79. See Sections 148 - 168 of the Labour Code.

80. David and de Vries op. cit. p. 73.

Further, the detailed and precise rules help to bridge the gulf which would otherwise develop between the law schools and the practitioners. Indeed, it avoids the formulation of broad conclusions and generalizations which are bound to arise where there are inadequate rules of procedure and evidence to aid understanding of the issues involved.[81] It would therefore appear that the common law rules are more suitable as a basis for the reform and integration of the rules of procedure and evidence, for they are not only more systematic, but also afford the average litigant with a great deal of opportunity to participate in the litigation.

In so doing, we will only be following the footsteps of some others before us and the overwhelming evidence which they have produced to support our assertion. In Japan, for instance, the criminal procedure was, until 1949, similar to that in the continent. Indeed, the code of criminal instruction in 1880 had as its model the French Code d'Instruction Criminelle. Those of 1890 and 1922 had German and French influence. Notwithstanding this strong continental influence, the 1949 Code of Criminal Procedure turned over a new leaf in favour of Anglo-American criminal procedure, particularly in the:

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81. Ibid, p. 80.

> "enlargement of the scope of defence counsel's functions and the introduction of the adversary form of trial including the use of rules of evidence such as the hearsay rule."[82]

This has resulted in the administration of justice changing from an inquisitorial to an accusatorial process. This process is bound in the future to produce a situation where public prosecutors and defence counsels will take more care in the preparation of their cases and judges will become more as:

> "impartial umpires of the trial rather than inquisitors of the truth."[83]

Another example of a code of procedure in which the common law has had some influence is the Turkish Code of Criminal Procedure. This Code, which was originally based on the German Code of Criminal Procedure of 1877, has incorporated changes which make it a mixed system of criminal procedure by means of which the preparation of public prosecutions and preliminary investigations are conducted in secret according to the inquisitorial system, while the remaining procedure is conducted openly according to the accusatorial system. Quite apart from this, there are many provisions which aim at ensuring the impartiality of the judges.[84] For instance, the law of evidence, while retaining the

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82. See Atsushi Nagashima. "The Accused and Society. The Administration of Criminal Justice in Japan" in "Law in Japan". The Legal Order in a Changing Society", edited by von Mehren, A.T., Harvard University Press, Cambridge Massachusetts, 1963, pp. 297-8.

83. Ibid, p. 321.

84. The American Series of Foreign Penal Codes. The Turkish Code of Criminal Procedure, Sweet & Maxwell, London, 1962, pp. 1

continental system of intime conviction of the judge with regard to the questions of fact at the investigation stage, also makes it possible for definite evidence such as confessions, testimony of witnesses, writing and records of officials, evidence gained through discovery, judicial notice, searches and seizures and opinions of experts to be admitted.[85]

We must now consider an example which is nearer home and also similar to the Cameroon situation. This is provided by the new Somali code of criminal procedure which is based predominantly on the English law of Evidence as contained in the Indian Evidence Act of 1872 which was in use in the former British Somaliland.[86]

These examples, which are in no way exhaustive, are merely intended to support the assertion made above that the common law would offer a suitable basis for the integration of the law of procedure and evidence in Cameroon. There are, of course other reasons which have led us to this conclusion.

In East Cameroon, as indeed in the West, the police play a very important part in the arrest and detention of suspected criminals.

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85. Ibid. p. 6.

86. Contini, P., The Somali Republic: An Experiment in Legal Integration. Frank Cass & Co. Ltd., London, 1969, p. 49. Also see the same author in 16 (1967) I.C.L.Q., p. 1088, p. 1093; Cotran, E., 12[1963] I.C.L.Q. p. 1021; Ganzglass, M.R., "A Common Lawyer looks at an uncommon legal experience". American Bar Association Journal, 53 [1967] p. 815.

During such detention which can sometimes be unconscionably long, the police make several attempts, sometimes forceably one fears, to secure confessions with the dual purpose of facilitating conviction and obtaining a reputation for professional efficiency. This, of course, is not peculiar to Cameroon because it happens in most countries. Such confessions, which are usually admissible in evidence in East Cameroon, would not be so admitted because of the provision in the Evidence Ordinance that:

> "a confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the court to have been caused by an inducement, threat or promise having reference to the charge against the accused person, proceeding from a person in authority and sufficient in the opinion of the court, to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature."[87]

A person in authority has been described as:

> "somebody engaged in the arrest, detention, examination or prosecution of the accused, or by some one acting in the presence and without the dissent of such a person, or perhaps someone erroneously believed by the accused to be in authority."[88]

The West Cameroon police and the East Cameroon gendarme

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87. See Sect. 28 of Evidence Ordinance (Cap. 62 of the 1958 Laws of Nigeria).

88. Phipson on Evidence, 10th Edition, London, Sweet & Maxwell, 1963, para. 796.

are definitely persons in authority and it is to them that these confessions are most likely to be made. In the case of West Cameroon, there are certain rules with which the police must comply when they obtain statements from persons connected with crimes. These rules known as the Judge's Rules which originated from the Queen's Bench Judges in England in 1912 have been adopted in Nigeria and West Cameroon in a modified form. In Nigeria there is now the practice of taking an accused person who makes a self-incriminating statement before a senior police officer or other senior official and his statement read over to him. This gives the accused an opportunity of alleging that such a statement has been improperly obtained.[89] This practice obtains in West Cameroon as well. In Kenya and Uganda, no confessions which are made to officers below the rank of sub-inspector and corporal respectively are admissible.[90] The position is slightly different in East Cameroon where the behaviour of the police and gendarme is not unlike that of their French counterparts who have been described as acting:

> "not only oppressively but sometimes brutally."[91]

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89. See the Nigerian Case of R. v. Omerewure Sapele [1957] 2 F.S.C. 24.

90. Morris, H.F., Evidence in East Africa, London, Sweet & Maxwell: Lagos, African Universities Press 1968, pp. 71 - 72.

91. Hamson, C.J., The Prosecution of the Accused - English and French Legal Methods, 1955 Criminal Law Review, pp. 272 - 282 at p. 273.

Perhaps we can only hope that there will be a lot of give and take for the better between the East and West Cameroon police forces when the Federal Government takes over the control of the Police in January 1970.

The difficulty with regard to the admission of confessions only arises when they have been improperly secured. Those properly secured are admissible. As we saw above when we considered procedure and evidence in West Cameroon, the onus of proving both the case and the fact that confessions have been properly secured rests on the prosecution. This is a matter which the judges and magistrates in West Cameroon have insisted upon, although there is evidence that gendarmes appearing before them have either been reluctant or unwilling to prove the sanctity of such confessions or to give evidence generally. It seems to us that it is in the interest of justice that judges and magistrates should not accept the evidence of a perspn in authority in such circumstances without more. This seems a better alternative to the extreme Indian position of rejecting outright confessions which are secured by people in authority.

While still on the question of evidence, we must say a word about the intime conviction (i.e. the profound personal conviction of the judge) which is said to be the basis of the French and therefore East Cameroon law of evidence. It has been said that this is the:

> "one supreme proof which overshadows all others and alone decides the issues."[92]

This, to say the least, will not be acceptable to any lawyer trained in the common law, for it does not seem fair to say that a person is guilty just because of a judge's intime conviction, which can either be a priori or acquired by means of confessions which are often secured, as we saw above, by means which are themselves questionable. No less disturbing is the position of the judge in the trial. His position is not like that of the impartial umpire, but more like that of someone who:

> "acts as a general for two opposing armies and at the same time he is the umpire in the fight."[93]

a part which perhaps only a Solomon can successfully play. Further, the intime conviction of the judge, even if this were acceptable as the hallmark of the law of evidence, is vitiated by the fact that he approaches the case with his mind already biased by the information contained in the dossier which is submitted to him. To the common law observer, this dossier creates the impression that the prisoner, at

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92. Vouin, R., The Protection of the Accused in French Criminal Procedure 1956, 5 I.C.L.Q., pp. 1 - 25, 157 - 173 at p. 15.

93. Ploscoe, M., Trial in France 1945, 29 Minnesota Law Review, pp. 376 - 387 at p. 384.

his trial in France, is presumed guilty - an impression which is false.[94] The dossier is, of course, the result of the ex parté evidence collected by the police or the report of the examining magistrate (juge d'instruction).

This rather free hand of the judge in deciding cases contrasts sharply with the strict rules with regard to matters which are judicially noticed in the English law of evidence in West Cameroon. As we saw above, only matters of great notoriety or those clearly established so that formal evidence thereof is unnecessary, can be judicially noticed. The strictness of this rule is based on the fact that the function of the judge is to adjudicate upon the evidence and not to supply it. Thus if a judge has an intime conviction which he wishes to tender as evidence, he must do so on oath.[95]

We have, in this conclusion, attempted to point out one or two things which we consider not to be in the interest of justice merely as examples of the type of reforms that are necessary. We in Cameroon find ourselves in the singularly fortunate position that we can always draw a great deal of inspiration from two well established and well tried systems of law. Our only task is to have enough courage to pick out only what is good in these systems.

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94. Hamson, op. cit. p. 279; Ploscoe. op. cit. p. 383.

95. Phipson's Manual of the Law of Evidence, op. cit., p. 17.

# CHAPTER VII

# CRIMINAL LAW

## Preliminary Observations

We will not, in this chapter, spend too much time on the familiar arguments as to whether or not there is a customary criminal law, as this has been better treated elsewhere.[1] We shall therefore be dealing generally with codified criminal law in Cameroon, and in particular with the New Cameroon Penal Code[2] which overrides all previous criminal law and legislation in Cameroon.

## West Cameroon

## The Introduction of Codified Criminal Law

The history of criminal law in West Cameroon follows very much the same pattern which we have already seen, namely, a close affinity to Nigerian law. This means that we must necessarily say a word about the general development of criminal law in Nigeria.

When the British took possession of Lagos in 1861, one of their

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1. Elias, The Nature of African Customary Law, op. cit., Chapter VII passim; Haydon, E.S., Law and Justice in Buganda, London, Butterworths, 1960, p.268 Malinowski, B., Crime and Custom in Savage Society, 1926, London, Kegan Paul, Trench, Turner and Co. Ltd., pp. 30-31, 56-59, 117-119; Maine, Sir Henry S., Ancient Law, London, George Routledge and Sons Ltd., p. 307; Driberg, J.H., The African Conception of Law, 1934, Journal of Comparative Legislation, pp. 230-245.
2. Law No. 65-LF-24 of 12th November, 1965, and Law No. 67-LF-1 of 12th June, 1967.

first acts was to introduce the English Common law of crime as part of the general introduction of the common law, equity and statutes of general application in England. Outside Lagos, customary criminal law continued to pay an important part, but with time, this customary law was modified by the passage of statutes prohibiting certain crimes and sanctions which were considered repugnant. For instance, several customary sanctions such as the execution of witches, mutilation and flogging were abolished as being repugnant.

With the extension of British influence over the whole of Nigeria, and the development of central government, the common law of crime became inadequate. Need was therefore felt for a criminal code which would apply to the whole country. This was realized in 1916 by the extension to the whole country of a code which had been in operation in Northern Nigeria since 1904.

The history of this code is quite interesting. The Northern Nigerian Criminal Code of 1904 was based on that of Queensland of 1899 which was itself based on a draft English Code of 1880. The author of the English draft drew a great deal of inspiration from the framers of the Italian Code of 1888.[3]

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3. Hedges, R.Y., Introduction to the Criminal Code of Nigeria (excluding the Northern Region), London, Sweet & Maxwell, 1962, Chapter I passim. By the same author, "Liability under the Nigerian Criminal Code: A historical and comparative study" in "Changing Law in Developing Countries" ed. Anderson, J.N.D., Chapter 10 passim; Okonwo, C.O. and Naish, M.E., Criminal Law in Nigeria (excluding the North), London, Sweet & Maxwell, Lagos' African Universities Press, 1964, Chapter I passim.

From 1916, the Criminal Code operated side by side with customary criminal law. This was the position with regard to criminal law in Nigeria when the decision was taken to administer the British Cameroons jointly with her. This situation, though seemingly unsatisfactory, worked very well. Customary law (which included Islamic law) was applied in the Native Courts while the codified criminal law was applied in the British styled courts. Beneath this apparently calm surface was a volcano which was bound to erupt sooner or later. The eruption actually occurred with the case of Tsofo Gubba v. Gwamdu Native Authority.[4] In this case the appellant had been convicted of murder under Islamic law in circumstances which would have amounted to a conviction for manslaughter under the Criminal Code. Thus the conviction for murder under Islamic law was not upheld. The difficulty thus created was finally solved by making provision in the various Native Court laws to the effect that a Native Court had the right to try anyone charged with an offence against Native Law and Custom even though the act or omission constituting the offence was covered by the provisions of the Criminal Code. There was, of course, a proviso that where an offence under native law and custom was also an offence under the Criminal Code or any other enactment, the punishment to be imposed by the Native Court could not exceed the maximum

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4. [1947] 12 W.A.C.A. 141.

permitted by the Criminal Code or such other enactment.[5]

This was therefore the position with regard to criminal law when the British Cameroons was administered along with Nigeria. As we have just seen, the criminal jurisdiction of the customary courts was at first co-extensive with the criminal regime of the Criminal Code, but gradually this was whittled down either consciously by means of legislation or otherwise. By the time of reunification, the criminal jurisdiction of Native Courts was limited to offences punishable with imprisonment for one year or a fine of 34,000 francs CFA or its equivalent by native law and custom.[6] Certain offences such as homicide, treason, sedition, counterfeiting, trial by ordeal and slave dealing, to name just a few, were specifically excluded from the jurisdiction of customary courts.

Most of these provisions have now been superseded by the new Penal Code.

East Cameroon

Codofied Criminal Law

When the French administration was granted a mandate over the then

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5. Anderson, J.N.D., Conflict of Laws in Northern Nigeria, 1957, Journal of African Law, pp. 87-98.

6. These were the powers of Grade A Customary Courts under the provisions of the Native Courts Ordinance (Cap. 142 of the 1948 Laws of Nigeria) as amended by West Cameroon Government. There were various scales for other grades of customary courts. These provisions were again amended by the first schedule to the Customary Courts Law (West Cameroon) of 1962 by which Grade A Customary Courts had jurisdiction over crimes punishable by 2 years imprisonment or a fine of 69,000 francs CFA.

French Cameroons, French criminal law was like English common law in the British Cameroons introduced for the benefit of the Europeans. This was done by virtue of the decrees of 17th March, 1903 and 22nd May, 1922.[7] The metropolitan decree introduced was modified to suit local conditions.

The natives were on the other hand subjected to very limited customary criminal jurisdiction. This was in keeping with the general French policy of suppressing everything which was thought incompatible with the French penal regime.[8] Even the limited customary criminal jurisdiction was not given a fair chance to work successfully. It was possible to discern clearly a desire to dominate both customary law and the natives which was perhaps not unexpected in the light of French colonial policy. This attitude manifested itself in the repressive penal system of the indigénat.[9] By this system the administration constantly interfered with matters which should have been left to the legislature and the courts.[10] This produced a situation where there was a penal regime in which most of the judgments were passed not by the tribunals but by the colonial governors and administrators. This amounted in effect to the imposition of a disciplinary regime over the customary penal system.[11]

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7. The decree of 17th March, 1903 introduced into French Equatorial Africa the Penal Code of 1877 which was already operating in Senegal, while that of 22nd May, 1922 introduced all existing legislation in French Equatorial Africa into Cameroon.
8. Rolland et Lampué, Droit d'Outre-mer, 1949, Paris Dalloz, para. 290.
9. le Vine, op. cit., pp. 99-104.
10. Luchaire, F., Manual de Droit d'Outre-mer, para. 275.
11. Rolland et Lampué op. cit., para. 290.

This situation continued till the reconstruction following the Second World War which abolished the indigénat and suppressed the customary criminal jurisdiction. This was done by a decree of 39th April, 1946.[12] This decree extended the application of French criminal law as contained in the Code of 1877 to everybody in Cameroon.[13] This move sent customary law to rest perhaps for ever.

The Federal Republic of Cameroon

The Cameroon Penal Code, Book I

On the eve of unification, the penal law of Cameroon was permanently stamped with the marks of the English and French systems, although in West Cameroon, there was still some provision, albeit limited, for the operation of customary criminal law.

By virtue of Article 6 of the Constitution of the Federal Republic of Cameroon, the responsibility for criminal law passed into the hands of the Federal Government. In the exercise of these powers, and in fulfilment of its policy of eventual integration of the law, the Federal Government, by a decree of 29th February, 1964,[14] created a Commission fédérale de

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12. J.O.C. 1946, pp. 706 and 779.

13. For the provisions of the Penal Code of 1877 and other subsidiary legislation on the subject of criminal law see Codes et Lois de Cameroun, Tome II, pp. 645-944. The subsidiary legislation covers topics such as amnestied persons, legislation on arms and explosives, drinks and alcohols, identity cards, hunting and delinquent children, to mention a few.

14. Decree No. 64-84 of 29th February, 1964, J.O.R.F.C. of March 1, 1964, p. 228.

législation pénale which was charged with the task of preparing a new integrated code of criminal law and procedure. Besides various people who, from time to time gave information to the Commission which was drawing up the Penal Code, there were three permanent members.[15] The Commission was enjoined to use as its basis all the criminal laws already in existence in both East and West Cameroon, and in the actual business of integration they had to bear in mind three things, namely:

(i) The simplification of the rules of law.

(ii) The recognition of the international fight against crime, and

(iii) The individualization of punishments and of preventive measures.[16]

The criminal law of West Cameroon which was to be taken into consideration consisted of the common law, the Criminal Code[17] of Nigeria, customary criminal law and other enactments which created criminal offences while in the East, the main source was the Penal Code which since 1946, governed all criminal matters. The Commission decided, however, to take account of all aspects of law except customary criminal law. The reason given was that the jurisdiction of customary criminal law was very

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15. The three permanent members were MM. R. Parant and R. Gilg who were seconded from the Paris Ministry of Justice as experts on French Law, and Professor J.A. Clarence Smith, the expert on English Law.

16. These objectives were set out in a speech by M. Parant the chairman of the Commission. See Herzog, J.B., Le Projet de Code Pénal Fédéral du Cameroun. Revue de Science Criminelle et de Droit Pénal Comparé, 1965, pp. 212-214.

17. See Cap. 42 of the 1958 Laws of Nigeria.

limited, and as a result, it was destined soon to die out.[18] True it is that customary criminal law had over the years been whittled down, but whether it was destined to die is a judgment which we cannot, without proper research, pass so easily. Our guess is that given the time and opportunity, the customary criminal law would have developed into a force to be reckoned with in drawing up the Penal Code. Indeed, the tendency in post independent Africa has been to seek to discover the African past from the customs, and to attempt to restore such past to its proper place in the development of all national institutions. Customary criminal law would, therefore, have played no small part in this connection. It is, therefore, to be hoped that customary criminal laws which represents the crystalization of the moral precepts of many a Cameroonian have merely relapsed into limbo where they await resuscitation one fine day. This is not to ignore the fact that customary criminal law might be enforced extrajudicially.

As we have already seen, the Commission was further enjoined to take account of all the currents of thought internationally on all matters concerning penal law and the modern methods of the fight against crime.[19]

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18. Parant, R., Gilg R. and Clarence Smith J.A., Le Code Pénal Camerounais. Code Africain et Franco-Anglais. Revue de Science Criminelle et de Droit Pénal Comparé, 1967, pp. 339-384 at p. 343.

19. Herzog, Le Projet de Code Pénal Fédéral du Cameroun, op. cit., p. 212.

It was perhaps in answer to this that the Commission drew inspiration not only from the Italian Penal Code of 1931, but also from the French draft Code of 1934. For instance, the provisions with regard to preventive measures to which we will return later, are not unconnected with similar provisions in the Italian Penal Code of 1931. Indeed, it is recorded that the idea was borrowed, at least partially, from the Italian Code.[20] Thus, the resulting Penal Code draws a great deal of inspiration not only from the Nigerian Criminal Code which was itself inspired, as we have already seen, by various other sources, but also by the French Penal Code, and to a lesser extent, the Italian Penal Code. The result is that the Cameroon Penal Code is rich in its international borrowings, but poor in its national sources.

But however that may be, the Code has, apart from the claims made by the Commission, received very favourable comments. We must now turn to a brief comment of the main provisions of the code itself. This seems the only thing to do in the absence of cases decided according to the provisions of the code.[21].

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20. See Italian Penal Code of 1931, Articles 199-240. See English translation published for the Foreign Office by H.M.S.O.. Also see Clarence Smith J.A. The Cameroon Penal Code, Practical Comparative Law, 1968, I.C.L.Q. pp. 651-671 at p. 657.

21. A large number of Criminal Cases decided since the coming into force of the Penal Code have been cases of embezzlement or stealing which come under the provisions of Federal Law No. 62-10 of 9th November, 1962. With the exception of Sections 1 to 4 and 21, this law which governs all cases of stealing and embezzlement is still in force.

The Cameroon Penal Code is divided into two Books. Book I, which came into operation in 1965,[22] contains 101 sections which are devoted entirely to the general principles of Criminal Law. There are four parts to Book I.

Part I, which is sub-divided into four chapters deals with the general application of the criminal law. Chapter I (Sections 1 - 2) contains preliminary provisions such as the fact that all men are equal before the law, but as one proceeds to read the whole code one finds that this is really not the case, for certain categories of people such as parliamentarians, infants and those suffering from diminished responsibility are treated differently. Chapters II and III (Sections 3 - 12) deal respectively with the application of the criminal law in time and space. Space here includes all situations in which the law of Cameroon can apply. Chapter IV (Sections 13 - 16) recognises the fact that Cameroonians abroad are subject to the law of the country in which they may be. In this way, the Cameroon Penal Code conforms to certain principles of International Criminal Law by its recognition of the territorial, protective, nationality and universality principles.[23]

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22. Law No. 65-LF-24 of 12th November, 1965.

23. See generally Brownlie I., Principles of Public International Law, Clarendon Press, Oxford, 1966, pp. 262-269; Clarence Smith, J.A., I.C.L.Q., 1968, op. cit., pp. 651-667 at p. 660.

Part II[24] deals with the question of punishment and preventive measures. This part is divided into eight chapters. Chapter I (Sections 17 - 21) deals with preliminary matters such as penalties, accessory penalties, preventive measures and the classification of offences Most of the penalties and preventive measures are elaborated in later chapters of this part. One interesting point about this section is the classification of offences which follows the French policy of classifying offences according to the type of punishment with which each is visited. Offences are classified into felonies, misdemeanours and simple offences. A felony:

> "shall mean an offence punishable with death or with loss of liberty for a maximum for more than ten years";
>
> "a misdemeanour shall mean an offence punishable with loss of liberty or with fine, where the loss of liberty may be for more than ten days but not for more than ten years and the fine more than 25,000 francs CFA" and
>
> "a simple offence shall mean an offence punishable with imprisonment for up to ten days or with fine of up to 25,000 francs CFA."[25]

These penalties can be modified without undue interference with the nature of the offences.

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24. Clarence Smith, I.C.L.Q., op. cit., p. 654-659, Sections 17-73; Parant, Gilg and Clarence Smith, op. cit., pp. 354-370.

25. Penal Code Book I, Section 21.

Chapter II (Sections 22 - 29) deals with the principal penalties which are death, imprisonment and detention, the first two being penalties for ordinary crimes and the last for political offences. It is, of course, not for the courts to determine whether or not an offence is political, for it is political by virtue of the fact that the legislature has prescribed detention as the punishment for it. This provision is new because there is no exact counterpart in the laws formerly in existence in both East and West Cameroon. Detention as provided by Section 26 of the Code:

> "shall mean loss of liberty imposed for a political felony or misdemeanour during which the offender shall not be obliged to work, and shall be confined in a special establishment, or failing such an establishment separately from those convicted under the ordinary law."

Perhaps it should be added here that we know from the general law what constitutes a criminal offence, but with regard to political offences, we shall have to wait for the legislature because we can only know that a political offence has been committed when the legislature prescribes detention as its cure.[26]

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26. See Circular 3-DL-1129 of 15th March 1966, concerning the application of Part I of the New Penal Code. J.O.R.F.C. of 1st June, 1966, p. 16.

Chapter III (Sections 30 - 35) deals with accessory penalties which provide generally for forfeiture and confiscation in certain circumstances

Chapter IV (Sections 36 - 45) deals with the rather important question of preventive measures. This chapter has a dual purpose. There is first of all the realization that dangerous criminals must not be let loose on society, and secondly, there is desire, where facilities permit, to reform those who may be amenable to it. This is to be highly commended as the current tendency is to lay the blame for all those who fall into crime more at the foot of society than on the individual. There is also ample provision for post-penal supervision which is important both in its reformative effects and the prevention of recidivism. It would seem, however, that the facilities for such post-penal supervision will, for a long time to come, be inadequate.

Chapter V (Sections 46 - 50) deals with recognizance, the essence of which is that if a person has by his conduct or utterances shown an intention to commit a crime, then such a person, or if he is a minor then his parents, or those in loco parentis to him must give an undertaking to pay a defined sum in the event of the envisaged crime being committed within a defined time. This amounts to some form of security for good conduct. There are adequate provisions as to what should happen in the event of a breach. For instance, Section 50 provides that:

> "(1) Upon conviction of an offence covered by the recognizance the District Court shall without prejudice to any penalty incurred for the offence order forfeiture of the sum therein fixed.
>
> (2) Payment of the said sum shall be enforced as against the person bound over in like manner as if it were a fine, and as against the sureties by any civil process."

Chapter VI (Sections 51 - 53) makes provision for concurrent and consecutive sentences while Chapter VII (Sections 54 - 68) deals with the problem of suspension and remission of sentences as well as the general problem of probation and release on licence.

Chapter VII (Sections 69 - 73) makes provision for the expungement of a sentence, the purpose of which is to restore the offender to the position in which he was before. Besides lapse of time, this is done by means of rehabilitation and amnesty.

Part III[27] which consists of six chapters deals with the general principles of criminal responsibility. The most important question of mens rea is dealt with in Chapter I (Sections 74 - 76). It is provided that penalties can only be imposed on persons who are criminally liable.

> "Criminal responsibility shall be on him who intentionally commits each of the ingredient acts or omissions of an offence with the intention of causing the result which completes it."[28]

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27. Penal Code Book I, Sections 74 - 100; Parant, Gilg and Clarence Smith, op. cit., pp. 371-380; Clarence Smith I.C.L.Q., op. cit., p. 661.

28. Book I, Section 74(2).

This means that intention forms the basis for all criminal liability. This must, of course, not lead one to the erroneous conclusion that there would be no liability where intention is not proved, for the definition of any particular offence may provide otherwise, nor is there a need for mens rea in the case of simple offences for which the only necessary ingredient is the actus reus or overt act.

Chapter II (Sections 77 - 87) makes adequate provision for extenuating circumstances which come under the heading of irresponsibility, and diminished responsibility. These exist either to entitle one to acquittal or a reduction of sentence. They include accident, physical compulsion, insanity, intoxication, infancy, threats, obedience to lawful authority, respect, lawful defence, provocation, state of necessity and diminished responsibility.

Chapter III (Sections 88 - 89) deals with the question of aggravation of responsibility - an idea which is French in origin. Besides other reasons which may lead to the enhancement or aggravation of a sentence, two are singled out for inclusion in the Code. These include, firstly, aggravation which is incurred as a result of previous conviction. In order for this provision to be effective, the previous conviction must be for an offence of the same category as the one under consideration. Thus there will only be aggravation in the case of felony if the previous

conviction was for felony. The same applies in the case of misdemeanour and simple offences. Secondly, the provision also applies in the case of a civil servant who is guilty of felony or misdemeanour against which it is his duty to guard. Where it applies, aggravation operates to enhance the maximum only of the prescribed sentence.

Chapter IV (Sections 90 - 93) is quite the opposite of the preceding one. It deals with mitigation and selection of sentences. In contrast to Chapter III where the maximum only of the sentence is enhanced, the mitigating circumstances operate to enable the court, at its discretion, to pass a sentence which is usually lower than the minimum prescribed.

The operation of Chapters III and IV depend largely on the question of maximum and minimum sentences or fines. One finds this throughout the code, particularly in Book II. For instance, Section 134 which deals with corruption provides that:

> "any public servant who receives any gift or accepts any promise for performing or refraining from any act of his office shall be punished with imprisonment for from two to ten years and with fine of from one hundred thousand to one million francs."[29]

This way of prescribing penalties which appears throughout the code is more a continental than a common law practice. The reason for this lies,

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29. Any reference to francs is to the CFA franc.

as Professor Clarence Smith has pointed out, in the different manner of appointment to the Bench. In the common law world, the practice is to appoint as judges, magistrates and justices, people who are mature and have had considerable practical legal experience. In the civil law world, the judiciary forms an arm of the civil service. The result of this is that newly qualified lawyers with hardly any legal experience find themselves on the Bench. Consequently, the Bench does not enjoy the confidence of its common law counterpart, and still less, can it be regarded as endowed with infallible wisdom. This gives rise to a reluctance by both government and people to leave an important matter such as sentencing to the Bench.[30]

Of equal importance in this connection is the fact that hardly anything is done to train people in the basic principles of sentencing.

Chapter V (Sections 94 - 95) considers the preliminary crimes of attempt and conspiracy which are usually described as inchoate offences. One uses the term "inchoate" with some reservation because it refers to something which has just begun and is not yet completed, although the essence of punishing offenders for attempt is that there is a certain amount of completeness in the offence per se even though the attempt

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30. Clarence Smith, The Cameroon Penal Code, op. cit., p. 665.

forms part of a chain of events which is not yet completed.[31] It therefore follows that in the case of attempt, there is a chain of events or steps leading to a certain conclusion, the offence being committed when a particular point has been reached in this chain. According to the Cameroon Penal Code;

> "an attempt to commit a felony or misdemeanour shall mean the performance of any act towards its commission unambiguously indicating an irrevocable intention to commit it and shall be treated, where execution has been arrested, or has failed solely by reason of circumstances independent of the offender's will, as the commission of the felony or misdemeanour attempted."[32]

Conspiracy, on the other hand, (Section 95(1)) means:

> "the resolve concerted and determined between two or more persons to commit an offence."

Despite the fact that the provisions with regard to these offences are clear and unambiguous, they presented the commission with no end of difficulty. Perhaps it might be useful here to cite the relevant sources on which the Commission depended for these particular offences and discuss very breifly the difficulties which confronted them. This will help us to appreciate how they dealt with this particular problem and indeed with similar problems throughout the whole of their task.

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31. Kenny's Outlines of Criminal Law 19th Edition by Turner J.W.C., Cambridge at the University Press, 1966, p. 99.

32. Section 94(1) of the Penal Code.

The provisions for "attempt" in the Criminal Code of Nigeria which was in application in West Cameroon are as follows:

> "Section 508. Any person who attempts to commit a felony or misdemeanour is guilty of an offence, which, unless otherwise stated, is a misdemeanour.
>
> Section 4. When a person, intending to commit an offence, begins to put his intention into execution by means adapted to its fulfilment, and manifests his intention by some overt act, but does not fulfil his intention to such an extent as to commit the offence, he is said to attempt to commit the offence.
>
> It is immaterial, except so far as regards punishment, whether the offender does all that is necessary on his part for completing the commission of the offence, or whether the complete fulfilment of his intention is prevented by circumstances independent of his will, or whether he desists of his own motion from the further prosecution of his intention.
>
> It is immaterial that by reason of circumstances, not known to the offender it is impossible in fact to commit the offence.
>
> The same facts may constitute one offence and an attempt to commit another offence."

The corresponding provisions of the French Penal Code are as follows:

> "Article 2. Every attempt to commit a felony manifested by commencement of execution is considered like the completed felony, unless the attempt has been terminated, or it has fallen short of success only because of circumstances independent of the perpetrator's will.

> Article 3. Attempts to commit misdemeanours are considered as misdemeanours only when specifically provided by law."[33]

Finally, the Italian Penal Code provides by Article 56 as follows:

> "Whoever commits acts which are appropriate for and directed in an unequivocal manner to the commission of a crime is responsible for attempted crime if the action is not completed or the event does not take place.
>
> A person guilty of attempted crime shall be punished with penal servitude from 24 to 30 years, if the law prescribes the penalty of death in respect of the crime; with penal servitude for not less than 12 years, if the punishment prescribed is penal servitude for life; and, in other cases, with the punishment prescribed in respect of the crime, reduced by one-third to two-thirds.
>
> If the guilty person voluntarily desists from the action, he shall only be liable to the punishment for the acts performed when these of themselves constitute a different offence.
>
> If he voluntarily prevents the occurrence, he shall be liable to the punishment prescribed in respect of the attempted crime, reduced by one-third to one-half."[34]

We shall now consider how the Commission handled all this material.

It will be seen from the provisions of the Nigerian Criminal Code and

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33. The English translation is that in the American Series of Foreign Penal Codes. The French Penal Code, op. cit., p. 15.

34. See the Italian Penal Code, published for the Foreign Office by H.M.S.O., op. cit., p. 16.

those of the French and Italian Penal Codes cited above that there is much similarity between the Nigerian and Italian provisions, particularly in respect of punishments. The punishment for an attempted offence is, in both cases, less severe than for the offence itself. Because of this essential similarity, the Commission was really faced with the job of reconciling the relevant sections of the French Penal Code and the Nigerian Criminal Code. There are, of course, several significant differences between these two codes. In the first place, the Nigerian Code punishes attempt with half the penalty for the completed offence, while in the French Penal Code the punishment for attempt is the same as that for the completed offence. Secondly, there is. in the Nigerian Code, a further reduction in penalty for the voluntary discontinuance of an attempt, while in French law a discontinued attempt does not constitute an offence at all. Thirdly, Nigerian law[35] punishes felonies and misdemeanours, but in French law attempted felony is punished automatically while attempted misdemeanours may only be punished if there is specific provision to that effect. Attempted contraventions are never punished at all.

There is, however, one point on which the two codes agree, namely, the question of punishing an attempt even when completion of the intended

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35. West Cameroon law should be read into any reference to Nigerian law.

offence is impossible. This is subject, of course, to the proviso that the impossibility is due to circumstances or facts unknown to the accused. In this connection, there are the familiar examples of the thief who attempts to pick an empty pocket, or the murderer who pulls the trigger of a gun not knowing that it is unloaded. This is not, of course, to ignore the fact that there are cases where it is doubtful whether attempt should be punished. An example of this is the attempt to kill with a child's toy gun.

However, bearing in mind these differences, we must now consider how the Commission dealt with them. A glance at the provision for attempt in the Cameroon Penal Code which was cited above shows that reconciliation was weighted in favour of French law. Thus, the French rule of punishing attempts as severely as the completed offences was adopted as against the Nigerian or Italian rules of inflicting less severe punishments for attempts than for the offences. Again, the French rule that a discontinued attempt rules out the offence was adopted as against the contrary Nigerian rule. Further, the French rules of excluding all attempted contraventions from punishment was adopted.

The question of conspiracy presented even greater difficulties, for here, the Commission had to deal not only with the problem of reconciliation, but also with the fact that French law knows no offence of conspiracy the nearest thing to it being complôt which is restricted to conspiracy

against the security of the State.[36]

Chapter VI (sections 96 - 100) deals with the question of parties to a crime.

Part IV (Section 101) of Book I deals with the general question of breach of State laws for which there may be no provision in the Penal Code or any other Federal Law.

The Penal Code Book II[37]

Book II of the Penal Code contains 262 sections which deal in greater detail with specific felonies, misdemeanours and simple offences as well as the penalties attached to these offences. It would take much too long and perhaps be too tedious to treat Book II in the same way as we did with Book I.

Section 24(3) of the Federal Constitution gives the Federal Government power to define:

> "crimes and offences and the establishment of penalties of any kind, criminal procedure, means of enforcement, amnesty, and the creation of new orders of jurisdiction."

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36. See generally, Clarence Smith, The Cameroon Penal Code, op. cit., pp. 665-667. Also see Circular 3-DL-1129 of 15th March, 1966, J.O.R.F.C. of 1st June, 1966 (supplementary issue) at pp. 40 - 41.

37. Parant, Gilg and Clarence Smith, op. cit., at pp. 380-384; Clarence Smith I.C.L.Q., op. cit., pp. 667-671.

This provision of the Constitution enables the Federal Government to create new offences. It was perhaps in the exercise of these powers that the provisions of Ordinance No. 62-OF-18 of 18th March, 1962, and Law No. 63-30 of 25th October, 1963, both of which relate to the creation of certain criminal offences not provided for by the Penal Code, and which were intended to suppress subversion, are still in operation.

Book II is divided into four parts. Part I covering Sections 102-226 is very extensive and deals mostly with felonies and misdemeanours against the state. The matters covered in these five chapters include offences against the external and internal security of the state and the Constitution and offences by public servants and those against public authority.

Part II (Sections 227 - 274) deals with felonies and misdemeanours against the general interest. There are six chapters which cover subjects such as public safety, public peace, public economy, public health, public decency and public worship. A breach of any of these subjects affects the entire public or a part thereof.

Part III (Sections 275 - 361) is a rather long section which deals with felonies and misdemeanours against private interest. Most of the offences covered by this part are usually those against either the persons or property of private individuals or both. In five chapters, this part deals with offences against the person, his private liberty and tranquility,

his confidence, his property, and his children and family.

Part IV (Sections 362 - 363) covers simple offences. There are four classes of such offences which are distinguishable by the punishment for each class. For instance, a first class simple offence attracts a fine of from 200 to 1,200 francs CFA while a seond class offence attracts a fine of from 1,400 to 2,000 francs CFA.[38]

Finally, Annexe III, Schedule III contains a number of provisions of the old law in existence in both Federated States which are exempt from the repeals in Schedule II of the Code.

In a work of this nature, it is not possible to do more than indicate very generally the provisions of the Penal Code and the various situations covered by it, but before we leave this section, a few general remarks must be made.

Although there is much less evidence in this Code than in its predecessors, one still gets the impression that greater emphasis is placed on the protection of property rights than of individual rights which is very important if we ever hope to protect the dignity of the individual. Perhaps this is so because of the intractability of the moral issues of right and wrong. The worrying question is that the Codes which

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38. Decree No. 67-DF-322 of 20th July, 1967 draws up rules under the Penal Code to define simple offences.

provide the background to the Penal Code were often drawn up by the colonial administrations, not so much out of concern for attitudes and values of the people for whom they were intended, but rather as a means of effectively maintaining law and order and suppressing certain customs and practices which were regarded as repugnant. Nor of less importance was the prominent part given to the protection of property in these Codes.

All this notwithstanding, the Code is a definite improvement on its predecessors because it leaves out:

> "what was inapplicable or inoperative such as spring-guns or mantraps on the Nigerian side and many archaic offences in the French Code."[39]

Another significant feature in the old codes was the almost passionate obsession with the question of theft. Perhaps this is a feature of colonial administration which tended to lay a great deal of emphasis on the protection of European property. Also the judges who were instrumental to the development of this field of the law, being themselves members of the property owning class of society, were bound to favour the general idea of the protection of property.

This branch of the law has retained its severity in the new Penal Code, particularly with regard to embezzlement which seems to have been prevalent among civil servants and the employees of corporations. Section

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39. Clarence Smith, I.C.L.Q., op. cit., pp. 667 - 668.

184 of the Code lays down the law for dealing with cases of embezzlement of Government funds or those of any corporation in which the state has an interest. The penalty for embezzlement where the value of the property exceeds half a million francs CFA is life imprisonment; where the amount involved is between half a million and one hundred thousand francs CFA, the punishment is imprisonment of between 15 and 20 years. Other smaller sums attract less severe punishments. It is further provided that these punishments may not be reduced even where there are mitigating circumstances below certain minima, nor may their execution be suspended.

Before the coming into force of the Penal Code, the law with regard to embezzlement was contained in Law No. 62-LF-10 of 9th November, 1962 which, but for Sections 1, 2, 3, 4 and 21 which have been repealed, remains in operation. The reason for this rather severe law of embezzlement has been the determination on the part of the Government to stamp out the offence, partly because of its prevalence, and partly as a fiscal measure. Whether it has been successful or not is a question which we cannot answer just yet because of a lack of statistics.

One further comment must be made about the Penal Code before we turn to the question of treatment of offenders. The comment concerns the Ministerial circulars concerning the application of the Penal Code which were issued by the Ministry of Justice. While not claiming the force of

law, these circulars were intended:

> "to draw the attention of the legal and judicial officers to the New Cameroon Federal Penal Code and to facilitate its understanding."

This was made necessary by the fact that:

> "up till now and so far as the criminal law of the two Federated States was principally made up of texts and general principles deriving either from the French or English law, its interpretation depended on English or French case law. The fusion in the new code of the systems so far in force, and the reforms which have been introduced have robbed the old case law if not of all significance at least of the greater part of its value as guide."

The circulars were therefore intended:

> "to reduce the effect of the hiatus which might otherwise appear until a body of clear and uniform case law is established."[40]

Such circulars were issued in respect of both Books of the Code.

One final comment must be made here before we pass on to consider the provisions of the Code with regard to punishment and the treatment of offenders. The comment is simply that it has not been possible to enliven our discussion with decided cases because of their unavailability.

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40. See Circular 3-DL-1129 of 15th March, 1966, concerning the application of the Penal Code.

Punishment and the Treatment of Offenders.

There are generally two attitudes to punishment. Firstly, punishment is regarded as an absolute value in itself and as the inevitable result of crime. Secondly, it is treated relatively, that is, it must be related to some object such as prevention or reformation. Perhaps the ideal situation is that both these elements must be present in any form of punishment.

Any one reading through the Cameroon Penal Code must come to the inevitable conclusion that punishment plays an important part. The Code contains the traditional penalties of hanging, imprisonment and fine. In addition to these, there are the usual provisions with regard to the treatment of young offenders with adequate emphasis being placed on reformation and after care.

According to Section 276 of the Code, the penalty for capital murder is death. No death sentence may, however, be executed until the President of the Federal Republic of Cameroon has signified his decision not to commute.[41] Where it is decided to go forward, then:

> "the execution of the death sentence shall be by shooting or by hanging as may be ordered by the judgment, and must be public unless otherwise ordered in the decision not to commute."[42]
>
> "Nothing may be published by the press beyond the official communiqué that may be released."[43]

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41. Section 22(1) of the Penal Code.

42. Section 23(1) of the Penal Code.

43. Section 23(3) of the Penal Code.

These provisions raise two quite fundamental problems. In the first place, there is the question of public executions,[44] the reason for which may lie in their deterrent and retributive effect. We believe that punishments of this nature obviously have their deterrent effects, but recent trends tend to create certain doubts in our mind about the efficacy of deterrence. For instance, Federal Act No. 62-10 of 9th November, 1962, provided by Article I that a sentence of hard labour for life would be imposed on persons embezzling sums of over 100,000 francs CFA.[45] An example is the case of Shey v. The People[46] where the facts

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44. Examples of public executions in Cameroon include those of the murderers of certain missionaries. See African Penal Systems (Ed.) Milner A., London Routledge and Kegan Paul, 1969, p. 9.

45. Section I of Act No. 62-10 of 9th November, 1962 has now been repealed under Book II of the Penal Code (Law No. 67-LF-1 of 12th June, 1967) which by Section 184(1)(a)(b)(c) and 184(2) provides the penalties for embezzlement as follows: "(a) where the value of the property is more than half a million Francs with imprisonment for life; and (b) where the said value is half a million francs or less, but over one hundred thousand francs with imprisonment for from 15 to 20 years; (c) where the said value is one hundred thousand francs or less with imprisonment for from 5 to 10 years and with fine of from 50,000 to 500,000 Francs. 184(2) the foregoing punishment may not be reduced, whatever the mitigating circumstances, below 10, 5, or 2 years as the case may be nor may its execution be suspended."

46. W.C.C.A./11C/1964. W.C.L.R. 1962-64, p. 57.

are that the appellant, as Sub-Treasurer at Mamfe, was in the habit of cashing his personal cheques with his own subordinate, the Cashier, but delaying their presentation by refraining, in his capacity as Sub-Treasurer, from endorsing them; and then taking them back and taking more cash against a further cheque for a larger amount. The appellant was convicted for embezzlement and sentenced to twenty years' imprisonment with hard labour under Act No. 62-10 of 9th November, 1962. As we saw above, the reason for these severe punishments is partly an attempt to deter people from committing them. Despite this, there have been several cases[47] of embezzlement recently which cast some doubt on the deterrent value of these severe penalties. As for retribution, suffice it to conclude with Lord Denning that:

> "the punishment inflicted for grave crimes should adequately reflect the revulsion of a great majority of citizens for them."[48]

Secondly, there is the question of the prohibition put by the law on any publications about the execution beyond the official communiqué.

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47. A few recent examples of prosecutions under Act No. 62-10 of 9th November, 1962 are as follows:
    (1) The People v. Francis Lobe (1968) No. KM. 1432c/66 unreported which attracted a sentence of 20 years.
    (2) The People v. Peter Fongyen and Joseph Mbake (1968) in which the 1st accused was sentenced to 20 years and the second acquitted. The criminal cause list for 1968 shows quite a few trials under the above law, some of which resulted in acquittals and others in shorter prison sentences.

48. Report of the Royal Commission on Capital Punishment 1949-53, Cmnd. 8932, para. 53.

This matter belongs to the régime of press law, so we can only mention in passing that a certain amount of press freedom in this connection can sometimes prevent a miscarriage of justice.

> "Human justice can never be infallible. No matter how conscientiously courts operate, there still exists a possibility that an innocent person may, due to a combination of circumstances that defeat justice, be sentenced to death and even executed."[49]

The death penalty is, of course, only resorted to in the event of offences against external[50] and internal[51] security and capital murder.[52] Most other offences are punishable with imprisonment or fine. With regard to imprisonment, the terms vary between five to ten days for simple offences of the fourth class,[53] and life imprisonment for misappropriation of public funds,[54] and several other offences in the Code. The majority of the sentences as can be seen from the figures below are short term

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49. Sellin, Thorsten, The Death Penalty. A Report for the Model Penal Code Project of America, 1959, p. 63.

50. Section 102 of the Penal Code.

51. Section 112 of the Penal Code.

52. Section 276 of the Penal Code.

53. Section 362(d) of the Penal Code.

54. Section 184 of the Penal Code.

ones.[55] Most of the inmates are engaged on work such as the construction of houses and roads, the repair of shoes and boots, and dairy farming. The Buea Prison Farms produce most of the fresh milk, eggs and vegetables in Buea.

It used to be thought in the colonial days that prisoners were happy to remain in prison because the conditions were better than those at home. This was perhaps based on the assumption that all those who went to prison came from homes where conditions were inferior to those in prison. It was also assumed that material well-being mattered more to the inmates than the separation from families and friends. There may have been, and perhaps still are, inmates who are inclined this way, but it seems that one cannot generalize too much on this point, except perhaps to the extent that the constant drift in recent years from village and family to town and city may weaken the family ties.[56]

The fine, too, is another form of punishment. It is sometimes the only punishment but occasionally it is alternative or additional to

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55. Specifications of the total number of Prison Admissions in West Cameroon for 1968/69. No statistics were available for East Cameroon.

| | Male | Female | Total |
|---|---|---|---|
| Sentenced to 18 months and over | 116 | - | 116 |
| Sentenced to 12 months & less than 18 months | 36 | - | 36 |
| Sentenced to 6 months & less than 12 months | 300 | - | 300 |
| Sentenced to 3 months & less than 6 months | 165 | - | 165 |
| Sentenced to 1 month & less than 3 months | 312 | 7 | 319 |
| Sentenced under 1 month | 202 | 7 | 209 |
| On remand awaiting trial | 23 | 5 | 28 |
| Total | 1,154 | 19 | 1,173 |

56. See generally (Ed) Milner, The African Penal System, op. cit., pp. 295-315.

imprisonment. The fine does, however, raise some problems. Has it any deterrent value? There is evidence that it has. The comment of the Police representatives to the Advisory Council on the Treatment of Offenders was that:

> "the deterrent value of the fine is under-rated by the courts and that fines are more appropriate for many acquisitive and personal offences than the courts apparently think."[57]

They, however, issued the warning that:

> "heavy fines would serve only as an inducement to commit offences,"[58]

in order to be able to pay them. If the fine is thought of as an adequate deterrent in England, then it must be even more so in countries like Cameroon where money is a scarce commodity. In any case, when considered against the background of overcrowded prisons, high running costs and inadequate staff, the fine becomes very attractive to policy makers. In addition, the prisoner is spared the possibility of gaol rot and the stigma which attaches to any one who has been to prison. Again, the fine is suitable for cases of short term imprisonment as that would render unnecessary the question of remission which tends to make such sentences

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57. Alternatives to Short Terms of Imprisonment. Report of the Advisory Council on the Treatment of Offenders, London, Her Majesty's Stationery Office, 1957, para. 24.

58. Ibid.

meaningless. Finally, by providing minimum and maximum fines, the Cameroon Penal Code gives the judges a great deal of discretion to adjust such fines to the means of the prisoners.

While still on the question of punishment, we must comment as indicated above on preventative confinement and detention. The former is the punishment for the more hardened criminals, its main purpose being to protect the public from such criminals. The latter is the punishment for political offenders. It means:

> "loss of liberty imposed for a political felony or misdemeanour during which the offender shall not be obliged to work and shall be confined in a special establishment, or failing such establishment, separately from those convicted under the ordinary law."[59]

Not much else is said about the nature of the offence of political felony or misdemeanour, nor about the method of incaceration. This is presumably left to the trial court. Obviously the punishment will be dictated by the gravity of the offence. One can only hope such detention will be humane and will take account of the results of research conducted elsewhere on the effects of detention. It was indeed in recognition of the fact that:

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59. Section 26 of the Penal Code.

> "solitary confinement for a prolonged period may be dangerous and barbarous"

that led to its abolition in England and America where laboratory experiments have confirmed that for most people solitary confinement is an unpleasant stressful experience.

> "To Christians and humanists alike the personality is sacred and inviolable and the evil of enforced solitary confinement is that it produces conditions under which a man's inner self may disintegrate. The destruction of the "inner citadel" of human personality is more terrible to contemplate than physical death. The conclusion to which one is forced is that solitary confinement may constitute a blasphemous assault upon a man's spiritual being. The fact that some spirits are inviolate does not in the slightest degree justify the system."[60]

To these words we can only add that coming as they do from South Africa where the effects of 90 and 180 day detention laws are being felt and seen, they should be taken seriously.

We cannot conclude this section without mentioning the extensive provisions for post-penal supervision and assistance for both adults and young persons.

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60. Mathews, A.S. and Albino, R.C., The Permanence of the Temporary - An examination of the 90 - and 180 - day detention law, South African Law Journal, Vols. 83-84, 1966-1967, pp. 16 - 43 at p. 24-25.

It is very difficult at this stage to say whether or not the means of dealing with criminals outlined above are enough to cope with the situation. Any such conclusion must wait for further research.

Conclusion

On a first reading through the Code, one gets the impression that it is the result of a scissors and paste operation on the criminal laws in force in both East and West Cameroon prior to the enactment. This, however, is not the case, for the Code incorporates material from other sources as well as the initiative of the Commissioners. The Code therefore represents a creation, a synthesis, a compromise, a consolidation as well as a pruning.[61] This must lead one to the conclusion that the Code is a real masterpiece. Indeed the Commissioners made some quite substantial, even extravagant claims for the Code about which we do not intend to comment beyond the fact that, taken as a whole, the Code is a commendable piece of legislation.[62] Perhaps the credit should rightly go to the members of the Commission who seem to have used a great deal of initiative, for the Code seems quite reticent on matters of basic policy considerations. Quite apart from the three things to which reference has already been made which the Commission had to bear in mind, any other policy considerations that there may be, such as the preservation of the fundamental assumptions of the criminal law, the creation of new offences,

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61. Clarence Smith, I.C.L.Q., op. cit., pp. 667 - 668.

62. Ibid, 670-671; Parant, Gilg and Clarence Smith, op. cit., p. 384.

such as the political offences created under Section 26, and any technical improvements, to mention just a few, emerge from the Code itself.

There remain, however, certain questions which must be answered. For example, it is not certain what place is to be given to the pre-Code precedents in West Cameroon and to a lesser extent the jurisprudence constante in East Cameroon. It is true, that the Minister of Justice said in his Circular that:

> "the fusion in the new Code of the systems so far in force, and the reforms which have been introduced have robbed the old case-law if not of all significance at least of the greater part of its value as guide."[63]

How much of a guide is left in the old case law is a matter which must perhaps be determined by the courts. This is not to mention the West African Court of Appeal, Nigerian and English decisions which are of persuasive authority, and which still seem, irrespective of the Ministerial Circular, to play a very important part.

The next question concerns the untidy nature of some of the provisions of the Code. Sections 35 and 45 provide an example of this untidiness. Section 35, coming under the general heading of "other accessory penalties" provides by sub-section I that:

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63. Circular 3-DL-1129 of 15th March, 1966.

> "on conviction for any felony or misdemeanour, the court may order confiscation of any property, moveable or immoveable, belonging to the offender, and attached, which was used as an instrument of its commission or is the proceeds of the offence."

Section 45 is under the general heading of "preventive measures" and provides that:

> "the confiscation of anything whose manufacture custody, sale or use is unlawful shall be ordered even if not belonging to the offender, and even if the prosecution does not result in conviction."

On reading through these sections it is not immediately clear why the word "may" is used in one case and "shall" in the other. It is only by looking at the Ministerial Circular, which incidentally is not law, that it becomes apparent that Section 45 being a preventive measure is compulsory while Section 35 being a remedy is discretionary. Difficulties of this nature, however, are largely language difficulties.

This leads us to the next point, namely, to comment on the claims of the Ministerial Circular that:

> "We cannot have a single code whose words mean the same thing for the whole of the Federal Republic being differently interpreted according as the method and sources of interpretation differ."[64]

Thus we need some machinery to:

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64. Circular 3-DL-;;29 of 15th March, 1966.

> "enable us to some extent to reduce the effects of the hiatus which might otherwise appear until a body of clear and uniform case law is established. There is good reason to hope that the courts of East and West will find the same solutions to the disputes arising before them; but if necessary it will be the function of the Federal Court of Justice under Section 11 of Ordinance 61-OF-6 of 4th October, 1961, to ensure the uniformity of interpretation which is indispensible."[65]

Further, there is reference to the fact that the preparatory material can be resorted to if need be.

Perhaps it is only right and fair that the Ministry of Justice should be so optimistic about the future uniform development of the Criminal Law. There are, none the less, doubts as to how accurately we can prognosticate such future uniformity. If it is difficult to get such uniformity in the interpretation of codes in situations which are much less complicated than that of Cameroon, then how can we expect unity in the interpretation of a code in a bilingual and bi-jural situation. It is a fact that the courts in each state are manned by personnel trained in the dominant legal system in the state which is French Law in the East and English Law in the West. The attitude of these courts to the problems of interpretation is bound to reflect the education, training, experience and associations of the judges and magistrates. In addition to this, the rules of interpretation are different. The East Cameroonian

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65. Ibid.

judge with his invariably French background is bound to follow the method of statutory interpretation known in France. This falls into four rough headings, namely, the grammatical, logical, historical and teleological interpretation.[66]

The grammatical interpretation attempts to interprete a statute as it is, that is, "to let the statute speak for itself."[67] This means that words are interpreted literally and without recourse to anything. It may, of course, happen that the statute does not speak simply and clearly. Indeed it often happens that the words and phrases used are capable of more than one interpretation. Where this happens the judge is then faced with the difficulty of sorting out the right meaning. This then gives rise to the logical interpretation which:

> "considers the legislative provision not merely as an isolated writing but in the context of the entire body of rules comprising the legal system - either in the same statute, in other laws or in recognised general principles of law."[68]

If this fails to solve the difficulty then resort is had to the historical method of interpretation. Except where prohibited by the rules of strict construction, this method looks back into the travaux préparatoires with a view to discovering the intention of the legislature. Finally, there is

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66. See generally David R. and de Vries H.P., op. cit., pp. 87-99.

