Policy Brief

The Common Law Division of the Supreme Court of Cameroon: An Assessment

Executive Summary

This policy brief is part of a wider British Academy funded project entitled '(Re)Constructing Judicial Institutions for Conflict Transformation: The Common Law Division of the Supreme Court of Cameroon in Perspective'. The project investigates the role of the newly established Common Law Division (CLD) in the Supreme Court of Cameroon, in engineering positive social change. The CLD was created in 2017, in response to a socio-political conflict which began in 2016 and subsequently degenerated into armed conflict. The events were triggered by concerns relating to the marginalisation of the inherited English common law practised by Cameroon's English-speaking minorities within Cameroon's bijural legal system. The government's stated objective was to address the lawyers' grievances by creating the CLD to accommodate the common law at the level of the Supreme Court, in areas where national laws had not been harmonised. This was particularly important in the context of considerable obstacles encountered by common law lawyers and litigants in accessing the Supreme Court.

The project investigates the extent to which the CLD addresses the fundamental concerns relating to access to the Supreme Court and the representation of the common law within the Supreme Court. Results are drawn from qualitative in-depth interviews with thirty-two participants. This policy brief outlines the key findings from the research.[1] It contributes new empirical evidence on the agency of institutional (re)construction on conflict transformation in Cameroon. In particular, it provides significant qualitative insights into the functioning of the CLD, the perception of common law lawyers regarding the CLD and their experience of using that institution. This is the first qualitative research on the CLD.

The brief is intended to stimulate policy debates on the general outlook of the Supreme Court and the CLD in particular in relation to its accessibility to common law litigants in both substantive and procedural dimensions of the common law as understood and practiced in the two common law regions of Cameroon. The brief is also intended to inform developmental support from Cameroon's international partners on key areas in enhancing the Supreme Court and the CLD in particular.

[1] A comprehensive analysis of the findings is contained in a forthcoming publication by Enonchong and Eware (Conflict Transformation Through Institutional (Re)Construction: Insights from An Empirical Enquiry into the Establishment of the Common Law Division of the Supreme Court of Cameroon).

Key Recommendations

- **Amendment of Law No. 2006/016 to take into consideration the particularities of the common law practice and procedure.**
- **Constitutional amendment to raise the CLD to a Bench.**
- **Appointment of more common law trained judges to the CLD.**
- **Training of lawyers on the technicalities of appealing to the Supreme Court.**
- **Awareness campaigns to showcase the activities of the CLD**
- **Raising the CLD to a Special Division as is the case with the Special Division on cases of misappropriation of public funds.**
- **Inclusive approaches to the development of policy initiatives.**

Introduction

The year 2016 was marked by an unprecedented strike action by lawyers in protest at what they perceived as a malicious scheme to eradicate the common law and common law practices and to undermine the Anglo-Saxon nature of the North West and South West regions. The strike action which started simply as a protest because of the unavailability of the OHADA Uniform Acts in English, evolved into a protest at the entire judicial process in the English speaking regions where French speaking civil law trained magistrates were appointed in great numbers to the courts in those regions. Further, the Organisation and functioning of the Supreme Court did not reflect the bi-jural nature of the country.

The government recognised the pertinence of some of the grievances and immediately sought to respond to them. With respect to the grievance on the organisation and functioning of the Supreme Court, the government introduced a bill during the June 2017 parliamentary session, 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 (Supreme Court Law). The purpose of the bill was to establish a common law division in the Supreme Court. Defending the bill in parliament, the Minister of State, Minister of Justice explained that some branches of the law that fall under common law are yet to be covered by an instrument that is applicable nationwide. These disciplines include Family Law, Law of Succession, Equity and Trust, Law of Torts, Law of Contract, Law of Evidence, and Civil Procedure. It was therefore, reasonable to establish a Division in the Supreme Court made of judges who mastered those disciplines, to hear and determine cases relating to them. It is within that context that Law No. 2017/014 of 12 July 2017 to amend and supplement some provisions of Law No. 2006/16 of 29 December 2006 to lay down the organisation and functioning of the Supreme Court was enacted, establishing the CLD.

