

# Instituting an Independent Prosecution Service as an Effective Mechanism to Combat Corruption in Cameroon

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## Abstract

The independence of prosecutors is a crucial component in the fight against corruption. Accordingly, a robust rule of law system and the application of anti-corruption laws require that prosecutors be free from any undue external pressure. Independence here means it should not be subordinated to the executive or any other state bodies. To avoid undue instructions, it is essential to develop a catalogue of such guarantees of non-interference in the prosecutor's powers in order to ensure that their activities in trial procedures are free from external pressure. Such guarantees should cover appointments, discipline, career, removal from office and specific rules of management of cases and decision-making process. This must be complemented by an adequate remuneration, budgetary, financial, internal and external independence. In Cameroon, the hierarchical subordination system of the Prosecution Service exists, with the Minister of Justice playing a crucial role in its functioning. This paper holds that the way it is practiced hinders the Legal Department from effectively combatting corruption, because prosecution may only be engaged in certain cases after instructions have been received. This system, to an extent, justifies the alarming rate of active corruption cases which are committed with impunity, even to the knowledge of the Prosecution. This research, which investigated the institution of an independent prosecution service in Cameroon as an effective anti-corruption mechanism, recommends the abolition of the principle of hierarchical subordination, or that it should be regulated and instructions should be limited only to the general application of the criminal policy. To conduct this research, a qualitative research methodology was adopted and a doctrinal method used. We essentially relied on desk research wherein we examined the primary and secondary data on the Prosecution Service.

**Keywords:** Prosecution service, corruption, independence, hierarchical subordination, judiciary, State Counsel, Prosecutors, Legal Department.

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## INTRODUCTION

The independence of prosecutors is a crucial element in the fight against corruption and as such, a strong rule of law and the implementation of national anti-corruption laws require that prosecutors be free from any undue external pressure [1]. There is considerable diversity in prosecution-investigator arrangements both between countries of the common law and the civil law traditions, and within each grouping, systems of prosecution reflect existing indigenous law to the extent that it has been recognized

by the legal system [2]. The situation in Cameroon is directly linked to its colonial past and deeply reflects the practice in civil law jurisdictions. The independence of the prosecution service is a common practice in countries with the Common Law system, as opposed to countries with the civil law tradition wherein the principle of subordination to the authority of the minister of justice is more visible.

The Legal Department (LD) or '*Ministère Public*' or '*Parquet*', as referred to in French, is the authority in charge of ensuring in the name of the society and general interest, the enforcement of law

<sup>1</sup> OECD (2020), The Independence of Prosecutors in Eastern Europe, Central Asia and Asia Pacific, p. 4

<sup>2</sup> UNODC (2004), United Nations Handbook on Practical Anti-corruption Measures for Prosecutors and Investigators, Vienna, UNODC, p. 11.

when it is criminally sanctioned, taking into account, on the one hand, the rights of individuals, and on the other, the necessity of the efficiency of the criminal justice system [3]. The LD, in other words, refers to all career magistrates who are charged before certain courts to request the application of the law and to ensure the safeguard of the general interest of the society [4]. This signifies that the LD applies the law and ensures that the law is applied. In this context, the State Counsel (prosecutor) or '*Procureur de la Republique*' as referred to in French, exercises his functions neither in his proper name, nor that of any political authority, but in the name of the society and in doing this he has to respect the necessary efficiency of the criminal.

Justice system which he has responsibility over [ 5 ]. The organizational setup, functioning of the Prosecution's Service and the powers of prosecutors in Cameroon does not permit it to effectively fight against corruption. Cases of corruption like bribery and corruption in administrative competitive examinations, substantial unjustified increase in wealth of public agents, misappropriation of public property, corruption in public procurement, interest in grants, influence peddling and abuse of authority have remained very active in Cameroon under the watchful eyes of a prosecution that awaits instructions to engage prosecution. This may not be strange, as the judiciary, of which the prosecution constitutes a major actor, has been persistently classified as one of the most corruption institutions in the country [6]. One could be tempted to say that the impunity existing in the fight against corruption could attributed to the fact that the prosecution is not free from corruption, and its situation is further compounded by poor financial treatment which serves as an incentive for prosecutors to engage into rent-seeking.

The magistrate of the LD or '*magistrat du parquet*' is an ancient appellation which originated from ancient France, whereby the prosecutors and lawyers of the Crown did not sit at the rostrum near judges, but at the parquet of the court hall as litigants and the representatives of the said litigants [7]. In most Anglo-Saxon countries, this institution is usually called the Directorate of Public Prosecution, which is an independent body charged with the duty of prosecuting offences without the interference of the Ministry of

Justice, in contrast to what obtains in most civil law jurisdictions.

Corruption has multifaceted definitions, and the one we will retain under this research is defined as a fiduciary or official use of a station or office to procure some benefit either personally or for someone else, contrary to the rights of others; an act carried out with the intent of giving some advantages inconsistent with official duty or the rights of others [8]. Corruption has almost become a norm in Cameroon and every fabric of the State has been affected. The level of corruption in the country became so alarming to the extent that she was classified as the most corrupt country in the world successively in 1998 and 1999 by Transparency International. Since then the country has always been classified as one of the most corrupt countries in the world [9]. Over the last two decades, the country has triggered a cornucopia of legal and institutional mechanisms to combat corruption, but unfortunately this cankerworm has remained very active in every sector in the country. The first visible measure was the ratification of the UN Convention against Corruption on 25 April 2004 which provides a comprehensive framework for charter members to strengthen anti-corruption strategies. This was followed by the enactment of numerous instruments that seek to tighten some administrative cracks, introduce new accountability standards, and hold perpetrators accountable [ 10 ]. These measures were enforced through CONAC which is the French acronym for the National Anti-Corruption Commission created by Decree no. 2006/088 of 11 March 2006, the National Agency for Financial Investigation (popularly known by its French acronym, '*ANIF*'), the Audit Bench of the Supreme Court, the Supreme State Audit, Anti-corruption Units in Ministries and Public Establishments and the Good Governance Program. This led to the anti-graft campaign known as 'Operation Sparrow Hawk' (a code name attributed by the press) which has ensnared many top Government and State officials; a former Prime Minister, over eight members of government, General Managers and Directors of Public Establishments and Corporations and a host of top-ranking State functionaries are in prison for the misappropriation of public property and other offences related to corruption. It is clear that in most of these cases prosecution was always commenced based on instructions. It is therefore glaring that all anti-corruption bodies lack independence and as a result are