67. Ibid, p. 87.

68. David R. and de Vries H.P., op. cit., p. 88.

the teleological method which has been developed to fill a gap created by the historical method. If we look back at the travaux préparatoires of legislation passed by the French administration in Cameroon at the beginning of the Mandate, we will perhaps discover that the original purpose of most of such legislation does not fit today's conditions. It is at this stage that teleological interpretation comes in and attempts to interpret such statutes in the light of their contemporary but social.

The judge in West Cameroon, on the other hand, will interpret the code according to the English cannons of construction which, although being far more numerous than those in the East:

> "centre on the duty of the judges to ascertain the intention of the legislator in making use of the particular word or phrase which is to be interpreted."[69]
>
> "It would seem", says Professor Lord Lloyd, "that the English approach is primarily based on ascertaining the plain meaning of the words used, whereas that of the civil law is directed to ascertaining the intention of the legislature."[70]

There are, however, a number of rules which guide the English judges.

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69. Gutteridge H.C., Comparative Law: An Introduction to the Comparative Method of Legal Study and Research, 2nd Edition, Cambridge at the University Press, 1949, p. 101.

70. Professor Lord Lloyd of Hampstead, Introduction to Jurisprudence, op. cit., p. 385. On the subject of interpretation see generally Maxwell on Interpretation of Statute, 12th Edition, by Langan, P. St. J., London, Sweet & Maxwell, 1969.

There is first of all the rule of literal interpretation by which words are to be construed according to their literal meaning and sentences according to their grammatical meaning. It is only in the event of an ambiguity that there can be any departure from this. In the event of such a departure, other rules are resorted to. One such rule is the "golden rule" which allows the courts in situations where the wordings of a statute are susceptible to two meanings, to adopt the one which avoids the absurdity. Thus where a statute[71] made it bigamous for a woman to marry a second husband while the first marriage was still subsisting, it was decided that the second word "marriage" was ineffective in law, hence it was construed as "going through a form of marriage with one man while still being married to another."[72] Then there is the "mischief rule" or the rule in Heydon's case[73] which provides that if the meaning of a statutory instrument is ambiguous, then the court may, within the rules laid down in Heydon's case look at the old law to determine (1) what was the common law before the passing of the Act; (2) what was the mischief and defect for which the common law did not provide; (3) what remedy Parliament have resolved and appointed to cure the disease of the Commonwealth; (4) the true reason of the remedy. Having made this inquiry, the judges must then suppress

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71. Offences against the People Act, 1861, Section 57.

72. R. v. Allen [1872] L.R.1 C.C.R. 367.

73. [1584] 3 Co. Rep. 7a.

the mischief and put forward the remedy. In construing statutes, the courts also take cognisance of public policy. This seems to have been the basis on which the court in the case of Re Sigsworth[74] refused to allow an only son to succeed to his mother's estate because he had murdered her. Thus, the fact that he was sole issue and therefore entitled to succeed under the provisions of Section 46 of the Administration of Estates Act, 1925, was of no avail.[75]

Besides the rules just discussed there are a large number of other aids to interpretation. These include internal aids such as the preamble and various titles of the statute; external aids such as dictionaries and reports and the ejusdam generis rule which provides that words used in a summary following an enumeration of particulars must relate to the things enumerated. Thus it was held in one case[76] that a white line painted on the road was not a "device" because the enumerated words consisted of "signals, warning sign posts, direction posts and signs", all of these not being in the same category as a "white line". Presumptions also play no small part in the interpretation of statutes. These include presumptions against fundamental changes of the common law by mere implication; against the imposition of criminal liability without fault; against

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74. [1935] Ch. 89.

75. Kiralfy, A.K.R., The English Legal System, 5th Edition, London, Sweet & Maxwell, 1967, p. 136.

76. Evans v. Cross [1938] 1 K.B. 694.

ousting the jurisdiction of the courts to name just a few.[77]

We have made reference to the common law in connection with the Rule in Heydon's case and presumptions. This raises the question of the extent to which the common law applies to the Cameroon Code, or indeed, in any code situation. Obviously if the code is to be construed de novo the question of the common law may never arise. But there may, however, be certain problems of construction which can only be resolved against the background of the common law on which the Nigerian Criminal Code, and therefore, the Cameroon Penal Code, at least partially, was based. It is therefore partly for this reason and partly as an attempt to summarise briefly, for purposes of comparison, all the rules of interpretation in West Cameroon that the reference to the common law has been included.

Quite apart from all these methods, there is an Interpretation Ordinance[78] which, with the exception of Section 66, is still applicable in West Cameroon. This Ordinance contains rules which, even if presumptive, are very valuable as aids to interpretation. Of even greater importance is the role of precedent in the interpretation of statutes. This ensures that there is consistency of interpretation of statutory provisions which have been the subject of litigation.

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77. Kiralfy, op. cit., at pp. 126-130; Hood Phillips, op. cit., pp. 117-123; Maxwell on Interpretations, op. cit., pp. 153 - 227.

78. Cap. 89 of the 1958 Laws of Nigeria.

These various attitudes towards the problems of interpretation which represent East and West Cameroon views on the subject must lead to everything but "a uniformity of interpretation."[79] There are other factors which militate against any uniformity of interpretation. In the first place the different judicial systems cannot be expected to produce any uniformity, nor does the lack of a Common Code of Criminal Procedure help the situation. The importance of these two as a unifying factor cannot be overemphasized. It would therefore seem that the first step towards attaining uniformity would have been to unify and simplify the system of courts and to have common rules of procedure to be applied in these courts. It would seem that the Federal Court of Justice will, for a long time, have very little impact on the development of the law. The reason for this is twofold. Firstly, the dominant aim of the Federal Court of Justice is to adjudicate on matters of interstate conflict. Secondly, the legal system in each state is so self-sufficient that there are likely to be very few matters, if any, which go to the Federal Court of Justice. It is true that the improved communication links between East and West will give rise to greater contact and perhaps more litigation. In such a situation, rules of internal conflict of laws are likely to be more useful than mere resort to judicial interpretation.

Finally, Section 101 of the Penal Code still makes it possible for

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79. Circular No. 3-DL-1299 of 15th March, 1966.

state laws which lie outside the ambit of the Code to be applied. This cannot be regarded as encouraging uniformity.

We have attempted in the conclusion to this chapter to show that a mere reliance on interpretation without more will not help the Penal Code to develop uniformly. In order to do so, it must work within a uniform judicial system with uniform rules of procedure. But if we were to stick to rules of interpretation then the continental rules would seem more objective, systematic and rational and therefore to be preferred to the English ones which swing:

> "from one type of statutory construction to another, one day interpreting a statute very narrowly, and another day favouring a broad approach."[80]

This perhaps results from the fact that in continental jurisprudence, statutes form the basis of the law and are therefore more general than their English counterparts which are built into the fabric of the common law. Cameroon, being a country which is on the move towards codification therefore stands to benefit by adopting the continental rules of interpretation.[81]

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80. Lord Lloyd of Hampstead, op. cit., p. 385.

81. On interpretation of statutes in common law Africa generally, see Bennion F.A.R., Constitutional Law of Ghana, London, Butterworths, 1962, pp. 272-280; Allott A.N., Essays in African Law, op. cit., Chapters 1 and 2; Brett and McLean, op. cit., pp. 6 - 8.

# CHAPTER VIII

# CONTRACT AND TORT

## Customary Law of Contract

As we did in the last chapter, we will not spend too much time in this chapter going over the familiar arguments as to whether customary law knows any distinction between crimes and civil wrongs, and the further arguments about a classification of civil wrongs into contract and tort. These have been very adequately dealt with elsewhere.[1] Indeed, the position has been well summed up by Morris and Read as follows:

> "Traditional customary law of sixty years ago recognised a variety of types of contracts, those for example of service, sale, loan and pledge. The great majority of such contracts were, of course, at that time oral, and customary law, in general, required that such contracts should take place in the presence of a witness. With the spread of commerce and of literacy throughout the country, the written contract, dealing with every branch of commercial activity, has become of increasing importance, although oral contracts are still recognised in present-day

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1. Elias, T.O., The Nature of African Customary Law, op. cit., chapters VII and VIII passim; Elias, T.O., The Nigerian Legal System, op. cit., chapter XIII passim; Cotran E., The Law of Civil Wrongs and Obligations in Commonwealth African Countries (1966); Shapera I, Contracts in Tswana Law, 1865, J.A.L., p. 152; Kanga Victor Jean-Claude, Le Droit Coutumier Bamileké au Contact des Droits Européens, Yaoundé, 1959, Imprimerie du Gouvernement, pp. 145-148; edited by Gluckman M., Ideas and Procedures in African Customary Law, published for the International African Institute by Oxford University Press, 1969. See especially pp. 71-78, and chapters XVII and XVIII.

customary law. A large part of the time of the average lower African Court is taken up with cases involving non-payment of debt. Whatever may have been the case in the past, and it has been maintained that interest is not a feature of traditional customary law, interest is certainly an important aspect of modern loans and is often at what appears to be extortionate rates and, in fact, the High Court rejected as extortionate one suit for recovery of debt with interest at the rate of 120 per cent per annum where, moreover, ample security of land had been given for the loan. It would hardly be expected that the English law concept of consideration as an essential aspect of the simple contract would be found in customary law and a High Court judge has stated in an appeal judgment in a case from the Principal Court of Buganda: 'I am by no means satisfied that under native law or native customary law prevailing in Buganda it is necessary for such an agreement (i.e. a sale) to be supported by consideration'. Of contracts which are found in customary law and which have no counterpart in English law, mention must be made of the cattle loan contracts which play a large part in the life of the cattle owning societies. There are a variety of types of loans of this kind whereby a cattle-owner loans, perhaps for many years, a beast to a friend and there are intricate rules, differing according to the type of loan, which cover the sharing of the produce and of the progeny of the loaned animal."[2]

We shall, therefore, in the following pages be considering, in relation to Cameroon, a few special cases of the customary law of contract with which we are familiar.

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2. Morris H.F. and Read J.S., Uganda. The Development of its Laws and Constitution, London, Stevens & Sons, 1966, p. 308.

Contracts of Sale

Sale contracts may relate to the sale of interests in land in the rare circumstances where this is permissible, or to the sale of cattle or other moveables. Sale transactions take place either in private or in the market place.[3]

Sale in the market place is almost always by money now. Barter, which may have been known in the recent past is now limited to private transactions. For example, A may want palm-wine to take to his parents-in-law, but may not have money with which to buy it. One of the alternatives open to him will be to find out if someone producing palm-wine wants something done. B, a palm-wine producer may want grass for the thatching of the roof of his mother-in-law's house. The two men could then agree that A shall, for a calabash of palm-wine from B, supply the latter with some grass. The size of the calabash of palm-wine and the quantity of grass, must be agreed upon by the parties. Transactions of this nature which could be entered into for various purposes are now on the way out, for the introduction of money has not only put an end to

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3. The Market, which has played such an important part in the economic and social life of the people of the grassfield areas of Cameroon, could indeed form the subject of a useful dissertation in either economics, economic geography or social anthropology.

The market economy in these areas has not only brought twentieth century goods to the village but also contributed in no small way to general development in other fields such as road building, the organisation of transport systems, and the general improvement of village housing. Most of these developments have been due largely to the initiative of the people themselves.

trading by barter, but also to the use of such money substitutes as gold ingots, cowries and shells.[4] In the Mbem area in Donga and Mantung Division certain shovel shaped instruments were used as money, particularly for the payment of marriage consideration, and sometimes for the purchase of livestock. These, too, are no longer in use.

We must now, before we leave this section on contracts of sale, make a brief mention of the rules governing sale. These vary according to whether the sale takes place in an open market or in private and whether the subject matter of the sale is personalty or realty. Personalty forms by far the greatest subject of most sale contracts.

Sales conducted in market places are simple. The buyer and the seller, after sometimes long and protracted bargaining in which the seller tries to get as much as he can for what he is selling while the buyer tries to pay as little as he can, usually agree on a price. When this is done, the property in the goods does not pass to the buyer until he has tendered the full purchase price. There may, however, be cases where the property passes after part payment. Such cases depend on agreement being reached between the parties in the presence of witnesses.

The position with regard to private sales is slightly more complicated. A contract for the sale of livestock which forms the subject of a great majority of such contracts must be completed between the buyer and

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4. Elias, The Nature of African Customary Law, op. cit., p. 151.

the seller in the presence of witnesses. This is so in order to ensure that there will be available witnesses, should it later transpire that the animal was suffering from a latent disease which could not be detected at the time of the contract. Again, a witness will be useful if it turns out that the animal was stolen. The bargaining process is the same as for sales in an open market. The property in the animal passes when the buyer has tendered the agreed price, although the seller is not completely absolved from liability until after the expiration of a reasonable time which may sometimes be as long as three months. The reason for this is that Mbem customary law, from which our examples are drawn, does not recognise the maxim caveat emptor. Thus, if within this reasonable time the animal sold shows signs of disease, or it appears that it was stolen, the vendor may be liable to replace it or to refund the purchase price. As in the case of sales in open market, the buyer may sometimes, subject to agreement, pay the purchase price instalmentally. Sometimes contracts for the sale of livestock may be made conditional on the conclusion of a contract of agistment to which we will return presently.

Finally, there are the rare cases of contracts for the sale of interests in land. Such contracts must receive the approval of the elders of the seller's lineage. The giving of such approval is followed by an inspection of the land and the delimitation of the boundaries of

the area which is the subject of the contract. The contract must be concluded in the presence of witnesses. Completion and conveyance are usually occasions for a formal ceremony.

Contracts of Agistment[5]

This category of contracts occupies a very important place in African customary law. By a contract of agistment, the owner of live-stock or other animals gives them to another for the purpose of custody or rearing. The consideration for doing this depends on the terms of the contract. Very often this includes the sharing of the progeny on an agreed ratio. For example, the parties may agree that the owner shall take the first two young ones of a female goat and thereafter every alternate one, or they may agree to take the young ones alternately beginning with the owner. The important thing is that any ratio worked out must receive the approval of both parties. The tendency today is that the consideration is usually of a financial nature. Since animals form the most important subject of contracts of agistment, these contracts play a large part in the lives of cattle owning people.

Co-operative Labour Contracts[6]

Under this heading, Dr. Elias has three classes of co-operative

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5. Elias, The Nature of African Customary Law, op. cit., p. 150; see the same author, The Nigerian Legal System, op. cit., pp. 245-247.

6. Elias, Nigerian Legal System, op. cit., pp. 247-249; also see by the same author, Nature of African Customary Law, op. cit., ppp. 148-149.

labour contracts. These include, firstly,

> "the reciprocal obligation between the family head and members of his household."[7]

Under this obligation, the head of the family provides the implements of work while the rest of the family do all the farm work, part of the produce of which is used to feed the entire family while the other part is sold for money which is used to clothe the family and to buy other necessaries.

It seems, with respect, that we cannot treat this purely family affair in which each member carries out his due responsibility as a contract. Surely, the responsibility of a father towards his son and vice versa has nothing contractual in it. Accepting the definition that a:

> "contract is basically a voluntary agreement between two parties imposing obligations upon one and (or both), and reciprocally conferring rights upon the other (or both),"[8]

it would seem that this is not the basis of the relationship between the head of the family and members of his household. The conclusion that we arrive at is that the relationship between a family head and members of his household is a matter of status. This would seem to be a more

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7. Elias, Nigerian Legal System, op. cit., p. 247.

8. Shapera, Contract in Tswana Law, 1965, J.A.L., op. cit., p. 142; also see the author in "Ideas and Procedures in African Customary Law"(Edited by Gluckman M.), Chapter XVII passim.

acceptable explanation in the light of the fact that in customary law women or minors may not enter into a contract without the permission of the head of the family. In the circumstance, the family head could not enter into contractual relations with people who had no capacity to conclude contracts.

Secondly, Dr. Elias mentions the practice whereby several households together take turns in working on one another's farms.[9] Any member on whose farm work is actually being done on any particular day, is under an obligation to provide food and drink. He must do this generously in order to ensure that he is not left out in the following season, as well as to satisfy his social responsibility. With the introduction of money, this practice is dying out for more people are tending to pay for their labour.

Thirdly, there is a variation of this form of co-operative labour unit whereby groups or villages come together to work not on one another's farms, but on a common or communal project such as the building of roads, community centres, or Native Authority Courts and dispensaries. This again, with respect does not fall within the definition of a contract as set out above. It seems more in the nature of an obligation which should be performed by every responsible citizen. Indeed, the United Nations Visiting Mission to the British Cameroons in 1952[10] seemed to

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9. Elias, Nigerian Legal System, op. cit., p. 248; Kaberry P.M., Women of the Grassfields. A Study of the Economic Position of Women in Bamenda, British Cameroons, London, H.M.S.O., 1952, chapter IV passim.

10. U.N. Document T/1109, p. 10.

have appreciated the essence of this practice when they described it as creating a sense of duty and responsibility among the ordinary citizen who in this way takes his rightful part in the politics of his immediate environment and of his country at large.

Contracts for Professional or Personal Services

Although these contracts are treated together, they fall into two distinct groups. Firstly, there are the professional contracts. These include contracts engaging well known midwives to deliver babies, or those engaging professional circumcisers or those with native doctors or medicine men. The terms of such contracts are usually quite specific, namely, the performance of the job, whether it be circumcision or delivery, for a specific fee usually a fowl, or the price of one.

Secondly, there are the contracts for personal services. These may take various forms, but here we shall mention two types. The first type is prevalent among agricultural peoples. Here the person offering his services may work on the farms of others in return for food crops during harvest. This practice is prevalent in the Donga and Mantung Division of West Cameroon where new comers to any village may earn a season's supply of food simply by going to help as many people as possible with the farm work. During harvest, these helpers are entitled to gather as much food as they can carry away on any single occasion. Several such

visits to the farms of those whom they helped will make them just as rich in grain as any one else in the village. The second type of contract for services is prevalent among cattle owning people. A healthy, usually young man, with services to sell approaches a cattle owner who may take him on as a "gainako" (herdsman). The reward for such services is usually a young cow after a period of service of from 8 - 12 months. People are known to have themselves become cattle owners by serving in this way. Where they do not wish to rear cattle, they may sell them and use the money to set themselves up in business. This practice is prevalent in the areas of Cameroon where cattle are raised.

Contracts of Apprenticeship

These contracts are usually concluded between parents and craftsmen or men practising certain professions. The parents usually conclude these contracts on behalf of their children. Older people may also enter into such contracts on their own behalf. In substance, the contracts provide that the apprentice shall be trained for the particular craft or profession over a fixed period for the payment of a fixed fee. During the tenure of such a contract, the apprentice is under an obligation to render certain free services, usually of a domestic nature to the master.

Pledges, Pawns and Mortgages

These are all variations of the contract of loan which is still

very popular in most African Societies.

A pledge has been defined by Dr. Elias as:

> "a form of contract in which the borrower leaves with the lender articles equivalent in value to those he desires to borrow from the lender."[11]

The articles left in this way are meant to serve as security and may not be sold, lost, or used in any way whatsoever by the lender. The lender is, however, entitled to full ownership of the pledged property if the subject of the loan is not returned on the date due. Any contract of pledge must be witnessed.

The borrower on his part is under an obligation to return what was loaned to him on the date stipulated for its return. He may be made liable for damage done to the subject of the pledge if it is something other than money, but he is not liable for any damages resulting from fair wear and tear.

Another special form of contract which is almost identical to the pledge is the pawn. Under old customary law a person could pawn himself or someone under his custody in order to secure a debt. During the period of the arrangement, the pawn was obliged to render services to the creditor which were never counted as part payment of the debt owed. The

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11. Elias, The Nigerian Legal System, op. cit., p. 249.

services ceased on complete repayment of the debt owed. Because this practice was abolished by statute,[12] human pawns were replaced by other property. This makes it quite difficult to distinguish between a pledge and a pawn. Indeed, the two words have been used interchangeably[13] as they involve the deposition of property or some other form of security with the lender or creditor on the condition that such property or security will be redeemed on payment of the amount borrowed. The only difference between the two is that in a pawn the creditor cannot use the article pawned without prior arrangement to that effect, whereas in a pledge he can do so. This sort of distinction tends to produce confusion. It would appear that in both a pawn and a pledge the possession passes to the creditor. This distinguishes them from a mortgage which is a similar transaction with land as the subject and the possession in which at all times remains with the borrower.

Other Forms of Contract

There are other relations which can be considered under the general heading of contracts as defined above. These include the "esusu"[14] which is known in most parts of West Cameroon as the "njangi" (a word which is

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12. Slavery Abolition Ordinance, Cap. 111 of the 1923 Laws of Nigeria.

13. Elias, T.O., Nigerian Land Law and Custom, 3rd Edition, 1962, London, Routledge & Kegan Paul, chapter 8 passim; Obi, S.N.C., Ibo Law of Property, London, Butterworths 1963, p. 145; Pawnbrokers Ordinance, Cap. 146 of the 1958 Laws of Nigeria

14. Bascon, W.R., The Esusu Credit Institution of the Yoruba, Journal of the Royal Anthropological Institute, Vol. LXXXII, 1952, p. 63.

probably of pidgin English origin). "Njangi", of course, has various local names. In the whole of the grassfield area, it is very popular. This institution has been described as:

> "A system whereby a large group of people meet at regular intervals to pay a fixed subscription into a fund which will be given to each member."[15]

This is perhaps a blanket definition which covers various varieties of such societies. Here we shall only mention two about which we have personal experience. In the first place, and this is perhaps the case defined above, there is the type which comprises a number of people - say 12, who agree that at the end of every month they will each subscribe a sum of 2,000 francs C.F.A. This sum, totalling 24,000 francs C.F.A., is then given to one man on the basis of an agreed chronological list. Each person takes his turn until the last person to receive completes the circle. The arrangement of the list is normally such that the less reliable people come last. This is done in order to ensure that every one pays up his share at the right time. The second variation is not as restrictive in numbers as the first, for the group can take as many people as are willing to join. In practice, however, the group normally excludes people who are thought to be unreliable. The fact that every precaution is taken to ensure that only reliable people can be parties

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15. Ardener, S.G. The Social and Economic Significance of the Contribution Club among a section of the Southern Ibo, West African Institutes of Social and Economic Research, Ibadan, 1953, p. 129.

to these arrangements does, in a way, imply that there are difficulties in enforcing such contracts. This group meets at regular fortnightly intervals. At each meeting subscriptions are taken up. These need not be uniform, but according as each member can afford. The money thus raised is given out on short term loans for periods of between a fortnight and two months at reasonable rates of interest. Such loans can, of course, only be given to members, and they must be repaid before the end of each year, for most of such societies last only for one year. At the end of the year the money which has been collected in this way is then shared out to the members according as they subscribed. Each member also receives interest in proportion to his subscription. Although the capital may be carried over into the new year, the usual practice is to start a new society.[16]

Executory Contracts

It is a matter of controversy whether or not executory contracts exist in customary law. It is often argued that since there is no action for breach of promise to marry, there can be no executory contracts in customary law. This is not only a bad example, but also an inaccurate

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16. Quite apart from the economic benefits, these societies are very useful in other respects. They train people in the use of money, and to show respect for other people's money. They also provide training for leadership and responsibility. This is not to mention the tremendous social benefits

one, for Professor Schapera gives us an example of a customary law case in which a breach of promise to marry was actionable.[17] Further strong arguments against this view have been put forward by Professors Gluckman[18] and Elias.[19]

It is hoped that these examples of contractual situations have more than proved the case that African customary law knows a law of contract even if there are no general principles such as one would find in an advanced legal system. This does not mean that there are no principles in customary law of contract, for Kanga lists four conditions which give validity to a contract in Bamiléké customary law, namely:

(1) The contract must have an object;

(2) The parties to the contract or their representatives must agree;

(3) They must have capacity; and

(4) The contract must not be contrary to any custom.[20]

Quite apart from these, there are certain basic trends which run through all the cases we have discussed, the most important of which

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17. Schapera, I., 1965, J.A.L., p. 151.

18. Gluckman M., Essays on Lozi Land and Royal Property. Rhodes-Livingstone Paper No. 10 Northern Rhodesia 1943, pp. 15. - 16.

19. Elias, The Nature of African Customary Law, op. cit., pp. 153-154.

20. Kanga, Victor Jean-Claude, Le Droit coutumier Bamiléké au contact des droits européens, 1959, Yaoundé, Imprimerie du Gouvernement, p. 147.

being the social trend. There is a social element in almost all the cases we have considered. Coupled with this social tendency is the inadequate - even the absence of - sanctions. It is therefore little wonder that the third characteristic which is social ostracism should play such an important part as perhaps the only sanction. Where social ostracism fails, specific performance is almost always resorted to. It is in very rare cases that damages are awarded as a remedy. Where damages are awarded, they tend to partake more of a delictual rather than contractual nature. For instance, Professor Schapera notes that:

> "if a case for breach of contract is due primarily to the defendant's obstinacy or misconduct, the court, in addition to any other award, may inflict special punishment."[21]

It is suggested, with respect, that such special punishment can only be inflicted on the basis of criminal contempt or on delictual basis.

Finally, all contracts under customary law are oral, although with the advance of literacy, this situation is changing quite rapidly. Another instrument of change has been the fact that the law has stepped in to regulate by statute some of the examples which we gave above.[22]

West Cameroon Common Law of Contract.

As we saw when we were dealing with the sources of law, English

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21. Schapera I, Contract in Tswana Law, 1965, J.A.L., p. 152.

22. Examples of such Ordinances include The Illiterates Protection Ordinance (Cap. 83 of the 1958 Laws), The Pawnbrokers Ordinance (Cap. 146 of the 1958 Laws of Nigeria), and the Moneylenders Ordinance (Cap. 124 of 1958 Laws).

common law, the doctrines of equity and the statutes of general application were received in Nigeria on 1st January, 1900, and extended to the British Cameroons on 28th February, 1924, when it was decided to administer the latter along with Nigeria. The common law which was introduced included the law of contract.

This section is therefore devoted to a consideration of the English common law of contract. We shall draw attention where necessary to the local variations.

The types of contracts with which we will be dealing are simple contracts. These are agreements made either by word of mouth or in writing as distinguished from contracts under seal whereby a person undertakes an obligation :

> "by expressing his intention on paper or parchment, attaching his seal, and delivering it as his deed."[23]

## The Nature of a Contract

A contract has been defined as "an agreement enforceable by law."[24] It must comply with certain requirements in order to ensure this enforceability by law. One of such basic requirements is that it must evince

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23. Cheshire, G.C. amd Fifoot, C.H.S., The Law of Contract, 7th Edition, London, Butterworths, 1969, p. 19.

24. Hood Phillips, A.First Book of English Law, op. cit., p. 261.

an intention to create legal relations. Indeed Banks L.J. said in the case of Rose and Frank and Co. v. Crompton and Brothers Ltd.[25] that:

> "There is, I think, no doubt that it is essential to the creation of a contract, using that word in its legal sense, that the parties to an agreement shall not only be ad idem as to the terms of their agreement, but that they shall have intended that it shall have legal consequences."

A local example is offered by the Ghana case of Eliza Morris v. John Monrovia[26] in which it was held that where a man and a woman lived together in concubinage, the woman could not claim against the estate of the deceased the sum of £94 which was her contribution towards the building of a dwelling place because there was no intention to create legal relations.

Offer and Acceptance

In order therefore to create such legal relation there must be a firm offer made by one party to the contract and acceptance by the other. It is this offer and acceptance, accompanied by the appropriate consensus ad idem that constitutes a binding contract. The question of a consensus ad idem is not nearly as important today because the courts are tending

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25. [1923] 2 K.B. 261.

26. [1930] 1 W.A.C.A. 70.

to rely more and more not on the actual state of mind of the parties, but that state of mind which an objective observer assumes him to have.[27]

An offer is the:

> "unilateral communication by one party to the other of his desire to conclude a contract with that other."[28]

One must here distinguish between an offer and an invitation to treat. If an offerer has not completed his part of the contract in such a way that he on his own part is ready to be bound as soon as the offeree indicates his acceptance, then such an arrangement which does not constitute a specific offer must be treated as an invitation to treat. Thus, where an advertisement indicates that there is a stock of books for sale, or a house to let, there is as yet no offer:

> "Such advertisements are offers to negotiate - offers to receive offers - offers to chafer."[29]

Such invitations to treat also cover goods displayed in shopwindows by shop-keepers.[30]

Offers can be directed both to individuals and the public at

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27. McNeil, J.L. and Rains R., Nigerian cases and statutes on contract and torts, London, Sweet & Maxwell, Lagos African Universities Press, 1965, p. 3.

28 Ryan K.W., An Introduction to Civil Law, The Law Book Company of Australia Pty Ltd., 1962, p. 42.

29. Per Bowen L.J. in Carhill v. Carbolic Smoke Balls [1893] I Q.B. 256.

30. Pharmaceutical Society of Great Britain v. Boots Cash Chemists (Southern) Ltd. [1953] 1 Q.B. 401.

large. This was the basis of the now celebrated case of Carhill v. Carbolic Smoke Balls which has now come to be accepted by most common law jurisdictions. In that case:

> "the defendants who were proprietors of a medical preparation called 'The Carbolic Smoke Ball', issued an advertisement in which they offered to pay £100 to any person who succumbed to influenza after having used one of their smoke balls in a specified manner and for a specified period. They added that they had deposited a sum of £1000 with their bankers 'to show their sincerity'. The plaintiff on the faith of the advertisement, bought and used the ball as prescribed, but succeeded in catching influenza. She sued for £100."[31]

The defendants put forward various ingenious defences which included, inter alia, that there was no offer; but even conceding that there was one, the plaintiff had not notified her acceptance. To all these Bowen L.J. effectively answered in the following manner:

> "It was also said that the contract is made with all the world - that is everybody, and that you cannot contract with everybody. It is not a contract made with all the world. There is the fallacy of the argument. It is an offer made to all the world; and why should not an offer be made to all the world which is to ripen into a contract with anybody who comes forward and performs the condition? ... Although the offer is made to the world, the contract is made with that limited portion who come forward and perform the condition on the faith of the advertisement."[32]

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31. Cheshire and Fifoot, op. cit., p. 26.

32. [1893] 1 Q.B. 256 at p. 268.

Before leaving the question of offers we must say a word about the difficulties which arise from the distinction between offers and invitation to treat. The first difficulty is whether an auctioneer makes a definite offer when he requests for bids, and whether the highest bidder is to be taken to have accepted such an offer. It was decided in Payne v. Cave[33] that a request for bids merely sets the ball rolling. It is the bid itself which constitutes an offer which is accepted when the auctioneer drops his hammer.[34]

The second problem which is whether an advertisement that specified goods would be sold at an auction on a certain day constitutes an offer to the public was answered negatively in Harris v. Nickerson[35]. In this case, the court refused to award damages to the plaintiff for loss suffered in travelling to an advertised place for an auction which was ultimately called off.

Thirdly, while the English courts take a negative view to the question whether an advertisement to sell goods without reserve constitutes an offer, most Nigerian courts answer the question affirmatively.[36]

As we have seen above, it is essential that there must be an

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33. [1789] 3 Term Rep. 148.

34. Sale of Goods Act, 1893, Section 58(2)

35. [1873] L.R. 8 Q.B. 286.

36. Cheshire and Fifoot, op. cit., p. 27. Sale by Auction Ordinance - Cap. 187 of the 1958 Laws.

offer in every contract. Offer in itself does not, of course, constitute a contract. It is only when such an offer is accepted that a contract comes into being. Just as there are difficulties as to what constitutes an offer, so are there difficulties not only as to what constitutes an acceptance, but the communication of such an acceptance. The courts have, however, laid down a number of rules which minimize these difficulties.

The difficulty with regard to acceptance is most noticeable in cases where acceptance is communicated by post. The English law position is that, if the post is either expressly or impliedly the means of acceptance, then the offer is deemed to be accepted as soon as the communication to that effect to the offerer is posted. This represents one choice out of a possible three, the other two which are adopted in civil law countries being that acceptance is deemed complete either when the letter of acceptance is delivered to the offerer's address, or when it is brought to his actual notice.[37]

It would seem that the situation with regard to acceptance in West Cameroon would be more like the civil law situation for the Post Office Ordinance[38] provides by section 3(b) that:

> "The delivery of a postal article at the house of the addressee (or his servant or agent or other person considered to be authorised to receive the article according to the normal manner

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37. Cheshire and Fifoot, op. cit., pp. 42-43; Ryan, op. cit., pp. 43-44.

38. Cap. 156 of the 1958 Laws of Nigeria.

> of delivering postal articles to the addressee) and where the addressee is a guest or is resident at a hotel delivery to the proprietor or manager thereof, or to his agent shall be deemed to be delivery to the addressee."

This seems to combine both the alternatives adopted by the civil law.

An offer can, of course, be terminated before acceptance. An offer is deemed to be terminated by revocation, lapse of time, failure of a condition subject to which the offer was made and death. These factors themselves may present difficulties which are normally fairly well dealt with by the courts.

Consideration

There may be a contract which satisfies the law with regard to offer and acceptance, but is still not legally binding because there is no consideration.:

> "Valuable consideration in the sense of the law may consist either in some right, interest, profit or benefit accruing to one party or some forbearance, detriment, loss or responsibility given suffered or undertaken by the other."[39]

Consideration was defined in another case as:

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39. Per curiam in Currie v. Misa [1875] L.R. 10 Ex. 153 at p. 162.

> "an act or forbearance of one party, or the promise thereof, is the price for which the promise of the other is bought and the promise thus given for value is enforceable."[40]

In brief, consideration is "the price for which the promise of the other party is bought."[41] Within this definition, there are other sets of rules which prescribe the application of consideration. These rules regulate what is and what is not regarded as consideration. The first of these rules provide that for consideration to be valid it must be executory or executed. Past consideration is not regarded as sufficient consideration. Consideration is "executory" or in futuro:

> "when the defendant's promise is made in return for a counter promise from the plaintiff; 'executed when it is made in return for the performance of an act."[42]

Secondly, consideration must move from the promisee, and thirdly, although theoretically there are no set rules about the value of consideration (each party may set his own value), the courts have developed certain rules which regulate its adequacy. Thus a promise to pay a sum smaller

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40. Dunlop Pneumatic Tyre Co. Ltd. v. Selfridge & Co. Ltd. [1915] A.C. 847 at 855. The House of Lords in this case relied on Sir Frederick Pollock's definition. See Pollock on Contracts, 13th Edition at p. 133.

41. Hood Phillips, First Book of English Law, op. cit., p. 285.

42. Cheshire and Fifoot, op. cit., p. 67.

than the one owing will not be recognized as good consideration,[43] but if payment of such smaller sum is made by other means, or at a different place, or in advance, then this is regarded as affording sufficient consideration.

In recent years, some noticeable inroads have been made into the doctrine of consideration by the creation of what has come to be known as "equitable estoppel." This provides that:

> "where one party has by his words or conduct made to the other party a promise or assurance which was intended to affect the legal relations between them and to be acted on accordingly, then, once the other party has taken him at his word and acted on it, the one who gave the promise or assurance cannot afterwards be allowed to return to the previous legal relations as if no such promise or assurance had been made by him, but he must accept their legal relations subject to the qualification which he himself has so introduced even though it is not supported in point of law by any consideration but only by his word."[44]

The doctrine of equitable estoppel is used merely as a defence.

Although we have said above that the sufficiency or insufficiency

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43. Pinnel's Case [1602] 77 E.R. 237; Foakes v. Beer [1884] 9 A.C. 605.

44. Combe v. Combe [1951] 2 K.B. 21 per Denning L.J. (as he then was). Also see London Property Trust Ltd. v. High Trees House Ltd. [1947] K.B. 130; Tool Metal Manufacturing Co. Ltd. v. Tungsten Electric Company Ltd. [1955] 1 W.L.R. 761.

of consideration does not play a vital part in a contract, there are certain cases in which a contract will not be considered binding because of insufficient consideration. These would cover situations where one enters into a contract to perform a duty which one is under obligation by a previous contract to perform or situations where one enters into a contract to perform a public duty.

Privity of Contract

One more important aspect of the coming into existence of contract ought to be mentioned here. There is a general rule of English law that only the parties to a contract can derive any benefit from it. In other words, there is no jus quaesitum tertio in English law. Thus any one who is not an original party to the contract cannot derive any benefit from it. Although this principle is still an important one in all contracts, its rigidity tends to have been moderated in recent years.

It is now possible for a third party to derive a benefit from a contract if he can show that one of the original parties to the contract was acting as his agent.

Again, equity which has always moderated the rules of the common law of which the doctrine of privity is one, can intervene, even if timidly, to redress any hardship that might be caused by too rigid an adherence to the doctrine of privity. An example of this is shown by the recent case

of Beswick v. Beswick[45] in which Peter Beswick, a coal merchant contracted in 1962 to sell his business to his nephew John in consideration of the fact that during the rest of his (Peter's) life, John would pay him £6.10/- per week and after his death £5 per week to his wife should she survive him. John took over the business and paid the agreed sum to Peter until his death in 1963. Thereafter, he paid Peter's widow for one week and no more. The widow then sued John both as administratrix and, in her personal capacity, claiming unpaid arrears of £175 of the annuity and asked for specific performance of the contract. She succeeded in her capacity as administratrix but not in her personal capacity. Equity therefore enforces decrees of specific performance and injunctions; it will also compel performance of contracts of realty where there has been part performance.[46]

Finally, although the House of Lords in the Beswick case refused to support the conclusions of Denning M.R. and Danckwerts L.J., namely, that the widow could claim in her personal capacity under Section 56(1) of the Law of Property Act, 1925, it is possible for third parties to be bound by contracts involving land. Indeed in Smith and Snipes Hall Farm Ltd. v. River Douglas Catchment Board[47] the plaintiffs were held liable on the basis of a contract to which they were not parties.

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45. [1968] A.C. 58.

46. It will be recalled that we adverted to the doctrines of Equity in Chapter V when we were dealing with the sources of law.

47 [1949] 2 K.B. 500.

Apart from what we have said above, it is possible, in the name of commercial practice and international trade, to deviate from the rigid doctrine of privity of contracts. This is done by means of bankers commercial credits which are a useful way of financing international trading contracts and are intended to assist exporters in dealing with customers whose credit worthiness may be in doubt. They also provide against situations where there might be fluctuations in the rate of exchange between the formation of the contract and the date of payment. The device involves three separate transactions, namely:

(a) In a contract between vendor and purchaser, the latter agrees to ask his banker to open a credit in favour of the vendor which will remain irrevocable for a given time.

(b) The purchaser agrees with his bank for this purpose and therefore the purchaser and the bank have a contract.

(c) The bank notifies the vendor that it has opened a credit in his favour to be presented as soon as he presents shipping documents - evidence of dispatch.

In this arrangement, there is no contract between vendor and the bank, but the courts with recognise the device.[48]

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48. Cheshire and Fifoot, op. cit., pp. 407-408.

What we have discussed above represents the common law position in English law. The question may be asked whether this position is applicable in Cameroon? Strictly speaking, the position in Cameroon would be more like the pre-1924 English position which would tend to follow the House of Lords decision in Dunlop Pneumatic Tyre Co. Ltd. v. Selfridge and Co. Ltd.[49] to which reference has already been made. In that case, the plaintiffs sold tyres to another company (Dew and Co.) on the condition that Dew and Co. were not to resell them below a certain price. Dew and Co. were further required to extract a similar undertaking from any trade customers to whom they might resell. Dew and Co. sold the tyres to Selfridge who undertook to observe the conditions and to pay the plaintiffs £5 for each tyre sold in breach of the agreement. Selfridge contrary to this undertaking, sold the tyres to other customers below the price. Dunlop sued Selfridge to recover liquidated damages of £5 each on each tyre sold,but they failed because they were not parties to the contract between Dew and Co. and Selfridge. Even the plea that the plaintiffs were undisclosed principals failed. A recent Nigerian case on the subject of privity relied heavily on the Dunlop case.[50] In this case the appellant and a partnership (Emodi Brothers) were defendants in an action in which the respondent bank was claiming £28,013. 19. 10d.

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49. [1915] A.C. 847.

50. Chuba Ikpeazu v. African Continental Bank Ltd. [1965] N.N.L.R. 374.

Since the first defendants had admitted liability they were no longer parties to the action. One of the grounds on which the appellant had been initially sued was that he, as partner, had guaranteed the loan to the partnership on the basis of a deed between himself and one William Emodi. By this deed the partnership was transferred to the appellant as consideration for his guaranteeing an overdraft from the respondent bank. The deed was, of course, deposited with the bank. The appellant argued, inter alia, that the bank, not being a party to the deed, could not sue on it. At first instance, the claim against the appellant was allowed, but the Supreme Court following Dunlop v. Selfridge allowed the appeal. The Supreme Court further added that an exception to the decision of Dunlop v. Selfridge could be made only under Section 5 of the Real Property Act of 1845 in order to enable a stranger to a deed to benefit from anything in his favour in the deed. Dr. Uche[51] argues, and not unconvincingly, that this could by analogy be extended to include other statutes. In this connection, he mentions Section 11 of the Motor Vehicles (Third Party Insurance) Act[52] which enables third parties under certain circumstances to enforce insurance provisions in their favour; or the Third Parties (Right against Insurers) Act,[53] the Married Women's

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51. Uche U.U., The Law of Obligation in Nigeria and Ghana. A Comparative Study, 1967, Ph.D. Thesis, p. 359.

52. Cap. 126 of the 1958 Laws of Nigeria.

53. Cap. 196 of the 1958 Laws of Nigeria.

Property Act[54] or the Bill of Exchange Act[55] which have similar provisions.

Whether or not the Cameroon courts will follow the bold examples of English judges like Lord Denning M.R. remains a moot question. It can only be hoped that the judges will, when dealing with matters of privity, balance the rigidity of the doctrine with the duty to do justice. Indeed, it is to be hoped that in any future Code of Contracts, we would follow the example of Ghana by abolishing the rigidity of the doctrine of privity.[56]

One last word must be said about the doctrine of privity, namely, that it is not only intended to deprive third parties of deriving any benefit from the contract, but also to protect them from any liability under a contract to which they are not parties.

Faulty Contracts

Hitherto we have attempted to state very briefly how a valid contract is entered into without adverting to any defects or elements which can vitiate a contract. In this section we will consider very briefly some of the vitiating elements.

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54. Married Women's Property Act, 1882 - an act of general application.

55. Cap. 21 of the 1958 Laws of Nigeria.

56. Ghana Contracts Act, 1960 (Act 25), Section 5(1); also see Read J.S. 1961 J.A.L., p. 48 and Uche, op. cit., p. 363.

Firstly, we must begin with mistake. There are certain conditions under which the parties to a contract can plead that they contracted under some misunderstanding or misapprehension which is commonly known as a mistake.[57] Mistake falls into three categories, namely, common mistake, mutual mistake and unilateral mistake. When both parties to a contract make the same mistake then it is known as a common mistake. This, for instance, arises where two people enter into a contract for the sale and purchase of a goat which unknown to them has died. There can be a common mistake as to the subject matter of the contract. For instance it may be that at the time of the contract, and unknown to the parties, the subject matter of the contract has ceased to exist or has never been in existence.[58] There may also be a mistake of title such as where a person purchases property which unknown to him and to the vendor already belongs to him.[59] Again there can be a mistake as to the substance of the thing contracted for. The common law treats contracts which are vitiated by mistake as a nulity, but equity protects the rights of third parties by treating the contract merely as voidable.

A mutual mistake occurs when the parties, even though genuine, have contracted under a mistaken belief that a fact which lies at the root of the contract is true. For instance, X who has two Peugeots

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57. Cheshire and Fifoot, op. cit., pp. 193-225.

58. Bell v. Lever Brothers Ltd.[1932] 101 L.J. K.B. 129 at p. 217.

59. Ibid, p. 218.

(204 and 404) contracts to sell the 204 to Y, while the latter thinks he is paying for the 404. In such a situation there is a mutual mistake.

A unilateral mistake on the other hand occurs when only one of the parties is mistaken while the other knows or must be assumed to know the true facts of the subject of the contract. There are three categories of unilateral mistake. These include:

(1) Where there is no real coincidence between the offer and acceptance,[60]

(2) Where there is a mistake by one party as to the promise of the other and the mistake is known by that other,[61] and

(3) Where there is a mistake as to the identity of the person with whom the contract is apparently made.[62]

The tendency of the courts is to deal with cases of mutual mistake by examining objectively all the evidence from the point of view of the reasonable man, while cases of unilateral mistake are examined subjectively from the point of view of the agrieved party.

Secondly, contracts are vitiated by misrepresentation, duress and undue influence.

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60. Raffles v. Wichelhaus [1864] 2 H. of C. 906.

61. Leaf v. International Galleries [1950] 2 K.B. 8.

62. Phillips v. Brooks [1919] 2 K.B. 243; Ingram v. Little [1961] 1 Q.B. 31.

A representation may be defined as a statement made by one party to the other before or at the time of the contract with regard to some existing fact or past event which induces wholly or partially the other party to enter into the contract. It is essential, however, to distinguish between a representation and a statement which forms part of the contract. This is important because the remedy for a misrepresentation which does not form part of the contract must be ex contractu. It is also important to distinguish between innocent and fraudulent misrepresentations because the consequences of each are different. With a few exceptions, silence is usually not regarded as a misrepresentation, for there is no duty to disclose material facts which influence the mind of a prudent contractor. The few exceptions include cases where silence distorts a positive representation,[63] or where the contract is uberrimae fidei (i.e. of the utmost good faith such as contracts of insurance), or where a fiduciary relationship exists between the parties such as family arrangements which require full disclosure of all relevant and material facts.[64]

Duress which consists of actual or threatened violence or imprisonment to the contracting party or his family by the other party to the

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63. Curtis v. Chemical Cleaning & Dyeing Co. [1951] 1 K.B. 805.

64. Joel v. Law Union and Crown Insurance Co. [1908] 2 K.B. 863.

contract in order to bring about the contract, vitiates it.

Undue influence which has been described as unfair or improper conduct, some coercion from outside, some overreaching, some form of cheating and generally, though not always, some personal advantage obtained by the party exercising it,[65] involves one person dominating another to such an extent that the other's will is overborn and his independence of judgment undermined. Undue influence can arise in cases where there is a special relationahip between the parties such as parent and child, or guardian and ward, as well as cases where there is no such relationship.

Illegal and Void Contracts

Certain contracts may be illegal even though they have been properly entered into. Illegal contracts fall into two categories. Firstly, there are those which are illegal strictu sensu because they contain an element of moral turpitude. These include contracts to commit crimes, torts or fraud on third parties, contracts which are sexually immoral and those which are contrary to public safety. Secondly, there are the less heinous contracts which are by tradition regarded as illegal. Included in this group are contracts in restraint of trade.

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65. Alkard v. Skinner [1887] 36 Ch. D. 145.

There is no difficulty with regard to the strictly illegal contracts for "no court will enforce a contract to commit a crime."[66] This indeed extends to contracts to commit offences contrary to any other statutory provisions. An example of this is contained in the Nigerian case of Harry v. Martins[67] in which the lease of a plot by the appellant to the respondent was held illegal because it did not comply with the provisions of Section 6 of the Crown Lands Ordinance.[68] Following the same analogy, any contract between any two parties which contravenes any Cameroon statute would be illegal, as indeed would be any contract which contravenes a common law rule.

Certain statutes, of course, have the effect of making contracts void. These are mostly gaming acts which regulate wagering contracts. A wagering contract consists of a promise to give money or money's worth upon the determination or ascertainment of an uncertain future event.[69] The Gaming Act of 1845 which deals with this kind of contract and which was extended into Nigeria as a statute of general application was invoked as recently as 1946 in Antoine Chemor v. J. Sahyoun[70] in overruling the plaintiff's claim of a sum of money borrowed by the defendant on the ground that the loan was contrary to the Gaming Act of 1845.

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66. McNeil and Rains, op. cit., p. 58. Most of such illegal contracts will be caught by the provisions of the Penal Code.
67. [1949] 19 N.L.R. 42.
68. Crown Lands Ordinance (Cap. 45 of 1958 Laws).
69. Per Hawkins J. in Carhill's case [1892] 2 Q.B. 484 at p. 490.
70. [1946] 18 N.L.R. 113.

Contracts which contravene statutory provisions can be declared null and void. This was the case in Ayo Solanke v. Abraham Abed and Ogunlowe.[71] In that case, the first defendant, owner of a right of occupancy, sublet part of a building, the plot over which he had this right, to the plaintiff who paid 6 months rent in advance and entered into possession. The consent of the Governor, which by Section 11 of the Land and Natives Rights Ordinance[72] was necessary for such subletting, was never obtained. This irregularity was brought to the notice of the first defendant who accordingly asked the plaintiff to quit. Afterwards when the second defendant, servant of the first defendant, tried to retake possession of the premises, the plaintiff sued for trespass. The court held that the sublease was null and void under Section 11 of the Land and Native Rights Ordinance, so the plaintiff who had no right of possession could not bring an action for trespass. In a recent West Cameroon case[73] which, among other things, involved this section of the Land and Native Rights Ordinance, it was held that in the winding up of a company, it was not possible for debentures to attach to land which had been acquired contrary to Section 11 of the Land and Native Rights Ordinance and Section 14 of the Land Registration Ordinance.[74]

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71. [1962] N.R. N.L.R. 92.

72. Cap. 105 of the 1948 Laws of Nigeria.

73. In Re Kamerun Ltd. [1966] A.L.R. 385

74. Cap. 108 of the 1948 Laws of Nigeria.

Discharge of Contracts

Having dealt with the way in which contracts are formed and some of the elements which may vitiate them or make them illegal or void, we must now consider briefly the ways in which contracts may be discharged.

There are four ways in which contracts can be discharged. These include discharge by agreement, performance, breach and frustration. A contract discharged in any of these ways renders the parties free from the obligation which they undertook under the contract.

A contract is said to be discharged by agreement either when the parties mutually agree to terminate an executory contract, or by accord and satisfaction, or by substitution of a new for an old contract, or by operation of a term in the existing contract.

The question of discharge of contracts by breach is perhaps not as straightforward as discharge by agreement, for it is only those breaches which are fundamental that enable the innocent party to treat the contract as discharged. Fundamental breach includes failure by the other party to perform his obligations under the contract and express or implied repudiation of his obligations under the contract. These breaches must render the contract purposeless if they are to be regarded as terminating it.

The normal way in which contracts are discharged is by performance The general rule here is that performance must be complete and precise and in accordance with the requirements of the contract. In the Eastern Nigerian case of Chiozie v. United Africa Company Ltd,[75] the plaintiff was employed by the defendant company under a contract, the terms of which provided that he could be dismissed on one month's notice or payment of one month's salary in lieu of notice. By the terms of the same contract, he could also be dismissed for serious misconduct. In the event of any such misconduct, the company could suspend him from duty until investigations had been carried out. The plaintiff was actually suspended for misconduct, but the company before the completion of investigation, terminated the contract by paying him one month's salary in lieu of notice. In an action against the company, he contended that such termination before completion of investigation had caused him considerable hardship and what is more, he had been discharged as a result of the investigation. The court, however, held that the company had performed its part of the contract by so acting.

In cases of sale of goods, performance is regarded as incomplete where a seller delivers to a buyer a quantity of goods less or larger than he contracted for, or goods mixed with those of a different description not included in the contract. In such a case, the buyer may reject the goods.[76]

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75. [1956] 1 E.R.L.E. 28.

76. Sale of Goods Act 1893, Section 30(1)(2)(3).

The general rule that performance must be complete can sometimes work injustice if adhered to rigidly. In order to avoid such injustice, the law makes exceptions in cases of divisible contracts or those of partial or substantial performance.

Finally, contracts are discharged by frustration. A contract is frustrated when it becomes impossible to perform it because of subsequent events, which must not be self-induced and which must defeat the common intention of the parties. The doctrine of frustration operates in cases where either the subject matter has been destroyed or the desired state of things does not occur, such as where one party dies or is incapacitated, or the frustration of commercial ventures or supervening illegality. The effect of frustration is to bring the contract to an end and to release both parties from any further obligation. Their accrued legal rights, or money paid before the frustrating event, are preserved.

## Standard Form Contracts[77]

Our discussion so far has been limited to simple contracts. Subject to incapacity or other disqualification, everyone is at liberty to enter freely into contracts and to expect that other people will not interfere with this right. Alas, this freedom of contract has been eroded away by standard form contracts.

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77. Wilson, N.S., Freedom of Contract and Adhesion Contracts, 1965, I.C.L.Q., pp. 172-193.

A standard form contract is one, the terms of which have been settled prior to negotiation. These contracts are a creation of modern society where business and industry are concentrated in large units. The result is that freedom of contract has become almost mythical. The individual finds himself at the mercy of such big combines, against whom he has only one choice. He must accept the terms offered partly because the services offered are of a public utility nature and partly because there may in most cases be no rival concern with which he can do business. Very often these contracts contain very wide exemption clauses similar to what was very vividly described by Lord Devlin in McCutcheon v. David Mc Brayne[78] in the following words:

> "When a person in the Isle of Islay wishes to send goods to the mainland he goes into the office of McBrayne (the respondents) in Port Askaig which is conveniently combined with the local Post Office. There he is presented with a document headed "conditions" containing three or four thousand words of small print divided into twenty-seven paragraphs. Beneath them there is a space for the senders signature which he puts below his statement in quite legible print that he thereby agrees to ship on the conditions stated above.
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> It would be a strangely generous set of conditions in which the generous reader after wading through the verbiage, could not find something to protect the carrier against 'any loss ..... wheresoever and whensoever occurring,' enough to absolve the respondents several times over for all their negligence. It is conceded that if the form had been signed as usual the appellant would have had no case."

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78. [1964] 1 All E.R. 430 at pp. 435 and 436.

The plight of the individual in this type of contract which surrounds us in ever increasing numbers cannot have been better described. There is, of course, no sign that there will ever be a let up. Indeed standard form contracts have been said, and quite fairly too, to save printing costs as well as the time and expense of negotiating each contract afresh. They are also ideal for mass production industries where it would be intolerable to apply different standards to articles produced by the same firm. It therefore means that these contracts are here to stay, so our energies should be directed towards minimizing the effects of exemption clauses.

The English solution to the problem has been to construe standard form contracts contra proferentem, coupled with piece-meal legislation such as the Hire Purchase Acts of 1938 - 1964.

In America, the uniform commercial code confers very wide powers on the courts to strike out unconscionable clauses in contracts, but this suffers from the handicap that the question of deciding what is unconscionable could well become very subjective.

The civil law countries have approached the problem by relying entirely on the courts.

The most interesting development in this connection seems to be

the Israeli Standard Contract Law 5724 of 1964.[79]

The law offers two alternative schemes. It provides for the setting up of a board to consider restrictive terms in contracts. The jurisdiction of the board is, of course, voluntary. Any one wishing to put forward a standard form contract may send the contract to the board for vetting. If the terms are approved by the board then any case arising under the contract will not be entertained by the courts. It is the board's duty to ensure that only reasonable terms are licensed. If any standard form contract has not got the board's license, then it can be adjudicated upon freely. The approval which the board gives to any standard form contract is renewable every five years or at an earlier date at the board's option. The second alternative is to leave matters as they are, and rely on the courts to deal with restrictive clauses in contracts.

