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CONSTITUTIONAL OPTIONS PROJECT

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LEGAL SYSTEM AND NATIONAL BIJURALISM

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SECTION I: BASIS FOR CAMEROONIAN BIJURALISM, SPECIAL STATUS AND MANAGEMENT OF LEGAL SYSTEMS

I.1 Basis and evolution of Cameroonian bijuralism

Upon the reunification of East and West Cameroon in 1961, the two territories had different legal systems inherited from the period of respective French and British mandate and trusteeship. However, while federalism was chosen as the form of State at the time of reunification, the Constitution of 1st September 1961 provided among the areas of competence of *federal authorities* and not of the *federated States*: "administration of justice, including rules of procedure in and jurisdiction of all *[modern]* Courts (but not the Customary Courts of West Cameroon except for appeals from their decisions)", the "law of civil and commercial obligations and contracts", the "law of persons and of property", "criminal law" and "labour law" (Article 6), and "rules governing the conflicts of laws" (Article 5).

The Constitution further specified as being in the federal legislative domain (i.e., of *the Federal Assembly* and not the assemblies of the *federated States*): "the definition of criminal offences not triable summarily and the authorization of penalties of any kind, criminal procedure, civil procedure, execution procedure, amnesty, the creation of new classes of Courts" (Article 24(3)). Secondly, the Federal President was empowered to "appoint to the bench and to the legal service of the Federated States" (Article 32, 2nd indent). While Legislative Assemblies existed for the Federated States of East and West Cameroon (article 40), they were limited to matters other than those entrusted to the federal authorities (articles 5 and 6 above) or otherwise designated as being subject to federal law. This made their weight as a source of law relatively limited, since in articles 5 and 6, federal jurisdiction included almost all functional domains of competence, the Federated States being restricted to unspecified, residual areas (article 38).

Clearly then, the *structural areas of law were almost entirely intended to be managed by federal authorities* (driven by a central administration) leaving very few prerogatives in this area to the *federated states*. The field of laws thus conformed to the *centralizing tendency* that marked Cameroonian federalism, which generally did not envisage the two inherited legal systems operating in a federal state. In practice, however, this work of "federalization" (which already implied harmonisation) of Cameroonian law had to be progressive, given the different realities of the legal and jurisdictional landscape of the two parts of the territory.[i] The provisions of the 1961 Constitution did not immediately lead to the creation of a complete national (federal) law system, which implied on both sides, the continued (and differentiated) recourse to pre-independence legal regimes (as territories under French trusteeship, and under British territory/Nigerian law). Thus, the (*de facto*) applicable laws in the Federated States between 1961 and 1972 relied in substantial part on, and extended these external systems, a situation which will acquire significance when it later became necessary to adopt rules to prevent legal voids.

Cameroon became a unitary State in 1972. With the advent of *the unitary state, the disappearance of the federated states and their legislative assemblies, the situation should in principle have transitioned more emphatically towards the unification of law – conceived, adopted, and applied uniformly throughout the national territory*, and thus enshrine *the unification of law applicable in Cameroon*. However, since any new legal order can only be deployed progressively, the 1972 Constitution included the following transitional provision:

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

The main effect of these transitional provisions was and remains the *prolongation of Cameroon's legal dualism on a territorial basis* (the territorial limits being those of the former Federated States where these laws applied respectively), since the geographical spheres of application of Romano-Germanic Law and Anglo-Saxon Law *remain intact and separate, in domains of law that have not been harmonised*. Two bodies of law are affected by the above-cited transitional provision: to a lesser extent, the law produced by the two federated States of the defunct federation (East Cameroon and West Cameroon); and to a greater extent, the law applicable in the federated States inherited from the period under French and British mandate and trusteeship.

These bodies of law had been introduced in the respective territories under French and British administration by virtue of the respective Articles 9 of the French and British Mandates signed with the League of Nations in 1922. This was translated into the adoption of two reference texts which are: the *British Cameroons Order-in-Council No. 1621 of 16 June 1923* (under which the part of Cameroon entrusted to Great Britain would be administered as an integral part of the British Protectorate of Nigeria), and which introduced in the part under British administration, the Common Law, the rules of equity, and the legislation of general application applicable in England in 1900; and the *Decree of 22 May 1924 extending the laws applicable in France to the French colonies of French Equatorial Africa*.

It should be noted from the outset that a reunified and independent Cameroon did not subsequently adopt a constitutional or legislative text which clearly states the *sources of inspiration* of Cameroonian law. In view of its history and the practice that has prevailed in the six (6) decades since independence and reunification, such a text would have been fully justified to identify, *among others,* the principles of Civil law/Romano-Germanic law, Common law/Anglo-Saxon law, customary and indigenous law in Cameroon, and law emerging from the community of nations at African and international levels (treaties, general principles) as stable and perennial sources of inspiration for its law. Adopting such a provision would have been wise, as it would have set forth that neither of its received legal heritages (Civil law/Common law) were doomed to disappear, but rather were to be taken into account, both territorially and in the task of building a national system of law.

A thorny question arises: why was the use of these received systems (Civil law, Common law) as sources of law, grafted only in a transitional provision of necessarily ephemeral character? Was it envisaged that there would come a time when the country would do without any reference to the structuring ideas of Romano-Germanic law and Anglo-Saxon law as structural legal orders and approaches to conceptualizing the law? In principle, the above-mentioned transitional provisions should not have been problematic since a transition from one legal order to another is gradual. However, their application is peculiar because of the *longevity of the arrangements* they have established. Generally, such transitional provisions are *limited in time*. If these provisions were purely transitional, the harmonization of the law to make it uniform and compatible with the directions that were initially set forth under the aegis of the 1961 Constitution, and then consolidated in unitarism since 1972, should already have taken place.

However, it must be noted that, 60 years after the broad trend towards "federalization" (harmonization) in the field of law, and 50 years after the adoption of the unitary State, several fields of law remain unharmonized, which *perpetuates the legal spheres of the former federated States* and perpetuates the distinction between Romano-Germanic law applicable in the predominantly French-speaking part of the country and Anglo-Saxon law applicable in the predominantly English-speaking part of the country. While nowadays, bodies of law such as *Administrative Law, Business Law, Insurance Law, Competition Law and Criminal Law (substantive and procedural)* are already harmonised, others, such as the *Law of Contracts, the Law of Torts, Equity and Trust, the Law of Evidence, Civil Procedure, and part of Family Law,* still feature legal dualism.

Cameroon: uniform and non-uniform areas of law

Uniform Areas	
Subjects	**Main texts**
Administrative Law	Law on the Organization and Functioning of Administrative Courts, 2006
Tax Law	General Tax Code
Labour Law	Labour Code, 1992
Criminal Law	Penal Code 2016 Criminal Procedure Code 2005
Business Law	OHADA Law (Treaty, Uniform Acts)
Insurance Law	CIMA Insurance Code, 1992
Competition Law	CEMAC Regulations, 2019
Civil Status	Civil Status Registration Ordinance, 1981
Land Law	Land Tenure Ordinance, 1974

Non-Uniform Areas	
Subjects	**Main texts**
Contract Law/*Droit des contrats*	*Contracts Law: Case Law, various received laws, such as the Sale of Goods Act, 1893* Droit des Contrats: Civil Code
Law of Torts/*Droit délictuel*	*Law of Torts: Jurisprudence and various laws* Droit délictuel: Civil Code
Family *Law*/*Droit* de la *famille*	*Family Law: Wills Act, 1837, Married Women Properties Act, 1882* Droit de la Famille: Civil Code
Law *of* Evidence/*Droit de la preuve*	Droit de la preuve: Civil and Commercial Procedure Code, 1954 *Law of Evidence: "The Evidence Ordinance Cap. 62 of the 1958 Laws of the Federation of Nigeria" ('Evidence Act)*
Civil Procedure/ *Procédure Civile*	Procédure Civile: Civil and Commercial Procedure Code, 1954 *Civil Procedure : Civil Procedure Rules CAP 211*
Equity and Trust (Peculiar to Common Law)	*Jurisprudence and Various Laws*

Distinguishing the traditional features [iii] of Romano-Germanic Law and Common Law

Features	Common Law	Romano-Germanic Law
Sources of law	Case Law, unwritten. *Rule of precedent, Stare decisis*	Written: Constitution, laws, regulations, etc. Consequence: extensive codification
Independence of the judiciary	Yes, very advanced	Yes, but to a lesser extent
Constitutional litigation	Performed by regular judiciary	Entrusted to a constitutional judge
Distinction between private and public law	Unknown	Yes. One of its main features
Abstract or concrete nature of the law	Concrete: rules laid down by the judge for concrete situations	Abstract: general and abstract rules enacted by Parliament
Adversarial or inquisitorial nature of the criminal trial	Adversarial: the prosecution and the defence are on an equal footing; play an important role in directing the proceedings.	Inquisitorial: the judge directs the proceedings.

Freedom of contract	Very pronounced	Limited
Administrative law	No special rules, no special courts	Separate substantive and procedural rules, separate administrative courts
Separation of substantive and procedural rules	Not very prevalent	Very significant

In addition to the separate Bibliography that accompanies this series of Papers, the endnotes include some resources freely available online which further elucidate the distinctive features of the civil law (Romano-Germanic) and common law (Anglo-Saxon) legal traditions.[iv] A *priority* reading list of materials that describe the experience with bijuralism in Cameroon and Africa is also included in the endnotes.[v]

I.2 Additional prerogatives of Special Status Regions (North-West and South-West) in relation to the Common Law legal sub-system

One of the major innovations of the General Code of Regional and Local Authorities (GC-RLA) of 24 December 2019 is *the endowment of the North-West and South-West Regions of Cameroon with Special Status (SS),* on the basis of Article 62(2) of the Constitution[vi]. As a result, these two Regions *in principle have additional domains of competence* over and above those they share with the other eight regions of the country. As part of these additional competences devolved to them on account of their Special Status, the North-West and South-West regions "*may* be consulted on issues relating to the formulation of justice public policies in the Common Law subsystem" (Art. 328(2), GC-RLA).

This provision warrants three observations. The **first** pertains to the level of involvement afforded to the Special Status region. In the majority of States with Special Status/Autonomous Regions, the distribution of powers across functional domains of competence includes (a) domains reserved to and exercised exclusively *by the State*, (b) domains of exclusive competence *by the Special Status region*; and (c) domains of *shared competence* by the State and Special Status region, in which one has jurisdiction to act, subject however to a requirement of consultation and collaboration with the other layer.

On the one hand, under the GC-RLA, consideration of the specificities of the Anglo-Saxon legal system constitutes an integral part of the Special Status. It states: "The special status shall also entail […] consideration of the specificities of the Anglo-Saxon legal system based on common law." (Section3(3)). This provision clearly establishes *a nexus between the Special Status regions* and the Anglo-Saxon legal system or tradition. On the other hand, the wording of Section 328 above demonstrates that this is not a domain of competence devolved exclusively to the Special Status regions, since the option of their being "consulted" indicates that the public policies related thereto will be *formulated* elsewhere (by the State).

This legislative choice, which affirms that policy-making in relation to the Anglo-Saxon legal tradition and heritage will be handled by national (central) authorities, may well reflect a policy vision that consideration of its specificities will be effected not just through (1) maintaining the prevalent legal dualism between the Anglo-Saxon and Romano-Germanic systems *on a territorial basis*, but also (2) by systematically taking into account these specificities in the construction of law and a legal order at *the national level*, in areas where it is being rendered uniform. The evidence from past practice in Cameroon demonstrates that these two approaches – which are not mutually exclusive – have been used in the past to manage the dualism of major legal cultures in the country. This has been done on the one hand, by enabling on a provisional basis, the application of Anglo-Saxon law through the principles of Common Law-Equity-English legislation and residual texts from British pre-independence administration, in the territory of the *former* federated state of Western Cameroon (NWSW); and on the other hand, by drawing inspiration from Anglo-Saxon law in the harmonization of areas of law at the national level, such as the 2005 Criminal Procedure Code.