<sup>3</sup> Association International des Procureurs et Poursuivants (2002), *Manuel des droits de l'homme à l'intention des procureurs et poursuivants*, Pays-Bas, Wolf Legal Publishers (WLP), p. 1.

<sup>4</sup> Emmanuel Ndjere (2009), op. cit., p. 13.

<sup>5</sup> Association International des Procureurs et Poursuivants (2002), op. cit., p. 1.

<sup>6</sup> CONAC (2021), Report on the State of Corruption in Cameroon in 2020, Yaounde.

<sup>7</sup> Luzolo Bambi Lessa Emmanuel and Bayona Ba Meya Nicolas Abel (2011), *Manuel de Procedure Pénal*, Kinshasa, *Presses Universitaires du Congo*, p. 200.

<sup>8</sup> Black's Law Dictionary, 10<sup>th</sup> edition, p. 422.

<sup>9</sup> National Governance Programme (2016), 2016 Governance Report, Prime Minister's Office, Republic of Cameroon, p. 8.

<sup>10</sup> Avitus Agbor (2019), Cameroon and the anti-corruption conundrum: Highlighting the need for political will in combating corruption in Cameroon, *African Journal of International and Comparative Law*, pp. 50-75.

subject to pressure and interference from the executive, and cannot ensure check and balances.

This is further compounded by the absence of the independence of the prosecution service which must receive instructions or obtain authorization to engage proceeding in some corruption cases, or at times will have to sit and wait for instructions to trigger proceedings. Independence here means it should not be subordinated to the executive or any other state bodies. Independence also covers guarantees relating to tenure, appointment adequate remuneration and removal from office. Many international guidelines and rules advocate for an independent prosecution service [11]. This paper, therefore, seeks to examine whether the institution of an independent prosecution service in Cameroon and the abolition of the principle of hierarchical subordination, can help in the effective fight against corruption. To achieve this objective, a qualitative research methodology was adopted and a doctrinal method used. We essentially relied on desk research wherein we examined the primary and secondary data on the prosecution's service.

### ***1 Institutional Framework of the Prosecution Service in Cameroon***

The powers of the LD are enormous in Cameroon when it comes to prosecuting offences, and its organization and functioning is well defined by the law. The LD is not defined by any law in Cameroon, but its functions and organization are provided for under a corpus of instruments, with the main legislation setting out the general functions of the LD being Law no. 2006/015 of 29 December 2006 on the judicial organization as amended [12]. The LD is treated under the Criminal Procedure Code (CPC) under articles 127-141. Thus, in Cameroon there exists a LD before every court. The LD is hierarchically subordinated to the Ministry of Justice and its functioning is subject to certain principles such as indivisibility and subordination to instructions from hierarchy. These principles or characteristics of the LD are based on the premise that the everyday decisions of prosecutors, such as whether to investigate and by what means, whether to authorize arrests, whether to seek to detain arrested individuals before trial, what charges to bring and whether to grant leniency, what witnesses to call, what arguments to make, what objections to raise, and what sentences to seek, may have life-altering, even life-shattering, significance to people who are investigated

<sup>11</sup> See for example the Guidelines on the role of prosecutors adopted by the Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

<sup>12</sup> See to this effect article 29 of the 2006 aforesaid Law. It should be noted that Law no. 2006/016 of 29 December 2006 on the organization and functioning of the Supreme Court as amended lays down the organization and duties of the Legal Department attached to the said Court.

or charged [13]. Some principles are, therefore, very material to enable the accomplishment of these tasks especially in the fight against corruption. Its organization and functioning leave much to be desired, as it lacks administrative and financial independence.

### ***1.1 Organizational Structure***

The LD in Cameroon is arranged in a pyramidal manner under the direct responsibility and control of the Minister of Justice. In this regard, the judicial organization Law in its article 30 provides that there shall be a LD attached to each Court of Appeal (CA), headed by a Procureur General (PG) who shall be under the direct authority of the Minister in charge of Justice [14]. It further provides that there shall be a LD attached to each High Court (HC) [15] or Court of First Instance (CFI) [16], headed by a State Counsel directly subordinated to the PG of the CA of the area of jurisdiction. This provision stipulates further that the State Counsel or his Deputy of the CFI at the seat of a HC may, concurrently with his duties as State Counsel of the CFI, be appointed State Counsel or Deputy State Counsel of the said HC. This is to reduce waste of resources, especially in towns where the volume of litigation is not heavy, thus warranting the existence of two LDs. As of now, only the HCs of Mfoundi, Mounjo and Wouri Divisions have prosecutors who do not sit in the CFI. Thus, as per the Judicial organization Law each Sub-Division is supposed to have a CFI, and for service needs the President of the Republic may create a CFI to cover several Sub-Divisions. This is the same with Divisions (administrative circumscription) when it comes to HCs, and Regions when it comes to

<sup>13</sup> Bruce A Green (2007), <<Prosecutors' professional independence: reflection on *Garcetti V. Ceballos*>>, p. 8, available at <https://pdf.semanticscholar.org/2198/df32d16f23fa8ad9682449bb023b71c3d19.pdf>, visited 22/04/2018.