Before we leave the subject of standard form contracts, a word must be said about another specie of standard form contracts which has come to be known as the "ticket cases". Examples of this form of contract abound in daily life. Any one making use of public transport is likely to receive a ticket which will probably contain on its front a phrase

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79. Gottschalk, R., The Israeli Law of Standard Contracts, 1965, 81 L.Q.R., pp. 31-36. Also see Diamond, A.L., Standard Form Contract Law No. 5724 of 1964., 1965 I.C.L.Q. pp. 1410-1416.

like "for conditions see back of ticket". The back may itself contain inscriptions to the effect that the ticket is issued subject to the bye-laws, regulations and conditions contained in the notices published by the executive of the particular means of transport.

By putting out a notice, the transport authority obviously wants the contract of carriage to be bound by the published conditions and regulations which are unlikely to be read by the passenger. The same thing may happen in many other situations.

This raises the obvious question of the extent to which such conditions can be incorporated into the contract. The answer to the question depends on whether or not the ticket is intended to be a contractual document, or a mere receipt. This decision is a matter of law and must be made by a judge on objective standards, such as, if a reasonable man is likely to regard such a ticket as a mere receipt, none of the conditions will be incorporated into the contract, but if he does not regard it as a mere receipt, he will be bound by the conditions provided everything has been done to bring them to his notice.

We feel a strong compulsion at this stage to try and justify the excursus into the law of contract, but such justification must await our conclusion to this chapter.

Quasi Contract[80]

Quite a lot has been written on the subject of quasi-contract, so we mention it here only in order to complete the picture.

Although quasi-contract is always treated under the general heading of contract, it is not unconnected with other subjects like equity or tort. Despite this, quasi-contract in English law is still based on an implied contract with reluctant bows now and again to equity.

The position in West Cameroon law is similar to that in Nigeria which has been described as having "little or no affinity with contract."[81] Thus in the case of Palmer of Nigeria Ltd. v. Fonseca,[82] the defendant who was an agent of the plaintiffs was sued for money received from a third party during the course of the agency. Jibowu J. gave judgment to the plaintiffs on the basis of an implied contract even though the situation was clearly one of unjust enrichment.

It is suggested that if there were a general English law of restitution, not only would the Nigerian and West Cameroon situation have improved, but also certain recent English decisions would probably have been decided on different lines. For instance, in the recent case of Jansen v. Jansen[83] in which a husband did work on property owned by his wife,

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80. Winfield, The Province of the Law of Tort, Chapter 7 passim; Uche, op. cit., p. 748; Gutteridge, H.C., and David, R.J.A., The Doctrine of Unjust Enrichment, 1935, 5 Camb. L.J. 204. See generally Goff R. and Jones G., The Law of Restitution, London, Sweet & Maxwell, 1966.

81. McNeil and Rains, op. cit., p. 187.

82. [1948] 18 N.L.R. 49.

83. [1965] 3 All E.R. 363.

the question before the court was whether the husband could, in the course of divorce proceedings, claim anything for his work which had enhanced the value of the wife's property. This case was decided under Section 17 of the Married Women's Property Act, 1882. It would seem that this was a case of unjust enrichment for what was in question was not the property itself, but whether the wife should be unjustly enriched by her husband's labour.

The situation in America and the civil law countries seems on the whole more satisfactory. The American Restatement of the Law of Restitution provides that:

> "a person who has been unjustly enriched at the expense of another is required to make restitution to that other."[84]

Civil law also recognises a doctrine of unjust enrichment which is applied on general equitable grounds and is based on the old Roman law negotiorum gestio.[85]

It would follow from what has been said that the common law position of quasi-contract as understood in West Cameroon is far from satisfactory and could be improved along the American or civil law lines.

Other Special Contracts

Under this heading, we might mention sale of goods, agency and

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84. Restatement of Restitution, Quasi-Contracts and Constructive Trusts, American Law Institute, 1937, p.12.

85. See Gutteridge and David, op. cit.

contracts of suretyship. These fall under the general law of contract, although they may have other rules which are peculiar to them. We must here for purposes of completeness state very briefly the general principles of these contracts.

Contracts for the sale of goods[86] are governed by the Sale of Goods Act, 1893, which is a statute of general application. The Act, by Section 1(1) defines a contract of sale as:

> "a contract whereby the seller transfers or agrees to transfer the property in the goods to the buyer for a money consideration called the price."

Agency, on the other hand, is a special type of contract which makes it possible, irrespective of the rules of privity of contracts to which reference has already been made, for a third party to derive benefit from or be liable under it. Thus in order for A to take advantage of or be sued under a contract between B and C, it must be shown that the relation of principal and agent existed between A and B, one of the parties to the contract. This relation of principal and agent is created in the following ways:

(i) By express appointment

(ii) By estoppel. This happens in cases where a person behaves in such a way that he is deemed to be the principal.

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86. See generally Atiyah, P.S., The Sale of Goods, 3rd Edition, London. Pitman & Sons Ltd. 1966.

(iii) By ratification. This happens when a person assumes responsibility for the completed actions of another person.

(iv) By necessity, i.e., where one party acts for another in a situation where there is an emergency and that other cannot be found.

(v) By cohabitation. A woman living with a man is deemed to be his agent in domestic matters whether they be married or not.[87]

Suretyship is another form of contract which combines two independent contracts. These independent contracts must refer to each other as they constitute one deal. Thus in a situation where A owes B some money, C may, on the basis of another contract with A, give B an undertaking that he will repay the money if A does not. This constitutes a contract of suretyship in which C is surety for B. If C satisfies his obligation, he will be entitled to recover the amount from the principal debtor, A. This, therefore, gives C an interest in any securities deposited by B with A.

Customary Law of Tort

So much has been written on this subject that it will not serve

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87. McNeil and Rains, Nigerian Cases and Statutes on Contract and Tort, op. cit., p. 126; Elias, The Nigerian Legal System, Chapter 13, passim.

any useful purpose to go over the same ground.[88] Suffice it to say that there is a customary law of tort, although the ingredients of the offence may not be the same as in western law. Whatever the case, intention and negligence[89] play an important part in customary law, although a large number of the cases are those of strict liability. Perhaps one or two examples will be enough to illustrate the extended role of strict liability in customary law.

Although negatively, intention plays a large part in the cases of accidental shooting during hunting expeditions. There are countless cases where a man shooting another during a hunting expedition has been set free on the basis of a lack of intention to kill. This lack of intention is normally negatived if it is shown that some animosity existed between the two people involved. This offence is common to most hunting societies in Cameroon.

Cases of negligence (i.e. culpa or negligence generally rather than as a specific tort) are common to almost all societies in Cameroon. Fences form a common feature of the scenery in the Bamiléké and grass-

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88. Elias, The Nature of African Customary Law, op. cit., pp. 155-161. Also see generally Driberg, The African Conception of Law, op. cit.; Penwill, Kamba Customary Law, op. cit.

89. Gluckman, M., Judicial Processes Among the Barotse of Northern Rhodesia, 2nd Edition, 1967, Manchester University Press;

field areas of West Cameroon. These fences demarcate individual holdings as well as confine domestic animals like pigs, sheep and goats. The purpose is to make sure that these animals do not trespass into other people's land. Instances of animal trespass are therefore attributed to the negligence of the owners of the animals. Kanga notes that cases of animal trespass are decided daily in the customary courts of the Bamiléké chiefdoms.[90] The offence is also predominant between cattle owners and farmers. There is legislation[91] in West Cameroon to the effect that all cattle owners who graze their cattle among farming people must ensure that there is a shepherd (the gainako to which we referred above) who makes sure that the cattle do not trespass into farmland. In the absence of a herdsman, the cattle must be kept within confinements. The Veterinary Department of West Cameroon has a Cattle Control Officer and various Cattle Control Assistants whose main duty is to ensure that there is a minimum of incidents of cattle trespass, for while the government is interested in protecting the farmers it cannot afford to annoy the cattle owners who are the chief source of the lucrative jangali tax.[92]

Finally, adultery is an offence which attracts strict liability.

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90. Kanga, Victor Jean-Claude, Le Droit Coutumier Bamiléké au Contact des Droits Europeens, Imprimerie du Gouvernement, Yaoundé, Cameroun, 1959 pp. 143-144.

91. See Control of Farming and Grazing Law which provides machinery for control of land between farmers and grazers.

92. This is a livestock tax based on a count of head of cattle.

The custom in the past, particularly among the Ndop[93] people, was to slash the adulterer with knives so that he would remain a marked man all his life. The punishment, of course, varied from place to place. Among the Bakwerri people, the adulterer was punished by pushing a broom stick into his penis. In almost all cases, adultery with the Chief's wife was punishable by death. These customs have almost all passed into disuse now as a result of decisions of the native courts, administrative prohibitions and the provisions of the criminal law.

Common Law of Tort in West Cameroon

The law of tort in West Cameroon is, like that in Nigeria, based on the English common law. "Tortious liability" said Sir Percy Winfield:

> "arises from the breach of a duty principally fixed by the law. Such a duty is towards persons generally and its breach is redressible by an action for unliquidated damages."[94]

Thus in order to found any liability in tort, the plaintiff must show that the defendant violated a legal right of his.

Predictably, there must be defences to the general rule with regard to tortious liability. These defences include mistake, inevitable accident, as well as certain stautory provisions, to name a few.

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93. See Assessment Report - Clans of Bandop, op. cit.

94. Winfield, P.H., The Province of the Law of Tort, Cambridge at the University Press, 1931, p. 32.

Having said so much by way of introduction, we may now discuss a few of the established torts.

Trespass

There are three categories of trespass, namely, trespass to land, to the person and to goods. Trespass to land involves unauthorized entry into another's land without his permission, as well as remaining on another's land when the permission to do so has expired. In brief, trespass is interference with possession. Thus, in order to succeed in an action for trespass, possession must be proved. In the Nigerian case of John George Will v. J.A. George Will,[95] Webber J. in dismissing a claim said that:

> "in this case the statement of claim discloses neither a right nor title to possession of the building and it negatives any prior or actual possession by the plaintiff."

Trespass to the person on the other hand covers cases of false imprisonment and malicious damage. In the case of Ezeani v. Ekwealu and Olikagu[96] it was decided that:

> "the warrant for the detention of a prisoner on remand requires the officer in charge of the prison to convey him to court on the date

95. [1924] 5 N.L.R. 76.

96 [1961] 1 All N.L.R. 428 per Palmer J.

> fixed. Although it is a practice for the police officers or court messengers to collect such prisoners, the legal responsibility rests on the officer in charge of the prison, and if he detains the prisoner beyond the date fixed for his production in court, then the officer is liable for wrongful imprisonment."

Finally, trespass to goods involves the wrongful interference with their possession. The difficult nature of this offence is well summed up in the following passage:

> "If mere touching of objects like wet paint, waxworks or exhibits in a picture gallery or museum, be not trespass, then their possessor could be without a remedy."[97]

Fortunately, however, there are more specific cases of trespass to goods. These include conversion and detinue. Conversion has been judicially defined as:

> "dealing with goods in a manner inconsistent with the right of the owner ... provided that it is also established that there is also an intention on the part of the defendant to deny the owner's right or to assert a right which is inconsistent with the owner's right."[98]

Detinue on the other hand consists in withholding the possession

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97. Winfield on Tort, Eighth Edition, by Jolowicz, J.A. and Ellis, Lewis T., London, Sweet & Maxwell 1967, p. 482.

98. Per Atkin J. in Lancashire & Yorkshire Rail Co. v. MacNicoll [1919] 88 L.J. K.B. 601 at p. 605.

of goods from one who is immediately entitled to their possession. In trespass to goods, as in trespass to land, it is important for the owner to prove possession.[99]

The new Cameroon Penal Code has made certain inroads into the common law position of the tort of trespass, for the code provides by Section 239 that:

> "Whoever in manner liable to disturb the public peace enters upon land quietly enjoyed by another to whomsoever belonging, shall be punished with imprisonment for from fifteen days to one year."

Further, Section 299(1) provides that:

> "Whoever enters or remains in another person's residence against his will shall be punished with imprisonment for from ten days to one year or with fine of from five thousand to fifty thousand (5,000 - 50,000) francs C.F.A. or with both such imprisonment and fine."

It is also possible that Section 291 which deals with [illegible] false arrest can come within the umbrella of trespass to the person.

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99. Two West Cameroon cases recently treated as trespass generally seem to sub-divide into conversion and detinue. The case of Francis Atungo v. Brandler & Rylke Motors (Likomba) (case W.C. /93/68T), was one of conversion in which the plaintiff claimed damages for his car, while in the case of Tchokoukam Emmanuel v. KouamFotso Collins and Paul Makia (W.C./13/68) the plaintiff claimed damages for wrongful detention of his goods, seems to have been a detinue case.

If the argument that the Penal Code interferes with the common law of trespass is accepted, then it would seem that the rule in Smith v. Selwyn[100] must apply. This rule provides that in a situation where a tort is also a felony, the action in tort will be stayed until the felon has been prosecuted. This case was followed in the Nigerian case of Tiamiwo and others v. Ashiru[101] in which an action for damages for assault and battery was stayed until a criminal prosecution had been completed.

Defamation

Defamation is defined by Winfield as:

> "the publication of a statement which tends to lower a person in the estimation of right thinking members of society generally; or which tends to make them shun or avoid that person."[102]

Defamation may take a permanent form or it may be transient in nature. Where the attack on a person's reputation is in permanent or written form, it is called a libel, but if it is transient or in spoken form it is slander. One of the differences between libel and slander is that libel can also be a criminal offence if it leads to a breach of the peace, but slander is always tortious.

For the purpose of the criminal law defamation is dealt with in

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100. [1944] 3 K.B. 98.

101. [1955] 21 N.L.R. 42.

102. Winfield on Torts, op. cit., p. 254.

Sections 152 and 305-306 of the Penal Code.[103] These sections would appear to have repealed the corresponding sections in the Nigerian Criminal Code,[104] under the provisions of which the appellants in the West Cameroon case of Woleta and Namata v. Commissioner of Police,[105] appealed unsuccessfully against a judgment for defamation for publishing matter in the "Cameroons Champion" which was defamatory of Mr. Vincent Nchami, a Senior Civil Servant.

It would seem from the provisions of the Cameroon Penal Code that slander can also be the subject of criminal action.

Negligence[106]

In most of the torts which we have discussed so far there is usually the ingredient of a negligent state of mind. Here we shall be discussing negligence as a tort in itself.

Negligence as a tort consists in the breach of a legal duty to take care, which breach results in damage to another. The general principle of this tort was enunciated by Lord Atkin in the celebrated case of Donoghue v. Stevenson.[107] His Lordship said that:

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103. See Appendix V for provisions of the Penal Code with regard to defamation.

104. The whole of the Criminal Code was repealed by the new Cameroon Penal Code.

105. Suit No. WC/20 CA/1962 in West Cameroon Law Reports 1962-1964, p. 3.

106. See generally Millner, M.A., Negligence in Modern Law, London, Butterworths 1967.

107. [1932] A.C. 562 at p. 580.

> "in English law there must be and is, some general conception of relations giving rise to a duty of care, of which the particular cases found in the books are instances. The liability for negligence, whether you style it such or treat it as in other systems as a species of "culpa", is no doubt based upon a general public sentiment of moral wrongdoing for which the offender must pay. But acts or omissions which any moral code would censure cannot in a practical world be treated so as to give a right to every person injured by them to demand relief. In this way rules of law arise which limit the range of complainants and the extent of their remedy. The rule that you are to love your neighbour becomes, in law, you must not injure your neighbour; and the lawyer's question, who is my neighbour? receives a restricted reply. You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. Who, then, in law is my neighbour? The answer seems to be - persons who are closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question."

The concept of duty of care was followed in the Nigerian case of Bankole v. United Africa Company Ltd.[108] In that case the plaintiff who had parked his lorry on the left hand side of an unlit road without the proper side and tail lights on, and thus resulting in an accident with the plaintiff's car which was travelling in the same direction, was said to be negligent. Quite a few cases of negligence have been brought before the West Cameroon

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108. [1939] 15 N.L.R. 41.

courts,[109] but most of them involve motor car accidents to which we will return later in this chapter.

The concept of duty of care, however, raises three quite fundamental problems. In the first place, it is difficult to find a satisfactory basis of relating duty of care, foreseeability and causality. In the case of Donoghue v. Stevenson itself, which was an action by the plaintiff against the defendant, a manufacturer of aerated waters, for injuries which she suffered as a result of drinking part of the contents of a bottle of ginger beer manufactured by the defendants and which contained the decomposed remains of a snail; the ginger beer itself having been bought from a retailer, Lord Atkin based his judgment on the fact that a manufacturer of drinks in the circumstances of the defendant owes a duty of care to the ultimate consumer. This duty is based on reasonable foreseeability. Professor Glanville Williams, on the other hand, argues that a duty of care is owed to everyone and should not be restricted to those within reasonable foreseeability.[110]

Secondly, this duty of care is clouded by some uncertainties. There are uncertainties as to the range over which this duty operates, or the criteria by which it is determined or those to whom it is owed.

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109. Donatus Ngaba v. Rev. Father Barniche and two others (WC/94/68). Case of damages for injuries sustained as a result of defendants negligent driving. Other similar cases include John Lifange Ikome v. David Batikum and Felix Ngang, WC/83/68 and Alphonsus Nwaosu v. Philip Jaff and C. Eziuku, WC/77/68.

110. Glanville Williams, Criminal Law, The General Part, 2nd Edition, London, Stevens and Sons Ltd., 1961., chapter 3 passim.

Thirdly, there is the problem of the logical distinction between duty of care and foreseeability. To say the least, one is uncertain as to whether the real test is reasonable foreseeability or a duty of care.

Also tied up with this problem is the question of remoteness of damages and contributory negligence.

Vicarious Liability

The cases covered under this head are often referred to as the Master and Servant cases. This covers the case where A may be liable to C for the torts of B his servant. The rules governing this head of liability are well treated in the main text books on the law of tort, so we need not repeat them here, particularly in the light of the fact that there are few recorded cases under this head even in Nigeria from where we have drawn most of our examples. As recent as 1963, Dr. Elias noted that there were only two reported cases under this head.[111] In West Cameroon in 1968 there were barely two cases noted by the author in which the question of vicarious liability was raised,[112] both of which were cases of negligent driving. It is therefore arguable whether these are proper cases of master and servant, as there is a growing tendency of treating liability

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111. Elias, Nigerian Legal System, op. cit., p. 257.

112. John Lifonge Ikome v. David Batikum and Felix Ngang (WC/14/68) and The West Cameroon House of Assembly v. The Royal Exchange Assurance WC/1/68.

resulting from the use of vehicles as sui generis.[113]

We have limited ourselves to a treatment of only a few heads of tortious liability because these are the ones which are more frequent in the courts. There are other heads of tortious liability which are well treated in the standard text-books on the subject. In any case, the heads of tortious liability are not closed.[114]

Contract in East Cameroon

The law of contract in East Cameroon is based on the French Civil Code of 1804 which was adopted first in Senegal in 1830 and then in French Equatorial Africa and finally in the then French Cameroons.[115]

The Code by Article 1101 defines a contract as:

> "an agreement by which one or several persons bind themselves towards one or several other persons to give, to do, or not to do a certain thing."[116]

Unlike West Cameroon, where the common law classifies contracts into simple and specialty contracts, in the East they are classified into the following categories:

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113. James, General Principles of the Law of Torts, op. cit., p. 375.

114. Winfield, The Province of Tort, op. cit., Chapter 3 passim.

115. Codes et Lois du Cameroun, Tome II, pp. 85-101 (articles 1101-1381).

116. Cachard, H., The French Civil Code, Revised Edition, Paris, The Lecram Press, 1930, p. 313. We shall rely largely on the translation of the French Civil Code contained in this work; Amos & Walton, op. cit., p. 149.

(1) "Article 1102. A contract is synallagmatic or bilateral when the contracting parties bind themselves mutually towards one another (i.e. where it imposes reciprocal obligations)."

(2) "Article 1103. It is unilateral when one or more persons are bound towards one or more other persons. These include contracts which impose an obligation on one of the parties only."

(3) "Article 1104. It is commutative when each of the parties binds himself to give or to do a thing which is considered the equivalent of what is given or done to him.

When the equivalent consists in the chance of a profit or of a loss for each of the parties dependent upon an uncertain event, the contract is aleatory." The distinction between the two lies in the fact that an aleatory contract cannot be set aside as a result of lesion.[117]

(4) "Article 1105. A contract of benevolence is one by which one of the parties procures to the other an advantage which is purely gratuitous."

(5) "Article 1106. An onerous contract is one which obliges all the parties to give or to do a certain thing."[118]

The civil code provides for these forms of contract. Article 1107 has the further provision that there may be other contracts which have no

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117. "Lesion" refers to the prejudice suffered by a party to a contract when what he has received is manifestly less than what he gives.

118. Cachard, op. cit., pp. 313-314; Amos & Walton, op. cit., pp. 149-151.

special denomination. In this group have been included contracts of adhesion (contrats d'adhesion). This is a standard form contract in which, as we saw above, the conditions are generally concluded in advance by one party - usually the dominant party - and the other party does no more than just adhere to these conditions. A variant of this type of contract is known as the contrats types. Here, the conditions are put forward by a professional body such as a trade union rather than an economically strong unit. There is another type of contract - the collective contract - into which we need not go now as these are now regulated by the provisions of the labour code.[119]

The Formation of Contracts

Certain preliminaries must be satisfied before a contract can be regarded as validly formed. These preliminaries which are laid down in Article 1108 of the Civil Code include the consent of the party who binds himself, his capacity to contract, a special object which forms the substance of the contract, and a legal cause for the obligation.

Offer and Acceptance

The law with regard to offer and acceptance has, like English law, been developed by the courts and jurists, as there is no provision in the

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119. Amos and Walton, op. cit., pp. 152-155; Labour Code. Law No. 67 - LF-6 of 12th June, 1967.

code to that effect. An offer involves a communication by one party to the other indicating his desire to enter into a contract with that other.[120] A firm offer once made remains open until it is accepted. Before acceptance it may be withdrawn or it may lapse as a result of the death of the offerer or his loss of contractual capacity. Offers which are stipulated to remain open within a specific period can only lapse at the expiration of such a period.

Just as the Code Civil has no specific provision with regard to offer, so is it silent on the question of acceptance. This silence does not, however, affect the importance of acceptance in the formation of a contract. In order for a contract to be binding, there must be implied or tacit acceptance. Silence or inaction will not do, except in rare cases where there has been considerable precedent.

This simple statement of the law with regard to acceptance is not intended to minimize the difficulties which arise in connection with it. These difficulties are mostly connected with the point at which acceptance is deemed to have been made, particularly in contracts by correspondence, for oral contracts are concluded as soon as the parties agree. There are various views concerning the acceptance of contract by correspondence.

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120. Ryan, K.W., An Introduction to Civil Law, Australia, The Law Book Company of Australia PTY Ltd., 1962, pp. 42-43; von Mehren, A.T., The Civil Law System. Cases and Materials for the Comparative Study of Law, 1957, Prentice-Hall, Inc.; Englewood Cliffs, N.J., pp. 473-379

Firstly, there is the émission theory which holds that the contract is completed as soon as the offeree emits a statement or declaration indicating his acceptance. Secondly, there is the expédition theory which holds that the contract is complete only when a letter or telegram has been dispatched indicating acceptance of the offer. Thirdly, the information theory holds that a contract is complete when the offerer becomes aware of the acceptance. Finally, the réception theory holds that the contract is complete when the acceptance reaches the offerer even though he may not read it.[121] All these theories contrast sharply with the English law situation that a contract in similar circumstances is deemed to be accepted as soon as the document of acceptance is posted.

Even when acceptance of a contract has been duly communicated by the offeree to the offerer, the contract may still be declared null and void or voidable at the option of one of the parties - usually the offeree - on certain grounds, such as error, violence or fraud,[122] lack of capacity,[123] lack of a specific object for the contract[124] or lack of cause.[125]

Cause which roughly equates to consideration, can be traced back to the Roman law causa. We do not intend to go into the controversy as

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121. Amos & Walton, op. cit., pp. 156-7; Ryan, op. cit., pp. 43-44; von Mehren, op. cit., pp. 483-488.

122. Articles 1110-1122 of Code Civil.

123. Articles 1123 - 1125 of Code Civil.

124. Articles 1126-1130 of Code Civil.

125. Articles 1131-1133 Code Civil.

to whether cause is the same as consideration, but merely to content ourselves with the provisions of the code on the subject. These are as follows:

> "Article 1131. An obligation without cause or with a wrongful or illicit cause can have no effect."
>
> "Article 1133. A cause is illicit when it is prohibited by law or when it is contrary to good morals or to public order."[126]

Inadequacy of cause will not invalidate an agreement.

Cause is usually interpreted to mean the immediate end of the contract. Thus in a contract of sale, the seller is interested in the money and the buyer in the thing sold. This means that just any type of contract can take place irrespective of motive. Article 1133, however, intervenes and sanctions only contracts which are legal. Thus illicit contracts such as those prohibited by the law or those contrary to public order (L'ordre public)[127] or good morals (bonnes moeurs)[128] are never allowed.

Whatever the contraversy as to what constitutes ordre public or

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126. On cause see generally Ryan, op. cit., pp. 44-49; Amos & Walton, op. cit., pp. 166-172; Walton, F.P., Cause and Consideration in Contract, 1925, 4 L.Q.R. 303-328.

127. Lloyd, D. (now Lord Lloyd of Hampstead), Public Policy: A Comparative Study in English and French Law, University of London, the Athlone Press, 1953, pp. 6-8. The author says public policy in both French and English law is based on the premise that certain obligations of any social group are so overriding that they cannot be excluded by any individual or group.

128. Ibid, op. cit., chapters 3 and 4. The wide area covered by bonnes moeurs raises the alarm that a few judges are being made custodians of everyone else's morals.

bonnes moeurs, the effect, where they have been established by the court, is to declare the contract null and void. Innocent parties may claim restitution in the event of such nullity.

The main aim of any court, however, is not to try and declare contracts null and void, but to do so only as a last resort. Thus they must strive at all times to construe the contract according to the intention of the parties. To this end, the code civil contains rules of construction which are designed to assist the courts in giving effect to the intention of the contracting parties or to resolve any doubts which might arise.[129]

Third Parties and the Contract[130]

French law, like the English law doctrine of privity, lays down the basic rule that a third party may not derive any benefit from or incur any liability under a contract. There are, however, exceptions to this rule. Article 1121 provides that a person may, in the cause of entering into an obligation on his own behalf, extend the benefits of such an obligation to a third party. This arrangement becomes irrevocable once the third party has indicated his acceptance. Further, by Article 1122, a

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129. Articles 1156 - 1164 of the Code Civil.

130. Articles 1165 - 1167 of the Code Civil; Amos & Walton, op. cit., pp. 173 - 178.

person is presumed to make contracts for his benefit as well as those of his heirs and legal representatives. Such presumption may be negatived by express provision to the contrary in the contract.[131]

Remedies for Breach of Contract[132]

We have attempted above, insufficiently one fears, to state very briefly the basic rules of contract in French law as practised in East Cameroon. We must now consider the remedies available to any party in the event of a breach of contract. Here one is immediately presented with difficulties because of the rather large number of contracts known in French law, but we must resist the temptation of giving but a cursory treatment of the remedies available for breach of contract.

French law recognises the remedy of recission for breach of contract.[133] This remedy is available in synallagmatic or bilateral contracts where the aggrieved party can, where possible, compel the performance of the contract or claim recission with damages. It has been argued that this remedy extends to unilateral contracts as well.[134] The provisions of Article 1184 operate along with the general remedy of recission under Article 1183.

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131. Amos & Walton, op. cit., pp. 174-179.

132. Ibid, op. cit., pp. 179-191; Ryan, op. cit., pp. 70 - 87; von Mehren, op. cit., pp. 501-513.

133. Article 1184 of the Code Civil.

134. Amos & Walton, op. cit., p. 187.

Specific performance is also resorted to as a remedy for breach of contract. It is, however, difficult to reconcile this remedy with Article 1142 which provides that:

> "every obligation to do or not to do resolves itself in damages, in case of non-performance on the part of the debtor."

The courts have always overcome this situation by seeking recourse to Articles 1143 and 1144 which give some leeway to the creditor to demand almost any remedy.

The aggrieved party in a broken contract may also seek damages from the defaulting party. Such damages may be with or without recission. The creditor must take the necessary steps against the debtor otherwise he will be taken as having acquiesced.[135] Only damage which has been suffered is recoverable.[136]

Another remedy which has been developed by the courts is based on Article 320 of the German Civil Code. This provision which deals with bilateral contracts allows one party to refuse to perform his part of the contract until performance by the other of that other's part.

Quasi-Contract[137]

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135. Article 1146 of the Code Civil.

136. Article 1149 of the Code Civil.

137. Amos & Walton, op. cit., pp. 192-199; Ryan, op. cit., pp. 101-108; Articles 1371-1381 (Code Civil)

We saw above that the English law position of quasi-contract is unsatisfactory. The position in French law is much less so. The Code Civil makes provision for quasi-contract, although the term itself has been described by some French writers as:

> "une sorte de monstre légendaire qu'il faut se décider à bannir du vocabulaire juridique."[138]

Most of the civil law provisions with regard to quasi-contract are derived from Roman law. The Code Civil, however, does not incorporate all the Roman law remedies,[139] but only two, namely, the gestion d'affaires

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138. Amos & Walton, op. cit., p. 192, note 1.

139. The Roman Law Remedies are as follows:

(i) Conditio indebiti - an action to recover property transferred and received in good faith in discharging an obligation which did not in fact exist.

(ii) Conditio ob rem or ob causam dati. This lay to recover money given for a consideration (casus) which failed.

(iii) Conditio ob Turpem causam was available to recover money paid for an immoral purpose.

(iv) Conditio sine causa makes provision for the recovery of money given for causless purposes.

See Buckland, W.M., Manual of Roman Private Law, Cambridge at the University Press, 1957, pp. 314-316.

which corresponds to the Roman law negotiorum gestio and the payment de l'indu which derives its origin from the conditio indebiti.

Both these remedies are fully well covered in the Code Civil.[140]

The Law of Tort in East Cameroon

The law of tort in East Cameroon which is much the same as that in France is contained in five articles of the Code Civil.[141]

These five articles deal with the whole question of délits and quasi-délits. The term délit applies to intentional harm while quasi-délit refers to unintentional harm such as omissions. These two together come under the generic name of responsabilité délictuelle.

The question which is raised in one's mind is whether the six articles of the Code Civil can deal with all responsabilités délictuelles. The answer seems, thanks to developments by the courts, to be positive.

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140. Articles 1372 - 1375.

141. The law of tort is contained in 5 articles (i.e. 1382 - 1386) of the Code Civil. Codes et Lois du Cameroun Tome II, p. 102. By a decree of 7th November, 1922, these provisions were extended by the insertion of two paragraphs after Article 1384 to cover liability to third parties for fine.

Another decree of 5th April, 1937, exempted teachers, parents, and artisans from liability if they could prove that it was impossible for them to prevent the act which caused the damage.

We must now consider how the courts have coped with the situation.[142]

Liability for damages caused by one's own fault

In what follows we shall be talking not about damage caused by the defendant, but about damage caused by the fault of the defendant, the criteria for determining the fault being the reasonable man.

The provisions of the law are as follows:

> "Article 1382. Every act whatever of an individual which causes injury to another obliges the one owing to whom it has occurred to make up for it."
>
> "Article 1383. Every one is responsible for the injury which he has caused not only owing to his own act, but owing to his negligence or his imprudence."

The damage envisaged in these articles may be moral or material. It is moral when it affects the extra-patrimonial rights of the victim, and material when it affects his property rights. In any case, the damage caused must be real otherwise there will be no cause of action open to the victim.

In order to found a cause of action under this head, there must

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142. In dealing with tort we shall follow the threefold classification of Professor Andre' Tunc in his article: "The twentieth Century Development of the Law of Tort in France.", 1965, 14 I.C.L.Q., p. 1089.

be damage, fault and some casual connection between these two.

In this brief statement of the law, we have only been able to state very general principles. There are, of course, more detailed provisions which the courts deal with from day to day. These include problems of the apportionment of damage[143] or cases of force majeur[144] or contributory negligence which either wholly or partially exempt the defendant from liability.

Quite apart from these, which are by no means exhaustive, there may be certain other conditions which negative liability. These cover cases of incapacity, private defence, necessity, ~~superior orders~~, waiver of right to sue, acceptance of risk and superior orders. In most of these cases such as private defence, the defendant must prove that he did no more than was necessary.

Liability, as we saw above, in Article 1383 is not only based on fault but also on negligence and imprudence. The test would seem to be the same reasonable man test.

So far, we have dealt with situations where the defendant acts positively. We must now consider cases where he abstains from acting.

In English law, no one is under a duty to act in order to rescue

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143. Amos & Walton, op. cit., p. 207.

144. Ibid, p. 214.

a person in danger or in distress. The situation in French law is that Articles 1382 and 1383 cover positive actions as well as abstentions. Another interesting aspect of French law is the question of abuse of rights. The law ensures against the possibility of anyone using legal rules for spiteful or selfish purposes. The leading French decision on the subject is the Affaire Clement-Bayard in 1915. In this case:

> "the proprietor of land adjacent to a hangar for zeppelins had erected upon his property an immense wooden structure topped with metal spikes with the aim of putting an end to the operations of Messrs. Clement-Bayard, who used the hangar. The Cour de Cassation had no difficulty in finding that the proprietor had abused his right of ownership."[145]

Article 826 of the German Civil Code provides in a similar manner that:

> "a person who wilfully causes damage to another in a manner contra bonos mores is bound to compensate the other for the damage."[146]

In English law, situations of this nature are treated as cases of nuisance. In the case of Bradford (Mayor of) v. Pickles[147] it was declared that the doctrine (i.e. abuse of rights) does not exist in English law. In that case, it was held that irrespective of whether

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145. Amos & Walton, op. cit., p. 219.

146. Lawson, F.H., Negligence in the Civil Law, Oxford at the Clarendon Press, 1950, pp. 17 and 204.

147. [1895] A.C. 587.

the motive was malicious or bona fide for his benefit, an owner of land underneath which water percolated in undefined channels to the land of another, could divert such water within his own land so as to deprive his neighbour.

The difference between the French and English position at the time the cases mentioned above were decided shows a great inclination in the English situation towards the protection of personal rights while the French attempted to reconcile personal rights and social need. We can only add the one comment here that the right course to use seems to be that in which individual rights are exercised in the context of the social purpose of the law.

Vicarious Liability

Article 1384 as amended by the decrees of 7th November, 1922, and 5th April, 1937, provide three situations in which a person can be held vicariously liable for the acts of another.

Firstly, there is the liability of a father, and after him, a mother, for the acts of minor children. Parents are liable only for the acts of children actually living with them. The children must be at fault, A father may, however, be liable for the acts of a child who lives with a mother who has been separated from him. Such liability ceases on

divorce. In spite of the difficulties of determining the right type of education and supervision, the liability seems to be based on the responsibility of parents to educate and supervise their children.

Akin to the liability of parents for their children is that of artisans for their apprentices.[148]

Secondly, Article 1384 makes masters and employers liable for the acts of their servants and employees. This is what is referred to in West Cameroon law as vicarious responsibility. It is not desired here to go into all reasons for the imposition of vicarious liability as these, though difficult, have been better dealt with elsewhere.[149] One obvious reason seems to be that liability is imposed on the master because he is able either to satisfy all claims or to insure in anticipation of such burden as opposed to the servant who is a man of straw.

The liability of the master, of course, depends on the establishment of a master/servant relationship between him and the servant. No less significant is the fact that in order to hold the master liable, the

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148. It would be interesting to know how a court would decide a case in which an artisan or a master has under a service contract or a contract of apprenticeship which must be written (Section 51 of the Cameroon Labour Code), excluded liability for the acts of such a servant or apprentice, and such a servant or apprentice has caused damage to a third party. The solution would probably depend on the reasonableness of the exemption clause and whether the apprentice was actually employed in the course of his apprenticeship when the damage occurred. The tendency in any case would be particularly in East Cameroon to impose strict liability on the master.

149. Tunc, 1965, I.C.L.Q., p. 1089.

offence must be committed by the servant in the course of his business. Further, it is important to distinguish a servant from an independent contractor. All these problems make the whole concept of vicarious liability look either artificial or fraught with many difficulties. The difficulties confronting French courts are not dissimilar to those facing English courts.

Finally, there is the liability imposed by Article 1384 on teachers for damages caused by their pupils while under their supervision. Because of the hardship caused the teachers by the strictness of this rule, it was amended by a decree of 5th April, 1937. This decree added the further condition that in order to hold teachers liable for the torts of their pupils, fault as provided by Articles 1382 and 1383 must be proved against them.

Liability for damages caused by things

The liability imposed under this section is comparable to strict liability in English law. The provisions for liability under this head are contained in sections 1384-1386.

Article 1384 imposes liability on any person possessing an inanimate object which has caused harm to another. Exemption from this head of liability will only be granted if it is proved that the damage was caused by the fault of the victim, the act of a third party, or a fortuitous event (vis major).

Article 1385 places strict liability on the owners of animals for any damage caused by such animals. This liability is not necessarily imposed on the owner but the person who is making use of the animal. No distinction is made between animals ferae naturae and mansuetae naturae.

Article 1386 also imposes very strict liability on the occupiers of buildings for damages caused to others by such buildings as a result of non-repair.

Conclusion

We have just considered the general provisions of the law of contract and torts as applied in East and West Cameroon.

This aspect of the law in East Cameroon is contained in the Napoleonic Code Civil in much the same way as it was promulgated in the metropole. This code suffers from certain handicaps. It does not, for instance, now satisfy all the needs of the French for whom it was initially intended. This makes it even more of an anachronism for Cameroon. This is not to mention the fact that the rigid nature of the code makes it even less suited to the needs of a developing country.[150] Perhaps one example will ~~very~~ clearly demonstrate the fact that the code can no longer cater for modern society. Contracts for the benefit of third parties

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150. Farnsworth, E.A., Law Reform in a Developing Country: A New Code of Obligations for Sénégal, 1964, J.A.L., p. 6.

have grown beyond the provisions of the code.

The situation is even worse with the law of tort about which a learned French author had this to say:

> "It is far from the straight and modern law which would be needed. This fact was brought to light when some new African nations turned to the French law to find inspiration for their new legislation. I do not think that any French lawyer would take the responsibility of urging them to adopt our law of torts, consisting of five articles of the Code, a number of cases which increase by the thousands every year, and a number of one - two - or three - volumed treatises, which give evidence of serious disagreements between the text-writers. The African nations need more modern and simpler rules. Ethiopia and Sénégal have recently set an example. Other countries, I assume, will establish new rules through co-operation between African and French lawyers. In the law of torts, as well as in some others, I would welcome a backlash in the form of some simplification of French law, which would take as models the new African codes. Obviously, certain provisions of the African Codes are adjusted to social conditions different from those of the industrialised countries. Many of them, however, have been elaborated by critical reflection on rules carried over for centuries. They give evidence that our law could be at the same time simpler and closer to natural justice."[151]

Besides the very sound reasoning in this passage, the learned author has drawn our attention to the start in codification which has already been

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151. Tunc, 1965, I.C.L.Q., op. cit., p. 1102.

made in this respect in Sénégal and Ethiopia, as well as to the very important point that any codification must reflect the "social conditions" of the country for which the code is intended. This, unfortunately, does not seem to have been a factor which played an important part in the drawing up of the codes of Sénégal and Ethiopia for the principles of customary law were not considered at all. One argument put forward in the case of Sénégal was that:

> "custom stagnates instead of developing because it is expected to be repeated orally without change, and while it is static, it is also often uncertain."[152]

In Ethiopia, very much the same arguments were advanced for excluding customary law. Professor David who was instrumental to the production of the Ethiopian Code argued that Ethiopia was made up of communities which did not always follow the same customs.[153]

Thus, in both these countries the whole question of customary law was sacrificed on the altar of expediency and economic progress in spite of the often repeated fact that laws must reflect the social conditions of the people for whom they are intended.[154]

Economic progress and development are certainly priority matters

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152. Farnsworth, op. cit., p. 16.

153. David, R., A Civil Code for Ethiopia. Considerations on the Codification of the Civil Law in African Countries 1962-63, 37 Tulane L.R., pp. 187-204 at p. 195.

154. It would seem that the attitude shown in the cases of Ethiopia and Sénégal represents the traditional French policy of disregarding anything African in an attempt to perpetuate the French civilization.

of any developing country, but development is only a means to an end, which is man himself. It would therefore seem that if such progress is not to lead to a run away society, it must be planned in the context of the society.

It is argued that the diversity of customary law hinders its inclusion in any code. It has been argued very convincingly, though in another connection, that:

> "it is possible, despite this diversity, to trace some broad uniformity in certain basic principles."[155]

Further, it would seem that equally diverse laws of the state of Israel have not in any substantial way hindered economic progress.[156]

In west Cameroon on the other hand, the English common law of contract and tort was introduced on 28th February, 1924. With this introduction, came certain aspects of the law which were totally unsuitable for African conditions. For instance:

> "there are certain aspects of the law of contract which, since they are peculiar to the English should not have been exported to West Africa in the first place."[157]

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155. Cotran, E., "The Changing Nature of African Marriage" in "Family Law in Asia and Africa", Edited by Anderson, J.N.D., London, George Allen & Unwin Ltd., 1968, pp. 21-22; also Allott, Essays in African Law, Chapter 3 passim.

156. Akzim, B., Codification in a New State in "The Code Napoleon and the Common Law World" Edited by Schwartz, B., New York University Press, 1956, p. 298. The various laws in Israel include enactments of the state of Israel, quasi-statutory enactments of the period of British rule, Ottoman law, Common law, Moslem law, Jewish (rabbinic) law, Christian Church law, and Bedouin tribal law.

157. Ekow Daniels, The Common Law in West Africa, op. cit., p. 225.

Although the learned author was in this connection referring to the doctrine of consideration, it seems that there are several other aspects of the law which can be similarly regarded such as the proliferation of standard form contracts to which reference has already been made. These technicalities can also be encountered in the law of torts such as the problems of causation and forseeability.

The main task in Cameroon, however, is not one of overcoming these technicalities, important as they may be, but one of producing a civil code which incorporates the common law of contract and tort in West Cameroon and the Code Civil in East Cameroon. This can be done either by having individual codes of contract and tort or a single civil code. It seems, from the terms of reference of the Commission which was set up to prepare a draft civil code, to which we will be returning presently, that the latter was preferred.

The task of producing such a code will not be easy, for, unlike that of producing the Penal and Labour Codes which was a little more than a scissors and paste job as there were existing codes on these subjects that of producing a Civil Code will not only involve a reconciliation of unwritten common law and written civil law, but also reckon with Islamic and Customary law which play a significantly more important part.[158] One can, of course, over dramatize the difference between the common law

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158. Allott, A.N., Towards the Unification of Laws in Africa, 1965, 14 I.C.L.O.

position in West Cameroon and the civil law position in the East at the expense of the large degree of similarity which can play a useful part.

As we have seen from the brief summaries above of the substance of the law of contract and tort, there are some similarities. Case law has, though in varying degrees of importance, as between common and civil law, contributed substantially to the development of contract and tort. While case law forms the bed-rock of the common law, it plays an important part in the civil law. We have also already noted the fact that stipulations in contracts for the benefit of third parties have, thanks to the courts, grown far beyond what was envisaged in Article 1121 of the Code Civil. Now, it is possible to make stipulations in insurance contracts for the benefit of third parties even though, contrary to the provisions of the law, the promisee may not retain an interest in the contract.[159] In torts, we have already come across the statement that the French law of torts consists of "five articles of the code, a number of cases which increases by the thousands every year, and a number of one - two - or three - volumed treatises."[160]

Quite apart from case law, there is some similarity in the basic rules of law such as the contract rules of offer and acceptance, consider-

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159. Ryan, op. cit., pp. 67 - 72.

160. Tunc, 1965, I.C.L.O., op. cit., p. 1102.

ation and privity of contracts, although these may vary in detail. This is no less true in tort, for the rules of vicarious and strict responsibility, to mention just two, are similar.

Even a dip into the future shows interesting developments in the same direction. An example of such development is the current thinking that liability for motor accidents should be a matter to be dealt with by means of insurance. Indeed, this problem which has been explored in the Canadian Province of Saskatchewan is being discussed in the United States and in Europe. This problem has been brought to the front because the traditional rules of establishing liability for negligence are, with the presence of the motor vehicle, no longer satisfactory. It is now very difficult to apportion fault in motor accident cases which happen within a split second. This is not to mention the ever increasing number of hit and run cases. Thus the suggestion has been put forward that liability for motor accidents should be covered under a general insurance scheme.[161] Indeed, such a scheme has been tried out in Saskatchewan.[162] By the Saskatchewan Automobile Insurance Act of 1946, a special insurance fund was set up under the supervision of the Saskatchewan Government Insurance office. The insurance scheme raises the finances by charging all motor

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161. Tunc, 1965, I.C.L.Q., op. cit., p. 1097; Payne D., Compensating the Accident Victim, 1960, C.L.P. 85; Gray, H.R., Liability for Highway Accidents, 1964, 17 C.L.P., 127; Lang, O.E., The Activity Risk Theory of Law. Risk Insurance and Insolvency, 1961, 39 Can. B.R. 520.

162. 1961 39 Can. B.R. 107. This article discusses the Saskatchewan scheme.

vehicle owners a premium as a condition of registration. There are also small premiums payable on the grant of driving licences. The insurable period is therefore limited to the period of validity of a driving licence and a certificate of registration. Under this scheme, any person injured by a vehicle covered by the insurance can claim on the company.

This is an idea which could be considered by developing countries when they draw up new codes, for such a scheme can offer adequate protection to the injured pedestrian who is very often the man of straw who either does not know his rights or cannot afford the cost of litigation. Further, it usually happens that the man of straw injured in this way is the bread winner of a large family. Indeed a similar situation arose in a West Cameroon case recently[163] where one Kenneth Okeke was being sued by a widow on behalf of herself, two other widows, one of whom was pregnant, and three children, for the negligence of his servant in driving a car which knocked down and killed the deceased Alexander Shu.

These, however, are all suggestions, but one thing will have to be done, namely, production of a civil code which embodies common and civil law ideas. It was towards this end that the President of Cameroon, by a decree of 29th February, 1964, set up a Commission Fédérale de législation Civil et Coutumier[164] which was charged with the responsibility of preparing

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163. Cathalina Shu (widow) on behalf of herself and Samuel Shu, her son, aged 15 years, Julia Ngu Shu (widow enceinte) on behalf of herself, Bih Alexander Shu (also known as Oricia Ngu) (widow) on behalf of herself and (a) Ngam - 7 years (b) Azirim 2½ years, V. Okeke, WC/14/1962. 1962-64 W.C.L.R., p. 6.

164. Decree No. 64 - 84 of February 29th, 1964; J.O.R.F.C. of March 1, 1964 at p. 228.

a draft Civil Code, a Code of Civil and Commercial Obligations, and a Civil Procedure Code.

This Commission about which there is little, if any, information, will have the not too easy responsibility of reconciling English, French and customary law. The Code Civil will offer a useful basis to French law. Although there is no corresponding code in English law, there are quite a few examples which could be used very profitably. There is first of all the Indian Contract Act of 1872 which was based on the common law. Then there is the Tanganyika Law of Contract, Contract Ordinance No. 1 of 1961 which is based on the Indian Act.[165] In addition to these two acts there are other legislations such as the Ghana Contracts Act (Act 25) of 1960.[166] The situation is slightly more difficult in the field of tort, although there are many English statutes of general application[167] or statutes from other commonwealth African countries on specific subjects.[168] Quite apart from this the French law of torts itself - based on five articles of the Code Civil - has been described above as unsatisfactory, so there is here enough opportunity for radical new thinking, with the large volume of

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165. Cotran, E., Law of Civil Wrongs and Obligations in Commonwealth African Countries (1966), p. 2; Cole & Denison, Tanganyika. The Development of its Laws and Constitution, op. cit., p. 177

166. See Read, J.S., 1961, J.A.L., p. 48; Daniels, Common Law in West Africa, op. cit., p. 226.

167. e.g., The Fatal Accidents Acts 1864-6 under which the case of Cathabina Shu and others v. Okeke referred to above was decided.

168. e.g. Law Reform (Torts) Act No. 63, 1961, of the Federal Territory of Lagos; The Civil Liability Act, 1963 (Act 176) of Ghana.

English and French case law offering a useful basis. As for customary law, a lot of fresh research will be needed.

We are, however, unaware of the extent to which work in this connection has already been done, nor are we aware of the method which has been used in tackling the onerous job. It may not therefore, be too late to offer some suggestions.

It seems, in our view, that for any major project of codification such as is envisaged in Cameroon, there are four stages. The first stage will be to set up a commission comprising of various shades of opinion. Such a commission must then draw up an inventory of the law to be codified. Such an inventory must make adequate provision as to the method of ascertaining customary law. The second stage will be for the commission to use the information assembled for the preparation of a draft code. Thirdly, such a draft code must then be made available for public discussion. The draft should then be amended in the light of the results of such public discussion. Finally, the draft must then be sent to the Government for approval. In this way, we would ensure that the law represents the sense of justice of a large and varied section of the people.

# CHAPTER IX

## Commercial, Industrial and Development Law

## West Cameroon

### Company Law

Company law, unlike those other aspects of the law which we have already discussed, has no customary content because it is one of those branches of the law which perhaps had no customary counterpart.[1]

Company law in West Cameroon developed along the same lines as in Nigeria. Thus, the company law in operation in West Cameroon at the present is based on the Companies Ordinance (Cap. 37 of the 1958 Laws of Nigeria)[2]. This ordinance was itself, mutatis mutandis, based on the English Companies Act of 1908. The ordinance has been amended over the years and is now more like the 1929 English Companies Act.

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1. It is, of course, arguable that societies such as the thrift and loan societies, or the various craft guilds such as blacksmiths, or bronze workers, or woodcarving groups, to mention just a few, of which there are numerous examples in the Bamiléké, Bamenda or the Foumban areas, could be regarded as the nucleus of companies, but because these were never given a chance to develop, the argument would be highly speculative. Besides, although they obviously performed valuable commercial functions, they partook more of the nature of socio-political institutions.

2. In re Kamerun Ltd. [1966] A.L.R. 385; [1965-1967] W.C.L.R. 1. The Companies Ordinance which now applies in West Cameroon is Chapter 37 of the Revised Edition of the Laws of the Federation of Nigeria and Lagos as modified by the general provisions of the Adaptation of Laws Order 1960 (S.C.L.N. 51) of 1960), the Adaptation of Laws (No. 2) Order, 1960 (S.C.L.N. 84 of 1960) and the West Cameroon Adaptation of Existing Laws, Order , 1962 (W.C.L.N. 7 of 1962). See editor's note on In re Kamerun Ltd. [1965-67] W.C.L.R. at p. 5.

Corporate Personality

Corporate personality is a fundamental attribute of a company by which it is regarded as a legal entity quite distinct from its members. As a result of this, a company enjoys certain rights, and is subject to certain duties which are quite different from those enjoyed and borne by its members. Although a company enjoys this "legal personality", it has in contrast to human beings, been described as an artificial person. This artificial personality has given rise to certain problems of definition the crux of which is whether the personality of a company is ficticious, real or concessionary. Even though Professor Hart,[3] in his inaugural lecture, thought that the distinction was unnecessary, the concession theory has a certain attraction, even if only because "incorporation depends upon a state grant."[4]

Despite all these arguments the principle of corporate personality which was firmly established in the English case of Salomon v. Salomon & Co. Ltd.[5] remains firm, although the courts may, in the interest of justice, from time to time lift the veil of incorporation in order to right a wrong.

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3. Hart, H.L.A., Definition and Theory in Jurisprudence. An Inaugural Lecture delivered before the University of Oxford on 30th May, 1953, Oxford at the Clarendon Press 1953.

4. Gower, L.C.B., Principles of Modern Company Law, 3rd Edition, Stevens & Sons, 1969, p. 22, note 2. In this chapter we shall be talking about a corporation aggregate and not a corporation sole which has only one member, e.g. the Bishop of London. See Gower, op. cit., p. 68.

5. [1897] A.C. 22.

Since a company is a separate entity quite distinct from its members, there must be some means of identifying such an entity. This is done by giving it a name, a place where it can be found, a statement of what it is set out to do and the capital with which it is to do it. All this is achieved in the memorandum of association.[6] Before we consider the provisions of the memorandum of association, a word must be said about the mode of forming a company. The Companies Ordinance provides by Article 4 that

> "any seven or more persons (or where the company to be formed will be a private company within the meaning of this Ordinance, any two or more persons) associated for any lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of this ordinance in respect of registration form an incorporated company with or without limited liability."

Compliance with this provision entitles any group to launch a company the memorandum of association of which must contain the following provisions.

The Name

A company is free to choose any name it likes, but, if the liability of the company is limited then the last word of its name must be the word

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6. For the Provisions of the Memorandum of Association see Sections 4 - 11 of the Ordinance.

"limited". Companies formed for charitable purposes or other purposes with a view to using the profits for the furtherance of the aims rather than paying them out as dividends, may dispense with the word limited.

The Registrar may refuse to register a company if its aims are undesirable or its name misleading. When a company has been registered, it must have its name on its seal as well as outside every place where it carries on business.

Situation of Registered Office

This clause simply states the place where the registered office of the company is, the main aim being to assist third parties who may want to deal with the company or to have a place where writs and other documents may be served on the company as Holden J. expressed in a recent Northern Nigerian case that:

> "the only method of serving a writ of summons on a limited liability company in Nigeria is by delivering the writ to the registered office."[7]

Objects of the Company

The objects clause sets out the purpose for which the company is formed. There is usually, in addition to this purpose, a long list of expressed powers enabling the company to carry on the business named and

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7. Guttman v. Northern Buying and Shipping Association Ltd. [1965], A.L.R. 490 at p. 493.

any others reasonably incidental thereto. These objects are sometimes referred to as primary and secondary objects. As a result of these provisions, the objects clauses of companies tend to be rather long and usually enable the companies to carry out every conceivable object under the sun. For instance, the objects clause of one of the companies in West Cameroon enables the company to carry out as many objects as all the letters of the alphabet plus five other combinations of letters.[8]

Once the objects of the company have been settled, it cannot transact any business other than that named in the objects clause or those which are reasonable and incidental thereto. Any transaction contrary to this rule will be ultra vires.

The reason for the ultra vires doctrine is twofold. Firstly, it provides some protection for shareholders because they can learn from the objects clause the purpose for which their money will be used. In this way, the otherwise wide powers of directors in the management of the company are curbed. Secondly, it offers protection to the creditors of the company by ensuring that the assets of the company are not dissipated on unauthorised activities.[9]

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8. The company in question is Emen Industries which is Indian by origin. This company was given a certificate of incorporation despite warning from a legal expert about the danger involved in registering a company with such a wide objects clause.

9. Ashbury Carriage Company v. Riche [1875] L.R. 7 H.L. 653.

Although the doctrine is based on sound principles it does not always work well in practice. Very often it is a hindrance to directors who may want to embark on a new line of business. It may also work considerable hardship on creditors. Since the memorandum is a public document, all creditors or any third parties dealing with the company are deemed to know its contents. This means that any such creditor or third party will be precluded from recovering against the company in a transaction which is ultra vires the company.

