DEVOLUTION OF JUDICIAL POWERS IN TERRITORIALLY AUTONOMOUS REGIONS: THE CASE OF THE SOUTH-WEST AND NORTH-WEST REGIONS OF CAMEROON AND INSIGHTS FOR THE SAHARA AUTONOMY INITIATIVE

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Introduction

This paper provides an analysis of the system of devolution of judicial powers in Cameroon particularly with respect to the special autonomy status of the North-West and South-West regions. The aim is to provide a comparative perspective to contribute to the debate on the proposed approach to the devolution of judicial powers in the Moroccan Initiative on the Autonomy of the Sahara Region.

One of the major challenges confronting many countries today is the issue of governance in very pluralistic societies and accommodating minorities by establishing systems that are representative without inducing sentiments of marginalisation. Amongst the many approaches available in theory and in practice is the devolution of powers in the form of an autonomy status for regional entities. Regional autonomy is often perceived as a credible approach to managing diversity and as argued by Caroline Hartzell and Matthew Hoddie, negotiated agreements that include territorial power sharing lower the risk of armed conflict.[2] Regional autonomy arrangements conventionally include the devolution of certain executive and legislative powers. The devolution of judicial powers is less common, although not unusual. The United Kingdom provides a fascinating and complex example of devolution of some judicial powers to its four nations.[3] The Moroccan Initiative on the Autonomy of the Sahara Region which makes provision for the devolution of some judicial power to the Sahara Region offers a unique example of this developing area of devolution in autonomous regions**.** Given the relevance of judicial powers to autonomy arrangements and the relative novelty in this sphere of devolution, it is important to understand existing approaches and the specific contexts in which they apply. Morocco's endeavour seems auspicious to the extent that it adopts a comparative approach to delineate more precisely the nature of judicial autonomy in the Moroccan Initiative.

This paper proceeds as follows. First, it provides a historical background of Cameroon which is relevant to a better understanding of its contemporary linguistic and judicial peculiarities. Next, it examines the context of the establishment of special autonomy regions and the relevant judicial provisions. It then delves into the Moroccan Initiative and the specific provisions relating to judicial power. The paper concludes with some general observations from the Cameroonian experience of devolution of judicial power which can inform further developments of the Moroccan initiative.

Historical Background

The Republic of Cameroon as it is known today was formerly a German protectorate from 1884 to 1916.[4] Following the defeat of German forces in Cameroon during World War I, Cameroon was ceded to France and Britain as a League of Nations mandated territory from 1922 until 1946 when it became

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[2] Caroline Hartzell and Matthew Hoddie, *Crafting Peace: Power-sharing Institutions and the Negotiated Settlement of Civil Wars*, (Pennsylvania State University Press 2007) 169.

[3] Chris Himsworth, 'Devolution and Its Jurisdictional Asymmetries' (2007) 70(1) *Modern Law Review* 31.

[4] For a discussion of the historical development of Cameroon, including its constitutional history, see Neville Rubin, *Cameroon: An African Federation* (Pall Mall 1971); Victor J Ngoh, *Southern Cameroons, 1922–1961: A Constitutional History* (Ashgate 2001); Laura-Stella Enonchong, *The Constitution and Governance in Cameroon* (Routledge, 2021) 8-19.

a UN trust Territory partitioned between Great Britain and France. France obtained 80% of the territory while Britain obtained 20%. The French-administered portion of the country, French Cameroon, gained independence on 1 January 1960 and became known as the Republic of Cameroon. The British-administered territory was subdivided into Northern Cameroons and Southern Cameroons, the former chose to join Nigeria when it became independent in 1961. Southern Cameroons had quite a dramatic journey to independence. During the colonial era, for administrative reasons, Southern Cameroons was administered as part of the Eastern Region of Nigeria. When Nigeria became independent, Southern Cameroons remained under the British territorial administration pending a determination of its future. This was a challenging issue as the British did not consider Southern Cameroons to be politically and economically prepared for independence, although it was clear that colonial administration had to be terminated. The two options which the United Nations and the British colonial administration offered Southern Cameroons were to gain 'independence' by joining either Nigeria or the Republic of Cameroon. In a UN-conducted plebiscite in February 1961, Southern Cameroonians voted to gain independence by joining the Republic of Cameroon. Both territories were formally reunited in October 1961. This move has since been the Achilles heels of national unity in Cameroon, specifically with respect to the English-speaking minorities' struggle for self-determination.

