

A Look at Challenges to the Effective Implementation of Safeguard to Fair Trial and Justice under the Cameroonian Criminal Justice System

Ncham Vanessa Ngwo^{1*}

¹Ph.D. Scholar, Department of English Private Law, Faculty of Law and Political Science, University of Dschang, Dschang, Cameroon

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*Corresponding author: Ncham Vanessa Ngwo

Ph.D. Scholar, Department of English Private Law, Faculty of Law and Political Science, University of Dschang, Dschang, Cameroon

Abstract

Fair trial as a principle which ensures the administration of justice is guaranteed in the constitutions of every democratic society. The right to fair trial is an essential right in all countries respecting the rule of law. Fair trial and justice constitute the back bone of all applicable procedures and substantial laws almost in every legal culture. This means that fair trial should be perceived as a “human right” issue and therefore an international concern which should comply and be measured by international norms. This paper aims at analyzing the challenges faced in the effective implementation of the safeguard to fair trial and Justice in Cameroon. The Cameroon criminal justice system has all necessary provisions aimed at safeguarding fair trial and ensuring a horizontal playing field where justice is been maintained. However, the question remains how effective does these laws safeguard the right to fair trial and Justice. The mechanisms put in place to ensure the safeguard to fair trial and justice is insufficient, ineffective and unsuitable in guaranteeing the safeguard to fair trial and justice. In the absence of fair trial and justice, the rule of law, human rights and consequently the idea of justice becomes illusionary.

Keywords: Challenges, Implementation, Fair trial, Safeguard, Criminal, Justice.

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INTRODUCTION

The fundamental human right to a fair trial is a pivotal norm that serves to protect individuals and uphold the rule of law. The right to fair trial is of legal essence and as stipulated in written text, its origin and features is as old as human existence [1]. This right dates back to the Biblical account of Adam and Eve in the Garden of Eden where God gave them an opportunity of being heard before passing judgment [2]. As a right in the form that is known today, it has a very long history signposted by struggles of different people to free them from the arbitrariness of power. The manner in which the primitive society dealt with serious crimes like murder, painted a picture of this rather long and arduous process.

The concept of fair trial is not only a corner stone of International Human Right Law but is enshrined

in the Constitutions of numerous nations including Cameroon. Commendation must be given to the plethora of legal instruments for the protection and enforcement of the right to fair trial and justice. These Legal instruments encompass International ratified convention, regional norm and national instruments. At the international level, we have the 1948 Universal Declaration of Human Rights [3], the International Covenant on Civil and Political Right [4], the International Convention against torture and other cruel inhuman or degrading treatment and the Rome Statute of the international Criminal court. At the Regional level, we have the 1988 African Charter on Human and Peoples Rights [5]. At the National level, we have the Cameroon Constitution of 1966 [6], the Criminal Procedure Code [7], the Cameroon Penal Code [8] and the Law on

¹ [http://www.Zcribed.Com/document/Constitutional and statutory Safeguards.](http://www.Zcribed.Com/document/Constitutional%20and%20statutory%20Safeguards)

² ibid

³ Hereinafter referred to a UHR.

⁴ Hereinafter referred to a ICCPR.

⁵ Hereinafter referred to as ACHPR.

⁶ LAW NO 96/06 OF 18TH January to amend the Constitution of June 1972 as amended by Law No 2008/001 of 14 April 2008.

⁷ Law No 2005/007 of 27th July 2005 on the Criminal Procedure Code.

⁸ Law No 2016/007 of 12 July 2016 on the Penal code.

Judicial organization [9]. Citizens in every given states are entitled to their fundamental rights and freedom and an accused persons stands as no exception to this protection.

The full realization of the right to fair trial leads to justice to the accused and victim. Theories of justice are a significant and abiding concern of moral, political and legal theory that has exercised the minds of thinkers since Plato and Aristotle.¹⁰ Whenever a human right is violated it leads to injustice. The concept of justice in itself is an intuitively understandable, and varies from one society to another. More often no distinction is made between justice in the legal sense, moral sense, ethical sense and sociological sense [11].

The different understandings of the concept of justice inevitably leads to different ideas of what it should entail; social order, fair distribution of assets and values, righteous life, fair and just judicial activity [12]. The essence of the theory of justice is to show that a judge cannot reach a just decision without a fair trial in the first instance. Justice must be administered in a way that achieves fairness for all, regardless of the identity of the parties. The focus of this paper is therefore to legally analyze the challenges faced in the effective implementation of the safeguard to fair trial and justice under the Cameroonian criminal justice system.

STATUTORY OBSTACLES TO THE APPLICATION OF FAIR HEARING IN CAMEROON

Court processes in Cameroon are governed by the Cameroonian Criminal Procedure Code that was harmonized in the year 2005 as Law No. 2005/007 of 27 July 2005 on the Criminal Procedure Code. The above law seeks to facilitate court hearing and the rapid administration of justice within a short period of time. Also the code provides for types of court processes that will serve due cause in trial. These processes are summons, bench warrants, remand warrants, search warrants, production warrants and warrants of arrest.

From the processes, justice must not only be done but must be seen to have been done. Delay to justice is hindrance to the principle of fair hearing. When a summon as per section 13 of the CPC is been issued by the competent court authority, the purpose is to command the person named therein to appear before the state counsel, an examining magistrate or a trial court on the date and hour mentioned in the summon. Regrettably, when the summons is been issue, the bailiff or the

judicial police will take the summon and makes little or no efforts to serve the accused. The case will be bound to suffer several adjournments.