It was in an attempt to overcome this rule that the companies started drafting objects clauses with the widest possible powers which they might need. However, the doctrine is usually "reasonably, and not unreasonably, understood and applied."[10] This tempers the rather harsh effects of a rigid application of the ultra vires doctrine.[11]

Statement of limited liability

The purpose of this clause is to indicate, where it is the case, that the liability of members is limited either by shares or by guarantees. A company limited by shares is one where the liability of its members is limited to the amount unpaid on their shares while it is limited by guarantee if the liability of its members is limited to such amounts as the members may undertake to contribute to assets of

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10. Deuchar v. Gas Light and Coke Co. Ltd. [1925] A.C. 691 per Viscount Cave L.C., at p. 697.

11. Re Jon Beauforte [1953] Cg. 131; Bell Houses Ltd. v. City Wall Properties [1966] 2 All E.R. 674.

the company in the event of a winding-up.

When all these requirements have been complied with, the memorandum is then stamped as a deed and signed by each subscriber. After this, the name of the company must not be changed nor its memorandum of association altered except according to the rules laid down in the ordinance.[12]

Articles of Association[13]

While the memorandum of association as we indicated above establishes the identity of the company, the articles of association play the equally important part of regulating the management of the company and its relations with the members with regard to the issue of shares, calls, alteration of capital, borrowing powers and declaration of dividends to name just a few.

Table A of the First Schedule to the companies ordinance contains a model articles of association. This model automatically applies if a new company limited by shares does not register any articles. Even if articles are registered, Table A may apply to the extent to which it is not expressly excluded by such articles. Articles of association

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12. Sections 9 - 11.

13. Sections 12 - 15. Unless otherwise stated, all references are to the sections of the Companies Ordinance.

must, however, be registered in the case of private companies in order to ensure compliance with the restrictions on private companies,[14] imposed by the ordinance.

The effect of the registration of the memorandum and articles of association is that they bind the company and the members to the same extent as if they had been signed and sealed by each member and contained covenants on the part of each member to observe the memorandum and articles.[15]

The articles may only be altered according to the provisions of the ordinance.

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14. A private company differs from a public company in the following respects:
    (i) Two signatures instead of seven to the memorandum of association are sufficient.
    (ii) The company can commence business immediately on registration.
    (iii) It can be formed more cheaply and more simply.
    (iv) There need not be more than one director.
    (v) It need not give as much publicity to its affairs on formation.
    (vi) The right to transfer shares is restricted.
    (vii) Membership of the company is limited to 50.
    (viii) It cannot issue invitation to the public to subscribe to its shares.

15. Section 16.

## The Prospectus[16]

We have established the identity of a public company and the way in which it regulates its management. But a company, however, needs to raise money with which to carry on its business. It does this usually by issuing a prospectus inviting the public to subscribe to its shares. The prospectus, which may be a notice, circular, advertisement or other invitation offering the shares to the public, must satisfy the requirements set out in section 86 of the Companies Ordinance. Where no formal prospectus is issued the ordinance, by section 87 imposes an obligation on the company to issue a statement in lieu of such prospectus. Once a prospectus or a statement in lieu of prospectus has been signed, it cannot be altered before the statutory meeting.[17]

There is liability for misrepresentation or untrue statements contained in the prospectus. The liability is both criminal and civil. Section 89 of the ordinance provides that any person who authorised the issue of a prospectus which contains untrue statements shall be guilty of an offence and liable on conviction to imprisonment for two years or a fine not exceeding £500 or both such fine and imprisonment, unless he proves that the statement was either immaterial or that on reasonable

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16. Sections 84 - 91.

17. Section 88. The statutory meeting is a general meeting of all the members of a company which is held not less than one month nor more than three months from the date of incorporation.

grounds he believed it to be true.[18]

There is also civil liability as against the company for misrepresentation contained in the prospectus. To be actionable, such misrepresentation must be one of fact, must be material and must induce the contract. The directors responsible for issuing the prospectus are also liable in tort if the misrepresentation is fraudulent.[19]

Allotment

When the prospectus has been issued, public companies can then allot shares to the public provided the minimum subscription has been raised within 40 days of the issue of the prospectus. The minimum subscription is the amount payable on each share which must not be less than 5% of the nominal value of the share. If the minimum subscription has not been raised at the close of the 40 days then all monies received from applicants shall be forthwith returned to them.[20] Any allotment made in contravention of the provisions of section 92 is voidable at the option of the applicant within one month of the holding of the statutory meeting. Any director responsible for such contravention is liable to compensate the company and the allotee for all losses.[21]

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18. It would appear that this criminal liability can still be imposed as it does not seem to have been repealed by the new Penal Code.
19. Section 90(2).
20. Section 92.
21. Section 93.

Besides these regulations with regard to allotment, there are other requirements which a public company must comply with before it commences business. In cases where a company has issued a prospectus, allotments must be made to the amount of the normal value of the minimum subscription and the shares must be payable fully in cash. Further, every director of the company must pay in cash all monies due on application and allotment of all shares which he has contracted to take.

When these conditions have been complied with, the Registrar then certifies that the company is entitled to commence business.[22]

Within one month of the allotment, the company must file with the Registrar a return of allotments.[23]

Membership of a company

Hitherto, we have considered the nature of a company and its general structure. Now we must consider the question of membership and the general working of the company.

The initial membership[24] of a company limited by shares arises in

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22. Section 94.

23. Section 95.

24. We say initial membership because there are other ways by which one can become a member of a company, such as by a transfer of shares, or by inheritance.

in two ways, namely, by subscription to the memorandum of association or by agreement to take shares in the company and having one's name entered on the register of members.[25]

All members of the company are exposed to certain liabilities, the most important being the liability of members of a company limited by shares to contribute to the assets of the company to an amount sufficient to pay debts, liabilities, costs, charges and expenses. This liability only arises in the event of the company being wound up. The contributors can, of course, adjust their rights amongst themselves.[26]

This liability does not, of course, exclude the liability for calls on shares, transfers and transmissions or forfeiture of shares.[27]

The Share Capital and Classes of Shares of a Company

Talking about shares must lead naturally to a consideration of the share capital of a company which is the amount with which the company intends to be registered. This amount must be stated in the memorandum of association of any company limited by shares.[28] It is divided into shares of a nominal amount in money. The interest of members in the company is measured by the number of shares which they hold. This is

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25. Sections 26 - 27.

26. Section 130.

27. See Articles 25 - 28 of Table A.

28. Section 5(1)(d).

a convenient way of determining the liability of members and their right to receive proportions of the profits of the company or proportions of its capital in the event of winding-up.

The shares of a company can all be of the same denomination and confer equal rights on all its members, or they may be conferred with preferential or other special rights or restrictions whether in regard to dividend, voting, return of share capital or otherwise as the company may from time to time by special resolution determine.[29]

In order for the share capital of a company to be maintained certain rules have been evolved. Prima facie every share issued for cash must be fully paid up, but this rule may be relaxed to allow for shares to be partly paid up.[30] Such partly paid up shares are liable for calls on the unpaid part. But whether the shares are fully or partly paid up, a company must comply with the general rule that it cannot reduce its capital without the prior confirmation of the court. This rule is intended to ensure that the capital of a company is maintained.[31] This general rule does not prohibit any alteration,[32] or increase,[33] or consolidation, or conversion into stock.[34]. Subject to

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29. Articles 3 - 8 of Table A. In order for any shares to be altered the procedure laid down in the articles of association of the company must be followed.
30. Sections 92 - 93.
31. Section 48.
32. Section 43.
33. Section 46.
34. Sections 44 - 45.

the provisions of a company's articles, the alteration of the share capital may be effected in any of these ways either by ordinary, extraordinary, or special resolutions at meetings of the company convened after appropriate notice has been given.

We saw above that the share capital of a company is normally raised by the issue of shares. This is by no means the only method, for capital can sometimes be raised by means of loans. The power to raise loans is in most cases stated in the memorandum of association, but it may be possible to infer this power if the memorandum is silent. Such inferences can, however, only be made in the case of a trading company. Incidental to such expressed or implied power to raise loans is the further power to grant securities for them.

One form of such securities which is often used in connection with companies is the "debenture".[35] This is a document creating or acknowledging a debt. A company may acknowledge its debts by the issue of one or several debentures. Where it is decided to issue several debentures, they are often issued in a series and rank pari passu. Where this is the case, each debenture holder is issued with a certificate which, inter alia, contains a covenant to pay principal and interest.

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35. Sections 100 - 114.

The security granted by a debenture may be a specific charge over the company's assets or a floating charge. A specific charge presents no difficulties, but a floating charge does. It is a charge over all the company's assets both present and future. Because the assets of the company are constantly changing, its nature is indeterminate. When a floating charge matures, it is said to crystalise. There are several events on which a floating charge may crystalise. This may happen as the result of the appointment of a receiver when the debentures become enforceable, or when the company sells the whole or a substantial portion of its undertaking without power to do so, or on a complete stoppage of business, or the commencement of winding-up proceedings, in which case they are said to crystalise "on the day on which the winding-up petition was presented."[36] The importance of crystallisation is that it converts a floating charge into a normal fixed charge on the assets of the company at the moment of such crystallisation.

In order for these charges to be valid, they must be properly registered with the Registrar of Companies.[37]

Dividends[38]

Although there may be other reasons, a company is established

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36. Per Gordon C.J. in In Re Kamerun Ltd. [1966] A.L.R. 385 at p. 390.

37. Section 101.

38. Articles 95 - 102 of Table A.

primarily in order to trade and earn profits for the shareholders. These profits are shared out according to the proportion of shares held by the shareholders. The articles of association of a company will normally contain rules to that effect. The declaration of any dividends which may be thus shared out depends to a great extent on the discretion of the directors of the company.

In declaring dividends, directors must always remember the cardinal rule that dividends must not be paid out of capital, but only out of profits.

Directors and Management of a Company

So far we have discussed the structure of a company, its membership and the method in which the company raises the capital which is used in trading for profit. In order for a company to realize any profits it must be properly managed. The original notion was that the management of the company was in the hands of the shareholders. This notion no doubt derived its origin from the days when partnerships were predominant. The tendency today is to regard the company as being managed by the board of directors and the shareholders in general meeting. These two bodies are independent, although the directors act generally as agents of the general meeting.

The Companies Ordinance contains provision with regard to the appointment of directors[39] and their qualifications. There are also extensive provisions in Table A which regulate the exercise of directors' functions.[40] These powers include the appointment, on a service contract, of a managing director who is responsible for the day to day management of the company.

Directors exercise their powers at directors' board meetings. This raises the question of the capacity in which directors exercise their functions and the extent to which they are liable to the company. With regard to the exercise of their powers, directors have been likened to trustees or fiduciary agents. They certainly are trustees with regard to the property of the company which comes into their possession, and their powers which must be exercised bona fide and for the benefit of the company, but the question of the exercise of their functions as fiduciary agents is fraught with many difficulties, for we are here dealing with a principal of a different nature. Unlike a human trustee who can always be held responsible for anything done in breach of trust, it is possible for a corporation to get away with many things because of the fact that its registered documents are taken to give any third party or outsider constructive notice.[41]

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39. Sections 74 - 79.

40. Articles 68 - 108 of Table A.

41. See The Royal British Bank v. Turquand [1856] 6 E. & B. 327 and cases on that line.

Be that as it may, directors must, in the exercise of their duties, maintain certain standards. They must act honestly. They must exercise such reasonable degree of care and skill as an ordinary man will exercise on his own behalf. Such degree of care and skill must not be greater than that required from a person of the same knowledge or experience. They need not give continuous attention to the affairs of the company. Finally, they may, in the absence of grounds for suspicion, trust officials who have been entrusted with certain responsibilities, according to the articles of association of the company to carry out such responsibilities honestly.[42]

According to the articles of association of a company, directors must retire annually in rotation.[43] This does not, however, preclude the company in general meeting from removing them, nor does it exempt them from disqualification.[44] The company exercises the power of removal by means of an extraordinary resolution.[45]

Auditors

Table A, article 109 provides that:

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42. Re City Equitable Fire Insurance Company Ltd. [1925] Cha. 407 at p. 428 per Romer J.

43. Table A, articles 78 - 85.

44. Article 77 of Table A.

45. Article 86 of Table A.

> "Auditors shall be appointed and their duties regulated in accordance with Sections 119 and 120 of the Companies Ordinance, or any statutory modification thereof for the time being in force."

According to these provisions of the ordinance, the appointment and remuneration of auditors rests with the members of the company in general meeting. Such auditors as are appointed must be competent and must have no connection with the company. Their duty is to see that the company keeps the proper books, that the balance sheets and profit and loss accounts agree with the books, and that all the documents give the information required by the ordinance.

In order to carry out these duties satisfactorily, the auditors must have access to the books and vouchers of the company. They should also be entitled to require from the directors and officers of the company all the information needed to facilitate their work.

In the exercise of their functions, the auditors must use the degree of care required of people practising their profession.

Meetings

As we indicated above, a company is managed by the board of directors and the shareholders in general meeting. The former carry on the day to day management of the company while the latter exercise certain functions which are reserved to them in general meetings. One such function is the appointment and removal of directors.

There are usually three meetings which may be held by any company. Technically, the annual general meeting is the only ordinary meeting, all the others being extraordinary general meetings.

Every company must hold one annual general meeting once every calendar year, and not more than 15 months after the last preceding general meeting. In the event of a default of this provision the court may, on the application of any member, call, or cause the calling of the annual general meeting.[46]

Apart from the annual general meeting, there are two other meetings. These include, firstly, the statutory meeting which must be held by every company limited by shares not less than one nor more than three months from the date when the company is entitled to start business. This meeting is usually preceded by a statutory report which sets out generally the success of floatation and all, if any, contracts, the addresses and description of directors and auditors.[47] Secondly, there are extraordinary general meetings which, according to the articles of the company, shall be convened by the directors whenever they think fit.[48] The Companies Ordinance also contains provisions which enable members holding not less than one tenth of the issued share capital of the company to make requisition for the convening of an extraordinary general

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46. Section 66.

47. Section 67.

48. Article 48 of Table A.

meeting. The directors must comply with such a requisition, but should they fail to do so within 21 days, those making the requisition may themselves convene the meeting at the expense of the company.[49] Expenditure incurred by the company in this connection may be recovered from the directors.

In convening all these meetings, adequate notice must be given in writing. Seven days notice (exclusive of the day on which such notice is served) is deemed sufficient. The notice must, subject to the articles, be sent to every member[50] and must contain the date, time and place of the meeting as well as a reasonably fair and full account of the nature of the business to be transacted. This requirement is particularly important if the company is going to transact special business.

In order for business to be transacted at any meeting, there must be a quorum. Most articles of Table A specify that three members shall be sufficient to form a quorum.

The chairman of the board of directors presides at every general meeting, but in his absence the members present are entitled to choose one of their number as chairman.

Voting at such meetings is by a show of hands, but any member may

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49. Section 68.

50. Articles 110 - 114 of Table A.

demand a poll. The right to vote by proxy is extended to absent members who are entitled to attend and vote.[51]

At meetings of a company various decisions are taken by means of resolutions. The usual practice is to pass an ordinary resolution effecting the matter agreed upon, but certain matters such as the alteration of the memorandum and articles of association and the appointment and removal of directors can only be done by means of extraordinary or special resolutions. The notice convening any meeting at which an extraordinary or special resolution will be taken must state this fact. In order for any extraordinary resolution to be effective, it must be passed by a majority of not less than $\frac{3}{4}$ of the members entitled to vote. In the case of a special resolution, a simple majority of those entitled to vote will do.[52]

All copies of extraordinary or special resolutions must be forwarded to the Registrar for his records, and in cases where separate articles have been registered, such resolutions must be annexed to the articles. In the event of a default both the company and management are severally liable.[53]

All companies must keep minutes of the proceedings of all general meetings.[54]

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51. Articles 45 - 67 of Table A deals with the whole question of meetings.
52. Section 71.
53. Section 72.
54. Section 73.

Protection of Minorities

As we have just seen, most of the resolutions of a company at general meetings are effected by a majority vote. Consequently, there might be objections by the minority if they disagree with the decision of the majority. The question which arises then is one of guaranteeing the rights of the minority.

Their guarantee is certainly limited because the view of the courts is one of non-interference with the majority decisions of the company at the suit of an individual shareholder. This rule was laid down in the case of Foss v. Harbottle[55] in which the directors of a statutory corporation were alleged by its shareholders to have caused loss to the corporation by mismanagement. The court decided that the case was a matter for the internal management of the company with which it could not interfere. The reasons given for this attitude include a desire to prevent a multiplicity of actions, and to avoid litigation on matters which can be ratified by the company.

However, the common law makes certain exceptions to this rule. In the first place, the rule will not apply where the act complained of is ultra vires. It is, of course, arguable that this cannot be regarded as a true exception to the rule because all ultra vires matters are not ratifiable by the company. Secondly, the rule will not operate to prevent an individual from suing in a case where an ordinary majority

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55. [1843] 2 Hare 461; 67 E.R. 189.

has passed a resolution effecting changes which can only come about as a result of a resolution by a special majority such as the ¾ majority which, as we saw above, is necessary to give effect to an extraordinary resolution. Thirdly, the rule will not apply if what is complained of is an invasion of the individual's personal right as in the English case of Pender v. Lushington[56] in which certain resolutions were obtained by rejecting the votes of certain shareholders. In an action against the directors it was held that the minority whose votes were rejected could sue because they had a priority right in ensuring that their votes were recorded. Fourthly, the rule does not apply in cases where there has been fraud on the minority. The whole question of fraud on the minority raises problems such as the meaning of fraud and the difficulty which the minority alleging such fraud face in having to prove it. Notwithstanding the difficulties, the court will grant certain minority actions as it did in the case of Cook v. Deeks[57] in which there was a successful action against directors of a company who used the contractual opportunities of the company to their own benefit.

Minority actions, where they are possible, can be brought either in a personal capacity where the minority shareholder sues to enforce an

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56. [1877] 6 Ch. D. 70.

57. [1916] 1 A.C. 554.

individual right, or as a representative action where such action is on behalf of a defined minority group, or in a corporate action where the aim is to protect some interest of the company.

Winding Up.

Once a company has been set up, it can only be terminated by recourse to the machinery laid down. The Companies Ordinance provides that a company can be wound up either:

(a) by the court;

(b) voluntarily; or

(c) subject to supervision by the court.[58]

A company is wound up by the court when one of the following conditions has occurred:

(a) if the company has by special resolution resolved that the company be wound up by the court;

(b) where there has been default in filing the statutory report or in holding the statutory meeting;

(c) if the company does not commence its business within a year of its incorporation;

(d) if the number of members is reduced in the case of a private company, below two, or, in the case of any other company, below seven;

58. Section 129.

(e) if the company is unable to pay its debts; and

(f) if the court is of opinion that it is just and equitable that the company should be wound up.[59]

Voluntary winding up on the other hand takes place:

(a) when the period (if any) fixed for the duration of the company by the articles expires, or the event (if any) occurs on the occurrence of which the articles provide that the company is to be dissolved, and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily; or

(b) if the company resolves by special resolution that it be wound up voluntarily; or

(c) if the company resolves by extraordinary resolution to the effect that it cannot by reason of its liabilities continue its business and that it is advisable to wind up.[60]

Finally, winding up subject to the supervision of the court takes place:

> "when a company has by special or extraordinary resolution resolved to wind up voluntarily, the court may make an order that the voluntary winding up shall continue but subject to such supervision of the court, and with such liberty for creditors, contributories, or others to apply to the court, and generally on such terms and conditions as the court thinks fit."[61]

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59. Section 135.
60. Section 181.
61. Section 198.

There is a provision in the Ordinance for the appointment of a receiver[62] and liquidator[63] who may conduct the winding up proceedings.

Statutory Corporations

Statutory Corporations were established in Nigeria and the Cameroons mostly after the war. They were intended to play a major part in the post war economic and social developments plans in which the natives were, according to the policy, to play a major role. They had to play this role by participating in large and increasing measure at high technical and managerial levels.

The corporations thus established were of two types. In the first place, there were those established to take over functions of a public utility nature such as electricity and water works which were previously performed by the central government. Then there were those like the Cameroons Development Corporations to which we will return presently which were predominantly commercial corporations and designed to operate on commercial basis.

The objects and powers of both types of statutory corporations

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62. Section 147. The practice in Nigeria and presumably also in West Cameroon was that the Administrator-General was appointed as Official Receiver by the Governor-General. In West Cameroon, the appointment would probably be made by the Ministry of Justice in consultation with the President and Prime Minister of West Cameroon.

63. Section 150.

are usually set out in the instrument creating the corporation. This is not too unlike the objects clauses of the memorandum of association of a company. The difference between a company and a corporation:

> "is that there are no shareholders to subscribe to the capital or to have any voice in its affairs. The money which the corporation needs is not raised by the issue of shares but by borrowing, and its borrowing is not secured by debenture, but is guaranteed by the Treasury. If it cannot repay, the loss falls on the Consolidated Fund ... that is to say on the taxpayer. There are no shareholders to elect the directors or to fix their remuneration... If it should make losses and be unable to pay its debts, its property is liable to execution, but is not liable to be wound up at the suit of any creditor. The taxpayer would, no doubt, be expected to come to its rescue before the creditors stepped in ... The protection of the interests of all these - taxpayer, user and beneficiary - is entrusted by Parliament to the Minister ... He is given powers ... which are as great as those possessed by a man who holds all the shares in a private company, subject, however, as such a man is not, to a duty to account to Parliament for his stewardship. It is the Minister who appoints the directors and fixes their remuneration. They must give him any information he wants; and, lest they should not prove amenable to his suggestions as to the policy they should adopt, he is given power to give them directions of a general nature, in matters which appear to him to affect the national interest, as to which he is the sole judge, and they are then bound to obey."

Allowing for variations, this judgment of Lord Denning in the case of Tamlin v. Hannaford[64] sums up quite admirably the position of

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64. [1950] 1 K.B. 18 at 23 per Denning L.J. (as he then was); Gower, Modern Company Law, op. cit., pp. 234-243.

statutory corporations which partake only partially of the essential nature of companies.

Having said so much by way of introduction, we may now consider a few of the leading statutory corporations in West Cameroon.

The Cameroons Development Corporation[65]

In order to fully appreciate the origin and functions of the Cameroons Development Corporation, we must look at it in its historical perspective.

As we indicated in an earlier chapter, one of the reasons - indeed the only apparent reason for German annexation of Cameroon - was the desire to use the territory for the benefit of German traders to the exclusion of all other European nationals. One of the ways in which this was to be done was, to use the words of Adolf Woermann - one of the foremost German traders - to try by all means to:

> "get the cession of very extensive lands as private property - especially those suitable for plantations. There is no doubt that, if the country becomes German, there will be many attempts to establish extensive plantations, and so it is always a good thing if the land is

65. See generally Bederman, S.H., The Cameroons Development Corporation: Partner in National Growth, Bota, Victoria, 1968; Wells F.A., and Warmington, W.A., Studies in Industrialization: Nigeria and the Cameroons, Oxford University Press, 1962. Chapter 8 passim.

> already in our private ownership, so that we can resell it. You must naturally try to buy as cheaply as possible. One can get the land for nearly nothing."[66]

In pursuance of this policy the Germans had acquired about 300,000 acres of plantation land when war broke out in 1914. Most of this land was held under freehold.

The war ended with the defeat of Germany and the partitioning of the Cameroons between Britain and France whose armies had played no small part in the Cameroon campaign. Britain took the Western part of Cameroon where most of the plantations were situated. Before the cessation of hostilities most of these plantations were put under the control of the public custodian.

When the war finally ended, an auction was held in 1922 the purpose of which was to dispose of all the ex-enemy lands to anyone except enemy nationals. No one seemed interested. The result was that another auction was held in 1924. This time the ex-enemy nationals were no longer barred from bidding. As a result, all the previous German owners, with the help of the German Government, bought back all their plantations.

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66. Ardener, Shirley G., Eye-Witnesss to the Annexation of Cameroon, 1883-1887, 1968, Government Printer, Buea, West Cameroon, p. 85.

But their ownership of these lands was destined to be short-lived for at the outbreak of the second World War in 1939, the plantations were once more taken over by the Custodian.of Enemy Property. At the close of the war, it was decided, perhaps as a result of the experience of the previous disinterestedness of British commercial interest in the plantations, to buy them over from the Custodian of Enemy Property and to treat them as native lands under the Land and Native Rights Ordinance.[67] It was, however, decided that instead of the lands reverting to customary tenure, they would be leased to a public corporation under certificates of occupancy. Such a corporation was to have as its main object the development and management of the land for the benefit of all the people in the territory. To this end the Cameroons Development Corporation was set up by an Ordinance of that name in 1946, and empowered to perform these functions.[68] By Section 6 of the Ordinance, the Corporation was to perform the functions of development of lands that might from time to time be put under its control by the Governor. In furtherance of this important aim it was given wide powers

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67. Cap 105 of the 1948 Laws of Nigeria. The taking over of Ex-Enemy lands was facilitated by the passage of the Ex-Enemy Lands (Cameroons) Ordinance, Cap. 66 of 1948 Laws.

68. See Cameroon Development Corporation Ordinance, Cap. 25 of the 1948 Laws of Nigeria. Certain sections of the West Cameroon population have never been tired of arguing that they should derive greater benefit from the proceeds of these plantations, because their forebears lived in the area of the plantations. Predictably, there have been counter arguments based on the grounds that the whole project was intended to benefit the whole territory. The arguments of the former group will in the long run give way to the latter. This is because all developments are now being undertaken in the light of one National Plan.

to cultivate the land and raise live-stock and sell the produce of these; to carry out engineering works such as the operation of wharves, marine craft and railways; to engage in export and import trade and to carry out research. In addition, the corporation was to provide health, social and welfare amenities to its workers.

At first the corporation was responsible to the Governor-General of Nigeria, but in 1956 the newly established Southern Cameroons House of Assembly passed legislation making the corporation responsible to it as well as to the Federal Government of Nigeria.

From its establishment, the corporation has experienced both fat and lean years. But this situation could not be endured for long, so in 1956, the Federal Government, in an attempt to ensure for regular prosperity, asked a London firm of Accountants to assess the viability and profitability of the corporation. As a result of its assessment, the firm recommended an increased and diversified investment of £1¼ million spread over the next 10 years. The Federal Government of Nigeria and the Government of the Southern Cameroons, not having the necessary funds to carry out these recommendations, approached the Colonial Development Corporation (now Commonwealth Development Corporation) for a loan of £3 million. As a result of the ensuing discussions, the Cameroons Development Corporation and the Colonial Development Corporation completed two agreements, to wit, a loan agreement and a

Management Agreement.[69] In brief, the loan agreement provided that the Commonwealth Development Corporation would invest £3 million, the first million being made available in instalments between 1960 and 1962. As for the rest of the loan (£2 million), this would follow later subject to certain conditions being fulfilled, namely, the reconstitution of the Cameroons Development Corporation into a joint stock company. This reconstitution never took place. Indeed, in 1961, West Cameroon decided in a United Nations organised plebiscite to reunify with the independent Republic of Cameroon. This decision meant that West Cameroon was no longer a member of the Commonwealth and was therefore precluded from benefiting from any investments by the Commonwealth Development Corporation which by its Constitution could not invest outside the Commonwealth. In addition, the West Cameroon and Federal Governments were not in favour of the decision to reconstitute.

The Management Agreement, on the other hand, was not affected by the political developments. In brief, this agreement handed over management of the corporation to the Commonwealth Development Corporation. Perhaps the one reason why this agreement was not cancelled was the loan of £1 million already made to the Cameroons Development Corporation. This agreement which was later relaxed slightly, particularly

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69. Epale, S.J., The Financial and Fiscal Aspects of the Problems of the Economic Development of West Cameroon, 1946 - 1966, Oxford University D. Phil Thesis, 1969, p. 115; Bederman, The Cameroons Development Corporation, op. cit., p. 22

in connection with membership of the Board, expired on 31st December, 1969.[70]

A fresh Management Agreement for three years has been concluded.[71]

Since 1967, the Cameroons Development Corporation has embarked on a programme of extensive and diversified agricultural developments. This has been made possible by a loan of $24.4 million from the International Bank for Reconstruction and Development (I.B.R.D.), International Development Association (I.D.A.), and the Fonds Européens de Dévéloppement (F.E.D.)[72]

Two Federal Laws affecting the capital structure of the corporation have been introduced. These are Law No. 68-LF-19 of 21st December, 1968,[73] which created an equity capital for the corporation and Law No. 135/PJL/ANF of 2nd December, 1966[74] which amended the Cameroons

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70. Bederman, The Cameroons Development Corporation, op. cit., p. 22.

71. See Commonwealth Development Corporation. Report and Accounts 1969, p. 129.

72. The loan of $24.4 million is made up as follows:

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|---|---|
| I.B.R.D. | $7 million |
| I.D.A. | $11 " |
| F.E.D. | $6.4 million |
| | $24.4 million |

See Epale, op. cit., pp. 261-262; also see Cameroons Development Corporation Report for 1968, pp. 7 - 8.

73 Cameroon Development Corporation Report 1968, p. 8.

74. Ibid, p. 49.

Development Corporation Ordinance by providing for a variable share capital for the Corporation.

West Cameroon Electricity Corporation

This corporation represents what was originally the Southern Cameroons section of the Electricity Corporation of Nigeria which was established in 1952 under Ordinance No. 15 of that year.[75]

After cessation from Nigeria, the Public Works Department in West Cameroon took over responsibility for electricity until the West Cameroon Electricity Corporation was created by West Cameroon Electricity Corporation Law of 1962. The law lays down regulations with regard to the functioning of the corporation. As far as possible, the corporation should be able to pay its way, although it may be subsidised by funds from the Government. The Government, through the appropriate Ministry has overall responsibility for the smooth and efficient running of the corporation. The Government may intervene in the corporation's affairs if things are not running well. Indeed, recently the Government appointed a Commission of Inquiry to look into the affairs of the West Cameroon Electricity Corporation because of persistent allegations of corruption and nepotism. The Commission's Report substantially confirmed these allegations.[76]

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75. See now Electricity Corporation of Nigeria Ordinance, Cap. 58 of the 1958 Laws of Nigeria.

76. See the Report of the Thomas Commission of Inquiry into the Working of the West Cameroon Electricity Corporation, Buea, 1969.

The West Cameroon Development Agency

The West Cameroon Development Agency is the successor to the former Southern Cameroons Development Production Board. Known before reunification as the Southern Cameroons Development Agency, it was established by Southern Cameroons Law No. 11 of 1956 in order to perform two principle functions, namely:

> "(1) to make loans to private persons for schemes or projects designed to further the economic development of the territory; and
>
> (2) to formulate schemes for all or any of the following purposes:
>
> (a) the economic benefit or prosperity of producers, or areas of production;
>
> (b) the direct investment of its funds in agricultural or industrial projects;
>
> (c) the encouragement of agricultural and industrial development;
>
> (d) the training of natives of the Southern Cameroons; and
>
> (e) the preliminary investigation of any schemes within the foregoing provisions."

Fine as these aims may be the history of the agency has been one of very qualified success, for not only has it been the subject of allegations similar to those made against the Electricity Corporation, but it has also taken part in quite a few abortive enterprises.

Like the Electricity Corporation, the West Cameroon Development Agency has been the subject of a recent Commission of Inquiry,[77] although

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77. See the Report of the Dervish Commission of Inquiry into the Affairs of the West Cameroon Development Agency, Buea, 1969.

it emerged with fewer scars than the former.

The inquiries in themselves raise certain problems. It is, for instance, doubted by some enlightened members of the public whether it is wise to hand over the top management of such corporations to people who have little, if any, business acumen or general managerial experience. It can further be argued whether it is not wiser to run these corporations on the same strict basis as a limited liability company. It will be recalled that the Cameroon Development Corporation was required by the Commonwealth Development Corporation to comply with such conditions as a pre-requisite to raising a £3 million loan.

The Commissions of Inquiry were certainly of the opinion that a certain amount of business experience in the management was necessary if these corporations were to fulfil their aims.

The West Cameroon Marketing Board

Initially this was known as the Southern Cameroons Marketing Board.[78] Prior to the London Conference on the Nigerian Constitution in 1953,[79] and the resumed conference in Lagos in 1954,[80] there existed a Central

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78. See Southern Cameroons Marketing Board Law No. 1 of 1954. Various reports published by West Cameroon Marketing and its predecessor since 1955 cover the activities of the Board.

79. Cmd 8934.

80. Cmd 9059.

Marketing Board for the whole of Nigeria. At these conferences, it was decided to decentralize the Central Board and set up Regional Boards. One condition for the setting up of such Regional Boards was that there would be sufficient machinery for consultation between the Regional Boards inter se while the Central Board retained responsibility for the overseas marketing of produce on behalf of the Regions.

The Marketing Board is responsible for fixing the prices to be paid to producers within the Region. It is also responsible for carrying out price support stabilization policies, for purchasing produce and taking responsibility for their evacuation. The Board is also responsible for the appointment of licensed buying agents.

Co-operative Societies

The development of Co-operative Societies in West Cameroon owes its origin to the Permanent Mandates Commission. It all started when in 1925 the Permanent Mandates Commission asked to know what was being done to encourage agriculture in the Mandated territory of the British Cameroons. This inquiry was followed by expert investigation which resulted in recommendations that Co-operative Societies such as had existed in Nigeria since 1922 be extended to the Cameroons.

The Co-operative Societies set up in the Cameroon were assisted by a Government Department. The basic law governing them was Co-operative

Ordinance of 1935.[81] This law still applies substantially today.

Partnerships

Hitherto, we have discussed companies and statutory corporations which have legal personalities of their own. They are also governed by local ordinances and laws. Partnerships on the other hand lack the attributes of legal personality. They do not also seem to be regulated by any local laws or ordinances. Their position would therefore appear to be regulated by the English Partnership Act of 1890 which is a statute of general application. Although there is no specific reference to the fact that this Act applies in Nigeria and therefore in the Cameroons, de Comarmond S.P.J. referred approvingly to section 41 of the Act in the case of Farhond v. Chama.[82]

A partnership is:

> "the relationship which exists between persons carrying on a business in common with a view of profit."[83]

The liability of its members is both joint and several. Thus a partnership, otherwise referred to as a firm, has neither perpetual succession,

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81. See now Cap. 39 of the 1958 Laws of Nigeria. Also see generally the Appendix to the 1926 Report on the British Cameroons to the Permanent Mandates Commission; Epale, op. cit., p. 120.

82. [1953] 20 N.L.R. 166 at p. 168.

83. Partnership Act 1890, Section 1(1). On the subject of Partnership, see generally Lindley on Partnerships, 12th Edition by Scamell, E.H., Sweet & Maxwell, London, 1962.

nor a common seal, nor a corporate name, all of which are attributes of a company. In talking about "name" we must distinguish between the name of a company which entitles it to sue and be sued in that name as opposed to the business name of a partnership which does not carry the same advantage, but is used merely for purposes of registration.

The relation of the partners inter se is governed by the partnership agreement. In addition to the terms of the agreement, or in the absence of an agreement, the law imposes certain stipulations on every contract of partnership. This is the requirement of mutual confidence which will always be enforced by equity in the event of a breach.

Every partnership in Cameroon must be registered with the Registrar of Business Names in accordance with the provisions of the Registration of Business Names' Ordinance.[84]

A partnership may come to an end either by means of dissolution or by death of one of the partners. Dissolution of a partnership may take place without any litigation.

## East Cameroon

### Commercial Law

Just as the company law in West Cameroon is based on the English

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84. Cap. 179 of the 1958 Laws of Nigeria.

Companies Act of 1908 with various amendments, so is the company law in East Cameroon based on the French Code de Commerce[85] which was rendered applicable in the colonies by a law of 7th December, 1850. This code was substantially modified by another law of 24th July, 1867.[86] This does not, of course, include several major and minor amendments which were introduced from time to time. The law of 24th July, 1867, dealt mostly with companies.

The volume of legislation on commercial matters has become so large that in a work of this nature we can do no more than mention in a very sketchy manner the basic facts of French company law.

The complicated nature of French company law as applied in East Cameroon almost eludes a logical summary, so the best method to attempt one will be to follow the Code as far as this is possible.

Article 1 of the code raises the first problem. In dealing with commerce generally, Article 1 says that commerçants are those who exercise the acte de commerce. These can be either groups or individuals.[87] Acte de commerce on the other hand includes:

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85. The Code de commerce as well as all the laws regulating commercial matters are to be found in Codes et Lois du Cameroun, op. cit., Tome II, pp. 331-509. The Code de Commerce itself occupies pp. 331-382.

86. Ibid, pp. 444-452.

87. See Article 8 of the Code de Commerce.

> "all purchases of commodities for the purpose of resale or hire; all banking, brokerage and discounting operations; manufacturing for sale; the business of commission agent or auctioneer; the business of public entertainment; carriage by land, sea or air; mining; all dealings in ships by way of purchase, sale or charter; marine insurance and other contracts relating to maritime commerce; bills of exchange."[88]

Such a definition is certainly far from clear. The reason for this may lie in the fact that the whole of the commercial law rests upon the civil law, and therefore all matters about which the commercial law is silent are supplied by the civil law.

Companies and Partnerships[89]

The law recognizes three kinds of companies. These include:-

(a) La société en nom collectif (partnership);

(b) La société en commandite (limited partnership); and

(c) La société anonyme (public company).

These companies (sociétés) must be distinguished from associations. The distinction lies in the fact that the former are brought about by a

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88. Amos and Walton, Introduction to French Law, op. cit., p. 341; Church, E.M., Business Associations Under French Law, London, Sweet & Maxwell, 1960, paragraph 47 at p. 31; Articles 632-633 of the Code de Commerce.

89. Articles 18 - 50 of Code de Commerce.

contract among the members the purpose of which is to trade with a common stock with a view to making profits[90] and sharing such profits, while the latter is the result of a contract to combine for some purpose other than gain.

Having said this we must now make a few general comments about the first two types before dealing in slightly more detail with the companies (sociétés anonymes).

La Société en nom collectif

This is defined in the code as comprising two or more persons who have bound themselves together under a contract for the purpose of trading.[91] This represents what in West Cameroon law would be a partnership. The partners must trade under a firm name which is composed solely of the names of the partners. Their liability is joint and unlimited, although there might be provisions to the contrary in the partnership contract. The partners may, if they so desire, appoint managers to control the affairs of the partnership. In such a case, the managers exercise a great deal of discretion in carrying out their responsibilities. Where the partnership does not appoint managers, its affairs will be managed according to the provisions

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90. Code Civile, Article 1832; Amos and Walton, op. cit., p. 348; Church, op. cit., p. 3.

91. Code de Commerce, Article 20.

of the Code Civile,[92] as the Code de Commerce is silent on the subject.

The usual case, however, is for the partners to appoint someone who manages the business for them. The dealings of such a manager with a third party will, in the absence of extenuating circumstances, bind the partners.

In the absence of provision to the contrary, the partnership can be dissolved by the death, bankruptcy, or insanity of a partner. This does not, of course, preclude a dissolution according to the procedure laid down by the law.[93]

La société en commandite

What has been said about the société en nom collectif applies to the société en commandite, the only difference being that the latter is made up of two types of members, namely, full members (commanditiés) and limited members (commanditaires). The difference between the two types of members is that the liability of the commanditaires is limited to the extent of their contribution.[94]

La société anonyme[95]

The société anonyme in East Cameroon is the equivalent of a public

92. Code Civile, Articles 1856, 1859.
93. Amos and Walton, op. cit., pp. 348 - 9; Church, op. cit., Chapter 4 passim.
94. Code de Commerce, Articles 23-28.
95. Code de Commerce, Articles 29-50; Law of 24th July, 1867, Articles 21-65; Amos and Walton, op. cit., pp. 351-355; Church, op. cit., pp. 181-185 and Chapter 8 passim.

company in West Cameroon. Quite apart from the other attributes of incorporation to which we will return presently, a société anonyme is different from a société en nom collectif in the following respect. In the latter, the firm is known by the names of the members collectively while in the former the names of any of the shareholders must not appear in the firm name, hence the word "anonyme". The names of most sociétés anonymes therefore represent either the business which the société is set up to do, such as the "Société Camerounaise de Banque" or the place of business of the company such as "Agip (Cameroun) S.A." All reference to a société anonyme must end with the abbreviation "S.A." This corresponds to the word "limited" in a West Cameroon public company with limited liability.

Formation of a société anonyme

Unlike a public company in West Cameroon which is incorporated by registration, a société anonyme goes through a more complicated procedure of incorporation.

The first stage is that any one wishing to promote a company must declare before a notaire[96] (notary) that the requirements of the law have

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96. A notaire is a public officer who exercises legal functions such as drawing up wills, conveyances, contracts and other agreements such as company charters and bye-laws, ante-nuptial agreements etc; see Law of 24th July, 1867, Article 1.

been complied with. This requirement pertains to the subscription of the capital. The notary then draws up the company's charter and bye-laws. These documents correspond to the memorandum and articles of association of a company formed under West Cameroon law and therefore form the basis of any contract between the company and shareholders.

It is a requirement of the formation of a company that there must be full subscription of the capital of the proposed company by a minimum of at least seven shareholders. Also of great importance is the requirement that at least $\frac{1}{4}$ of each share must be paid up.

When all these conditions have been complied with, a general meeting known as a constitutive meeting is called. At this meeting the directors (administrateurs)[97] who should be not less than three nor more than twelve are elected. Also elected at this meeting are the auditors (commissaires aux comptes)[98] who are charged with the responsibility of checking the books, accounts, stocks and shares and assets of the company, of controlling the regularity and genuineness of all stock-takings and balance sheets as well as ensuring that all the information given in connection with the accounts of the company are correct. If the directors and auditors accept office after the constitutive meeting then

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97. Art. 22 of Law of 24th July 1867; Church op. cit., Chapter 8.

98. Art. 32 of the Law of 24th July, 1867 as modified by later decrees; Church, op. cit., Chapter 15.

the company is regarded as duly formed. It must then be registered in the appropriate registers and given due publicity in newspapers entitled to carry out such publicity.

Shares and Share Capital[99]

We have indicated above that one of the pre-conditions of incorporation is that all the shares must be fully subscribed and that 25 per cent of the value of each share must be paid up. This, of course, depends on the further condition that they will all be fully paid up within five years. Apart from other contributions which may be made in kind, the amounts raised under the conditions above normally form the share capital of the company.

Shares (actions) may be divided into various classes. There might, for instance, be preferred shares (actions de priorité, actions privilégiées) or ordinary shares (actions ordinaires), all enjoying different rights and advantages.[100]

The capital of a company can also be raised by the issue of debentures (bons or obligations). Any issue of such debentures is fully safe-guarded by the law. For instance, debentures may not be issued unless the capital of the company is fully paid up.

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99. Ibid, Chapter 10.

100. Article 34 of the Code de Commerce and Article 31 of the Law of 24th July, 1867.

The share capital of a company can either be reduced or increased subject in the case of reduction to the right of a minority to sue for any prejudice which they may suffer, and in the case of an increase, to the fact that the shares are fully paid up and that the new ones are first offered to existing shareholders. Provided the rules laid down are followed, there can be various deals in shares.[101]

Management[102]

As we saw above, one of the main functions of a constitutive meeting is to elect not less than three nor more than 12 directors (administrateurs). The directors are entrusted with the administration of the company. It is customary for the directors to appoint a chairman in whose hands ultimate responsibility for the management of the company rests. Directors are, of course, just one of three groups of people who are responsible for the smooth management of the company, the other two groups being the auditors (commissaires aux comptes) who are also appointed during the constitutive meeting, and the shareholders who exercise ultimate authority over the company in general meetings (assemblées générales)[103]

There are certain requirements which must be satisfied before any

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101. Church, op. cit., p. 294; Law of 24th July, 1867, Articles 13 and 14.

102. Church, op. cit., Chapter 13 passim.

103. Law of 24th July, 1867, Article 27; Church, op. cit., at Chapter 17.

one can be appointed as director. In the first place, he must have subscribed not only to the shares of the company, but also to directors' shares (actions de garantie des administrateurs). Secondly, he must not be disqualified either through lack of capacity or by belonging to certain professions such as the army. Without prejudice to the right of the company to remove them before the expiration of their period, directors are often appointed for a fixed term which must not exceed six years.

They exercise their functions at board meetings, and any thing they do which is ultra vires does not bind the company. In the exercise of their duties, directors are liable both in contract and in tort. Their contractual liabilities arise mostly from cases of violations of statute, the charter and bye-laws of the company and mismanagement, while their tortious liabilities arise mostly from misrepresentations in the prospectus, inaccurate accounts, and untruthful statements, to name a few. Their liability is both joint and several. There may also be a criminal liability for matters such as the publication of inaccurate balance sheets with a view to concealing the true situation of the company.[104]

Meetings[105]

Just as directors exercise their functions in board meetings, so

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104. Church, op. cit., p. 393, para. 323; Law of 24th July, 1867, Articles 15, 45 as modified by Decree-Law of 8th August, 1935.

105. Church, op. cit., at Chapter 17.

does the company exercise its ultimate supervision in meetings of shareholders.

It is a requirement of statute that there should be an ordinary meeting (assemblée générale ordinaire) of the shareholders once every year.[106] This general meeting considers the accounts of the company and all other matters and decides on the declaration of dividends.

All shareholders are entitled either to attend personally and vote at these meetings or to exercise their voting rights through proxies.[107] Such meetings must be convened according to the provisions of the law. The notice convening a meeting, must provide an agenda (ordre du jours). All meetings duly convened can only deal with the matters on the agenda if there is the appropriate quorum.

Decisions are taken by a simple majority at ordinary meetings,[108] but at extraordinary meetings a $\frac{2}{3}$ majority is needed to give effect to any decision.

Apart from general and extraordinary general meetings, there are others, one of which is the constitutive meeting (assemblée constitutive)[109] which is convened as a prerequisite of incorporation. We have also mentioned the extraordinary general meeting (assemblée générale extraordinaire).[109]

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106. Law of 24th July, 1867, Article 27.

107. Church, op. cit., p. 417, para. 342.

108. Ibid, op. cit., p. 437; Law of 24th July, 1867, Art. 27.

109. Law of 24th July, 1867, Art. 31; Church, op. cit., at Chapter 19.

The main purpose of an extraordinary meeting is to make alterations in the bye-laws or to effect other major changes such as amalgamation. The extraordinary meeting can effect changes by a $\frac{2}{3}$ majority, but there are certain alterations such as change of the nationality of a company which require the unanimous consent of all shareholders. In all decisions taken by a $\frac{2}{3}$ majority, there is always a right available to the minority if they think that the majority have acted against their interest.[110]

Winding up[111]

Once a company has been formed, it carries on its business until it is dissolved. The conditions under which a dissolution may occur are laid down in the Code Civile[112] rather than the Code de Commerce or other related legislation. The reason for this must lie in the fact, already alluded to, that the Civil Code subsumes the Commercial Code. Whatever the reason, there are five conditions, the occurrence of any one or more of which, determines a company. These include:-

(1) The expiration of the time for which the company was set up;

(2) Destruction of the subject matter or termination of the business by a vote of an extraordinary meeting of shareholders;

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110. Church, op. cit., Chapter 19.

111. Ibid, Chapter 25.

112. Code Civile, Caricle 1865.

(3) Expiration of the reason for which the company was set up;

(4) Dissolution by order of the court; and

(5) The concentration of shares in one man's hands.

In the event of dissolution, a liquidator (liquidateur) is appointed to wind up the affairs of the company.

We have attempted, perhaps insufficiently, to give a brief outline of company law as operated under French law in East Cameroon.

In concluding, we might make one final observation. Cameroon, unlike France, does not have a separate system of commercial courts. It will be recalled that by the decree of 27th November, 1947, to which reference has already been made, reorganising the judiciary in Cameroon, it was provided that the tribunals of first instance would handle civil and commercial matters.

Other Corporations

There is one important commercial concern which, for want of a better or more appropriate name, we shall call a statutory corporation. This is the Société Nationale d'Investissement du Cameroun. Although the Société Nationale d'Investissement originated in East Cameroon, it has now assumed national responsibility in respect of the matters with which it deals.

The société is a state company which was set up by Presidential decree.[113] It engages in various activities whose aim is the enhancement of the social and economic development of the country. The activities are as follows:

> "(1) carrying out studies for economic development, directly or in connection with the State or State-owned organisations;
>
> (2) assisting the planning departments of the State, civil service organisation, communities and public organisations at the Government's request for all projects or studies requiring State participation;
>
> (3) assisting private companies in the study of all investment projects;
>
> (4) contributing within their power to the financing of investments of particular economic and social importance;
>
> (5) management of the State communities or public institutions' portfolio;
>
> (6) contributing to the mobilisation and orientation of the national savings."[114]

The société which operates three co-ordinated departments (the "studies", "operations" and "finance and management" departments), has participated in diverse enterprises including agriculture and food industries, engineering, electronics, chemical, textile and wood industries, transportation, tourism and hotel industries.

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113. Decree No. 64-DF-52 of 16th December, 1964.

114. See The Federal Republic of Cameroon. A Financial Times Survey, 19th February, 1969.

## Federal

### Law Relating to Investment

There has, so far, been no major Federal legislation on the subject of commercial law except such matters as Investments, Foreign Exchange Control, and Taxation which were mostly extensions to West Cameroon of legislation on those subjects existing in East Cameroon.

One of such extensions which is of major importance and needs specific mention here is the Investment Code.[115]

Cameroon, like most African countries, is basically an agricultural country which is eager to industrialize in order to alter this position. This is important because the prices of commodities on the world market are anything but stable.

In order to achieve this aim of industrialization, the Cameroon Government has put forward a very generous investment code, the main purpose of which is to attract prospective investors both in the private and public sectors.

The generous conditions offered to investors whether in agriculture or industry fall into four distinct categories.

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115. Law No. 64-LF-6 of 6th April, 1964. The law adapts Law No. 60-64 of 27th June, 1960 establishing the Investment Code of East Cameroon to the Institutions of the Federation. Also see Presidential Circular No. 14/CAB/PRF of 16th November, 1965. See the Cameroonian Market·Special English Issue of Marché Tropicaux et Méditerranéens, 25th April, 1964.

Category I[116] includes exemptions from certain import duties and taxes on equipment, machines and tools, directly required for processing. There is also an exemption on raw materials and products which either wholly or partly enter into the composition of finished or processed goods. Also exempted from certain taxes are goods which may not be regarded as raw, but whose intrinsic nature is destroyed during manufacturing. Raw materials and packaging products also enjoy an exemption.

In addition to these advantages, there is a reduction of export duty on finished products which are exported. Firms benefiting from these conditions are immune from new tax legislation until 1980.

Category II.[117] In addition to the advantages which a company may enjoy under Category I, there will be exemption from taxes on industrial and commercial profits during the first five years of operation. There is also exemption from land, mining and forestry fees during the same period. Firms in the two categories above will, in addition, enjoy any benefits that there may be in the Cameroon fiscal legislation.

Category III[118] applies to certain firms which are considered to be of great economic importance. Firms which are so considered enter into

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116. Sections 6 - 10 of the Investment Code.

117. Sections 11-12.

118. Sections 13 - 18.

25 year agreements with the Cameroon Government on certain guarantees. The Cameroon Government on the one hand guarantees judicial, economic and financial stability as well as the fiscal advantages under Category II. The State, of course, excludes responsibility for any loans or other adverse situation which is caused by the firm. The firms on the other hand give guarantees with regard to general operating conditions, minimal equipment and production programme.

Category IV[119] deals mostly with the stabilization of tax laws in respect of firms which make a great contribution to economic development by investing large sums. Such tax stabilization which applies to income tax, rates, fiscal dues, the assessment of taxable elements and conditions of payment can last for a period of up to 25 years.

In addition to these four categories, the code contains conditions regulating the affairs of small and medium term businesses as well as those of self-employed persons.[120]

There is also an arbitration clause which contains procedure for settling disputes between the administration and the firms. Such disputes must relate to matters under Categories 1 - IV.[121]

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119. Sections 19 - 25.

120. Sections 31 - 33.

121. Section 30.

There is an Investment Commission which is responsible for examining all applications from undertakings to benefit from one of the Schedules referred to in Part II of the law.

As we have already indicated, the Investment Code is generous almost to the extreme. The result of this generosity is that certain foreign companies can repatriate very substantial, if not all, their profits. Indeed, it is noted elsewhere that Alucam, one of such companies, repatriates 90% of its profits.[122] A situation of this nature must raise questions as to whether the Investment Code is not producing adverse effects on the economy. Indeed, these questions have been raised in a very illuminating article in a current issue of a magazine published by the National Union of Cameroon Students in Great Britain. The author of the article argues quite convincingly that there is need for a reappraisal of the Investment Code. In particular, he emphasizes the point that:

> "reciprocity is lacking in the wording of the Cameroon investment concessions. That is, the foreign investors are not made to see what economic benefits the country itself foresees in such an open door policy. But more than anything else is the fact that such a policy undermines the revenue structure of the growing economy and impairs its flexibility, since the goal of the tax structure in the economies of underdeveloped countries, is to increase the

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122. See Epale, op. cit., p. 307; Hugon P. Analyse du sous-développement en Afrique Noire. L'Example de l'Economie du Cameroun, Paris, 1968, p. 274.

> ratio of taxes to the national income, from those sectors of the economy enjoying a boom. And a tax holiday policy would only deprive the government raising revenue from the most promising sources. With almost the entire economy in the hands of foreign large enterprises, frozen taxation means that the government would have to raise its revenue (taxes) from the sources not enjoying any rising profits. And exerting pressure on such low profit earners means limiting their chances of expansion - a situation that in the long run does the economy no good."[123]

Labour Law[124]

In an earlier chapter we made a critical comment about the Labour Code, namely, that the public were never given a chance to discuss the provisions before promulgation. This comment, which was only made as a random example of the fact that public participation in the promulgation of legislation of that nature could be bettered, has nothing to do with the content of the code. On the contrary, the Labour Code of Cameroon which embodies ideas from the codes previously existing in the Federated States, is very exhaustive and satisfactory.

The Labour Code[125] which supercedes all previous labour legislation

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123. Ashu, M.N.F., "Aspects of Monetary and Investment Policies in Cameroon" in "Prospects for the Seventies." Magazine of the National Union of Cameroon Students of Great Britain and Northern Ireland, London, 1970, pp. 16 - 25 at p. 20.

124. Law No. 67-LF-6 of 12th June, 1967.

125. Section 193 of the code outlines all the previous laws which have been superseded. The list is certainly not exhaustive for Ordinances like the Workmen's Compensation Ordinance (Cap. 222 of the 1958 Laws of Nigeria) which form a part of Industrial Law are excluded. These laws would presumably still be in operation.

in East and West Cameroon is divided into ten titles.

Title I[126] contains general provisions which include, inter alia, the matters governed by the code, the category of persons coming under its provisions, the right to work and the exclusion of forced labour from its provisions.

Title II[127] deals in five chapters with the subject of trade unions and employers' associations. The five chapters deal respectively with the establishment and purposes of trade unions and employers' associations, the rules of such unions and associations, their accounts, federations of trade unions and employers' associations, and sundry matters.

Title III[128] deals in four chapters with contracts of employment. These include provision with regard to individual contracts of employment, their making , performance and termination, as well as contracts of apprenticeships, collective agreements and sub-contractors.

Title IV[129] is devoted to the all important question of wages, the method of payment, certain privileges and guarantees of wage debts, deductions from wages and "compulsory store"[130] and the limitation of actions for the recovery of wages.

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126. Sections 1 - 2 of the Labour Code.

127. Sections 3 - 27.

128. Sections 28 - 66.

129. Sections 67 - 86.

130. "Compulsory store" is defined by Section 85(1) as "any arrangement whereby an employer directly or indirectly sells or supplies goods to workers in his employment for their normal personal requirement."