<sup>14</sup> Section 127 (4) of the CPC provides that the LD of the CA shall be composed of the PG at the said Court and all the magistrates of the said LD. Its jurisdiction shall be that of the CA. Art 20 (1) (b) of the 2006 on Judicial organization provides that the CA shall be composed of at the LD: a PG, one or more Advocates General, one or more Deputies of the PG and one or more Legal Assistants at the PG's Chambers.

<sup>15</sup> Section 127 (5) of the CPC provides that the LD of the HC shall comprise the State Counsel and all the magistrates of the said LD. Its jurisdiction shall be that of the HC. Art 17 (1) (c) of the 2006 law on judicial organization provides that the HC shall be composed at the LD of one State Counsel and one or more Deputy State Counsel.

<sup>16</sup> Section 127 (6) of the CPC stipulates that the LD of the CFI shall be the State Counsel and all the magistrates of the said LD, and its jurisdiction shall be that of the CFI. This provision is further supplemented by Art 14 (1) (b) which provides that the CFI shall be composed of at the LD of a State Counsel and one or more Deputy State Counsel.

CAs [17]. As of now each Region has a CA and every Division has a High Court except for the Hauts Plateaux, a Division in the West Region, which is not yet operational. The administrative organization of the LD and the courts is governed by a different law.

The PG of the CA has enormous powers over magistrates of the LD and his functions are not only limited to ensuring the application of the criminal law throughout the jurisdiction of the CA, but goes as far as instructing the State Counsel to investigate, institute proceedings or to close a case file in any matter [18]. He equally plays a dominant role in the management of the careers of magistrates [19]. It is our humble submission that a law should clearly define the types of instructions that they can give to magistrates of the LD. Furthermore, they should have no role in the discretionary powers of prosecutors to institute proceedings. This could bring tremendous impetus in the repression of corruption. The influence of the PG in the activities of the LD greatly limits its independence, especially in a context like ours wherein the Judiciary is attached to the Executive. The role of the Minister of Justice is well defined in some countries [20] and the law does not give any possibility for them to influence the independence of the Judiciary.

The Military Tribunal which is located at the level of each Regional headquarters comprises, at the LD, a State prosecutor and one or more Deputy Prosecutors [21]. The Military Tribunal has been given enormous powers under the 2017 Military Justice Code (MJC) in issues of misappropriation of military effects and other offences committed by servicemen. The

Tribunal is directly under the Ministry of Defence, and no mechanisms have been put in place to guarantee its independence.

The Special Criminal Court (SCC) which sits in Yaounde is composed at the LD of a PG, one or more Advocates Generals and one or more Deputies to the Procureur General [22]. Albeit, the 2011 Law setting up the SCC does not talk about hierarchical subordination, section 6 of this Law says that the Judicial and Legal Officers of the Court are governed by the rules and regulations governing their profession. The Court has convicted so many top functionaries, but the reality is that in most of the cases, the Prosecution Service only commences proceedings after instructions to prosecute have been received. This can be buttressed by the fax messages prohibiting certain top functionaries from leaving the country signed by the Delegate General for National Security and the Secretary of State at the Ministry of Defence in charge of the Gendarmerie, who are directly attached to the Presidency [23].

The Supreme Court which, is the highest Court of the State in criminal matters with headquarters in Yaounde, is composed at the LD of a PG, 1<sup>st</sup> Advocate General and Advocates General [24]. The PG of the other Courts is not answerable to the PG of the Supreme Court which entails that the principle of hierarchical subordination does not operate in this context. However he plays a dominant role in the management of the careers of prosecutors. He is the President of the Commission in charge of promoting magistrates (prosecutors) of the Legal Department (LD) and is Vice-President of the Disciplinary Commission as provided by articles 41 and 52 respectively of Decree no. 95/048 of 8 March 1995 on the general rules and regulations of the magistracy as amended.

<sup>17</sup>See Articles 13, 16 and 19 of Law no. 2006/015 of 29 December 2006 as amended.

<sup>18</sup> See sections 133 and 134 of the CPC.

<sup>19</sup> See Articles 26, 35 and 41 of the 1995 Decree on the general rules and regulation of the magistracy.

<sup>20</sup> For example Section 88 of the Ghanaian Constitution is very clear on the role of the attorney General by providing that (1) There shall be an Attorney-General of Ghana who shall be a Minister of State and the principal legal adviser to the Government. (2) The Attorney-General shall discharge such other duties of a legal nature as may be referred or assigned to him by the President, or imposed on him by this Constitution or any other law. (3) The Attorney-General shall be responsible for the initiation and conduct of all prosecutions of criminal offences. (4) All offences prosecuted in the name of the Republic of Ghana shall be at the suit of the Attorney-General or any other person authorized by him in accordance with any law. (5) The Attorney-General shall be responsible for the institution and conduct of all civil cases on behalf of the State; and all civil proceedings against the State shall be instituted against the Attorney-General as defendant. (6) The Attorney-General shall have audience in all courts in Ghana.

<sup>21</sup>Section 5 (b) of Law no. 2017/012 of 12 July 2017 to lay down the Code of Military Justice

<sup>22</sup>See Section 3 of Law no.2011/028 of 14 December 2011 on the setting up of a Special Criminal Court as amended.