Post-Independence Constitutional Design and the Accommodation of Different Legal Traditions (1961 – 1972)

At independence and reunification of the English- and French-speaking parts of Cameroon, the governmental structure which was subsequently adopted was federalism. The Constitution created two federated states, West Cameroon (former Southern Cameroons) and East Cameroon (former Republic of Cameroon). This was potentially a workable framework for the accommodation of diversity and the sharing of political power between the centre and the federated states. One unique benefit of these arrangements was in relation to the exercise of judicial powers. Given the disparate colonial experience of both territories, they inevitably inherited two distinct legal traditions, the English Common Law in West Cameroon and the French civil law in East Cameroon.

The federal arrangements made significant attempts to allow each state a measure of autonomy to regulate its judicial affairs at the level of the states.[5] The two legal systems applied separately in the respective federated states and were distinct with respect to legislation on organisation, jurisdiction and operation.[6] Each state had a Supreme Court[7] with final jurisdiction except in matters within the jurisdiction of the Federal Court of Justice as described below. However, this measure was intended as provisional due to a broader agenda of the central government to initiate the enactment of uniform federal legislation applicable nationally. One of the earliest attempts in that direction was the promulgation of a harmonised Penal Code in 1967, which was largely influenced by French principles of criminal justice.[8] Despite the measure of autonomy established at the level of the states, the federal judiciary retained significant influence at the federal level and in particular, civil-law oriented institutions were established at the federal level with the Federal Ministry of Justice having overall control of the judiciary. For instance, the Federal Council of Magistracy[9], an essentially civil-law

[5] Federal Constitution of Cameroons, 1961 art. 46.

[6] Jeswald W Salacuse, *Legal Systems of Africa Series: French-Speaking Africa (Africa South of the Sahara)* (vol 1, The Michie Company 1969) 268 & 271.

[7] See for instance Ordinance No. 61/OF/9 of 16 October 1961 establishing the West Cameroon Supreme Court and Ordinance No. 59/86 of 17 December 1959 establishing the East Cameroon Supreme Court.

[8] Victoria Time, 'Legal Pluralism and Harmonisation of Law: An Examination of the Process and Reception and Adoption of both Civil Law and Common Law in Cameroon their Coexistence with Indigenous Laws' (2000) 24(1) *International Journal of Comparative and Applied Criminal Justice* 19, 22.

[9] Federal Constitution of Cameroon, 1961, art. 32.

modelled institution, was responsible for regulating the career of judges, including disciplinary procedures. A Federal Court of Justice was also established to hear *inter alia* appeals from the federated states in matters relating to the application of federal legislation and to resolve conflicts of jurisdiction between the supreme courts of the federated states.[10]

These arrangements remained in place until 1972 when the federal system was abolished in favour of a unitary system of government. A new Constitution was adopted which created seven administrative provinces, later expanded to 10 provinces, with the former West Cameroon (the English-speaking minority) becoming the North-West and South-West provinces and seven other provinces representing various parts of former East Cameroon. In the judicial sphere, a relevant outcome was the establishment of a uniform judicial system.[11] This inevitably saw the demise of the separate court systems that had existed in the former federated states, thereby ending the practice of accommodating difference in legal traditions. More significantly, the institutions and practices that dominated the national legal system were civil-law oriented. The 1972 Constitution provided that legislation resulting from the Federal state or the federated states remained applicable, with the caveat that it was not contrary to the Constitution itself or had not been amended by subsequent legislation.[12] This implied that, in terms of practice and procedure, the inherited legal traditions could be retained in the respective territorial areas. For instance, the English-speaking provinces which applied the inherited Common Law principles, practice, and procedures could continue to apply these in the courts, despite the judicial structure now reflecting a civil-law organisational structure.