Title V[131] deals with conditions of employment which include matters such as hours of work, night work, the employment of women, young persons and children, weekly rest and leave and travel.

Title VI[132] is devoted to matters of hygiene and safety establishments. Every work place must provide good hygiene facilities and enough safety devices. The law also requires that medical services should be provided at all places of employment.

Under Title VII[133] the problem of the administration of the Labour Code is dealt with. There are, in the first place, Inspectors of Labour who are employees of the Ministry of Labour and Social Legislation, and whose main duty is to ensure that there is compliance with the provisions of the code. Secondly, there are Advisory Bodies like the National Labour Council whose functions include, among others, the study of problems relating to labour, employment, vocational guidance and training, placement, movement of labour, migration, improvement of workers material and other conditions, occupational health and safety and social security, the giving of opinions and formulation of proposals and resolutions relating to the making of resolutions in these matters.

Title VIII[134] deals with disputes relating to employment. These

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131. Sections 87 - 101.

132. Sections 102 - 110

133. Sections 111 - 140.

134. Sections 141 [ 178.

disputes might be individual or collective. Individual disputes are usually settled in the Labour Courts. The Code itself contains provision with regard to the Labour Courts and the procedure to be followed in them. Collective disputes, on the other hand, can be settled by conciliation at the initiation of the Inspector of Labour and Social Legislation. If conciliation fails, the dispute is then referred to arbitration if there is machinery in the collective agreement to that effect. In the absence of such machinery, the dispute is to be settled by an arbitration board which is established in every appeal court area and which is presided over by the President[135] of the Court of Appeal.

Title IX[136] deals with penalties while Title X[137] deals with transitional provisions as well as all previous legislation which is repealed by the coming into force of the Labour Code. The list of repealed statutes does not include the Workmen's Compensation Ordinance,[138] so the presumption would be that this Ordinance which provides for the payment of compensation to workmen for injuries suffered in the course of their employment still applies.

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135. The meaning of the word "President" is reported to have presented some difficulty in West Cameroon recently since there is nothing there corresponding to a "President in every Appeal Court Area". The question was resolved by making the Chief Justice of West Cameroon the President in such circumstances.

136. Sections 179 - 191.

137. Sections 191 - 195.

138. See Note 117 supra.

## Banking and Insurance

Prior to 1962, the laws governing banking in Cameroon were the pre-unification laws. In West Cameroon, the law was laid down in the Banking Ordinance (Cap. 19 of the 1958 Laws of Nigeria), while French banking law applied in East Cameroon. This was changed by a decree No. 62-DF-90 of 24th March, 1962, as modified by another decree No. 67-DF-238 of 29th May, 1967. By these decrees, a National Credit Council was set up and charged with the responsibility of regulating all affairs concerning banks and the banking profession in Cameroon, and the study and implementation of the credit policy of the Government.

The Council is made up of 14 members who are chosen in such a way that the Government, the banks, commerce, and the co-operative societies are adequately represented.

The duties of the National Credit Council include, inter alia, the orientation of the credit policy of the Government. Such orientation must be based on proper studies and advice from the Government as well as general recommendations. It can also be consulted on the financial policies of the State. It makes recommendations for the regulation of credit, advises on the establishment and closure of banks, and their general functioning. The decisions of the Council, in so far as they concern the totality of the banking trade or single members thereof, can

assume a general or individual character. Decisions of a general nature include such matters as the increase of the minimum share capital of a bank, the keeping of uniform statistics, the publication of regular information about the banks, and the presentation of proper balance sheets, to mention a few. In this connection, the National Credit Council issued certain regulations in 1967 which provided, inter alia, that all banks with more than one branch must have a minimum share capital of 300,000,000 francs CFA. Consequently, Barclays Bank which seemed reluctant to comply with the regulation, decided to put its total assets in Cameroon into B.I.C.I.C. (Banque Internationale Pour le Commerce et l'Industrie du Cameroun). Decisions of an individual nature include matters such as registering a bank in the register of banks.

The law regulating insurance concerns is contained in Ordinance No. 62-OF-36 of 31st March, 1962.[139] This Ordinance is divided into six parts.

Part I deals with the question of approval of all insurance concerns. The Minister of Finance and Planning is responsible for giving any such approval.

Part II deals with the solvency requirements for insurance concerns, and the safeguards for insured persons and beneficiaries. The point is

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139. J.O.R.F.C., 15th July, 1962, pp. 774-780.

stressed that all insurance companies should always show, on the assets side of their balance sheets, enough reserves to ensure full settlement of all their commitments vis-à-vis insured persons and beneficiaries of contracts.[140] As part of the policy to ensure that insurance companies are solvent at all times, they are required, depending on the operation carried on, to constitute certain reserves. For instance, in respect of life, marriage - birth and capitalisation insurance operations, they must provide:

> "(a) capitalisation reserve: a reserve designed to cover the depreciation of stockholdings forming part of the company's assets and loss of reserve therefrom;
>
> (b) mathematical reserve: the difference between the current value of commitments by insurers and insured persons respectively;
>
> (c) reserves for profits not actually distributed to persons insured, being the total of individual (with profit) accounts kept in the name of persons insured, whenever such profits are not payable immediately following the termination of the financial year in which they accrued."[141]

Part III lays down the machinery for state supervision of all insurance concerns. To this end, there is an office under the supervision of the Minister of Finance and Planning which is responsible for such supervision.

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140. Article 15 of the Ordinance.

141. Article 16 of the Ordinance.

Part IV sets out the conditions which can disqualify any one from starting an insurance concern. These include persons convicted:

> "for theft, embezzlement, obtaining money by false pretences, malversation of public funds, extortion of funds or securities, uttering cheques without provision in bad faith, damage to the credit of the state or receiving goods stolen or improperly obtained,"[142]

a long but not exhaustive list.

Part V deals with transitional provisions, one of which is to abrogate all earlier legislation on the subject, and Part VI deals with penalties for any infringement of the provisions of the Ordinance.

Conclusion

In this chapter, we have considered certain general principles in connection with Commercial Law as practised in both East and West Cameroon. We cannot overemphasise the point that we have not, in our cursory treatment, done justice to this all important aspect of the law, nor have we been able to include the various important legislation on related subjects. Perhaps one can take refuge in the fact that this branch of the law is hopelessly out of date and much in need of reform. In this light, there might be some justification in not devoting too much time to a branch of the law which might soon be swept away by fresh reforms of,

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142. Article 29 of the Ordinance.

may be, an entirely different nature. We are, of course, conscious of the fact that the same argument can be raised in favour of the other topics which we have already considered or will be considering in the next chapters, but such an argument cannot stand up to the overwhelming desire of Cameroon to industrialize and to improve her foreign and internal trade.

Our description of Commercial law in Cameroon as being hopelessly out of date is borne out by the laws themselves. Surely, it does not take much to convince any one that the Code de Commerce which came into operation in the Colonies in 1850 is over a century out of date. It is true that there may have been some major amendments such as the law of 27th July, 1867, as well as some minor ones, but these either did not make any substantial changes or are no nearer us even in point of time. Another reason which makes these laws even more anachronistic is that they were meant for European companies largely serving European ends. Even when they were established in Cameroon, this continued to be the purpose, and as a result, Africans hardly ever participated. This position has prevailed till today. Indeed, President Ahidjo in his main speech during the first Cameroon National Union Convention in Garoua on March 10th, 1969, exhorted Cameroonians to try and participate in the Commercial world in Cameroon.

Although the position which we have just been describing applied in East Cameroon, the position in the West was not far different. Company legislation in West Cameroon is based on the English Companies Act of 1908 which is 62 years out of date. The amendments made to this Act only brought it in line with the English Companies Act of 1929, which is no more suitable to handle the problems of company law in 1970 in a developing country. As in East Cameroon, the Companies Ordinance was intended to cater for the interests of British and other European countries. Thus we are faced with a situation where the commercial law in Cameroon is not only out of date, but was meant to serve foreign ends. This situation cannot be expected to last much longer, particularly with Cameroon now enjoying an independent status.

The question which arises then is how to deal with the situation? The answer to this question cannot be a simple one. We are in no doubt, however, that reform in this aspect of the law is desperately needed, but desperation must not drive us into over hasty action, because there are certain basic things which we must get clear in our minds before we proceed with any reform. In the first place, we must bear in mind that the notion of limited liability companies is a capitalist institution par excellence, so we must work out our basic philosophy - be it capitalism or socialism or African socialism or any other "ism" and try and fit

company law into whatever philosophy we adopt. Secondly, we must decide on the relationship between the Government and private companies because, said Berle and Means:

> "the rise of the modern corporation has brought a concentration of economic power which can compete on equal terms with the Modern State... economic power versus political power each strong in its own field. The State seeks in some aspect to regulate the corporation, while the corporation is steadily becoming more powerful, makes every effort to avoid such regulation ... The law of corporations accordingly might well be considered as a potential constitutional law for the new economic State, while business practice is increasingly assuming the aspect of economic statesmanship."[143]

In this connection we need hardly emphasize the fact that the regulation of companies vis-à-vis the State is of great importance, particularly in a young and poor country where there might be companies or their subsidiaries which are sometimes richer and perhaps more powerful, or at least potentially so, than the State within which they are operating.

Having settled these major policy matters, the next step must be to consider the practical problems of promulgating any commercial law. The first thing will be to decide whether any such commercial legislation should take the form of a Code or an Act. It would seem that a Code would be our best choice. This is so because, quite apart from the

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143. Berle A.A. and Means G.C., The Modern Corporation and Private Property, New York, 1933, p. 357.

peculiar position of Cameroon, a Code is bound on the whole to be more detailed than an Act. This means that the provisions will be detailed enough to enable us to dispense with the need in Cameroon, at least in the long run, of referring to old English and French cases on company matters. Such dispensation, it is hoped, will exclude decisions on matters in pari materia.

Any such codification must, of course, take into account certain factors. In the first place, it must reckon, with the fact that we live in a world in which commerce is playing an increasingly more important part. Any new Code must therefore be sufficiently broad based in order to take account of this. Secondly, any new Commercial Code must, in contrast to the previous ones which were basically European, give enough encouragement to the indigenous business man. It has been suggested elsewhere that this can be done by means of an "incorporated private partnership" to cater for the needs of the small African business men who are not yet ready for limited liability trading. Such "incorporated private partnership" which will be:

> "analogous to the partnership with unlimited liability and without any separation of ownership and control, will provide both the simplicity needed as well as the essential safeguards. Incorporation not only removes the business from family property but gives such partnerships a possibility of surviving beyond one generation - a malaise which at the moment afflicts most African businesses."[144]

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144. See Final Report of Commission of Enquiry into the Working and Administration of Company Law in Ghana, op. cit., p. 6, para. 25.

These suggestions are indeed sound and sensible, but it would seem to us that they merely duplicate matters. Besides, there are not many African countries which will consciously pass legislation which tends to discriminate between African and other business. A better policy which Professor Gower himself recommends[145] would perhaps be to encourage African business men to take a greater part in all commercial activities in the country. The co-operation of expatriate concerns will be most valuable. All this can be done under the umbrella of one Commercial Code. This seems to us to be the surest and quickest way of enabling Africans to gain much needed business experience. It also enables Africans with business initiative, of which there are many, to carry on their businesses on a more competitive basis with foreign entrepreneurs.

Sorting out all these problems does not, of course, produce a Commercial Code. The practical job of drawing one up can be carried out in four stages as we suggested in the last chapter. Although a Commercial Code for Cameroon must include ideas of French and English Commercial Law, and therefore in a sense quite unique, there are plenty of examples from which we can draw inspiration, if not copy. There is in the first place the French law of 24th July, 1966, which has revised and consolidated into one code (Code des Sociétés Commerciales) most of French Commercial Law. Then there are the English Companies Acts of 1948 and 1967 as well as the Jenkin's Committee Report[146] which contains very valuable suggest-

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145. See Final Report of Ghana Company Law, op. cit., p. 9, para. 34.

146. Cmnd. 1749.

ions about the reform of Company law. Not only can we draw inspiration from the two metropolitan countries from which we derive our laws but also from neighbouring African countries. In this connection, we might mention the new Ghana Companies Act[147] which embodies a lot of proposals made by Professor Gower as well as the Nigerian decree on Company Law which came into effect on October 1st, 1968.

A job of this nature should not be impossible because quite apart from the fact that there are certain essential similarities between French and English Company Law, our experience in drafting the Penal and Labour Codes will be an added asset.

Finally, it seems that we cannot conclude this chapter without making some comparison between the two systems of company law. Such a comparison, even if limited, will be useful in the sense that it will show us the type of questions which may be considered when the Civil Law Commission gets round to dealing with commercial law.

The first important point of comparison is the share capital of a company. As we saw above, one of the things which must be stated in the memorandum of association of any company in West Cameroon is the capital with which the company intends to be registered. This capital (the share capital) is divided into a number of shares of fixed amount which need not be fully subscribed before the company is entitled to

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147. Ghana Companies Code, 1963 (Act No. 179).

commence business. Indeed, if the minimum amount deemed by the directors to be necessary to commence business has been raised, the company may get on with the business of incorporation. The result of this is that a company may,and often has, an issued capital which is quite different from the authorized capital.

The situation in East Cameroon is different. Under the present law, all the shares of a company must be fully subscribed, and 25% or more of the value of each share must be paid up before the company can commence business. There is a further stipulation that the balance on each share must be paid up within 5 years. This is important because the company's right to issue debentures or raise loans depends on the full subscription of each share. The reason for the insistence on full subscription is that it enables investors to know at the very beginning the capital of the company in which they are investing, and therefore, serves as a guarantee.

This comparison shows that the rules in East Cameroon are stricter than those in the West. It can of course be argued that there are advantages and disadvantages in each system. For instance, the strictness of the East Cameroon rules makes it more difficult to float companies than is the case in West Cameroon. On balance, however, it would seem that the East Cameroon rules are to be preferred because they tend to discourage the proliferation of bubble companies.

Once a company has been formed, a statutory meeting must, according to West Cameroon law, be convened not less than one month nor more than three months from the date when the company is granted a certificate of incorporation which entitles it to commence business. Thus, the statutory meeting is not of direct relevance to the time of incorporation. Indeed, if it is not held within the time stipulated, a court may order that it be held or that the company be wound up.

The situation in East Cameroon is different. The assemblée constitutive is the one thing which brings a company into existence. During the meeting, the draft articles of association of the company are approved either with or without alterations. Also at this meeting, the officers of the company are elected, but if they were previously nominated, such nominations must be ratified. At this meeting, too, the statement of the notaire with regard to full subscription of the shares and payments on each share is presented. The shares must either be fully paid up, or at least 25% of the value of each share must be paid up. The assemblée constitutive also choses the auditors. Because this meeting is so important, the law provides that no shareholder may have more than one vote, the aim being to prevent the holders of a large number of shares from imposing their will on the minority or small shareholders.

Since the life of the company begins from this meeting, East Cameroon law avoids the difficult problems of pre-incorporation contracts. In this respect, it certainly has an advantage over West Cameroon law.

As soon as a company comes into existence, its management becomes the responsibility of the directors. In West Cameroon, the directors can only use the funds of the company in carrying out those things which are specifically set out in the objects clause of the company. These, of course, include all such things as are reasonably incidental to the objects of the company. Any other thing outside the objects is ultra vires the company. The directors may also engage in activities which are ultra vires their powers, but, while such activities may be ratified by a general meeting of the company, those activities which are ultra vires the company are null and void.

The ultra vires rule and all its attendant difficulties is unknown in East Cameroon law where a company, like a person, has absolute freedom in its dealings with third parties. This means that there is little if any limitation on the powers of directors. Thus, except where the articles specifically state that a particular thing is beyond the powers of the directors, all contracts concluded by them on behalf of the company are binding on the company. Although no acts of the directors can, in the absence of specific provision, be declared ultra vires, they may, nevertheless, be impeached for mismanagement. The French rules as applied in East Cameroon seem, in the light of the confused nature of the case law on the ultra vires rule, more logical.

There are, of course, several points of West Cameroon Company Law which are, as against East Cameroon law, to be preferred. One such point concerns the appointment of auditors. In West Cameroon, auditors must be men who are professionally qualified and who have no connections with the company. This is so in order to ensure that they give a fair and independent report of the company. In East Cameroon, on the other hand, the auditors need not have any special qualifications. The rules with regard to their appointment are also considerably relaxed. Not unconnected with this are the powers of supervision of companies by the Registrar of Companies in West Cameroon. These have no counterpart in the East.

Finally, there is greater reliance placed on case law in West Cameroon than in the East. Thus, cases like the Royal British Bank v. Turquand[148] and Foss v. Harbottle,[149] to which reference has already been made, have laid down almost everlasting principles.

As we have just seen, it seems on the whole much easier to float a company in West Cameroon than in East Cameroon, so the tempting conclusion is that companies wishing to operate in Cameroon can quite easily register in West Cameroon and set up branches in the East. This does not in fact happen. The reasons for this may be threefold. In the first

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148. [1856] 6 E. & B. 327.

149. [1843] 2 Hare 461.

place, company law is a Federal responsibility, so the citing of any new company must receive the approval of the appropriate Federal authority. Secondly, the laws governing company taxation are not uniform. This creates a situation where a company which is registered in one Federated State and operating in another may have to pay taxes on its profits in both States. This may be the same reason why firms already operating in East Cameroon are reluctant to extend their operations to the West.[150] The third and perhaps the most important point lies in the fact that there may be a reluctance from the strong continental business contingent in East Cameroon to get involved with the English orientated company law in West Cameroon. This is not to ignore the fact, as Professor Escarra, an eminent French commercial lawyer puts it, that there are:

> "permanent elements that lie at the bottom of a specific institution common to several countries having reached the same level of juristic civilization. These permanent elements are similar to what are called "constants" in mathematics."[151]

These "constants" are present in the company laws of East and West Cameroon, and could provide the basis for a uniform Commercial Code.

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150. Epale, op. cit., p. 329.

151. Escarra, Jean. Some Points of Comparison between the Companies Act, 1948, and the French Law of Companies, 1951-53, XI Camb. L.J., pp. 15-30 at p. 30.

# CHAPTER X

## LAND LAW

### Customary Land Law in West Cameroon

Customary land law in Africa is one of those subjects about which a great deal has been written by many eminent authors,[1] but in order to maintain the balance which we have established in the earlier chapters, a few observations must be made about customary land tenure.

The decision of the Privy Council in the case of Amodu Tijani v The Secretary, Southern Nigeria[2] seems a useful starting point. In that case, an area of land in Apapa - Lagos was compulsorily acquired under the Public Lands Ordinance No. 5 of 1903. The appellant, head chief of the Oluwa family, claimed compensation on the basis of ownership. The claim was rejected by the court of trial which argued that the appellant could claim compensation only on the basis of his having a right of control and

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1. Meek C.K. Land Tenure and Land Administration in Nigeria and the Cameroons. Colonial Office Research Studies No.22, London, Her Majesty's Stationery Office, 1957 Part II. passim.

   (Ed.) Biebuyck D. African Agrarian Systems. Published for the International African Institute by Oxford University Press 1967.

   Ollennu N.A., Principles of Customary Land Law in Ghana. London, Sweet and Maxwell, 1962.

   Obi, S.N.C. Ibo Law of Property, London, Butterworths, 1963.

   Elias, T.O., Nigerian Land Law and Custom, 3rd ed. Routledge and Kegan Paul Ltd. London 1962.

   Lloyd, P.C. Yoruba Land Law. Oxford University Press, 1962.

2. [1921] 2 A.C. 399.

management rather than absolute ownership. A full Court of Appeal upheld this decision, but on further appeal to the Privy Council, it was decided to consider the nature of native title in land as an aid towards resolving the problem. To this end the Privy Council concluded that in

> "native land law . . . the notion of individual ownership is quite foreign to native ideas. Land belongs to the community, the village or the family, never to the individual. All the members of the community, village or family have an equal right to the land, but in every case the Chief or Headman of the community or village, or head of the family, has charge of the land, and in loose mode of speech is sometimes called the owner. He is to some extent in the position of a trustee,[3] and as such holds the land for the use of the community or family. He has control of it, and any member who wants a piece of it to cultivate or build a house upon, goes to him for it. But the land so given still remains the property of the community or family. He cannot make any important disposition of the land without consulting the elders of the community or family, and their consent must in all cases be given before a grant can be made to a stranger. This is a pure native custom along the whole length of this coast, and where ever we find, as in Lagos, individual owners, this is again due to the introduction of English ideas. But the native idea still has a firm hold on the people, and in most cases, . . . even in Lagos, land is held by the family. This is so even in cases of land purporting to be held under Crown grants and English conveyances. The original grantee may have held as an individual owner, but on his death all his family claim an interest, which is always recognised, and thus the land becomes again family land" .[4]

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3. The word "trustee" has been criticised. See Allott, A.N., Family Property in West Africa: Its juristic basis control and enjoyment in " Family Law in Asia and Africa" Ed. by Anderson J.N.D. 1968. Allen and Urwin Ltd. p.133.

4. [1921] 2 A.C. at p. 404.

This passage from the advice of the Privy Council summarises in a concise and authoritative way the basic characteristics of customary land tenure. Although these basic characteristics have come to be accepted, we are still plagued by questions such as the nature of the rights of the individual, the Chief or Headman over the land. Since these questions have been adequately dealt with elsewhere,[5] we shall not go into them here. Instead, we must make a few general observations on customary land law in Cameroon which is the subject of this chapter.

The Federated State of West Cameroon comprises basically acephalous and centralized societies. The centralized societies are to be found in the grassfield area of West Cameroon. These societies can be reclassified into the big and very highly centralized groups like Bali, Bafut, Bikom and Nsaw, and the smaller chiefdoms to be found in the rest of the grassfield area. The acephalous societies are to be found in the forest areas.

The land tenure in West Cameroon is similar in the sense that the land belongs to the society, but there are certain basic differences which depend on whether the society we are considering is centralized or acephalous.

In most of the grassfield area, particularly in the highly centralized areas the land belongs to the chief or village head only in the sense that he exercises certain functions over the land on behalf of his subjects. As part of these functions, he must be consulted before any grant of land is made to any one. He takes part in the adjudication of all

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5. Allott, Family Property in West Africa, op.cit. p. 121.

disputes concerning land. His responsibilities also extend to safeguarding the interests of the community in lands which are owned communally. These lands include the market place, the dancing fields, sacred shrines, public ways, hunting reserves, and sources of drinking water. It is also his responsibility to re-allocate any land which is left by an extinct lineage. These functions have been described as titular and residuary.[6]

Beneath the protection offered by the chief, the several lineages exercise de facto control over lineage lands. This control enables the lineages to do almost anything with the land short of expropriation. In this connection, the chief himself is in de facto control of his own lineage lands over which he can exercise all rights short of sale without the necessity of consulting the people.

Although the characteristics which we have described above may be true of all the centralized societies in the grassfield highlands, the grip of the chief or the lineage head in the smaller chiefdoms over the land is not nearly as firm as that of the chiefs in the big centralized groups. There are, for instance, groups like the Ngwos and Ngies in Momo Division where the authority of the clan head over his subjects is negligi-

6. Kaberry, P.M. Women of the Grassfields: A Study of the Economic position of women in Bamenda, British Cameroons. London Colonial Office Research studies No. 14, H.M.S.O. 1952. Chapter III passim.
Meek, Land Tenure and Land Administration in Nigeria and the Cameroons op. cit., Part II passim.

ble. Here, according to Dr. Kaberry, the men receive, building, farm, and palm plots from their fathers on marriage.[7] Thereafter, they are free to exercise absolute freedom over such land. Although Dr. Kaberry says that they can even sell land, it is doubtful whether they can do so without the consent of the lineage head. In any case, sales to outsiders who are not members of the tribe are prohibited. Another instance where the grip of the chief or lineage head over land is not very firm is in the matrilineal societies. There are very few of these societies in the grassfield area, the most important being the Bikom, the Aghem and the Fungom people, all of which are in Metchoum Division.[8] In these places, the head of the matrilineage has titular control over lineage land while the individual, instead of looking up to his lineage for any claims to land, directs them to his matrilineage.

In the forest areas, the general notion that the community owns the land also exists, but because the societies are acephalous, the controlling hand of the chief is not as rigid as in the grassfield highlands. The result is that the tenure tends to be much less feudal in nature. The lineage head, therefore, has a freer hand to deal with the land. It would indeed seem wrong to have a chief interferring with land which has been cleared from virgin forests and kept in a cultivatable state against the

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7. Kaberry, P.M. and Chilver, E.M. Traditional Bamenda. The Pre-Colonial History and Ethnography of the Bamenda Grassfields, 1967, Government Printer, Buea.

8. See Anthropologucal Office Circulars, File 139, Volume I and Anthropological correspondence File 869. West Cameroon Archives, Buea.

ever encroaching forest. Despite the fact that an individual can deal with land acquired in this way freely, he cannot expropriate any such land to a stranger without the approval of the head of the community or the community at large. Indeed, Chief Endeley in the case of Wokoko v Molyko to which we will return later said that "if a stranger desires to build in a village, he must apply to the village head and present a pig to him".[9]

The Arrival of the Germans and their influence on land law in Cameroon

The customary land law described above obtained in most of West Cameroon before the arrival of the Germans in 1884. In concluding the treaty of annexation with the Germans, the natives insisted on including provisions to the effect that "our cultivated ground should not be taken from us for we are not able to buy and sell as other country".[10] In another treaty between the Douala people and Nachtigal, it was stipulated that "the land and towns and villages should remain the private property of the natives".[11]

These treaties were probably completed with knowledge of the fact that the provisions with regard to land were not going to be respected.

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9. Wokoko v Molyko [1938] 14 N.L.R. 42 at 43-44.
10. Treaty of Annexation of 12th July 1884. See Appendix III
11. Treaty between the Douala Chiefs and Nachtigal. Appendix IV.

Whether those actually concluding these treaties knew it or not, a few months earlier, Adolf Woermann, one of the leading German businessmen who was instrumental in the annexation of Cameroon had written to one Herr Eduard Schmidt urging him that:

> "at the same time as the seizure of sovereignty, you should by all means get the cession of very extensive lands as private property - especially those suitable for plantations. There is no doubt that, if the country becomes German, there will be many attempts to establish extensive plantations, and so it is always a good thing if the land is already in our private ownership, so that we can resell it later. You must naturally try to buy as cheaply as possible. One can get the land for nearly nothing." [12]

This policy of acquiring as much land as possible seems to have dominated the thinking of all the German nationals who went out to Cameroon to the extent that even the pretence of buying was abandoned. Traders and planters true to the Woermann spirit grabbed as much land as they could. This practice went on till 1896.[13]

On June 15th, 1896, the Imperial German Government, in an attempt to regularize this little German scramble in Cameroon passed a decree[14] which apparently had the approval of Woermann.[15] Section 1 of the decree provided that :

> "save and except in the case of claims to property or other realty which private or legal persons, chiefs or native communities can substantiate, save and except also the

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12. Ardener S.G. Eye-Witness to German Annexation of Cameroon 1883-1887 op.cit. Appendix C. p.85.

13. Report on the British sphere of the Cameroons Cmd. 1647 para 49-53 p.60.

14. Ibid para. 54 and Appendix II.
Also Recueil des textes législatif et réglementaine relatif aux régime domanial et foncier. Federal Archives. Yaounde.

15. Rudin op.cit., p. 399.

rights of occupation of third parties established by agreements with the Imperial Government, all land within the territory being ownerless shall be Crown land".[16]

This provision raises two fundamental questions. The first one is the whole question of vacant lands (herrenlos). As we saw above, all lands belong to the community. This must mean that the doctrine of ownerless land "was a perversion of the principles of African land tenure, because the Germans took ownership in the European and not its African sense and alienated forever the freehold of the natives in private property".[17] Put in other words; "the early land policy of the German protectorate subordinated native interests to those of the concessioners".[18]

The second question concerns the validity of expropriating native lands in the light of the terms of the treaty of annexation and the Douala Treaty referred to above in which the natives had made two things quite clear, namely the fact that they wanted to retain control of the land as well as the fact that the question of buying and selling land was unknown to them - a point which, as evidence shows, was apparently appreciated by the Germans, for Rudin records one case where, because of the difficulty of explaining to the natives that land could be bought, one trader explained to the natives that he wanted the land for its produce. This led the native to sell the land at a low price because he believed that he was selling the

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16. Cmd. 1647, Appendix II.

17. Statement of E.J. Arnett in Land Files of 1926, West Cameroon Archives, Buea.

18. Ardener, E.W. and S.G. and Warmington W.A. Plantation and Village Life in the Cameroon. London Oxford University Press 1960. p. 303.

usufruct and not the land itself.[19] If such a contract were concluded under English law, it could be challenged on grounds of misrepresentation or mutual mistake, for either the buyer put out a misrepresentation which induced the contract, or else there was a mutual mistake in the sense that the buyer thought he was buying the freehold while the seller thought he was selling the usufruct.[20]

But he that as it may, the Imperial decree of 1896 had firmly established in Cameroon the notions of private property and ownerless land, both of which have survived. The notion of ownerless land later fitted into the French civil law idea of terrains vacants et sans maître and later the East Cameroon innovation of patrimoine collectif nationale to which we shall return later.

Besides laying the foundation for land tenure in German Kamerun, the decree of 1896 made provision for the establishment of a Land Commission whose main responsibility was to seek out and determine what was regarded as ownerless land, and to decide on any claims over such land which might be made by private persons.[21] The Crown land so demarcated was to be registered in the Grundbuch (land register). Other private properties were also registrable in the Grundbuch.

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19. Rudin op.cit. p.397.

20. It would seem that such a contract could also be avoided under the German Civil Code which by Article 119(b) provides that:

> " a mistake concerning any characteristic of a person or thing that are regarded in ordinary dealings as essential is also deemed to be a mistake concerning the purport of the declaration".

Von Mehren, The Civil Law System, op.cit. p.879.

21. Section 4 of the decree.

Most of the lands acquired and registered in this way were situated in Victoria (now Fako) and Kumba (now Meme and Ndian) Divisions, the hinterland being left relatively untouched. The result was that the natives, particularly those of Fako Division, the area of intense German activity, were deprived of most of their fertile lands. As a poor substitute the decree of 1896 provided (section 3) that:

> " when Crown land is occupied in the vicinity of existing settlements of natives, areas shall be reserved, the cultivation and usage whereof shall ensure the subsistence of the natives having regard also to future increases of population".

This was known as the system of reservats. The land set aside in this way was such as would allow for about 15 acres for each native. Quite apart from the fact that this was inadequate, the land set aside comprised of the most infertile and less accessible parts as can be seen from the Bakweri villages perched along the rocky slopes of Mount Fako. Another feature of the reservats was that separate villages were often grouped together into one reservat. This in itself created a lot of problems. An example of such problems is shown by the case of Wokoko v Molyko. This case concerned the Wokoko and Molyko people who had been brought together under one reservat. The Wokoko people then started to build houses on Molyko land on the basis that all the reservats formed a compendious community. The Molyko people resented this and as a result both villages brought two cross - actions in the native court where the District Officer sat as President. The case went on Appeal to the Resident and finally to the High Commissioner who removed it to the High Court under Section 36(2) of the Native Courts Ordinance, 1933. The High Court decided that since the reservats had under

customary law become interdependent communities both Molyko and Wokoko were undifferentiated parts of a whole, and consequently every indigenous villager had become a member of all the villages, so the Wokoko people could build on Molyko land.

The discussion above of the German land law in Cameroon can lead to the false impression that all the expropriation of land was quiet and peaceful. On the contrary, there were violent protests against the sometimes repressive measures which were employed in taking over the land. One such example is the Douala land case. Early in 1910, solely for the interest of the Europeans, the Government decided to move the people of Douala from the sea front and resettle them in a village about two miles further inland. This move was resented by the people because it was contrary to the Treaty of 1884, but this was of no avail, for not only did the Douala people forcibly lose their land, but they also lost an outstanding leader in the person of Chief Manga Bell who was executed by the German Government in Cameroon.[22]

When the Germans were forcibly acquiring the Douala lands, little did they know that they were destined soon to lose, by force of arms, not only those lands which they had acquired, but also the entire territory of Cameroon. The first World War broke out in 1914 and the defeat of Germany resulted in the liquidation of the German colonial empire.

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22. Rudin op.cit., pp. 408-413

Land Tenure in the British Cameroons.

The war as we have seen, broke out in 1914 and by 1916, the British and French forces which took part in the Cameroon campaign had already succeeded in driving the Germans to the neighbouring neutral Spanish territory of Rio Muni. The Government of Cameroon then passed into the hands of the Allied Forces who in 1916 divided the territory into two unequal parts.[23] The British took the narrow Western strip while the French took the larger Eastern sector.

By Article 119 of the Versailles Peace Treaty of 28th June,1919, the Germans renounced their claims over Cameroon in favour of the Allied Forces. Whereupon, Britain and France were asked to draw up Mandates for the approval of the League of Nations. These were accordingly approved on 20th July,1922.

However, before the approval of the British Mandate for Cameroon, the British Government had by Proclamation No.25 of 6th March,1920,[24] declared that the Public Custodian Ordinance,1916 of Nigeria, and all other Ordinances amending the same should be in force and apply to the British sector of the Cameroons. This meant that all the property of German Nationals and those of the Imperial German Government at once vested in the Public Custodian appointed under the Public Custodian Ordinance until a final decision was taken as to their disposal. Ultimately, the Public Custodian was empowered by another Proclamation[25] to sell either privately

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23. Proclamation No. 10 of 17th March, 1916.

24. This proclamation revoked an earlier one - Proclamation No. 24 of 10th February, 1920.

25. Proclamation No. 38 of 10th October, 1922.

or publicly all movable and immovable property belonging to the Ex-Enemy nationals.[26] All Ex-Enemy nationals were, of course, barred from purchasing or bidding.

A public auction of all the Ex-Enemy property actually took place in London in October 1922, but very few of the estates were sold.[27] This led to the passage of the British Cameroons (Ex-Enemy Immovable Property Disposal) Ordinance No.22 of 1924. This Ordinance lifted the bar on Ex-Enemy nationals and permitted them to acquire the property which was being auctioned. Thereupon, all the land was bought up by the previous German owners with the aid of the German Government.

Most of this intense activity was taking place in connection with lands which were mostly situated along the slopes of Mount Fako. Not much was heard about the lands in the hinterland. They were obviously covered by the provisions of the Mandate for the British Cameroons in respect of land. Article 6 of the Mandate provided that:

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26. Ex-Enemy nationals were defined by Proclamation No.38 as including Citizens of Germany, Austria, Hungary, Bulgaria, Turkey or any person who had at any time been such a subject or citizen and had not changed his allegiance as a result of recognition of new states.

27. Meek, thinks that a possible reason for this was the "uncertainty felt regarding the title, to say nothing of the Mandate itself". Land Tenure in Nigeria and the Cameroons op.cit., p.355. One is tempted to add that this was perhaps in line with Britain's traditional reluctance in the Cameroons - a reluctance which, as we saw in Chapter I, resulted in the rejection of the request of the Douala chiefs for annexation of Cameroon before the arrival of the Germans. It is quite possible that if there were minerals in the Cameroons, the questions about the uncertainty of titles or the future of the Mandate would not have arisen.

> "in framing of the the laws relating to the holding or transfer of land, the Mandatory shall take into consideration native laws and customs, and shall respect the rights and safeguard the interests of the native population. No native land may be transferred except between natives, without the previous consent of the public authorities, and no real rights over native land in favour of non-natives may be created except with the same consent. The Mandatory will promulgate strict regulations against usury".[28]

This provision raised certain problems as to the relation between the British Government and the League of Nations vis-à-vis the land. It was argued in a memorandum from Mr. Arnett the Resident in the Cameroons to His Excellency the Governor that the rights of the British Government derived from those of the Germans who exercised the rights of conqueror in relation to land and taxes in Cameroon.[29] While it is true to say that the British came into the Cameroon scene as conquerors, it is not true in the case of the Germans. Despite the fact that they acted as conquerors, they got their initial foothold in Cameroon by signing treaties with the natives- treaties which were later treated as not being worth the paper on which they were written. But however that may have been, Britain's land policy in Cameroon prevailed over the view that the Mandatory held the land as trustee for the League of Nations.[30] Despite these arguments, the raison d'être of

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28. Cmd. 1794. Article 8 of the United Nations Trusteeship Agreement of 13th December,1946 contains almost identical words. The only difference is that the words and "natural resources" appear in The Trusteeship Agreement.

29. Document QF (a) of 1926. File 134/1926, West Cameroon Archives, Buea.

30. Ibid. Most of this information is contained in a letter from Downing Street dated 10th September,1926, addressed to the Governor of Nigeria and signed by L.S. Amery.

the Mandate was to administer certain underdeveloped territories as a sacred trust of civilization. The Mandatory powers were mere tools given to enable it (the League of Nations) to fulfil its obligation. The fact is that each Mandate under the Mandate system constitutes a new international institution, the primary overriding purpose of which is to promote the well-being and development of the people of the territory under Mandate.[31] The Mandates were therefore, to be exercised by the Mandatories on behalf of the League and not on behalf of the members of the League in their individual capacities.[32] Irrespective of this, Britain administered her sector of the Cameroons as a conqueror whose powers were derived from the defeated Germans. Because of this stand, Britain, ignoring the character of German interest, decided to treat the land in Cameroon in the same way as she treated that in Northern Nigeria which was conquered from the rule of Sokoto and Gwandu. It was on this basis that the British Government introduced into the Southern Cameroon the Land and Native Rights Ordinance No.1 of 25th February,1916,which was already in force in Northern Nigeria.

The operation of the Land and Native Rights Ordinance was to apply to all land in the Southern Cameroons except the areas covered by the former German plantations[33] and all station rights which were declared as crown

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31. See the 1962 judgment of the South West Africa case I.C.J. Reports 1962,p.329
32. South West Africa 1966 I.C.J. Reports 1965-66.
33. Crown Lands Ordinance Cap. 45 of the 1948 Laws of Nigeria.

lands.[34] The Land and Native Rights Ordinance was actually introduced in the Southern Cameroons on 4th February 1927.

Like the Northern Region of Nigeria where the object of the Ordinance was to vest in the Governor-General sovereign control over all land held by the Fulani overlords, the object of introducing this legislation into the Southern Cameroons was to vest all land held or purported to be held by the Imperial German Government in the Governor-General.

The Land and Native Rights Ordinance,[35] of course, replaced the Native Lands Acquisition Ordinance[36] which applied in the British Cameroons prior to 1927. The Native Lands Acquisition Ordinance permitted aliens with the approval of the Governor-General to acquire documentary titles to leases from natives. These leases were, however, not very popular because of certain inherent weaknesses such as the lack of security of tenure, lack of good maps of the areas and the fact that it was often difficult to find any single individual who could dispose of the land in the name of the community. No less difficult was the fact that it was often difficult to identify the recipient of rent and the problem of the ultimate distribution of such rent.

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34. See letter referred to in Note 30 supra.

35. See now Cap. 105 of the 1948 Laws of Nigeria.

36. This Ordinance (see now Cap 144 of the 1948 Laws of Nigeria) was one of those extended to the British Cameroon by virtue of the 4th Schedule to the British Cameroons Administration Ordinance (No.3) of 1924.

These problems really gave rise to the initial suggestion to introduce the Land and Native Rights Ordinance. Once introduced, the Ordinance has, with some amendments survived till today. Section 3 of the Ordinance declares that all land in West Cameroon is native land except

(i). All lands which are described in the Fourth Schedule to the Ordinance. These include freehold lands in private ownership such as the Basel Mission stations and the former Ex-Enemy lands in Fako and Meme Divisions.

(ii). All lands, the title to which was granted to non-natives before 4th February,1927, the day on which the Land and Native Rights Ordinance was introduced in the British Cameroons.

(iii). Land to which a native had acquired a valid title prior to 1st March,1916.

Most of these exceptions were regarded as conferring rights similar to freehold rights granted under English law; and may generally be transferred absolutely. These titles are similar to those which were the subject of a recent Tanganyika case. In the case of Attorney-General v Noti bin Ndugumbi,[37] Worley, V-P, basing his conclusion on the terms of the Mandate in relation to the continuance of the pre-existing land titles, held that there must be a presumption that a Tanganyika Ordinance would not have the effect of prejudicing a German title and that once it was established that a certain title would have been registered in the Grundbuch

37. [1958] 21 E.A.C.A. 43.

under German law (the effect of which was under German law to confer on the owner an indefeasible title) it must be accepted for registration under Cap. 116 .[38] The effect of this judgment was to make all titles acquired under German law absolute. This obviously raises a conflict problem in connection with disputes involving such titles. Does one, for instance, solve a disputed contract of sale of land during the German period according to German or English law? Such a contract, since it involves immovables will be governed by the lex situs[39] which at the time of the contract was German law.

However, that may be, the bulk of all German property in Cameroon which had, as we saw above, reverted to their previous owners in 1924, once more fell into the hands of the Custodian of Enemy Property at the outbreak of the Second World War in 1939. At the close of the war, a decision was taken to buy these lands from the custodian and to treat them as native lands under the Land and Native Rights Ordinance. This was done through the aid of the Ex-Enemy Lands (Cameroons) Ordinance (Cap.66 of the 1948 Laws of Nigeria). It was further decided that instead of these lands reverting to customary tenure, they would be leased to a public corporation under certificates of occupancy. The Cameroons Development Corporation to which the certificates of occupancy were given was set up by the Cameroons

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38. Cole, J.S. and Denison,W.N. Tanganyika, The Development of its Laws and Constitution, op.cit. p.217.

39. Dicey and Morris on the Conflict of Laws, 18th Ed. London Stevens and Sons Ltd. 1967 p.786.

Development Corporation Ordinance (Cap 25 of the 1948 Laws of Nigeria) and charged with the responsibility of developing and managing the land for the benefit of all the people in the territory.

With the exception of the lands thus given to the Cameroons Development Corporation and the few freehold titles owned by a few families such as the families of the late Chief Manga Williams, Carr, Ilufa and Mokeba, all the land declared as native land are, by virtue of section 3 of the Land and Native Rights Ordinance vested in the Prime Minister[40] who shall hold and administer the same for the use and benefit of all the natives. No title to the use and occupation of any such land shall be valid without his consent.[41] In the exercise of his powers, the Prime Minister shall have regard to the native laws and customs existing in the district in which the land is situated.[42] In connection with his general control over native lands, the Prime Minister stands in a fiduciary position vis-à-vis the natives. It would seem from this that any dealings with land which have not received the Prime Minister's consent are null and void.

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40. The land which was originally vested in the Governor-General is now vested in the Prime Minister. This change was brought about by an amendment - See Southern Cameroons Legal Notice No.2 of 1955. This amendment first transferred the land to the Commissioner of Cameroons and then to the Prime Minister after independence.

41. Sections 5 and 11 of the Land and Native Rights Ordinance. Cap.105.

42. By virture of West Cameroon Legal Notice No.8 of 1963 published in West Cameroon Extraordinary Gazette No.7 of 30th January,1963, certain regulation were made under the Land and Native Rights Ordinance. These included the Delegation of Powers to the Chiefs Regulations, by which the Prime Minister empowered Chiefs to act on his behalf in alienating land as between natives. Only Chiefs whose names appear in the Register of Chiefs established by the Recognition of Chiefs Law are eligible. This delegation is revocable and does not prevent the Prime Minister from exercising his powers under the Land and Native Rights Ordinance.

The Prime Minister disposes of native land by granting rights of occupancy to natives as well as non-natives and local authorities. Such grants must, however, not be inconsistent with the provisions of the Land amd Native Rights Ordinance. A right of occupancy is defined in Section 2 (a) of the Land and Native Rights (Amendment) Law of 1956 as "a title to the use and occupation of land and includes a customary right of occupancy and a statutory right of occupancy". A customary right of occupancy refers to the title of a native[43] or a native community lawfully using or occupying native land in accordance with native law and custom and not subject to payment of rent. A statutory right of occupancy, on the other hand, is a right of occupancy granted by the Prime Minister or any public officer or native authority duly authorized in that behalf.[44]

Under these circumstances, the only way in which a non-native can acquire any interest in land in West Cameroon is either to buy it from the few families who have freeholds or to take out a statutory certificate of occupancy subject to the payment of rent. Natives may, of course, also be required to take out statutory certificates of occupancy. This happens when a native is not living in the village where he can enjoy his customary right of occupancy. Thus, a native living in the urban areas must, like non-natives, take out statutory certificates of occupancy.

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43. A native is defined as a person whose parents are members of any tribe or tribes indigenous to the Federal Republic of Cameroon and the descendants of such persons and includes a person one of whose parents was a member of such tribe.

44. Section 6.

These rights of occupancy may be revoked by the Prime Minister for "good cause".[45] With regard to those lands which are outside the operation of the Land and Native Rights Ordinance (i.e. the lands held under freehold tenure or those transferred to the Cameroons Development Corporation under leasehold), they can be acquired for the same purpose under the Public Lands Acquisition Ordinance.[46] This Ordinance empowers the Prime Minister to acquire land absolutely or on lease, provided due notice has been given and upon payment of compensation which is assessed on the market value of the land or interest.

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45. Section 12 defines "good cause" as including:
    (a). non payment of rent, taxes, or other dues imposed on land.
    (b). alienation in any manner of a right of occupancy contrary to the provisions of the Ordinance.
    (c). Where land is required for public purposes. (Public purpose according to the Public Lands Acquisition Ordinance includes Government use, general public use, carrying out reclamations, sanitory improvements, government lay-outs, planning of rural development or settlement schemes, control of land contiguous to ports, railways or either public works and requirement for mining purposes).
    (d). Where land is required for mining purposes.
    (e). Abandoned land.
    (f). Breach of Section 19 of the Ordinance.
    (g). Breach of any term in a certificate of occupancy or under any contract under section 8.
    (h). Where land is required by a local government Council for legal purposes.

46. Cap. 189 of the 1948 Laws of Nigeria.

We have just been dealing with two types of titles to land in West Cameroon. In the first place, there are the customary rights of occupancy which are regulated according to native law and custom. Secondly, there are the statutory rights of occupancy which are regulated by various statutes. We have already made mention of the Land and Native Rights Ordinance. Another statute of importance is the Land Registration Ordinance (Cap.108 of the 1948 Laws of Nigeria). The Land Registration Ordinance makes the registration of all instruments in connection with statutory titles compulsory. Before the registration of any such instruments, they must receive the consent of the Prime Minister or any authorized public authority as to their validity.

The land law in West Cameroon which we have discussed above raises some quite fundamental problems. In the first place, there is the problem of the predominant role of the Prime Minister with regard to all lands, particularly those held under customary tenure. True it is that he is entrusted with the management of the land for the benefit of everybody, but his dominant position is not quite consistent with the notions expressed earlier that land is owned by the collectivity. It is perhaps in realization of this fact that the Prime Minister delegated his power to control and dispose of native land which is actually used and occupied by a native or native community to the chief of that community.[47] This delegation is revocable at will and does not really prevent the Prime Minister from exercising his powers under the Land and Native Rights

47. See West Cameroon Legal Notice No.8 of 1963 referred to above.

Ordinance. Nevertheless, this delegation which is a political solution gives the chiefs individual powers which were unknown in customary law, and thus helps for the smooth operation of the present system.

Secondly, there is the important problem of the disposal of the rent paid by all owners of statutory rights of occupancy. These rights are registrable and therefore they attract rent, the amount of which depends on the location of the land, the acreage, and the purpose for which the land is required.[48] The question which arises is how these rents should be used, particularly where the land alienated is native land. The position at the moment is that where the land in question is native land, the Government retains 50% of the annual rent and remits 50% to the Native Authority of the area. The Native Authority then retains two-thirds of this amount for its own use and spends one-third for the general improvement of the village concerned. After five years, the ratio as between the Native Authority and the village is reversed.[49] This raises two problems. In the first place, there is the problem as to whether the village shares should go to those actually affected or be spent for the good of the village. It would appear that the method adopted is the correct one because the residual ownership of land vests in the collectivity. The second problem is that the Native Authority does not deserve any share of the rent, because only two groups matter in the transaction, namely, the Central Government which

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48. Building leases attract more rent than those for agricultural or philanthropic purposes.

49. See generally, Orume, E.A., Land Tenure in West Cameroon, Desertation submitted for the final examination of the Royal Institute of Chartered Surveyors.

ensures that there is security of tenure and the village which has actually lost its customary rights in the land alienated. Were it not for the fact that the Native Authority only enjoys its share of two-thirds for five years, this argument would certainly carry a lot of weight. In the circumstances, it would seem that one-third share which the Native Authority ultimately gets is fair compensation for its exercise of certain functions in the area on behalf of the Central Government. It need hardly be emphasized that most of these are political rather than legal solutions.

The third problem is not unconnected with the one above. This is the whole question of reversionary titles to land. We have seen above that the Prime Minister can revoke a right of occupancy whether it be customary or statutory if land is needed for 'good cause'. The question which then arises is whether such land can revert to the previous owner if the purpose for which it was intended fails or has been satisfied. In as far as concerns land held under a statutory right of occupancy, the answer is simple, for under the rules governing such occupancy, the land must revert to the Government. The problem really arises in the case of land held under customary rights of occupancy. The solution in this case seems to be that where compensation was paid, the land would revert to the Government. This cannot be considered to be an altogether just solution, for the compensation may, in many cases, be less than the market value of the land. In any case, the question of reversion only arises where there has been failure or a total exhaustion of a 'good cause' for which the land was originally acquired. Assuming that such 'good cause' was beneficial to the people, it would seem that any reversion to the Government would not only deprive them of such benefits, but also of their land. Where no compensation was paid, there can be no justification for such land reverting to the Government.

The fourth difficulty concerns the issue of certificates of occupancy to natives. This problem has come to the fore in recent years and will continue to be of considerable importance as lang as the land law remains as at present. The problem really concerns the predicament of a native who wants to raise a loan on the security of his land. Under customary law he cannot do this because he has no specific title to land which he can use as security. The only alternative open to him is to take out a certificate of occupancy as this would give him some registrable interest in the land. In order to do this he must obtain the consent of the lineage head. His difficulties, however, do not end there, for he is faced with the further question whether he should pay rent on land which he previously enjoyed rent free under customary law. No less difficult is the question of reversion, for under the rules governing all statutory rights of occupancy, the land must revert to the Government. An even wider problem is the whole question of registration of certificates of occupancy under section 10 of the Land Registration Ordinance. He is bound whether the certificate of occupancy is in his favour or in favour of a non-native to register it. This confronts him with the problem of having to delimit and register a piece of land forming part of a larger piece which is itself unregistered.[50]

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50. Another facet to this problem concerns the issue of temporary certificates of occupancy. These have been mostly issued to Nigerians. Since they are not registrable the only protection of a holder of a temporary certificate of occupancy is any development effected on the land. Such property sometimes changes hands undetected because of the want of registration. This can cause difficulty. For instance, there has been some difficulty particularly in Kumba involving Nigerians who, after getting a temporary certificate of occupancy, carry out certain developments on the land and then purport to transfer titles by way of subleasing to others. The irregularities with regard to such subleases can also be found among Cameroonians. See the Inglis Commission of Inquiry Report 1967, Chapter 3. op. cit.

The fifth question is one of definition. Who is a native? The Ordinance defines native as " a person whose parents are members of any tribe or tribes indigenous to the Federal Republic of Cameroon and the descendants of such persons and includes a person one of whose parents was a member of such tribe". According to this definition, a Nigerian with a Cameroonian mother can claim to be a native in the mothers village of origin just as a man from Garoua can claim to be a native of Buea. This, of course, does not happen in practice. Therefore, while the definition of " native" may be useful for a nationality code, it is obviously not very helpful for the purpose of the Land and Native Rights Ordinance. It has been suggested that some of these problems can be overcome by introducing a system of registration of customary rights of occupancy perhaps based on the model of the régime de l'immatriculation in East Cameroon to which we will return later. Even this will not bring all the natives to the land registry. The system was introduced in East Cameroon in 1932 and by the end of 1955 only about 2,120 people had taken out land certificates.[51]

Finally, there are difficulties of interpreting the Land and Native Rights Ordinance. Section 11 of the Ordinance is one of the sections which is very often misinterpreted. The section provides that "except as may be otherwise provided by the regulations in relation to native occupiers, it shall not be lawful for any occupier to alienate his right of occupancy or any part thereof by sale, mortgage, transfer of possession, sublease or

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51. United Nations Trusteeship Council Report of the Committee on Rural Development, U.N. Document T/A.C. 36/L61. p.69.

bequest or otherwise howsoever without the consent of the Honourable Prime Minister." This has been interpreted to mean that one must, in all cases take out a certificate of occupancy first before any alienation. The result of this has been that there have been a number of cases where the consent of the Prime Minister had not been obtained before the holder of a certificate of occupancy had subleased his plot".[52] Indeed, this was one of the terms of reference of the Commission of Inquiry into the West Cameroon Department of Land and Survey.

These difficulties which are by no means exhaustive, face those who are charged with the responsibility of land administration in West Cameroon. In 1963, the West Cameroon Government drew up various proposals for land reform. These were probably based on the ground that until the Federal Government assumed its responsibility for land matters under Article 6(1)(b) of the Federal Constitution, they were still entitled to pass land legislation. Briefly, the proposals were not intended to interfere with customary land tenure without proper study and research. Even after such research any legislation that might ensue would be limited to matters which could not be satisfactorily dealt with by local authorities. In this connection local authorities were to be encouraged to institute land registration. The central Government, on its part, was going to pass legislation discouraging the fragmentation of holdings. One way of doing this was to create Settlement Schemes which would remove the strain from

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52. Report of the Inglis Commission of Inquiry into the Affairs of the West Cameroon Department of Land and Surveys. 1967.

overcrowded areas. It would also be the policy of the Government not to acquire any more native land, but to devote its energy torwards developing those already acquired. Local authorities were also to be encouraged to develop planned lay outs. Also on the cards were plans to regularise the acquisition of land by foreigners and to set up a separate system of courts[53] to deal with land matters.[54]

These proposals were never implemented. The reasons for this are not easily apparent. Nor can it be because of the Federal Governmeht's power over land as contained in Article 6(1)(b) of the Federal Constitution, for East Cameroon, around the same time, passed very important laws relating to land which are likely to influence any future Federal legislation on land. Indeed, the Federal Government proposals in connection with land which are put forward in the Second Five Development Plan follow [illegible] much the same lines as the legislation in East Cameroon. We shall, however, return to this later. For now we must turn to a consideration of land law in East Cameroon.

Customary Land Law in East Cameroon

This section on customary land law in East Cameroon is included just for purposes of completeness. The general observations which we made above about customary land law in West Cameroon would hold good for the East.

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53. At the moment all land matters fall within the jurisdiction of the customary courts while Inter-Community Boundary disputes are settled by Boundary Tribunals set up under the Inter-Community Boundary Settlement Law 1962. West Cameroon Gazette No. 54 Vol. II of 15th September 1962.

54. These proposals were meant for publication in a West Cameroon Brochure. See Land and Survey File No. L.8/68.

One difference, however, is that in East Cameroon, unlike the West where there are only the acephalous and centralized societies, we also have the small segmented societies as we saw in chapter I. These are represented by the pygmies who live in the South-East of the country. Their numbers are small and their preoccupation is not with the ownership of land as is the case with the Bantu speaking people who surround them, but with freedom to hunt and to benefit from the produce of the forest and the land.

The Bantu speaking people who inhabit most of the forest region in the East are, like their West Cameroon counterparts acephalous in nature. This means that they exercise more freedom over the ownership of land than the centralized societies. Among the Boulou, for instance, a person would be regarded as the absolute owner of land which he has reclaimed from the forests.[55] This land would, of course, be reclaimed from the general lands of the collectivity. It is on this that the initial right to reclaim the land is based. It is not unlikely that the early introduction of a registration system first by the Germans and then by the French in 1932 played a big part in the idea of absolute ownership.