The Supreme Court is a significant avenue for justice which brings together the two main distinctive legal and judicial traditions that exist in Cameroon; the inherited English common law on the one hand and the inherited French civil law on the other hand. From that perspective, it is iconic not only in terms of its status as an avenue for justice but also in terms of its embodiment of aspects of distinct Cameroonian identities. As such, its ability to adequately represent these distinct identities is crucial

from a socio-political perspective. It is in that light that the government's establishment of the CLD in effect recognises the importance of representing the two distinct legal and judicial traditions at the level of the Supreme Court to grant litigants in the country equal access to the institution at the apex of the hierarchy of the administration of justice.

As mentioned earlier, the policy brief is an attempt to stimulate policy debates on the general outlook of the Supreme Court and the CLD in particular in relation to its accessibility to common law litigants in both substantive and procedural dimensions of the common law as understood and practiced in the two common law regions of Cameroon. The wider project from which the brief draws applies a theoretical framework and a qualitative methodology to develop an informed approach to support the prospective policy debates.

The theoretical framework adopted to analyse the role of the CLD is conflict transformation, given the context in which the CLD was established – to address some of the issues identified by common law lawyers which were the immediate triggers of the conflict in the two Anglophone regions. The term conflict transformation exploits the opportunities that conflict situations present for change in social structures which may foster negative dynamics.[2] The change is aimed at replacing such negative dynamics to 'foster healthier dynamics' within such structures.[3] In this policy brief, we adopt the following framework for conflict transformation:

> ***'… actions and processes which seek to alter the various characteristics and manifestations of conflict by addressing the root causes of a particular conflict over the long term. It aims to transform negative destructive conflict into positive constructive conflict and deals with structural, behavioural and attitudinal aspects of conflict. The term refers to both the processes and the completion of the process.' [4]***

The focus here is to harness the opportunities for enhancing the representation of the common law within the Supreme Court, thereby enhancing justice and equality, a process which has been commenced by the establishment of the CLD. Conflict transformation perceives change as a continuous process of reforming and refining structural dynamics aimed at achieving healthier social interactions.[5] Thus, it is necessary to ensure the sustainable adequacy of any institution created for such a transformative purpose. That is what the research aims to achieve and, in that respect, it endeavoured to respond to the following key questions;

- What is the scope of the CLD's jurisdiction?
- Is the procedure applied by the CLD normatively and practically common law based?
- How do the Anglophone lawyers perceive the establishment of the CLD?
- More generally, to what extent has the establishment of the CLD addressed the concerns of the Anglophone lawyers that led to the conflict?

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[2] Elisabeth King and Cyrus Samii, 'Fastrack Institution Building in Conflict Affected Countries? Insights from Recent Field Experiences' (2014) 64 *World Development* 740, 741.

[3] Alexander Austin, Martina Fischer and Norbert Ropers (eds), *Transforming Ethnopolitical Conflict* (The Berghof Handbook. Wiesbaden: VS Verlag 2004) 464-465.

[4] ibid.

[5] Ed Garcia, 'Addressing Social Change in Situations of Violent Conflict: A Practitioner's Perspective' in David Bloomfield, Martina Fischer and Beatrix Schmelzle (eds), (Berghof Handbook Dialogue Series, Berghof Research Centre for Constructive Conflict Management 2006) 43; King & Samii, 'Fastrack Institution Building in Conflict Affected Countries?' 741.

In addition to applying the theoretical framework to address these question, in-depth qualitative research was carried out between July 2021 and February 2022. Data collection comprised thirty-two semi-structured interviews with key participants such as Anglophone common law lawyers, including those who have accessed and appeared before the CLD and judges of the Supreme Court. A small number of Francophone lawyers were also interviewed and they provided a comparative perspective of their experience of practicing in a bijural context. At present, there is no published qualitative research on the functioning of the CLD and the perception and experience of the CLD amongst common law lawyers. This research therefore provides useful qualitative insights to inform policy initiatives regarding the CLD. The key findings are discussed in the four subsequent sections and they represent the main themes and subthemes emerging from the analysis of the qualitative data.