Progressive Legal Harmonisation and Effects on the Inherited English Common Law System

The arrangements described previously remained in place until the promulgation of a supposedly pro-democracy constitution in 1996. The Constitution created a decentralised form of government and changed the provinces into regions. Henceforth, the English-speaking provinces became the North-West and the South-West regions.[13] The decentralised system of governance made provisions for devolution of powers to the regions. However, more than 20 years on, the decentralisation had not come into effect.

In relation to the accommodation of the different legal traditions, the 1996 Constitution preserved the provision which is often seen as the basis for bi-juralism. Thus, article 68 provides that,

> '*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*.'

The above provision is complemented by article 1(3) which states that English and French shall be the official languages of Cameroon, both of equal status with the state given the responsibility to promote bilingualism.

The constitutional recognition of English and the inherited legal systems has not been satisfactorily reflected in practice. For instance, the pace of harmonisation of laws has continued unabated with a preference for civil-law-oriented principles, practices, and procedures. The harmonised Penal Code was soon followed by other uniform laws in the areas of labour law, land tenure system and civil status. Another important development which has been perceived as an attempt to further undermine the Common Law system is the ratification of the Treaty on the Organisation for the Harmonisation of

[10] Federal Constitution of Cameroon, 1961, art. 33.
[11] Ordinance No. 72/4 of 26 August 1972 on the Organisation of the Judiciary (with numerous subsequent amendments).
[12] Unitary Constitution of Cameroon 1972, art. 38. This formulation was originally introduced in article 46 of the Federal Constitution.
[13] Cameroon Constitution of 1996, art. 61.

Business Laws in Africa (OHADA Treaty) by Cameroon in 1996.[14] That treaty replaced the commercial laws previously applicable in Cameroon to institute a treaty with supra-national influence and based on civil-law principles and procedures. Moreover, the working language of the treaty was initially French. The ratification of the treaty was inconsistent with article 1(3) of the Constitution of Cameroon which makes English and French official languages with equal status and article 31(3) which requires laws to be published in the Official Gazette in English and French.[15] Due to the inconsistency and apparent lack of attention to its effect on the common-law tradition in the English-speaking regions, advocates were vehemently opposed to its application. In the infamous case of *Akiangan Fombin Sebastian v Foto Joseph & Others,*[16] a judge in the English-speaking region refused to apply provisions of the OHADA Treaty on the basis that it suffered from self-exclusion given its French-language prescription and the fact that upon ratification, the Treaty was not published in both English and French as mandated by the Constitution. The fierce opposition orchestrated by common-law advocates and some members of the judiciary led the government of Cameroon to seek to address the concerns raised. The OHADA Treaty was eventually amended to include other languages such as the English language[17] which resolved the language issue in Cameroon.[18] This move was acknowledged as progressive from the perspective of common-law advocates, but this did not lessen grievances related to the perceived discrimination against the Common Law and an agenda to obliterate it through the harmonisation process.

More recently, the criminal procedure was harmonised in the form of a Criminal Procedure Code in 2005, which attempted to reflect some principles specific to the Common Law.[19] However, it is significantly influenced by the civil law and more importantly, some principles and practices are not well-understood by judges trained in the civil-law system and vice versa. The situation is exacerbated by the fact that the government had embarked on a process of transferring judges trained in the civil-law system to serve in courts in the English-speaking regions where Common Law is practiced. These judges often had no training in the common-law practices and procedures and had little English language competency to enable them to adjudicate effectively. This led to an unacceptable situation where the channels of communication were broken between litigants and the courts. Despite repeated calls from common-law advocates to the government and in particular the Ministry of Justice to address these grievances, the situation persisted.