Difficulties in Issuing Warrants

Section 1 of the CPC is to the effect that, a bench warrant shall be an order given by a court to any officer of the judicial police to bring immediately before him, the person named therein [13]. It will be worth noting here that there are some judicial police that when they go to file, they turn to negotiate with the accused. This was seen in the *People v. Tanjouno Fred* [14] where a judicial police officer went and saw an accused but informed the court that he did not see him. The PW1 testified in court that it was alleged that, the accused gave the sum of 500000 francs to the said judicial police not to arrest him.

A remand warrant as section 15 of the CPC shall be an order given by the state counsel in the case of a felony or misdemeanor committed flagrante delicto, the examining magistrate or the trial court to the superintendent of prisons to receive and detained a defendant or an accused [15]. The remand warrant is issued as per section 218-221 of the CPC. When the defendant is in prison custody, when he is needed in court, the prison authorities always indicate that the registry of the court did not save them with a production warrant as per section 17 of the CPC. This section of the CPC gives rights to judicial authority say the state counsel, examining magistrate or the trial court to the superintendent, as accused or a convict before him for trial. Warrant of arrest shall be an order according to section 18-24 given to an officer of the judicial police to arrest a defendant, an accused or a convict and bring him before of the judicial authorities in section 12 of the CPC.

Imprisonment warrant according to the CPC will mean an order given by a trial court to the superintendent of a prison to received and detained a convict for the sake of the promotion and protection of fair hearing, if someone (convict) is been sentence to imprisonment it means the right procedures of trial was followed so as he| she need to serve the imprisonment term therein. But in most cases in Cameroon, one is sentenced today for two years imprisonment, the next month you find the same person strolling in town. In most cases, the sentence is in default of payment in such cases if the convict pays the required sum and court charges he can go out of the prison [16]. This may be, to

⁹ Law No 2006/015 of 29thj December, 2006 amended and supplemented by Law No 2011/027 of 14th December 2011.

¹⁰ Raymond Wacks, *Understanding Jurisprudence: An Introduction to Legal Theory* {3rd Edition, Oxford University Press 2012}.

¹¹ Ibid

¹² ibid

¹³Section 14 of the CPC.

¹⁴ CDIB|55C/2008 {unreported}.

¹⁵ Section 15 of the CPC

¹⁶ This was the rulling in the *People v. NjoyaAzefor* where Justice Achu Ndalle Esq according to section 91 mitigated the sentence for Njoya Azefor to pay the sum of 150.000francs as fines and 3000francs for court

an extend abrogated by the right of bail, which it has been established that, as concerns the condition for granting conditional bail, it differs according to whether the accused is detained temporally or his sentence has become final. Bail may be granted for a person awaiting trial and persons convicted, but who have gone on appeal [17]. In the case of the *People. Fon Doh GahGwanyii III and 11 others* [18], the Ndop High Court on January 30, 2006, admitted to bail the principal suspect Fon Doh because of his poor health condition while the other convicts were refused bail. In this case, the accused persons were convicted and sentenced to 15 years of Imprisonment and a fine of 500,000FCFA each [19]. They appealed against the decision and bail was granted to him.

From the above analysis, one of the most striking questions with respect to fair hearing is whether the claim of the level of professional secrets as provided for in section 325(2) of the CPC which is consistent with the right to fair hearing as provided by the preamble of the 1996 constitution. Section 325(2) provides that.

Subject to the provision of section 322(2), a witness shall be bound to appear and take oath before given evidence. The oath taking of the witness shall not receive the witness of his obligation to keep secrets which have been confided to him by reason of his profession.

Corruption in the judiciary

The law, when confronted with corruption becomes confused and overcome by the criminal vitality and ingenuity of man. Social customs, political consideration, also hamper its effectiveness in the fight against corruption. Generally, although the law is able to fight isolated and specific acts of corruption, it is powerless in structural and systematic corruption situation. The law may, punish persons guilty of corruption but it is not equipped to shake the roots and structure of corruption in Cameroon. On the whole, as paradoxical as that may sound, corruption needs to be refined, while at the same time fundamental constraints should be tightened, against those that hinder and check its spread, by relieving the law of its constraining force while at the same time betraying the fear that in spite of everything the law inspires corruption demonstrates the difficulties that may be encountered in fighting it with the law.

Many developing countries are caught in a vicious circle of poverty, weak institutions, low levels of legitimacy and low economic growth rates. Corruption appears as the common denominator to these vices that beset most developing countries.

The judiciary in Cameroon which is expected to be a major actor in the fight against corruption has also fallen short of expectation. There are significant weaknesses in the Cameroon judicial systems that prevent the judiciary from playing a more active role in the trial process, while making it more vulnerable to bribery and undue influence. The judiciary has long been considered a subordinate authority rather than a constitutional power, and courts have continued to be unduly influenced and weakened by the legislative and executive branches of government. The lack of resources available for the administration of the judiciary and the low salaries and limited training of judges also hampers their efficiency and in the long run slow down their strides to render justice from the Cameroonian society. Corruption in the judiciary can occur at any stage of the judicial process. Cases can be affected by corruption even before they reach the court, if law enforcement agencies have been paid off or influenced to manipulate evidence. In this case, corrupting the public prosecutor can be enough to block a case from going forward. Judges might accept bribes to delay cases, to refuse appeals or to take decisions in the interest of one of the parties. Judicial staff might accept kick-backs to deliberately lose or alter files.

CHALLENGE RELATING TO THE INDEPENDENCE AND IMPARTIALITY OF THE TRIBUNAL

In spite of the need for judges, prosecutors and lawyers to exercise their professional responsibilities in true independence, experience shows that they are often subjected to pressures of various kinds aimed at compromising their ability to do so. For instance, although the way in which judges are appointed varies from country to country, there may be a danger to their independence where they are appointed exclusively by the executive or legislature or even where they are elected. A further threat to independence is posed by lack of security of tenure, as arises in countries where judges are generally employed on temporary contracts. Such insecurity may take judges more susceptible to inappropriate outside pressure.