1. The Supreme Court and Experience of Common Law Lawyers Prior to the Establishment of the CLD

Given that the CLD was established in response to the difficulties faced by common law lawyers, one of the key areas of inquiry during the qualitative interviews was to document their narrated experiences of some of these difficulties. In analysing the information, it was clear that most of the participants faced the same kind of difficulties in the key areas explained below.

- *Bijural nature of the country not reflected at the level of the Supreme Court.* Prior to the amendments of the 2006 Supreme Court Law, the Supreme Court acted more as a court of cassation. This model followed that of the Cour de Cassation in France and effectively undermined the common law approach to appeals. Participants viewed this as one of the issues that indicated that the Supreme Court failed to represent the bijural nature of the country.

- *Accessibility of the Supreme Court (Cumbersome and unfamiliar procedure and language differences)*. The position mentioned above had direct consequences and one of these was the accessibility of the Supreme Court for the common law litigants and their legal representatives. The procedure was cumbersome and largely unfamiliar to the common law lawyer given its civil law orientation. For instance, participants noted that a major difficulty they encountered as common law trained lawyers, and which was often fatal to their action was with respect to the formulation and articulation of admissible grounds of appeal. Participants noted that they were more familiar with the practice and procedure before the lower common law courts where less importance was attached to the form, as opposed to the practice and procedure before the Supreme Court where mere technicalities would be fatal to a submission. As a result of these differences and the strict application of the form by the Supreme Court, participants said that a majority of appeals from the North West and South West regions do not go beyond the admissibility stage.

    - Another issue was the language. Proceedings were often conducted in French and the language of the judgment depended on the language mastered by the judge-rapporteur. Participants said that, counsels sometimes felt compelled to make their submissions in French in order to facilitate the understanding of the grounds of appeal by francophone judges who most of the time had little or no mastery of common law principles. They noted further that a large proportion of the judges did not have competence in the English language to deal with appeals from the North West and

South West regions where cases would have been heard in English. The cumulative effect was the extensive delays in hearing a case and attendant denial of justice. Participants repeatedly raised these issues with reference to the alien rapporteur system, that applied even to cases from the common law regions. The judge-rapporteur is one of the members of the panel of judges to decide on an appeal. Typically, an appeal file is allocated to a rapporteur to study, undertake all necessary research and propose a solution to be adopted or rejected by the other members of the panel. When the process is complete, the judge-rapporteur reads out his findings and proposed solution (a draft judgment) at the beginning of the hearing of the appeal before room is given to the parties to debate or respond to the rapporteur. This practice is alien to common law practitioners who expect all the judges to remain largely silent and impartial throughout the proceedings.

- Moreover, the matters were often tried by a panel which was made up entirely of, or by a majority of judges who were not common law trained, had no knowledge of the substantive common law regulating the cases, nor the language in which the appeals were submitted. Often, when the file was assigned to a rapporteur who was not an Anglophone, there was need to translate the entire voluminous file. Inevitably that entailed huge costs and additional time to do so. The logical consequence was that such appeals were not treated with celerity. In fact, some of the appeals remained untreated for up to 30 years. The table below lists some of the most blatant cases of delay in hearing and determining appeals from the Courts of the English-speaking regions which this research uncovered. Curiously, these cases were eventually heard and determined by the CLD during the 2019 judicial year.

