

A Critical Analysis of Sentencing in Criminal Law: The Case of Cameroon and France

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Abstract

Mankind is a companionable being and the fact of staying together with varying and various characters usually gives rise to differences. If these differences are not sorted out amicably they may degenerate into disputes or conflicts with far reaching consequences. These disputes may be settled in either a civil or criminal court depending on their nature and the choice of the victim. While the aim of a civil action is to pay damages to a victim who has suffered prejudice as a result of another person's tortuous act, a criminal action is aims principally to punish an offender whose action offends the society as a whole. The paper however, is concerned with criminal law. The purpose of criminal law is self-protection and to prevent harm to others. In this light, this paper after making clarifications of key concepts, analyze the relevance and actors of sentencing under international criminal law. The paper also seeks to provide the limited province of the judge in sentencing as well as appraise the legal provisions and mechanisms of sentencing in Cameroon and France. In effect, the paper concludes with some salient measures in order to blend theory and practice for effective implementation of Sentencing in Cameroon and France Criminal Law.

Keywords: Critical, Analysis, Sentencing, Criminal, Law, Cameroon, France.

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INTRODUCTION

Man is a gregarious being and the fact of staying together with varying and various characters usually gives rise to differences. If these differences are not sorted out amicably they may degenerate into disputes [1] or conflicts with far reaching consequences. These disputes may be settled in either a civil or criminal court depending on their nature and the choice of the victim. While the aim of a civil action is to pay damages to a victim who has suffered prejudice as a result of another person's wrong, a criminal action aims principally to punish an offender whose action offends the society as a whole. The paper however is concerned with criminal law.

The purpose of criminal law is self-protection and to prevent harm to others [2]. It equally aims at suppressing some acts which are outrageous to the society [3]. In fact the institution of criminal proceedings aims at procuring a sentence or a preventive measure against an offender as provided by law [4]. To achieve the above aims certain rules are set which must be respected by the members of the society. Violators of such rules when tried [5] and found guilty under conditions prescribed for a fair trial are sentenced accordingly.

² Mills's essay on liberty (1859), 974, Harmondsworth :Penguin

³ Lord Devlin, in the Enforcement of morals(1967, Oxford: See also the case Shaw v.DPP (1962)AC 220

⁴ Section 59(2) of Law No 2005/007 of July 2005 instituting the Criminal Procedure Code in Cameroon

⁵ Process by which the court establishes the guilt or innocence of an accused person

¹Disputes here may include but not limited to tortious acts, breach of contract and criminal acts

The way these violators when found guilty are punished, is the interest of this paper which makes a comparative analysis of sentencing in Cameroon and France. The Republic of Cameroon which has undergone tremendous political, constitutional and dramatic changes was once known to be a Federal Republic of Cameroon comprising East and West Cameroon states with equal status each administering its received laws from their colonial masters [6] and applying the said laws. While West Cameroon applied common law comprising English received laws [7] and east Nigerian laws, East Cameroon applied the civil law system in line with French received laws [8]. These two systems cohabited till 2005 when the criminal law system of Cameroon witnessed a revolution [9]. This paper shall be limited to the new harmonized criminal Procedure Code of Cameroon and the revised Penal Code [10].

Sentencing puts an end to the process of a criminal trial if the accused person is found guilty [11]. The paper aims at making a comparative analysis of these two systems with regards to sentencing by assessing how both systems operate. One will therefore not expect the paper to conclude by saying which of the 2 systems is better. On the contrary it seeks to know whether the 2 systems operate in the same manner, whether the penalties are same and to a limited extent how the sentences are executed.

The Cameroon criminal system which is a hybrid [12] of the inquisitorial and the accusatorial system is therefore to be compared with the French system which is inquisitorial. Before delving into the in depth of the subject matter, it would be laudable to define certain key words or concepts.

⁶ While West Cameroon was colonized by Great Britain, East Cameroon on her part was colonized by France

⁷ The applicable relevant law was the Criminal Procedure Ordinance (CPO)

⁸ The applicable law was the Code d'InstructionCriminelle

⁹ Enactment of Law No 2005/007 of July 2005 instituting the Criminal Procedure Code in Cameroon which fused the two criminal legal systems

¹⁰ Law no 2016/7 on the Penal Code.