<sup>23</sup>See Text no. 00000093/2-TO/gn/247 of 13 March 2018 addressed to all Legion Commanders prohibiting Nkoto Emame David (GM of Cameroon Telecommunication Corporation CAMTEL) indicating that should he attempt leaving the country, he should be arrested and brought before the SCJPOs attached to the SCC. Fax no. 00000401/DGSN/SG/DPF/S of 2<sup>nd</sup> March 2018 addressed to all Regional Delegates for national security with an introduction stating that following correspondence no.00291/L/PR/CONSUPE/CAB of 6 February 2018 of CONSUPE and the application of the instructions of the Head of State, the GM for CAMTEL Nkoto Emame David and 7 others were prohibited from leaving the national territory with instructions for them to be arrested and taken before the SCJPOS of the SCC in case of any attempt to leave the country.

<sup>24</sup>See section 4 (b) of Law no. 2006/016 of 29 December 2006 to lay down the organization and functioning of the Supreme Court as amended.

Thus, the LD plays a very important role in the criminal justice system; the role of the LD as spelled out in the national law differs from one country to the other. There is equally a great difference as far as its institutional set-up and its relationship with the Executive Power is concerned [25]. In Cameroon, it is directly under the Executive and attached to the Ministry of Justice that is headed by a Minister.

For an individual to qualify as a prosecutor in Cameroon, he must be a holder of a Postgraduate Diploma in Law, (Economics, Accounting, Computer Science for audit prosecutors), must pass highly competitive Entrance Exams into the National School of Administration and Magistracy (ENAM) and complete the two years training which covers coursework and internship partitioned into eight months and fourteen months respectively. Upon graduation with at least 12/20, they are integrated into the magistracy by Presidential Decree after the opinion of the Higher Judicial Council and appointed equally by Decree to various prosecution services throughout the country. Tenure is not guaranteed and after 4 years of practice prosecutors can be appointed as judges to the High Court and Presiding magistrates to the Court of First Instance. While at the bench they can, at the discretion of the President of the Republic, be reappointed to the Prosecution Service.

### 1.2 The Powers of the Legal Department

The powers of prosecutors in deciding whether to prosecute a case, their role in conducting investigations and the substantial choices they take in the course of the whole proceedings make the independence of the prosecutorial service a decisive factor conditioning the possibility of a country to combat corruption offences [26]. The LD has unfettered powers to institute criminal proceedings whenever it has knowledge of the commission of any offence and can at any time and place act as a JPO [27]. In controlling and supervising the activities of JPO, the prosecutor may at any time, visit the police post or gendarmerie brigade in order to verify the conditions of persons in custody and can order the immediate release of anyone under custody that he deems necessary. The non-execution of his order to release those detained unjustly may lead to prosecution for unlawful detention against the JPO in charge of the investigating unit [28]. Unfortunately, the privileged jurisdiction given to JPOs under the CPC is a serious barrier for such a measure to be applied spontaneously. As such, all the powers of JPOs such as that of conducting investigation, arrest, search and seizure can be performed by the State Counsel. In this context, he has the power to issue

summons, search warrants, remand warrants, arrest warrants and production warrants [29]. As a principal party in criminal trials, the LD can only be subject to the powers of the presiding magistrate to maintain order in court. The prosecutor can address the court at any time without being denied the right to do so, even if his submissions are not related to the matter pending before the court [30]. The powers of the LD is being usurped by most PGs at the Regional headquarters wherein the decision to prosecute in *flagrante delicto* cases is decided by the PGs. This is because all State Counsel submit a daily report of suspects brought before the LD to the PG, with proposals on the decisions that could be taken in instituting proceedings, with the PG having the discretion to alter the solution proposed by the State Counsel [31]. Some of this interference is supported by magistrates at the Prosecution Service attached to the Court of Appeal (CA) on the premise that it is in order to limit the excesses and corrupt practices of the State Counsel and his Deputies. The question that comes to mind is whether the LD can effectively investigate and prosecute corruption in this type of atmosphere, where its actions can be reversed by a PG who has an interest in a matter.

Consequently, matters can be brought to the State Counsel by way of an oral complaint, by a written complaint or by a written report by a competent authority; the LD or the State Counsel may also be seized of his own motion [32]. It is rather unfortunate that in practice, the State Counsel hardly institutes proceedings on his own motion when it comes to certain top high-ranking functionaries. This can be seen in the cases prosecuted by the SCC which are most often at the behest of the Executive. Moreover, since the first report on the management of funds dedicated to the fight against covid-19 and media publications unveiling serious cases of corruption, the Prosecution has been mute, as usual, in the face of active cases of corruption.

<sup>29</sup>See sections 11 and 12 (1) of the CPC.

<sup>30</sup>Section 128 (1) and (2).

<sup>31</sup>This is done in gross disregard of the provisions of Section 114 of the CPC which provides that a suspect arrested *flagrante delicto* shall be brought by the JPO before the State Counsel who shall proceed to check his identity, interrogate him summarily and if he decides to prosecute shall place him under temporary detention or release him on bail with or without sureties. It further provides that in all cases the State Counsel shall make a report on the measures he has taken and where he intends to prosecute him, he shall do so at the very nearest session of the court. He may equally institute proceedings against the suspect by way of direct summons or after preliminary inquiry.

<sup>32</sup>Section 153 of the CPC.

<sup>25</sup>*Association Internationale des Procureurs et Poursuivants* (2002), op. cit., p. 1.

<sup>26</sup>OECD (2020), op. cit., p. 4.

<sup>27</sup>Section 137 of the CPC.

<sup>28</sup>*Ibid.*

### 1.3 The Role of the Prosecutor in Criminal Justice System

The prosecutor represents the society, and therefore has the duty to ensure that an accused person receives the fair trial that is guaranteed by the country's constitution and that is recognized internationally as a fundamental human right by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights [33]. It is, therefore, for the prosecutor to defend the public interest – which is to ensure that the Rule of Law is respected, that an accused person receives a fair trial, and that only the guilty are convicted [34]. The prosecutor can only achieve these goals by being objective, honest, impartial and independent.