That said, it is striking that in the area of Anglo-Saxon law, the above-mentioned Section 328 only sets forth consultation of the Special Status region as a discretional option. *Their being consulted depends on the State's judgment, which has the prerogative to determine the pertinence of their being involved or not*. This is based on a literal interpretation of the verb "*may*" (be consulted), which connotes a discretionary option. It is difficult, if not impossible to reconcile the reduction of this domain of competence to a discretionary option to consult (per Section 328), with the legislator's recognition that the "specificities of the Anglo-Saxon legal system" are an *integral part* of these two regions' Special Status, in Section 3 of the same law. *Is it therefore conceivable that the Special Status regions would not be consulted on a reform bearing on a domain recognised as integral to their special status?*

Whichever of the two above-mentioned routes for considering the specificities of the Anglo-Saxon legal system is pursued, one would arrive at the same conclusion. If the specificities were being protected in the context of their territorial application in these two regions (the territory of the former Federated State of West Cameroon), once Anglo-Saxon law is recognised as a domain of regional specificity, the Special Status regions' institutions cannot avoid taking an interest in it, because the said legal tradition will continue to develop in that geographic zone. If by contrast the said specificities were being considered in the construction of law at national level, the said regions would still objectively be highly concerned stakeholders in the process.

A **second** observation pertains to what would be considered as coming within the scope of "justice public policies *in the Common Law subsystem"* (Section 328(2)). It is noticeable that the legislator uses a different and broader formulation in Section 3(3) of the GC-RLA, which states that "the special status shall also entail [...] consideration of the specificities of the *Anglo-Saxon legal system based on common law*." It is imperative to ensure interpretative consistency between sections 3(3) and 328(2), since the latter provision expounds what is

intended to be a concrete prerogative, in a specificity domain established by the former. The notion of the *Anglo-Saxon legal system* is necessarily broader since the Common Law is just a part thereof, as its reception in Western Cameroon by the above-mentioned 1923 Order-in-Council demonstrates. This broader notion also necessarily includes its rules of interpretation.

It will be necessary to clarify the meaning of the terms used ("Anglo-Saxon judicial system based on common law"; "Common Law subsystem") given that they have rarely been used in the past under Cameroonian law. In addition to the General Code of RLAs, the few previous occasions have been in Law n°2017/014 of 12 July 2017 to amend and supplement some provisions of Law No. 2006/016 of 29 December 2006 to lay down the organisation and functioning of the Supreme Court, which *creates a Common Law Section* within the Judicial Chamber of the Supreme Court [vii]. If we draw a comparison with the other domain in which the specificity of the Special Status regions is recognized ("the Anglophone education system" in Section 3(3); and "the Anglophone education sub-system" in Section 328 (1)), the contours of the Anglo-Saxon legal system are textually less well defined, notably because its subsistence in "provisional" form (explained above) does not specify what constitutes its existential, irreducible core. By contrast, in the domain of education, the notion of two sub-systems which are distinct in their certifications, methods of assessment, and pedagogy is well established in Cameroon. [viii]

The importance of specifying the content of the "Common Law subsystem" lies in the *need to render operational this additional competence* transferred to the North-West and South-West regions. Clarifying its content will make clear when the Special Status regions would need to be consulted on a precise matter under consideration. What does the legislator mean by "formulation of justice public policies in the Common Law subsystem"?

The formulation of public policies on justice in the common law sub-system *should be understood from both a substantive and a formal perspective*. From a substantive standpoint, it should include *all the non-uniform areas of law* which currently result in differentiated law applicable in the two parts of the country. In other words, under Section 328(2), the North-West and South-West regions could be consulted on *any legislative reform in areas that are not yet uniform* and which, as a result, currently have different content and application, in either part of the country. (See the earlier table of uniform and non-uniform areas of law). From a formal standpoint, the situations for consultation of the Special Status region would also include *any national reform pertaining to structural rules of law*, such as *legal interpretation*, insofar as the said reform would impact upon the Anglo-Saxon legal tradition, which has different rules and cannons.

A **third** observation pertains to the legislative choice to delimit the option of consultation to "**public policies**" on justice in the Common Law sub-system (Section 328(2)). Admittedly, Section 328 (which sets out the *participation - consultation - association* functions of Special Status regions in given domains) on more than one occasion refers to the phase of *public policy-making* – for instance example, with respect to education.

However, as pointed out in our Paper in this series on Devolution and Special Status, the prevailing practice in comparative Special Status arrangements is that the said regions are consulted in the preparation of **laws** and **regulatory instruments which** pertain to the regions' recognised specificities, which unavoidably concern them, or which are intended to be applied within the said regions. Given that it is *legislation* that needs to be adopted in areas of law that are not uniform between parts of the country, it will be important that the consultation apply to these, and not just to *public policies* in the wider sense.

A **fourth** observation is that for Special Status regions to actually have a role in ensuring "consideration of the specificities of the Anglo-Saxon legal system based on common law" (Section 3.3, GC-RLA), their involvement in this domain of specificity (the legal system) should extend to matters of : (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.

Recommendation 1: Replace the *optional* consultation of the North-West and South-West regions in the formulation of public policies on justice in the common law sub-system with a *mandatory* right of consultation.

Recommendation 2: To define the notions of "Anglo-Saxon legal system based on common law"; and Common Law sub-system" in Cameroon's context the context of Cameroon, which is the scope of the consultation prerogative, include all the non-uniform areas of law, and the structural rules of law which, as a result of section 68 of the Constitution and on account of their legal heritage, continue to be different in these two regions.

Recommendation 3: Extend the scope of the consultation of Special Status regions beyond public policies relating to Anglo-Saxon law, to include laws and administrative decisions in this domain. Expand the scope of interest of Special Status regions to include legal education, qualifications for judicial appointments, exercise of legal professions, and uniform law and treaty-making in structural legal areas.

I.3 The subsequent separate instrument to specify the content of the specificities of the Anglo-Saxon judicial system based on the Common Law

Section3 of the GC-RLA states:

(1) The North-West and South-West Regions shall have a special status based on their language specificity and historical heritage.
(2) The special status referred to in subsection 1 above shall be reflected with regard to decentralization, in specificities in the organization and functioning of these two regions.

(3) The special status shall also entail respect for the peculiarity of the Anglophone education system and consideration of the specificities of the Anglo-Saxon legal system based on common law.
(4) The content of the specificities and peculiarities referred to in subsection 2 and 3 above shall be specified in separate instruments.

Subsection 4 envisages separate instruments which will expound on the content of the specificities and peculiarities of the *education and legal* systems recognized as connected to the Special Status regions. As these instruments have not yet been adopted (as at March 2022), we propose some issues to be considered in the process of their adoption.

The **first** issue pertaining to the said instruments is their legal form. At issue is whether the said specificities would be delineated in a *Law (Statute) of by way of Regulations* – given that the degree of entrenchment of a legal text, depends on where it is placed in the hierarchy of legal norms. (In our Paper in this series which examines the Special Status framework in the context of Asymmetric Devolution, we set forth arguments in favour of placing the Special Status arrangement in the body-text of *a future amended Constitution*. In doing so, Cameroon will be aligning with other countries where the criteria for accession to a regional Special Status, the general attributes of such status, and the beneficiary regions, if any, are set out in the body of the Constitution). However, even where the Constitution sets up the Special Status, the prevailing practice is that a legislative Statute (an Autonomy Law. Act, or Statute) spells out the details, notably the additional powers devolved on such regions. This constitutes a wise approach since the additional domains of competence are generally not fixed at the outset, but evolve over time, depending on the interactions between the State and the region.)

In the current Special Status dispensation (introduced by a law – the GC-RLA, which refers to the Constitution), the first argument in favour of its adoption by way of a law and not a regulation, lies in the *delineation of the respective domains of intervention between legislative Statutes and Regulatory powers* under Cameroon's Constitution. Article 26 of the Constitution (under Title IV which defines the relationship between the executive and the legislature) specifies the matters which fall within the domain of the legislative statutes, voted by Parliament. Thus, the following matters fall within the domain of Statute and emanate from legislative power: *judicial organization* and the creation of various types of courts (Art. 26(2)(c)(5)); criminal procedure, civil procedure, measures of execution (Art. 26(2)(c)(6)); the matrimonial system, succession and gifts; rules governing civil and commercial obligations; the movable and immovable property ownership system (Art. 26(2)(b)). The *system of education* also falls within the scope of the law passed by Parliament (Art. 26(2)(f)).

In this context, the Executive branch's scope of *regulatory* action as concerns the judicial system and the education system is to adopt *regulations*, whose purpose is to facilitate execution of a principle or rule already set forth by a Statute/Act duly passed by Parliament in these domains reserved for the legislature. That the envisaged separate instruments will

expound the "*content*" of the specificities, gives them a substantive character which goes beyond the (regulatory) task of merely facilitating implementation of a legislated-upon norm. Having regard to global comparative practice on Special Status regions, it is the GC-RLA, the principal legislative text that governs its functioning, which would have specified the main contours and features of the specificities and peculiarities highlighted or would have provided for them in a subsequent Annex/Appendix. The legislator having delegated the task to "*separate* instruments", an alternative would be that Statutes/Acts specific to each domain concerned, namely governing judicial organisation and sources of law, and the educational sub-systems in Cameroon, include a section pertaining to the said specificities and peculiarities.

Another argument in favour of the option of legislative Statute is *that it makes for firmer legal entrenchment*. First, since the legislative law-making process is more elaborate, the resulting instrument is less amenable to modification than a regulation, which is in principle easier to adopt and amend. Second, being situated at a relatively high rung in the hierarchy of legal norms, and having supra-regulatory standing, a Statute/Act is on par with similarly ranked laws and supersedes all inferior norms. Its effect therefore radiates all legal norms of lower rank.

The **second** issue pertains to the link between these separate instruments envisaged in Section 3(4) and the prerogatives of Special Status regions under Section 328(2). Section 328(2) limits the role of the region in the domain of the Anglo-Saxon legal system based on common law, to *optional* consultation of the region in formulating public policies in this area. This is less than what Section 328 (1) provides, when it requires *mandatory* consultation of the said regions in formulating public policies on the Anglophone *education* sub-system. Without the said specificities having been spelt out, defined, and textually clarified, how was it possible to determine that this level of involvement (optional) of the Special Status region would be sufficient to attain the goal of protecting those specificities, which is the object and purpose sought by the law? The same logic applies to the scope of the regions' initiative in this domain: may the concerned regional institutions be seized of these questions in their ordinary course of business, or must they await consultation by the State?

The **third** issue on the separate instrument pertains to the process leading to its adoption, in particular *the role of the concerned (beneficiary) regional institutions in its adoption*. As the GC-RLA heralds, these instruments spell out *the content of* specificities and peculiarities which are an integral part of the Special Status. They will identify what needs to be respected (as peculiarities, emanating from the Anglo-Saxon heritage) in order that the promise of a Special Status to the NW and SW, to respect their historical heritage, be kept. These separate instruments are intrinsically linked to the Special Status itself and define its contours. By global comparison, such legal texts which set forth the specificities of Special Status regions, are included in the body of the Autonomy Law or Statute (for instance in Spain, Portugal, Indonesia, Italy, and Finland). This lies at the heart of every

Special Status framework whose core is about domains of competence and specificity recognised as accruing to the beneficiary regions.

