

Adoption of Children in Cameroon: A Blend of the Procedures before the Civil and Common Law Courts of Cameroon

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Abstract

Adoption is a process that provides comfort and relief to potential parents who are unable to conceive, as well as a God-given opportunity for disadvantaged children to grow up in a stable and dependable home to secure their education and general well-being. Most countries have adopted a law on adoption and are parties to different bilateral and multilateral conventions. On its part, Cameroon does not have any stringent laws on adoption matters except when recourse is made to English and French laws owing to the colonial past of the state. This presents a serious problem in understanding the procedure for adoption in Cameroon as courts on the two divides of the country, and especially in Anglophone Cameroon continues to make use of different pieces of legislation. This article therefore sets out to discuss the procedure for adoption common to the courts of the civil and common law jurisdictions of Cameroon. Findings indicate that no matter the form of adoption wherever it is sort, the paramount concern of the courts is the welfare of the child to which unperturbed consent of either party must be given for adoption to be granted. Cameroon is also encouraged to ratify the 1993 Hague Convention as most adoptions made in Cameroon are by foreigners.

Keywords: Adoption, bilateral and multilateral conventions, English and French laws, Hague Convention

INTRODUCTION

Adoption is a legal process in which a child becomes legally attached to a parent to whom he or she is not biologically related. This is a common practice in certain high-income countries. The acceptance of adoption depends not just on the level of education but also on the socio-economic status. In addition, social beliefs constitute a non-negligible influence on attitudes towards adoption [1].

Worldwide adoption significantly increased after World War II. The challenge of finding acceptable homes and responsible tutelage for the innumerable orphans left by the conflict emphasised the need for the creation of a suitable legal organisation. For most countries in Europe, the answer was sought in the heretofore little-used institution of adoption [2]. Adoption was commonly performed in Cameroon before and after independence, according to local customs and traditions.

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In Cameroon, child abandonment is on the rise. The problem is the outcome of unrestrained sex among adolescents, parental irresponsibility, and poverty against a backdrop of diminishing ancestral bonds of solidarity, which in recent times have deteriorated with the impact of HIV/AIDS, and the problem of child trafficking and slavery. Over 300,000 orphans and vulnerable youngsters are at risk of being abandoned by their families [3]. This

is one of the issues expressed in Cameroon's 1996 Constitution, which states in the preamble that everyone has the right to a family [4].

As the number of children in Cameroon without parents or families grows, two types of alternative care are currently available: interim alternative care and permanent alternative care. Interim care is typically used in an emergency case where a child's physical safety necessitates an instant reaction. In such instances, the departmental delegation for social affairs, acting on a report from the head of a refuge for children in distress or any other person responsible, temporarily places the kid in such a facility. Once the child's parents are discovered, the centre will care for the child.

In Cameroon, adoption is the only permanent type of alternative care. Essentially, it aims to address the problem of a person or family who is unable to produce children, as well as the problem of a child who has no parents. Adoption is now governed by a patchwork of rules based on both national and international legal instruments, with no special legislation dealing with adoption in place. There are two types of adoption: simple adoption (by mutual consent) and full adoption. Cameroon has made adoption one of the primary issues to be included in the preliminary draft code on the protection of children, which aims to govern both domestic and international adoption, in order to harmonise and modernise the legal framework [5].

To improve understanding of the legal framework governing adoption in Cameroon, this article will cover the adoption process, types of adoption, requirements, formalities, and competent jurisdictions.

THE LEGAL FRAMEWORK ON ADOPTION IN CAMEROON

Adoption in Cameroon is only permitted in the best interests of the child under the French Civil Law System. The French Civil Code, promulgated by the order of 5th November 1830 [6], in its Article 343, provides that 'no adoption shall take place unless for just motives, and is of advantage to the adopted child'. The English Children's Act of 1975 governs adoption in Anglophone Cameroon. Section 3 of the Act states that:

'In reaching any decision relating to the adoption of a child, the court or adoption agency shall have regard to all the circumstances, with first consideration being given to the need to safeguard and promote the welfare of the child through his childhood; and shall ascertain the wishes and feelings of the child regarding the decision to give consideration to them, having regard to his age and understanding [7].'