Inadequate remuneration may also constitute a threat to the independence of judges in that it may for instance make them more amenable to corruption. Furthermore, the independence of judges, prosecutors and lawyers is frequently threatened by the refusal of the Executive to allow them to organize freely in professional associations. For instance, where the executive issues licenses to lawyers and obliges them to exercise their profession as members of state-run professional organizations, they cannot carry out their work independently. However, judges, prosecutors and lawyers are frequently also subjected to other kinds of

charges and in default of payment will serve an imprisonment term of 12months.

¹⁷ Ewang Sone Andrew “Maitrise lecture notes on litigation”, University of Dschang, (2007), Unreported.

¹⁸ Suite No HCND/2C/2005/2006 (unreported).

¹⁹ Ibid

persecution. Such acts may involve public criticism by either the Executive or Legislature aimed intimidating the legal professions, but they also often take the form of arbitrary detentions and direct threats to their lives, including killings and disappearances [20]. In some countries the fact of being a woman lawyer further adds to the precariousness of the profession. Because of the willingness to take up the defence of cases involving the sensitive issue of women's rights, these lawyers face intimidation and violence, sometimes relating to death [21].

The threats and attacks described above are not only perpetrated by state authorities, but are frequently also carried out by private individuals, either independently or in connivance with bodies such as criminal organizations and drugs cartels [22]. Clearly, unless judges, prosecutors and lawyers are able to exercise their professional duties freely, independently and impartially, and unless the executive and the legislature are likewise always prepared to ensure this independence, the rule of law will slowly but steadily be eroded, and with it effective protection of the rights of individuals. As can be seen, it is the entire structure of a free and democratic constitutional order that is upheld by an independent and impartial judiciary, independent and impartial prosecutors and independent lawyer.

Free access to court and fair trial are well recognized and protected by law in Cameroon. Article 14 of the ICCPR provides that every person has the right to a fair hearing, that is, the hearing should be public and within a reasonable deadline before an independent and impartial court. This article further provides for minimum standards to ensure a fair trial namely; presumption of innocence, respect for the right of the defence, independence and impartiality of courts, jurisdiction of judges, and publicity of hearing except for proceedings held in camera, reparation of mistakes or judicial abuses, respect for the authority for *res judicata*.

Delays in the Administration of Justice

Delay of justice in Cameroon is almost becoming a normal happening. It is often said justice delayed is justice denied. The constitution and law provide for the right to a fair and public hearing, without undue delay, in which the defendant is presumed innocent, but authorities do not always respect the law [23].

In 2016, we saw cases of people who were arrested in the two Anglophone Regions of Cameroon

suspected of participating in the crises. Some of them till date have not had the opportunity to be tried and still rot in jail. The law provides for a maximum of 18 months detention before trial, but many detainees waited years to appear in court. Also, some pre-trial detainees had been awaiting trial for more than two years. Research has found that along with long pendency of cases, issues such as repeated adjournments and courts refusing to simplify processes add to judicial delay. More than 75 percent of court time is spent on reasons other than court functioning. This study holds that; there is a huge delay due to the processes of court functioning during the trial stage for reasons such as non-attendance of witnesses, non-appearance of lawyers, lengthy oral arguments, arbitrary adjournments and delayed judgments.

Furthermore, it takes several years for cases to be tried in Cameroonian courts. A case taking this long to be resolved is symptomatic of an inefficient and ineffective judicial system. Any justice delivered after the appropriate time limit as prescribed by the law would be bereft of its true meaning. The bottom line is that today it has almost become an accepted fact in Cameroon that cases must last several years in court before they are concluded. Under such circumstances, citizens would naturally be reluctant to initiate actions for enforcement of their basic rights. There is no doubt that such delays not only erode public confidence in the judicial process but also undermine the very existence of the courts as litigants would be reluctant to push forward their matters to court taking into account the delay it will cause, even though speedy trial is guaranteed in Cameroon [24]. In criminal matters, the preamble of the constitution of 18 January 1996 affirms, "the law shall ensure the right of every person to a fair hearing before the courts" [25].

The ICCPR and the ACHPR provide a procedural framework that Cameroon strives to progressively adapt as illustrated in *SOCAR v. Ets NGOWOUE* [26]. In effect, the Supreme Court held that: Everyone has a right to a fair and public trial that is held within a reasonable time-limit by an independent and impartial court." Unfortunately, the Supreme Court does not define the meaning of the expression "within a reasonable time". However, to throw more light to that, we would have to make reference to the Nigerian case of *Gozie Okeke v. The state* [27]. In this case, Justice Ogundare held that:

"The word "reasonable" in its ordinary meaning means moderate, tolerate or not excessive. What is reasonable in relation to the question whether an accused has a fair trial within a reasonable time

²⁰See generally, UN doc, E/CN.4/2000/61, Report of the Special Rapporteur on the independence of judges and lawyers.

²¹ *Ibid.*

²² *Ibid.*

²³ Cameroon 2018 Human rights Reports

²⁴See sections 13(4), 19(2) (b), 89(1), 119(2) (a) of the CCPC. See also the Preamble to the 1996 Cameroon constitution as amended by Law no. 2008/001 of 14 April 2008.

²⁵The preamble of the 1996 constitution.

²⁶ Judgment No.23/CC of 13 November 1977.