By global comparison, the drafting (as well amendments to) the legislative text that defines the contours of Special Status, is done through a process that *formally involves the Council or Assembly of the concerned region* through: the preparation and drafting the text; being mandatorily consulted in advance on the text, its presentation to the National Assembly for adoption; and in some cases, in its formal adoption through a concomitant vote by the regional assembly. [ix] The recent establishment of the NWSW Special Status regions' institutional bodies constitutes a *unique opportunity for collaborative action (between the State and regional institutions) in the preparation, consultations, and adoption of the separate instruments spelling out the regions' specificities and peculiarities, including on* Anglo-Saxon legal systems based on Common Law.

Recommendation 4: Embed the content of specificities of the Anglo-Saxon legal system based on common law in a legislative instrument (an Act or Statute).

Recommendation 5: Involve the regional authorities of the North-West and South-West, beneficiaries of the Special Status, in the process of drafting, preparing, consulting and adopting the separate instruments spelling out their specificities in the justice area.

I.4 Internal institutional ordering of the Special Status regions dedicated to exercising their specific functional competences linked to the Anglo-Saxon legal system based on Common Law

The GC-RLA states in Section 328:

(1) In addition to the powers devolved on regions by this law, the North-West and South-West regions *shall* exercise the following powers:

- participating in the formulation of national public policies relating to the Anglophone education sub-system,
- setting up and managing regional development authorities,
- participating in defining the status of traditional chiefdoms.

(2) The North-West and South-West regions *may* be consulted on issues relating to the formulation of justice public policies in the Common Law subsystem.

The Code therefore grants the Special Status regions prerogatives additional to those devolved to all other regions in four areas: *the Anglophone education subsystem, regional development authorities, the status of traditional chiefdoms, and the Anglo-Saxon common law legal subsystem*. However, how these additional prerogatives will be exercised, and

notably the internal institutional structures to discharge them, vary from one domain to another. On this aspect, *there are different levels of specification* between the prerogatives as to the "formulation of justice public policies in the Common Law subsystem" and their other prerogatives.

For all the other special prerogatives of the NWSW Special Status regions, the GC-RLA in effect provides for *internal organs* within the region to exercise the additional prerogatives devolved to the Special Status regions. As such, the prerogative to create and manage **regional development authorities** will be exercised within the region's deliberative body (Regional Assembly) by the *Commission for Finance, Infrastructure, Planning and Economic Development* (Sec. 334); and within the executive body, by the *Commissioner for Economic Development*, who is responsible for "implementing the policy of the region on the exercise of devolved powers in the fields of economic action, environmental and natural resources management, planning, territorial development, public works, town planning and housing" (Sec. 352 and 362). The power to participate in defining the status of **traditional chiefdoms** will logically be exercised by the *House of Chiefs*, the second chamber of the Regional Assembly, which, among other powers, "shall give its opinion on [...] the status of traditional chiefdoms" (Sec. 337(2)).

In the domain of **education,** the Special Status regions have *dedicated internal organs* in both the legislative and executive branches. They have a *Committee on Education* lodged at the *House of Divisional Representatives* (one of the two Houses of the Regional Assembly, the deliberative body of the Special Status regions); and a *Commissioner for Educational, Sports and Cultural Development* (a member of the Regional Executive Council, the executive body of the Special Status regions) who is responsible for the "implementing the policy of the region on the exercise of devolved powers in the field of education [...]" (Art. 352(2) and 364). The establishment of a Committee entirely and exclusively dedicated to education in the two regions under the special regime, while this subject shares the same Commission with sport and culture in the other eight regions under the ordinary devolution regime, should be attributable to the two regions' greater responsibilities in the education sector, where they have expanded prerogatives.

One would have expected the same logic in relation to the **Anglo-Saxon legal system based on Common Law**, which, together with the field of education, is an integral part of the special status of the North-West and South-West regions (art. 3(3), GC-RLA). However, the GC-RLA does *not provide any internal organ specifically dedicated to this prerogative.* The need to provide institutional organs to exercise this prerogative is even greater because this constitutes an area where *regions under the "ordinary" regime have no devolved competencies or prerogatives at all.* This means that in contrast to the domains of education and development which were already accommodated in the internal ordering *common to all regions*, the Anglo-Saxon legal system was the domain which most required special status region-specific organs to exercise them, or risk remaining orphaned.

In the absence of dedicated internal organs, *five possible options, which can be grouped into two subsets*, can be envisaged for exercising prerogatives on the formulation of public policies pertaining to justice in the Common Law legal system. The first two options would function under the existing internal ordering of the regions, "as is":

- The first would be *to have this prerogative exercised by one of the organs* in the existing institutional set-up for all regions, despite not being *specifically designed for this purpose*. For want of a better option, the Committee on Administrative and Legal Affairs and Standing Orders of the House of *Divisional Representatives of the* Regional Assembly of the Special Status regions could be used.

- The second would be to have *this subject handled in plenary session of* the Regional Assembly, the deliberative body, and in meetings of the Regional Executive Council, the executive body of the Special Status regions.

The other three options would require *modifying the internal ordering* of organs of the Special Status region. The basis for these options is in Section 351 of the GC-RLA which *makes applicable to the Special Status regions*, subject to provisions specific to the Regional Assembly, the rules governing the functioning of Regional Council (the deliberative body of regions under the ordinary devolution regime). Sec. 282 (1) of the GC-RLA provides for 4 constituent Committees of the Regional Council should enable a re-ordering of Committees in light of the matters under deliberation. Acting pursuant to Sec. 282 (2), for its internal organ to be tasked with public policies on the Anglo-Saxon legal system based on Common Law, the Special Status Regional Assembly could:

- *Create an additional dedicated Standing Committee*, through adopting a deliberative resolution, at the request of its President or two-thirds of its members.

- C*reate an ad hoc committee* whenever it seeks to deliberate on, or is consulted upon the matter.

- *Call for consultations any person*, on account of his/her expertise on the subject, for its discussions thereof in plenary or in Committee. The technical complexity of this domain warrants leaning towards this option, which could be combined with the others.

Recommendation 6: Modify the internal ordering of the Special Status regions to provide for internal organs to exercise the additional prerogatives pertaining to the Anglo-Saxon legal system based on common law, in order to ensure optimal assumption of the said prerogatives.

SECTION II: MUTUAL ACCOMODATION AND PROTECTION OF LEGAL SYSTEMS IN CAMEROON

II.1 Recent Governmental measures for the protection of the Anglo-Saxon legal tradition based on the Common Law

The demands of lawyers practising in the Anglo-Saxon legal tradition led the Government to take a series of measures to protect this legal sub-system within the Cameroonian legal system. Some of these measures were proposed by the *Ad Hoc* Committee *tasked with examining and proposing solutions to the concerns raised by Anglophone lawyers*, presided over by the Minister Delegate to the Minister of Justice. [x] In a press briefing on the subject on 31 March 2017, the Minister of Justice and Keeper of the Seals announced these measures instructed by the President of the Republic. Some of the measures would subsequently be translated into laws. In general, these measures pertain to *judicial training and organization.*[xi]

Reforms pertaining to the training of judicial personnel

The reforms pertaining to training of judicial personnel seek to *ensure the acquisition of principles of Common Law by judicial personnel* who will be required to apply them in practice. Three measures have been introduced as reforms to the pre-existing system for training judicial personnel.

- The first is the *creation of a Common Law section* within the Magistracy and Registry Division[xii] of the National School of Administration and Magistracy (ENAM), tasked with teaching, in English, of the principles of Common Law (and of already uniform areas of law). This reform was formalized in *Decree No. 2018/240 of 09 April 2018 reorganizing the National School of Administration and Magistracy (ENAM)*. The decree does not expressly create the Common Law Section as a permanent structure within the Magistracy and Registry Division, but enables its creation on an *ad hoc basis*, by delegating the power to do so (as with all other sections that make up ENAM's three Divisions) to the Minister in charge of Administrative Reform, each time a competitive examination is launched to recruit trainees into the said section. [xiii]

- The two other measures flow from the first since they are intended to ensure the smooth functioning of the Common Law Section. They are:

    - the *launching of a special competitive examination open only to English-speaking candidates for the recruitment of pupil Judicial and Legal Officers and Court Registrars*. The link between this measure and the first is that this Common Law Section will constitute the entity for their training. This measure led to creating an ad hoc Commission and an inter-Ministerial Committee tasked with special recruitment of English-speaking judicial

personnel for deployment to the remit of the North-West and South-Wests' Courts of Appeal. [xiv]

- *The addition of the English-speaking teaching staff* at the Magistracy and Registry Division of ENAM to compensate for the often-observed shortage of lecturers who are English-speaking and from the Anglo-Saxon legal tradition. This announcement by the Ministry of Justice has not been subsequently formalized in a legal text. Such a text would have strengthened the visibility of this measure through setting a minimum or indicative number, or quotas (language/legal tradition) to be followed in recruiting lecturers for this Division.

Recommendation 7: Entrench the Common Law Section of the Magistracy and Registry Division of the National School of Administration and Magistracy (ENAM), by including it specifically in the texts organising ENAM, in lieu of its ad hoc creation by MINFOPRA when it launches competitive examinations into the said Section.

Recommendation 8: Entrench the representation of English-speaking and Anglo-Saxon legal tradition lecturers within the Magistracy and Registry Division of ENAM, through adopting a regulatory text on same, which would set the minimum proportions (language/legal tradition) of lecturers to be recruited.

Reforms pertaining to judicial organization

The reforms pertaining to judicial organisation seek to *strengthen representation of the Anglo-Saxon legal sub-system based on Common Law*, specifically within the country's apex court, and to ensure its territorial representation in the regions that historically constitute the cradle of this legal sub-system in Cameroon. Three measures fall in this category:

- The *creation of a Common Law Section within the Judicial Bench of the Supreme Court, a* reform embodied in Law No. 2017/014 of 12 July 2017 amending and supplementing certain provisions of Law No. 2006/016 of 29 December 2006 on the organisation and functioning of the Supreme Court. According to Article 37-1 of this law, "the Common Law Division shall have jurisdiction, in matters relating to Common Law, to hear appeals against:
  - final decisions of tribunals.
  - judgments of courts of appeal".

- *Increasing the number of Judges of the Anglo-Saxon legal tradition in the Supreme Court*. This measure seeks to increase representation of this legal tradition at the country's apex court.[xv]. It should be noted, however, that no legal instrument has enshrined or concretized this announced measure, which leaves its implementation to the discretion of the authority that appoints and assigns Judges.

- The *re-assignment of Magistrates based on their mastery of the predominant official language* in the various regions. On this criterion, there were significant redeployments intended to post Magistrates to regions where they have a mastery of the preponderant official language. Magistrates previously in the NW and SW regions who were not proficient in English were redeployed to predominantly French-speaking regions and replaced by English-speaking magistrates posted to the 2 regions.

Two observations can be made thereon: the first pertaining to the *linguistic criterion used as a basis for redeployment*. While it solves the problem of official language use in access to justice as a service to the public, it leaves unresolved that of mastery of the predominant legal tradition in the regions concerned. One cannot equate French language proficiency with mastery of the Romano-Germanic legal tradition; neither can English language proficiency be equated with mastery of the Common Law legal tradition. In other words, one can be proficient in English without mastering the Anglo-Saxon legal system based on Common Law. The second observation pertains to the absence of a legal framework governing this measure, since no legal instrument was adopted to provide a compass or yardstick for its implementation. Here again, such an instrument would provide better entrenchment and objectivity of the measure, rendering it not only mandatory but also stable over time.

Recommendation 9: Adopt a framework text on the composition of Judges of the Supreme Court in order to ensure equitable representation of Judges from the Anglo-Saxon and Romano-Germanic legal traditions; and on modalities for deployment of the Magistrates (per language/legal tradition) so as to establish the bases for their postings.