In November 2016, advocates from the two English-speaking regions eventually took to the streets in peaceful protest at the unresponsiveness of the government. The government responded to the protest with disproportionate force, using security forces to dispel protesters and to arbitrary arrest some of the advocates. The situation soon degenerated into violence and reawakened calls for secession of the English-speaking regions, a danger that had loomed since the unsatisfactory process of reunification of the two Cameroonian territories in 1961. Following calls for an inclusive peaceful resolution process, a national dialogue was organised between September and October 2019 by the Prime Minister, on the instructions of President Paul Biya. This process was severely criticised because amongst other weaknesses, it was not inclusive and had a predetermined agenda which prevented

[14] Organisation for the Harmonisation of Business Laws in Africa (OHADA Treaty).

[15] For a more in-depth discussion of the constitutionality issue see generally, Nelson Enonchong, 'Harmonisation of Business Law in Africa: Is Article 42 of the OHADA Treaty a Problem?' (2007) 51(1) *Journal of African Law* 95; Martha Tumnde, 'Harmonization of Business Law in Cameroon: Issues, Challenges and Prospects' (2010) 25 *Tulane European and Civil Law Forum* 119.

[16] *Akiangan Fombin Sebastian v Foto Joseph & Others*, Suit No. HCK/3/96 of 6 January 2000 (unreported).

[17] See article 42 of the OHADA Treaty.

[18] The Common Law Division of the Supreme Court has confirmed the application of the OHADA Treaty in the English-speaking regions. See *Texaco Cameroon S.A. v Peter Ngu*, (2020) 10 *SOWEMAC Law Report* 24.

[19] Law no 2005/2007 of 27 July 2005 as amended by Law no 2006/008 of 14 July 2006 on the Criminal Procedure Code.

representatives of the English-speaking regions from freely articulating their preferences regarding the territorial administration of the regions. The agenda of the national dialogue steered conspicuously away from discussions of issues such as federalism. Some of the recommendations that ensued from the dialogue included the granting of a special status to the North-West and South-West regions and to take specific measures to ensure equality of English and French in all aspects of national life and to reinforce the autonomy of decentralised local authorities.[20] In December 2019, without broad-based consultation or input from the English-speaking regions, parliament enacted the Code on Regional and Local Authorities (RLA Code) which amongst other things established a special autonomy status for the two English-speaking regions.[21]

Special Autonomy and Judicial Power

The Code on Regional and Local Authorities (RLA Code) is the primary legal instrument on decentralisation in Cameroon. It vests the decentralised authorities in the ten regions of Cameroon with some devolved competencies in the areas of economic development, health and social development, educational, sports and cultural development.[22] In terms of the organisational structure, the regions are composed of a Regional Council (the deliberative organ) and the President of the Regional Council (the executive organ) which together are in charge of the administration of the regions.[23] The RLA Code makes special dispensations for the English-speaking North-West and South-West regions to take account of their 'specificities'.

The Normative Framework for a Special Autonomy Status

The normative framework for the special autonomy status of the North-West and South-West regions is based on article 62(2) of the Constitution which states that:

> '*Without prejudice to the provisions of this Part, the law may take into consideration the specificities of certain Regions with regard to their organisation and functioning*.'

That is confirmed in article 327(1) of the RLA Code which makes reference to the fact that the special status has been established in accordance with article 62 of the Constitution. The special status was carved against the backdrop of the Constitution to take account of the specificities of the North-West and South-West regions particularly with regard to its language difference, Anglo-Saxon education system, and Common Law heritage. Thus, section 3(1) of the RLA Code provides that:

> *'The North-West and South-West Regions shall have a special status based on their language specificity and historical heritage.*'

More specifically with regard to the legal system, the law provides that the special status shall entail 'consideration of the specificities of the Anglo-Saxon legal system based on Common Law'.[24] Moreover, the English-speaking regions may be consulted in the formulation of judicial policies in the common-law sub-system.[25]

Beyond these specifications, the RLA Code makes no provisions for the devolution of judicial powers. As in other regions, the English-speaking regions have defined competencies in areas of economic development, health and social development, education, sports, and cultural development. However, they have no powers to establish local courts and tribunals or powers to recruit and train judges and

[20] Enonchong, *The Constitution and Governance*, 186.
[21] Law No. 2019/024 of 24 December 2019 to Institute the General Code of Regional and Local Authorities.
[22] RLA Code, ss. 267-273.
[23] RLA Code, s.274.
[24] RLA Code, s. 3(3)
[25] RLA Code, s. 328(2). See also Enonchong, *The Constitution and Governance* (n..)189.

other judicial personnel. These aspects continue to be regulated at the national level. The position is described briefly in the next section.