²⁷ (2003) 15NWLR pt.842.p.25

depends on the circumstances of each particular case, including the place or country where the trial took place, the resources and infrastructures available to the appropriate organs in the country. It is therefore misleading to use the standard or the situation of things in one or a particular country to determine the question whether trials of criminal cases in another country involves an unreasonably delay... A demand for a speedy trial, which has no regards to the conditions and circumstances in this country, will be unrealistic and be worse than unreasonable delay in trial itself”.

His lordship went further to state that in ascertaining whether the trial of the accused person was held within a reasonable time, the following four factors are to be considered, namely, “the length of the delay, the reason given by the prosecution for the delay, the responsibility of the accused for asserting his rights and prejudice to which the accused maybe exposed” [28].

Nevertheless, it is clear that any trial which lasts more than the time limit prescribed by the law can hardly be said to be “within a reasonable time”. However, even as we insist on the desirability of speedy disposal of cases, one must bear in mind the need to give all parties the opportunity to present their cases before the final decision by the court.

Moreover, justice delayed is justice denied and the effect will be the overcrowding of Cameroonian prisons. Overcrowding remains a significant problem in most prisons, especially in major urban centers of Douala Yaoundé, Buea, and Bamenda. Officials held prisoners in dilapidated, colonial-era prisons, where the number of inmates is as much as five times the intended capacity [29]. The reason behind this is that the colonial master never foresaw population growth when constructing the prisons; as such it affects today’s prison condition. The colonial masters left years ago, but the present government finds it difficult to allocate funds for the construction of a prison that meets the present situation. Authorities often held detainees in pre-trial detention and convicted prisoners together [30].

To ameliorate the effects of delay, foremost would be to efficiently manage judicial time. Listing an optimal number of cases to be heard on a daily basis is vital to ensuring that judicial time is not spent on unnecessary adjournments and that lawyers are prepared for their cases knowing that they will be heard with certainty. Courts must work towards better case

management framework to ensure that cases are scientifically listed taking into consideration the stage of the cases and the amount of time they would require to be heard. We re-iterate our call to all relevant authorities to respect international and regional standards against inhumane and degrading treatment of prisoners. To respect the right of prisoners provided both in national and international Human Rights Instruments, important aspects like the general hygiene conditions and access to health care and material needs must also be improved. Physical and mental health issues must be addressed with adequate measures [31]. The overall goal should be to guarantee the respect of already established standards like the Bangkok Rules amongst others, and to ensure that prison serves the purpose of reformation and provide an enabling environment for personal development, with view to combating discrimination against prisoners. This will ensure that the fundamental Human Rights of prisoners are safeguarded.

Shady Separation of Powers in Cameroon

The problem of executive dominance is not only true of highly centralized and manifestly illiberal constitutions such as that of Cameroon. The imbalance in power among the three branches of government often means that the judiciary is not as independent as it should be and therefore cannot freely rule against the government, especially when dealing with delicate and sensitive issues. Executive lawlessness has become very common in our country Cameroon. Executive dominance is often aggravated by the hegemonic influence of the dominant parties, which are often effectively controlled by the president and a small inner circle of cohorts. As a result, the one party dominated parliaments merely rubber stamp laws put before them by the executive, in much the same way as was done by the pre-1990 one party parliaments [32].

The word “independence” can be understood in different ways depending on the context in which it is employed. In this context, it means not subject to control or influence of another, not associated with one another entity and not dependent on contingent on something else. It is manifested by the freedom of the judges to enter a judgment not bound by any hierarchy or pre-existing norms [33]. During the solemn session of the Supreme Court of Cameroon on the 26th of February 2010, the Chief Justice, Justice Alexis Dipanda Mouelle intimated that the independence of the judiciary is an essential condition to quality justice. He further identifies the threats affecting the independence of judges with the most grievous being financial pressure, social pressure

²⁸ Ibid.

²⁹ Transparency International- Judicial Transparency International retrieved from <http://www.transparency.org/topic/detail/judiciary>. Accessed on 5/11/2019

³⁰ Cameroon 2018 Human Rights Report

³¹ As per Rule 10 and 12 of the Bangkok Rule

³² Charles Magna Fombad Enyinna Nwauche, « Africa’s Imperial Immunity, Immunity and Accountability”, op. cit, p.

³³ Gerard Emmanueuel Kamdem Kamga, “The political (in) dependence of the judiciary in Cameroon: fact or fiction?” centre for sexualities, Aids and Gender, University of Pretoria, 2018, pp-1-17, p. 2.

and political pressure [34]. Financial pressure according to him led to corruption and the learned Justice stressed that such pressures should be eliminated or allayed by some mechanisms protecting judges. For over the years this strong observation was made by the highest justice in the country, nothing has been done to guarantee the independence of the judiciary in Cameroon. This paper therefore seeks to critically examine the ability of the judiciary to fight against corruption when its independence is not properly guaranteed and to militate for Cameroon's compliance with international standards on judicial independence. Owing to its diverse colonial background, Africa inherited various legal traditions, which in turn have led to different ways of selecting judges and judicial independence.

Despite these differences in approach, the two ones are the common law approach in Anglophone Africa and the civil law approach in Francophone. The collapse of the judicial integrity affected each of these legal traditions, even if the extent of this varied from one tradition to another and within these legal traditions, from one country to the next. Taking into account the complexity of the legal traditions that are the subject matter of this research is to unveil some antipodal hurdles that beset judicial independence in Cameroon.

Matters pertaining to judicial independence such as security of tenure, financial security, immunity and institutional independence are simply left to the discretion of the executive power. During a 2018 solemn session of the Supreme Court of Cameroon, its former chairman Alexis Dipanda Mouelle referred to the independence of the judiciary as the gist of Quality justice [35]. He went on to identify some threats to the independence of judges namely, social pressure, financial pressure and especially political pressure. Dipanda was of the view that such pressures should be eradicated or mitigated by some mechanisms protecting judges.