II.2 Official language use before the courts and in judicial decisions, and the challenge of access to justice

The Law on the promotion of Official Languages enacted on December 24, 2019 includes provisions with an impact on access to justice. Section 26 provides:

> "(1) English and French shall be used indiscriminately in ordinary law and special courts.
> (2) Courts decisions shall be rendered in any of the official languages, depending on the choice of the litigant."

A proper understanding of these provisions requires that they be interpreted in the light of Section 13 of the same Law, which states:

> (1) English and French shall be the official working languages in public entities.
> (2) State employees shall be bound to render services in any of the official languages.
> (3) Users shall have the right to ask to be rendered service in any of the official languages.

Read together, these provisions set forth a *principle and an exception*. The principle is for State employees to *render services in either official language*, subject to the possibility that the public service user may *ask to be served in the official language of his or her choice*. The exception is found in the sphere of justice, since section 26(1): establishes the principle of *"indiscriminate" use of either official language*; and does not temper it *with a right of litigants to request service in the official language of their choice*. Hence, while users of general public services have the right to ask to be served in their preferred official language, *that right does not extend to litigants* (and their counsel) before the courts. Here, they must make do with the official language of the court officials (Magistrates, Registrars), even though they (the litigants) have the right to express themselves in the official language of their choice. The right to request the use of the litigant's preferred language is confined *to the rendering of judicial decisions* (art. 26(2)). This issue is addressed in the Paper in this series dedicated to managing official languages.

This interpretation is in line with the government's policy on official languages which makes French and English official languages of equally permissible use, in all official proceedings and transactions, before all branches of government (executive, legislative, judicial) in all regions of the country. It worth noting that one of the flashpoints at the origin of the crisis in 2015/2016 was whether primarily French-speaking judicial personnel posted to the NW and SW regions could use French in their pleadings and submissions in these two predominantly English-speaking regions – which made official language use before the courts, a contentious issue. One of the consequences of the policy direction taken in the Official Languages law of 2019 is that, in theory, the posting of judicial personnel can be done without regard to their language proficiency, since they are not legally required to be able to express themselves in *both* official languages (should the need arise) during court proceedings. However, one can immediately see the discrepancy with the recent measures taken by the Government to redeploy judicial personnel based on their language proficiency.

The "indiscriminate" use of one or the other official language in legal proceedings should be overcome if, in the event of a language mismatch, the courts call upon their translation and interpretation service provided for in section 14 of the Official Language law, which states that "each public entity shall have an internal structure in charge of translation, interpretation and promotion of official languages, run by professional translators and interpreters".

II.3 The question of territoriality of the Common Law and Civil Law legal systems in Cameroon

The 2017 presidential measures raise the issue of the *territorialisation of law in Cameroon.* Do they elect towards territorializing the two legal subsystems, and confine them to well-defined geographical spaces: the Anglo-Saxon legal tradition in the North-West and South-West regions, and the Romano-Germanic legal tradition in the other eight regions? In the

current state of law in Cameroon, there is *a dual aspect* to the actual sphere of influence of the Anglo-Saxon legal tradition and law in the country.

On the one hand, and all the measures taken since 2017 confirm this, there is a recognition that both the legal tradition in its entirety (rules of interpretation, influence of the *binding precedent)* as well as specific areas of Anglo-Saxon inspired substantive and procedural law have not yet been harmonised remain influential *in the NW and SW regions*. Thus, a *first aspect* of taking into consideration the specificities of Anglo-Saxon legal systems to meet the requirements of Special Status would be to recognise the influence of this legal tradition and the corpus of subsisting Anglo-Saxon law within these regions. This is a dimension *within* the two regions.

On the other hand, the measures taken do not result in a *hermetic partitioning of* the two legal cultures, or between bodies of substantive or procedural law of Anglo-Saxon or Romano-Germanic inspiration. This is because, when it is desirable and feasible, the constant task of constructing *national law* can proceed by considering or merging elements from one system or the other, provided this is done through an appropriate law reform process that respects best practice canons in this area. Thus, the *second aspect* of taking into consideration the specificities of Anglo-Saxon law to meet the requirements of Special Status would be to draw from and solicit it, in the process of constructing uniform national laws, when this is the desired legal policy objective. This is a "national" dimension. Consequently, depending on their degree of prominence in a specific body of law under consideration, *the principles of Romano-Germanic Law could be applied in the North-West and South-West regions, while the principles of Common Law could be applied in the other eight regions of the country*. One could cite the example of the Criminal Procedure Code and OHADA which are instances of harmonisation between legal systems. [xvi]

This approach of envisioning the protection of Anglo-Saxon specificities of the Special Status regions (1) within their geographical remit, and (2) nationally, is cross-cutting and applies to all other domains of specificity. The NW and SW Special Status regions have an interest in the use of official languages (notably the viability of English) within their territorial remit, but also as to bilingualism policies nationally. They have an interest in the educational sub-systems (especially Anglophone) within their territorial remit, but also as to national policies on that sub-system. The same logic applies to the field of justice.

This approach is important because Special Status does not disconnect these regions from national policies. These regions do not retain the English language, the Anglo-Saxon education subsystem, or the Anglo-Saxon legal tradition (their recognized areas of specificity) as their regional property, to the exclusion of the rest of the country. The Nation can and should draw on these for its development. But when it does so, it will remember (in formulating national policies) that there is a part of the territory that has an embedded link to them (and often depends on it for its identity) and will listen to it especially in the formulation of national policies relating thereto.

One thing is certain: The North-West and South-West regions on the one hand, and the other eight regions on the other, *are the historical home of the* Common Law and Romano-Germanic legal traditions *respectively*. They will continue to be the main "structural influences" of the law and the sources of rules of interpretation. Nevertheless, the present approach leads to two outcomes: not to create a firm territoriality of Anglo-Saxon inspired law which would confine it to the North-West and South-West regions and not to create two firmly separate sets of courts *(Civil Law - Common Law)* operating in parallel. If the above approach is pursued, Cameroon could technically be classified as belonging to the family of *mixed legal systems*, due to the discernible interaction between the two legal sub-systems. [xvii]

In this regard, it is worth noting the observation of a specialist on comparative law (common law-civil law), who notes that *purely territorial bijuralism* is only viably and perennially possible upon two conditions: (1) that it is applied in a federal state that has, juridically-speaking, well-delineated internal borders within which the respective legal systems operate; [xviii] and (2) to endow each of the systems with its own legal order: (legislative) institutions which produce norms, their own courts, etc.[xix] It must be acknowledged that where things stand at present, Cameroon does not meet this dual condition.

II.4 What are possible options for managing the plurality of sources of inspiration of Cameroonian law?

In this management of plurality, it is possible to envisage **(i)** a juxtaposition where the two systems and bodies of law exist side by side, **(ii)** situations where the objective is not to unify national law completely and textually, but rather to render the applicable norms similar by enacting broad principles or guidelines of national law, and allowing their adaptation to suit regional specificities (a frequent feature in Special Status arrangements), and **(iii)** harmonisation of the different bodies of law in existence, towards creating uniform law. *A careful choice will have to be made, including taking into consideration the Special Status framework, on which areas of law will fall under each of the above three categories*. Among the possible approaches to dealing with a plurality of legal systems, and to manage the dual legal heritages, are:

- (i) *Accommodation*, which consists in allowing the two systems to operate relatively side by side, by mediating between them. The possibility of *legislative adaptation* (practiced comparatively in several Special Status regions) also allows for rendering the rules and principles similar, while allowing the possibility of adapting them to the specificities of different legal environments.

- (ii) *Legislative bijuralism* will often go hand in hand with accommodation, when the two language versions of a text are separately designed to express the same substance and have the same impact, although intended to be applied in different legal environments.

- (iii) *balanced approaches to law harmonisation,* which entails blending legal traditions and sources of inspiration for laws through a process that takes into consideration the different legal systems in existence; and

- (iv) *Interpenetration*, which serves to de-territorialize them, allowing the two systems to develop, flourish and influence each other, so as to gradually move out of their historical areas of use.

On observation, Cameroon could oscillate between these options, depending on the areas of law under consideration. For non-uniform areas where the legal borders of the former federal States are maintained, the technique of *accommodation* prevails insofar as they *entail the application of the two legal systems in parallel*, with the State keeping an eye on their application. For other matters (to be rendered similar, or harmonised/uniform) the ideal would be an approach that goes beyond *integration*, whereby one dominant system absorbs the other and asserts its influence over the whole sphere of law. It should move either to a system of rendering norms *similar* (where norms are aligned but not necessarily identical given the flexibility of adaptation), and where possible and desirable, to a system of *balanced production of uniform, harmonized laws*. The latter approach may also be accompanied by, and facilitate, progressive *interpenetration* or deterritorialization, to the extent that the emerging body of national law takes into consideration both sources of inspiration for the law present.

Recommendation 10: In handling non-uniform areas of law, prioritize the techniques of: making the law similar with the possibility of adaptation; balanced production of uniform, harmonized laws; and interpenetration, with the objective of bringing the law closer, drawing from the sources of law present, and encouraging permeability and a natural interweaving of the two legal systems (with other endogenous and international sources) as sources of influence of national law.

II.5 Example of mutual accommodation of legal systems and sources of inspiration for law in a unitary State: the case of Mauritius

Mauritius[xx] offers an example of *harmonious coexistence* of the Romano-Germanic and Common Law legal systems within a State, the two systems having *historically and progressively interwoven over the years to achieve a subtle equilibrium*. The extract below gives an account of this equilibrium between legal systems in Mauritius:

> Mauritius having been under French occupation until 1810, the Napoleonic codes were introduced into the country. After the conquest of the island by the British in 1810, the inhabitants were allowed to keep their laws, customs and lands (Treaty of Paris). However, these codes have been modified several times to adapt to the Mauritian context, both during the English colonial period and since independence in 1968. In particular, large parts of the Commercial Code, the Civil Procedure Code and the Criminal Procedure Code were

> repealed and replaced by British law sources. Since 1968, the Civil Code, which remains in French, has undergone several amendments based on developments in French civil law, especially in the area of personal status law. The Penal Code, which is largely in French with an English translation in a parallel column, has been amended several times, inspired by changes in England and other Commonwealth countries.
>
> As for business law, it is mainly based on the model of British and Commonwealth law… At present, in rendering decisions, *Mauritian judges rely not only on domestic precedents, but also cite decisions of British and Commonwealth courts or French precedents*, depending on the case before them and the source of the law governing the case. In addition, where appropriate, judges also refer to the works of *English or French legal scholars*. The final (or highest) appellate body in the Mauritian courts is the Judicial *Committee of the* Privy Council in England, where judges of the English Supreme Court sit. When deciding civil law appeals, they do not hesitate to *refer to French legal scholars and case law* by quoting extracts in French *although their judgments are written in English.* [xxi]

Despite the previous Franco-British dual administration which is the common denominator between Mauritius and Cameroon that lends them to comparison, there are differences between the Mauritian and Cameroonian situations. These lie mainly in the *spatial and temporal frameworks* of the dual Franco-British dual administration. The spatial aspect emanates from the fact that contrary to Cameroon where the territory was *divided into two parts under French and British administration,* in Mauritius it is the *whole country* that was (successively) placed under their administration. The temporal aspect emanates from that contrary to Cameroon where the *French and British influences were simultaneous*, in Mauritius, they were *successive*.[xxii] Consequently, (1) Mauritius does not have the same territorial connotation with the legal traditions received from Franco-British administration since they do not have internal historical bastions; and (2) the two legal systems are more naturally intertwined because of their successive application in the same geographical space.