The Judicial organization Law provides that the LD shall ensure the enforcement of laws, regulations and judgments and, in the interest of the law, make any request it considers necessary before any court. In criminal matters, the LD searches for offences, institutes and carries out prosecution and issues any warrants necessary for the institution of prosecution [35]. The presence of the LD is obligatory in criminal matters [36] and optional in civil, matters except the law provides otherwise.

Many international rules set out the role of the LD specifically the UN Guidelines on the Role of Prosecutors; adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in Havana Cuba, on 27 August to 7 September 1990 [37]. Also, there are the principles on the professional responsibility and declaration on the

<sup>33</sup> UNODC (2004), op. cit., p. 12.

<sup>34</sup> Ibid.

<sup>35</sup> Section 29 of the 2006 law on judicial organization.

<sup>36</sup> Section 128 (1) of the CPC

<sup>37</sup> 12. Prosecutors shall, in accordance with the law, perform their duties fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights, thus contributing to ensuring due process and the smooth functioning of the criminal justice system.

13. In the performance of their duties, prosecutors shall:

(a) Carry out their functions impartially and avoid all political, social, religious, racial, cultural, sexual or any other kind of discrimination;

(b) Protect the public interest, act with objectivity, take proper account of the position of the suspect and the victim, and pay attention to all relevant circumstances, irrespective of whether they are to the advantage or disadvantage of the suspect

(c) Keep matters in their possession confidential, unless the performance of duty or the needs of justice require otherwise;

(d) Consider the views and concerns of victims when their personal interests are affected and ensure that victims are informed of their rights in accordance with the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

rights and duties of prosecutors adopted by the International Association of Prosecutors, and the Principles and Guidelines to the Right to Fair Trial and Legal Assistance in Africa (PGRFTLAA) adopted by the African Human Rights Commission in 2003 [38].

### 1.4 The Principle of Hierarchical Subordination and its Impact on Prosecutorial Discretion

All the members of the LD of the jurisdiction of the CA depend on a single boss who is the 'Procureur General' (PG) who exercises authority over them [39]. At the summit of their hierarchy is the Minister of Justice, Keeper of the Seals on whose authority members of the LD exercise their authority [40]. Obedience to hierarchy is manifested through the obligation of the State Counsel to inform the PG of all the most important matters within his jurisdiction. Thus, the principle of hierarchical subordination implies two essential notions: the obligation to render account and the obligation to conform to orders received [41].

This obligation to render account is further consolidated by Circular no. 11 of 16 April 1962, which prescribes that State Counsel and PGs must render account to the Minister of Justice on matters (referred to in French as '*affaires signalées*') concerning certain personalities [42]. In practice, the non-respect of orders received will result in disciplinary sanctions, and the Minister of Justice exerts a lot of influence on the powers of the LD and even reserves the right to decide on whether to institute criminal proceedings or not [43]. This is further amplified by the CPC, which provides that the PG at the Court of Appeal may instruct magistrates of the LD within his jurisdiction to investigate offences of which he has knowledge and to close a case file or to institute proceedings. In practice, magistrates of the LD usually receive instructions in gross disregard of the law, but because of fear of being

<sup>38</sup>F. Role of prosecutors

(g) Prosecutors shall perform an active role in criminal proceedings, including institution of prosecution and, where authorized by law or consistent with local practice, in the investigation of crime, supervision over the legality of these investigations, supervision of the execution of decisions of judicial bodies and the exercise of other functions as representatives of the public interest.

<sup>39</sup> See section 133 (2) of the CPC

<sup>40</sup> See article 3 of the 1995 Decree on the general rules and regulation of the public service.

<sup>41</sup> Emmanuel Ndjere (2009), *Le Ministère Public ou Parquet*, Tome 1, Yaounde, PUCAC, p. 49.

<sup>42</sup> These matters include those relating to State security and subversive activities; and matters involving: Parliamentarians, former Parliamentarians, Mayors and Traditional Rulers, SDOs, DOs, and in a broad manner top-ranking civil servants, magistrates, auxiliaries of justice, the authorities in charge of the maintenance of order and matters devolving from ordinary law that present features of extreme gravity.

<sup>43</sup> Emmanuel Ndjere (2009), op. cit., p. 49.

sanctioned, such orders are executed to the detriment of the law.

This is outrageous and greatly undermines the fight against corruption in Cameroon, as the State Counsel is unable to trigger investigation when it comes to certain personalities. A glaring example is the ongoing anti-graft campaign wherein authorizing officers who have misappropriated public funds are removed from office but spend several years without being arrested, since the order to arrest and commence inquiry depends on the Minister of Justice who receives instructions from the Presidency [44]. Furthermore, so many suspects have escaped out of the country before criminal proceedings relating to corruption are commenced against them, because the State Counsel could not trigger proceedings when instructions had not been received.

Though the principle of hierarchical subordination should be used in order to have a uniform penal policy, the Minister of Justice and the PGs should be prohibited from interfering in the powers of prosecutors when it comes to putting criminal action into motion. The principle extends right to court since article 3 of the 1995 Decree provides that magistrates of the LD cannot deviate from written or oral instructions given to them on a matter pending before the court, except express authorization to deviate from instructions was received. This principle greatly undermines the fight against corruption especially when it comes to denunciations made by the press on corruption and other offences concerning public agents. Disciplinary sanctions taken against public agents and other entities are usually mediatized and can serve as information to the LD. The State Counsel has always demonstrated inertia in this context and this can be justified on the premise that he is obliged to inform hierarchy and wait for his instructions before commencing proceedings. Accordingly, if he does not respond he will keep on waiting until the matter will die a natural death. This attitude also accounts for the absence of case law in corruption offences [45].