	PARTIES	**DATE OF APPEAL**	**DATE OF JUDGMENT**	**TIME LAPSE**
1.	*Paul N. Ndille v Helen Nneh*	03/02/1985	07/03/2019	34 years
2.	*Kembiwe Joseph v The People of Cameroon*	02/07/1986	06/06/2019	33 years
3.	*Sama Pierre & 2 Others v Mimba Tantoh*	21/05/1996	12/12/2019	23 years
4.	*Chief Simon Lyonga Musenja & 7 ors v Chief David Ikome Molinge & 3 Others*	01/07/1999	06/09/2019	20 years
5.	*Veufo Victor v Sab Mumeh Martin Haleh & 1 other*	14/09/1999	06/06/2019	20 years
6.	*Akondeng Paul v Pekeleke Margaret*	29/11/2002	07/02/2019	17 years
7.	*Sabo Adamu v Njimntor Johnson*	17/01/2002	04/07/2019	17 years
8.	*Idowu Akwen Alice v Patrick Babila Tayong*	20/06/2003	05/12/2019	16 years

9.	*Che Nche Thomas v Abel Nfor Njamsi*	27/03/2003	07/02/2019	16 years
10.	*Tamon Peter v Adamou Tonga*	22/07/2003	05/12/2019	16 years
11.	*Aku Dansin Anarabom v Zama Fru David*	04/05/2005	07/02/2019	15 years
12.	*Texaco Cameroon S.A v Peter Ngu*	26/02/2004	03/10/2019	15 years
13.	*Francisca Enanga Temple Cole v Samuel Esukise Temple Cole*	03/08/2004	05/12/2019	15 years
14.	*Achu Barnabas v Anye Marcus*	07/04/2004	07/02/2019	15 years
15.	*Struggling Generation & 2 Others v Farmer's House*	27/06/2005	07/02/2019	14 years

It is worth noting that most of the cases in the above table are civil matters, decided by the lower courts on common law principles. Two participants explained the probable cause of delay in such matters. From their experience as judges, the files may have been assigned to judge-rapporteurs who had no mastery of common law practices and principles in civil matters. The files, would have been put aside until the retirement of the particular judge, after which they would be reassigned to another judge-rapporteur who may face the same challenges as the previous one. Such explanations have a measure of credibility as they are based on the participants' personal experience. Moreover, the above cases were eventually decided by the newly established CLD less than 2 years after it became fully operational, further lending credence to the participants' explanation.

The difficulties described above caused a great deal of anxiety and reluctance on the part of common law lawyers to appeal matters to the Supreme Court. Participants said that judges who were not versed with common law practices and principles and the English language could not render sound decisions on common law cases, capable of serving as precedents to be followed by the lower courts.

2. Advent of the CLD and Scope of its Jurisdiction

In terms of the CLD's jurisdiction, section 37 -1 of the Supreme Court Law (as amended) provides as follows:

> *'The Common Law Division shall have jurisdiction, in matters relating to common law, to hear appeals against:*
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> - *Final decisions of tribunals;*
> - *Judgments of Courts of Appeal.'*

From the foregoing it can be said that the jurisdiction of the CLD is based on the subject matter of the case and not solely on the region where the case was heard at trial. In order to further confirm this view, to establish the scope of the CLD's jurisdiction, the research team endeavored to understand the perception of the participant, in particular the judges. There was consensus that the jurisdiction of the CLD as per that provision extended to all matters which were governed by the common law at trial level. This meant matters heard by lower courts in the North West and South West regions and any other region, in the event that the matter was governed by the common law. This understanding was also shared by common law lawyers who participated in the research.

3. Recognition and Incorporation of the Common Law Identity within the CLD

After five years, the CLD has recorded what may be termed as achievements in the recognition and incorporation of the common law identity within the Supreme Court. The key areas are listed below:

- *The procedure is entirely in English.* In view of the importance of language to the dispensation of justice[6] and the difficulties encountered with the use of English in the Supreme Court prior to 2017, having procedures entirely in the English language within the CLD has been a welcome relief to the common law lawyers and their litigants. They can now communicate confidently in a language which they master and which is equally mastered by the justices before whom they appear.

- *All matters are heard and determined by common law trained judges.* As per section 11(3) of the 2006 Supreme Court Law as amended, the judges in the CLD should have an 'Anglo-Saxon legal background'. This was a source of optimism for the common law lawyers as it means that the judges are versed with both substantive and procedural aspects of the common law as practiced in the North West and South West regions. There is therefore assurance of legal continuity and consistency in appeal cases, especially in relation to the application of substantive common law doctrines, principles and concepts.