As one moves away from the forest area towards the north one comes across the centralized Bamiléké.[56] Here, as in the Bamenda chiefdoms, the land is owned by the collectivity. They and they alone are the proprietors.

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55. Binet, J. Droit Foncier, Coutumier au Cameroon. Extrait du "Monde Non Chretien" No. 18. Paris 1951 p.5.

56. Ibid pp. 7-10.
Kanga, V. J-C. Droit Contumier Bamiléké au contact des Europeans op.cit. pp.127-135.

The chief manages the land for the benefit of everybody. Individual families are allocated land for the purpose of farming. This is done in most cases on the basis of need. Unallocated land remains the joint property of everyone. Joint property also includes the hunting grounds, the sacred shrines, the rivers, public places such as race tracks and market places, open grassfields as well as the shaded patches of forest areas. Next door to the Bamiléké and having a similar system of customary land tenure are the Foumban people of the Tikar group.

In North Cameroon, there are two types of people. In the first place there are those living in the mountainous Mandara area. Most of them fled to these areas during the Fulani invasions and have remained there ever since. Theoretically the land belongs to the people collectively, although in practice individual families have specific tracks of land which have descended from generation to generation. Such tracks were first acquired by clearing part of the land of the collectivity and putting it into cultivation. Secondly, there are Fulanis who not only introduced the religion of Islam in North Cameroon, but are also responsible for the introduction of the feudal system of tenure, by means of which the absolute ownership of land passed into the hands of the Lamidos who were the leaders and feudal superiors of the people. The people were, however, allowed the use of the land in consideration of certain services to the feudal overlords. This has continued to dominate land tenure in the north.[57]

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57. Bimet; op.cit. pp.12-13.

Introduction of Western ideas of Land Tenure in East Cameroon

We have already adverted to the fact of the arrival of the Germans in Cameroon and their bid to acquire as much land as possible for as little consideration as possible.

The defeat of the Germans during the first World War opened the gates of Cameroon to the British and the French. As we have seen, the French received the lion's share in the partition which followed the allied occupation of Cameroon. The arrangements which followed the 1919 Peace Treaty of Versailles did no more than give Britain and France a carte blanche to administer their sectors of Cameroon subject only to the terms of the Mandate Agreement.

The first French act was the passage of a sequestration law in 1919. This law laid down the conditions under which the Government was to deal with German property.[58] This was followed by another decree of 1920 which laid down the specific procedure to be used in Cameroon and Togo. The procedure was that an Administrator/Sequestrator would be appointed to sell all German property at a public auction, with the state retaining the right of pre-emption. The result of the auction sales was that a large number of the properties sold was either acquired by the state in the exercise of its right of pre-emption or by French men. Buell records that out of a total of 362 different properties sold at public auctions, government exercised its right of pre-emption in acquiring 107 while French men acquired 132 as against 40 which went to English men and 29 to Cameroon nationals. Quite apart from this obvious advantage of the right of pre-emption, the Government

58. Buell. The Native Problem in Africa, op.cit. p.294.

had the added advantage that it could acquire property for the nominal amount of one franc.[59] In this way a large proportion of German property either passed to the Government which France established in the Mandated territory or to French people. It is arguable that the French would still have acquired the property even without the auctions for their attitude was that as heirs of the Germans, they (the French) were entitled to all German property in the territory. At least this was the argument which was put forward in connection with the Douala land[60] an argument not unlike that put forward by the English.

Having disposed of the German lands which were only a small portion of the French Cameroons and which were limited to Southern part of the territory, the French then proceeded to pass legislation covering all land in the territory.

The first legislation in this respect was the decree of 11th August 1920,[61] which laid down the land policy for Togo and Cameroon. This decree which was effected, in Cameroon by an Arrêté of 15th September, 1921[62] divided all land in Cameroom into four categories namely,

(1) lands held under German titles;

(2) lands occupied according to native law and custom but for which no written title existed;

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59. Buell: The Native Problem in Africa Volume II, op.cit. Chapter 77 passim .
60. Ibid p.342.
61. Buell, Vol. II op.cit. p.393, Appendix XXXIII for French text of the decree.
62. Ibid, pp.394-409.

(3) lands situated around villages on which natives cultivate crops, pick produce necessary for their existence and pasture their flocks but on which they have only a right of usage and not of property, and

(4) terrains vacants et sans maître.

With perhaps the exception of the lands held under German titles, it is difficult to justify the other categories, particularly in the light of the fact that all land belongs to the people - a fact which was well known to the French. Indeed, a leading French writer and administrator, writing about the French Sudan concluded that:

> "there is not an inch of land without a master, not an inch over which a proprietor and the greater part of the time an occupier, does not make his right prevail."
>
> "Upon this point, peoples of the north and south, both sedentary and nomadic, are all in agreement, and this is undoubtedly why the Moslems themselves adopt the rule of the Maliki law, which admits up to a certain point that vacant land can be sans maître. Moreover, all the natives of the Sudan are unanimous in admitting that, if the chief of the political unit is the proprietor of the natives soil, it is only as the administrator of the territory and the legal representative of the group to which in the last analysis all the rights to the soil belong. Thus, among the Moslems as well as among the animists, the chief can cede no lands on his own authority, except those which he exploits himself and which constitute in a sense his private property."

> "From the native point of view, it is therefore illegal on the part of the authority to consider any land however small as domain of the French State, and to grant concessions either to companies or to individuals. . . . If it is a question of granting an agricultural, mining, or forest concession over a certain area, the colony or the French State cannot do so without violating the traditional rights of the native, unless a preliminary agreement is made with the proprietors or occupiers of the land".[63]

This passage, besides summarising the basis of customary tenure, leaves us in no doubt that the division of the land in Cameroon into four categories was not in the interest of the natives but that of the French.

The idea of terrains vacants et sans maître which obviously came from the French Civil Code[64] was not unlike the German idea of herrenlos to which reference has already been made, which was used as a means of enabling the Government to acquire native land. It has been suggested that these categories were introduced in order to enable the French Government to grant large concessions to French companies as fertile land was already running short in neighbouring French Equatorial Africa.[65]

The hasty promulgation of the decree of 11th August 1920, and the Arrêté of 15th September, 1921, so soon after the Versailles Treaty of 1919 cannot but give some credibility to these suggestions, for at this time

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63. Buell Volume I op.cit. pp.1021-1022. The author was quoting from M.Delafosse Haut Sénégal - Niger Volume III pp.14-15.

64. The relevant articles are 539 and 713. Article 539. "All property which is vacant or is without an owner, and that of persons who die without heirs or whose successions are abandoned, belong to the public domain".
Article 713: "Things which have no owner belong to the State".

65. Buell. Vol.II op.cit. pp.335-338.

France's right over Cameroon had not yet received the blessings of the League of Nations. When this was given on 20th July 1922, in the form of the Mandate for French Cameroons it was specifically provided by Article 5, like Article 6 of the British Mandate for Cameroons that:

> "in framing the laws relating to the holding and transfer of land the Mandatory shall take into consideration native laws and customs, and shall respect the rights and safeguard the interests of the native population.
>
> No native land may be transferred, except between natives, without the previous consent of the public authorities, and no real rights over native land in favour of non-natives may be created except with the same consent.
>
> The Mandatory will promulgate strict regulations against usury".

Under these circumstances it would seem that the legislation of 1920 and 1921 which was perhaps promulgated in anticipation of the Mandate provisions was quite contrary to the general purpose and intendment of the Mandate system and ought to have been amended once the Mabdate was signed. Indeed, a member of the Permanent Mandates Commission pointed out in 1923 that under the Mandate system, the land which by the 1920 legislation was designated as state land, and which therefore belonged to the French Government, should in fact belong to the local territory. This criticism resulted in the amendment of the legislation with regard to Togo, but not Cameroon,[66] presumably because the demands for land in Togo were not as great as in Cameroon.

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66. Buell, Vol.II op.cit. pp.337-338.

This attitude of the French Government not only indicated beyond all doubt that the land legislation had come to stay, but also tended to confirm once more the suggestion that the French Government wanted land in Cameroon to make up for the shortage in French Equatorial Africa. Most future legislation was therefore destined to follow the path mapped out.

The first such legislation came in 1927,[67] when a decree already in force in French Equatorial Africa was extended to the Cameroons. This attempted to lay down a mode of ascertaining and establishing customary rights in land. This idea was carried forward and perfected in another decree of 21st July 1932.[68] These decrees were, of course, based on the assumption that, in order to be valid, all titles to land must be written. This was obviously contrary to customary land tenure, so an attempt was made to help the natives either as individuals or collectively through chiefs to ascertain their rights over land. The procedure, known as constatation, was as follows: any one wanting to have his customary rights ascertained and recognised had first of all to address a request to that effect to the head of the division. Such a request was accompanied by a plan of the land in question as well as certain vital information about the applicant such as his age, his occupation, domicile, place of birth, filiation and family status. Then a day was fixed for a public inquiry during which the administrative head of the sub-division consulted with individuals as well as the local chiefs and notables of the area and any adjacent areas

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67. J.O.C. 1927 p. 522.

68. J.O.C. 1932 p.618.
Codes et lois du Cameroon Tome IV pp.45-47.

which might be interested. The consultation centred on an investigation of the local customs. The applicant could be challenged by any interested party. If any such challenge resulted in a dispute, the usual practice was to submit to the appropriate local tribunal for adjudication. The record of the proceedings, including the results of the adjudication, where there is one, is then signed and witnessed by the participants. Where the rights of the applicant are established, he is issued with a document of title known as the livret foncier. This document entitles him either to alienate the land in question or to encumber it in any way he likes. The same procedure is followed in ascertaining the title of a village or the group, the only difference being that they must act through a chief or headman.

This decree establishing the constatation procedure was meant to work hand in hand with another decree of the same date[69] establishing a system of immatriculation (registration of title to land) in Cameroon. There followed in 1934,[70] an arrêté relating to the application of this decree.

Briefly, this decree, which got a good deal of its inspiration from the Torrens System,[71] provided registration facilities for all those who

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69. Decree of 21st July,1932 establishing a system of registration of titles to land J.O.C.1934 p.230. Codes et Lois du Cameroun Tome IV pp.57-78.
70. Arrêté of 24th March,1934,J.O.C. 1934 p.256. Codes et Lois du Cameroun Tome IV pp.78-85.
71. The Torrens System was introduced in Australia in 1858 by Sir Robert Torrens in an effort to simplify the complicated land tenure system in Australia then. The procedure is "designed to ensure that every person interested has the right to establish his claim and obtain the interest under the scheme comparable to that which he had under the general law". This is done by the registration of certain paramount interests in land. See Jackson D.C. Principles of Property Law. Australia. The Law Book Company Ltd. 1967 p.97 note 2.

had a livret foncier. Although registration was optional, it gave the holder of a title security and thus enabled him more easily to raise loans on the security of his registered title. Indeed, in recommending the system to the Lomé Council of Notables, the Governor said that si vous désirez avoir de l'argent, il faut immatriculer vos terrains; vous pourrez ainsi obtenir des avances de la banques .[72] The result of immatriculation was that it removed the land from customary tenure and brought it under the rules of French Civil law[73] a move quite different from what has been followed in some Commonwealth African countries. For instance, under the Mailo system in Uganda[74] or the recent Registered Land Ordinance of Kenya,[75] the incidents of customary tenure have been retained in all cases of registered land.

Both constatation and immatriculation were, however, regarded as steps in the direction of the ultimate goal of voluntary individualization of title.

The two decrees of 1932 were followed by another of 12th January 1938[76] but this time, instead of dealing with the problem of individualization of title, it dealt with the problem of state lands (terres domanialles).

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72. Hailey, An African Survey, op.cit. p.797.

73. Mifsud, F.M. Customary Land Law in Africa with reference to legislation aimed at adjusting customary tenures to the needs of development. F.A.O. Legislative Series No.7. F.A.O. Rome 1967. pp.30-32.

74. Morris and Read, Uganda: The Development of its Laws and Constitution op.cit p.348.

75. Registered Land Ordinance of Kenya,1963.

76. J.O.C. 1938 p. 930.
Codes et Lois du Cameroun Tome IV pp.12-15.

We saw above that the French Government treated the lands declared by the decree of 11th August 1920, as ownerless, and therefore belonging to the State. The decree of 1938 carried this further by providing not only that all terrains vacants would be treated as state land, but also that lands which were not covered by regular titles of ownership or use or which had not been exploited or occupied for more than ten years would form part of the territorial domain. Indeed, only land which was owned or possessed under the Civil Code or the decrees of 1932 were exempt.

Lands acquired by the State in this way could be used for public purposes or given out by way of concessions to private persons.

We cannot over emphasize a point which has already been made, namely, that the concept of vacant and ownerless land was unknown in customary tenure. Therefore, the only interpretation is that the whole idea was no more than a desire of the French Administration to ride roughshod of native opinion. The administration, however, did try to cloak this with a semblance of legality. This was done by giving publicity to the desire to declare these lands as state property.[77]

The machinery of publicity set up was obviously an implicit recognition of the fact that the natives had an interest in the land which was being declared State land - quite contrary to the notion of terrains vacants et sans maître. Quite apart from this decree, there were other laws which provided for the acquisition of land already owned or occupied if such land was needed for public purposes.[78] Only public authorities could acquire

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77. United Nations Trusteeship Council Report on Rural Development. Summary of Population land utilization and land tenure in Cameroon under French Administration. United Nations Document T/AC.36/L.61 p.70.

78. Decree of 10th July,1922 J.O.C 1922 p.246 and that of 12th October 1938.

land in this way, subject, of course, to the payment of compensation.

Predictably, the people of Cameroon, through their representatives protested against the notion of vacant and ownerless land. These protests did not go unheeded, for in the land legislation of 1959,[79] the notion of ownerless land was abolished. Once more the customary rights of the natives were confirmed. Thus under the 1959 law, land in Cameroon was either held under customary law, or under state and private ownership or subject to the system of immatriculation.[80]

This legislation was, however, destined to be short-lived, for shortly after independence it was thought not to be in the national interest because, not only was it likely to impair the implementation of the development projects in the rural areas by making it difficult to acquire needed development land, but it could also perpetuate tribalism by inflaming feelings against Cameroonians from other ethnic groups.

The result was the promulgation of another law in 1963.[81] This law when it comes into effect, will be the main law governing land tenure in East Cameroon.[82] It divides all land in East Cameroon into four categories, namely,

(1) Lands held by individuals and communities under customary tenure,

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79. Act No. 59-47 of 17th June,1959. J.O.C. 1959 p.876.

80. Melone S, La Parenté et la terre dans le stratégie du developpement L'example du sud-Cameroun. Thèse pour le Doctorat en Droit. Université de Paris 1968 pp.227-228.

81. Décret-Loi No.63 - 2 of 9th January,1963. Journal Officiel de l'Etat du Cameroun Oriental (J.O.E.F.C.O) of January 15th 1963. p31
Salacuse J.W. An Introduction to the law in French-speaking Africa Vol.I Africa South of the Sahara. Michie Company Law Publishers: Charlottesville, Virgina 1969, pp.287-288.

82. Mifsud. op.cit. pp72-74 at p.74.

(2) Private or public lands held by the state or local authorities,

(3) Lands privately owned, and

(4) the national collective heritage or patrimony (patrimoine collectif national).

Land deemed to be held by individuals or communities under customary tenures includes areas actually occupied and those necessary for fallow and grazing purposes as well as areas deemed necessary for subsequent crop development having regard to demographic changes. It is hoped in this way to limit customary tenure to the immediate and future needs of the people. The manner of determining such areas will form the subject of a future decree.[83] Such a decree would presumably be based on a study of customary law. Such a study, though intended to help in delimiting the areas under customary law, would also help to unify them.

State lands which form the second category as we have seen are either private or public. Public state lands are further sub-divided into natural and artificial public domains. The natural public domain comprises the maritime public domain and the fluvial public domain. The former consists mainly of the shores of the sea up to the highest tide limits as well as the banks and mouths of waterways up to the same limits, while the latter consists of waterways and their beds, lakes, pools and lagoons. The artificial public domain, on the other hand, consists of all the means of circulation such as ports, railways, telegraph and telephone lines, public utility works and military installations, to mention a few.

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83. Article 3 of décret - loi No. 63 - 2 of 9th January 1963.

The private domain includes land held by the state either under a regular title or by acquisition or other private agreement.[84]

Thirdly, there are the privately owned lands which can either be acquired under the rules of the Civil Code or through the system of registration.

Finally, the national collective patrimony is an innovation of the new law. This category extends to all land not included in any of the three categories above. It corresponds roughly to what was previously referred to as terrains vacants et sans maître.[85] The state is responsible for the management of the national collective patrimony. In this connection, the national collective patrimony may be distributed under conditions to be laid down by a separate decree. The state may also expropriate some national collective patrimony for inclusion into its private domain. The communities, however, retain their traditional rights of hunting, harvesting use as parks, access routes, grazing and transit of livestock over such lands provided the exercise of such rights are not inconsistent with the use to which the state intends to put the land.[86]

The creation of the national collective patrimony obviously means that the area over which the communities exercise their rights has been curtailed. This was effected by Act No.63-COR-6 of 3rd July,1963.[87]

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84. See Article 9-20 of above decree. This division of State property corresponds roughly to the situation in French law. See Amos and Walton op.cit. pp91-92.

85. Jouhand, Yves. La notion du domain patrimoine collectif national dans les nouvelles législation du Sénégal et du Cameroun.Essai synthèse entre le droit foncier coutumier et le droit foncier moderne,Revue Juridique et Politique 1966 p.30-52 at p.46. Meloné op.cit. pp 227-228.

86. Articles 26-27 of décret-loi No.63 - 2 - of 9th January 1963.

87. J.O.E. F.C.O. 1963 (Supplementary).

A feature of the national collective patrimony is, that it can, like vacant ownerless land, be acquired by the State. Indeed, part of the philosophy behind the creation of this category is to enable the state to have some land which it can redistribute in the interest of social and economic development. This is, of course, subsumed under the general policy of gradually individualizing all titles to land.[88] This would be done by encouraging all those enjoying a customary tenure to register their land under the registration system.[89]

The national collective patrimony will also be used for purposes of resettlement and redistribution of population. Plans for resettlement had already been thought of in the case of North Cameroon where it was hoped to resettle people from the highly populated mountain areas on the plains. It is not unlikely that the problem of resettlement may also be considered in other thickly populated areas such as the Western or Central Regions of East Cameroon. Quite apart from resettlement needs, land may also be needed for purposes of making concessions to entrepreneurs.[90]

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88. Mifsud, F.M. op.cit. pp.72-74.

89. Decree No.66-307-COR of 25th November 1966. J.O.E.F.C.O of 1st December 1966 p.72. This decree lays down the provisions for registration while an Arrêté No.670 Bis of 30th November, 1966 lays down the procedure to be followed by any member of the collectivity who seeks registration under decree No.66-307-COR.

90. A decree No.64-10-COR of 30th January 1964 lays down rules for distributing the national collective patrimony. On the whole, the rules are similar to those which govern concessions from private State lands. It is however, expressly stated that attribution of any land belonging to national collective heritage shall be effected solely by concession.
See J.O.E.F.CO. of February 1964. Supplementary Issue p.4.

The new legislation on land tenure therefore attempts to blend customary land law with ideas of individual tenure, the predominant purpose for this being social and economic development. Whether these imaginative and, on the whole fair proposals work, is a matter which we cannot say at this stage. It seems, however, that given time and the co-operation of all concerned, there is more than an even chance that the plan will succeed. At least, it seems to be fair to all sectors of the community.

These proposals were, of course, made by the legislature of East Cameroon and affect only that State - which cannot legislate on land matters for the whole Federation because Article 6 (1) (b) of the Federal Constitution provides that the law of persons and property shall be the responsibility of the Federal Government. The question which then arises is what the Federal Government is going to do when it assumes its constitutional responsibility over land. To that question we must now turn.

Federal Government Plans for Land Legislation

In the Second Five Year Development Plan, the Federal Government made certain proposals with regard to land reform which provide that:

> "the harmonization of the land tenure and State land systems on the Federation level should take place during the second plan. This harmonization must take due account of the main currents of rural evolution".[91]

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91. See Second Five Year Development Plan p. 93 ff. particularly para. 2.143.

One aspect of this evolution which we saw above is the gradual progress in the direction of individualization of titles. This is aided in the East by the system of immatriculation while in the West there has been an upward trend in the acquisition of statutory rights of occupancy which is the greatest right an individual can acquire in land under the present laws. Such evolution, of course, has its consequences. There has been evidence of speculation in land in West Cameroon recently.[92] There is also great potential for speculation in the East Cameroon system.

The Federal Government is not unaware of this, for it has planned to combat the situation by defining the nature of communal land and laying down rules which will ensure that there is a smooth passage from communal to individual tenure. In this way the customs of old will be transformed into new forms of ownership which should promote effective development.

This evolution is important because it gives guarantees not only to farmers who invest their money, but also to any financial organisation which might assist them.

In working out its land policy, the government also hopes to ensure that all areas of potential conflict are smoothed out. For instance, in areas where stock-farming and crop-raising take place on the same land, such as in the grassfield areas of West Cameroon or some divisions of the Federal Inspectorate of North Cameroon, there shall be an agricultural-stock-farming zoning.

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92. Report of the Inglis Commission of Inquiry into the affairs of the West Cameroon Department of Land and Surveys 1967 passim.

The national collective heritage will also answer the great need for development land envisaged in the Second Five Year Development Plan. Such developments as the Logone rice plantations, the resettlement schemes in the north to which reference has already been made, the Yabassi - Bafang project, to mention just a few, will need large stretches of land. This is not to ignore the possibility of demand for land by concessionaires.

Since the Second Five Year Plan is now in its closing stages, it seems that most of these proposals will not be carried out, but it is probable that they will, subject to revision, be carried into the Third Five Year Plan. Thus, in so far as the Federal Government's responsibility in connection with land is concerned, we have only proposals which have yet to be effected, but these proposals are a useful pointer to the direction of any future Federal Government land legislation.

Conclusion

We have attempted in the pages above to do no more than trace a structural development of land legislation in Cameroon. In lots of ways, the old order has changed yielding place to new, particularly in East Cameroon where there has been a major land reform programme which has been described as "one of the most comprehensive undertaken in Africa in recent years".[93] This comprehensive programme is the result of several years of legislative experience in land legislation in East Cameroon.

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93. Mifsud. op.cit. p. 72.

West Cameroon, on the other hand, has had precious little experience in this connection. Indeed, the only legislation of any importance is the Land and Native Rights Ordinance which has survived, albeit with some amendments, till today. The indifference, even timidity of those who have been responsible for land matters in West Cameroon has meant that land tenure developments have lagged behind those in the East. Here we are not only restricting our comments to the pre-independence period, but also to the post-independence. After all, were not the major land proposals in East Cameroon made as recently as 1963?

The result is that we are faced with a situation where the land reform programme in East Cameroon is going to be extended to the West. At least, one gets this indication from the proposals of the Federal Government as contained in the Second Five Year Development Plan.

Theoretically, "the authorities of the Federated States may continue to enact laws and to direct the corresponding administrative services until such time as the Federal National Assembly or the President of the Federal Republic as the case may be, shall decide to exercise the powers vested in them respectively."[94] It was on this basis that East Cameroon effected her legislative programme, but it is doubtful now, in the light of the Federal proposals, whether any of the States can effect any major changes in the land law.

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94. Article 6 of the Constitution of The Federal Republic of Cameroon.

Perhaps as a postscript, one final remark must be made. It strikes one as odd that an important subject such as land does not figure in the curriculum of the Faculty of Laws of the Federal University of Cameroon. It would seem that lawyers with a sound knowledge of land law in Cameroon will be needed if the massive programme with regard to land reform is to be carried through.

# CHAPTER XI

# FAMILY LAW

## MARRIAGE

### Customary Law of Marriage in Cameroon

In this section, we shall be concerned with a general discussion of the customary law of marriage.

Although there has been great change in western attitudes towards customary marriages, to many a Westerner, it still remains what it was to Chief Justice Hamilton who said in the old Kenya case of R. v. Amkeyo[1] that:

> "in my opinion the use of the word marriage to describe the relationship entered into by an African native with a woman of his tribe according to tribal custom is a misnomer which has led in the past to considerable confusion of ideas.... The elements of a so-called marriage by native custom differ so materially from the ordinary accepted idea of what constitutes a civilized form of marriage that it is difficult to compare the two."

Chief Justice Hamilton was obviously basing his judgment on the dictum of Lord Penzance in Hyde v. Hyde[2] where he said:

> "I conceive that marriage, as understood in Christendom, may for this purpose be defined

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1. [1917] 7 E.A.L.R. 14.
2. [1866] L.R. 1 P. & D. 130 at p. 133.

> as the voluntary union for life of one man and one woman to the exclusion of all others."

Without going into the arguments as to whether Lord Penzance was attempting to give a definition of marriage which would be good for all cases, it seems that this dictum was taken to have sufficiently defined marriage for the purposes of colonial administration in Africa. Because this definition does not cover customary marriages several other attempts have beem nade to define marriage in customary law. One attempt defines it as a:

> "union between a man and a woman in which their relationship to one another is jurally defined and which establishes the legitimacy (i.e. entitlement of full filial rights) of the children born to the woman."[3]

Kanga, on the other hand, defines it as:

> "the acquisition by a man, by means of payment of a sum of money, several goats and sheep, of one or several women who become his exclusive property."[4]

These two definitions do not in any way exhaust the attempts that have been made to define marriage. They are merely representative of

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3. Brain, R.J., Bangwa Kinship and Marriage, University of London, Ph.D. thesis in Anthropology, 1967. The author was relying on a definition by Dr. Kaberry in "Glossary of Anthropological terms for Social Organization - Kinship-mimeographed, Department of Anthropology, University College, London, 1962.

4. Kanga, Le Droit Coutumier Bamiléké, op. cit., p. 93 (our translation).

the two types of people who have attempted these definitions, namely anthropologists and lawyers. The definitions are interesting in several respects. Although they are drawn from works based on West and East Cameroon, they relate to the same ethnic group, namely, the Bamiléké, so they ought to bear some resemblance. Perhaps the difference lies in the fact that marriage as defined here is seen from different points of view. Thus, the first definition which is anthropological in orientation has both legal and moral overtones. Quite apart from that, it does not seem very logical to rely on children who are the result of a legal union to define that union. Further, too much reliance on legitimacy to define marriage in customary law can be misleading because it is not uncommon to find parents, particularly fathers, legitimating children even though there is no subsequent marriage of the parents. The second definition, on the other hand, lays emphasis on that which gives the marriage legal validity, namely, the payment of marriage consideration to which we shall return later. This definition, though slightly more to the point, is deficient in several respects. In the first place it is vague as to the amount of marriage consideration payable. Secondly, it is not clear from the definition whether one payment is sufficient in the case of several wives. Thirdly, it is questionable whether a wife is really regarded as the exclusive property of the husband.

These problems, however, emphasize the fact that it is difficult to

define a customary marriage satisfactorily. Despite this shortcoming, there are certain common characteristics in all customary marriages. These include their potentially polygamous nature, the important part played by the families of both spouses, the formalities and ceremonials connected with it, the payment of marriage consideration, the procreation of children as an essential aim of the marriage, the inferiority of the woman and the general difficulty in securing divorces.[5]

Having made these general observations, it is important to enter the warning that there is no uniform customary law of marriage as this varies according to the different ethnic groups.

Types of Marriages and Marriage Negotiations

As already indicated, marriages vary from ethnic group to ethnic group, but on the whole, two types are distinguishable, namely, the regular and irregular types. This distinction is not everywhere the same, for what may be regarded as an irregular marriage in one ethnic group could be perfectly regular in another. For instance, marriage by elopement is treated as irregular by the Bakweris[6] and Balis[7] while in the Nwa Sub-district in Donga and Mantung Division, it is one of the pre-

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5. Cotran, E. "The Changing Nature of African Marriage" in "Family Law in Asia and Africa", Edited by Anderson, J.N.D., op. cit., pp. 16-20; Binet, J., Le Mariage en Afrique Noire. Foi vivante. Series vie des mission. Les Editions di Cerf, Paris, 1959, pp. 121-122.

6. Rubin, N, Family Law of West Cameroon, Draft Statement of Bakweri Law of Marriage (mimeographed) 1969, p. 10.

7. Rubin, N. Customary Law of Marriage in West Cameroon. Draft Statement of the Bali Law of Marriage (mimeographed) 1969, p. 7.

scribed forms of marriage.

There is, however, one regular way of contracting a marriage for the large majority of ethnic groups in Cameroon. We must now turn to a consideration of the way in which a regular marriage is contracted. In so doing, we shall limit ourselves to an area with which we are most familiar, because this is the area in which we did some field work. The area in question is the Mbem area in Donga and Mantung Division.

A marriage negotiation starts in one of two ways. The first way is for the parents of the boy to chose a future wife for him, and the second is for the boy to make his own choice. Whichever way is adopted, the choice must meet with the consent of the boy's parents. The difficulty with regard to such approval only arises when the boy makes the choice, as it may be rejected by his parents for several reasons. These include reasons such as the fact that the choice comes within the prohibited degrees, or doubts about the chastity of the girl, or the general standing of her family in the community (i.e. whether it has a good reputation with regard to cleanliness, kindness, honesty; whether its food habits are good; and whether it has a bad criminal record.) Also of considerable importance is its record with regard to witchcraft. Once the choice has been accepted by the boy's parents the responsibility to set the ball rolling falls on his father and other male relatives. The first step is to establish some communication with the girl's parents. This is usually

done by the boy and some of his male relatives taking some palm wine to them. On arrival at the house of the girl's parents, they are promptly asked by her father or guardian to declare the purpose of the visit. Thereupon, one of the boy's relatives explains that they have come to seek the hand of the girl in question. The girl is then asked for her comments by her father. The normal practice is that if the girl likes the boy in question she will open the calabash of palm wine and take the first cup and share it with her father. This, however, never happens at the first of such meetings. The reason for this is twofold. In the first place, the girl does not want to be seen to be too anxious to give her consent and secondly, the parents would normally need some time to talk it over with other relatives. During such time, they use very much the same criteria as was used by the boy's parents in arriving at a conclusion as to whether or not they should give their daughter away in marriage to the boy. After a period of between 2 and 4 weeks, the boy and relatives make a repeat journey to the parents of the girl. The timing of this repeat journey is important as a great lapse between the first and second, or indeed any subsequent visit, may be construed to show a lack of enthusiasm. On the second visit, the girl's parents once more shift the burden of acceptance of the proposal to her. She may, at this stage, indicate her acceptance by sharing the first cup of palm wine with her father. It is not, however, uncommon to find cases where

the girl indicates her acceptance after several visits. Indeed, sometimes this is done in order to test the extent of the boy's love for her. When the girl does finally accept the hand of the boy, they are then deemed to be formally betrothed.

So far we have described the situation in which the boy and the girl have a big say in what happens. This is not always the case. Indeed, in a large number of cases, the arrangements are the responsibility of the parents of both future spouses who may sometimes be kept in the dark until a marriage has actually been concluded. In such a case, they are presented with a fait accompli which they must accept because it is part of the responsibility of their parents to see that their children are happily married.

This practice is now fast changing, for the boy and the girl are now tending to have an increasing say in their marriage. They can now, contrary to the wishes of their parents, contract a marriage under the Marriage Ordinance,[8] provided they are of age. This change has been due largely to the introduction of Western ideas through various religious organizations, the influence of commerce, and the attitude of the colonial governments which tended to discourage customary marriages.

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8. Cap. 115 of the 1958 Laws of Nigeria.

Having considered the regular marital negotiations above, we must now make some passing comments on elopement which has been referred to as an irregular type of marriage. As we have already indicated, elopement is one of the prescribed forms of marriage in some areas. Thus, we are considering it as such, and not merely as an exception to the regular type.

An elopement involves the cohabitation by a man and a woman without any of the negotiations which we have referred to above. The place of cohabitation usually depends on the reasons for elopement. There are two main reasons. In the first place, this is the only way in which the boy and the girl can present their parents with a fait accompli, particularly where they are both not of age and their parents object to the marriage. In such a case, both the boy and the girl leave their parental homes, and cohabit somewhere else. If such cohabitation produces children, the parents may change their minds. This has indeed happened in the case of several relatives of the present author. If, on the other hand, only the parents of the girl object to the case, which is the usual thing as the reverse hardly ever happens, the two may cohabit at the home of the boy's parents. In such a case, the girl's parents may bring an action for forceful detention of their daughter before the Chief's court. Such actions, even if successful, are usually difficult to enforce.

Indeed, there have been cases where the girl has been forceably returned to her parents and each time she has run away with the boy until the parents have had in the end to acquiesce. The second reason for elopement is that it shortens the otherwise long and protracted marital negotiations. Indeed, a successful elopement operates to exclude almost every negotiation antecedent to the payment of marriage consideration.

A third type of marriage, namely, widow inheritance may also be mentioned here. Widow inheritance is one of the options open to the wife of a deceased by means of which she becomes a wife of one of the members of her deceased husband's lineage. The other alternatives open to the widow are either to return to her own lineage or to remain as widow in the husband's lineage, subject of course to the guardianship of her late husband's successor. Only old women choose the last alternative. The vase majority of widows choose the option of widow inheritance because a return to their lineage may raise the question of the refund of marriage consideration. These alternatives are, of course, open to each wife individually if the deceased had more than one wife.

Capacity to Marry

Capacity to marry depends on two factors, namely, the capacity of the individual to marry personally and the capacity of the spouses to marry each other.

In as far as individual capacity is concerned, there are few bars. Every one who has reached the age of puberty may contract a marriage. A boy is said to have reached the age of puberty when the voice breaks and some hair begins to grow under the armpit and other parts of the body. These physiological changes must be matched by physical strength and a sense of responsibility as these are important if the boy is to be entrusted with the responsibility of caring for a family. With regard to the girl, menstruation, the growth of hair under the armpit and the development of the bust are sure signs of puberty.

With regard to the capacity of both spouses to marry each other, this is determined by the degrees of relationship. No boy or girl may marry any one in the direct ascending or descending order. This prohibition is absolute, as indeed is that against marriage in the collateral line. There are also certain affinity bars. For instance a man may not marry his wife's sister.[9] Deformities whether physical or not are no bars to a marriage, but if a future husband has only one arm, and therefore incapable of performing the manual duties of a husband efficiently, this may make it more difficult for him to find a wife readily. As a general rule, sickness is no bar to a marriage, but a cripling disease like leprosy may constitute a bar.

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9. Compare the Ewondo custom where a man can marry two sisters.

Constant feuds between two families are a bar to marriage between such families. A bar of this nature may be lifted by performing the accepted ceremonies and offerings aimed at restoring harmony.

Betrothal

As we saw above, this occurs when the girl gives her consent to marry the boy. This is now almost the only way of doing it as the once prevalent custom of child betrothal has now almost completely passed into desuetude.

Once the boy and girl are legally betrothed, the boy works on all sorts of projects, such as house building, farming and fetching wood for his future parents-in-law even as Jacob worked for Laban for the hand of Rachel.[10] In addition to such work he must give presents not only to his future wife and parents-in-law but also to their relatives. These services are considered important, so failure to perform them may result in the termination of betrothal. They may now be commuted for cash payments.

Betrothal is terminated by the consumation of the marriage, or by the death of either of the parties or by a unilateral act of one, or

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10. Genesis 29, verses 15 - 20.

mutual decision of both parties to terminate it. Before we deal with the consumation of the marriage a few passing remarks must be made about the other ways of terminating betrothal.

Where betrothal is terminated by death, certain incidents follow. Where death is that of the girl, the suitor may do one of three things. He may treat death as an act of God and forget about the whole matter, or he may demand the return of certain valuable presents as well as compensation for work done, or he may accept another girl from the family of the deceased girl, provided that the other girl is agreeable. Where the boy dies, the options are much the same. His parents may find someone to step into his shoes, or ask for a refund of all valuables or treat the whole matter as an act of God. It seems, however, that in both these cases, the return of the valuables is a matter for negotiation for, although theoretically there is a right of action at customary law, it is hardly ever resorted to because of the sorrow caused by the death. An action may more readily be brought if the cause of death is traceable to the family of the deceased. An example of this is where it is suspected that the deceased was killed by witchcraft originating from his or her family. The termination of betrothal by the unilateral action of either party or the mutual decision of both parties is usually discouraged by the parents of both the boy and the girl because they may, depending on who is adjudged guilty, either forfeit what has been spent should

the boy be found to be at fault, or refund what has been spent, and pay for services rendered, should the fault be that of the girl.

The Marriage Ceremonies and Formalities

There are obviously many ceremonies which take place between betrothal and marriage, but we are here only concerned with the one which gives legal validity to the marriage. This is the one at which marriage consideration is paid. The point in time after betrothal at which this ceremony takes place depends on how easily the boy wins the confidence of his prospective parents-in-law and whether the boy and girl are considered responsible enough to start their own life.

When agreement has been reached on this between both families, a day is then fixed when the parents and relatives of the boy will visit those of the girl and pay marriage consideration. Despite the celebrations on such a day, it is the payment of marriage consideration which validates the marriage. This is quite contrary to various ideas which have been put forward about the singificance of marriage consideration. It has been argued that it is:-

(1) Compensation to the woman's family for the loss of one of its members;

(2) Security for the good treatment of the wife;

(3) Part of a transaction where the emphasis is the formation of an alliance between the two families;

(4) Merely a symbol to seal the marriage contract, and

(5) Compensation for the transfer of a woman's reproductive capacity and her issue to the husband's family, hence the argument that bride price is child price.[11]

It is quite possible that these various reasons are valid, perhaps at least with regard to the societies considered in each case, but it remains an overriding reason of marriage consideration that it validates the marriage. Indeed, it has been defined by Professor Allott[12] as what:

> "is given by or on behalf of the bridegroom to the bride."[13]

As this definition says, the responsibility for payment of marriage consideration falls on the parents or guardian or relatives of the bridegroom who himself may, if able, help financially. The responsibility for providing marriage consideration for a second or subsequent wife

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11. See Howell, P.P., A Manual of Nuer Law, International African Institute, Oxford University Press, London, 1954, pp. 71-72. Also see generally Cotran, The Changing Nature of African Marriage, op. cit.

12. Allott, Essays in African Law, op. cit., p. 213.

13. It ought to be mentioned here that in Islamic Law a certain proportion of the marriage consideration (mahar) goes to the bride.

falls on the bridegroom, although he may be assisted by his parents or relatives.

The amount of marriage consideration varies from society to society, as is also the means of payment. In Mbem, which forms part of the society which we are considering, marriage consideration is paid in kind, and this practice is dying harder than it would have been expected. The reason for this is the fear maintained by the old that payments made in cash may be spent, and thus leave nothing which could be used to pay the marriage consideration of younger male members of the lineage. This is based on the old tradition that the lineage is responsible for the payment of marriage consideration in respect of the first wives of its male members. One way of raising money for this purpose is to put aside money received as marriage consideration on behalf of female members of the lineage.[14] What benefit then, one may ask, accrues to the parents of the bride? They benefit not only from the work which the bridegroom does for them, but also from the pre and post marital presents which they receive - presents such as palm wine, palm oil, meat, salt and other food stuffs, and money, clothing or other material goods.

Payment of marriage consideration is made by means of 'shovels', goats and fowls. In the rare occasions when payment is made in cash, this

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14. This practice is common in other parts of Cameroon. See Meloné, La Parenté et la terre dan la Stratégie du Developpement. L'Example du Sud-Cameroun, Thèse, Paris 1968, op. cit., pp. 91-93.

may range between 25,000 francs CFA and 200,000 francs CFA. On the whole, most people pay an average of 50,000 francs CFA.[15]

We have hitherto discussed only the societies where the payment of marriage consideration is essential to validate a marriage. There are, however, societies where such payments are not essential to the validity of a marriage. This is true of most, if not all, of Bui Division in West Cameroon, where, although the parents of the bride may from time to time receive gifts and services throughout her life time, they do not receive any money or material as marriage consideration.[16]

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15. These amounts vary from society to society but they must not exceed the amount that was paid for the girl's mother except perhaps where the girl's utility has been enhanced as a result of the education given her.

For various rates of marriage consideration see Rubin, Draft Statements of Bali Marriage Law, op. cit., p. 14, where marriage consideration ranges between 50,000 and 200,000 francs CFA. Among the Bakweri (See Draft Statement of Bakweri Marriage Law by the same author op. cit., p. 8), the amount ranges from 30,000 francs CFA to 80,000 francs CFA.

Dr. Brain records that among the Bangwa the amount which excludes informal gifts and services may be as much or even more than £175 (i.e. about 120,000 francs CFA). See Bangwa Kinship and Marriage (Thesis) London University 1967, op. cit., pp. 193-206; also see Brain R.J. (Bangwa Western Bamiléké) Marriage Wards 1969, Africa, Journal of the International African Institute, pp. 11-22. With regard to marriage consideration in East Cameroon see generally Mbarga, E., Quelques reflexions sur le projet de la loi réorganisant l'état civil au Cameroun Oriental et portant diverse disposition relative au mariage. Recueil Penant, 1966, pp. 285-302; Binet, Le Mariage en Afrique Noire, op. cit., Chapter III,

16. Ethnographic Survey of Africa (Edited by Daryll Ford), West Africa, Part IX: The Peoples of Central Cameroons (The Tikar, by M. McCullock, The Bamum and Bamiléké by M. Littlewood and the Banem, Bafia, Balom by I. Dugast, London, International African Institute, 1954, p. 45.

Dissolution of Marriage

A marriage may be dissolved either by divorce or by death. The view has been expressed that the dissolution of marriages by divorce is an easy matter. It is, for instance, recorded about the Ndop people that all a man who wishes to get rid of his wife need do is to send her back to her father's house where she must stay until she finds another man who then refunds the marriage consideration to the former husband.[17] This, with respect, is a totally wrong view of the situation, for quite apart from the fact that divorce was rare, the procedure for obtaining it was long, and complicated.[18] Indeed, it is argued elsewhere that divorce was unknown among the people of Douala where the father's parting exhortation to his daughter was that she should remain in her husband's family till death.[19]

Divorce proceedings out of court are often started by the wife running away to her parents. This may happen as a result of her own initiative or on instigation by her husband or, in rare cases, on instigation by her parents. This last case usually happens when the

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17. Drummond-Hay, Assessment Report of the Bandop (Ndop), op. cit.; Binet, Le Mariage en Afrique Noire, op. cit., Chapter IV passim.
18. Cotran, The Changing Nature of African Marriage, op. cit., pp. 19-20.
19. Doumbé-Moulongo, L'Evolution des coutumes et le Droit, op. cit., pp. 71-72.

husband has shown consistent disrespect for the parents-in-law, while the other two may be the result of consistent disagreement between husband and wife.

Whoever instigates it, this running away of the wife to her parents normally sets in motion the machinery of reconciliation. The first move to reconcile husband and wife is made by both their parents to whom reconciliation is important because it prevents the problems about the uncertainty of the future of the children of the marriage and the whole question of the return of marriage consideration. If the attempt at reconciliation succeeds, as most of them do, the reunion between husband and wife is followed by the slaughter of sacrificial goats of reconciliation. If reconciliation at the family level fails, attempts are then made at the lineage level and sometimes even before the chief. Where all these attempts fail, the marriage is then dissolved, but these depend on the reasons which have been advanced for and against the divorce. It has been argued that in Africa divorce:

> "proceedings did not turn on establishing grounds for the so-called 'grounds' being motives which led a party to seek dissolution, reasons which justified a party's acting to bring a marriage to an end or factors to be taken into account, in adjusting the financial liabilities of both sides (viz, for repayment of marriage consideration, damages for unjustified divorce, compensation for other matrimonial misbehaviour etc."[20]

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20. Allott, Essays in African Law, op. cit., p. 221.

We do not, with respect, entirely share this view. True it is that customary law grounds for divorce may be different and not as clear cut as the English law grounds of adultery, cruelty, desertion, insanity and rape and unnatural offences,[21] but they are just not factors to be taken into consideration in adjusting the financial liabilities of both sides, for there may be cases where the return of marriage consideration depends as much, if not more so, on the number of children as on fault. Besides, it is arguable that since most cases which come before the family or the chief or even the native court do not automatically lead to a divorce, there must be grounds on which such tribunals base their judgments. This is not to mention the fact that some of the English law grounds such as desertion, unnatural sexual offences or cruelty are recognisable in customary law, although they may differ in emphasis and the degree of sophistication. For instance, in English law the establishment of grounds are the only factors necessary to get a divorce while in customary law this may be only one of several factors.

The following are usually regarded as grounds for divorce in customary law.

(1) Witchcraft;
(2) Habitual criminal behaviour;
(3) Unnatural sexual behaviour;
(4) Refusal of sexual intercourse, or conjugal rights.

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21. Bromley, P.M., Family Law, 3rd Edition, 1966, London, Butterworths, Chapter VI, passim.

Besides menstruation, there may be other mitigating circumstances which operate in favour of a woman such as the last two months before delivery and the entire period of lactation.

(5) Adultery. This ground operates only in favour of the husband, but it may operate against him if the woman with whom he is accused is within the prohibited degree particularly on the wife's side. In order to be accepted as a ground for divorce, adultery must be habitual. This is so because mere acts of indiscretion can always be put right by means of ceremonies of cleansing.

(6) Desertion;

(7) Disrespect for parents-in-law;

(8) The impotence of the husband. Infertility of the wife is not by itself a ground for divorce, but it may result in cruelty to her. Where this happens she could get a divorce on the grounds of cruelty.

(9) Failure of either spouse to perform the matrimonial duties of providing and caring for the family.[22]

If a divorce is granted on any of the grounds above, this almost invariably gives rise to problems about the return of marriage consid-

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22. Rubin, Draft Statement of Bali Marriage Law, op. cit., pp. 26-28; Rubin, Draft Statement of Bakweri Marriage Law, op. cit., pp. 26-28; Ardener, E.W., Divorce and Fertility, An African Study, Oxford University Press, 1962. See especially Chapter V; Doumbé- Moulongo, L'évolution des coutumes et le Droit, op. cit., p. 73.

eration and the custody of children, if any.

As a general rule, the husband is always entitled to the refund of marriage consideration, except in cases where he is at fault or where there are issue of the marriage. If the husband is found to be at fault, he will not be entitled to a return of all the marriage consideration, but only to that part which is considered equitable by the adjudicating tribunal. Where there are children, and particularly female ones, the husband will not be entitled to any refund of marriage consideration, the reason being that he will be handsomely repaid when he receives marriage consideration on behalf of his daughters. This is based on the fact that he keeps all the children. This usually is the case. Only children too young to be separated from the mother are allowed to remain with her till they grow older. It is important to add here that although the rules with regard to the return of marriage consideration are interwoven with those relating to the custody of children, these two aspects of the law retain their individual legal identities.

Hitherto, we have considered the dissolution of marriage by divorce. We must now turn to dissolution by death. The death of either spouse does not automatically put an end to the marriage, for as we have already seen above, a surviving wife may be subject to widow inheritance. This only applies to young widows who have not yet passed the age of procreation Such widows have two options. They may either be inherited by one of

the late husband's kin or return to their own lineage with the ultimate aim of remarrying if possible. If the second alternative is adopted, this is usually treated as divorce, and therefore subject to the rules which we have just considered. The burden of refunding the marriage consideration normally shifts to the new husband in the event of her remarriage. Such refund, of course, takes into consideration the existence of any issue. Older widows spend the rest of their lives peacefully in the late husband's lineage.

If the death is that of the wife, it is usually treated as an act of God, but the surviving husband may demand a refund of marriage consideration if he suspects that her life was taken away by her relatives by means of witchcraft or some other devious method. Such cases are rare because of the difficulty of proof.

We have attempted in the preceding pages to paint a picture of marriage in the traditional sense in one society in West Cameroon, namely, the Mbem group. This group is part of a wider one known as the Tikar group. It therefore follows that the principles of customary law which we have just considered will bear close resemblance to those of the other Tikar groups in both West and East Cameroon.[23]

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23. Compare Rubin, Restatement of the Bali Law of Marriage, op. cit.; Kanga: Droit coutumier Bamiléké , op. cit., pp. 88-110; Ethnographic Survey of West Africa, Part IX, Peoples of the Central Cameroons. The Tikar by Merran McCullock, op. cit.

We might even venture, albeit at the risk of generalizing, to say that these general principles are true of most customary laws in Cameroon, at least in the South of the country from which we have drawn examples to support some of our principles. Quite predictably, there would be differences between the customary laws on such matters as the procedure, the ceremonies and the quantum of marriage consideration. For instance, we have already mentioned the part played by palm wine in the marriage negotiations. This only applies to areas where palm wine is produced. In areas where there is no palm wine, substitutes like corn beer may be used. In the North, the kola nut plays an important part in these negotiations. There is today an increasing tendency to provide beer and other imported wines and spirits in substitution for palm wine or other local substitutes. The various ceremonies differ too. Among the acephalous Bantu groups the ceremonies are very simple and may involve, asamong the Bakweri, only the slaughter of a goat and a pig by the father and mother respectively of the bride. Among the centralized societies, on the other hand, the ceremony which is spread over a number of days is more elaborate. The Balis are a good example of this group. Marriage consideration too, may, as we have already seen, range from very nominal presents, as among the people of Bui to sums as large as 120,000 francs CFA, as among the Bangwa. This is not to ignore the differences as between patrilineal and matrilineal societies. It would seem,however,

that most of these differences are not of the essence,as any infraction of them may not necessarily invalidate the marriage. Under the circumstances, it would therefore seem possible to generalize to the extent that marriage consideration which validates the marriage is essential in most cases.

Islamic Law of Marriage

Despite the fact that Islamic law is subsumed under customary law as we have already seen, it seems important, for purposes of completion to say a word about marriage under Islamic law.

The important thing to remember is that a marriage under Islamic law must comply with the provisions of the Koran, although there may be varieties in the ceremonies.

A marriage is regarded as a contract under civil law. The father of the girl has an almost absolute right to give his daughters away in marriage, and to conclude similar contracts on behalf of his minor sons. This absolute right of father has its dangers, the most important being that of child marriages and all the dangers which they may involve.[24]

The conclusion of a marriage contract which has been duly witnessed follows the payment of marriage consideration. Customs with regard to

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24. Anderson, J.N.D., Islamic Law in Africa, op. cit., pp. 206-214.

marriage consideration may vary from locality to locality. Whenever it is paid, a substantial amount goes to the bride herself.[25]

A marriage once entered into can be dissolved either by the death of either party or by divorce. A divorce may be obtained by the mere pronouncement by the husband of three talaqs.[26]

Statutory Marriages in West Cameroon

We have, in the pages above, attempted to paint a general picture of the customary law of marriage in one society in West Cameroon. It is hoped that these general principles apply, mutatis mutandis, to most other groups in the country.

The customary law of marriage has, of course, been considerably altered by the introduction of Western law. Western law was introduced during the Colonial era through two main channels. Firstly, there were the statutes of general application as well as those passed locally which affected marriage. Secondly, the Mission Churches played no small part in influencing attitudes about marriage. They did this by preaching that Western marriage law was, because of its monogamous nature,

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25. Compare mahar to which reference was made above.

26. Anderson, ibid.

superior to customary law on the subject. Polygamy, they cried, was a pagen tribal custom, perhaps little realizing that:

> "monogamy itself is a tribal custom, influenced but not created by Christianity."[27]

Whether the introduction of Western law came by means of statutes or through church pulpits, it was intended to propagate and uphold the virtues of monogamous marriages to which we must now turn.[28]

The statutes with respect to marriage in West Cameroon are, like many other statutes which we have already met, the same as those in Nigeria. Thus the Marriage Ordinance (Cap. 115 of the 1958 Laws of Nigeria) applies in West Cameroon. Like most other statutes, those with regard to marriage were extended to West Cameroon by virtue of the First Schedule to the Cameroons Under British Administration Ordinance (Cap. 27 of the 1948 Laws).

The Marriage Ordinance is in general based on the English law of marriage, although due regard is taken of the local conditions and any particular circumstances prevailing in the country.

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27. Allen C.K., Law in the Making, 7th Edition, Oxford at the Clarendon Press, 1964, p. 74.

28. On the general subject a useful book to consult is Kasumu, A.B. and Salacuse, J.W., Nigerian Family Law, Butterworths, 1966.

Preliminaries to Marriage[29]

The Ordinance provides for the appointment of a Principal Registrar of Marriages and various registrars in charge of the districts who are responsible to the Principal Registrar.

Any two persons wishing to contract a marriage give written notice of their intention to do so to the registrar of their district who then enters the notice in the Marriage Notice Book.[30] A copy of the notice is also affixed to the door of the registry where it must remain till a marriage certificate is issued or till three months after affixing it on the door.

Twenty-one days after such notification and before expiration of three months, the registrar shall, upon the payment of the prescribed fee, issue the necessary certificates provided he is satisfied that one of the parties has been resident in the district for at least 15 days, that each of the parties has capacity to contract the marriage, that there are no impediments to the marriage and that neither of the parties has

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29. See Sections 7-17 of the Marriage Ordinance. Unless otherwise indicated all the sections referred to will be those of the Marriage Ordinance (Cap. 115 of the 1958 Laws).

30. The thumb print of illiterate persons will be accepted in lieu of signature provided it is properly attested by a literate person.

before contracted a customary law marriage. An affidavit to this effect can be sworn either before a registrar, an administrative officer, or a minister of religion. Whoever administers the affidavit, it is important to ensure that the declarant knows all about the prohibited degrees of kindred and affinity and the penalties for any infringement.

In order for there to be a valid marriage, it must be celebrated before the expiration of three months. This raises problems about the validity of marriages celebrated after the three months period. It has been argued, and quite rightly too, that such marriages are by virtue of Section 33(3) not necessarily invalid because of the principle of interpretation which provides that in the event of a conflict between two statutes or two sections of a statute, the latter prevails.[31] Thus Section 33(3) which provides that:

> "no marriage shall after be deemed invalid by reason that any provision of this Act other than the foregoing provision has not been complied with"

operates to invalidate the effects of Section 12.

Subject to a right of appeal to a judge of the Supreme Court who has power to award compensation and costs to an injured party in the

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31. Kasumu and Salacuse, op. cit., p. 53.

event of a wrongful entry of a caveat, any one whose entitlement to give consent has not been solicited, or any one who may know of a just cause why the marriage should not take place, can enter a caveat against the issue of the certificate. A case in point is the Nigerian case of Beckley v. Abiodun.[32] The facts of the case are as follows. Beckley had, while living in Lagos, proposed to one Miss Alade who accepted. He was then transferred to Jos where he met Miss Abiodun to whom he also proposed and who also accepted. He then made arrangements to marry her under the Ordinance. In the meantime, he had authorised his father to perform the ceremony of betrothal in respect of Miss Alade who was expecting his baby. When Notice of the intended Ordinance marriage came to him, the father entered a caveat on the basis of the betrothal ceremony in respect of Miss Alade, but it was held that this celebration not being a marriage, could not prevent the Ordinance marriage, so the caveat was set aside.

Celebration of the Marriage[33]

Before the issue of a certificate or the granting of a licence for the celebration of a marriage, the necessary consents must have been given by those entitled to do so, namely, the parents. Once such consent

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32. [1943] 17 N.L.R. 59.

33. Sections 21 - 32.

has been given and the certificate issued or the licence granted, the parties are then entitled to proceed to the celebration of the marriage. There are three ways in which this can be done.