¹¹ If not found guilty at the end of trial or that there was no full trial for any reason the accused is either discharged or acquitted

¹² Before the harmonisation of the criminal procedure in Cameroon, two systems existed to wit the accusatorial system practiced in the Anglophone Cameroon and the inquisitorial system practiced in the francophone Cameroon. While the anglophon Cameroon was using the Criminal Procedure Ordinance ,the Francophone Cameroon was using the Code d'InstructionCriminelle.

DEFINITIONS AND CLARIFICATION OF KEY CONCEPTS

The section of the paper provides some essential definitions and clarification of key concepts as seen below.

Accusatorial system/adversary system

A procedural system, such as the Anglo-American legal system, involving active and unhindered parties contesting with each other to put forth a case before an independent decision-maker [13].

Inquisitorial system

A system of proof-taking used in civil law, whereby the judge conducts the trial, determines what questions to ask, and defines the scope and the extent of the inquiry [14].

Trial

A formal judicial examination of evidence and the determination of legal claims in an adversary proceeding [15].

Sentencing

The judicial determination of the penalty for a crime [16]. The systematic and organized efforts directed by a society that attempts to punish offenders, protect the public from offenders, change offender behavior, and in some cases may compensate victims [17].

After defining certain important key words/concepts, it would be necessary to find out the importance of sentencing in a criminal process. What role does sentencing play in a criminal trial? How is it applied in the above cited countries?

THE RELEVANCE OF SENTENCING UNDER INTERNATIONAL CRIMINAL LAW

After going through an arduous task [¹⁸] of a criminal trial and when a verdict of guilt has been entered against the accused person who has now become convict, it behooves the trial judge to sentence. If at the end of a trial when an accused found guilty is

¹³ BRYAN , A.GARNER,Black's Law Dictionary,9th edition, Thomson Reuters,2009,at page 62

¹⁴ Ibid,page 864

¹⁵ Ibid, page 1644

¹⁶ Ibid, page 1486

¹⁷ Richard W, Introduction to corrections,3rd edition,McGraw-Hill Higher Education, Kentucky,1996 at page 44

¹⁸ A criminal trial consists of many stages including but not limited to arraignment, case for the prosecution, calling of witnesses who undergo examination in chief ,cross examination ,re-examination ,addresses ,conviction and sentence as the case may be. See from section 307 to 386 of the Criminal Procedure Code of Cameroon.

not chastised, then the trial would have been a voyage in futility which in effect forfeits the *raison d'être* of a criminal process. Though having pronounced a conviction and armed with the relevant laws which punish the established offences, the apportioning of the corresponding penalty is even more tedious and challenging to the judges.

The goals of sentencing always involve a balancing of competing goals. These three goals are deterrence, denunciation, and to some extent, rehabilitation. To balance these goals and come out with a sentence or penalty is usually a difficult exercise because convicts found guilty of the same offence may have different sentences due to various reasons. Apart from the above three goals the judge has to avert his mind to the antecedent of the offender, his age, the gravity of the offence and the prejudice suffered by a victim and or the public at large.

In this light it has been well illustrated that:

“In sentencing, the judge’s task is to determine the type and quantum of sentence appropriate to the facts of the case, and this judgment must be made in accordance with the relevant statutory provisions and appellate principles” [19].

The importance attached to sentencing can equally be seen in the opinion of a judge who stated:

“Sentencing is not a purely logical exercise, and the troublesome nature of the sentencing discretion arises in large measure from unavoidable difficulty in giving weight to each of the purposes of punishment. The purposes of criminal punishment are various: protection of society, deterrence of the offender and of others who might be tempted to offend, retribution and reform. The purposes overlap and none of them can be considered in isolation from the others when determining what an appropriate sentence is in a particular case. They are guideposts to the appropriate sentence but sometimes they point in different directions” [20].