However, the Mauritian experience shows the importance and the immensity of the task to be accomplished. For as stated above, rendering norms similar, harmonisation and unification of law in Cameroon may only be achieved through a *consociational* approach that would guarantee an *effective, balanced and substantial consideration of* the two legal traditions in the process of creating national law. If the unity of law "is the guarantee of homogeneity and cohesion, it does not however exclude diversity and even plurality within the whole and it is not intended to erase all peculiarities" [xxiii] [our translation]. Thus, any area of law to be rendered similar/harmonized/unified should be subjected to this consociational approach. For the sake of balance, already harmonised areas should also *be screened to ensure that the two legal systems are effectively taken into consideration* and, if necessary, progressively reviewed with a view to meeting this essential criterion.

Recommendation 11: Study further and draw useful lessons from the Mauritian example in order to build laws that interweave the two legal cultures in a balanced manner in the context of a unitary State

II.6 How to ensure that legal systems are taken into consideration in a balanced and effective manner in the law-creation process?

Harmonisation of law may result from two different dynamics. Some fields are *harmonised internally*, i.e., through the adoption of relevant laws by the national parliament; others are harmonised *externally*, i.e., through the mechanism of international law, notably regional community law which also uniformizes the concerned legal area with *other States that form the community in question*. This is the case of business law, which is unified by OHADA (notably company law), CEMAC (notably competition law) and CIMA (insurance law). For non-uniform areas and where necessary to *reduce the gaps between the two bodies of applicable law*, some of them (such as the law of civil obligations), could be dealt with as a priority. Whatever the dynamics considered, in order effectively to take into account the two legal cultures, the construction of uniform law needs to follow a well-defined procedure, which respects the principles of *legislative bijuralism, bilingual bisystemism and legal dualism*.

II.7 Bijural reform of major domains of law: instituting a consultative law reform entity on a parity basis between the two major legal traditions

In the case of areas of law to be harmonised, the procedure followed so far in Cameroon involves *studies on the modalities of harmonizing the areas under consideration*, commissioned by the Ministry of Justice, which are submitted to its Directorate of Legislation and stakeholders (notably Magistrates) from the two legal traditions. However, this procedure has not prevented there being complaints on scope and inclusiveness (of both legal traditions) in consultations, and the transparency of the choices made. It has often been observed that apart from a few specific areas (such as criminal procedure), the harmonisation more often results in texts (administrative law, land law, civil status) that are *strongly dominated by Romano-Germanic law and inspired by French laws in this area*.

These difficulties point to the need to **rethink the law-formation process in a plural legal context** such as Cameroon, with a view to drawing from the sources of legal inspiration present, in a more balanced manner. Ideally, this will involve the creation of a *consultative body which will constitute the technical organ for future work to* render similar, harmonise or unify areas of law that are still divergent, and to reform/amend areas already rendered uniform. Optimally, the consultative body should be:

(1) *Mandatory*: that is to say, its process should be *compulsory for any undertakings* to develop initial legislation or amendments on structural areas of law for nationwide application.

(2) *Permanent* and not just an *ad hoc* body. This condition would enable the said body to scrutinize permanently legal proposals within its remit, and have more time to discharge its mandate.

(3) *Parity*, i.e., composed in *equal numbers of* representatives of the two legal systems, Common Law, and Romano-Germanic Law: and

(4) *Mixed*, i.e., representative of all the stakeholders involved or having an interest in the process of structural creation of law. This would include notably the Government, the Judiciary, the Bar and other legal professions, and legal academics, including specialists in comparative law.

It is important to note that this process is required only for the reform of *core, structural areas of law* (such as contracts, family law, tort/delict, civil procedure, etc) where there are long-standing variations between civil/common law concepts, and *not for every single legislative enactment* in Cameroon. Ordinary legislation covering general domains would go through the bi-juralism check/audit mentioned in the next sub-section.

Recommendation 12: Create a representative, mixed and permanent body, drawn from the two legal systems of Anglo-Saxon and Romano-Germanic inspiration, tasked notably with ensuring that the said inspiration sources are taken into account during reforms of major, structural domains of law.

II.8 The need for legislative bi-juralism (and bilingual bisystemism): ensuring laws reflect the language, expressions, and terminologies of both legal traditions present

Inherent in the nature of the language of law, is that some terms and expressions used in one legal system or tradition, do *not mean the same thing* when transposed to the other legal system or tradition. In countries with more than one official language and legal tradition, the pinnacle legislative objective is to ensure that *each language version* of a law should reflect and contain the legal terminology, concepts, and expressions familiar to and applicable in the respective legal traditions. Critical to this approach is that laws cannot be drafted entirely in one (legal) language and then simply transposed or translated into another (legal) language: it risks trying to export concepts and terms that are wholly unfamiliar in the target legal language and do not fit in there. Rather, the ideal process is that *while* drafting the law, consideration should be given early on to *both legal languages and traditions present* and ensuring that in each choice of terminology and concept, thought has been given to how it would fit under both legal systems and their forms of expression.

The above undertaking is the essence of *legislative bijuralism* – a critical need for Cameroon. This could be defined in Cameroon's context as an approach to producing laws in a manner that ensures the complementarity of national law with the principles of Romano-Germanic and Common Law[xxiv]. It is also associated with seeking to attain legal bilingualism, known in specialized terminology as *bilingual bisystemism*[xxv]. The broad

objective is to avoid situations *of uni-juralism*[xxvi], *semi-bijuralism*[xxvii] or *mistranslation* when rendering from one language to another, of legal concepts that are unique to each system.

It is important to distinguish the above challenge from that of *inaccurate translations* observed in laws – those are errors in the work of **legal or legislative translators** wherein entire phrases or terms are sometimes missed between the two languages. Situated at a much higher level, legislative bi-juralism is a responsibility of specialized lawyers, namely the **legal drafters** themselves: it is about actually framing the body of the law (selection of legal forms, procedures, terminologies, usages, concepts) in a manner that reflects what are two separate legal traditions and forms of expression. Major laws that are under preparation/consideration should undergo a check for whether they raise bijuralism issues.

Bilingual bisystemism touches upon both the form and substance of the laws in question. As to form, it consists in ensuring that the *process of creating the law involves specialists in both legal languages*. Generally, there are three possible methods of achieving legal bilingualism, that is, the availability of laws in both official languages:

- *Drafting the text in one language and translating it into the other*: This method may be the simplest but is often highly unsatisfactory since it creates a sort of *structural imbalance in favour of one legal language*, namely that in which the law was originally drafted, to the detriment of the other language. The translated-into language becomes tied to the expressions, styles, and terminology of the source language.

- *Parallel drafting*, through which each version is drafted separately from the other and then they are subsequently brought together to reflect each other.

- *Simultaneous drafting (**legislative co-drafting**) in both languages,* while constantly checking between both language versions to ensure equivalence of terms and expressions used, which is the optimal, preferred method.

It can be observed that Cameroonian laws are drafted principally using the first method above, and to a lesser extent using the second. In particular, the drafting of regional community texts such as those of CEMAC, OHADA and CIMA is *generally done according to the first method mentioned above*. No doubt due to the minority status of the English language within these organisations (Cameroon is the only member State of these organisations that uses English as an official language), it is on the receiving end of translations, especially from French. French is the only working language of *CIMA*, under Article 62 of its 1992 Treaty. Moreover, while the Treaties establishing CEMAC and OHADA recognize English as one of the working languages of the said organizations, *establish a hierarchy that favours French*, which is the initial language of drafting of the said Treaties[xxviii].

These situations arising from international instruments to which Cameroon is a party, have a dual effect *within* the country: (1) *the worth of the official languages*: they contribute to establishing a *de facto* hierarchy between the official languages of Cameroon, thus going against the principle of equality of the two official languages laid down in Article 1(3) of the Constitution; [xxix] (2) *access to the law by English-speaking citizens* (legal professionals, litigants, citizens) who may be subjected to the effects of *systematic* drafting of regional / community law instruments outside their preferred official language.

To illustrate the value of **co-drafting** both versions of a text, especially when it deals with areas or disciplines whose *expressions, terminology and meaning* may vary considerably *between languages*, but also between the *legal traditions and environments* in which they are applied, it is useful to examine comparatively, Canada's Cabinet Directive on Law-Making [the drafting of laws], addressed to all government Ministerial departments:

> Importance of bilingual and bijural drafting: The Constitution Act, 1867 requires [nationally applicable] laws to be enacted in both official languages and makes both versions equally authentic. It is therefore of primary importance that Bills and regulations **be prepared in both official languages. It is not acceptable for one version to be a mere translation of the other.** For this reason, sponsoring departments and agencies must ensure that they have the capability to develop policy, consult, and instruct legislative drafters in both official languages. Both versions of legislation must convey their intended meaning in clear and accurate language.
>
> It is equally important that bills and regulations respect both the common law and civil law legal systems since both systems operate in Canada and [...] laws apply throughout the country. **When concepts pertaining to these legal systems are used, they must be expressed in both languages and in ways that fit into both systems.**[xxx]

From a substantive standpoint, bilingual bisystemism is concerned with the *content of the laws in question*, and more specifically with the concepts and expressions used in drafting the legislation and requires the use of certain techniques *to ensure that the enunciation (expression) and understanding of a given norm is as bi-jural as possible.* A law may either be system-neutral or may carry a significant imprint from a specific legal system. In an article entitled "Legislative Bijuralism: Its foundations and its application", a specialist the Department of Justice of Canada presents the various techniques used to this end, depending on the circumstances and the legal area concerned:

- The first technique is *the use of a neutral term* which "is to express a private law norm through the use of a common term which applies in both the civil law and the common law [...]. This neutral language can be either the ordinary meaning of a term or a neutral legal term which refers to concepts or institutions belonging to both legal systems. In the latter case, the specific meaning will be determined by the relevant private law. Since it refers to both civil law and common law concepts and institutions, the neutral term is to this extent bijural."

- The second technique is the *use of definitions*, by which "a particular term is given a specific meaning understandable in both a common law and civil law context. In a given statute, the definition has the effect of neutralizing the vocabulary chosen to express the norm for both the common law and the civil law audiences. This technique seeks to express the norm in a bijural manner which reflects the objectives of Parliament."
- The third and last technique used is the *double*, which "reflects the specificity of each legal system by expressly referring in a legislative provision, to the private law rules, principles and institutions applicable to each. As a rule, the civil law term is followed by the common law term in the French version whereas the common law term is followed by the civil law term in the English version of the provision. This technique, which expressly includes in a legislative provision the specific terms used by each legal system, can render the text more cumbersome. In particular, members of each audience must recognize the terminology that applies to them and disregard the terminology of the other legal system. On the other hand, the double has the advantage of being unambiguous with respect to the concept or institution referred to in a given provision." [xxxi]

Legal translation is also an important and unavoidable area in a multilingual context. In the endnotes, we include a list of useful resources in this area.[xxxii] Given its importance for bijuralism and bilingualism in the justice system, *professional specialisation in legal translation and interpretation* ought to be a priority specialty at the University of Buea's Advanced School of Translation and Interpretation (ASTI). This field deserves special support in the allocation of national budgetary resources and from development partners (through scholarships at ASTI for deserving candidates who opt for this specialty, lecturing by and training internships with experienced senior legal translators, funding for the publication of glossaries and guides on bilingual legal terminology).

Recommendation 13: (a) Introduce the technique of simultaneous drafting (co-drafting) of the English and French versions of major legal texts in preparation; **(b)** Establish a Bi-Juralism Department within the Legislation Directorate at MINJUSTICE to serve as Government's nerve-centre and knowledge repository on legislative bi-juralism; **(c)** Develop and fund a substantial program of training and legal resource materials for Government's Legal Advisers/drafters across Ministries on techniques of bi-jural legislative drafting.

Recommendation 14: Provide funding (national and development partners) to enhance the attractiveness of, and orient deserving candidates to specialize in, legal translation and interpretation.

