Arbre à palabre, Palaver tree
CONSTITUTIONAL OPTIONS
PROJECT

PEACE POLICY PAPER

LEGAL SYSTEM AND NATIONAL BIJURALISM

INFORMATION NOTE

This Policy Paper starts by identifying the source of the two major legal traditions in Cameroon (Romano-Germanic and Anglo-Saxon law). Upon reunification in 1961, most areas of law and the Judicial system were designated as Federal (national level) domains of competence. In practice however, this did not result in the enactment of a complete national system (at federal level) of unified law. To fill legal voids, the previously applicable law and legal systems received under French and British administration continued to be in force. As a Unitary State, Cameroon's Constitutions have extended the application of these bodies of law, until when they get repealed by new national laws.

Cameroon's bodies of law are in two categories: there are *Uniform domains* of law, where national laws have supplanted received laws and rendered uniform the law applicable across the entire country (Criminal law and procedure, Labour law, Civil Status, Land law, Tax law) and *non-Uniform areas* of law, in which a *territorial legal dualism* exists between the historically French and English-predominant regions of the country (Law of Contracts, Torts, Family law, Civil Procedure, Law of Evidence). The general structure and methods of legal practice in the eight predominantly French-speaking, and the two predominantly English-speaking regions remain influenced respectively by the modes and usages of law in the Romano-Germanic, and Anglo-Saxon Common Law traditions.

The Paper assesses the effort to protect the specificities of the Anglo-Saxon legal system based on Common Law through the mechanism of regional Special Status afforded to the NW and SW regions in the devolution legislation. It notes that while consideration of the specificities of the said legal system is considered *integral* to the Regions' distinct status, the Legislator contradictorily limits their role only to being optionally (at the central State authorities' behest) consulted in formulating public policies pertaining to it. It opines that

the scope of consultation of the two regions should include *reforms of national law in areas that are not yet Uniform* between the two legal spheres of the country; and that it should not be limited to "public policies" but encompass *laws and regulatory instruments* thereon.

It observes that for Special Status regions to have a meaningful role in this domain, the scope of their involvement should include: (i) legal education and training, (ii) qualifications required for Judicial appointments to the regions, (iii) exercise of the legal professions in the regions, and (iv) participation in the process of adopting national uniform laws, or treaties that reform structural areas of law. The Paper notes the importance of the Special Status regions being formally involved in the preparation of the separate legal instrument that would lay down the content of specificities of the Anglo-Saxon legal system based on Common Law, and the value of the said instrument being adopted by Statute (legislation). It also notes that the internal ordering of the Special Status regions' Assembly organs does not provide for a body (a Committee or Commissioner) with a mandate pertaining to its involvement on the Anglo-Saxon legal system.

The Paper presents the recent judicial reforms undertaken since 2017 in response to the crisis, and recommends the formalization of these reforms, including having more firmly rooted provisions on the Common Law Section, and on representation of both major legal traditions among the Lecturer corps at the Magistracy and Registry Division of ENAM. It calls for clearer, formal guidance on the modalities for deployment/posting of Magistrates as a function of their legal system/tradition exposure and mastery, and language competencies. In this regard it flags the need for coherence between these policy directions, and the 2019 Law on Official Languages which permits the use of either official language in all Courts, nationwide.

The Paper advances that while there is a territorially limited dimension in considering the specificities of the Anglo-Saxon legal tradition in its application in the NW and SW regions, there is also a national dimension in the process of creating and crafting national law, which can draw upon elements from it - as well as from Romano-Germanic, endogenous, and emerging African/International legal principles. It observes that legal pluralism in Cameroon can be resolved through a combination (depending on the areas of law) of juxtaposition of systems, rendering the applicable laws similar, and full harmonization. The Paper offers Mauritius as an example of *harmonious coexistence* of the Romano-Germanic and Common Law legal systems within a Unitary State, the two systems having historically and progressively interwoven over the years to achieve a subtle equilibrium.

The Paper proposes that when new areas of law (previously dissimilar in the two legal spheres) are being harmonized to be uniform, they should go through a consultative law reform process involving parity representation from both major legal traditions. It underscores in Cameroon's context, the importance when drafting laws and major legal texts of employing the methodology of co-drafting. This means that instead of a legal text being researched, conceptualized, and written in one legal language, and then *translated* to the other, the actual process of drafting should be conducted simultaneously in both

languages, by legal experts from both language backgrounds. It underscores the value of this approach in ensuring that Cameroon's laws will be framed (in each language version) in terminology, usages, and concepts that are familiar to the French and Anglo-Saxon legal traditions respectively. It highlights the need to deepen the specialized field of legal translation.

The Policy Paper concludes by highlighting the importance of studies in comparative law, and familiarity with Romano-Germanic and Anglo-Saxon for aspirants to legal careers in Cameroon, given that the legal professions entail mobility across the spheres of influence of these legal traditions in Cameroon. It notes however that University law curricula in Cameroon tend to teach French/English law in separate streams and silos, making for weaker acquisition of cross-legal systems competencies. It examines incentives and barriers to migration and cross-legal systems practice in Cameroon and recommends that Cameroon's development partners support increasing national capacity to manage and accommodate legal pluralism.