Firstly, the marriage can be celebrated in a church or a licensed place of worship according to the rites of the particular denomination concerned provided the ceremony takes place between 6 a.m. and 6 p.m. and is witnessed by two others besides the officiating Minister. A Minister who has not had the registrar's certificate or a special licence from the Prime Minister[34] or who knows of any other impediment to the marriage may not carry it out. As part of the celebrations of a marriage in a licensed place of worship, a Minister must complete in duplicate, a marriage certificate which must contain the date, the names of the parties and the witnesses. When such certificates have been duly signed, one is then given to the parties on payment of the prescribed fee while the other is forwarded to the registrar of marriages within 7 days. It must be observed that it is not the celebration of the marriage in a licensed place of worship, but compliance with the provisions of the Marriage Ordinance that gives it legal validity.

Secondly, a marriage may be celebrated before the Registrar at a

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34. The Prime Minister can dispense with the requirement of a registrar's certificate by granting a licence which authorizes the celebration of a marriage between the parties mentioned therein.

Registry. With the exception of the time (between 10 a.m. and 4 p.m.) and the religious ceremony, the Registry marriage is similar to that at a place of worship.

Finally, the Prime Minister may by licence authorise the celebration of a marriage at a place other than a licensed place of worship or a Registry.

Whatever the manner of celebration, all marriage certificates must be registered in the Marriage Register Book.

Invalid Marriages[35]

A marriage may be rendered invalid if it is celebrated without leave of the Prime Minister or in a place other than those mentioned above. Certain other factors such as marriage under a false name, marriage without a Registrar's certificate of notice or licence from the Prime Minister, or a marriage celebrated by a person not being a recognised Minister of religion or a Registrar, may also invalidate a marriage. These do not include offences with regard to marriage created by the Ordinance.[36]

Termination of a Statutory Marriage

Section 4 of the Regional Courts (Federal Jurisdiction) Ordinance[37]

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35. Section 33.

36. Sections 40 - 49.

37. Cap. 177 of the 1958 Laws of Nigeria. See Section 4.

provides that:

> "the jurisdiction of the High Court of a Region in relation to marriages, and the annulment and dissolution of marriages, and in relation to other matrimonial causes[38] shall, subject to the provision of any laws of a Region so far as practice and procedure are concerned, be exercised by the court in conformity with the law and practice for the time being in force in England."

Section 16 of the High Court of Lagos Ordinance has similar provisions.

The combined effect of these two sections is that the Regional Courts are not only given jurisdiction over matrimonial causes, but also directed as to what law they should apply. Thus all matrimonial causes in West Cameroon are within the jurisdiction of the West Cameroon High Court. The applicable law is English law. This raises once more the problems which we have already met in connection with the reception of English law when we were dealing with the sources of law.[39] Whatever the arguments it would seem that the law has always been able to take account of the changing nature of marriage. One way of doing this which we have already referred to is the adaptation of statutes to suit local conditions. But however that may be, the West Cameroon courts exercise English jurisdiction in connection with matrimonial causes. Since the subject of

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38. "Matrimonial Causes" is defined by Section 2 of the High Court of Lagos Ordinance (Cap 80 of the 1958 Laws) as "any action for divorce, nullity of marriage, judicial separation, jactitation of marriage or restitution of conjugal rights".

39. See Chapter 5 above.

dissolution of marriages is well treated in the basic textbooks[40] on the subject, we need only make very brief comments on the way a statutory marriage may be terminated.

A statutory marriage may be terminated by death or by divorce. Quite unlike customary law, the death of any spouse automatically terminates a marriage. The death of a spouse may be actual or presumed. The presumption of death only arises where a spouse has not been heard of for seven years and there is reasonable ground to allege that he or she is dead.

A marriage may also be terminated by divorce. The divorce jurisdiction of the West Cameroon courts derives from the fact of domicile within the jurisdiction, the determination of which lies within the domain of its conflict of laws.[41] The remedy of divorce may only be granted on the proof of one or more of the following grounds: desertion, adultery, cruelty, insanity and sodomy, bestiality and rape.

Conversion of Marriages

As we have seen above, there are two types of marriages in West

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40. Tolstoy, D., The Law and Practice of Divorce and Matrimonial Causes, 6th Edition, London, Sweet & Maxwell, 1967; Bromley, P.M., Family Law, 3rd Edition, 1966, London, Butterworths.

41. See generally Graveson, R.H., The Conflict of Laws, 5th Edition, London Sweet & Maxwell, 1965; on termination of statutory marriages see Kasumu and Salacuse, op. cit., Chapter 6 passim.

Cameroon, namely, marriages under customary law and statutory marriages, the differences between the two being that the former are potentially polygamous and the latter monogamous. Monogamous marriages were introduced in an attempt to suppress customary marriages, or at least, to encourage the natives to marry in what was regarded as a civilized way. The consequence of this has been that any one who has contracted a customary law marriage can convert it into a monogamous marriage by going through the form of ceremonies contained in the Marriage Ordinance which we have already considered.

The conversion of a customary law marriage into a statutory marriage raises certain problems. The first and obvious problem is the question as to whether a couple lawfully married can be married again. Chief Justice Hutchinson, commenting on the Ghana Marriage Ordinance of 1884:

> "thought that persons already lawfully married could not be married over again."[42]

His Lordship was presumably basing his comment on the assumption that both customary and Ordinance marriages were placed on the same basis. This as we have seen in the Kenya case of R. v. Amkeyo[43] was not always the case, for Chief Justice Hamilton, in that case, thought it a

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42. Re Ammetifi [1889] Red. 157.

43. [1917] 7 E.A.L.R. 14.

misnomer to refer to the relationship entered into by an African native and a woman of his tribe as a marriage. This was, indeed, the attitude adopted by most colonial governments. On this argument, it was possible to convert customary marriages into Ordinance marriages. Indeed, it is only after independence that there has been a noticeable change against this attitude in most African countries. Also not unconnected with the problem of conversion is the question whether the dissolution of a converted statutory marriage ipso facto dissolves a prior customary marriage. The case of Ohochuku v. Ohuchuku,[44] although basically a conflict of laws case, seems to indicate a negative answer. In that case a Nigerian couple contracted a customary law marriage in Nigeria and then later left for the United Kingdom. While in the United Kingdom they went through a registry marriage because the wife wanted to avail herself of a marriage certificate and any benefits that might accrue therefrom. Shortly after the registry marriage, the couple experienced some difficulties and the wife petitioned the English courts for divorce on the grounds of cruelty. The court granted her a decree of divorce. Although the learned judge did not advert to the question whether this divorce was also effective to dissolve the customary marriage, it would seem that if the case had been decided in Nigeria, it would have effectively dissolved the customary law marriage, as there can only be one marriage. This view seems to be supported by the case of Thynne v. Thynne,[45] although it was a monogamous

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44. [1960] 1 All E.R. 253.

45. [1955] P. 272.

marriage. In this case, the parties were secretly married at a registry in 1926. In 1927, they again got married officially. Later on, the wife petitioned in respect of the 1927 marriage and was granted decrees nisi and absolute. She then brought an action asking the court to amend the decrees to include the 1926 marriage. The decree absolute was accordingly amended.

Irrespective of these difficulties, there are several cases where customary marriages have been converted in this way.[46] In order to be valid, a conversion must not offend against the provisions of the Marriage Ordinance or the Penal law.

Whilst a customary law marriage can, as we have just seen, be converted, the reverse is not true. The reason for this seems to lie as much in the fact that monogamous marriages are considered to be superior to customary marriages as in the fact that statutory provisions often prohibit any such conversion.[47] A recent case in support of this point is the Northern Nigerian case of R. v. Princewell[48] in which the accused

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46. Allott, New Essays in African Law, op. cit., pp. 203-237; Kasumu and Salacuse, Nigerian Family Law, op. cit., Chapter 5 passim.

47. See for example Section 35 of the Marriage Ordinance which provides that "any person who is married under the Ordinance or whose marriage is declared by the Ordinance to be valid, shall be incapable during the continuance of such marriage of contracting a valid marriage under native law and custom." Sections 47 and 48 of the Marriage Ordinance create penal offences, as also do certain sections of the Cameroon Penal Code. See Appendix VII.

48. [1963] N.N.L.R. 54. Also see 1964 J.A.L., p. 36.

who was married under the Ordinance was later converted to the Moslem faith and thereupon he married another woman. He was then convicted of bigamy under Section 370 of the Northern Nigerian Penal Code.[49] The second marriage was, of course, based on the fact that as a converted Moslem, he could marry up to four wives.

There is, however, one case in which a monogamous marriage was converted into a polygamous one, although it seems fair to add that this is not a good example as it was based more on natural justice and conflict of laws than on the rules which we have just been considering. The case in question is Asiata v. Goncallo.[50] The facts are as follows: Alli, a Yoruba from Nigeria was sold into slavery and taken to Brazil. While there, he married Selia, an African freed woman according to Moslem rites. This marriage was later converted into a monogamous one by going through another marriage according to Christian rites. The couple then returned to Nigeria where Alli contracted another Moslem marriage with Asatu. He then died intestate and the plaintiff, the only child of the marriage contracted in Nigeria, brought this action claiming that he was, along with the children of the first marriage entitled to a share of the property of the deceased. The court, without considering the issues raised, held that the marriage with Asatu was valid because it was entered

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49. The point has been raised that the action against Princewell could well have been taken under the provisions of the Marriage Ordinance (Sections 35, 47 and 48) since the Ordinance applies throughout Nigeria. See Allott 1964 J.A.L., p. 36.

50. [1900] 1 N.L.R. 42.

into in a polygamous country. This decision has, however, been discredited by subsequent decisions such as Smith v. Smith[51] and Coleman v. Shang[52] which lead to the conclusion that an Ordinance Marriage does not preclude the operation of customary law in the event of an intestacy.

Marriage in East Cameroon

The marriage laws in East Cameroon follow very much the same dual pattern which we have just seen in the case of West Cameroon, but in East Cameroon this dualism developed along a more defined pattern, for customary law applied to people of statut local and French law to those of statut civil.

The division of people into the two categories goes back to a law of 1833. This law conferred a statut civil on all those who were thought to be born free or who had acquired their liberty by legal means.[53] Predictably, this category comprised of French citizens either of the metropole or of the colonies. Thus most of the people in French West and Equatorial Africa who were not of French descent were automatically regarded as possessing a statut local.

Although this distinction worked well initially, it was bound,in

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51. [1924] 5 N.L.R. 105.

52. [1959] G.L.R. 390. Also see 1960 J.A.L. 160.

53. Lampué P., Droit d'Outre-mer et de la co-operation, op. cit., p. 52, para. 53; Marticou-Rigu, Anne, Les Statuts Personnels au Cameroun (mimeographed) Yaoundé 1968.

the light of the policy of assimilation, to produce some difficulties. Certain difficulties resulted from several factors. One factor was the fact that French law which was written, and therefore more certain, tended to be resorted to in cases where customary law was uncertain. A second factor was the fact that the policy of assimilation operated to transfer to a statut civil certain people who originally had a statut local. This practice was finally confirmed in Article 84 of the Fourth Republican Constitution of 1946. Naturally this situation was productive of conflicts to which we will return after a general consideration of the law.

The result of the two types of status was that there were two types of law - customary law for those of statut local and French law for those of statut civil, but unlike French law, there was no uniform customary law which applied throughout the territory. Besides, there was the added problem of unwritten customary laws. This led the French, in their usual Cartesian manner to draw up Codes of Islamic and Customary Marriage laws. This was done in an attempt to bring uniformity and certainty into the customary laws.

The first of such codes ~~which~~ appeared as an annexe to an arrêté of 26th December, 1922.[54] This annexe contained the rules of a Moslem

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54. J.O.C., 1923, p. 13.

marriage as contained in the Koran.

A second annexe to the arrêté of 1922, contained a code of customary marriage law which was intended to be of general application in the territory except among the Kirdis, the Bamiléké and the Bamoum. After minor amendments by another arrêté of 1928,[55] both codes were confirmed by a later arrêté of 26th May, 1934.[56]

In the following pages we shall be concentrating on the code of customary marriage law because of its novel nature. With regard to Moslem law, the basic principles follow the same pattern as in our observations above on customary law generally.

Formation of Marriage

Preliminary Arrangements

Only girls who are above the age of 14 and boys of upwards of 16 years may contract a marriage. Any failure to comply with this requirement makes the marriage invalid and annuls all rights to a return of marriage consideration. All preliminary agreements between the future spouses and their parents must be entered into publicly in the presence

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55. J.O.C. 1928, p. 701.

56. J.O.C. 1934, p. 372; Codes et Lois du Cameroun, Tome II, pp. 307-310. The code contains the French version of both the Moslem and customary law codes of marriage.

of the elders of the girl's village. Any breach of such agreements, whatever the causes and origins, gives rise to restitution to the fiancé or his family of all monies or valuables received as advance payment of marriage consideration.

Necessary Consents

No marriage may be concluded without the consent of the future spouses and the heads of the interested families. It was provided by an arrêté of 15th July, 1930,[57] that in the event of any opposition to the marriage, or refusal by the chief of the family to give his consent, the matter would be referred to the tribunal of first degree.

Marriage Consideration (dot)

This is fixed by agreement between the fiancé or the head of his family and the head of the girl's family. The marriage is not concluded until after the payment either fully or partially of marriage consideration One way of showing that marriage consideration has been paid is by taking the fiancée to her future husband.

Celebration of the Marriage

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57. This arrêté was substantially amended by another arrêté of 16th March, 1935. Codes et Lois du Cameroun, Tome II, pp. 311-315, J.O.C. 1935, p. 296.

The conditions governing the celebration of a marriage were first set out in Articles 22 - 28 of the arrêté of 15th July, 1930. These are now contained in Articles 17 - 23 of an arrêté of 16th May, 1935,[58] which amended the former.

Under these provisions, all marriages are compulsorily celebrated by an officier de l'état civil responsible for the affairs of natives under the following conditions.

At least a month before the celebration of the marriage, the officier de l'état civil (hereinafter referred to as the civil officer) must be notified as much by the future husband or his family head as by the family head of the future wife or his representative. This double statement must contain the names, occupation, place of origin and residence of the future spouses and their intention to contract a marriage. Identical statements must also be sent to the civil officer of the place of origin of the future wife.

The officers so notified must give all these declarations all the necessary publicity possible according to local usage.

During this period of one month, the following people may oppose the marriage.

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58. Ibid.

(1) The head of the family of either of the spouses.

(2) The previous husband of the future wife. He may oppose the marriage either on the grounds that there was no proper and regular divorce, or because marriage consideration was not refunded in the manner laid down by the divorce judgment,

(3) Any one who was , according to local custom, previously betrothed to the future wife, and who has not yet been refunded all money and valuables paid in advance in respect of marriage consideration.

(4) Any person who, as a result of prolonged or permanent cohabitation with the future wife has had one or more children.

(5) The chiefs of the circonscriptions or sub-divisions concerned.

At the end of one month, the civil officer must proceed with the celebration provided, of course, that there are either no oppositions raised, or that those raised, if any, have been dealt with by the appropriate tribunal.

Publication is dispensed with in the case of hostilities, but any such dispensation must be given by the chief of the region where the marriage would have been celebrated.

The celebration of the marriage requires the compulsory presence of the future spouses, the family head or qualified representative of each

spouse and four witnesses - two for each spouse - chosen from among the notables.

Unless there is a document evidencing the prior payment of marriage consideration,[59] all payments in this respect must be testified by the witnesses.

The marriage is concluded by the signing of a deed which must contain the following information.

(1) The names, dates, places of birth, occupation and residence of the spouses;

(2) The names, occupation and residence of their parents;

(3) The consents of the spouses;

(4) The consents of their family heads;

(5) The absence of opposition;

(6) The amount of marriage consideration. This must state the amount that has been paid and what is outstanding.

Successive marriages contracted by natives practising polygamy give rise to the establishment of a number of corresponding deeds.

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59. It is possible to enter into a prior written agreement about marriage consideration under the provisions of a decree of 29th September, 1920 which instituted a procedure whereby agreements between natives could be committed to writing. See Codes et Lois du Cameroun, Tome II, p. 306; J.O.C. 1928 p. 629.

A note of the marriage must be made in the margin of the birth certificate of each spouse. In the same way, a divorce must be entered in the margin of the marriage and birth certificates of each spouse.

Questions with regard to creation of such civil centres and the appointment of officers to run them is a responsibility of the chief of each particular circonscription who is assisted by regional chiefs. The blessing of the Commissioner of the Republic must be received also.

Children

All children born before the marriage belong to the family of the woman while those born during the duration of the marriage, and after dissolution, within a period corresponding to the maximum period of gestation, belong to the family of the husband. The children of a widow or divorced woman belong to the family of the husband if marriage consideration has not been refunded in the way laid down in the decision which either declared the widow free or pronounced the divorce. Where marriage consideration has been refunded, the children belong to the family of the woman.

In certain cases, the court may, on the dissolution of a marriage, authorize the mother to keep children in infancy or early childhood for as long as they are in need of maternal care. The husband must contribute towards the well-being of the children during such period.

Dissolution of Marriage

A marriage may be dissolved either by the death of either spouse or by divorce. The death of the male spouse does not, ipso facto, bring the marriage to an end, since the woman is, in principle, bound to remain in the family of her deceased husband. This, of course, does not preclude her from asking to return to her own family. If she so decides, she must report to the chief of the sub-division who will officially acknowledge her decision. It is then the duty of the tribunal of first instance to decide the extent to which there ought to be a refund of marriage consideration. In some cases, the refund of marriage consideration may be a condition precedent to the return of a woman to her own family. In other cases, she may not re-marry until marriage consideration has been refunded to her late husband's heir.

If the death of the husband occurs more than 10 years after marriage, the widow may only refund a fraction of the marriage consideration.

Where the death is that of the wife, the husband usually does not, in principle, demand the return of marriage consideration.

Marriages may also be dissolved by divorce. The tribunal of first instance has jurisdiction over all divorce matters.

A husband may seek a divorce on the following grounds:

(a) That the wife has adapted badly to marital life;

(b) Imprisonment of the wife for criminal misbehaviour;

(c) Habitual misconduct of the woman;

(d) Repeated absence from the conjugal home; and

(e) Persistent and systematic refusal of the wife to accomplish her customary obligations.

A wife may, on the other hand, seek a divorce on the following grounds:

(a) That she has contracted a serious and contageous disease from the husband;

(b) That she has been gravely and habitually maltreated by the husband;

(c) That the husband has habitually refused to provide for her essential customary needs and general upkeep;

(d) That the husband has been imprisoned for criminal behaviour.

If divorce results from the husband's conduct, there can be no question of a refund of marriage consideration, but where the woman's conduct results in a divorce, there will be refund of marriage consideration, subject to the courts discretion to decide the extent to which an old woman can be released from the obligation to refund marriage consideration.

There is one more form of divorce which should be mentioned here. This is the divorce which is granted spouses of polygamous marriages who wish to renounce polygamy. A divorce of this kind is obtained under the conditions below.

Where the demand for such divorce comes from the husband, he cannot claim a refund of marriage consideration except what is paid by the new husbands of former wives in the event of their remarrying, but if they do not re-marry, there is no obligation to refund anything. Indeed, the former husband must look after wives divorced in this way if they are old and have no families of their own to go back to.

Where a wife seeks divorce in this way, she will only get it when all the marriage consideration paid by her husband has been refunded. The court may, if the woman is old, determine the extent to which she should be released from the obligation of having to refund marriage consideration.

In order to ensure that those seeking recourse to this method of divorce take it seriously, the court is given the responsibility to judge each case on its merits taking into consideration the need for stability of marriage and the sincerity and conviction of the spouses seeking divorce. In this connection, the court may reject a demand for divorce which is not properly motivated.

These attempted codes of customary and Islamic Marriage Laws were at first intended to assist the officials dealing with such matters, but they gradually assumed the force and importance of a real legislative act - a development which did not always meet with the approval of the courts.[60] But once the rules had been established, they continued to be used to regulate marriage. With time, need was felt for an amendment of the rules, partly in order to bring them up to date and partly in order to regulate more stringently certain aspects of a customary marriage such as the payment of marriage consideration or the prohibition of child betrothal - practices which were considered to be contrary to French civilization.

The first of such amendments was effected by a Decree of 13th November, 1945,[61] which fixed a minimum age for marriage, namely, 14 years for girls and 16 years for boys, and made the consent of both spouses indispensible to the validity of a marriage. The result of this was to invalidate all marriages involving young girls or cases of widow inheritance where the female party had not given her consent.

This decree was followed by another decree of 14th September, 1951,[62] the purpose of which was to limit the institution of marriage consideration[63]

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60. Lampué P., Les Sources du Droit de la famille dans les Etats d'Afrique Francophone. Recueil Penant, 1967, p. 22

61. Codes et Lois du Cameroun, Tome II, p. 314; J.O.C. 1946 p. 528.

62. Codes et Lois du Cameroun, Tome II, pp. 314-315; J.O.C. 1951, p. 1494. This decree also applied to French West and Equatorial Africa and Togo.

63. By an arrêté of 1st March, 1954, the highest limit for marriage consideration was pegged at 5,000 francs. Codes et Lois Tome II, p. 315; J.O.C., 1954, p. 290.

and to provide the possibility whereby an undertaking of monogamy could be entered in the marriage certificates of those whose marriages were potentially polygamous.

These rules continued to be in force in East Cameroon until they were replaced by a decree of 7th July, 1966.[64] Unlike the other rules which laid down guiding principles, this law lays down binding rules governing marriage.

The law is short and is divided into three parts. Part I[65] deals with the conditions requisite for contracting a marriage, the most important being the condition that no person under 21, unless they have been married before, may contract a valid marriage without parental consent. The minimum marital age for girls is set at 15 and that for boys at 18.

Part II[66] deals with the problem of marriage consideration[67] by providing that failure to pay it will affect neither the validity of the marriage nor the paternity of the children.

Part III[68] deals with diverse matters such as the right of an

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64. Decree No. 66-2-COR of 7th July, 1966; J.O.E.F.C.O. (Supplementary Issue) pp. 66-67.

65. Articles 1 - 8.

66. Articles 9 - 12

67. On the subject of marriage consideration see generally Mbanga, E., Quelques reflexions sur le projet de la loi réorganisant l'état civil au Cameroun Oriental et portant diverses disposition relatives au mariage. Recueil Penant at pp. 291-298, 285-302.

68. Articles 13 - 19.

abandoned wife to sue her husband for support both for herself and her children. While acknowledging the fact that a marriage may be dissolved either by divorce or the death of either spouse, this part goes on to provide that in the event of the husband's death, the widow will be released from the obligation to refund marriage consideration if she re-marries after 180 days.[69]

Our discussion so far has been limited to the various developments in the law of marriage affecting those of statut local otherwise known as sujets. As for those of statut civil otherwise known as citoyens the applicable law was the French Code Civil.[70] Those of statut civil fell into three rough groups. Firstly, there were the français or européens who automatically qualified for a statut civil. Then there were the assimilés (i.e. those as close as an African could ever come to being européen), and finally, there were evolués (i.e. the educated and Gallicized Africans). For the African to qualify for statut civil, he had to know the French language and culture, embrace French education, and accept the practice of certain "civilized" professions. The acceptance of these meant a corresponding rejection of various customary practices, the most important one connected with marriage being the rejection of polygamy.

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69. Decree No. 66-2-COR of 7th July, 1966, has to be read in conjunction with decree No. 66-380 of 30th December, 1966, (J.O.E.F.C.O. of 1st February, 1967, p. 94) which dealt with the question of jurisdiction raised by the earlier decree.

70. Code Civil, Articles 144-342; Amos & Walton, op. cit., Chapter 4 passim.

The dual status giving rise to dual marriage laws were bound sooner or later to create difficulties, even conflicts. There were bound to be conflicts of status and conflicts of laws.

The conflict of status is now largely theoretical because the common nationality of all Cameroonians which came with independence operated to smooth out the problems of status. But while the dual status existed, it raised problems such as the status of children born of parents one of whom was of statut civil and the other of statut local, or the status of children both of whose parents being of statut local had opted to marry according to the provisions of the civil code. Were such children themselves of statut local or statut civil? It has been suggested elsewhere that, until there are decided cases or specific legislation on this matter, it might be useful,as in the case of dual nationality, to give such children a dual status and to allow them to exercise the option on their majority.[71] While we agree that some legislation on this matter might be useful, it seems that the question is largely academic as children tend to take after the status of their parents. In any case, with common nationality and common legislation,[72]

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71. The question of conflict of status has been very exhaustively dealt with by Mme. Marticou-Riou. See her Les Statuts Personnels au Cameroun (mimeographed) Yaoundé 1968, pp. 6 - 14.

72. An example of the legislation which applies to everyone is law No. 66-2-COR of 7th July, 1966 already referred to. This law abrogates not only contrary provisions in previous laws, notably the decree of 15th September, 1951, but also any inconsistent provisions in the Code Civil.

this problem is no longer as important.

The second type of conflict is that of the laws. For instance, there might be conflict as to what law applies in a marriage between a person of statut civil and another of statut local, or a marriage under the civil code by persons of statuts particuliers, or a customary law marriage with an undertaking of monogamy. As early as 18th October, 1954,[73] there was a ministerial circular which attempted to regulate this type of situation. Whatever solutions were suggested tended always to be heavily weighted in favour of French civil law, particularly in cases of conflict between customary law and French law. With regard to conflict between customary laws, at least the customary law of marriage and succession, the practice was to make provision in the statutes concerning natives for choice of law rules. Thus in the decree of 31st July, 1927,[74] which dealt with justice according to customary law, it was provided by Article 51 that in the event of any conflict with regard to matters of marriage and divorce, succession, contracts, or other matters not included in the section, the Commissioner of the Republic would by means of an arrêté indicate the way of solving the conflict.

The problems which we have just discussed are mostly those of

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73. Codes et Lois du Cameroun, Tome II, pp. 315 - 319.

74. Codes et Lois du Cameroun, Tome II.

internal conflicts. There may, of course, be conflicts which result from the fact that the marriage is celebrated outside Cameroon. Such problems, when they do arise, can be dealt with according to the rules of Private International Law.

For purposes of completeness, it ought to be mentioned here that Federal Law No. 68-LF-1 of 11th June, 1968, lays down by its Articles 38 - 44, the current law governing a civil status marriage in the Federation of Cameroon. These provisions will be found in Appendix VIII.

Succession.

Customary Law of Succession in Cameroon

This heading may give the erroneous impression that there is a uniform law of succession in Cameroon. Quite the contrary, Cameroon, like most African countries has various customary laws of succession. What follows, therefore, is the customary law of succession of the Mbem people in Donga and Mantung Division in West Cameroon. It is hoped that this outline will contain certain basic principles which apply, mutatis mutandis, to most patrilineal groups in the country.

One reason why we have chosen to deal with the succession laws of the Mbem people is because in dealing with property and marriage we drew a lot of our examples from the same group.

Since the law of property and succession are not too unconnected, succession is going to figure quite prominently in the legislative list if proposals to pass legislation individualizing titles in land are carried through. We have already adverted to the procedure of constatation and the system of immatriculation in East Cameroon. This, as we shall see later, had great influence on the law of succession. Quite apart from this, the rapid economic development which is the aim of Cameroon, and indeed of every developing country, will result not only in an ability to acquire individual titles in land, but also in the ability to acquire property which was traditionally unknown in customary law - property like radios, radiograms, record players and tape-recorders, bicycles, motorcycles and cars, and other material products of the modern industrial world. The acquisition of such property will raise problems as to whether they should devolve according to the rules of customary law of succession.

Although these problems have been with us for the last 50 years, they still await legislative action to deal with them, so until they are dealt with, the property of the deceased will continue to devolve as under the present law to which we must now turn.

Succession among the people of Mbem may be testate or intestate. It is testate where the deceased has in his life time made specific

provision for his children. Such a will (nuncupative will) is made orally by a dying man to an assembled group of his lineage. The wishes which he discloses to such a group may include the appointment of an executor or guardian. He may also disclose any assets in his favour or liabilities against him. Such disclosures are made to members of the lineage because of any interest which they may have in the property of the deceased.

With the exception of the fact that the eldest members of the lineage must be present, there are no formalities to the making of a nuncupative will. Such eldest members include all the heads of families of a lineage who are older than the testator. A lineage in this connection refers only to all those who are as of right entitled to contribute to marriage consideration on behalf of the testator and all his male issue, and who enjoy the corresponding advantage of benefiting from marriage consideration received on behalf of daughters of the testator or those of his male children. No will will be valid if it has not been witnessed by all or some of the elders entitled.

Theoretically, young men have the capacity to make such wills, but they hardly ever do because of the almost total ban on the contemplation of death by the young. Any will made in this way will be set aside if it is shown that they were made under duress or undue pressure such as the pressure to dispose of property in order to pave the way to recovery.

Informal as these wills may seem, they are usually complied with because of the fear that non-compliance might raise the anger of the dead against the living.

As we have already mentioned, one of the functions of a will is to appoint an heir. This practice is, however, unusual and is resorted to only in cases where the testator wishes to disinherit the heir who in normal circumstances is chosen according to the rules of primogeniture. The reasons for which a testator may wish to disinherit an heir usually turn on character, capability, health and availability. Availability is important only in the case of heirs who may be gainfully employed somewhere away from the village.

Since nuncupative wills are made conditional on death, they are revocable by the testator if he recovers from the illness, although because of the fact that bequests are generally made to members of the family or the lineage, they may sometimes remain unrevoked even after the testator's recovery, particularly where he is very old and thought to be nearing the end of his life span.

It is important to distinguish nuncupative wills from any inter vivos gifts which may be made by a pater familias in the exercise of his functions. The head of a family does very often make substantial inter vivos gifts to younger children, because, as we shall see presently, their share in any inheritance is usually very small, if any at all.

The cases of testate succession are, however, few and far between. The normal thing is, therefore, that most people die intestate. Intestate succession in Mbem is of the automatic-universal-patrilineal type. It is automatic because an heir succeeds automatically without reference to anything; universal because there is only one heir and partilineal because the society is such a one.

The procedure on the death testate or intestate of the pater familias is the same. In the order of events after death, burial comes first. The burial ceremony is important from the point of view of heritable property because it does sometimes result in a depletion of the property. This can happen in two ways. In the first place, the grandsons of the deceased may take away some items of property of the deceased, such as swords, matchets, spears or even guns as a parting gifts from their deceased grandfather, if they can lay their hands on any of these things. It is therefore the responsibility of the heir to be to make sure that such property is hidden away. Secondly, the ceremonies immediately before the burial require the slaughter of goats and fowls for the consumption of those present. The animals so slaughtered either come from the stock of the deceased or are bought with money left by him, but where he leaves neither, animals nor money, the heir to be must provide these. In the past, it was possible to perform an autopsy in order to find out the cause of death, more particularly where the deceased was suspected of witchcraft.[75] While this now discontinued custom lasted, the experts who performed the

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75. Gebaner, Spider Divination in the Cameroons, op. cit., p. 34.

autopsy had to be compensated out of the estate.

The burial is followed by a period of mourning. This is mostly a family affair during which all those who survive the deceased, particularly the young ones, are exhorted to be frugal from henceforth, because the bread-winner is no more.

The next important occasion after the period of mourning is the distribution of the estate of the deceased. The estate in customary law has a wider connotation than just property. It includes movable and immovable property, livestock, rights and duties in relation to people as well as to religious and political offices.

There are two categories of moveable property, namely, property belonging to the lineage and property acquired by the deceased. As far as concerns lineage property, this will continue to be used by any wife or wives who used them before until they are inherited by someone in the lineage. When this happens, such wife or wives continue to farm on the land, although general management passes to the new husband. Wives who are not inherited continue to use the land, but any extra land which they do not need reverts to the lineage. Land acquired by the deceased becomes bona vacantia within the lineage provided no wife is at present working on it. Where this is the case, the land is given to members of the lineage who are in most need of it. If, on the other hand, a wife of the deceased needs the land then the management passes, as for lineage

land, to any one who inherits such a wife, but if she is not inherited, she may continue to use it for the rest of her life. The rights which we are considering here do not include leases or tenancies at will, as such will revert to their rightful owners.

Just as there are two types of immovable property, so are there two types of movables. These include movables which are traditionally recognised such as stools, matchets, swords, guns, spears, walking sticks, native gowns, and household utensils, to mention a few, and modern movables such as radios and other such appliances, bicycles, motorcycles and cars or lorries, and indeed, any other products of the modern industrial world.

With regard to the traditional movables, these are normally shared among the members of the lineage in descending order of age. The result of this is that the youngest members of the lineage hardly ever derive any benefit from the estate. The explanation is that they do not need anything because they are too young to appreciate it and because the other members of the lineage will always take care of them. The responsibility to care for the young falls either on any one who inherits their mother or on the lineage generally if the mother re-marries an outsider or opts to remain on her own within the lineage.

The question of the distribution of modern movables is trickier and can be productive of conflict as between the old and the young. The

older folk, in their attempt to be identified with the modern world, claim some of these things while the young, because of their know how and ability to use such modern apparatus, also exert a very strong claim to them. In most cases, the young men are given the modern movables on the payment of token amounts which are shared out among the elders.

As we saw above, there are also inheritable rights and duties over persons. The most important such right is that of widow inheritance which we dealt with in our discussion on marriage. The right of widow inheritance carries along with it the right of guardianship over minors. The usual practice is that any one who inherits a woman, ipso facto, becomes guardian of her children. This sometimes produces a situation where eligible widow inheritors tend to go for women with more daughters than sons. This is so because of the benefits which might accrue to them when such daughters are given away in marriage. Where a woman is not inherited either because she opts out or because she re-marries an outsider, the guardianship of her children falls to the main heir who may, if he has other older brothers, give them responsibility over some of the minors.

The final aspect of succession concerns succession to religious and political offices, the latter being more important, and including such offices as that of compound head, quarter head and nchinda (i.e. messenger to the chief), to mention a few. The general rule is that the eldest son of the holder of the office inherits the office, as a matter of course

if he becomes the principal heir, but this pattern may be changed for one of three reasons, namely, that succession to such offices tends to remain in one family, or that the principal heir is incompetent, or that he is too young. Where this happens, the right to succeed to a political office is then thrown open to all eligible members of the lineage. In such an event, the tendency has always been to settle on the more avant-garde competent and eligible members. With regard to succession to religious offices, the practice is that the heir succeeds, but the deceased may, in his life-time, change this pattern by taking steps to initiate someone else into the particular religion or secret society. Succession of the heir to a religious office is, of course, not automatic as he may opt out.

Our discussion of the law of succession has been based on the existence of a senior male heir. Needless to say this is not always the case, for although customary marriages are potentially polygamous, there are in reality many monogamous ones. Where this is the case, there is no difficulty as the male heir succeeds if he is not disqualified by any of the conditions mentioned above. Women are generally not eligible to succeed. Thus, if the deceased is survived by female heirs, succession rights would belong to his surviving brothers in order of seniority. If, on the other hand, the deceased had more than one wife, the eldest son of the first wife succeeds, but failing that, the rights of succession pass to the next son of the same wife if he is older than all the other

surviving male children. Where there are no senior male issue of the first wife, the right passes to the male issues of the second and subsequent wives in order of seniority. If the only male issue is too young, the property will be managed on his behalf by an uncle until he reaches majority. Where there is a total failure of male issues, the rights of succession fall on the surviving brothers of the deceased in order of seniority.

This pattern may sometimes be upset. This happens in cases where the deceased in his life time treats a younger wife as a favourite wife. The result of such treatment is that it places the issue of such a wife on the same level as those of the eldest wife.

Since we have drawn most of our examples from a patrilineal society it will be important, for purposes of completeness, to mention, even if briefly, the incidents of succession in a matrilineal society - such as the Bikom. In a matrilineal society, descent is traced through the mother's rather than the father's line. This operates to exclude the sons of the deceased from taking under an intestacy. The order of succession is from mother to brother according to seniority and then to nephews according to the same order.

We have in the pages above, attempted to state the customary law of succession among the people of Mbem. Since they are of the Tikar group, the law thus discussed is, in many ways similar to that of most Tikar groups in Cameroon. Indeed, we may venture to say, even at the

risk of generalizing, that the principles of law discussed above are, mutatis mutandis, true of most of Southern Cameroon.[76]

Succession in Islamic Law

In a work like this one is tempted to dismiss succession in Islamic law by saying in one sentence that it is according to the Maliki School of Islamic law. This is particularly convenient in the case of Cameroon where the influence of Islam is strongest in the north, but because of the slight differences between Islamic and Fulbe law of succession, we must comment very briefly on these differences.

Succession among the Fulani, otherwise known as the Fulbe, is not too dissimilar from what we have already considered. The one big difference is that since they are cattle rearing people, cattle must play an important part in the law of succession.

When a Fulbe dies, all his cattle pass to his younger brother, but

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76. See generally, Meloné S., La Parenté et La terre dans le Stratégie du Developpement, op. cit.; Brain, R.J., Bangwa Kinship and Marriage, op. cit.; Binet, J., La dévolution successorale chez les Doualas du Cameroun, Recueil Penant, 1955, pp. 33-40; Doumbé-Moulonge, M., Consequences de Juridictions de Droit traditionnel sur l'évolution des coutumes dans le Sud-Cameroun. Revue Juridique et Politique d'Outre-mer, 1963, pp. 564 - 569; also by the same author, L'évolution de coutumes et le Droit, op. cit., chapitre III, passim; Kanga, Droit Coutumier Bamiléké, op. cit., pp. 110-112.

failing one, to his eldest son. The inheritor holds the cattle for the benefit of the family of the deceased. Until the children of the deceased either get married or are given away in marriage, they remain as part of the household of the deceased under the guardianship of the inheritor. When the male children get married, they are given enough cattle to set them up in life. The number of cattle given to each depends on the total number which the deceased had. When female children are given away in marriage, they are given a cow apiece. As for the wives of the deceased, one of two things may happen. If they have children, they may opt to remain within the family, but if they have no children they may choose to re-marry. Where the latter happens, they are usually given a share of the cattle to compensate for what they themselves brought. Old women, whether childless or not, normally prefer to remain within the family of the deceased husband as this ensures them of enough care and protection.

Although cattle form the chief item of inheritable property, there may be other items of property like swords, bows, and arrows and clothing which follow the same pattern of succession as for cattle.[77]

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77. See generally Hopen, C.E., The Pastoral Fulbe Family in Gwandu. International African Institute, Oxford University Press, 1958, Chapter 14 passim; Smith M.G., "Hausa Inheritance and Succession" in "Studies in the Laws of Succession in Nigeria" Edited by Derrett, J.D.M., 1965, Nigerian Institute of Social and Economic Research. Published by Oxford University Press, Chapter 7 passim; Elias, T.O., Nigerian Land Law and Custom, op. cit., pp. 250-252;

The general pattern of Fulbe succession which we have described above is, however, changing. The change is due largely to the fact that an increasing number of them are giving up a nomadic for a settled life. This means that they can now acquire immovable property and are more easily amenable to the strict Maliki law of succession.

Quite apart from the fact that this has been dealt with elsewhere,[78] the rules of Maliki law of succession are too detailed and technical to be dealt with here. Very briefly, Moslem law of succession was summarised by Bello J. in a recent Nigerian case as follows:[79]

> "(1) That if a Moslem dies intestate his estate must be shared among his heirs entitled to share his estate under the Moslem law and that his male children must have equal shares and his female children half share each of a male child;
>
> (2) That a Moslem is entitled to make a will and by it to dispose of $\frac{1}{3}$ of his estate to persons who are not his heirs entitled to share his estate and the remaining $\frac{2}{3}$ would be distributed to his heirs as if he died intestate and he cannot by the will affect any alteration of the shares of these heirs in the remaining $\frac{2}{3}$ without the consent of the heirs.
>
> (3) That where a person makes a will in favour of his heirs, the same rule holds as in the case of bequeathing more than a third to the stranger - in other words the deed is not valid, unless the heirs give their consent to the disposing after the death of the testator; and their consent previous to his death will have no effect;

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78. Ibid. Also Ruxton, F.H., Maliki Law, London, 1916, pp. 373-397.

79. Yinusa v. Adesubokan [1968] Suit No. Z 23/67 from the North Central State of Nigeria. The facts of the case will be stated later.

(4) That a child may only be disinherited of his legal share if he is not a Moslem or if he kills his parents with the intention to inherit their properties."

This judgment of Bello J. does no more than summarise the cardinal principles of succession under Islamic law. It need hardly be mentioned that there are more detailed rules governing the payment of debts and the settlement, if any, of all liabilities of the deceased, as well as rules determining the categories of kin who may also share in the inheritance.[80]

Succession According to English law in West Cameroon

As in the case of marriage, the law of succession is the same as in Nigeria. It is governed by the case of Cole v. Cole,[81] the facts of which are as follows. One, James William Cole (the deceased) and Mary Jemima Cole contracted a Christian marriage in Sierra Leone in 1864. The couple then returned to Lagos in the same year. Two years later, their only child, Alfred Cole was born. In 1897 James William Cole died

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80. Anderson, J.N.D., Islamic Law in the Modern World, London, Stevens & Sons, 1959, Chapter 4 passim; Smith, Hause Inheritance and Succession, op. cit.

81. [1898] 1 N.L.R. 15. This differs from the position in Lagos which is governed by Section 36 of the Marriage Ordinance (Cap. 115 of the 1958 Laws). By this section the assets of persons subject to customary law, but who are married under the Ordinance, shall be governed by the English law relating to personalty as at 1st January, 1900.

intestate. The problem before the court in the present case was whether English or customary law should be applied in the distribution of the property of the deceased. The court below decided that customary law was applicable, but this decision was reversed by Brandford Griffith J. on appeal to the full court on the ground that:

> "the position of a man and a woman who marry according to Christian rites is entirely different. Christian marriage imposes on the husband duties and obligations not recognised by native law. The wife throws in her lot with the husband, she enters his family, her property becomes his .... In fact a Christian marriage clothes the parties to such a marriage and their offspring with a status unknown to native law.
>
> In such circumstances, can it be contended that the question of inheritance of the deceased in the present case should be decided in accordance with the principles of native law and custom? I think not. Such a contention would be contrary to the principles of justice, equity and good conscience. Were such a contention to hold good then an educated native Lagos gentleman - maybe a doctor, or a barrister, or a clergyman, or a bishop (for there are all such) - marrying an educated native lady out of the colony and coming to reside permanently in Lagos would have his estate subject to native law in case he died intestate, his widow being required by a strict undiluted native law to act as wife to her brother-in-law in order to obtain support ... I am of opinion that this is a case in which the court ought not to observe the native law of inheritance."[82]

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82. [1898] 1 N.L.R. at p. 22.

This case, therefore, established that the English law of succession will be followed in all cases where the parties have clothed themselves, by means of a Christian marriage, with a "status unknown to native law." In other words, the form of marriage will determine the mode of succession. Predictably, this decision has not gone uncriticised. Dr. Okoro has referred to it as:

> "an outmoded case decided at a time when English judges were unused to customary law and its administration, a legal system which struck some of them as not merely bewildering, but even barbaric to the extent that Speed J. went so far as to say that the customary law which governs the concept of family property deserved to be given the coup de grace."[83]

Professor Allott, commenting on the view:

> "that an African who married under the Ordinance removes himself entirely from the operation of customary law, at least in personal matters,"

thought that:

> "this is hardly maintainable, at least for Ghana. Persons married under the Ordinance continue to be liable for torts by customary law, to be able to contract by customary law, to hold land on customary tenure, to succeed to property by the customary law of succession, to administer the estate of a deceased relative under the

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83. This passage is taken from Dr. N. Okoro's book - The Customary Laws of Succession in Eastern Nigeria, London, Sweet and Maxwell, Lagos, African Universities Press, 1966, pp. 185-189. The reference to Speed J. is in connection with his decision in Lewis v. Bankole [1908] 1 N.L.R., at p. 83.

> customary law, to act as head of the family etc. It is reasonable that any rights or duties that a spouse may have under customary law that are clearly incompatible with the marriage state as known to English law should be overridden by the English rules; but it is also reasonable to remember that the spouses are African though married by forms imported from England, and that they will tend to conform as far as possible to standards of behaviour usual in Ghana."[84]

This passage sums up in a fair and objective manner the attitude which should be adopted in dealing with the type of situation with which Justice Brandford Griffith was faced. Indeed, this line of thought received judicial support in the case of Smith v. Smith.[85] In this case, Smith, a native of Lagos contracted a Christian marriage in Sierra Leone in 1876, and later returned to Lagos with his wife. He died there leaving a house and three children - the plaintiff, a boy, and two girls. In 1922, the plaintiff, who was then in need of money obtained the permission of his sisters to execute a deed of mortgage which stated that they were tenants in fee simple of the property. At a later date, the plaintiff wanted to execute a second deed of mortgage, but his sisters refused to give their consent. Thereupon, he brought an action claiming that he was exclusively entitled to the house as heir at law since succession to it was governed by English law, but Van Der Meulen J. quite contrary to the Cole case held that:

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84. Allott, Essays in African Law, op. cit, p. 219

85. [1924] 5 N.L.R. 105.

> "the fact that a man has contracted a marriage in accordance with the rites of the Christian church may be very strong evidence of his desire and intention to have his marriage generally regulated by English laws and customs, but it is by no means conclusive evidence. In my opinion, the question as to what law is equitable to apply in any given case can only be decided after an examination of all the circumstances of the case, and that I conceive to be the meaning of Section 20 of the Supreme Court Ordinance."[86]

Despite these doubts about the case of Cole v. Cole, it remains the law that outside Lagos (and this would include West Cameroon), the devolution of property on death of spouses married according to Christian rites or under the Marriage Ordinance must be according to the rules of English law. The rules of devolution are those laid down in the Statutes of Distribution of 1670 and 1685. These statutes of general application were confirmed in two recent Privy Council decisions in the cases of Bamgbose v. Daniel[87] and Coleman v. Shang[88] which came from Nigeria and Ghane respectively.

Most of these problems, however, arise in cases of intestacy. As for testate succession, the law in force in Cameroon is the received English law as contained in the Wills Act, 1837, which is a statute of general application. Under this Act, any person can make a will disposing of his disposable property. It is important that the property

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86. Smith v. Smith [1924] 5 N.L.R. at p. 107.

87. [1955] A.C. 107.

88. [1961] 2 All E.R. 406.

must be disposable because this excludes family property.

Wills made under the provisions of the Wills Act, 1837 may, nevertheless, produce situations of conflict as was highlighted by the recent case of Yinusa v, Adesubokan[89] from the North Central State of Nigeria. The case concerned the will of one Saibu - a Moslem born at Ommaran in Ilorin Province. He was then brought up and educated in Lagos where his parents had settled. He subsequently moved to Zaria where he lived with his parents until his death in 1965. Under his will which was made according to the provisions of the Wills Act, 1837, he left to the plaintiff, his first son, the sum of £5. To the two others, he left a house each situated in Zaria, another house in Lagos to them jointly as well as the residue of his estate. Probate of the will was granted to the defendant. This action was therefore brought by the plaintiff in an attempt to set aside the probate on the ground that the testator as a Moslem was not entitled to make a will under the Wills Act, 1837, nor was he entitled to dispose of his properties under the will contrary to Moslem law, the general provisions of which we have already referred to above. It was held by Bello J. as follows:

> "(1) that a Moslem of Northern States of Nigeria is entitled to make a will under the Wills Act, 1837, but he has no right to deprive by that will any of his heirs, who are entitled to share his estate under the Moslem law, of any of their respective shares granted to them by Moslem law.

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89. [1968] unreported.

(2) that in the case of a will of movables, the testator must comply with his personal law, i.e., the native law and custom of his particular locality, unless such personal law is repugnant to natural justice, equity and good conscience or incompatible with any law for the time being in force which does not deprive any person of the benefit of the personal law of the testator; and

(3) that where the testator is a native within the meaning of the land tenure law and the will concerns immovables situated in the Northern States of Nigeria, the testator must comply with the native law and custom, relating to devolution, of property of the place where the land is situated.

For these reasons the probate of the will will be set aside."

Although this might smack of chauvinism, we find a great deal of sympathy with the arguments of Bello J.

Succession in East Cameroon

The law of succession in East Cameroon follows, like the law of marriage, the dual pattern of customary and French law, but unlike marriage, this aspect of the law was not the subject of modification by metropolitan or local statutes. Thus, the only noticeable changes in the customary law of succession came either through developments in other branches of the law or through general administrative developments.

The first significant impact which developments in other branches of the law had on the customary law of succession came with the decrees of 21st July, 1932, introducing the constation system and the régime of immatriculation which we dealt with in connection with land law. As a result of these legislative measures, a number of people were given certificates of title to land registered in their name. The result of this was that the rights of succession to land under customary law were affected in the sense that certain lands which would have in normal circumstances devolved according to customary law were removed from the province of customary law. Other measures which affected succession rights, also in connection with land, were certain administrative measures which delimited certain zones in urban areas like Douala where all houses had to be of a permanent nature. The result of such regulations was that several natives sold their land, the reason being either for the quick gains to be realised by so doing and/or the lack of funds with which to put up permanent buildings. In this way, inalienable property that once belonged to the family was disposed of.[90]

These developments were bound to have certain effects on the law

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90. Doumbé-Moulongo, Conséquences des Jurisdictions des Droit Coutumier sur l'évolution des coutumes dans le Sud-Cameroun. Revue Juridique op. cit., pp. 564-569. The same author, L'Evolution des coutumes et le Droit, op. cit., chapitre III passim.

of succession. All land registered was automatically removed from heritable property under customary law, as was all the land sold as a result of the administrative regulations. The consequence of all this was twofold. Firstly, future heirs were, as we have already mentioned, deprived of heritable property. Secondly, and particularly with land which had come under the system of immatriculation, the notion of co-heirs was created where before there was just one heir. Co-heirs were created as a means of guaranteeing the interests of other heirs, particularly where "immatriculated" land was registered in the name of the principal heir. Inherent in the creation of co-heirs was the possibility of dividing the land between them.

These new developments, of course, only applied to a very small proportion of the people in Cameroon. For the vast majority, the law of succession was and still is the customary law, the principles of which are, mutatis mutandis, similar to those which we have already considered above.

These Cameroonians of statut civil are, of course, subject to the law of succession as outlined in the French Civil Code.[91]

Conclusion

The general elements of the law of marriage and succession which

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91. See Articles 718-1110 of the Code Civil. Codes et Lois du Cameroun, Tome II, pp. 59-84; Amos & Walton, Introduction to French Law, op. cit., Chapters XIII & XIV.

we have considered, demonstrate quite clearly that this is one of the areas of greatest potential conflict.

We have seen, in our consideration of the law of marriage that not only are there variations in the different customary laws, but also complications created by Islamic, French and English law. This is not to mention the influence of religion. This situation does not seem to have been improved by piecemeal legislation passed by the Federal Government in exercise of its constitutional rights in respect of the law of persons and property.[92] For instance, there are provisions in the Penal Code[93] in relation to marriage,as well as in the law to organize the Civil Status Registration.[94]

Again, as we saw when dealing with the judicial system, the courts which are charged with responsibility for all litigation in connection with marriage are different. In West Cameroon, all matters involving customary law marriages are dealt with in the customary and Alkali courts. All other disputes involving Christian or Ordinance marriages fall within the jurisdiction of the High courts. A similar situation obtains in East Cameroon. All matters involving customary or Islamic law are dealt with either in the tribunal coutumier or in the chambre

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92. Articles 6 and 24 of the Federal Constitution.

93. See the relevant provision of the Penal Code (Laws No. 65-LF-24 of 12th November, 1965 and No. 67-LF-1 of 12th June, 1967). See Appendix VI.

94. See relevant provisions of the law to organize the Civil Status Registration. (Law No. 68-LF-1 of 11th June 1968). See Appendix VII.

coutumier du tribunal de premier instance, while all marriages under French law are dealt with in the appropriate chamber of the court of first instance. This difference in jurisdiction results from the fact that the existing law in West and East Cameroon does not accord equal treatment to the different marriage laws. In the circumstances, the fact that there is great need for a new integrated law which guarantees for all marriages the same legal status and consequences cannot be overemphasised. In this connection, the recent Tanzanian Government[95] proposals on the uniform law of marriage could offer some useful ideas.

While the law of marriage is in need of reform, the law of succession is even more so because it transcends the boundaries of other branches of law such as marriage and property law. Thus, the recent proposals in connection with the individualization are bound, if carried into fruition, to have far reaching effects on the law of succession. The law of succession is, however, not easily susceptible to change as was highlighted by the discussions at a recent colloquium on the law of succession.[96]

The problems in connection with the law of succession which are not too dissimilar to those in connection with other aspects of the law

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95. Government Proposals on the Uniform Law of Marriage, Government Paper No. 1 of 1969.

96. Colloquium on the Preparation of an Integrated Law of Succession in African Countries held at the School of Oriental and African Studies in London in June, 1965.

include problems of multiplicity not only of customary laws, but also of laws derived from other sources, such as French and English law. The adoption of English law creates further handicaps. Firstly, there are the accustomed problems about the reception of English legislation and case law. Then there are problems created by the outdated nature of some of such legislation and case law. For instance, we have seen above that the Statutes of Distribution of 1670 and 1685 are still applicable in Cameroon today. As for case law, it is not only the metropolitan decisions which are sometimes too unrelated to particular African conditions, but also the local decisions which, as we saw above were sometimes based either on an erroneous interpretation of customary law, or on the assumption of the inherent superiority of Western law - assumptions which were fired by a certain degree of chauvinism. Further, the law of succession depends on the law of marriage, for as we have seen, intestate succession in West Cameroon depends on the type of marriage. Thus, customary law marriages give rise to customary law succession, while Christian or Ordinance marriages give rise to succession under English law. No less important are the parts played by religion and the nature of the property on the law of succession. Indeed, the recent case of Yinusa v. Adesubokan has not failed to drive home some of these problems. Faced with a situation such as this, we cannot but accept the con-

clusion of the London colloquium that there is need for a cautious approach to such a complicated subject as succession. However, we hasten to add that, because of the rapid social changes in Cameroon, and indeed, in most African countries, as well as proposed changes to other aspects of the law which are not unconnected with succession, notably property and marriage, reform and integration cannot be too long delayed, if we must avoid chaos. Our general plan of the procedure which can be adopted has been suggested elsewhere.[97]

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97. See Chapter VIII.

# CHAPTER XII

## ATTEMPTS AT INTEGRATION OF THE LAW

### Preliminary Observations

In an attempt to trace the development of the law in Cameroon, we have seen that Cameroonians are brothers in many aspects of the law and divided in many more. The pressing job which faces them, therefore, is to bridge the legal divide. Several bold and successful attempts such as the unification of Penal and Labour Law have already been made, but much remains to be done. Therefore, until this work is done, there are bound to be conflicts in the law. Because of the peculiar situation in Cameroon, we must now consider the nature of the conflicts.

### Conflicts and the Need for Harmonization

Cameroon, like Somalia, has not only inherited from its colonial past a dual system of law such as is common in most African countries, but a much more complicated structure. This is due as much to its chequered colonial history as to the various customary laws within the country.[1] Thus, whereas in most African countries, there are operating side by side different customary laws, an imported Western law, and in

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1. See generally Allott, A.N., New Essays in African Law, London, Butterworths, 1970, Chapter 4 passim.

some cases, the addition of Moslem and/or Hindu groups,[2] in Cameroon there are, in addition to these, three different imported laws, namely, German, French and English law. Except in the field of land law, the influence of German law has been slight, if any. This is not the case with French and English law. Quite the contrary, these have had a tremendous influence in East and West Cameroon respectively. This legal maze is made even more complicated if we add, as we need must do, the new laws being passed by the Federal and Federated State Governments and the development of case law in West Cameroon and jurisprudence constante in the East. Thus the conflict situation in Cameroon can be broken down as follows:

(1) Conflict of the general law.[3] This involves any conflict resulting from French and British adopted laws. Since the two systems are different any conflicts can only be settled by seeking recourse to the rules of Private International Law.