Though not applicable either in France or in Cameroon but of persuasive value, the wordings of section 3A of Crimes(Sentencing Procedure) Act give in a very exhaustive manner, the purposes for which a court may impose a sentence on an offender [21]. From

¹⁹ Austin L.the framework of judicial sentencing .Cambridge Criminology series, Cambridge University Press

²⁰Veen v The Queen (No 2) (1988) 164 CLR 465 where Mason CJ, Brennan, Dawson and Toohey JJ said at 476

²¹ See Judicial commission of new south Wales.The reasons for sentencing as per the above section are:

to ensure that the offender is adequately punished for the offence,

to prevent crime by deterring the offender and other persons from committing similar offences

the above it is discernible that sentencing is not done arbitrarily. Contrary to the above principle, the EBOLOWA Court of First Instance presided at by Magistrate Minlang EBA’A as he then was, found one Simo Mathias guilty of simple threats, rebellion, illegal carriage of arms and false news and sentenced him to serve 6 months imprisonment term without specifying the various sentences for the various offences [22]. The above judgment which is on appeal is a glaring example of a case in which sentencing was done arbitrarily whereas sentencing ought to follow a well synchronized system of law making and the implementation of the said laws.

ACTORS INVOLVED IN SENTENCING UNDER INTERNATIONAL CRIMINAL LAW

Under sentencing there are two key actors who play virtually the same roles in both systems [23]. These two actors both stem from the principle of separation of powers. Whereas France implements and obeys the said principle strictly wherein the 3 powers are independent, in Cameroon the Executive headed by the President of the Republic is the super power amongst the others. The judiciary is not independent at all in Cameroon because the judicial Council is headed by the President of the Republic who has the sole powers to appoint and dismiss Magistrates [24] whereas the case is not same in France. Their roles of the 2 actors are essentially the same by virtue of the general principles of criminal law to wit: the principle of the legality of offences and penalty [25]. Otherwise stated, no penalty or measure may be imposed unless provided by law, and except in respect of an offence lawfully defined [26]. In fact the penalty can only be that which is fixed by law for the considered offence consequent upon the principle of legality of offence and penalty [27]. The judge who implements the law can only work if there are existing laws made by the legislative power or other competent authorities.

The Legislator

to protect the community from the offender
to promote the rehabilitation of the offender
to make the offender accountable for his or her actions,
to denounce the conduct of the offender,
to recognise the harm done to the victim of the crime and to the community.

²²Ministere Public et BIKORO MENYE Jean V. SIMO MATHIAS (jugement No 362/Cor du 19/04/2013) Unreported.

²³The 2 main actors are the law makers and the judges.

²⁴ Article 37 (3) of the Cameroon Constitution states that the President of the Republic shall guarantee the independence of the judicial power and that he shall appoint the members of the bench and of the legal department

²⁵*Nullumcrimen, nullapoena sine lege.*

²⁶ Section 17 of the Cameroon Penal Code

²⁷ Philippe A .ABC droit, Paris 1973

In any democratic society the 3 powers [28] that make up a government are independent and are seen to be actively functional. Whereas this independence is fully practiced in France as earlier said, the case in Cameroon is not the same, the executive power exerting more power and control over the others.

In making laws, the legislators create offences; fix a maximum and a minimum sentence that awaits any convict. For the judge to efficiently implement these laws, he is guided by a set of standards for the determination of punishment that a convicted criminal should receive based on the nature of the crime and the offender's criminal history [29]. The causes of aggravation or mitigation are spelt out in advance by the legislator.

In both systems causes for aggravation and mitigation are the reserve of the legislator. These causes of aggravation or mitigation are binding on the judge whereas mitigating circumstances which are not catalogued might not. The situation is same in both systems.

CAUSES OF AGGRAVATION UNDER INTERNATIONAL CRIMINAL LAW

These causes are prejudicial to the convict as his/her sentence will be increased as a result. They are prescribed by law in a limited and objective manner without taking into consideration the personality of the offender [30]. There are 2 causes of aggravation namely:

- Aggravating circumstance
- Recidivism

Aggravating Circumstance

This is a fact or situation that increases the degree of liability or culpability for a criminal act [31]. These aggravating circumstances are many but to ease the task, one would divide them into 2 namely: those that take into consideration the elements of the offence and those that take into consideration the personality of the offender.