Justice Mounyol à Mboussi, therefore, proposes that in order to intensify the repression of corruption and reduce the alarming rate of impunity, the LD should be encouraged to systematically engage proceedings whenever there is denunciation and sufficient elements, no matter the person involved, except those benefiting from immunity from prosecution [46]. It would have been a good anti-

corruption mechanism if the principle of hierarchical subordination is redefined in Cameroon so as not to affect the powers of the prosecutor when it comes to engaging criminal proceedings.

Nevertheless, there exist certain limits to the principle of hierarchical subordination, with the first coming from the fact that the State Counsel has proper powers and can institute criminal proceeding without necessarily receiving orders from above. Orders received may equally not be respected when they are manifestly illegal or not in the interest of the law [47]. The second limit comes from the French adage '*la plume est servie, la parole est libre*' meaning the pen is enslaved while speech is free. In simple terms, this means the State Counsel is bound only by written instructions or that this principle does not affect what he says in court. The literal understanding of this adage is that writing remains, while speech flees [48]. However, a literal interpretation of this adage indicates that it lacks justification and only the rational sense helps to give its true meaning: thus, the executive power may impose acts on the LD, but cannot impose an opinion on it. As such, the executive can prescribe prosecution or an appeal against a matter but cannot constrain the opinion [49]. The principle of hierarchical subordination as practiced in Cameroon contravenes international rules on the independence of judicial bodies which requires that all judicial organs shall be independent from the executive branch [50]. The Venice Commission, in its recommendation at point 10, states that in hierarchical prosecution systems instructions may be given at the level of an individual case, provided certain safeguards are met. Point 10 Recommendation 2000 (19) is to the effect that: '*All public prosecutors enjoy the right to request that instructions addressed to him or her be put in writing. Where he or she believes that an instruction is either illegal or runs counter to his or her conscience, an adequate internal procedure should be available which may lead to his or her eventual replacement.*' [51].

The Commission went further to explain that these safeguards are not sufficient and should be further developed by indicating that any instruction to reverse the view of an inferior prosecutor should be reasoned, and in case of an allegation that an instruction is illegal, a court or an independent body like a Prosecutorial Council should decide on the legality of the instruction

<sup>44</sup>It should be noted CONAC and the Supreme State Audit send their reports after control or investigation to the President of the Republic.

<sup>45</sup>Mounyol à Mboussi (2007), *La corruption au Cameroun: Un panorama juridique*, Yaounde, Presses de l'UCAC, p. 27.

<sup>46</sup>Ibid, pp. 76-77.

<sup>47</sup> Luzolo Bambi Lessa Emmanuel and Bayona Ba Meya Nicolas Abel (2011), op. cit., p. 204

<sup>48</sup> Ibid.

<sup>49</sup> Ibid.

<sup>50</sup> See for example rule A (4) (g) on the principles and guidelines on the right to fair trial and legal assistance in Africa (PGRFLAA) 2003.

<sup>51</sup> Venice Commission (2011) Report on European Standards as Regards the Independence of the Judicial System: Part II- The Prosecution Service, p. 11.

[ 52 ]. The practice of hierarchical subordination in Cameroon has to be reformed to allow prosecutors to independently prosecute corruption and exercise prosecutorial discretion within the ambits of the law.

## **2 Consecrating an Independent Legal Department in Cameroon**

Political interference in prosecution is as old as society itself, wherein in early societies the prosecution's power was entirely under the control of princes who could use it to punish their enemies and reward their friends [ 53 ]. The advancement in democracy has pushed countries in Modern Western Europe to largely avoid the issue of abusive prosecution by adopting mechanisms to avert improper political pressure. On the inverse, in totalitarian States or in modern dictatorships, criminal prosecution has been and continues to be used as a tool of repression and corruption [54]. In order to effectively fight against corruption, the LD is required to act in all freedom and to be guided only by general interest, even if it is hierarchically subordinated. In another sense, this principle of independence indicates that the LD is independent from the bench and cannot receive orders from judges. The independence of the LD is witnessing a systematic evolution from a mere organ under the influence of the executive, to constituting part and parcel of the judiciary. In Cameroon it is part of the judiciary but unfortunately it is not independent. The prosecution will be a veritable tool in the anti-corruption crusade in Cameroon if its independence is consolidated, as seen below.

### **2.1 External and Internal Independence of Prosecutors**

The independence of the LD from interference by other authorities or entities is addressed by several international standards. The Venice Commission distinguishes between 'external' independence of the prosecutor's office from other branches of powers and 'internal' independence of individual prosecutors from their hierarchy [ 55 ]. The former includes the impermissibility of the executive or other branches of power to give instructions in individual cases to any prosecutor. The latter covers guarantees of non-interference from the prosecutor's hierarchical superior [56]. Thus, prosecutorial independence should ensure

<sup>52</sup>Ibid, p, 12.

<sup>53</sup>Ibid, p. 5.

<sup>54</sup> Ibid.

<sup>55</sup> European Commission for Democracy through Law (2010), Report on European standards as regards the independence of the judicial system: part ii- The prosecution's Service, adopted by the Venice Commission at its 85<sup>th</sup> plenary session, Venice, 17-18 December 2010, p. 8.

<sup>56</sup> OECD (2011), Anti-corruption specialization of prosecutors in selected European countries, working paper, Anti-Corruption Division, Directorate for Financial and Enterprise Affairs, Paris Cedex 16, p. 11.

that the prosecutor's activities are free from external pressure as well as from undue or illegal pressures from within the prosecution system.