- *Matters are heard and determined within a shorter time frame.* Participants acknowledged that the CLD heard cases within shorter periods compared to the infamous delay in the Supreme Court. This was seen as a major innovation and a necessity which is consistent with the old adage, 'justice delayed is justice denied'. Nevertheless, the lawyers were of the view that matters could be dealt with even more timely. Whilst the CLD did not characteristically adopt a protracted approach in determining matters, some unsatisfactory elements of delay persisted. Participants noted that this was due partly to the small number of judges in the CLD who had to deal with a large volume of cases from the two regions and the rapporteur system which inherently made the procedures lengthy in the absence of specific time limits on the rapporteur in certain instances.

- *Judgments are articulated in a style that common law practitioners are familiar with.* Participants noted that initially, the judgments from the CLD tended to follow a typical civil law style applied in the rest of the Supreme Court. Amongst other things, this style was devoid of analysis and deprived the common law lawyers of a proper appreciation of the reasoning

[6] See generally Kristin Henrard, Language and the Administration of Justice: The International Framework' (2000) 7 *International Journal on Minority and Group Rights* 75.

of the court. However, the approach has changed and the judgments now adopt the style in which a typical common law judgment is written. Many participants emphasised that due to the common law's reliance on judicial precedents, it was vital for judgments to be elaborate on the points of law and fact and the reasoning of the court. The SOWEMAC Law Report, volume 10, 2020 contains a number of judgments which adopt a common law style and this is also reflected in more recent judgments in 2021 and 2022.[7]

- *Lawyers are more confident referring matters to the Supreme Court.* As opposed to the situation pre-2017 when common law lawyers were apprehensive and apathetic in appealing matters to the Supreme Court, participants in the research stated that the position is now changing. Common law lawyers are more confident to refer matters to the Supreme Court. A combination of factors account for this. As noted earlier, there is familiarity with the language and the substantive common law applied in the CLD. The judges are common law trained judges. These factors combine to instill confidence in the lawyers about more fair trials given the language and the normative basis on which their appeals would be heard and determined. As stated by one participant;

> *'CLD is now like a continuation of appeals from the North West and South West and some lawyers find it better. The organisation is more common law and judges are common law and speak English. Common law lawyers also find it easier. Before they were reluctant and the Supreme Court was not organised. The CLD is organised and things are moving well.'*

At the time of writing this report, the research team were unable to obtain sufficiently reliable data to confirm the trend of appeals from the North West and South West regions. Participants however expressed the view that the cases may have been considerably more but the persistent insecurity in the two provinces affected the effective and consistent operation of the courts and undermined the willingness of litigants to approach the courts for fear of reprisal. Nevertheless, the CLD is fully operational and as of September 2022 it had received a total of 450 appeals, comprising 200 appeals received directly from the North-West and South-West regions and 250 cases which were pending before other Divisions of the Supreme Court prior to the establishment of the CLD. Thus far, it has delivered admissibility decisions in 178 cases and final judgments in 125 matters.

4. Outstanding Concerns Relating to the Functioning of the CLD

Despite the achievements of the CLD in incorporating the common law and in addressing some of the original concerns of the lawyers, some aspects remain to be effectively addressed. During the interviews, one of the main recurring concerns was that of practice and procedure and in particular the difficulty with satisfying the admissibility requirements. The majority of participants highlighted the procedure for submitting an appeal which has to comply with the form; in other words, the grounds of appeal and the jurisdiction of the Court. This is regulated by the 2006 Supreme Court Law and applied strictly and widely within the Supreme Court. Moreover, it is based on civil law oriented procedures which are not familiar to common law lawyers. Due to the lack of familiarity and the strict

[7] See for instance *Niba Jude Thaddeus Ndenge v Che Gordon and Others*, Judgment N°02/COM of the 04th February 2021 ; *SIC CACAO S.A. v Ngassa Tchoumi Samuel*, Judgment N° 30/COM of the 07th October 2021 and *Ntumngia Zacheus v Crédit Foncier du Cameroun*, Judgment No.35/COM of 02 December 2021.