²⁸ The said powers are; the executive, the legislative and the judiciary. Though these powers exist in Cameroon, they are not independent as in France. The executive is the overlord who dictates to the others. The Head of the executive is the Supreme Magistrate who appoints and dismisses magistrates at will. The case of Pascal Magnaguemabe is illustrative, By Decree No 20177359 of 06th July the 4th grade Magistrate was dismissed from the judicial corps.

²⁹ Here the status of the convict as a recidivist or 1st offender comes to play in aggravation or mitigation

³⁰ Philippe A .ABC droit, Paris 1973, page 311

³¹ BRYAN , A.GARNER,Black's Law Dictionary,9th edition, Thomson Reuters,2009,at page 277

Aggravating Circumstances linked to the Offence

These circumstances take into consideration the constitutive elements and the gravity of the offence. These circumstances are numerous with varying constitutive factors. Some of the factors are:

- The means used to commit the offence e.g. theft in a public place
- The methods used e.g. use of false key, weapon [32], vehicle, violence, poison [33]
- The time the offence was committed e.g. at night [34]
- Personality of the victim e.g. minor

Aggravating Circumstances linked to the Personality of the Offender

By virtue of the office occupied, status and position in life vis a vis others, many may easily become victims of offences committed as a result of such inequalities. Some of the people become very vulnerable and as a result their rights are abused. As such the ease with which the offender commits crimes becomes an aggravating circumstance as the victim may be helpless. It could equally be that the offender wills some parental or custodial powers over the victim. Factors here include but are not limited to:

- The relationship between victim and offender e.g. parricide, incestuous rape
- Circumstances that facilitate the commission of offence e.g. church leader and follower,
- Medical Doctor and patient,
- Employer and employee
- Public servant [35]

Recidivism

This is a tendency to relapse into a habit of criminal activity or behavior [36]. Some of the main roles of sentencing are for deterrence and chastisement with the hope that the convict will be remorseful and desist from committing crimes in future. If an ex-convict finds himself in court again standing trial for having committed the same or similar crime, then the court should be harder on him in sentencing than a first

³² Under section 157(1) of the Cameroon Penal code, resistance is punished with imprisonment from 3months to 4 years whereas if the offender or co offender is armed the penalty is imprisonment from 1 to 5 years.

³³ Under section 297 of the Cameroon penal Code (assault occasioning grievous harm), the use of weapon, explosive, corrosive or toxic substance, of poison or witchcraft, magic or divination are all aggravating circumstances.

³⁴ Under section233 of the Cameroon Penal Code armed rioting attracts a penalty of from 3 months to 2 years but if it is done at night the penalty is doubled under sub section 4.

³⁵ Section 132 penal code

³⁶ BRYAN , A. GARNER, Black's Law Dictionary,9th edition, Thomson Reuters,2009,at page 1384

offender. In France, recidivism is treated under section 132-18-1 of the new Penal Code whereas it is found under section 88 of the Cameroon Penal Code titled previous conviction of natural persons and corporate bodies [37]. In both systems there are also causes that may militate to lessen the sentence of a convict.

CAUSES OF ATTENUATION (MITIGATION)

These are facts or situations that do not justify or excuse a wrongful act or offence but that reduce the degree of culpability and thus may reduce the damage or punishment [38]. The established causes are:

- Infancy [39]
- Compulsion [40]
- Provocation [41]

Mitigating Circumstances

Unlike the above cited cause of attenuation which are binding on the judge, mitigating circumstances as aforesaid are not catalogued and are left to the discretion of the court. This discretion must however be used judiciously and the judgment must enumerate the circumstances considered mitigating.