The National Structure of the Judiciary and Judicial Power

The Judicial Organisation Law is the legislative text regulating the courts and the judiciary.[26] Section 3 provides for the following courts:

- The Supreme Court
- The Court of Appeal
- The Special Criminal Court
- Lower Courts of Administrative Litigation (Regional Administrative Courts)
- Lower Audit Courts (Regional Audit Courts)
- Military Tribunals
- High Courts
- Courts of First Instance
- Customary Law Courts

The lower courts are represented at the regional level and the sub-regional (administrative sub-divisions) level and have a relatively broad jurisdiction in relation to subject matter.[27] There is a caveat with regard to criminal matters relating to the misappropriation of public funds and related offences provided for by the Penal Code and international conventions ratified by Cameroon, where the amount of the loss exceeds 50,000,000 CFA. The court with relevant jurisdiction is the Special Criminal Court which is located in Yaoundé.[28] The Supreme Court is at the apex of the judicial organisation structure and is situated in the capital city of Yaoundé.[29] It has final jurisdiction in matters adjudicated by the regional Courts of Appeal, irrespective of the geographical region.[30]

In terms of the special autonomy status, this means that cases decided in the two special autonomy regions can be appealed to the Supreme Court from their respective Courts of Appeal. This applies to all regions but the contention with the supposed special autonomy regions is that they apply the Common Law, whereas the Supreme Court is a civil-law oriented institution. Historically, that has posed many problems including the issue of language as the Supreme Court's language is, in practice, French. Cases from the English-speaking regions are naturally in English. Besides the issue of language, there are also problems of different legal principles, practices, and procedure under both systems and conflict of laws as both systems are bound to come into conflict when it is unclear as to which system should apply to a particular case.

[26] Law No. 2006/015 of 29 December 2006 on the Organisation of the Judiciary (Judicial Organisation Law - JOL) as amended by Law No. 2011/027 of 14 December 2011.

[27] The Customary courts however have a very limited subject matter jurisdiction, specifically in customary marriages, divorce, custody, succession, and inheritance, applying the local customs and traditions of the districts in which they operate. See Enonchong, *The Constitution and Governance*, 115.

[28] Law No 2011/28 of 14 December 2011 relating to the creation of the Special Criminal Court as amended by Law No 2012/011 of 16 July 2012, ss. 1 & 2.

[29] Constitution of Cameroon, 1996, art. 38(1); Law No. 2006/016 of 29 December 2006 on the Organisation and Functioning of the Supreme Court (Supreme Court Law), s. 3.

[30] Note that there is a Constitutional Council which deals with matters of constitutional interpretation, the constitutionality of laws and the standing orders of parliament. It also has jurisdiction in electoral disputes arising from presidential and parliamentary elections. This institution exists outside of the ordinary judiciary.

Some of the above issues underpinned the grievances of the English-speaking advocates which triggered the socio-political conflict in 2016. The fallout from the conflict prompted the government to make amendments to the organisational structure of the Supreme Court, through an amendment to the Supreme Court Law.[31] The Supreme Court now has a Common Law Division to hear appeals on matters pertaining to the Common Law. Article 37-1 of the Supreme Court Law (as amended) provides that,

> *'The Common Law Division* [CLD] *shall have jurisdiction, in matters relating to Common law, to hear appeals against:*
>
> *- final decisions of tribunals*
>
> *- judgments of courts of appeal'*

This structure was presented by the Minister of Justice as a measure intended to take into account the areas of the law which had not yet been harmonised.[32] This measure goes some way to ensuring that the legal tradition of the autonomous regions is to an extent, accommodated within the Supreme Court. Moreover, it gives consideration to the training and background of judges to be appointed to the CLD. Section 11(3) of the law mandates that judicial personnel appointed to the CLD have an Anglo-Saxon legal background. However, at least three issues can be raised here.