application of the requirements relating to the 'form', a large number of cases are being declared inadmissible. For instance, as noted by a judge, the grounds of appeal have to be reproduced in a submission, otherwise the case may be thrown out of court.[8]

Another participant noted that

> *'the Civil Law throws out cases on the basis of the form without looking at the substantive content.'*

Whereas, in the common law as practiced in the North West and South West;

> *'procedural irregularity does not vitiate the course of substantive justice.'*

For many participants, this prejudiced litigants and amounted to a denial of justice. It should be noted however that these difficulties have been acknowledged by the CLD and innovative approaches are being adopted to address the issue in the interim. For instance, the judges in the CLD tend to adopt a more flexible approach where the law is cited but not necessarily reproduced in the submissions. They also rely on article 35(2) of the 2006 Supreme Court Law by virtue of which the Supreme Court can raise a ground of appeal on its own initiative.

Other concerns related to the fact that the CLD being a Division, is subordinate to the Judicial Bench. This position undermines the extent to which the CLD can operate independently from a practical and administrative dimension. One of the main limitations this posed was the inability to adequately implement common law practice and procedures. Further, administratively, the CLD's effective functioning is undermined by limited resources as it depends on allocations from the Judicial Bench.

Two final issues relate to the manner in which the cause list is presented (mixture of subject matter) and doubts as to the finality of the CLD's judgments. These concerns were not specifically raised by participants in the research. However, they are debated within the wider practitioner community. With regard to the latter, it seems trite to affirm that the CLD's decisions are final – in the same way as decisions from any Bench or Division of the Supreme Court. When the CLD sits, it does so as a court of last resort, against whose judgment there is no further appeal. An argument against the finality of the CLD's decisions amounts to challenging the position of the Supreme Court as the highest court in Cameroon by virtue of article 38 of the Constitution.

It would appear that the confusion emanates from an insufficient understanding of the distinction between an appeal and a review as provided for under section 41 (2)(b) of the Supreme Court Law. The provision grants jurisdiction to the panel of joint divisions, to 'review' final judgments, where new elements or facts have come to light, indicating a potential miscarriage of justice. For instance, where the decision was based on documentary evidence which has subsequently been declared fraudulent. As per section 41 (2) (c), it is an exceptional procedure that is actionable within 30 days from the date of discovery of the new facts. The procedure is different from an appeal and it should be noted that the procedure applies to any decision that is final, regardless of whether they were rendered by a court of original jurisdiction or a court of appellate jurisdiction.

[8] See for instance, *Fon V. E. Mukete v Niba Che Albert*, Judgment No. 24/COM of 6th September 2019 declared inadmissible by the CLD partly for failure to comply with the 'form', in particular, failure to reproduce the provisions of the law on the grounds of appeal raised by the appellant.

5. Recommendations on Enhancing the CLD

There were four key recommendations proposed by participants in view of the outstanding issues which need to be addressed in order to more fully respond to the original difficulties raised by the lawyers. Based on the views of the participants, some insights from the research and further analysis of legal texts, three additional recommendations have been proposed. Cumulatively, there are seven recommendations which are discussed below in turn.

i. Amendment of the Supreme Court Law No. 2006/016 to take into consideration the peculiarities of the common law practice and procedure.

> *'Let the core values of the common law be taken into account, the law on the Supreme Court should be amended to embed the true common law to enable us work according to the procedure'*

This recommendation is a direct response to the issues of practice and procedure identified earlier given that the law mandates procedures that do not align with the common law. In the interest of consistency and the proper administration of justice, it is necessary that the common law applied aligns with the common law practices and procedures. In the short term, amending the law to take account of the substantive and procedural common law would be necessary.

ii. Constitutional amendment to raise the CLD to a bench.