THE JUDGE

The judge is the more active actor in sentencing as the fate of the convict lies on him [42]. The role of the judge in sentencing is crucial in any action. The Cameroon Criminal Code is very incisive

³⁷ The said section states : a recidivist shall be:

- a) Any natural person or corporate body who, having been convicted for a felony or misdemeanor, commits another simple offence classified as felony or misdemeanor within the time-limit running from the date of final conviction and which expires 5 years after the execution or expiry of the sentence:
 - b) Any natural person or corporate body who, having been convicted for a simple offence commits another simple offence within the time limit running from the date of final conviction, which expires 12 months after the execution or expiry of the sentence
- 2) In case of recidivism, the maximum penalty provided for shall be doubled

³⁸ See footnote 21 page 277

³⁹ Section 80(2) and 80(3) of the Cameroon Penal Code give children under 18 years old diminished penal responsibility. Under section 87 of the very code, the apportioning of penalty with regard to the diminished responsibility is clearly outlined

⁴⁰ Ibid Section 82

⁴¹ Ibid section 85

⁴² After conviction, it is the judge who writes down the sentence and reads it in court .Section 389(6) Cameroon Criminal Procedure Code.

on this point [43]. Once an accused has been convicted and sentenced, the sentence must be carried out forthwith unless challenged by an appeal duly filed. The judge is however subject to the rule of law in sentencing as he can neither invent offences nor penalties. This applies both to the French judge as well as to the Cameroonian judge.

THE LIMITED PROVINCE OF THE JUDGE (SCOPE OF SENTENCING)

The judge, though as powerful as illustrated above, is however restrained during sentencing as to the sanction or penalty he inflicts on convicts.

He is guided by the principal penalties, alternative penalties, accessory penalties and preventive measures in both systems. The said penalties are inflicted on the convict depending on the gravity of the offence or the classification [44] given it. Classification of offences in Cameroon falls under Section 21 of the Penal Code [45]. The said penalties are however different in magnitude and method of execution.

Principal Penalties

The judge in pronouncing or dishing out a principal penalty in Cameroon is guided by section 18 of the Penal Code [46]. The Cameroonian judge can

⁴³ Ibid. section 391 states: “where the court finds an accused guilty of an offence, it shall sentence him to the penalties provided by law”. The court is of course presided at by a Magistrate or judge as the case may be. Section 397 of the very code states that: when the court pronounces a sentence of loss of liberty, it shall issue an imprisonment warrant or a warrant of arrest against the convict.

⁴⁴ Offences are classified in order of gravity of sentence into: felonies, misdemeanours and simple offences

⁴⁵ Section 21 (1) states: Offences are classified as felonies, misdemeanours and simple offences according to the principal penalties provided for them, as follows:

- A felony shall mean an offence punishable with death or with loss of liberty for a maximum of more than 10 years and fine where the law so provides.
- A misdemeanor shall mean an offence punishable with loss of liberty or with fine ,where the loss of liberty may be for more than 10 days but not more than 10 years, and the fine more than 25.000frs
- A simple offence shall mean an offence punishable with imprisonment for up to 10 days or with fine of up to 25.000frs

⁴⁶ The principal penalties are:

- a) For natural persons
 - Death
 - Imprisonment
 - Fine
- b) For corporate bodies
 - Dissolution
 - Temporary or final closure

sentence a convict to death. Offences which can attract capital punishment in Cameroon abound [47]. The Cameroonian legislator in violation of the constitution of Cameroon (the constitution which states that treaties shall override local laws) and in violation of many international conventions which proscribe death penalty, just of recent voted a draconian 4th December 2014 law on the suppression of acts of terrorism to enlarge the scope of offences that attract capital punishment. Many are those who see in the said law full dictatorship and a calculated attempt to violently stamp out strikes and peaceful demonstrations. The scenario has been, described as political power fighting evil with evil and terror with terror [48]. In fact the Cameroon legislator has not defined what state security means in most of those offences that attract death penalty. Again government in order to cause the courts to met out death sentences on people may declare a state of emergency or siege such that offences which could attract only imprisonment would consequently attract death sentence [49]. The modes of carrying out execution are outlined in the penal code [50].