First, it must be noted that the arrangement relating to the Common Law Division (CLD) exists outside the framework of the special autonomy status. The English-speaking regions do not have any devolved powers in relation to that institution. Appeals from the Courts of Appeal in these regions continue to go to the Supreme Court, implying that the centre still determines matters relating to the regions. In that respect, it is difficult to perceive it in the broadest sense possible as representative of the special autonomy status of the English-speaking regions.

Second, the subject matter jurisdiction of the CLD is not clear. The relevant legislative provisions do not specifically define or outline what matters are considered as relating to the Common Law for which the CLD has jurisdiction. This is important because the Supreme Court has other divisions with specific jurisdictions, making it necessary to be clear about the material jurisdiction of the CLD. In the absence of clarity, cases may be erroneously referred to the other jurisdictions, thereby undermining the CLD. Given the novelty of the CLD, it is perhaps possible to presume that the subject matter jurisdiction would be progressively defined through its jurisprudence.

Third, the relevant legislation makes no provision for the resolution of conflict of laws and leaves pertinent questions unanswered. For instance, the doctrine of *stare decisis*[33] which applies only in the Common Law requires courts to apply rules or principles laid down in previous judicial decisions. The CLD operates within the broader structure of the Supreme Court which does not apply that doctrine. Given that jurisprudence already exists from the Supreme Court in many areas where the CLD will subsequently have jurisdiction, how would the doctrine of *stare decisis* apply here and would it apply at all? These questions may be partly answered by section 35(1) of the Supreme Court Law which states that the decision of the Supreme Court is binding on lower courts where the decision was taken by a panel of joint divisions of a bench or of joint benches of the Supreme Court. The question which

[31] Law No. 2017/14 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.

[32] See above discussion noting that some areas of the law in Cameroon have been harmonised, making them applicable throughout the national territory without distinction as to the dominant legal tradition of the geographical region.

[33] *Stare decisis* is Latin for "to stand by things decided." In short, it is the doctrine of precedent. Courts cite to *stare decisis* when an issue has been previously brought to the court and a ruling already issued.

remains outstanding then is the application of *stare decisis* in the CLD where a decision has not been taken by a panel of joint divisions.

Judicial Tenure and Training

The judicial tenure in Cameroon is regulated by the Constitution and legislative instruments. The Constitution provides that the 'judicial power shall be independent of the executive and legislative powers' and that 'judicial independence shall be guaranteed by the President of the Republic'.[34] As a further measure of independence, judges are required to render justice according to the law and their conscience.[35] In addition, judicial decisions are required to be written, well-reasoned and supported in law and in fact.[36] In the exercise of his duties towards the judiciary, the President is assisted by the Higher Judicial Council (HJC) which provides non-binding recommendations to the President on the appointment, promotion and discipline of judges.[37] That institution is controversial partly due to the fact that its role is simply advisory and due to its composition: the key issue is that it is dominated by the executive and in particular the President and Minister of Justice who are respectively, chair and vice chair of the HJC. Ironically, the HJC is supposed to provide an advisory opinion to the President on action to be taken in relation to a judge's career. In effect, the Present advises himself on action to be taken on the important issue of determining the trajectory of a judge's career. Given this inherently problematic institutional design, the judiciary in practice, lacks independence both at the individual and institutional levels. Institutionally, the judiciary is linked to the Ministry of Justice which is an executive organ. Judges are subordinate to the Minister of Justice, who through the HJC regulates their career. This essentially civil-law-oriented design facilitates the subordination of the judiciary to the executive despite the constitutional guarantee of judicial independence. The situation inevitably undermines the rule of law and the respect for human rights as it has become increasingly difficult for the judiciary to hold executive officials accountable.