> *'the Common Law Division can be even more effective as a Bench rather than a Division. It needs to be elevated to a Bench in order to consolidate the Common Law in the system and more autonomy to help implement the Common Law in the other two provinces'*

Participants acknowledged that in the short term, amendment of the Supreme Court Law would be a valuable option. Nevertheless, in the long term and to guarantee a stronger normative basis for a common law dimension of the Supreme Court, the CLD should be elevated to a Division. That of course would require a constitutional amendment which participants noted is not unfeasible. It requires political will and members of Parliament can assist in progressing that agenda. The recommendation has a number of advantages to enhance the effectiveness of the CLD. First, constitutionalisation provides a stronger normative basis for its existence and guarantees permanence. This is likely to ease any anxieties within the practitioner community on the question of whether the CLD is a permanent institution. Second, having a Bench would necessitate the appointment of the requisite number of common law trained judges. This is important in order to allow the judges to address the diverse substantive areas of the common law that the cases presented before them encompass. An associated advantage is that it would enhance the development of common law jurisprudence within the Supreme Court, potentially providing better guidance to lower courts and practitioners. Third, a bench would ensure that there is more adequate financial allocation to meet its administrative needs more efficiently. This is vital for the proper administration of justice.

It may be argued that it is not relevant to elevate the CLD to a Bench because common law judges do not specialise. That argument has some merit. It is the case that common law judges do not specialise. This is because they have complete jurisdiction in their countries. That would be the case in common law jurisdictions such as the UK, USA, Australia, Kenya and Nigeria. However, this cannot be applicable to the CLD as it has not got complete jurisdiction. For instance, it has no jurisdiction over administrative, constitutional or audit matters. In practice, the CLD currently functions as a Bench and should be given legal status as a Bench to make it function more effectively, on par with other Benches of the Supreme Court.

iii. Appointment of more common law trained judges to the CLD.

The current composition of the CLD impacts on the timeliness in which matters are dealt with, although comparatively, the CLD is more timely than the rest of the Supreme Court. Participants noted that having a small number of judges to deal with diverse areas of substantive law from the North West and South West constituted a strain on the CLD judges and undermined efficiency. In effect, the CLD is operating at the same capacity as the Benches of the Supreme Court in spite of its status as a Division. To address this issue, participants recommended that more common law trained judges should be appointed to the CLD to facilitate a more timely execution of justice to litigants and to reduce the administrative burden on the judges.

Training lawyers on the technicalities of appealing to the Supreme Court.

As noted earlier, both lawyers and judges raised the difficulties encountered by lawyers in the procedures of the Supreme Court and in particular the lack of familiarity with the procedures for submitting an appeal. In view of the effect this has on admissibility, vis cases being dismissed for technical reasons, participants recommended that it was important for common law lawyers to be provided formal training on submitting appeals to the CLD. In line with conflict transformation theory, users of relevant transformative institutions need to be equipped with the skills and knowledge to access and use the institution. In the absence of sufficient training, lawyers may remain inadequately equipped to use the CLD with the effect that submissions will continue to be declared inadmissible for mere technicalities. A potential outcome may be further dissatisfaction with the inadequacy of the CLD. Training can pre-empt such a negative outcome. The government can support the Cameroon Bar Association and the judges of the CLD to oversee training in the relevant areas to support common law lawyers in making full use of the CLD.

Additional recommendations

iv. Awareness campaigns to showcase activities of the CLD

Although the CLD has been in existence for over five years, it remains unknown to some segments of the population and interestingly, to some lawyers. It became clear during the qualitative research process that a small number of lawyers, especially those at the earlier stages of their career were unaware of the existence of the CLD. This can be attributed partly to the fact that the activities of the CLD have not been widely publicised and therefore beyond those who regularly appear before the CLD, it remains relatively unknown. Case reporting will obviously increase awareness of the activities of the CLD within the legal community. Nevertheless, for wider awareness beyond the legal community, it may be necessary for the CLD to organise awareness events within the regions. From the perspective of conflict transformation, it is important that the community for which the CLD has

been created is aware of the existence of the institution and the nature of its activities. Although the CLD is located in Yaoundé, such local events might be avenues through which the CLD connects with the local community, potentially reinforcing the fact that the Anglophone legal identity as expressed through the common law is recognised and represented within the Supreme Court.

v. **Raising the CLD to a Special Division as is the case with the Special Division on cases of misappropriation of public funds**.