(2) Then there is the conflict either between the French or English adopted law and customary law. For instance, A marries B in a Registry according to the British orientated Marriage Ordinance. A pays marriage consideration to the parents and relatives of B according to customary law. In the event of a dissolution, there is bound to be conflict both as to jurisdiction and the law governing the marriage.

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2. There is only the Moslem addition in Cameroon.

3. Allott, New Essays in African Law, op. cit., pp. 15 - 27.

(3) There are also conflicts as between the various customary laws. The West Cameroon Customary Court Law, 1962[4] provides by Section 20(a) that a customary court shall administer:

> "the native law and custom prevailing in the area of the jurisdiction of the court or binding between the parties."

While this section is an improvement on a similar section in a previous law dealing with the same matter, it does not altogether prevent situations of conflict where litigants A and B come from different customary court jurisdictions.

(4) Although Islamic law is treated, as we have already noted, as a species of customary law, it is in itself basically a religious law and therefore different in several respects from customary law. The result of this is that there can be several cases in which there is conflict between Islamic and customary law. We have already met the interesting case of Mariyama v. Sadiku Ejo,[5] where the question was raised as to whether the custody of the children of the parties who were Moslems by conversion should be governed by Islamic law or their customary Igbirra law. This case highlights the type of conflict that c an arise between customary and Islamic law.

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4. This law amends Customary Dourt Law (Southern Cameroons) No. 9 of 1956 and Customary Courts (Amendment) Law No. 5 of 1959.

5. [1961] N.R.N.L.R. 81.

(5) There might also be a conflict of jurisdiction such as was alluded to in the second item above.

The position in Cameroon is therefore a conflict situation par excellence. Thus, we have to grapple not only with problems of internal conflict but also with problems which call for a recourse to the rules of Private International Law.

Faced as we are with such a situation, the inevitable question is how do we deal with it? Since Cameroon is not the only country faced with this problem, it may be useful to consider briefly how others are dealing with it so that we may, if need be, take a leaf out of their books.

Most, if not all, African countries are eager to have a uniform system of law. The arguments put forward in favour of this policy are twofold. Firstly, there is a great desire, even rush in certain cases, to get rid of customary law which has been described hitherto as primitive. Secondly, it is often argued that a single law would engender unity and progress. There is, of course, the counter argument which is by no means unconvincing that any wholesale unification on the lines undertaken by Ataturk in Turkey in 1926 might tend to be divisive rather than unifying.[6] But be that as it may, it is true that there is as much a risk of legal balkanization as there is a need for legal uniformity. The problem is how to handle the situation. Professor Alliot has suggested three solutions, namely:

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6. Edited by Baade, H.W., African Law, New Law for New Nations, Oceana Publications, Inc., Dobbs Ferry, New York, 1963, p. 16.

"(i) the 'de-occidentalization' of African laws (i.e. rejecting certain features of French and English law unsuitable for application in Africa).

(ii) harmonization of the form of legislation (at present French lawyers find it difficult to use English texts and authorities and vice versa) because of the very different approaches of legislation and text-books in the two systems, and

(iii) the adoption by African legislators of the same legal classifications and concepts. Here new variations are being introduced, e.g., in the classification of crimes. A new legal vocabulary which could be followed by most African States is essential, e.g., to clarify who is a "brother" or a "sister"... or what is abus de confiance in banking law.

Much could be achieved by universities which teach African law to promote this re-classification and unification of African legal terms. Up till now such comparisons as have been attempted have been restricted to a limited group of laws (e.g. those of Francophone Africa; those of English-speaking Africa); Law Schools should be bolder and adopt a wider frame of reference and comparison."[7]

We find ourselves in total agreement with Professor Alliot on the point that universities which teach African law can do much to promote the re-classification and unification of African legal terms. We even venture to add that such universities can achieve even more towards a

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7. Alliot M., Problème de l'Unification des Droits Africains, 1967 J.A.L., pp 96-98 at pp. 97-98.

unification, not only of legal terms, but of African law as a whole. They can do this by conducting research into all aspects of the law and working in close co-operation with the Government through the Ministry of Justice - a thing which is sadly lacking, at least in Cameroon. It seems, with respect, that Professor Alliot's threefold suggestion is necessarily restrictive, for it places emphasis on French and English law and seems to ignore the existence of customary law which regulates the affairs of a large majority of the population. Indeed, the policies of most African states recognise this.

Thus the policy of every African State is to have a uniform law which blends together all the laws, but the approach to the problem varies from country to country. Roughly, there are three approaches. Firstly, there are countries which believe that if the integration of the laws is to be meaningful it must be backed by detailed research into all the laws, and in particular customary law which is varied and unwritten. The prior ascertainment and restatement of customary law before any attempt at a unification of the law is not only scientific, but gives us a good understanding of a major part of the law which we are trying to unify. Quite apart from that, such research into customary law is important, if only for reasons of national pride, for it helps us to revive, record and reserve some of our traditions which took a great deal of

knocking during colonial rule. Foremost amongst countries in this group is Kenya. Secondly, there are other countries, notably the Francophone ones, which have a strong tendency not to bother with any research into customary law, or indeed, to ignore it completely.[8] The third group of countries, notably Tanzania, adopt a middle course between the first two groups.[9] Whichever method is adopted, the aim is to produce either a harmonized integrated or unified law.[10]

Since we are dealing with Cameroon, the immediate question must be one of placing her in this threefold classification. In order to do this we must first consider the examples of integration and the procedure adopted.

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8. In this group one might also include Ethiopia whose New Civil Code ignores customary law.

9. Allott, A.N., Towards the Unification of African Law, 1965, I.C.L.Q., pp. 366-389 at p. 375.

10. These words have been defined by Professor Allott as follows:

> "By 'harmonization' is meant the removal of discord, the reconciliation of contradictory elements, between the rules and effects of two legal systems which continue in force as self sufficient bodies of law."
>
> "By 'integration' is meant the making of a new legal system by the combining of separate legal systems into a self consistent whole. The legal systems thus combined may still retain a life of their own as sources of rules, but they cease to be self sufficient autonomous systems."
>
> "By 'unification' is meant the creation of a new uniform legal system entirely replacing the pre-existing legal systems, which no longer exist either as self sufficient systems or as bodies of rules incorporated in the larger whole; although the unified law may well draw its rules from any of the component legal systems which it has replaced."

See Allott, 1965, I.C.L.Q., p. 377.

Examples of Legal Integration in Cameroon.

As we have already indicated, Cameroon is a conflict situation par excellence. This makes it imperative for an urgent integration of the law. The Federal Government of Cameroon is not unaware of this need. To this end, in 1964, it set up two commissions to carry out this task. One commission - the Commission Fédérale de Législation Civil et Coutumier - was charged with the responsibility of drafting bills for a uniform Civil Code, a code of civil and commercial obligations, and a code of civil procedure. The second commission - the Commission Fédérale de Législation Rénale - was to prepare draft penal and criminal procedure codes.[11]

The second commission has since produced a Penal Code which we have already dealt with. The Criminal Procedure Code as well as the entire work of the first commission[12] are still being awaited.

The Penal Code was produced by literally putting the Nigerian Criminal Code Ordinance[13] which applied in West Cameroon side by side

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11. Decree No. 64-84 of 29th February 1964. J.O.R.F.C. of 1st March, 1964, at p. 288; 1964, J.A.L., p. 85; Allott, Towards the Unification of African Law, 1965, I.C.L.Q., op. cit., p. 382; Salacuse, J.W., Introduction to the Law of French Speaking Africa, op. cit., at p. 275.

12. We have not been able to lay hands on the list of the members of this Commission. It would seem that the bulk of the work is being done by a few civil servants attached to the Ministry of Justice.

13. Cap. 42 of the 1958 Laws of Nigeria.

with the French Penal Code[14] which applied in East Cameroon and synthesizing their provisions to produce a draft which reconciled the two. Sometimes this was impossible so the Commission had to choose either the French provisions or the English provisions. A good example is the offence of conspiracy which appears in the code. Its inclusion represents a bow to the Criminal Code Ordinance because it was unknown in the French Code applicable in the East.[15] Again the classification of offences into felonies, misdemeanours and simple offences according to the maximum penalties is a bow in the other direction.[16]

Interesting as this exercise may have been, there are significant omissions in the Code. These omissions are caused by the apparent lack of ideas about customary or Islamic criminal law. It may well be that there is nothing in customary or Islamic law that is worth including in the Penal Code, but the fact that they were left out, not as a result of the discovery of their worthlessness through research, leaves much to be desired. While this disregard of customary and Islamic criminal law does not seem to be missed, any such omission in a Civil Code is bound to be a great mistake because of the importance of customary and Islamic personal law. It is, therefore, to be hoped that the Commission responsible for

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14. See Codes et Lois du Cameroun, Tome II, pp. 645 to 944.

15. See Section 95 of the Penal Code.

16. Section 21 of the Penal Code. Also see Clarence Smith, The Cameroon Penal Code, 1968 I.C.L.Q., op. cit., p. 656.

drafting the Civil Code will not make the same mistakes. Quite apart from these major projects of integration, a lot of uniform laws are being passed in many other fields. These are not integration strictu sensu, but rather the wholesale introduction into West Cameroon of legislation which has been in operation in East Cameroon.[17] This may be either because there was no corresponding legislation on the subject in West Cameroon law or because such West Cameroon law as existed on the subject is unsatisfactory, or simply as a matter of policy. Examples of such laws include the Cameroon Investment Code[18] which started as a specific law for East Cameroon and which has now been extended to the whole Federation, or the Law Organizing the Civil Status Registration[19] or the Nationality Code,[20] to mention just a few.

One fortunate thing, however, is that all these laws which are not really potential areas of conflict work satisfactorily.

Having raised the problem of conflict, we must now consider how Cameroon is actually dealing with it. As we saw above, the conflict in Cameroon is not only what has been referred to as internal conflict of laws,[21] but one between territorially separated legal systems, namely,

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17. In discussing the example of integration, we have not mentioned the Labour Code because, although it draws examples from previous labour legislation in both East and West Cameroon, it partakes more of the nature of an entirely new creation.

18. Law No. 64-LF-6 of 6th April, 1964. This is the same Law No. 60-64 of 27th June, 1960 which was in force in East Cameroon.

19. Law No. 68-LF-1 of 11th June, 1968.

20. Law No. 68-LF-3 of 11th June, 1968.

21. Allott, New Essays in African Law, op. cit., p. 112

French law in the East and English law in the West. The slow pace of integration means that this pattern is likely to persist for a long time. Further, the linking of East and West Cameroon by the Douala-Tiko road and the Mbanga-Kumba railway extension, and the freedom of movement which will result from this is likely to exacerbate the situation even further. How then do we cope with it?

At the moment there are no internal conflict rules in both East and West Cameroon, except perhaps in West Cameroon where the ordinary courts apply customary law. When this happens, they apply the law which would have been applied by the customary court if it had jurisdiction over the matter in question. Apart from this exception, each court applies its own rules and the jurisdiction of the courts is distributed in such a way as to eschew conflicts. Thus the court of the _situs_ deals with land and the court of the deceased's tribe deals with succession. A similar situation obtains in East Cameroon.[22]

As for conflict of law rules, it would appear that the English choice of law rules apply in West Cameroon. The justification for this statement is not difficult to come by, for Professor Graveson has expressed the view that:

> "the principles of English conflict of laws applied in the English courts form part of the English law in its widest sense, while

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22. Edited by Allott A.N., _Judicial and Legal Systems in Africa_, 2nd Edition, London, Butterworths, 1970, p. 120.

> individual principles of the conflict of laws form an integrated part of the branch of law to which they relate. Thus, the rule that the validity of a contract as to form depends on the law of the place where the contract is made is equally a rule of conflict of laws and of contracts. Particularly for the purpose of this subject, law cannot be treated as divided into a number of well-defined and water-tight compartments. For the conflict of laws is a cross-section of almost the whole law."[23]

It follows from this that the general reception of English law in West Cameroon on 28th February, 1924, included the English choice of law rules. In much the same way, the reception of French law in East Cameroon included the French choice of law rules since French "Private International Law is a branch of French private law."[24]

The prevailing situation leads us to the inevitable conclusion that the first step in dealing with the Cameroon legal maze would have been to draw up a uniform choice of law rules, or as Professor Allott puts it:

> "The most logical arrangement for choice of law rules would be to have a general statute regulating the extent of the application of different types of law; such a statute ought to appear as the first enactment in the statute book. Regrettably, such provision has not been made up till now in African countries and rules for choice of law have generally been inserted as appendages to legislation establishing or controlling the courts of the territory."[25]

23. Graveson, R.H., The Conflict of Laws, 5th Ed., London, Sweet & Maxwell, 1965 p. 120.
24. David and de Vries, The French Legal System, op. cit., p. 48.
25. Allott, New Essays in African Law, op. cit., p. 122.

We must here add that such a statute must be followed, if not preceded, by an integration of the court system. This is extremely important because an integration of the law without an integration of the courts is unlikely to reduce the problems to a minimum, for we have seen above that the choice of courts, often determines the choice of law. Thus, customary law tends to be applied in customary courts and western orientated law in courts of a similar orientation. It was perhaps in realization of this fact that Somalia, which is in a similar position to Cameroon, decided to start the whole process of integration by first integrating the courts.[26]

Conclusion

Since we ended every chapter of this work with a conclusion, only a few general remarks shall be made here.

In the preceding pages, we have tried to trace in historical perspective, the structural development of the laws and constitution of Cameroon. Like Aristotle, we believe that:

> "here and elsewhere we shall not get the best insight into things until we actually see them, growing from the beginning."

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26. Contini, P., The Somali Republic. An Experiment in Legal Integration, op. cit., pp. 32-44. The same author, Integration of Legal Systems in the Somali Republic, 1967, I.C.L.Q., p. 1088; Cotran, E., Legal Problems arising out of the Formation of the Somali Republic 1963, I.C.L.Q., p. 1021.

The law, being inherently dynamic, is still growing, and like all growths, needs nurturing if the best results are to be achieved. This growth must, therefore, be directed not only by lawyers who can in this legal jungle see the wood for the trees, but also by the Government which can make available resources and facilities for legal research both at the university and elsewhere.

Finally, we are too well aware of the fact that in this work more problems have been raised than have been answered. Nor need one man attempt to answer all the problems if this is at all possible. As President Ahidjo has said:

> "development (and one may add, legal development) is not a gift from heaven nor the result of mere chance, but represents the fruit of unremitting efforts of a whole people, and of each individual acting in his place in the community according to his means and his talents."[27]

There could not be a better note on which to end this work.

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27. Ahidjo, A., The Second Five Year Development Plan, at p. 1. Our parenthesis.

APPENDIX I

Treaty with the Kings, Chiefs and Traders
of Cameroons, January 14, 1856

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Bye-laws for the better regulation of Trading Matters between the Supercargoes and Native Traders of the River Cameroons: passed at a Meeting held on board Her Majesty's steam-vessel "Bloodhound".

Art. 1

That an Equity Court be established in the River Cameroons, to keep in their integrity the following bye-laws and regulations; and that the Court shall consist of all the Supercargoes, as well as of the Kings and traders, of the locality.

Art. II

That the proposed Court-house be erected and the ground purchased at the joint expense of the Supercargoes now trading in the river; to be considered British property, and under the protection of Her British Majesty's Consul, subject to the approval of Her Majesty's Government.

Art. III

That this body have a monthly sitting, unless in special case, to be summoned at any time; that a Supercargo, each in his turn from seniority, be elected chairman for a month; and that a report of each meeting be forwarded to Her British Majesty's Consul, to Fernando Po.

Art. IV

That these laws now entered into be complied with and respected by Supercargoes absent from this river, or this meeting, at the time of their enactment, or afterwards to be here; and any native traders to "come up" to be bound by them also.

Art. V

That the native Kings and Chiefs pledge themselves, not only to pay their own debts, but to use their influence, each with his respective traders, to do the same, and that for their neglect of this they be subject to a fine, to be settled by the Court.

Art. VI

That any 3 members of the Court have the power to make an appeal against its decisions, which appeal is to be deferred till the Consul's next visit; and that if, on examining this appeal, it be proved to be frivolous or invalid, the appellants are to be fined in the highest penalty the Court can inflict.

Art. VII

That this Court shall apply the fines levied by it to the expense of its erection and keeping in order, or as the Court assembled may think fit.

Art. VIII

That the Kings and Chiefs of Cameroons hereby solemnly pledge themselves to keep inviolate the Anti-Slave Trade Declaration made between Her Majesty's Government and the Kings of Cameroon on the 10th of June, 1840, and to give information to any of Her Majesty's officers in the neighbourhood, of the presence of a slave-trader in Cameroons.

Art. IX

That any Supercargo or native, after receiving a formal notice to appear at the Court, refusing to attend, thereby setting the laws of the Court at defiance, shall be fined in the amount of 5 pieces of cloth, unless he can show clear cause for his absence.

Art. X

That any native refusing to pay any fine that may be inflicted by the Court, shall be stopped from going on board any ship in the river, either for trade or any other purpose, and any Supercargo refusing to pay a fine shall be denied the privileges of the Equity Court.

Art. XI

That in the event of any native trader attempting to evade the penalty of the Court by non-appearance, or otherwise, and notice of such defaulter being sent to all the masters, traders, or Supercargoes in the

river, such masters, traders, or Supercargoes, are hereby bound, under the penalty of 100 crews, to forbid such defaulter coming to his vessel for trade, or under any pretence whatever, and if necessary the final settlement to await the arrival of Her British Majesty's Consul.

Art. XII

That all palavers shall be considered as settled up to this date, and cannot be again brought forward to the detriment of trade.

Art. XIII

That any vessel coming into the river for the purpose of trade shall pay to the King, or Headman, of the town at which he may choose to anchor, the amount of 10 original crews for every 100 tons of the vessel's register; in special cases, or those of resident agents, their comey to be according as they may arrange it annually, or otherwise, with the King or Headman of the town at which their cask-houses are situated; and under no pretence shall any other King or Headman demand any comey or dash whatever from such vessel; and also the said King or Headman to supply the said ship with a suitable cask-house, on payment of 5 crews.

Art. XIV

That after the usual payment to the King or Headman for the use of the cask-house, if any agent or Supercargo can prove that his cask-house has been illegally entered or broken into, and any property stolen therefrom

by any of the natives, the said King or Headman to be held responsible for the loss.

Art. XV

That any King, Chief or trader, attempting or threatening to stop the trade of any vessel or Supercargo, after the usual comey had been tendered for the privilege of trading, such King, Chief or trader, shall, at a meeting of the Supercargoes, be summoned before the Court to account for such stoppage, and if found guilty of illegal obstruction shall be fined to such an extent as may be agreed upon.

Art. XVI

That any person acting as pilot shall receive as compensation, the value of 1 original crew for every 3 feet of the vessel's draught.

Art. XVII

That whereas several boats have been frequently stopped and taken from alongside ships, the British subjects detained and maltreated, any aggression committed either on property or person shall be visited by immediate punishment to the parties so offending; a special Court called for the occasion, and the heaviest fine inflicted allowed by the laws.

Art. XVIII

That the regulations long existing, made by the natives, respecting

intentionally watered or fomenting oil, shall still be in force.

Art. XIX

That for any breach of any one Article of this Treaty the person or persons so offending be liable to whatever penalty the Judge of the Court may think proper to inflict, not exceeding 20 crews for a native, and not exceeding 300 crews for a Master, Supercargo or Agent.

Art. XX

That any Supercargo or native, their employers or followers, appearing at, or in the immediate vicinity of, the Court-house with fire-arms, or any other offensive weapons, be heavily fined and expelled.

Given under our hands, on board Her Britannic Majesty's steam-vessel "Bloodhound", laying in the River Cameroons, this 14th day of January, 1856.

| | | | |
|---|---|---|---|
| King Bell | Preso Bell | Joss | Jim Quan |
| John Acqua | King Acqua | Charley Dido | Ned Dido |
| | First Tom Dido | Dido Acqua | |

Thos J. Hutchinson, H.B.M.'s Consul for the Bight of Biafra and the Island of Fernando Po.

G.J. Williams, Lieutenant, Commanding Her Majesty's steam-vessel "Bloodhound".

Thos. M. Simpson, Secretary to Her Britannic Majesty's Consul.

APPENDIX II

Draft of Treaty with Kings and Chiefs
of the Cameroons

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Her Majesty the Queen of Great Britain and Ireland, Empress of India and so on, and the Kings and Chiefs of the Cameroons being desirous of maintaining and strengthening the relations of peace and friendship which have for so long existed between them.

H.B.M.has named and appointed G.H. Hewett, Esq., her Consul for the Bights of Benin and Biafra to conclude a treaty for this purpose.

The said G.H. Hewett, Esq., and the said Kings and Chiefs of the Cameroons have agreed upon and concluded the following articles:

Article I

Her Majesty the Queen of Gt. Britain and Ireland etc., in compliance with the request of the Kings, Chiefs and people of the Cameroons hereby undertakes to extend to them and to the territory under their authority, and jurisdiction, Her gracious favour and protection.

Article II

In return for the benefit accorded to them by Article I, the Kings and Chiefs of the Cameroons hereby undertake to cede to Her Majesty the Queen of Great Britain and Ireland etc. whenever she may call upon

them to do so, so much of their territory as she may consider it necessary to facilitate the objects of this treaty.

Article III

The Kings and Chiefs of the Cameroons agree and promise to refrain from entering into any correspondence, agreement, or treaty with any foreign nation or power except with the knowledge and sanction of H.B.M.'s Government.

Article IV

All disputes between the Kings and Chiefs of the Cameroons or between them and British or foreign traders or between the aforesaid Kings and Chiefs and neighbouring tribes which cannot be settled amicably between the two parties shall be submitted to the British Consular or other officers appointed by H.B.M. to exercise jurisdiction in the Cameroons territories fof arbitration and decision or for arrangement.

Article V

The Kings and Chiefs of the Cameroons hereby engage to assist the British Consular or other officers in the execution of such duties as may be assigned to them and further to act upon their advice in matters relating to the admin. of justice, the development of the resources of the country, the interests of commerce, or in any other

matter in relation to peace and order and good government, and the general progress of civilization.

Article VI

The subjects and citizens of all countries may freely carry on trade in every part of the territories of the Kings and Chiefs, parties hereto, and may have houses and factories therein.

Article VII

All Ministers of the Christian religion shall be permitted to reside and exercise their calling within the territories of the aforesaid Kings and Chiefs who hereby guarantee to them full protection.

All forms of religious worship and religious ordinances may be exercised within the territories of the aforesaid Kings and Chiefs and no hindrance shall be offered thereto.

Article VIII

If any vessels should be wrecked within the Cameroons territories the Kings and Chiefs will give them all the assistance in their power, will secure them from plunder, and also recover and deliver to the owners or agents all the property which can be saved.

If there are no such owners or agents on the spot then the said

property shall be delivered to the British Consular or other officer. The Kings and Chiefs further engage to do all in their power to protect the persons and the property of officers, crew, and others on board such wrecked vessels.

All claims for salvage dues in such cases shall, if disputed, be referred to the British Consular or other officer for arbitration and decision.

Article IX

This treaty shall come into operation so far as may be practicable, from the date of its signature.

## APPENDIX III

## "WUNSCHE DER KAMERUN LEUTE'

Cameroons River,
July 12th, 1884.

Our wishes is that white man should not go up and trade with the Bushmen,nothing to do with our markets, they must stay here in this river and they give us trust so that we will trade with our Bushmen.

We need no protection, we should like our country to annect with the government of any European Power.

We need no attention about our Marriages, we shall marry as we are doing now.

Our cultivated ground must not be taken from us, for we are not able to buy and sell as other country.

We need no Duty or Custom House in our country.

We shall keep Bulldogs, Pigs, Goats, Fowls, as it is now, and no Duty on them.

No man shall take another man's wife by force, or else a heavy (fine(?)).

We need no fighting and beating without fault and no impression on paying the trusts without notice and no man shall be put to Iron for the trust.

We are the chiefs of Cameroons.

N.B. The following words were written on the paper: "Dieses Dokument ist von dem Herrn Consul zum Zeichen seines Einverständnisses unterzeichnet worden."

## APPENDIX IV

## TERMS OF THE DOUALA TREATY

Unable to find an exact copy of Nachtigal's treaty with the Douala chieftains in July, 1884, the author is forced to substitute an extract from the report made by Nachtigal to Bismarck of his work in West Africa. He wrote that he made with the chieftains of the Cameroons a treaty with the following reservations:

1. Rechte Dritter sind Vorbehalten.
2. Frühere Handels- und Freundschaftsverträge sollen Gültigkeit behalten.
3. Der Grund und Boden der Städte und Ortschafen und ihrer Bewohner soll das Eigentum derselben bleiben.
4. Die Häuptlinge sollen ihre Abgaben erheben dürfen, wie bisher.
5. In der ersten Zeit sollen die Sitten und Gebräuche der Eingeboreren respektirt werden.

A contemporary translation was made in the English Embassy in Berlin and forwarded to London, The conditions were given in the following words:

1. Reservation of the rights of third parties.
2. Former treaties of Friendship and Commerce to remain in force.
3. The land of the towns and villages to remain the private property of the natives.
4. The Chiefs to continue to levy their dues as formerly.
5. The natives to retain for the present their customs and usages.

APPENDIX V

## Provisions of the Penal Code relating to Defamation

### Section 152: Contempt

(1) A contempt shall mean any defamation, abuse or threat conveyed by gesture, word or cry uttered in any place open to the public.

(2) The exceptions defined by section 306 shall be applicable to contempt.

(3) Prosecution shall be barred by the lapse of four months from commission of the offence or from the last step in preparation or prosecution.

### Section 305: Defamation

(1) Whoever by any of the means described in section 152 injures the honour or reputation of another by imputations, direct or indirect, of facts which he is unable to prove shall be punished with imprisonment for from six days to six months or with fine of from five thousand to two million Francs, or with both such imprisonment and fine.

(2) No proof may be offered of the truth of a defamatory imputation where -

(a) It concerns the private life of the person defamed; or

(b) It refers to a fact more than 10 years old; or

(c) It refers to a fact constituting an offence which has been amnestied or the conviction for which has been otherwise expunged.

(3) No prosecution may be commenced without the complaint of the injured party or of his representative by law or by custom or continued after withdrawal of the complaint.

(4) Prosecution shall be barred by the lapse of four months from commission of the offence or from the last step in preparation or prosecution.

(5) This section shall apply to defamation of the memory of a deceased person with intent to injure the honour or reputation of his living heirs, spouse, or universal legatee.

(6) The penalty shall be halved for a defamation which is not public.

(7) The penalty shall be doubled for anonymous defamation.

Section 306: Exceptions to defamation.

The following shall constitute no offence:

(1) Speeches within any legislative assembly, and any report or other document printed by order of any such assembly;

(2) Faithful accounts without malice of the public sittings of any such assembly;

(3) Proceedings in court and the speeches made and documents produced in court;

(4) Faithful accounts without malice of all such proceedings and speeches, save only of a prosecution or action for defamation;

(5) Publication of any judgment or judicial order, including those passed in a prosecution of action for defamation;

(6) An official report without malice by a person lawfully appointed to conduct an enquiry to the extent that it is germane to the enquiry;

(7) Imputations without malice by a superior on his subordinate;

(8) Information on any person given without malice to a third party having an interest, personal or official, in receiving it, or having power to remedy an alleged injustice;

(9) Criticism of any work of art, entertainment or opinion shown or expressed in public, provided that such criticism be not an expression of personal animosity;

(10) Any work of a historical nature and without malice.

APPENDIX VI

Selected Articles of the Penal Code of the Federal Republic of Cameroon (Law No. 65-LF-24 of 12th November, 1965 and Law No. 67-LF-1 of 12th June, 1967) relating to marriage and connected offences.

"Section 355. - Failure to return a child

Whoever being in charge of a child fails to return him to those having the right to claim him back shall be punished with imprisonment for from one to five years, and with a fine of from twenty thousand to two hundred thousand francs.

Section 356 - Forced Marriage

(1) Whoever compels anyone to marry shall be punished with imprisonment for from five to ten years and with a find of from twenty-five thousand to one million francs.

(2) Where the victim is under the age of eighteen, the punishment may not be less than two years, whatever the mitigating circumstances.

(3) Whoever gives in marriage a boy under sixteen years or a girl under fourteen shall be punished as under the last two foregoing sub-sections.

(4) Upon conviction the Court may deprive the offender of parental power and disqualify him from being the guardian or curator of any person for the time prescribed by section 31(4) of this Code.

"Section 357. - Abuse in respect of bride-price.

(1) Whoever -

(a) Receives from a third party the whole or any part of a bride-price for the promise in marriage of a woman already married or bound by a betrothal not yet broken off; or

(b) Receives the whole or any part of a bride-price before refund to an earlier suitor; or

(c) Receives without any right to it the whole or any part of a bride-price for the marriage of a woman; or

(d) Demands the whole or any part of the excessive bride-price for the marriage of a girl over the age of twenty-one years of age or of a widow or divorced woman; or

(e) For want of compliance with this excessive demands for bride-price for the marriage of a girl under the age of twenty-one, and for no other reason, obstructs her marriage; or

(f) Receives as heir any such consideration promised to the person from whom he inherits -

shall be punished with imprisonment for from one to five years or with fine of from five thousand to five hundred thousand francs or with both such imprisonment and fine.

(2) The time shall begin to run again for prosecution on payment of the bride-price or of any instalment.

"Section 358. - Desertion

(1) Any spouse or parent who without just cause evades, whether by desertion of the family home or otherwise howsoever, the whole or any part of his moral or material obligations towards his spouse or children shall be punished with imprisonment for from three months to one year or with fine of from five thousand to five hundred thousand francs.

(2) Where a spouse alone has been deserted, no prosecution may be commenced without his or her complaint.

(3) The same punishment shall apply to a guardian or person responsible by custom who evades his obligations by law or custom towards any child in his custody.

(4) Upon conviction, the Court may order the forfeiture described in section 30 of this Code, disqualify the offender from being guardian or curator of any child for the time fixed by section 31(4), and for the same period deprive him of parental power in respect of any one or more of his children.

(5) Where the person who received payment of the whole or a part of the bride-price is accessory to a wife's offence, he shall be punished

for from three months to one year and with fine of from fifty thousand to five hundred thousand francs.

"Section 359. - Bigamy

(1) Whoever -

(a) Being polygamous contracts a monogamous marriage before the dissolution of all previous marriages; or

(b) being bound by an undertaking of monogamy contracts any marriage before dissolution of any previous marriage; or

(c) Being married under the codified law contracts any marriage before dissolution of that former marriage -

shall be punished with imprisonment for from two months to two years and with fine of from twenty-five thousand to five hundred thousand francs.

(2) The burden of proving dissolution of any previous marriage shall fall on the accused.

"Section 360. - Incest

(1) Without penalties to the penalties prescribed by sections 346(3) and 347(1), whoever has sexual intercourse with -

(a) any legitimate or natural ascendant or descendant in the direct line without limit of degree; or

(b) his brother or sister, whether legitimate or natural, and whether of the whole or the half blood -

shall be punished with imprisonment for from one to three years and with fine of from twenty thousand to five hundred thousand francs.

(2) Save in cases of notorious concubinage or of incestuous marriage, no prosecution may be commenced without the complaint of a relative by blood in whatever degree.

"Section 361. - Adultery

(1) Any married woman having normal intercourse with a man other than her husband shall be punished with imprisonment for from two to six months and with fine of from twenty-five thousand to one hundred thousand francs.

(2) Any married man having sexual intercourse in the matrimonial home, or habitually having sexual intercourse elsewhere, with a woman other than his wife or wives, shall be punished in like manner.

(3) No prosecution may be commenced without the complaint of the wronged spouse.

(4) The connivance or condonation of the wronged spouse shall bar the commencement or continuation of any prosecution, and the consent by the wronged spouse to resume cohabitation shall put an end to the effects of conviction."

APPENDIX VII

Law No. 68 - LF - 1 of 11th June, 1968
to Organize the Civil Status Registration

Marriage Registration

38. Marriage shall be celebrated by a civil status registrar.

39. (1) One month before the celebration of the marriage, the civil status registrars having jurisdiction over the places of birth of the future spouses must be notified by the civil status registrar responsible for the celebration of the marriage of a declaration mentioning the names, occupation, age, place of birth and residence of the future spouses and the intention of the latter to contract marriage.

(2) The civil status registrars thus notified shall publish the declaration referred to in the foregoing subsection by the posting up of notice on the door of the registry.

40. Upon the expiry of the period of one month, the civil status registrar shall proceed with the marriage ceremony after ascertaining that no opposition exists or that any opposition which may have been formulated has been legally withdrawn.

41. The Procurator of the Republic or the Magistrate who is territorially competent may, for serious reasons, dispense,the parties from the publication provided for above.

42. The following persons shall compulsorily be present during the celebration of the marriage:

a) the future spouses;

b) two witnesses, one for each spouse.

43. Every marriage registration must mention:

a) the names, first names, date and place of birth, filiation, occupation and place of residence of the spouses;

b) the names, first names, occupation and place of residence of the fathers and mothers;

c) the consent of the spouses;

d) where applicable, the express declaration of the spouses that they intend to contract a monogamous marriage;

e) any other consent necessary;

f) the absence of opposition;

g) the names and first names of the witnesses;

h) where applicable, the type of antenuptial settlement adopted by the spouses.

44. (1) Mention of the marriage must be made in the margin of the birth registration of each of the spouses.

(2) Divorce must similarly be mentioned in the margin of the marriage registration and the birth registration of each of the spouses.

Transitional provisions

45. (1) All registrations made prior to the promulgation of this law in respect of marriages contracted in forms other than those prescribed herein shall be valid and shall so remain.

(2) The provisions of Sections 24 to 26 hereof shall be applicable to marriages validly contracted prior to this law and not registered in the civil status registers.

46. All provisions contrary to this law are hereby repealed.

47. This law shall be registered and published in the Official Gazette of the Federal Republic of Cameroons in French and English.

## LIST OF ABBREVIATIONS

| | |
|---|---|
| A.G. | Action Group. |
| A. & E. | Adolphus and Ellis. |
| A.L.R. | African Law Report. |
| All. E.R. | All England Law Reports. |
| All. N.R. | All Nigeria Law Reports. |
| A.C. | Appeal Cases. |
| A.S.A.B.E. | Association Amicale de la Benoué. |
| B.D.C. | Bloc Démocratique Camerounais. |
| Camb. L.J. | Cambridge Law Journal. |
| C.D.C. | Cameroon Development Corporation.<br>Commonwealth Development Corporation. |
| C.N.U. | Cameroon National Union. |
| C.P.N.C. | Cameroon People's National Congress. |
| C.U.C. | Cameroon United Congress. |
| Can. B.R. | Canadian Bar Review. |
| Ch.D. | Chancery Division. |
| Cmd/Cmnd. | Command Papers (United Kingdom). |
| C.F.A. | Colonie Française d'Afrique.<br>Communanté Financière Africaine. |
| C.L.P. | Common Legal Problems. |
| C.L.R. | Criminal Law Review. |

| | |
|---|---|
| E.A.C.A. | East African Court of Appeal. |
| E.A.L.R. | East African Law Reports. |
| E.R.L.R. | Eastern Region Law Reports. |
| Ex. | Exchequer. |
| E.R. | Exchequer Reports. |
| F.E.D. | Fonds Européen de Developpement. |
| F.S.C. | Federal Supreme Court. |
| G.L.R. | Ghana Law Reports. |
| H.M.S.O. | Her Majesty's Stationery Office. |
| H. & C. | Hurlstone and Coltman. |
| I.B.R.D. | International Bank for Reconstruction and Development. |
| I.C.J. | International Court of Justice. |
| I.C.L.Q. | International and Comparative Law Quarterly. |
| I.D.A. | International Development Association. |
| Jeucafra. | Jeuness Camerounaise française. |
| J.A.A. | Journal of African Administration. |
| J.A.L. | Journal of African Law. |
| J.O.E.F.C.O. | Journal Officiel de l'Etat Fédéré du Cameroun Oriental. |
| J.O.R.F.C. | Journal Officiel de la République Fédéral du Cameroun. |
| J.O.C. | Journal Officiel du Cameroun. |
| K.B. | King's Bench. |
| K.F.P. | Kamerun Federal Party. |

| | |
|---|---|
| K.N.D.P. | Kamerun National Democratic Party. |
| K.N.C. | Kamerun National Congress. |
| K.P.P. | Kamerun People's Party. |
| K.U.N.C. | Kamerun United National Congress. |
| L.J.K.B. | Law Journal King's Bench. |
| L.Q.R. | Law Quarterly Review. |
| L.R.H.L. | Law Reports House of Lords. |
| M.A.N.C. | Mouvement d'Action Nationale. |
| M.L.R. | Modern Law Review. |
| Minnesota L.R. | Minnesota Law Review. |
| N.C.N.C. | National Council of Nigeria and the Cameroons. |
| N.E.P.U. | Northern Elements Progressive Union. |
| N.K.D.P. | Northern Kameruns Democratic Party. |
| N.L.R. | Nigerian Law Reports. |
| N.N.L.R. | Northern Nigeria Law Reports. |
| N.P.C. | Northern People's Congress. |
| N.R.N.L.R. | Northern Region of Nigeria Law Reports. |
| N.Y. | New York. |
| N.J. | New Jersey. |
| P.D.C. | Parti Démocratique Camerounaise. |
| P.C.I.J. | Permanent Court of International Justice. |
| P. | Probate. |
| P. & D. | Probate and Divorce. |

| | |
|---|---|
| Q.B. | Queen's Bench. |
| R.D.A. | Rassemblement Démocratique Africain. |
| Red. | Redwar's on some of the Gold Coast Colony including Law Reports - 1889 - 1909. |
| S.A. | Société Anonyme. |
| S.C.H.C.L. | Southern Cameroons High Court Law. |
| S.C.L.N. | Southern Cameroons Legal Notice. |
| S.F.I.O. | Section Française de l'International Ouvrière. |
| Term Rep. | Term Report. |
| Tulane L.R. | Tulane Law Review. |
| U.C. | Union Camerounaise. |
| U.N.C. | Union National Camerounaise. |
| U.N.E.S.C.O. | United Nations Educational, Social and Cultural Organization. |
| U.N. Doc. T. | United Nations Document Trusteeship. |
| U.N.O. | United Nations Organization. |
| U.P.C. | Union des Populations du Cameroun. |
| W.A.C.A. | West African Court of Appeal. |
| W.C.C.A. | West Cameroon Court of Criminal Appeal. |
| W.C.L.N. | West Cameroon Legal Notice. |
| W.C.L.R. | West Cameroon Law Report. |
| W.L.R. | Weekly Law Reports. |

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## LIST OF STATUTES AND CONSTITUTIONAL INSTRUMENTS.

### BRITISH/SOUTHERN CAMEROONS

Proclamation No. I of 1916.

Proclamation No. 10 of 1916.

Proclamation No. 24 of 1920.

Proclamation No. 25 of 1920.

Proclamation No. 38 of 1922.

British Cameroons Administrative Order-in- Council 1921.

British Cameroons Administration Ordinance No. 3 of 1924.

British Cameroons (Ex-Enemy Immovable Property Disposal Ordinance) No. 22 of 1924.

British Cameroons Administration Ordinance No. 1 of 1925.

Southern Cameroons Marketing Board Law No. 1 of 1954.

Southern Cameroons Legal Notice No. 2 of 1955.

Magistrates' Courts (Southern Cameroons) Law No. 6 of 1955.

Southern Cameroons High Court Law No. 7 of 1955.

Magistrates' Court (Southern Cameroons Amendment) Law No. 8 of 1956.

Southern Cameroon High Court (Amendment) Law No. 9 of 1955.

Magistrates' Courts (Southern Cameroons Amendment) Law No. 4 of 1956.

Southern Cameroons Customary Courts Law No. 9 of 1956.

Southern Cameroons Development Agency Law No. 11 of 1956.

Southern Cameroons High Court (Amendment) Law No. 3 of 1958.

Adaptation of Laws Order 1960. (S.C.L.N. No. 51 of 1960).

Adaptation of Laws (No. 2) Order 1960. (S.C.L.N. No. 84 of 1960).

Southern Cameroons (Constitution) Order-in-Council No. 1654 of 1960.

Southern Cameroons (Plebiscite) Order-in-Council No. 1655 of 1960.

## FRENCH CAMEROONS

Decree of March 17, 1903 providing for the application in French Equatorial Africa of most Metropolitan legislation applicable in French West Africa.

Decree of January 15, 1910 granting authority for the publication of Metropolitan decrees in French Equatorial Africa.

Decree of April 16, 1913 setting up of a Justice de Paix in French Equatorial Africa.

Decree of September 5, 1916 setting up a Court in Douala to assist the Military Commander.

Decree 1919 - a sequestration decree laying down conditions for dealing with German lands.

Decree of August 8, 1920 creating a tribunal of first instance in the French Cameroons.

Decree of August 11, 1920 laying down a policy for dealing with land in Togo and Cameroon.

Decree of September 29, 1920 establishing a procedure for registering agreements entered into by natives.

Decree of March 23, 1921 concerning financial and political autonomy.

Decree of April 13, 1921 introducing a system of native justice in Cameroon.

Arrêté of September 15, 1921 dividing land in Cameroon into 4 categories.

Decree of July 10, 1922 authorizing the acquisition of land needed for Public Purposes.

Arrêté of December 26, 1922, the annex to which contained rules of Moslem and non-Moslem marriages.

Decree of December 29, 1922 setting up a hierarchy of courts to administer French law in Cameroon.

Decree of December 29, 1922 providing that Criminal and Civil Procedure in the Courts of first instance and of appeal would be determined by an arrêté of the Commission of the Republic.

Arrêté of March 17, 1923 putting into effect the decree of December 29, 1922 concerning the hierarchy of courts.

Decree of May 22, 1924 extending all laws applicable in French Equatorial Africa to the French Cameroons.

Decree of August 8, 1924 introducing the system of indigénat in the French Cameroons.

Decree of July 9, 1925 to check emigration from the French Cameroons.

Arrêté of December 26, 1925 stating that the Criminal Procedure to be applied in the local courts would be the procedure applicable in the French Courts.

Decree of 31st July, 1927 on native justice in the French Cameroons.

Decree of 1927 extending to the French Cameroons the mode of establishing customary titles in land in force in French Equatorial Africa.

Arrêté of 1928 making it necessary to consult local opinion in the appointment of chiefs.

Arrêté of September 11, 1928 giving effect to the decree of July 31st, 1927 establishing a system of native justice.

Decree of September 29, 1928 concerning extradition in the French Cameroons.

Arrêté of July 15, 1930 on the civil status of natives.

Decree of October 7, 1930 laying down the conditions for admission and residence in the French Cameroons of French nationals.

Decree of November 7, 1930 laying down the conditions under which the citizens of the Mandated territories of Togo and Cameroon could become French citizens.

Decree of July 21, 1932 establishing a system of constatation.

Decree of July 21, 1932 establishing a system of immatriculation.

Decree of February 4, 1933 defining the status of chiefs.

Arrêté of May 26, 1934 confirming the Codes of Marriage for Moslems and non-Moslems.

Arrêté of April 20, 1936 concerning practice at the Bar in French Cameroons.

Decree of June 30, 1936 reorganizing the Courts of French Equatorial Africa.

Decree of August 5, 1937 laying down the procedure by which nationals of Morocco or Algeria could obtain French citizenship.

Decree of 1937 laying down the rules of emigration and immigration with regard to natives (effected in the French Cameroons by an arrêté of October 13, 1938).

Decree of January 12, 1938 dealing with the question of State lands.

Decree of 1939 laying down the procedure for naturalization by natives.

Decree of July 26, 1944 creating customary courts for the unique purpose of handling matters of property, debt, succession and marriage consideration.

Decree of 1944 according French citizenship to metis.

Decree of November 13, 1945 fixing the minimum marital age.

Decrees of December 8, 1945 and February 20, 1946 suppressing the system of indigénat.

Decree of April 30, 1946 suppressing the customary criminal law and extending the application of French criminal law to include everybody.

Decree of October 25, 1946 setting up a legislative Assembly in the French Cameroons.

Decree of November, 1947 reorganizing the system of courts.

Decree No. 47-2235 of November 19, 1947 creating communes in French West and French Equatorial Africa.

Arrêté of November 27, 1947 concerning the reorganization of the system of justice according to French law.

Arrêté of October 8, 1948 concerning practice at the Bar in the French Cameroons.

Decree of September 14, 1951 limiting marriage consideration.

Law of February 6, 1952 substituting a territorial assembly for the legislative assembly.

Decree of July 8, 1952 establishing the conseil du contentieux in the French Cameroons.

Decree No. 537 of August 21, 1952 creating communes mixtes rurales.

Arrêté of March 1, 1954 setting the higher limit of marriage consideration.

Decree of 1956 consolidating all laws on the subject of citizenship.

Loi-Cadre (enabling law) of June 23, 1956.

Law of May 9, 1957 enlarging the French Cameroons Territorial Assembly.

Ordinance No. 58-1375 of December 30, 1958 granting internal self-government to the French Cameroons.

Act No. 59-47 of June 17, 1959 abolishing the notion of ownerless land.

Law No. 59-56 of October, 1959 granting full powers (plein pouvoirs) to the government of the French Cameroons.

Ordinance No. 59-66 of November, 1959 promulgating a Cameroon Nationality Code.

Ordinance No. 59-86 of December 17, 1959 reorganizing the judicial system in the French Cameroons.

Decree No. 59-247 of December 18, 1959 laying down transitory measures for the operation of the provisions of Ordinance No. 59-86 of December 17, 1959.

## REPUBLIC OF CAMEROON

Law No. 60-1$^{bis}$ of January 14, 1960 establishing the Consultative Committee on the Constitution.

Decree No. 60-24 of February 6, 1960 concerning the referendum on the Constitution.

Decree No. 60-46 of February 25, 1960 legalising the U.P.C.

Ordinance No. 60-42 of April 16, dissolving the Legislative Assembly.

The Constitution of the Republic of Cameroon, 1960.

Law No. 60-64 of June 27, 1960, Cameroon Investment Code.

## EAST CAMEROON

The Constitution of the Federated State of East Cameroon, 1961.

Décret-Lois No. 63-2 of January 9, 1963 dividing all land in East Cameroon into 4 categories.

Act No. 63-COR-6 of July 3, 1963 creating the National Collective Patrimony.

Decree No. 64-10-COR of January 30, 1964 laying down rules for distributing the National Collective Patrimony.

Decree No. 66-2-COR of July 7m 1966. Law relating to marriage.

Decree No. 66-307-COR of November 25, 1966 laying down provisions for registration of titles to land.

Arrêté No. 670 bis of November 30, 1966 laying down the procedure to be followed in connection with land registration.

Decree No. 66-380 of December 30, 1966 dealing with the question of jurisdiction in connection with matrimonial cases

## WEST CAMEROON

The Constitution of the Federated State of West Cameroon, 1961.

West Cameroon Customary Courts Law, 1962.

West Cameroon Electricity Corporation Law, 1962.

West Cameroon Inter-Community Boundary Settlement Law, 1962.

West Cameroon Adaptation of Existing Laws Order, 1962. W.C.L.N. No. 7 of 1962.

West Cameroon, Control of Farming and Grazing Law, 1962.

West Cameroon Legal Notice No. 8 of 1963. Delegation of Powers to Chiefs Regulation - Regulations under the Land and Native Rights Ordinance.

## FEDERAL REPUBLIC OF CAMEROON

Constitution of the Federal Republic of Cameroon, 1961.

Ordinance No. 61-OF-4 of October 4 establishing a standing Military Tribunal at Yaoundé.

Ordinance No. 61-OF-9 of October 16/1961 establishing the Supreme Court of West Cameroon.

Decree No. 61-DF-15 of October 20, 1961 creating Administrative Regions.

Decree No. 61-DF-15 of October 20, 1961, establishing the organization of the Federal Republic of Cameroon.

Ordinance No. 61-OF-18 of December 27, 1961 concerning the Composition of the Federal High Court of Justice.

Decree No. 61-DF-73 of December, 1961 establishing a standing Military Tribunal at Buea.

Decree No. 62-DF-23 of January 17, 1962 laying down the form of a Cameroonian Visa.

Ordinance No. 62-OF-4 of February 7, 1962 creating a special Federal Cours des Comptes for dealing with matters pertaining to public funds.

Decree No. 62-DF-83 of March 12, 1962 creating a system of Federal Inspectors.

Ordinance No. 62-OF-18 of March 12, 1962 concerning the suppression of subversive activities.

Ordinance No. 62-OF-12 of March 15, 1962 granting immunities to Deputies.

Decree No. 62-DF-90 of March 24, 1962 concerning the establishment of a National Credit Council.

Ordinance No. 62-OF-36 of March 31, 1962 regulating Insurance Concerns.

Act No. 62-LF-10 of November 9, 1962 dealing with cases of stealing and embezzlement.

Act No. 63-30 of October 25, 1963 transferring offences of a political nature to Military Tribunals.

Law No. 63-30 of October 25, 1963 relating to the creation of certain offences not provided for in the Code.

Law No. 63-37 of November 15, 1963 to organize the Practice of the Bar in West Cameroon.

Decree No. 64-84 of February 29, 1964 setting up Integration Commissions.

Law No. 64-LF-6 of April 6, 1964, Cameroon Investment Code.

Decree No. 64-DF-218 of June 19, 1964 prescribing the procedure to govern the Full Bench of the Federal Court of Justice.

Law No. 64-LF-14 of June 26, 1964 concerning the need for Cameroonians to have an exit visa on leaving Cameroon.

Decree No. 64-DF-53 of December 16, 1964 establishing a Société Nationale d'Investissement.

Law No. 65-LF-24 of November 12, 1965 introducing Book I of the Penal Code.

Law No. 65-LF-29 of November 19, 1965 setting up the Federal Court of Justice.

Decree No. 66-DF-402 of August 16, 1966 unifying the rules of appeal from local courts temporarily maintained.

Decree No. 66-DF-205 of December 28, 1966 modifying the legal and judicial services.

Decree No. 67-DF-238 of March 29, 1967 concerning the National Credit Council.

Arrêté No. 50/CAB/PRF of April 6, 1967 regarding immigration and emigration.

Law No. 67-LF-1 of June 12, 1967 introducing the Penal Code Book II.

Law No. 67-LF-5 of June 12, 1967 changing the designation of Attorney-General for West Cameroon to Procurator-General for West Cameroon.

Law No. 67-LF-6 of June 12, 1967 introducing the Labour Code.

Decree No. 67-DF-322 of July 20, 1967 defining simple offences under the Penal Code.

Law No. 68-LF-1 of June 11, 1968 to organize Civil Status Registration.

Law No. 68-LF-3 of June 11, 1968, Nationality.

## NIGERIA (including British/Southern Cameroons)

Supreme Court Ordinance No. 11 of 1863

Ordinance No. 4 of 1876 extending the operation of the Supreme Court.Ordinance.

Protectorate Courts Ordinance No. 4 of 1900.

Native Courts Proclamation No. 5 of 1900.

Native Courts Proclamation No. 9 of 1900.

Native Courts Proclamation No. 25 of 1901.

Native Courts Proclamation No. 1 of 1906.

Native Courts Proclamation No. 7 of 1906.

Law Officers Ordinance No. 4 of 1910.

Supreme Court Ordinance No. 6 of 1914.

Supreme Court Ordinance No. 7 of 1914.

Public Custodian Ordinance of 1916.

Native Courts Ordinance of 1918.

Nigerian (Legislative Council) Order-in-Council No. 1446 of 1922.

Slavery Abolition Ordinance, Cap. 111 of 1923.

British Protectorates Ordinance No. 5 of 1924.

Native Courts Ordinance No. 44 of 1933

West African Court of Appeal Ordinance 1933.

Protectorate Courts Ordinance No. 45 of 1933.

Supreme Court (Amdnement) Ordinance No. 46 of 1933.

Co-operative Ordinance of 1935.

Law Officers Ordinance No. 40 of 1936.

Immigration Ordinance No. 11 of 1939.

The Appointment and Disposal of Chiefs (Amendment) Ordinance of 1945.

Crown Lands (Amendment) Ordinance, 1945.

The Minerals Ordinance, 1945.

Public Lands Acquisition Ordinance, 1945.

Nigeria (Legislative Council) Order-in-Council No. 1370 of 1946.

Nigeria (Protectorate and Cameroons) Order-in-Council, 1949.

Cameroons Development Corporation Ordinance, Cap. 25 of 1948.

Cameroons Under British Mandate Administration Ordinance, Cap. 27 of 1948.

Companies Ordinance, Cap. 38 of 1948.

Crown Lands Ordinance, Cap. 45 of 1948.

Ex-Enemy Lands (Cameroons) Ordinance, Cap. 66 of 1948.

Extradition Ordinance, Cap. 70 of 1948.

Immigration Ordinance, Cap. 89 of 1948.

Interpretation Ordinance, Cap. 94 of 1948.

Land and Native Rights Ordinance, Cap. 105 of 1948.

Land Registration Ordinance, Cap. 108 of 1948.

Legal Practitioners' Ordinance, Cap. 110 of 1948.

Native Courts Ordinance, Cap. 142 of 1948.

Native Lands Acquisition Ordinance, Cap. 144 of 1948.

Public Lands Acquisition Ordinance, Cap. 189 of 1948.

Supreme Court Ordinance, Cap. 211 of 1948.

Nigeria (Constitution) Order-in-Council No. 1172 of 1951.

Electricity Corporation Law of 1952.

Nigeria (Constitution) Order-in-Council No. 1146 of 1954.

Land and Native Rights (Amendment) Ordinance, 1956.

Banking Ordinance, Cap. 19 of 1958.

Bills of Exchange Ordinance, Cap. 21 of 1958.

Companies Ordinance, Cap. 37 of 1958.

Co-operative Societies Ordinance, Cap. 39 of 1958.

Criminal Procedure Ordinance, Cap. 43 of 1958.

Electricity Corporation of Nigeria Ordinance, Cap. 58 of 1958.

Evidence Ordinance, Cap. 64 of 1958.

Illiterates Protection Ordinance, Cap. 83 of 1958.

Interpretation Ordinance, Cap. 89 of 1958.

Labour Code Ordinance, Cap. 91 of 1958.

Legal Practitioners' Ordinance, Cap. 101 of 1958.

Marriage Ordinance, Cap. 115 of 1958.

Moneylenders' Ordinance, Cap. 124 of 1958.

Motor Vehicles (Third Party Insurance) Ordinance, Cap. 126 of 1958.

Pawnbrokers' Ordinance, Cap. 146 of 1958.

Petition of Rights Ordinance, Cap. 149 of 1958.

Post Office Ordinance, Cap. 156 of 1958.

Regional Courts (Federal Jurisdiction) Ordinance, Cap. 177 of 1958.

Registration of Business Names' Ordinance, Cap. 178 of 1958.

Sale by Auction Ordinance, Cap. 187 of 1958.

Third Party (Rights against Insurers) Ordinance, Cap. 196 of 1958.

Workmens' Compensation Ordinance, Cap. 222 of 1958.

Nigeria (Constitution)(Amendment) Order-in-Council No. 429, 1958.

Nigeria (Constitution)(Amendment No. 4) Order-in-Council, 1959.

Federal Supreme Court Ordinance, 1961.

Designation of Ordinances Act, 1961.

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