The lack of judicial power in Cameroon is very limpid [36] that a major aspect necessary to secure the

effective functioning of the liberty judge is an independent judiciary vested with adequate powers to sanction executive disrespect for court orders. That point was affirmed by the African commission in *Constitutional Rights Project & Anor v. Nigeria* [37] when it stated that a provision on habeas corpus is of no use without an independent judiciary to apply it.

With regard to strengthening the judiciary, a Cameroonian judge has suggested that a Special Judicial Police Force be created and placed under the distinct control and supervision of the judiciary [38]. In addition, the Penitentiary should effectively be under the judiciary in order to enhance its powers to enforce judgments [39]. Two problems are discernible here. First, execution of the law is the responsibility of the executive arm of the state as provided for by the Constitution [40]. Creation of a Special Judicial Police Force under the supervision of the Judiciary can be seen as encroachment on executive power and consequently, be inconsistent with the principle of separation of powers. Secondly, a judicial police force under the distinct supervision of the judiciary implies that such an institution would be part of the judiciary. As a result, it would be plaque with the same problems that the judiciary is faced with. The fact of being a police force may not automatically confer on the judicial police the necessary power or independence. With regard to the penitentiary Services, it should be noted that this institution was transferred from the Ministry of Territorial Administration to the Ministry of Justice in 2005 without significant effect on the ability of the judiciary to enforce its judgments [41]. Thus, while these suggestions might appear attractive, they are of doubtful utility.

In Cameroon, judicial power can be further secured by making provision for a clear and transparent disciplinary procedure subject to an independent judicial review [42]. Furthermore, it is necessary to guarantee financial autonomy of the judiciary and adequate remuneration of judges. It is now widely recognized that financial autonomy is vital to judicial independence and hence, judicial power [43]. The judiciary must be

³⁴ Ibid

³⁵ Gerard Emmanuel Kandem Kamga, "The political (in) dependence of the judiciary in Cameroon: fact or fiction?", op.cit, p.2.

³⁶ Since there is no independent judiciary in Cameroon, judges endeavor to toe the governments line on controversial issues: Joseph Nzalie Ebi, "The structure of succession law in Cameroon: finding a balance between the needs and interests of different family members", Unpublished Ph. D. Thesis, University of Birmingham, October 2008, p.12.

³⁷ Communication No. 143/95-150/96, ACHPR, 1996.

³⁸ In this light, Decree No. 2013/131| o 3 May 2013 on the establishment, organization and functioning of the specialized Corps of Judicial Police Officers of the Special Criminal Court is highly welcomed. It only

suffices that such special services are extended to the whole judicial process.

³⁹ Muambo Evande, "Empowering the Judiciary: Making Judicial Power Possible" op.cit., p.

⁴⁰ Art 12(2) of the 1996 Constitution.

⁴¹ See Decree no. 2004/320 of 8 December 2004 organizing the Government of Cameroon by Virtue of which the Penitentiary Service was transferred to the Ministry of Justice.

⁴² UN Basic Principles on the independence of the Judiciary, principle 20. See also Charles Fombad, "A preliminary Assessment of the Prospect, op.cit" at p. 249.

⁴³ See Article 7 of the UN basic Principles on Independence of the Judiciary and Article 3 of the Latimer House Guidelines on Judicial independence

adequately funded and must be in control of the administration of the budget [44]. Judiciaries that are reliant on the executive for financial resources are susceptible to pressures to achieve outcomes that are favorable to the executive [45]. It has been suggested that there should be a return to the practice in the former West Cameroon where the Judiciary's budget was controlled by the Chief Justice through the Registrar [46].

This eliminates the executive's ability to limit the judiciary's budget as a means of exerting its influence over the judiciary. In this way, the judiciary will be able to meet its internal needs directly without undergoing lengthy bureaucratic procedures and administrative bottlenecks. Judges who are not sufficiently remunerated and are subject to the whims and caprices of the executive are likely to be influenced by the latter in order to protect their (judges) financial interests. Cameroonian judges should, therefore, be adequately remunerated to minimize their susceptibility to external influence. Their salary should be secured by law and this law needs to take cognizance of the level of remuneration, allowances and benefits of public servants of equivalent ranking.

CHALLENGES INVOLVED IN THE ACCUSED RIGHT TO BE HEARD

Although the preamble of the 1996 constitution of Cameroon guarantees the right of everyone to be fairly heard by the courts, it actually does not specifically safeguard the access for everyone to be heard by the competent court. This is the more reason; the same constitution restricts disputes between the state and administrative authorities to be heard only by the administrative bench of the Supreme Court [47]. Meanwhile the law organizing practice at the Supreme court does not permit parties to appear in the Supreme Court in person. How then can a litigant make an appraisal of how his case was determined by the administrative court in his absence? This is a fundamental breach to the right to fair hearing principle which requires that, hearing is supposed to be open to the public with an opportunity given to litigants to be orally heard.

Challenges to access court due to policy

In criminal matters usually, it is the state that bears the responsibility of absorbing most of the cost proceedings. This involves the fact that, judges are civil servants and like bailiff, they are indemnified by the state as process servers to serve the court. Hindrance due to policy can be observed in regulatory texts which impose certain threshold fees to be paid by a civil claimant before the incidental cost which may arise during hearing like locus fee, expert fees, and Bailiff's fees. Solicitors which

may also constitute a hindrance have not been considered under this heading because such fees are freely negotiable. This also goes with the minimum pay wage in Cameroon of about thirty-two thousand francs in most instances will hinder a prospective litigant from accessing the courts [48].

