

The Role of Judiciary (Judges) in the Promotion and Protection of Human Rights in Cameroon: A Critical Analysis

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Abstract

The ratification and domestication of international human rights instruments are used as indices to determine a state's commitment to the promotion and protection of human rights. The judge as part of the judiciary is one of the stakeholders to fulfil this task. According to the Universal Declaration of Human Rights 1948 and the UN Declaration on Human Rights Defenders, everyone has a role to play in the realisation of human rights. Everyone should respect the role of those who work for the protection of human rights, through an independent judiciary, who are impartial, neutral, and independent in the promotion and protection of human rights. Article 37(3) of the Cameroonian constitution of 1996 as amended provides for the independence of the judge which constitutes part of the judiciary. This is to the effect that the President of the Republic shall guarantee the independence of the Judiciary. He shall appoint members of the bench and the legal department. Nevertheless, judges are partially independent in their role in the promotion and protection of human rights. This raises issues such as contradiction, inconsistency, and difficulties for the judges to play in the promotion and protection of human rights. This article is based on the hypothetical premise that the role of the judges in the promotion and protection of human rights in Cameroon is ineffective. It seeks to examine the effectiveness of the role of judges in the promotion and protection of human rights. Adopting the Doctrinal and comparative research method, the paper concludes that under article 37(3) of the constitution, judges are partially independent in their role in the promotion and protection of human rights. It is submitted that the provision of Article 37(3) should be revisited to ensure the independence of the judiciary and judges in particular in the promotion and protection of human rights. In addition, the judiciary must undergo a paradigm shift from complacent and disturbing judicial inertia to judicial activism.

Keywords: Critical, Appraisal, Judges, Promotion, Protection, Human Rights, Cameroon.

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INTRODUCTION

According to the Universal Declaration of Human Rights and the UN Declaration on Human Rights Defenders, everyone has a role to play in the realization of human rights. Everyone should recognize and respect the role of those who work for the protection of human rights and call on their political representatives to ensure that the rights established in the UN Declaration of Human Rights Defenders, are respected and supported.¹ Despite this, in countries across the globe, governments, security forces, traditional leaders, armed groups, or religious leaders place obstacles in the way of human

rights work. They abuse the rights of citizens and create an atmosphere where human rights are not respected. The idea of promotion and protection of human rights acts as a challenge to the existing political, economic, or cultural power structures to put mechanisms in place to ensure the realization of human rights.

The greatest value of human life is best represented in the recognition of fundamental rights² and in fully enabling people to enjoy and exercise these rights to an extent that preserves their humanity and respects their civility. According to Fredua-Kwarteng,³ the judiciary is the system of courts that interprets and

¹ Vasak, K. (1982). *The International Dimensions of Human Rights*; Greenwood Press, Connecticut.

² <https://legalaffairs.gov.in>, Department of Legal Affairs (Fundamental Rights). Accessed on Wednesday 5 of February 2025 at 4.16 am

³ Fredua-Kwarteng, Y. (2014), "Our Judges Still Wearing Wigs!" *ModernGhana.com*. MG Media Group. Accessed on the 12th of January 2025.

applies the law in the name of the state. The judiciary also provides a mechanism for the resolution of disputes. The structure and power of the judiciary are partially independent of the two other branches of government. The constitutional council and Supreme Court of Cameroon have broad powers of judicial review.

It is authorized by the Constitution to rule on the constitutionality of any legislation or executive action at the request of any aggrieved citizen. Human Rights – Two simple words but when put together they constitute the very foundation of our existence. Human Rights are commonly understood as “inalienable fundamental rights to which a person is inherently entitled simply because he or she is a human being”⁴. The Judiciary with no doubt plays a vital role in the promotion and protection of human rights over the decades. Some of the most unpleasant violations of human rights like Child Marriage, women's rights to property⁵, Child labour, etc, have been abolished wholly owing to widespread awareness and strict implementation measures taken by the Judiciary.⁶ The submission of judges and courts to fundamental rights turns the Judiciary into a natural protector of those rights.⁷ The judiciary is a place of refuge for those seeking redress for human rights violations. Under the 2008 Cameroonian Constitution, the judiciary has a mandate to protect human rights, and citizens can institute petitions if their human rights are violated or under threat. The public must have confidence that when they bring their cases to court, the judges will be in a position to hear and determine their cases in line with the principles of independence and impartiality, without which the courts cannot be effective or efficient.

From this brief introduction, it is relevant to examine the role of judges, the tools used by judges, and the challenges faced by judges in the promotion and protection of human rights in Cameroon.

⁴file:///C:/Users/THINKBIG%20COMPUTER/Desktop/my%20doc/Role%20of%20Crts%20in%20Prot%20of%20HR%20PSJ.pdf.