In adoption proceedings, the preceding principle addresses the child's best interests.

The draft of the Cameroonian Child Protection Code also includes a new concept known as "customary placement," which is similar to *confiage* in Burkina Faso [8]. According to the code, customary placement refers to child custody intended to ensure better living conditions for the child that are more conducive to the child's growth [9]. According to the Code, customary placement is a legal act in which a mother and father or parent to whom the child is affiliated request to confine the child to a member of the extended family or a friendly family, who agrees to receive and raise the child without discrimination [10].

While customary placement is similar to *confiage* in Burkina Faso, the former is a legal process that considers children's right to appropriate alternative care mechanisms. In addition to the Child Protection Code, Cameroonian legislature has also drafted the Family and Persons Code. Once adopted, this code will also address children's rights, particularly in the areas of adoption, affiliation, and succession. Adoption will be given special attention in this code due to previous legal loopholes that resulted in a significant increase in child adoption by foreigners. As a result, the Family and Persons Code is expected to strengthen adoption procedures in Cameroon in order to prevent child trafficking [11].

Sadly, Cameroon lacks a complete adoption law and instead relies on other pieces of legislation dealing with child adoption, such as the African Charter on the Rights and Welfare of the Child (ACRWC) and the United Nations Convention on the Rights of the Child (CRC), both of which Cameroon has ratified. Regrettably, Cameroon has not ratified another piece of international legislation, the 1993 Hague Convention on the Protection of Children and Cooperation in respect of intercountry adoption, which deals only with adoption.

A number of substantive problems involving intercountry adoption are addressed under Articles 21 of the CRC and 24 of the ACRWC. These sections concern adoptability, the subsidiarity principle, and illicit intercountry adoption practices such as trafficking and illegitimate financial gain. Other issues addressed by Article 21 of the CRC and Article 24 of the ACRWC include the establishment of equivalent standards for domestic and international adoption, post-adoption follow-up, and the conclusion of bilateral or multilateral agreements to regulate international adoption [12].

Other pieces of legislation of important standing with respect to adoption in Anglophone Cameroon include:

- The Ordinance No. 81-02 of 29 June 1981 relative to the organization of the civil status and other provisions related to conditions of physical persons,
- Law No. 84/04 of 04 July 1984 fixing the conditions of adoption and guardianship of state orphans,
- Circular Letter No. 22/MISAP/DAS/BDI of 27 June 1974 relative to the techniques of enquiry in issues of child adoption [13],
- Circular Letter No. 81/0018/LC/MINAS/DDS/SPF of 18 September 1981 relative to the granting of authorization for the temporary custody of the children,
- Circular Letter No. 90/02759/LC/MINASCOF/DPIF/SDPF of 05 December 1990 reiterating the procedures in questions of temporary custody of abandoned children, and
- Law No. 2005/015 of 29 Dec. 2005 relating to the fight against child trafficking and slavery.

TYPES OF ADOPTION PRACTICED IN CAMEROON

In Cameroon, any sort of adoption can only become effective and valid with a court order. The Ministry of Social Affairs, on the other hand, is concerned about social inquiries, cases of foreigners desiring to adopt, and the adoption of children under the age of five. The aforementioned ministry is also expected to monitor adoption cases in order to prevent abuse.

Simple Adoption

In English law, and consequently in Anglophone Cameroon, simple adoption is not recognized. Nonetheless, it is allowed and known as ‘adoption simple’ (gré a gré) in Francophone Cameroon, that is, as agreed between the people concerned. Adoption is revocable in simple cases, and the adopted person keeps family links with the biological family. The adopted person is entitled to inherit from the adoptive parents’ estate. Simple adoptions can involve both minors and adults, according to Article 358 of the applicable civil code. This individual must give his or her consent in the presence of a notary public. In the case of a minor, both parents (or, in the event of a divorce or separation, the person with custody) must agree. Simple adoption has no effect on the adopted person’s nationality, though a name change may be granted at the adopter’s request [14].