The cost of filling a claim as a hindrance to the right to fair hearing

Cameroon being a developing country has a minimum wage level not up to forty thousand francs. Ministerial circular No. 00012/MJ/SJ/DAG of 13/05/1996 stipulates that 5 percent of the total value of a claim must be paid as deposit into court before a claim is entertained. This legislation does not encourage the spirit to be heard by the court because, not all people who intend to be heard by the courts cannot have the financial means to sponsor same. This was the issue in *Meme Lawyers Association and two others v. Registrar in Chief Court of First Instance Kumba* [49] where the plaintiff sought to challenge this ministerial policy. The decision of Justice Ayah Paul Abine could be registered as one that encouraged access to courts because he held that all collection by the defendant of 5% of the quantum of the claim or any amount as deposit as a condition precedent to filling suit is illegal.

Challenge in relation to the locus fees

It is a strange practice that a judge will ask for fees meanwhile it has been well established that the state bears the cost of prosecuting a criminal case. Neither the Supreme Court Civil Procedure rules cap 211 nor the Criminal Procedure code applicable in the courts of Cameroon, impose any locus fees on litigants.

Also, it has become a regular practice in most courts that any case concerning an interest on land is subject to the visit of the locus. This is very obvious in cases of destruction and disputes over boundaries. Most judges have turned to regard this as a money-making venture by discretionally imposing exorbitant amounts as locus fees without any receipt been issued out upon paying the fees. It is for this reason that, lawyers of the Fako Lawyers Association (FAKLA) questioned the act of one of the magistrates of the court of First Instance in Limbe who did not only ask for exorbitant locus fee of seventy thousand franc from each party to the proceedings but even dared to say that, he was working according to the instructions of the president of the Court of Appeal. From both parties, a total of one hundred and fifty thousand franc as locus fee to visit a vegetable farm which was not up to five kilometers away from the Limbe Court was fixed by the magistrate. The plaintiff a peasant farmer in this unfortunate situation abandoned her cause

⁴⁴ Love more Mahugu, "Constitutional Protection of the Independence of the Judiciary, op.cit "at p.244.

⁴⁵ James Spigelian CJ, "the Rule of Law and Enforcement", 26 University of New South Wales Law Journal, 2003, p. 16.

⁴⁶ Carlson Anyangwe, The Magistracy and the Bar in Cameroon, op.cit, at p.43.

⁴⁷ Section 40 of the Cameroon Constitution

⁴⁸ Principle 17(2) of the ICC Statute

⁴⁹(2001) ICCLR 1-125 P.11.

of action due to her inability to raise the amount of the money asked by the judge. It may be observed that, an assessment of the entire vegetable farm, plus the vegetable which was there did not worth seventy thousand francs. Such an act of this magistrate constituted a vital breach of the accused right to fair hearing.

Challenge in preparing a defense due to denial of bail

Bail is defined as a measure to obtain the release of oneself or another by providing security for future appearance [50]. Bail has not been defined in the CPC but emphasis has been laid on bail in the CPC. Bail in Cameroon is applicable to all criminal cases except for carrying a death sentence or life imprisonment. It is a right which may be denied only as an exception as provided under the CPC. It is common practice in all courts for the prosecution to object application for bail. This type of rejection must be criticized because most often, all the relevant evidence in the case are fully forwarded to the state counsel. In fact, it may be in this type of situation that the evidence will be interfered with by an accused person who is detention.

Bail has been considered as an aspect of fair hearing for two reasons; the first reason is that, an accused who is in detention is presumed innocent and cannot be under such conditions for an unreasonable time since detention is tantamount to punishing an accused when he has not yet been proven guilty. Denial of bail may breach the fair hearing rule of presumption of innocence. Secondly, an accused who is in detention may not raise adequate financial resources in order to enable him prepare for his defense.

It may be observed that, denial of bail is an exception to the general principle of presumption of innocence. But it is a strange practice in Cameroon under the CPC that bail is usually denied for cases tried under the procedure of flagrante delicto or for a case in which the accuse with an offence under the Penal Code carrying a sanction of death sentence, life Imprisonment or under the new law on terrorism in Cameroon.

Language barrier

In Cameroon, there is generally the problem of language barrier especially with suspects arrested from the English speaking jurisdictions and ferried to the French speaking jurisdictions for trial. At times, the suspects are not really aware of the exact charges against them since the “process Verbale” is mostly drafted in French. It was believed that the putting in place of the National commission for the promotion Bilingualism and Multiculturalism in 2017 [51] could be a saving Grace.

After about five years of its existence, its impact is yet to be clearly ascertained especially in the field of judiciary.

Another challenge is at the level of having a competent interpreter so as to ensure the right of an accused to an interpreter so as to ensure the right of an accused to an interpreter. Most issues faced at this level result from the difficulty to get hold of a fluent and competent interpreter who will be able to listen, interpret and transpose the exact intensions of the accused or the court especially with the difficulty in perfectly comprehending the two official languages. It becomes more difficult in rural areas where most accused persons are local farmers who can neither speak nor write in the two official languages but of their native language.

Apart from that, there are some of the rights that are constantly violated especially the right to medical attention, as many prisoners have lost their lives because of inadequate medical assistance.

CONCLUSIONS AND RECOMMENDATIONS

In the respect of human right and that of human dignity provided by relevant human right provisions of essence in the application of every state law in which human right is of utmost importance of recognition. Cameroon is not an exception in the application and enforcement of these laws in which that of the right to fair trial is of primordial essence.