⁵ Article 17 of UDHR is clear on the ownership of property, where it clearly states that, everyone has the rights to own property alone as well as in association with others. But in Cameroon with the practice of Levirate marriage women are instead considered as property upon marriage which is contrary to the UDHR and the CEDAW Convention which also says all men and women are equal at such can own property. This is evidence in the Kumba High Court case of David Tchakokam V. Koen Magdalane. Where Among other things the plaintiff David Tchakokam sought an order of the court to force his levirate wife to return to him and a declaration that she had no claims over her late husband's property which he had inherited long ago with (Justice Ngassa in dismissing the plaintiff's claim said: This is

THE JUDGE AS THE MAIN STAKEHOLDER IN THE PROMOTION AND PROTECTION OF HUMAN RIGHTS IN CAMEROON

The judge is one of the main stakeholders in the promotion and protection of human rights. As the main stakeholders, judges must uphold the rule of law, interpret domestic laws, and ensure fair trials. These functions are worth examining.

The Judge in Upholding the Rule of law for human rights promotion and protection

Where there is no rule of law, human rights are at stake. The rule of law is a fundamental pillar on which the promotion and protection of human rights rests.⁸ Unless the rule of law is embedded in the fabric of governance, there is no effective legal protection for rights and entitlements.⁹ A sound rule-of-law framework ensures that victims of human rights abuses are provided redress and the perpetrators are held accountable, which in turn deters future violations. Conversely, the lack of the rule of law, by elevating the risk of arbitrary action and impunity for human rights violations, creates a climate of mistrust and instability, which may be further compounded by corruption and lack of transparency. This is the reason why the judge must ensure the protection of human rights by upholding the rule of law.¹⁰ The principle of equality before the law is a fundamental characteristic of the rule of law. However, in many instances, judges continue to violate the rule of law without consequence to them, but with severe consequences for individuals, in particular, those belonging to marginalized or otherwise vulnerable groups, such as the poor masses, opposition leaders, women and children.

The judge in the Interpretation of Human Rights Domestic Legislation

Judges use human rights standards to interpret domestic laws. Through its powers of interpretation, the judge can expand civic and democratic space in

the most objectionable, repugnant and obnoxious action to have been brought barely three years to the close of the twentieth century

⁶ *Ibid.*

⁷ Report by Mr José de la Mata Amaya (Magistrate, Spain), 2002 Conference on “Human Rights Protection Systems”

(file:///C:/Users/THINKBIG%20COMPUTER/Desktop/my%20doc/document(1).pdf, Accessed on Saturday 23 January 2025.

⁸ <https://www.advisory21.com.my>, www.penguin.com, The rule of law /PDFDrive.com. Accessed on Wednesday 5 February 2025 at 4.30 am.

⁹ Hofburg, Vienna, (2013), Supplementary Human Dimension Meeting. Rule of Law in the Promotion and Protection of Human Rights

¹⁰ *Ibid.*

situations where the executive and parliament have limited that space.¹¹

In Kenya, for example, the Supreme Court annulled the presidential election¹² because it was marred with violence.¹³ The Court held that a free and fair election conducted in a democratic society could not take place in a climate of violence. The legislature, when it enacts the law, is naturally unable to visualize all the situations to which it will apply in the future. In the numerous situations that arise thereafter, there are some occasions when the existing law appears to be deficient to provide for the needs of the time. In such a situation, the role of the judge is not only to interpret but also to expound the law to provide for those situations as well, though within the bounds of the law, since the rule of law, which does not permit any vacuum, must prevail to respond to the needs of society. When an institution or individual wants an interpretation of a human rights provision in the constitution or other instruments, the court is there to lend a helping hand.

A good example is the case of *New Patriotic Party v. Inspector General of Police* case.¹⁴ In February 1993, the plaintiff, the New Patriotic Party, wanted to hold several rallies for peaceful demonstration and commemoration. They asked for and received permission from the local officials. However, the police withdrew those permits and on one occasion, arrested several members of the demonstration for holding a public meeting without permission. However, the Constitution¹⁵ grant the fundamental right to "freedom of assembly, including the freedom to take part in processions and demonstrations," to every citizen.

The plaintiff referred to this constitutional right and filed a writ with the Supreme Court, claiming a violation of it by the acts of the police. It was then the Supreme Court's that takes to determine whether parts of NRC68¹⁶ contravene the Constitution of 1992 and are therefore null, void, and unenforceable. Giving reference to preceding cases from the United States Supreme Court, Justice Hayfron Benjamin examined each section in question individually. He made it very clear that the Constitution requires strict adherence to human rights and that it is anticipated that every effort must be made to uphold the dignity of man in the interest of peace and stability. The defence nevertheless argued that

permissions for public meetings and the power to withdraw or deny them were necessary for the proper performance of police officers' duties. Weighing up the situation, Justice Hayfron-Benjamin stated that upholding the law in question the Public Order Decree would impose incredible amounts of power on police officers. Constitutional rights should not be limited by acts and decrees; these rights must find their limits in the Constitution itself. Therefore, he suggests interpreting the law¹⁷ in such a way that public meetings must be lawful and must not be against 'public order'. The judge thought that there was a scope for this wide interpretation. To end this case, the judge declared that the right to assemble, process, or demonstration cannot be denied and that the sections of NRC68 that formed the basis of the respondent's defence are unconstitutionally void, and unenforceable. Therefore, the plaintiff's writ succeeded.