Full or Plenary Adoption

A full adoption is one in which the adoptee’s family links with his or her biological family are severed. In the case of plenary adoption, the adoptee’s previous blood relationships are completely terminated, and he or she is considered a full member of the adoptive family, with no inheritance rights within his or her biological family. All of the adoptee’s rights now derive from the adoptive family, and the adoptee is entitled to the same rights as a biological child of the family, including inheritance rights with respect to the adopter. However, in England and Wales, the courts allow the adoptive parents and

the family of the adoptee to keep in contact with each other [15] just to maintain some sort of family tie as one should not be totally separated from his blood.

THE REQUIREMENTS AND CRITERIA TO ADOPT A CHILD

Adoption eligibility is determined by national law, which has numerous repercussions, including the difficulty produced by the adoption of a wide variety of criteria relating to residency, marital status, age of the adopter, and wealth, among others. This is done to promote the adoptive child's best interests.

Capacity to Adopt

These are the requirements that an adoptive parent must fulfil when intending to adopt.

Minimum Residency

When the adoptive parents are Cameroonians who live in Cameroon, they must live within the jurisdiction of the court where the adoption application is filed. Residency is encouraged but not required in cases of adoption by foreigners. However, before being matched with a child, prospective adoptive parents are not required to live in Cameroon. The Ministry of Social Affairs may compel prospective adoptive parents to spend at least three months in Cameroon in order to get to know the child to be adopted.

Age of Adopting Parents

In order to adopt a child in Cameroon, whether as a foreigner or a national, the law requires that the adopting parent be at least 40 years old for a single adopting parent. In case adoption is sought by a couple, one of them must be at least 40 years old. If neither of them is over the age of 40 years, and the couple has been married for ten years, at least one person must be over the age of 35. However, in case, none of the couple is 35 years old or they have not been married for at least 10 years, they may submit a medical report from a licensed medical practitioner or facility showing their inability to procreate for the age requirement to be waived.

The prospective adoptive parent must be at least 15 years older than the child for single-parent adoptions. The age difference can be as much as ten years if the adoptee is the kid of the prospective adoptive parent's spouse. The President of the Republic may grant an exemption from the age difference criterion [16].

Minimum Income

The prospective adoptive parent(s) must demonstrate their financial ability to support the adopted child. Bank statements, asset evidence, pay slips, and other financial papers are examples of such evidence [17].

Consent of the Adoptive Parents

Where adoption is sought by married persons, both spouses must agree to the adoption. The court, being aware of such may rescind the adoption especially if the other spouse is in disagreement.

Marital Status of Adoptive Parents

There is no requirement under Cameroonian law that provides for the marital status of an adoptive parent. This means that both single and married persons can adopt children into and from Cameroon. An issue that has not been contemplated, probably due to the reason that it has presumably not occurred or that the sexual orientation of the adoptive parent is hidden, especially in the case of foreigners, is that of homosexual parents. Given the fact that homosexuality is a criminal offence in Cameroon [18], it would be of great importance to know if homosexual couples can adopt a Cameroonian child. Of course, since this practice is criminal in Cameroon, and looked at as corruption of morals, Cameroonians who are either gay or may be scared for fear of prosecution to openly declare their sexual orientation in such matters. The question is now left to be handled in the case of foreign gay parents.

In such situations, the answer will be left in the hands of the courts which have the discretion to either grant or deny the adoption of a Cameroonian child by a homosexual foreign parent. Also, homosexual adoptive parents may easily adopt if they are single.

Best Interest of the Child in Adoption

Whatever form of adoption is used in Cameroon, it must be profitable and in the best interests of the person being adopted. Article 21 of the CRC puts much importance on this as it seeks to ensure that children grow in a more hospitable and comfortable environment necessary for their wellbeing.

Requirements of the Adoptee

These are criteria that touch on the child to be adopted.