The judicial tenure is modelled on the French civil-law system where the judiciary is a career judiciary. This is regulated at the national level and provides no scope for the autonomous regions to regulate issues of judicial tenure. Judges are appointed following the completion of two years of training in the National School of Administration and Magistracy (ENAM), in the Magistracy section. At the end of their training, they are appointed into the judiciary by the President of the Republic, with the assistance of the HJC and enjoy a fixed tenure until retirement. They may be appointed as judges on the bench, as prosecutors, investigating magistrates or to the Ministry of Justice. In the course of their career, they may be appointed to serve in courts in different geographical regions, irrespective of their training. Prior to the socio-political conflict that began in 2016, it was the case that the training in ENAM did not consider the separate judicial traditions. Training was based on the civil law whereas, upon completion of their training, judges could serve even within the common-law jurisdictions. The crisis prompted the introduction of a common-law section in ENAM to provide training for judges and judicial personnel in the common-law judicial tradition. Nevertheless, given that the judicial tenure is still regulated centrally, civil-law-trained judges may still be appointed to serve in the common-law oriented regions and the reverse position also obtains. Devolution through the special autonomy status has not resolved this partly because the regions are not vested with devolved judicial powers.

The Moroccan Initiative and Judicial Power

As in Cameroon, the Moroccan judiciary is constitutionally independent although the provisions in Morocco appear more robust than in Cameroon. The Constitution of Morocco guarantees the

[34] Constitution of Cameroon, 1996, arts. 37(2) & 37(3).
[35] Constitution of Cameroon, art.37(2).
[36] Judicial Organisation Law, s.6(4), s. 7.
[37] Constitution of Cameroon, art.37(3).

independence of the judiciary from the executive and legislative powers and states that the King is the guarantor of the independence of the judiciary.[38] The individual independence of presiding judges is protected in that they are irremovable from office.[39] Moreover, the Constitution prohibits external intervention in matters brought before the courts and prevents judges from receiving instructions, injunctions or any other form of external pressure in the exercise of their duties.[40] Judges are also guaranteed the right to freedom of expression to be exercised consistently with judicial ethics and their obligations of reserve.[41] To protect their independence, judges can refer to the Superior Council of the Judiciary when their independence is threatened.[42] The Superior Council of the Judiciary is empowered to oversee all guarantees related to the independence of judges, especially in the areas of appointment, promotion, retirement and discipline. That institution is guaranteed financial and administrative autonomy.[43] These arrangements have potential to enhance judicial independence more than the previous position under the 1996 Constitution of Morocco. Nevertheless, one must interpret these arrangements cautiously as other areas could be strengthened to further enhance judicial independence. For instance, the mechanisms for the discipline of judges could be made more transparent and objective.

In relation to the proposed special autonomy, the Moroccan Initiative makes provision for the devolution of executive, legislative and judicial powers. Given that the devolution of judicial powers in territorially autonomous regions is yet to become a common feature, the Moroccan Initiative seems to be taking a step in the right direction in establishing some precedence in that area. Some relevant provisions relating to judicial power are quoted below.

> Art. 22. "*Courts may be set up by the regional Parliament to give rulings on disputes arising from enforcement of norms enacted by the competent bodies of the Sahara autonomous Region. These courts shall give their rulings with complete independence, in the name of the King*."
>
> Art. 23. "*As the highest jurisdiction of the Sahara autonomous Region, the high regional court shall give final decisions regarding the interpretation of the Region's legislation, without prejudice to the powers of the Kingdom's Supreme Court or Constitutional Council*."
>
> Art. 24. "*Laws, regulations, and court rulings issued by the bodies of the Sahara autonomous Region shall be consistent with the Region's autonomy Statute and with the Kingdom's Constitution*."

Special Autonomy Status in Cameroon and Some Insights for the Moroccan Initiative

It is a recognised fact that no two conflicts are the same and that applies also to self-determination conflicts. The experiences of Cameroon and Morocco may be distinct in many respects, but, in spite of the differences, one common factor is the persistent issue of carving out a suitable structure for the self-determination of the restive regions – in Cameroon, the North-West and South-West regions and in Morocco, the Sahara region. Having already taken that path of designing a special status for the North-West and South-West regions, Cameroon's experience presents opportunities to generate useful insights that can inform the further development of the Moroccan Initiative. In that respect, the following considerations are worth noting.