Unlike the Cameroonian judge, the French judge cannot sentence its citizen or offender to death [51] as the heaviest penalty is life imprisonment. For felonies convicts can be sentenced to from more than 10 years imprisonment to life imprisonment [52].

For misdemeanours both systems give maximum penalty to be 10 years but while Cameroon

➤ fine

⁴⁷ Ibid: they include but are not limited to,

- Hostility against fatherland section 102
- Treason, espionage, section 103
- Secession in time of war or emergency or siege section 111(2)
- Civil war section 112
- Concert against the security of state section 124(3)
- Depradation by band during war section 236
- Capital murder section 276

⁴⁸ Fabrice R, Le droit à la une du paradigme de l'ennemi

⁴⁹ Sections 111(2) and 236 of the Penal Code. The case of AGBOR BALLA, Dr FONTEM and BEBIXY pending before the Yaounde Military court is a glaring example of peaceful demonstrators who have been charged with terrorist acts thus likening the to the BOKO HARAM

⁵⁰ Ibid section 23 which talks of hanging or shooting. The judge must state the mode of execution in his judgment.

⁵¹ Death penalty was abolished in France in 1981. The last person executed in France was HAMIDA DJANDOUBI in 1977. The French constitution in its section 66-1 states that no one shall be sentenced to death.

⁵² Section 131-1 of the French Criminal Code

amount of fine is more than 25.000 FRS, that of France is equal or greater than 3705 Euros [53].

Alternative Measures

Many are of the opinion that for less severe offences alternative penalties instead of loss of liberty could be imposed on the convict as imprisonment has been found to be counterproductive in the rehabilitation and reintegration of convicts to the society. The measure in both systems is meant to decongest the prisons so prisoners can enjoy the barest minimum rights inherent on their human dignity. The French and Cameroon judges do apply these penalties with the common denominator being community work. While the French judge will impose in addition to community work, a probationary penalty and a pecuniary sentence [54], the Cameroonian judge would only add reparatory sentence.

Under Cameroon Penal code they fall under section 18-1 which states:

“the following are alternative penalties

- *Community service*
- *Reparatory sentence”*

Accessory Penalties

These are accompanying measures when principal penalties are passed for the effective execution of the said penalties and or for the public to be informed of the judgment or measures taken to ensure the offence is not committed again. They are used in cases of mitigation of punishment and equally the intensification of punishment in order to realize more efficiently the purpose of punishment. The publication of a judgment for example would deter people from committing the offence and equally inform the public of the dangerous nature of the convict. An ex-convict of theft or misappropriation will obviously not be employed by a bank. Under the Cameroonian law, they are found under section 19 of the Penal Code [55]. In some economic

⁵³ Ibid section 131-3

⁵⁴ Section 131-6 of the Penal Code of France

⁵⁵ Section 19 of the Penal Code states:

The following are accessory penalties

- a) for natural persons:
 - forfeiture
 - publication of the judgment
 - closure of an establishment
 - confiscation
- b) for corporate bodies:
 - ban, for a specified period of time, on the direct or indirect exercise of any or all of its activities
 - placement under judicial supervision for a specified period of time
 - closure, for a specified period of time of establishments or branches having served in the commission of offences
 - publication or media broadcast of the judgment

crimes these measures are applied [56]. They are found in France under sections 131-10,131-16 and sections from 66 to 70 of the new Code.

Preventive Measures

As alternative to imprisonment they are meant to stop an offence from the initial stage, pre-empt and stop it before it matures or subject certain types of convicts to special life styles. They are catalogued under section 20 of the Cameroon Penal Code [57].

The both systems vary only on the level of implementation and the degree of sophistication of some of the measures which are yet to be implemented in Cameroon. Security retention and the wearing of chains with electronic device to locate the convict are yet to be used in Cameroon. Castration for recidivist rapists could be ordered by the French judge whereas that is not possible in Cameroon.

Stiff as the law may be, the judge is not supposed to act as a robot. He is called upon to be flexible.