Consent of the Child and/or Parents or Guardian

The child's legal parents, guardians, or other entity with legal custody of the child must consent in writing to the child's irrevocable and unconditional release for adoption, and they must comprehend the nature and consequences of the adoption. In the case of a plenary adoption, such permission removes all parental rights and obligations between the individual(s) or entity and the child. If the youngster is 16 or older, he or she must also offer written approval. For a full and final adoption, a child must be regarded abandoned, or his or her parents' rights must have been relinquished, or the parents must be unknown or deceased [19].

Age of the Adoptive Child

Before a child can be adopted in Cameroon, they must be at least 5 years old for plenary adoption [20]. However, under Cameroonian law, children below the age of 5 can be adopted under special circumstances. There is however no maximum age for adoption, and one may only presume based on the age of majority. This too presents a difficulty, as different pieces of legislation provide for different ages of majority.

Child that can be Adopted

In Cameroon, children whose parents are unknown or deceased, abandoned children, children already related by a relationship or alliance to the adoptive parent or one of them, if the adoption is made by spouses, children whose parents or legal representative has consented to the adoption, and orphans of the nation as defined by Law No. 84/04 of 04 July 1984 [21] can be adopted.

THE FORMALITY FOR ADOPTION

The Ministry of Social Affairs and the High Court [22] of the place of residence of the child to be adopted have jurisdiction. The process for adopting a child in Cameroon often includes multiple steps. The steps are divided into three stages: investigation, evaluation, and experimentation, judicial, and post-adoption supervision and monitoring.

The Investigation, Evaluation, and Experimentation Phase

This phase comprises the time when an adoptive parent decides to adopt a child and takes the initial step by applying. This will include identifying a child for adoption. A social welfare officer is assigned to do background checks on the adoptive parents and the family with whom the adopted child will live. If the investigation and appraisal of the adoptive parent are favorable or not; it is decided by a social welfare officer, who will file a report, whether good or bad [23].

The Judicial Phase

In order to make a decision on the adoption, a complete court hearing is required. The adoptive parents are scrutinized in court by a judge throughout this procedure, and the State Counsel is the pivot in such hearings as he represents the state in order to determine whether the adoption is in the best interests of the child. If the child to be adopted is present in court and is not a teenager, he may be

questioned to discover his permission. The judge may rule in favor or against the petitioner. In the event of denial, the applicant has three months to file an appeal.

Before issuing an adoption decree, the Cameroonian High Court must assess that the following four criteria have been met:

- That each person whose consent is required has agreed to and understands the nature and consequences of the adoption. Such permission is irrevocable and serves all legal relationships between the biological parents and the child in perpetuity.
- That adoption will improve the child's well-being. Parents must demonstrate how they can provide for their child in ways that others cannot.
- The adoption was motivated by the fact that there was no payment or reward.
- That the potential adoptive parent is in good health.

The Post-adoption control and Monitoring Phase

This entails monitoring after an adoption is completed in order to guarantee that the adopted child is living in good health. This is a condition that the Cameroonian authorities frequently fail to meet.

THE AUTHORITIES TO GRANT ADOPTION

Adoption cases can only be heard by the High Court which has exclusive jurisdiction at first instance [24]. In Anglophone Cameroon, Section 15 of the SCHCL grants the High Court competence to consider adoption cases. Adoption cases are also brought to court under Section 18 (1) (b) of Law N 2011/027 on Judicial Organization, which states that "the High Court shall have jurisdiction to hear and determine suits and proceedings relating to status of persons; civil status, marriage, divorce, affiliation, adoption, and inheritance." The Ministry of Social Affairs is the ministry that is in charge of investigations and evaluation for placing children for adoption. This ministry has regional, divisional, and sub-divisional offices around the country.

THE DILEMMA SURROUNDING THE PROCEDURE FOR ADOPTION IN CAMEROON

Cameroon operates a bi-jural legal system owing to its colonial past. That is, the Common Law Legal System (derived from Great Britain) and the Civil Law Legal System (derived from France). The Common Law system operates in Former Southern Cameroon on the one part, while the Civil Law system operates in the regions of Former Western Cameroon (French speaking regions) on the other part [25].