[38] Constitution of Morocco, 2011, art. 107.
[39] ibid, art. 108.
[40] ibid, art. 109.
[41] ibid, art. 111.
[42] ibid, art. 109.
[43] ibid, art.116.

- **The scope of judicial power at the regional level should be clearly outlined** and more comprehensively defined including its subject matter jurisdiction (for instance commercial, private, criminal, etc.)
- **Defining clearly where final judicial authority lies**. The special autonomy in Cameroon did not seriously consider the effect of the current judicial structure on the continued existence of the Common Law and in particular how the final authority of the Supreme Court may affect the development of the Common Law. Morocco does not have a dual legal tradition and so, does not have to deal with that specific problem. Perhaps the important insight here is that the Moroccan Initiative should take into account the structure of judicial power and the way it is currently exercised within the Sahara region and nationally. The structure of devolution should seek to reflect as closely as possible the preferences of the Sahara region especially where it entails powers to effectively regulate the judiciary at the level of the region. This means, consideration should be given to such issues as the appeal structure, whether the decision of the High Regional Court on the interpretation of legislation enacted by the Regional Parliament is final; whether decisions from the High Regional Court can be reversed by the Kingdom's Supreme Court and/or the Constitutional Court; and the competence of any court set up by Regional Parliaments, whether they can decide on disputes arising from laws enacted by relevant national bodies.
- The Cameroonian special autonomy structure provides no mechanism for the resolution of conflict of laws in spite of the potential conflicts highlighted earlier in the context of the different legal traditions and their application by the courts, especially the Supreme Court. Again, there is no parallel here with the position in Morocco. On the other hand, the potential for conflicts of jurisdiction cannot be underestimated. Given that the Moroccan Initiative envisages a structure where some judicial competencies fall within the jurisdiction of the region, **it would be necessary to have a clearly outlined normative framework and procedure for potential conflicts of jurisdiction with national judicial institutions**.
- **Provision for the training and appointment of members of the judiciary should be developed** in line with the proposed autonomy accorded to the Sahara region. This is particularly important because the Moroccan Initiative envisages the creation of regional courts by the Regional Parliament. The question of which level of authority has the competence to appoint to such regional courts is inevitable. That question is inextricably linked to the method of training of judicial personnel, either within a separate regional structure or following the prevailing national structure provided in the Constitution and legislative instruments. Judicial power in Cameroon remains very centralised which continues to be a problem in view of the different processes of judicial training in the civil law system and a typical Common Law system. The centralised nature means that the unique Common Law aspect of appointing judges from senior and reputable advocates from the BAR cannot be applied in the special autonomy regions. For judicial power to have been devolved appropriately, there should have been a constitutional amendment. However, there was no constitutional amendment which would have been necessary to restructure governmental powers to ensure appropriate devolution of executive, legislative and judicial power. Even in the absence of a constitutional amendment, there could be a special statute dedicated to the special autonomy regions to exhaustively outline the powers vested in them especially with regard to their unique judicial tradition.
- **Continued emphasis on an inclusive consultative process**. The special status in Cameroon did not result from a specific inclusive process. There was no broad-based participation to draft the legislation, no initial drafts were circulated for comments, no civic education and no ad-hoc law commission was appointed to study the proposal or to draft a proposal. Instead, it was an expedited government initiative prepared shortly after the National Dialogue and presented to Parliament. This was adopted with ease due to the numerical advantage of the

ruling party, Cameroon People's Democratic Movement, as they occupy 152 out of 180 seats in the National Assembly. The political opposition and some members of the ruling party uncharacteristically criticised the bill when it was presented in Parliament but could not prevent its adoption. Due to the lack of a consultative process and some of the weaknesses identified previously, the special autonomy has not received wide recognition amongst the populations in those regions and the armed secessionist fighters have simply rejected it. Cameroon's experience therefore highlights the need for the Moroccan Initiative to continue to pursue an inclusive approach which acknowledges and respects differences.