Furthermore, the Guidelines on Professional Responsibility and the Declaration of the Rights and Obligations of Prosecutors (GPRDRO) adopted by the International Association of Prosecutors on 23<sup>rd</sup> of April 1999, provides that resort to discretionary powers to prosecute, whenever it is authorized in a particular case, should be exercised in an independent manner without any political interference [57]. The PGRFLAA provides that States shall ensure that prosecutors are able to perform their professional duties without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or any other liability [ 58 ]. The principle of hierarchical subordination discussed is very glaring in that the prosecutor is not at all independent in Cameroon, and is subject to all sorts of pressure and interference.

The Minister of Justice exerts tremendous influence on the activities of the LD. For example, in case file no. 00000259/DGSN/DJP/SDEEF/S of 4<sup>th</sup> August 2008 on the matter relating to the misappropriation of public funds against Atangana Mebara Jean Marie, Inoni Ephraim, Otele Essomba Hubert Patrick and Mendouga Jerome, transmitted to the LD of the Mfoundi High Court via transmission order no. 0000371/DGSN/DPJ/S of 4<sup>th</sup> August 2008, it was clearly stated in the summary of facts that preliminary investigation was commenced based on correspondence no. 286/CF/CAB/VPM/MJ/GDS of 23 April 2008 of the Vice Prime Minister, Minister of Justice to the Delegate General for National Security (GDNS). In this manner, corruption can never be properly prosecuted since the LD cannot trigger criminal action in certain cases because the prosecution must wait for instructions, even if it is aware of the existence of corruption offences involving certain top ranking functionaries. If we must combat corruption, then we must follow the evolution of the status of the LD in Europe, which is now being given the same total independence as the bench.

Article 37 (2) of the Constitution 1996 Constitution of Cameroon provides that the Judicial Power shall be independent of the Executive and Legislative Powers and that Judicial Power shall be exercised by the Supreme Court, CA and Tribunals. Furthermore, the magistrates of the LD belong to the judicial corps as per article 1 of the 1995 Decree on the general rules and regulations of the magistracy. The same Decree provides that magistrates of the LD are directly under the control and authority of the Minister of Justice, which is anti-constitutional because the Constitution proclaims the independence of the

<sup>57</sup>See rule 2 of the aforesaid guidelines.

<sup>58</sup>Rule F (a) (2) of GPRFTLAA.

Judiciary. The syndicate of magistrates in France had seized the Constitutional Council (CC) to interpret the provisions of article 5 of Statutory Ordinance of 22 December 1958, which provided that the magistrates of the LD were under the direct control and authority of the Minister of Justice. In this case, the CC held that the Constitution recognizes the independence of the magistrates of the LD but that this independence must be reconciled with the prerogatives of government, and that this guarantee is not ensured in a similar manner like that of magistrates of the bench. The CC further reaffirmed the prohibition of individual instructions put in place since the Law of 25 July 2013 by adumbrating that the Constitution consecrates the independence of magistrates (prosecutors) of the LD, wherefrom comes the freedom to exercise their activities before the Courts [59].

The decision of the French CC came when the European Human Rights Court (EHRC) had ruled in 2008 that the LD in France could not be considered as a Judicial Authority within the meaning of the Convention because it lacked independence from the Executive to be qualified as such, and that the newly created European prosecutor demanded an independent LD [60]. The prosecution service in most Anglo-Saxon countries is independent from the Ministry of Justice and is a hierarchical centralized organization, which does not form a separate branch of government but remains independent and exists on the basis of the constitution [61].

The Constitutional reform of 2006 in the Democratic Republic of Congo (DRC) and the law on the magistracy makes the LD independent from the Ministry of Justice [62]. Another interesting example is the LD of the Republic of Netherlands that was bestowed with a great margin of independence vis-à-vis the Ministry of Justice after the judicial reform of 2000. In addition to this, a central organ which is a college of General Prosecutors was established with the

<sup>59</sup>See the communiqué of *Union Syndicale des Magistrats* on 8 December 2017 titled, “*il y a des magistrats indépendants et d’autres moins*”, available at [www.union-syndicale-magistrats.org/web2/themes/fr/userfiles/fichier/publication/vos\\_droits\\_2013/2017/communiquedec17.pdf](http://www.union-syndicale-magistrats.org/web2/themes/fr/userfiles/fichier/publication/vos_droits_2013/2017/communiquedec17.pdf), visited 22/04/2018.

<sup>60</sup>CEDH, *Arrêt Strasbourg, 10 Juillet 2008, Medvedyev et autres, requête no. 3394/03*. In this case, an investigation which was being conducted under the supervision of the LD led to the detention in police custody of the petitioners and the European Court held that their detention was illegal since under the French system, the LD which was not independent of the executive was not a Judicial Authority and thus had no powers to take measures restraining liberty.

<sup>61</sup>OECD (2011), op. cit., 18.

<sup>62</sup>Luzolo Bambi Lessa Emmanuel and Bayona Ba Meyya Nicolas Abel (2011), op. cit., p. 206.

competence to emit directives on the implementation of government’s penal policy and to equally determine the essential of the penal policy [63].

To effectively fight against corruption, the LD and the Judiciary must be given total independence. Accordingly, to avoid undue instructions, it is essential to develop a catalogue of such guarantees of non-interference in the prosecutor’s activities; non-interference means ensuring that prosecutors’ activities in trial procedures are free from external pressure. Such guarantees should cover appointments, discipline, career, removal from office and specific rules of management of cases and decision making process [64]. Magistrates of the LD should have a maximum period of five years to serve in a particular town and the current practice wherein only certain magistrates’ serve in urban towns should be seriously jettisoned. Furthermore, the rules governing the management of career should be reviewed by making the change of grade automatic with the exception being that only those who have been sanctioned after due process should be retarded to move from one grade to the other [65]. This will enhance the internal independence of prosecutors, thereby enabling them to fight against corruption effectively.