II.9 The importance of legal dualism: safeguarding the uniqueness of legal traditions through proactive judicial interpretation

By way of comparison, in Canada, *legal dualism* is a cornerstone of judicial interpretation; it provides an interpretative method that allows both legal systems to be taken into account in the *interpretation of legislative and judicial texts* in federal law (harmonized, which applies in both Common Law and Civil Law legal environments). It is achieved through a technique known as the "interpretive dilemma", or the "complementarity-dissociation principle", under which any interpretation of federal law *requires a determination of whether it is necessary to refer to* the private law of the province in which the dispute arises in order to supplement it. *How can this principle be applied in the Cameroonian context?* There exists an underlying similarity in that (like in Canada) a distinction is made in Cameroon between *uniform areas of law* which are applicable throughout the national territory and *non-uniform areas, which are of territorially confined application*.

Legal dualism should make it possible, in uniform areas of the law, to establish a system of interpretation *that guarantees that the principles specific to each legal tradition are taken into account*. The task then falls on Judges, who before interpreting legislative texts in uniform or harmonized areas of law, need to *determine whether it is necessary to resort to legal principles that are specific to a* particular *legal tradition or environment*, and especially so where the litigation emanates from the geographical sphere of influence of the legal tradition. Put simply, for cases arising in the North-West and South-West regions and bearing on uniform areas of the law, the Judge will need to determine whether it is necessary to resort to *principles specific to Common Law*; for cases arising in other regions, in uniform legal areas, the Judge will need to determine whether it is necessary to resort to *principles specific to Romano-Germanic Law*. This principle should obtain across the hierarchy of courts, and therefore be applicable from the courts of first instance to the Supreme Court.

The principle of legal dualism has an *important implication*; by virtue of it, we can state that *the unification of laws in a dualist context does not necessarily result in obliteration of all specificities of* the different systems. Despite the harmonised nature of certain areas of law, rules of interpretation should make it possible to *maintain a legal system/tradition bias or flavour, depending on where the case emanates from*. Mauritius again presents a good example of legal dualism in a unitary State context. In effect, through interpretation and depending on the cases before them, and the sources of the law applicable to the case, Mauritian judges rely on *national, French, and British precedents*. Also, depending on the case before them, they do not hesitate to cite scholarly legal works drawn from the French or Anglo-Saxon traditions.[xxxiii]

The interpretive function of Judges should also grant them an important role in the conflict *rule*. In a bijural (and federal) context, the conflict rule is one of the most important questions of balance between legal systems since it establishes *whether a law or regulation is adopted by the right level of government*. In Cameroon, the conflict rule would enable a

Judge to draw a *clear demarcation line between non-uniform and uniform areas of the law* and within the latter, the *sub-fields or sub-domains* which have been rendered uniform or not. This is significant since some areas of law have been unified (rendered uniform) *in part* but *remain un-unified in part*; and it is often necessary to determine the exact demarcation line between unified/non-unified.

This is of particular importance given that in Cameroon, legal debates persist on the *scope of legal instruments for the unification of law*, specifically as to whether they harmonise or make uniform the entire field or area of law in question, or not. For example, it is often argued that OHADA law *has not harmonised the whole of business law*, since some aspects (especially certain special contracts not provided for by OHADA) are still governed, in the North-West and South-West regions, by provisions of the *British Sales of Goods Act, 1893*.

Recommendation 15: Adopt a bijuralism-sensitive interpretation statute that prescribes judicial interpretation techniques according to the subject matter, the applicable sources of law, and the geographic origin/location of the dispute

SECTION III: LEGAL TRAINING, MOBILITY AND PRACTICE ACROSS LEGAL SYSTEMS & TRADITIONS IN CAMEROON

III.1 Why is it important to introduce and render widespread, the study of comparative legal systems and cross-legal system learning?

The coexistence of the Romano-Germanic and Common Law legal systems/traditions in Cameroon makes the *study of comparative legal systems a* must, as a method, a source of law, and a legal discipline. The importance of the study of comparative law is no longer in question. As a learning experience in "foreign" law, it allows a jurist to *become familiar with mindsets and value systems different from his/her own*, to understand better the *strengths and constraints of the different systems*. The study of comparative legal systems proceeds by way of examining *the major legal traditions*, with an objective to expose the learner to the different conceptions of law in force throughout the world.

The learning path proposed in the discipline is to *highlight and put into perspective the dynamics, divergence and convergence* taking place in the field of law and presenting an introduction to the comparative legal methods. Between apprehending the *specificities and diversities and understanding areas of similarity and convergence*, its core purpose is to underscore how different legal systems seek to address common problems, through each system's distinct internal logic. Moreover, in the current international context marked by the diminishing of borders, similar global challenges and rapid interaction via new technology, comparative law is an essential field for improving national legislation and to train jurists for cross-jurisdictional work.

In a context of legal pluralism as obtains in Cameroon, training in comparative legal systems serves the important purposes : (1) to *open the minds of* learners and legal

professionals to modes of conception of law different from the legal tradition in which they were primarily trained or work, (2) to *build a critical mass of knowledge* on different legal systems, which is a necessary condition for the creation of a *common legal professional market* and hence facilitate *mobility of professionals* between the two systems.

In practice, in the past as well as in the future, some if not a sizeable number of legal professionals (Magistrates, Judges, Prosecutors, Lawyers, Bailiffs) will be called upon to practice, either on an ad hoc basis or for substantial periods of time, in a legal environment different from the one in which they received a large part of their training. In a logic of *accommodation* of legal traditions and influences, of *rendering similar* or *harmonization* of law, drawing from the sources of legal inspiration present, the Cameroonian lawyer will need more so than in the past, to be capable of working with the norms, customs, and methods of these different approaches to law. At the very least, the legal professional who is apt in this respect, will stand out from the rest.

Interaction between the two legal systems is accentuated by the dynamics of the globalisation of law, which underscore the importance of a mastery of the principles of the two systems. Indeed, *the inescapable use of English* in international business transactions means legal instruments on same draw from principles of Anglo-Saxon / Common Law and consequently make legal English essential. On the other hand, to meet the needs for security, predictability and certainty, the trend in legal regimes governing international business transactions is towards *codification*, which is the primary characteristic of the Romano-Germanic system: this makes familiarity with the principles of Romano-Germanic law indispensable for any practitioner. More broadly, for purposes of cross-learning between the two legal systems, it will be necessary to teach Civil Law/Romano-Germanic Law in English (already practised in Anglo-Saxon universities where English is the compulsory language of instruction) and Common Law/Anglo-Saxon Law in French, as is already done elsewhere.

Both within the country and comparatively, it is necessary to note the progressive and cross-fertilizing influences between the two legal systems, including in countries that have historically and traditionally adhered to one or the other. On the one hand, in countries with a common law legal tradition, such as England or the United States, the law is becoming increasingly codified, to varying degrees from one country to another and from one legal domain to another. According to one author, *"England does not have a tradition of codification per se. However, for at least two hundred years it has had a tradition of seriously considering codification. Despite many failures, even recent decades have shown that codification has not yet lost its appeal."*[xxxiv] On the other hand, in countries with a civil law tradition, the Judge is being entrusted with increasingly significant powers, to the point of generating the debate on the government by Judges, which formerly arose only in States with a common law tradition. This rapprochement of legal systems should inspire open-mindedness among professionals and practitioners from both systems and reduce the conception that these two legal systems operate in isolation.

III.2 What is the practice in Cameroon in terms of the interpenetration of legal systems in the academic curriculum of Law Faculties?

Advanced and in-depth study of comparative legal systems, in a country like Cameroon with established legal pluralism, which is now part of protected specificities and heritages, requires a *design and organisation* of *university law teaching programmes* aligned with this objective. In this regard, although Cameroon has made some efforts, much remains to be done to achieve a *satisfactory level of cross-acquisition of knowledge on legal systems*.

Firstly, *the organization of programs of study* in Cameroon's law faculties *encourages parallel training* in the two legal systems. The Universities of Buea and Bamenda created respectively in 1993 and 2011 are officially *universities conceived in the Anglo-Saxon tradition*, based on the texts that established them. On this basis, and until the reform aimed at diversifying the programs offered by law faculties in Cameroonian universities, the University of Buea has long aligned itself with the Anglo-Saxon tradition by offering programmes specific to that tradition alone. Among the other universities, some, such as the Universities of *Yaoundé II-Soa, Douala and Dschang* (since they were not classified as universities in the "French tradition") offered Common Law programmes, in which subjects were taught from that legal tradition, in addition to harmonised areas of law.

Since 2017, and as part of the measures announced by the Minister of Justice, all universities have now introduced both legal systems. On the one hand, we have witnessed the creation, in the Universities of Maroua and Ngaoundere, of a Department of *English Law*[xxxv] . On the other hand, in the Anglo-Saxon Universities (Buea and Bamenda), Departments dedicated to Romano-Germanic Law, namely a Department of Public *Law* and a Department of Civil Law (whose name *Department of French Private Law* deserves to be reviewed), were also created. This reorganisation of the law faculties in the State Universities was accompanied by a trend to harmonise the subjects taught, with the aim of making the teaching of all currently national uniform areas of law, compulsory in all universities.

If progress has been achieved on the availability of training in the two legal sub-systems in all the eight State universities, there remains a problem of *interpenetration and interaction between* the programmes dedicated to each legal system. Indeed, it is observable that the various programs/syllabus of study in Cameroonian law faculties are offered in *Common Law and Romano-Germanic Law* silos, since the said programs function within the mould of **one or the other** system. The academic programmes/syllabus of the various law departments are characterized by weak inter-penetration of the respective legal systems, since each includes very few courses from the "other" legal system. The context (location of the university and study program concerned) *remains a determining factor* that leads to *relegating the other legal system to its simplest expression*. Indeed, the courses offered on the "other" system are very few, and rarely appear on the list of compulsory courses.

At the University of Buea, for example, in the Department of English Law (dedicated to Common Law in an Anglo-Saxon university), in addition to the subjects of the Common

Law legal subsystem and already nationally uniform areas of law, the courses on *non-uniform disciplines of the Romano-Germanic legal system* are only: *Civil Law, French Family Law and Law of Persons*, all listed as elective subjects. In the Department of Public Law (dedicated to Romano-Germanic Law, but in an Anglo-Saxon University), the courses offered on non-uniform areas of the Common Law legal subsystem are *Law of Contracts, Family Law, Law of Evidence, Law of Torts, Equity and Trust*, with only the latter as a compulsory subject. The Department of French Private Law (dedicated to Romano-Germanic Law in an Anglo-Saxon University) hardly achieves better interpenetration into the other legal tradition since it offers as compulsory subjects two non-uniform subjects belonging to the Common Law system, namely: *Introduction to Common Law and Law of Evidence*, and several others as elective subjects: *Law of Contracts, Family Law, Equity and Trust, Law of Torts*.

Law faculties of universities in the predominantly French-speaking regions of the country *follow the same pattern* of *modest interpenetration in the learning of legal systems*. The course offerings there include *even fewer subjects from the other system*, mostly as elective subjects. [xxxvi]

Moreover, in the universities, students obtain their first university law degree *having acquired very few skills, if any, in the other legal subsystem*. Since there is no minimum threshold of courses from the other legal subsystem in which the student must achieve a pass, the desired objective of promoting the acquisition of cross-legal system skills is not achieved. This explains why legal practitioners trained in one legal sub-system may have difficulties in commuting from one system to the other and *remain confined to the area where the legal tradition familiar to them is most prevalent*. Yet, lawyers for instance are sworn to a national Bar and may establish and practice anywhere in the country.