The law is modern, global and capable of standing the test of time. If the laws are properly applied to the extend these rights are upheld, an accused standing trial under the Cameroonian criminal proceedings cannot be hopeless: he cannot be unjustly prosecuted and prejudicially convicted and this will of course, consequently, safeguard his liberty. On this note, we therefore, recommend the following:

Firstly, the government should commit her genuinely to the fight against bribery and corruption. Corruption in the judicial system breaks the basic principle of equality before the law and deprives people of their right to fair trial especially to the poor. As Akere Muna puts it, “if money and influence are the basis of justice, the poor cannot compete” [52]. In a corrupt judicial system, money and influence may decide which cases are prioritized or dismiss. Perpetrators get away unpunished while victims are left with no answer and no justice. At the level of courts in Cameroon for example, litigants always use money to buy their way out. They either go before or after the day to negotiate when litigants does the, if they get to magistrate that wants to enrich themselves and keep on adjoining certain instance

⁵⁰Bryan A. G., Black’s Law Dictionary, Seventh Edition. Minnesota: West Group (1999)p. 135

⁵¹ The commission was created by presidential Decree No.2017/013 of 23rd January 2017 as an advisory body with legal personality and financial independence. The

commission is placed under the authority of the President of the Republic.

⁵² Transparency International Global Corruption Report 2007: Corruption in the Judicial system

as seen in the field. This act of corruption does not only make justice unaffordable for the poor, it ruins the capacity of a justice system to fight against corruption and to serve as a beacon of independence and accountability [53]. The situation is not different in cases of bail deposit. The magistrate also in a case in which he/she is hearing has the discretion to determine the amount of bail in a particular case. The legislators should legislate on what should amount as to the amount of bail deposit taking cognizant of crime in which an accused is seeking bail, standing trial in that particular court. In addressing the aspect of bribery in the judicial system, I recommend that judicial personnel should be adequately trained receive salaries and pensions. Increase in the salaries of judges will aid in eliminating the necessity to supplement the paltry income with bribes [54] thus making them less vulnerable to bribery which will ensure equal treatment of all before the law which is a pillar of every democratic state.

Also, the state should embark on a serious and vigorous legal sensitization to expose to the people to the people certain aspects of criminal proceedings like the trial rights of the accused. The cross section of litigants in Cameroon is illiterates. This is a disability that causes people not to understand the basic explanation in English or French. In this situation, the state should embark on educating the population of Cameroon vital aspects of the Law in Languages that they will better understand. This legal sensitization can be done I local community, radio, local television station. These problems have been 20% solve in the sense that there is a National Commission for Bilingualism and Multi culturalism, which can work in this light as the wheels of the government be ensuring that, the over 250 local languages that we are having in Cameroon can be elevated and the indigenous population will benefit.

The right to be represented by counsel should be emphasized in administrative cases in order to ensure equality of arms. Besides, the possibility to grant bail should apply to all charges [55] in order to give an equal opportunity for an accused just like a civil party to prepare his side of the case. It has been observed that, in order to deal with opponents, the issue of total denial of bail for charges carrying life imprisonment and death sentence has often been maliciously handled by the prosecution in certain instances. In this connection, it suffices for someone to be charged for example for

murder or aggravated theft and will indefinitely detain by in prison or kept in custody.

More so, judicial appointments constitute one of the factors which impede the efforts put up by the courts in the fight against corruption practices in Cameroon. Where the government is perceived to appoint deferential judges-or friends-to the bench, it damages trust in the judiciary, regardless of whether the judges are in fact biased in their rulings. We therefore recommend that, judges should be elected by members of the Cameroon Bar Association amongst the lawyers of the Bar and Chief Judge should be elected as well. This idea is to depart from the situation where the president of the Republic acts as the overall boss of the judiciary who appoints the chief Judge of the Republic. The Judges elected should have fix tenure [56] such that once a judge is appointed to the Bench; he will not be sent back to the legal department. This ameliorates the principle of neutrality under fair hearing. Where judges are appointed for a specified mandate period and particularly where the terms of service are renewable and short, judges have an incentive to rule with an eye on the interests and preferences of those for whom they depend for reappointment (or new employment after they finish their judicial tenure). We contend that, by electing judges, they will not be functioning at the pleasure of the government of the day [57]. Most Anglo-Saxon countries like Nigeria have their judges elected by the Bar from the lawyers who have distinguished themselves in legal practice. In Cameroon, judges posted in the Anglophone jurisdiction are trained with those to work in francophone jurisdiction in the Higher School of Administration and Magistracy (ENAM) which is a government institution and later posted at the pleasure of the President of the Republic acting as chairman of the higher Judicial Council. From thence, these judges work under the fear of the executive arm of government and cannot deliver according to the dictates of a fair trial [58]. Where judges are appointed for specific mandate period and particularly where the terms of service are renewable and short, judges have an incentive to rule with an eye on the interests and preferences of those for whom they depend for reappointment (or new employment after they finish their judicial tenure). Thus, in Cameroon, one of the mechanisms for enhancing judicial independence is a transparent and objective system for judicial appointments. All in all, the legal framework ought to be rendered quite conducive so as to permit the Cameroonian judge to perform his or her role without

⁵³ Ibid

⁵⁴ Maer Noel Pepsy(2003), “ Corruption and the Justice Sector”, Washington, management international, p.8.

⁵⁵ Bail is granted in cases carrying a death sentence or life imprisonment under strict conditions. This is because every accused is presumed innocent.

⁵⁶ See the African Commission on Human and People’s Rights Principles and Guidelines on the Right to trial and legal assistance in Africa.

⁵⁷ Most judges fear executive sanctions which can transfer these judges at will. Besides, the judges are transferred to the bench or to the legal department and vice versa.