In Anglophone Cameroon, the courts have always had the problem of interpretation of Sections 10 of the Southern Cameroons High Court Law, as to the use of post 1900 English Statute with regards to the issue of adoption as evident in the *Bernard Fonlon's Case*. This is due to the fact that Cameroon lacks a stringent local legislation on the subject. This gives room for complex issues with regards to adoption in Cameroon and Anglophone Cameroon in particular.

The procedure for adoption in Cameroon is outlined in Sections 343 to 370 of the Civil Code, as well as Section 41 of Ordinance No. 82/02 of 29 June 1981 [26], as revised on May 6, 2011 [27], to relating to Civil Status Registration and Status of Persons in Cameroon.

Adoption applications or petitions are non-adversarial proceedings [28]. There are no plaintiff(s) or petitioner(s) on the one hand, and no defendant/respondent to the complaint on the other. Building a fake legal relationship out of a previously non-existent relationship, however, is a touchy matter. The legal department must always submit before the court can rule on whether to approve or deny adoption since it is a question of public order that the state must consider [29].

It is worth noting that as a party to the proceedings, the legal department may appeal a court decision granting adoption, as seen in the case of *Ntamack Therese contre Qui de Droit* [30], where the Supreme

Court of Cameroon, in deciding an appeal filed before it by the legal department, quashed the decision of the original court that had granted adoption to the applicant, Miss Ntamack, despite the fact that she was only 29 years old at the time she filed for adoption. As a result, it ruled that the originating court had erred in law, by not respecting the provisions of the which states that adoption rights are only granted to people above the age of 40 who file individual petitions [31].

Adoption is under the purview of issues of public order, resulting in the state's and courts' protectionist stance. The legal department must file submissions in support of or in opposition to the approval of the application. Adoption attempts to establish a legal tie where there was previously no biological or natural link.

The best interests of the adopted child must be determined as the court's top priority. As a result, the court may make any pertinent inquiries prior to granting adoption in order to identify this overriding interest. The aforementioned interests are both moral (or ethical) and material-financial in nature. Moral in that the applicant should not be a gangster or a criminal unable to provide the adoptee with the moral standards expected of an average person in society. Above all, the applicant must be mentally sound. On the other hand, in terms of material-financial interest, adoption cannot be allowed in order to transfer a kid from a better (financially) to an impoverished household [32].

In adoption cases, there is a major concern that judges or courts are not obligated to provide a justification for their decisions. This means that there is no requirement for the court to explicitly state the factors, doctrines, or principles that influenced their ruling. The first thing the court does is check to see if all legal conditions have been satisfied for adoption. As a result, the court may conduct additional inquiries, even through intermediaries such as social services or other individuals, as the situation may be. As a result, the court has broad discretion [33].

The Lack of an Applicable Law on Adoption in Anglophone Cameroon

Given that in questions of adoption, reliance must be made to applicable English law; it is important to note that the concept of legal adoption was unknown under common law. According to Section 11 of the Southern Cameroons High Court Law of 1955, the Adoption Act of 1926 and subsequent acts are not applicable in Anglophone Cameroon. The adoption of Children's Act of 1926, made adoption a legal act in England and Wales. Further acts were passed, including the Adoption of Children (Regulations) Act of 1939, as well as the Adoptions Acts of 1950, 1960, 1964, and 1968. The Children Acts of 1975 and 1976 later consolidated portions of the 1958 Act. The law is ever-changing, and adoption in England is now controlled by the Adoption and Children's Act 2002 [34].