The CLD may alternatively be accorded the status of a Special Division.[9] This approach is not new and has been applied in relation to the Division that hears appeals in cases of misappropriation of public funds. An advantage of that approach is that the CLD will function almost as a semi-independent Bench. This will obviously raise the status of the CLD in terms of protocol. However, arguably, it is unlikely to change much in terms of its functioning, as long as the procedure for processing, hearing and determining of appeals continues to be regulated by the 2006 Supreme Court Law. A more common law oriented practice and procedure can be introduced only if there is an amendment of the 2006 Supreme Court Law as discussed earlier.

vi. Inclusive approaches to the development of policy initiatives

Transformative approaches to conflict resolution advance inclusive and participatory processes as important dimensions to achieving positive change in societal relationships.[10] The qualitative research for this project revealed that participants favoured an inclusive approach to the development of initiatives aimed at responding to the problems identified by lawyers. It is of course acknowledged that policy initiatives remain the jurisdiction of the government. Nevertheless, these initiatives are better informed by the knowledge and experience of those for whom the policies are intended to assist. In that respect, it is recommended that further reforms and developments relating to the CLD should incorporate the views and experiences of common law lawyers and judges and other personnel such as registrars through a consultative and inclusive process. The approach has potential to ensure that the CLD sufficiently addresses the original concerns of the lawyers thereby enhancing its adequacy and legitimacy and pre-empting scepticism which may lead to further tension.[11]

Conclusion

The Supreme Court is an important institution which brings together the two dominant legal traditions in Cameroon. The creation of the CLD is an initiative which has provided the common law a stronger position within the Supreme Court than the position that existed prior to the amendments in 2017. From the above findings and analysis, this has gone a long way to address some of the initial issues that undermined access to justice for litigants whose claims were based on the common law. The findings also reveal that, there are outstanding issues that need to be addressed to provide these

[9] This also appears to have support within the practitioner community, although not raised by participants interviewed for this project.

[10] Sven Gunnar Simonsen, 'Addressing Ethnic Divisions in Post-Conflict Institution-Building: Lessons from Recent Cases (2005) 36(3) *Security Dialogue* 297, 302; Ed Garcia, 'Addressing Social Change in Situations of Violent Conflict: A Practitioner's Perspective' in David Bloomfield, Martina Fischer and Beatrix Schmelzle (eds), (Berghof Handbook Dialogue Series, Berghof Research Centre for Constructive Conflict Management 2006) 42.

[11] See for instance Janine Aron, 'Building Institutions in Post-Conflict African Economies' (2003) 15 *Journal of International Development* 471, 474.

litigants, through their legal representatives, better access to justice via the medium of the CLD. They additionally reveal that improvements on the CLD also involve enhancing the conditions of judges within that Division, an aspect which is important for the quality of justice rendered through the CLD. A successful conflict transformation endeavour should be a continuous process. Thus, the above findings and recommendations serve as an important framework for further efforts to enhance the effectiveness of the CLD.

About the Authors

Dr Laura-Stella Enonchong is Senior Lecturer in Law and Head of the LLB in Law, Social Justice and Human Rights Programme at De Montfort University, UK. She holds a PhD in Law from the University of Warwick, UK. She also read law at the University of Buea, University of Yaoundé II, Cameroon and the University of Birmingham, UK. Her research focus is in the area of constitutionalism and human rights.

Justice Ashu Eware is presently the State Prosecutor of the High Court of Manyu Division and the Court of First Instance Mamfe. He has 19 years' experience as a prosecutor, Examining Magistrate and Judge in seven jurisdictions in the English-speaking Regions of Cameroon. He is a researcher and the production manager for the SOWEMAC Law Report, the main law report in the Common Law Jurisdictions of Cameroon, and is equally the co-author of the most authoritative book in criminal procedure and criminal practice in Cameroon (*Cameroon Criminal Procedure and Practice in Action,* Veritas, 2019).

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