The burden of learning and the cost of prolonging university studies are certainly factors to be taken into account when considering how to ensure that law graduates from Cameroon's universities have been imparted with foundational knowledge that will enable them, early and later on in their careers, to adapt to the pluri-legal nature of the country, by being familiar with these two legal cultures and approaches. However, solutions exist, such as (i) developing a *minimum package of* inter-legal system learning to be dispensed to all students, and (ii) introducing *pilot learning programs* that will allow students who so desire to pursue a combined Civil Law/Common Law curriculum, either in parallel or as a supplement to the basic curriculum. [xxxvii]

It is worth re-stating that in order to achieve cross-learning and acquisition the two legal systems, it would be necessary to be able to deliver *substantive teaching of* Civil Law/Romano-Germanic Law in English (already practised in Anglo-Saxon universities because of the institution of English as a compulsory language of instruction) and of Common Law/Anglo-Saxon Law in French.

Departments dedicated (in part) to Comparative Law in some universities[xxxviii] could potentially be valuable contributors towards the *objective of offering study courses featuring both legal systems*. They should be able to produce future legal theorists and practitioners who wield a perfect command of the concepts and principles of both legal systems, and therefore ready to be deployed throughout the national territory, without the barrier of the legal systems/traditions being an obstacle. In the long run, their graduates should be an asset in bringing the two legal systems closer.

Recommendation 16: Establish a minimum package of study courses from the other legal system that must be taught to students enrolled in programmes cast in a given legal tradition/system, and ensure the availability of this minimum inter-system package in the main language of instruction (Civil Law in English, Common Law in French)

Recommendation 17: Open optional programmes in state universities that offer cross legal system, combined, and advanced courses in the two legal systems practised in Cameroon, and other major legal systems practised throughout the world.

III.3 What factors promote or hinder balanced access to training in legal systems or inter legal system mobility?

The objective of interpenetration of *legal systems* in Cameroon requires that there be significant inter-system relations in order to ensure the *representation of the said systems on the national territory*. This requires, at the outset, the availability of or access to related law studies programs. In this respect, it should be noted that due to a certain number of factors, access to study programs in Common Law *is more difficult to achieve* than for Romano-Germanic Law. This is due to three main factors:

- First, there is a *significant gap between supply of university study programs* in Common Law and in Romano-Germanic Law – both as to number of dedicated Universities, and number of dedicated programs. In the State Universities, there is generally only one Common Law department, while there are several in the field of Romano-Germanic Law. This is undoubtedly due to the demographic factor, and the demand, which is higher for one, and lower for the other. A new equilibrium between legal traditions also requires some equilibrium as to programs of study available.

- Secondly, the *prevailing security situation* in the North-West and South-West regions (where the Anglo-Saxon universities are located and whose learners are most likely to opt for the Common Law training) is likely to discourage many.

- Finally, the *language factor* also plays an important role in the imbalance in access to training between the two systems, through: (1) *languages of instruction of legal disciplines* (apart from the Universities of Buea and Bamenda where instruction is in

principle in English; in the other Universities, Common Law programmes are taught in English and Romano-Germanic Law programmes in French, which may *dissuade French-speaking learners from opting for training in the Common Law system and English-speaking learners from opting for the Romano-Germanic system*); (2) *unavailability of legal learning tools (case law, doctrine) in both languages*, both for national instruments and, a fortiori, for supranational instruments. The problem of the availability of learning tools such as case law, doctrine and certain texts is particularly acute for learners of English when the supranational law comes from a predominantly French-speaking structure.

On the other hand, it is important to note that there are certain prevailing dynamics which tend to lead to *inter-system migration and influences*, and notably the shift from the Romano-Germanic to the Common Law system. Firstly, there is a *significant switching of* learners from one educational subsystem to another which has implications for the scope of learning in both systems. This is because (1) a significant number of historical French-speakers *opt for the Anglophone educational subsystem*, in which many end up studying law; and (2) many Baccalaureat holders (the high school diploma in the francophone educational subsystem) *migrate to higher education in English*, in which some also end up studying law.

This practical reality of the learning dynamics of educational/legal systems has subsequent impacts. French-speaking learners who opt for the English-speaking educational subsystem or migrate there after their Baccalaureat, and who obtain common law degrees, are eligible to pursue their professional careers in the common law legal tradition (lawyer, magistrate, other judicial professions), where training in the said legal tradition is required.

Secondly, and still from a practical point of view, inter-system mobility also stems from the *significant movement of graduates of the civil law system* who, by choice or lack of other options, study for and obtain *Legal Practice Certifications in other countries of the common law legal tradition*, mainly in Nigeria. These persons are admitted to the Cameroon Bar and authorised to practice law.

Recommendation 18: Address the deficit in supply of study programs in the Common Law/Anglo-Saxon Law tradition, by increasing the number of teaching staff

Recommendation 19: Take steps to increase legal learning tools *in English* (texts, case law, supranational and national doctrine) in subjects where English is structurally less well represented, and increase legal research and publications on national/supranational law in English

Recommendation 20: Encourage bilingualism in teaching at law faculties in State universities by gradually providing in law programs, for a minimum level of courses available in English and French, to encourage learners to incline towards one system or the other regardless of their preferred official language.

III.4 Support by Cameroon's development partners to the process of balanced, mutual accommodation between legal systems

The efforts made by the Government of Cameroon in accommodating the two legal systems practised in Cameroon *should be supported by the country's development partners*. These include *structural partners* with whom Cameroon maintains relations on a permanent basis and who can support the *achievement of balanced bijuralism* (bilateral and multilateral cooperation, development banks); and *ad hoc partners* whose cooperation would help to resolve specific challenges, such as the resolution of the crisis in the North-West and South-West regions.

Given that the management of legal systems is one of the driving forces of the crisis, these partners should use the levers at their disposal in terms of public policy dialogue and cooperation programmes to support the *design of a balanced mechanism* for taking legal systems into account in the construction of law. These programs should not only be viewed from the usual development prism of strengthening the judicial system to increase access to justice as a vector of development and social protection. *In the case of Cameroon, whose legal pluralism has conflict potential, they constitute a key contribution to the management and prevention of conflicts*. Indeed, these interventions make support to the justice sector consistent with a conflict-sensitive approach to development.

Development partners could do this through funding projects that are in line with a balanced mutual accommodation of legal systems, and through policy dialogue with national authorities on justice sector policies. In this regard, it could be useful for the said partners to encourage the *establishment of a consultative forum* bringing together, in addition to the public authorities and legal practitioners and theoreticians from the two legal traditions, comparative law experts, including foreign experts with experience in the management of pluralist legal systems. The value of such an approach would be to bring together a range of comparative expertise capable of accompanying Cameroonian stakeholders: by demonstrating the challenges they have faced in their own contexts, and how they are working to resolve them - legal pluralism within the same country not being exclusive to Cameroon but shared with other countries.

Recommendation 21: To Cameroon's development partners - work to include in support to the justice sector a component aimed at increasing national capacity to manage and reconcile the pluralism of Civil law/Common law legacies as an important element of a conflict-sensitive development approach for the sector.

Recommendation 22: To Cameroon's development partners - encourage and promote the establishment of mixed spaces for consultation between Cameroonian stakeholders in the justice sector and foreign experts in the management of legal pluralism and comparative legal systems.

ENDNOTES

[i] See Célestin Sietchoua Djuitchoko: Célestin Sietchoua Djuitchoko, *Souvenir de la common law et actualité du droit administratif dans les provinces anglophones du Cameroun*, Revue générale de droit, Vol. 27, No. 3, 1996, pp. 357-374.

[ii] See Article 38 of the Constitution of 2 June 1972, adopted to mark the transition from a Federal State to a Unitary State. These provisions were reproduced *in extenso in* article 68 of the Constitution of 18 January 1996.

[iii] This refers to the classical, traditional conception of these legal systems, since in their modern conception, the two legal systems have many points of convergence. This will be addressed later in this Policy Paper when we examine the need for bridging between the legal systems.

[iv] See :

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2. Gilles Cuniberti, *Les caractéristiques prêtées classiquement à la tradition juridique continentale*, in : 'Actes du 33eme Congres de l'IDEF (Institut du Droit d'Expression et d'Inspiration Françaises)', Revue de l'Ersuma / Numero special, mars 2014, pp. 7-18.
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12. Esin Orucu, *What is a Mixed Legal System: Exclusion or Expansion?* Electronic Journal of Comparative Law, Vol. 12, No. 1, May 2008.
13. Patrick Glenn, *The Civilization of the Common Law*, International Review of Comparative Law, Vol. 45, No. 3, July-September 1993, pp. 559-575.
14. J. G. Sauveplanne, *Codified and Judge made Law: the role of Courts and Legislators in Civil and Common Law Systems*, Niewe Reeks, Deel, Vol. 45, No. 4, 1982.

[v] See:

1. Pierre Etienne Kenfack, *La gestion de la pluralité des systèmes juridiques par les Etats de l'Afrique noire : les enseignements de l'expérience camerounaise*, Cahiers de la recherche sur les droits fondamentaux, No. 7, 2009, pp. 153-160.
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3. Justice Lucy Asuagbor, *La coexistence de droits dans un même espace économique : la perspective Camerounaise*, Intervention au 31e Congrès 2008 de Lomé : Le rôle du droit dans le développement économique, Institut international de Droit d'Expression et d'inspiration Françaises, 2009.
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11. Jean-François Gaudreault-DesBiens, *On the Relative Pertinence of the Civil Law/Common Law Dichotomy When Reflecting on the Relationship between Comparative Law, Development Law and Living Law. Some Observations in the African Context* (examining the OHADA model), April 7, 2017.
12. Salvatore Mancuso, *The New African Law: Beyond the Difference Between Common Law and Civil Law*, Annual Survey of International & Comparative Law, Vol. 14, Issue 1, Article 4, pp. 39-60.
13. Martha Simo Tumnde, *The applicability of the OHADA treaty in Cameroon: Problems and prospects*, Annales de la Faculté des Sciences Juridiques et Politiques, Université de Dschang, Tome 6, 2002, pp. 23-32.
14. Rajendra Parsad Gunputh, *Le droit des affaires ''sans'' l'OHADA : l'emprise du Civil Law / Common Law dans un système de droit mixte (le regard de Maurice)*, Revue Juridique de l'Océan Indien (RJOI), No. 11, 2010, pp. 43-62.
15. Salvatore Mancuso, *« La coexistence du droit civil et du common law en Afrique »*, Revue de l'ERSUMA : Droit des affaires – Pratique Professionnelle, N° Spécial, IDEF - Mars 2014, pp. 169-178.
16. Claire Moore Dickerson, *Le droit de l'OHADA dans les États anglophones et ses problématiques linguistiques*, Revue internationale de droit comparé. Vol. 60 No. 1, 2008, pp. 7-17.
17. Jean-Jacques Ndongo, *Les actes uniformes de l'OHADA en traduction*, Revue Parallèles, No.25, octobre 2013.
18. Titus Anurike Edjua, *The contemporary application of English and French contract law in Cameroon*, Doctoral thesis, SOAS, University of London, 1995.

19. Carlson Emmanuel Wunde Anyangwe, *The Administration of Justice in a Bi-jural Country - The United Republic of Cameroon*, PhD thesis, School of Oriental and African Studies, University of London, August 1979.
20. Paul Bamela Engo, *Some Aspects of Legal Reform in Cameroon*, Journal: Abbia, Vol. 4, No. 6, 1964, pp. 159-171.