## 2.2 Financial and Budgetary Independence

The financial independence of the Judiciary does not exist in Cameroon. The budget allocated to the functioning of the Judiciary is based on the whims of the Executive. The budget is prepared by the Executive and the budget allocated to the Ministry of Justice floats the functioning of the Judiciary, except that of the Supreme Court which is separated though it is not prepared by the Supreme Court. In 2016 and 2017 financial year, the Executive allocated only 3.06 and 3.2 billion F CFA respectively (approximately 5,305,650 US Dollars), as investment budget to the Ministry of Justice including the judiciary, since it does not have a separate budget. Cameroon has to copy the example of countries like Ghana and the DRC wherein the Judiciary has an autonomous budget, and the Chief Justice is the Voteholder of the budget for the Judiciary

<sup>63</sup>Caroline Smits (2016), *Le rôle du juge d’instruction a l’issue du plan de réforme du Ministre de la Justice, Université de Liège, Faculté de Droit, de Science Politique et de Criminologie, Master en droit à finalité spécialisée en droit pénal*, p. 23.

<sup>64</sup>European Commission for Democracy through Law (2010), op. cit., pp. 8-9.

<sup>65</sup>Rule F (2) (c) of the PGRFTLAA provides that Promotion of prosecutors, wherever such a system exists, shall be based on objective factors, in particular professional qualifications, ability, integrity and experience, and decided upon in accordance with fair and impartial procedures. The procedure in Cameroon both for magistrates of the bench and LD does not guarantee the independence of magistrates.

[ 66 ]. One of the methods of ensuring external independence of prosecutors is sufficient and non-arbitrary budgetary funding. The Council of Europe CM Recommendation 19 of 2000 in its S 4 states the importance of “adequate conditions as to the means, in particular budgetary means put at the disposal of public prosecutors”[67].

The budgetary independence of the LD in Cameroon is guaranteed by a special treasury account called ‘*compte de frais de justice criminelle*’ wherein, unbudgeted needs relating to the functioning of the LD are defrayed. Curiously, since 2014, the Minister of Justice has been trying to curtail the discretion of the LD to resort to this account by placing ceilings on the amounts that can be engaged [68]. This is outrageous as it is very impossible to budget the cost of judicial and investigating activities of the Judiciary in a particular year. This curtailment has only aggravated corruption that is already deeply rooted in the Judiciary as a result of very low salaries and poor working conditions for prosecutors and judicial personnel.

The Judiciary has consistently been involved in fictitious justice fees wherein over the years; billions of Francs CFA has been looted from the public treasury in the form of emoluments for judicial personnel and auxiliaries of justice, expert fees and mission orders. To curb this phenomenon, the Inter-Ministerial Instruction no. 00000001 of 13 February 2014 relating to the administrative, accounting control and payment of justice fees was signed by the Ministers of Finance, Justice and Defence, to lay down the modalities of administrative treatment and accounting control of justice fees as well as their payment. Some heads of courts have refused to apply this instruction by infringing on the budgetary independence of the lower courts and their LDs thus, encouraging more corruption in the Judiciary.

Prosecutors are subject to financial pressures because of low salaries and this probably justifies why the judiciary remains one of the most corrupt institutions in Cameroon. Upon recruitment, a Deputy Prosecutor earns just over 445 US Dollar if appointed in a lower court and over 516 US Dollars when appointed to the Court of Appeal. This is not at all benefiting due to the delicate nature of the functions of the Prosecutor. The general rules and regulations of the magistracy provides the same financial treatment for judges and

prosecutors The GPRDROP of 1999 provides that prosecutors shall benefit from reasonable and regulatory conditions in the accomplishment of their functions [69] and it is compelling for such reasonable conditions to be put in Cameroon to enable the prosecution to effectively fight against corruption.

## CONCLUSION

In summation, it is unequivocal that the Prosecution Service is not independent in Cameroon and as such, it cannot effectively fight against corruption. This justifies the prevalence of impunity and alarming level of corruption in the country, and ironically, in the judiciary. We therefore recommend that in order to effectively combat corruption, reasonable conditions of service of prosecutors, adequate remuneration and, where applicable, tenure, housing, transport, conditions of physical and social security, pension and other conditions of service should be revisited and this will no doubt guarantee the independence of prosecutors. The organizational structure of the LD is equally very important in the accomplishment of its activities. As such there should either be an abolition of the principle of hierarchical subordination, or it should be reformed to the extent that only instructions of general application relating to the penal policy should be given to prosecutors, failing which a mechanism should be put in place to review the instructions whenever the prosecutor feels that it is against the law and his conscience.

There must be a political will to combat corruption by installing the independence of the Judiciary. The role of the LD in the fight against corruption is complemented by the adjudicating institutions that decide on the guilt of those charged with corruption. The cases of corruption are very active in every fabric of the State in Cameroon and those holding public office operate with impunity despite the multiplicity of anti-corruption agencies and the existence of the Legal Department located in every Division. Instituting an independent Prosecution Service in Cameroon followed by the creation of special courts responsible for sanctioning corruption will drastically reduce the alarming rate of endemic corruption the Cameroon.

<sup>66</sup>See Part II, Chapter VII titled budget expenditure and breakdown of expenditure under the general budget respectively of Law no. 2016/018 of 14 December 2016 to lay down the finance law of the Republic of Cameroon for the 2017 financial year.

<sup>67</sup>OECD (2011), op. cit., p. 12.

<sup>68</sup>Abdoul Salami Alhadji Souaïbou (2017), *Les frais de justice: les dépens, la gratuité de la justice en questions*, Douala, Africa Services, Imprimerie-Reprographie, p. 144.

<sup>69</sup>Principle 6 (c) of the afore cited rules.