As a result, the position in Anglophone Cameroon regarding substantive adoption legislation remains unclear. Adoption is not governed by substantive law. Because of this gap in the legislation, judges tend to rule on adoption issues using English law. As a result, the presiding judge has the discretion to decide which English statute to use in any given case. The courts took the lead and adopted the precedent set by the Court of Appeal in *Bernard Fonlon v. Judith Fonlon & Others* [35]. In that case, the Court of Appeal rejected the High Court's decision to decline jurisdiction in adoption cases due to a lack of substantive law. The Court of Appeal dismissed the appeal for failure to comply with the consent requirements of Section 3(1) of the 1958 English Adoption Act. The court based its ruling on Section 10 of the Southern Cameroons High Court Law of 1955, which as critics have pointed out, refers to procedural rather than substantive law [36].

Court rulings authorizing adoption have largely followed this precedent, implementing the 1958 English Adoption Act and later adoption statutes. Judges in Cameroon in general use Section 18(1) of the 2011 Law on Judicial Organization to consider adoption cases. Judges in Anglophone Cameroon also resort to Section 10 of the Southern Cameroon's High Court Law of 1955, which allows them to use post-1900 English statutes. However, the lack of a comprehensive law on adoption in Cameroon

and Anglophone Cameroon continue to present problems as judges in Anglophone Cameroon make use of different English statutes. In the case of *Ngam Theresia Lum V. The State of Cameroon, Esther Bei Muchoh & Neh Muchoh Adeline* [37], the judge in making the adoption order, relied on the provisions of the 1958 English Adoption Act as read with Section 21 of the CRC and Section 24 of the ACRWC. On the other hand, in the case of *Dr. Diggelmann Martin V the People of Cameroon & Tabi Rachel Anderson* [38], the presiding judge rather relied on the provisions of the English Adoption Act 2002 as well as the provisions of the United Nations CRC and the ACRWC.

As a result, it is unclear that which English statute should be applied in adoption proceedings held in the courts of Cameroon's two English-speaking regions. Section 50 of the Adoption and Children's Act of 2002, for example, stipulates that an adoptive parent must be at least 21 years old and a parent adopting his or her own child with their partner, must be just 18 years old. The 1975 Children's Act, on the other hand, allows only children under the age of 18 to be adopted, and the applicant or joint applicants must be at least 21 years old. This exemplifies the state of confusion in Anglophone Cameroon's adoption laws.

Conflict of Laws on the Age of Majority

There is the problem of conflicting laws with regards to the age of majority in Cameroon. Different pieces of legislation provide different ages of majority, thereby presenting a challenge to adoption in Cameroon. The civil status ordinance, for example, provides 15 years for a lady and 18 years for a male as the minimum marriage age, criminal culpability is 18 years, electoral age is 20. With all these differences in the age of majority in different legal instruments, the process of adoption becomes wanting in regards to the maximum age of a person to be adopted. This will now leave us to define who a child or minor is as per Cameroonian law.

CONCLUSION

The Convention on the Rights of the Child expressly recognizes adoption as one of four types of alternative care choices. Article 21 includes a set of standards intended to ensure that adoption is governed by the best interests of the child. They include requiring that all adoptions be approved by competent authorities and that all parties involved, including birth parents, provide informed consent (unless consent is impossible or not required for some other reason). Unfortunately, our courts of law continue to err in following these procedures.

Moreso, the lack of a comprehensive piece of legislation regulating issues of adoption in Cameroon and Anglophone Cameroon, in particular, has been a difficulty for the common law courts to address. Different judges make use of different English statutes, meanwhile others deny jurisdiction altogether. This hinders the smooth observance of the procedure for adoption.

Countries have the option of entering into cooperative agreements to govern intercountry adoption. Both the CRC and the ACRWC recommend this option for states, but very few African countries have joined such bilateral and multilateral accords. Unfortunately, Cameroon is not among them.

The 1993 Hague Convention on Intercountry Adoption plays a vital role in promoting children's best interests, particularly in eliminating illicit intercountry adoption activities. It is unfortunate that Cameroon is not party to the Hague Convention relating to inter-country adoption despite the fact that most children adopted in Cameroon are done by foreigners. It will be in the best interest of Cameroonian children placed for adoption and the state in general for Cameroon to be a party to this convention as well as other bilateral and multilateral conventions and treaties.

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