[vi] Under Article 62(2), without prejudice to the provisions governing all regions, "the law may take into consideration the specificities of certain Regions with regard to their organization and functioning".
[vii] This law increases to six (6) the number of Sections within the Supreme Court's Judicial Chamber. The newly-created Common Law Section adds on to the five pre-existing Sections: Civil, Commercial, Social Criminal and Traditional Law.
[viii] See in particular Sections 15, 16, and 17 of Law No. 98/004 of 14 April 1998 to lay down Guidelines for Education in Cameroon, and the process of developing new curricula for Basic (Nursery and Primary) Education in Cameroon in 2018 : Ministry of Basic Education, *Cameroon Primary School Curriculum: English Subsystem, Level I, Class 1 & Class 2*, 2018.
[ix] See our paper on "The constitutional requirement of an assenting regional vote on Special Status for the North-West and South-West regions: the imperative of building consensus with these Regions instead of recourse to nation-wide majoritarianism" available at this link: https://constitutionaloptionsproject.org/fr/publication/approches-majoritaires-et-approbation-regionale-du-statut-special-pour-no-so
[x] This Committee was established by the Prime Minister, Head of Government on 22 December 2016.
[xi] See the full press briefing at: "Claims of Anglophone lawyers: the response of the Head of State", Cameroon Tribune of March 31, 2017, last accessed on September 17, 2021.
[xii] One of the three divisions of ENAM, along with the Administrative Division and the Financial Division.
[xiii] Pursuant to Article 25 of the Decree :
"(1) Studies at ENAM are organized under the following Divisions:
- The Administrative Division
- The Financial Division
- The Magistracy and Registry Division.

(2) Each Division shall have Sections tasked with dispensing the foundational and in-service education programs of ENAM.
(3) The Sections referred to in paragraph 2 above shall be created pursuant to Orders signed by the Minister in charge of the Public Service, which declare open the competitive entrance examinations to recruit candidates for the said Section, following proposals from Administrative departments requiring the personnel." [Our translation].
[xiv] These measures were taken respectively by Order N° 001216/ MINFOPRA of 06 April 2017, and Order N°. 0005121/MINFOPRA of 26 May 2021.
[xv] We also note the appointment for the first time in over 5 decades, of a magistrate of the Anglo-Saxon legal tradition as President of the Judicial Chamber of the Supreme Court. Judge Epuli Mathias Aloh was appointed by Decree No. 2017/277 of 07 June 2017 appointing Magistrates of the Bench at the Supreme Court.
[xvi] Mancuso, Salvatore, *"The New African Law: Beyond the Difference Between Common Law and Civil Law,"* Annual Survey of International & Comparative Law: Vol. 14: Iss. 1, Article 4, (2008). Last accessed 16 September 2021.
[xvii] According to Marie-Claude Gervais and Marie-France Seguin: "The notions of "bijuralism" and "mixed law" do not describe the same aspects of reality. Two legal systems may coexist within a single state without interacting, in which case that state may be considered "bijural", but not as having a mixed legal system. Canada is said to be a bijural country because civil law is the common law of Quebec and common

law that of the rest of Canada. However, Federal law is also a mixed law since its development, interpretation and application are based on the common law of each province." Marie-France Séguin & Marie-Claude Gervais, *Some thoughts on Bijuralism in Canada and the world*, Legal Counsels, Department of Justice, Canada, 2018.

On mixed legal systems, see : Kensie Kim, *Mixed Systems in legal origins Analysis*, Southern California law review, Vol. 83, No. 3, 2010, pp. 693-730; Charles Manga Fombad, *Managing Legal Diversity: Cameroonian Bijuralism at a Critical Crossroads*, in 'Mixed Legal Systems, East and West', Vernon Palmer, Mohamed Mattar, Anna Koppel (eds.), Routledge Publishers, New York, 2016, pp. 101-122; Esin Orcu, *What is a Mixed Legal System: Exclusion or Expansion?* Electronic Journal of Comparative Law, Vol. 12, No. 1, May 2008; Vernon Valentine Palmer, *Mixed Legal Systems - The Origin of the Species*, Tulane European & Civil Law Forum, Vol. 28, 2013.

[xviii] In a presentation entitled "Bijuralism in Canada", the Honourable Michel Bastarache, then Justice of the Supreme Court of Canada, pointed out that "bijuralism" in Canada refers to the coexistence of the English common law and French civil law traditions in a country with a federal system. Speech delivered at a luncheon meeting on bijuralism and the judiciary, Department of Justice, Ottawa, February 4, 2000.
[xix] See William Tetley, *Mixed Jurisdictions: Common Law v. Civil Law (Codified and Uncodified)*, 60 Louisiana Law Review. (2000). Pp.677- 738, esp. pp 726-637, last accessed 16 September 2021.
[xx] This country is in many ways comparable to Cameroon: it is a unitary state; it experienced past administration under France and Britain; it applies Common Law and Romano-Germanic Law.
[xxi] Organisation Internationale de la Francophonie, Promouvoir la diversité des cultures juridiques, https://www.francophonie.org/sites/default/files/2020-01/OIF_diversite_juridique.pdf, p. 10, last accessed 17 September 2021.
[xxii] As a reminder, Mauritius was colonized by France from 1715 to 1810, then by the Great Britain from 1810 to 1968, when it acceded to independence. The country had previously been occupied by Holland from 1590-1710.
[xxiii] Mathieu Douzeil-Divina (Dir.), *Initiation au Droit; introduction encyclopédique aux études et métiers juridiques*, Paris, LGDJ; 2011; p. 282 et seq.
[xxiv] The expression "legislative bijuralism" is defined in Canada as "an effort to harmonize federal legislative texts — in a jurisdictional perspective — that fosters the complementarity of federal law with provincial private law, particularly Quebec civil law". Department of Justice Canada, *Legal Dualism and Bilingual Bisystemism : Frequently Asked Questions*, last accessed 14 September 2021.
[xxv] Bilingual bisystemism "relates to the unique coexistence of the civil law and common law legal systems within Canada, and the simultaneous or concomitant presence of two official languages". Department of Justice Canada, *Legal Dualism and Bilingual Bisystemism : Frequently Asked Questions*, last accessed 14 September 2021.
[xxvi] Unijuralism is more specifically defined as "a situation that arises, when a legislative provision is based on a concept or term specific only to one legal tradition in both language versions". Louise Maguire Wellington, Legal Counsel, Civil Code Section, Department of Justice Canada, *Bijuralism in Canada: Harmonization Methodology and Terminology*.
[xxvii] Semi-bijuralism refers to " a situation that arises, for example, when a legislative provision is based on concepts or terminology specific to the common law in the English version, and concepts or terminology specific to the civil law in the French version ". L. Maguire Wellington, op. cit.
[xxviii] Article 42 of the OHADA Treaty revised in 2008: " The working languages of OHADA are: French, English, Spanish and Portuguese. Before translating the documents in other languages, documents already published in French shall have full effects. In the event of differences among the different translations, the French version will control. " Article 64 of the CEMAC Treaty revised in 2008: "This

Treaty is drawn up in a single original in the French, Spanish, Arabic and English languages, the French text being authentic in the event of divergent interpretations."

[xxix] Article 1(3) of the Constitution: " The Official languages of the Republic of Cameroon shall be English and French, both languages having the same status. "

[xxx] Cabinet Directive on Law-making, *Guide to Making Federal Acts and Regulations: Cabinet Directive on Law-Making*, Government of Canada, 2018.

[xxxi] Canada - Department of Justice, *"Legislative Bijuralism: Its Foundations and its Application" (continued).*

[xxxii] See:

1. Jean-Claude Gémar, *Aux sources de la « jurilinguistique » : texte juridique, langues et cultures*, Revue française de linguistique appliquée, Vol. XVI, No. 1, 2011, pp. 9-16.
2. Jean-Claude Gémar, *Les enjeux de la traduction juridique : Principes et nuances*, in :' Übersetzung von Rechtstexten : Probleme und Methoden / Traduction de textes juridiques : problèmes et méthodes', Bern, 1998.
3. Jean-Claude Gémar, *Traduire le texte pragmatique : Texte juridique, culture et traduction*, Les Cahiers de l'ILCEA, No. 3, 2002, pp.11-38.
4. Jean-Claude Gémar, *Langages du droit et styles en traduction : Common Law vs. Droit civil : An Odd Couple ?* Journal of Civil Law Studies, Vol. 9, No. 1, article 7, 2016, pp. 135-165.
5. Gérard Snow & Sylvette Savoie Thomas, *Répertoire des appellations en usage dans les régimes de common law anglais-français / Titles and Designations in Common Law Jurisdictions English-French*, Centre de traduction et de terminologie juridiques, Faculté de droit-Université de Moncton, 2011.
6. Government of Canada, *Family Law Glossary (Common Law): Terminology Bulletin 271*, 2017.
7. Didier Emmanuel, *La Common Law en français. Étude juridique et linguistique de la common law en français au Canada*, Revue internationale de droit comparé, Vol. 43 No. 1, Janvier-mars 1991, pp. 7-56.
8. Bureau de la traduction-Translation Bureau, *Lexique du droit des contrats et du droit des délits (common law), BT-266, Law of Contracts and Law of Torts Glossary (Common Law)*, PAJLO, Ministère de la justice Canada – Department of Justice Canada, 2008.
9. Bureau de la traduction-Translation Bureau, *Lexique du droit des sûretés (common law), BT-269, Law of Security Glossary (Common Law)*, PAJLO, Ministère de la justice Canada – Department of Justice Canada, 2009.
10. Bureau de la traduction-Translation Bureau, *Lexique du droit des fiducies, BT-259, Law of Trusts Glossary*, PAJLO, Ministère de la justice Canada – Department of Justice Canada, 2005.
11. Government of Canada, *Human Rights Glossary: Terminology Bulletin 285*, 2017.
12. Bureau de la traduction, *Lexique des modes substitutifs de résolution des différends (common law)*, Gouvernement du Canada – Government of Canada, 2019.
13. Gouvernement du Canada, *Lexique du droit de la famille (common law) : Bulletin de terminologie 271*, 2017.
14. Gouvernement du Canada, *Lexique sur les droits de la personne : Bulletin de terminologie 285*, 2017.
15. Attorney General of the province of Ontario, Office of the Coordinator for French Language Services, *Justice Sector Lexicon*, January 2018 / Province de l'Ontario, le Bureau de la coordonnatrice des services en français du secteur de la justice, *Lexique du secteur de la justice*, Janvier 2018.

16. Sylvette Savoie Thomas et Gérard Snow, *Dossier de recherche sur le terme Corporation et termes connexes*, Centre de traduction et de terminologie juridiques, Faculté de droit-Université de Moncton, 16 mai 2008.
17. Government of Canada, *Alternative dispute resolution glossary* (common law), 2019.

[xxxiii] Tony Angelo, "Mauritius: 'Capitulation, Consolidation, Creation'" in Sue Farran, Esin Örücü and Seán Patrick Donlan (Eds.) A Study of Mixed Legal Systems: Endengered, Entrenched or Blended, Juris Diversitas, 2014, pp. 117-137.

[xxxiv] Gunther A. Weiss, *The Enchantment of Codification in the Common-Law World*, (2000), 25 *Yale J. Int. L.* 435, 454-470.

[xxxv] In the Law Faculties of the Universities of Douala, Dschang and Yaoundé, where a Department of Common Law already existed, the name was also changed to that of Department of English Law.

[xxxvi] At the University of Douala, for example, Law students in programs other than English Law have only two subjects from the Common Law system on their course offerings: Introduction to Common Law (compulsory) and Equity and Trust (optional). At the University of Dschang, there are no Common Law subjects on the list of compulsory subjects for students in departments other than the one dedicated to teaching English Law.

[xxxvii] See for example the combined Civil Law/Common Law program at McGill University in Canada: https://www.mcgill.ca/law/fr/bcl-jd/description-programme, and https://www.mcgill.ca/law-studies/bcljd-studies/structure.

[xxxviii] These Departments are not exclusively dedicated to Comparative Law, which is combined with other legal disciplines in the respective Universities. These include, at the University of Yaoundé II-Soa: the Department of *Legal Theory, Legal Epistemology and Comparative Law*; at the University of Maroua: the Department of *Legal Theory, Epistemology and Comparative Law*; and at the University of Buea: the Department of *Customary and Comparative Law*.