⁵⁸ This invariably means the executive arm of the government will be a party to all legal proceedings.

fear or favor. In this way, the rule of law would be applied rigorously, for the relationship between the state and the individual is an inherently unequal one in which the individual is confronted by a state that enjoys the monopoly of power and violence. It is the rule of law that protects the individual from state power. The rule of law should not depend on the whims and caprices of strongmen; the protective wall of the rule of law built around the weak individual should never be broken [59]. Beside, more judges have to be recruited and more courts created in relation to the population ratio⁶⁰ so that they can determine the numerous cases within a reasonable time. The reason for this is obvious because, the course list for a typical criminal court sessions especially in the court of First Instance usually enlist about forty cases for the day. By so doing, courts will not take the pleasure of over loading their course list just for adjournments.

Equally, that a publication of all court judgments should be mandatory. The inability to publish all judgments of a judicial nature has undermined the principles of the African Commission on Human and Peoples Right [61].Cameroon a signatory to this convention which applies pursuant to section 45 of the 1996constitution as revised. The government ought to publish all court judgment of a judicial nature for appraisal. This will enable the public to know how a particular case was determined and whether the accused trial rights were observed. This will also contribute to improving the quality of judicial hearings. An example drew from countries like England which has several law Reports and Nigeria which even has a weekly law Reports.

Also, we recommend that filing fees should be reduced. The low minimum wage in Cameroon plus the exorbitant filing fees involved in instituting cases have been seen to adversely affect the accused right to fair trial. It is for this reason that I recommend that filing fees should be reduced to a minimal rate such that an aggrieved party seeking justice can have the opportunity

to be heard. This issue was highlighted in Meme Lawyers association and 2ors v and Registrar in chief, court of first instance Kumba and registrar in chief court of first Instance kumba [62] where a perspective litigant may be denied his hearing right because of the imposition of 5% fees on the amount claimed in order for all claims to be receivable by the registry [63]. In line with this, we also recommend that High Courts and Courts of Appeal should be created in area where litigants from remote areas can conveniently access them [64]. Although the judicial organization law has established the various seats of courts as a function of the administrative collectivities, yet, we believe that, taking justice nearer to the people will ameliorate fair hearing and the dispensation of justice in Cameroon. It is of course incumbent on the state to ensure that, every potential litigant has access to the court. This is the African Commission on Human Rights provides that; states shall ensure that judicial bodies are accessible to everyone within their territory and jurisdiction without distinction [65].

An increasing flexibility in strengthening judges competence and professional norms. Training and resources that make judges more professionally secure and skilled, reduces risks of submitting to pressure. By creating national, regional and international forums where judges meet, share experiences, give support and exchange recognition, professional norms develop and reputations matter more. This raises the ‘reputational costs’ of succumbing to undue influence and may contribute towards a stronger sense of social purpose. It may also create material incentives, if judicial integrity and professional competence are seen as factors in appointments in appointments to attractive positions.

We equally recommend that, sanctions should be meted out against inadvertent judges who delay cases by making late appearances in court. The consequences of such delays in determining cases have generally led to the option of summary justice amongst individuals and communities [66]. It has become a usual practice that

⁵⁹ Tazoacha Asonganyi (2012), “Cameroon Judicial Power: a tool in the hands of the Executive Power.”, L’Effort camerounais, No. 535, 15-29 August, p. 10. Some shades of opinion think that the legislature and the judiciary have abandoned their Constitutional prerogatives in the ace of a super President whom they describe as the alpha and omega of the state; Dominique Mbassi, “Executif, Legislatif et jJudiciare, la faillite des pouvoirs: l’hyperpuissance d’un hyperpresident,” Reperes, No 386, Mercredi, 20 aout 2014, p.2.

⁶⁰ The last population census in Cameroon was carried in 2023 and the statistics declared in 2005. Since then, no population census has been in Cameroon out. The government consequently may not be able to determine the additional need for te legal officers and courts without knowing the growth trend of the population of her citizens

⁶¹ See principle 5(D) (c) of the African Commission on Human and People Right on Principle and Guidelines on the right to Fair Hearing and Legal Assistance in Cameroon.

⁶²(2001)1CCLR1-125. Part 7 page 11.

⁶³ See Ministerial Circular No.00012/MJ/SG/DAG.

⁶⁴ Although the preamble of the 1996 Constitution as amended guarantees the right for everyone to be fairly heard by the court, nit however, does not specifically safeguard access for everyone to be heard by the competent courts.

⁶⁵ See principle K (a) of the African Commission on Human and Peoples Right on Principle and Guidelines on the Right to Fair hearing and Legal Assistance in Cameroon.

⁶⁶ See Report by the Ministry of Justice in Cameroon of Human Rights, 2008, page 53.

court sessions start between 11am and 1pm. This leads to redundancy and delays in hearing and determining cases. It has also been observed that, judges treat lawyers with contempt by not keeping them around the court premises but also using unrolling words against them in court. Some litigants grow weary and have to testify those weary conditions. Such conditions may not enable them to adduce quality evidence. Some judges have also used their discretionary power to hear and determine cases with bias whereas they could have declined jurisdiction. Again, others have used the discretion of fixing locus fees and conditions of appeal as money making ventures. Since judges cannot impose contempt upon themselves and considering the slowness in the administrative sanctions, we recommend that special courts should be created to hear and determine sanctions against judges who inadvertently and intentionally behave in a way that affects the right of parties to benefit from fair trial. This recommendation may be implication, be applied to investigating officers who not only punish suspects by torturing them to make a statement but also take such statements without cautioning suspects.

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