THE JUDGE'S DISCRETIONAL POWERS

The subject matter is viewed by many as paradoxical because the judge is bound only to apply the laws as they are made by the legislator.

Chief Justice John Marshall had this to say about the judge's discretion [58]:

"Judicial power, as contradistinguished from the power of the laws, has no existence. Courts are the mere

- any other accessory penalties provided for by special instrument

Equally of importance are sections: 30 to 35.

⁵⁶In the Case : Ministère Publique C/ ABAH ABAH Polycarp; the Mfoundi High Court after finding him guilty and sentencing him accordingly went ahead and ordered that he should never hold any official position

⁵⁷ Ibid section 20. A) for natural persons

- Ban on exercise of activity
- Preventive confinement
- Post-penal supervision and assistance
- Confinement in a special health institution
- confiscation

B) for corporate bodies

- Ban on exercise of activity for a specified period of time
- Confiscation
- placement under judicial supervision for a specified period of time

Equally of importance are sections 36 to 45 of the same penal Code.

⁵⁸ Osborn V. Bank of the United States, 22 U. S. 738 (1824).cullled

from https://en.wikipedia.org/wiki/Judicial_discretion consulted on the 21/07/2017

instruments of the law, and can will nothing. When they are said to exercise a discretion, it is a mere legal discretion, a discretion to be exercised in discerning the course prescribed by law; and, when that is discerned, it is the duty of the court to follow it. Judicial power is never exercised for the purpose of giving effect to the will of the judge, always for the purpose of giving effect to the will of the legislature; or, in other words, to the will of the law"

The judge's hands in sentencing should not be tied in such a way that he forgets that he is the person who heard the matter, watched the demeanour of the accused and convicted him. The legislators by providing minimum and maximum punishments have even made the job easier for the judges.

Powers When Choosing Between Minimum and Maximum Penalty

Even when the penalties are set a priori, he has the right to select either the minimum penalty, a penalty between the minimum and the maximum or the maximum as the case may be. This limited discretion is enjoyed by both judges.

Discretional Powers under Mitigating Circumstances

As aforesaid, they are not catalogued and every case turns on its facts. What is a mitigating circumstance in one matter may not be the same in another case. Under a criminal process, the respectful conduct of the convict during trial, his remorseful nature and a plea of guilt may all militate to have his sentence reduced [59]. At the end after sentencing, every judge has the desire to see his judgment executed no matter the penalty. When the penalty is loss of liberty, the judge makes sure he signs the necessary orders for the apprehension or handing over of the convict to the penitentiary officers for execution because the ultimate goal of a judgment is its execution.

During Executions

In Cameroon as in France once a judge hands down judgment, he becomes *functus officio*. However in France there are judges who are specialized for the follow up of and the implementation of penalties. This institution is lacking in Cameroon and the follow up is either done by the clerks of court or the penitentiary services. After this comparison it would be laudable to conclude while making some recommendations.

CONCLUSION AND THE WAY FORWARD

Even though the two systems are different in the way evidence is adduced, at the end of the trial they both follow the same principles. The effectiveness of implementation of law and the penalties is efficiently done by the French judge who is very independent unlike the Cameroonian judge whose carrier lies in the

⁵⁹ Section 354(2) Criminal Procedure Code, sections 54, 90, 91 and 92 of the Penal Code.

hands of the almighty executive. Needless to say here that, the Cameroonian judge is more repressive than the French the latter tilting towards implementation of alternative penalties and milder principal penalties unlike the former. In this regard, the following recommendations are inevitable.

The Cameroonian legislators should create a frame work of sentencing law that provides for alternatives and encourage sparing use of imprisonment. They should know they are working for the welfare of the people and not a political party and

vote laws that reflect the international standards and norms.

The Cameroonian judges should exercise discretion to impose alternatives wherever possible and, when imprisonment is unavoidable, make it as short as possible. They should assert their independence by avoiding imposing a death penalty grounding their reason on the fact that Cameroon has ratified treaties which proscribe death penalty and that the said treaties prime over local laws. Finally, the French should rethink alternative of castration which is dehumanizing.