Judges ensure fair trials and public trials

Here, judges lead court proceedings and ensure that people have a fair and public hearing.¹⁸ However, the constitution and law provide for an independent judiciary, but this is not always the case. In some instances, the outcomes of trials appeared influenced by the government, especially in politically sensitive cases. Despite the judiciary's partial independence from the executive and legislative branches, the president of the republic appoints all members of the bench and legal department of the judicial branch, including the president of the Supreme Court, as well as the president and members of the Constitutional Council, and he may dismiss them at will. Military courts may exercise jurisdiction over civilians in a broad number of offenses including civil unrest. Military courts increasingly exercise jurisdiction over peaceful demonstrations, which the government had not previously authorized.

In addition, the constitution and law provide for the right to a fair and public trial¹⁹ without undue delay²⁰, and the defendant is presumed innocent²¹. But judges sometimes did not always respect the law, selectively applying the presumption of innocence. Criminal defendants have the right to be informed promptly and in detail of the charges, with the free assistance of an

¹¹ Nouakchott M auritania, (2018), The role of the legal profession in protecting human rights in the context of shrinking civic and democratic space in Africa, p.7.

¹² 8 August 2017.

¹³ The role of the legal profession in protecting human rights in the context of shrinking civic and democratic space in Africa April 2018.

¹⁴ ILDC 2548 (GH 1993), [1993-94] 2 GLR 459 SC, 30th November 1993, Ghana; Supreme Court.

¹⁵ Article 21(1)(d) of 1992 constitution as amended in 2008.

¹⁶ Sections 7, 8, 12, and 13, National Redemption Council Decree.

¹⁷ Article 21(1)(d)

¹⁸ <http://hrlibrary.umn.edu>, University of Minnesota Human Rights. Accessed on Sunday 9 February 2025 at 7.19 pm

¹⁹ Section 359 to 384 of CCPC.

²⁰ The Rights to Fair Trial, <https://www.amnesty.org>, Amnesty International 2002. Accessed on Wednesday 5 February 2025.

²¹ Section 8 of CCPC.

interpreter²². Defendants have the right to be present and to consult with an attorney of their choice, but in many cases, the government did not respect this right through the judge, by restricting access to lawyers, particularly in cases of individuals suspected of complicity with separatists, or political opponents²³.

When defendants cannot pay for their own legal defense, the court may appoint trial counsel at public expense, but the process was often burdensome and lengthy, and the quality of legal assistance was poor. Authorities generally allowed defendants to question witnesses and to present witnesses and evidence on their own behalf but did not compel witnesses to testify in the Ngarbuh trial. In some cases related to the crisis in the Northwest and Southwest regions, defendants reported that the state did not share evidence during discovery and that they were not provided the opportunity to cross-examine witnesses²⁴. Defendants have the right to adequate time and facilities to prepare a defense and not to be compelled to testify or confess guilt, but authorities often violate this right. Hearsay and anonymous testimony were sometimes permitted, especially in terrorism cases. Examining magistrates sometimes attempted to induce political opponents and suspected separatists to incriminate themselves. Defendants may appeal convictions up to the Supreme Court and may subsequently petition the president for pardon. Courts often limit procedural rights in politically sensitive cases.

During a press briefing on September 9, the collective of the 60 lawyers defending MRC detainees announced its decision to withdraw from proceedings concerning the remaining 124 inmates, who were held in Bafoussam, Douala, Mfou, and Yaounde, and those whose appeals were awaiting review. Justifying their decision, the lawyers said they could not continue to provide professional services under conditions contrary to their oath as lawyers and did not want to be associated with arbitrariness and illegality. They said all civil, administrative, and military judges handling the cases lacked independence and fairness.

According to the lawyers, the judges violated their oath as magistrates by systematically refusing to apply the law, which is contrary to judicial ethics and the principles of justice in conformity with human rights. Addressing journalists on the occasion, Barrister Meli, the lead lawyer, remarked that all steps taken before

judicial police officers as well as before civil and military courts for a statutory release, a release on bail or under guarantor remained unaddressed for the most part or had simply been rejected. Meli said the same applied to all habeas corpus requests initiated from October 2020 to establish the illegal, unlawful, and arbitrary character of the arrests. Overall, the lawyers said they carried out 279 procedures, all of which were unsuccessful²⁵.

Judges play the role of protecting judicial independence in the case of human rights violations

Here judges should be free to exercise their rights while preserving the independence of the judiciary.²⁶ They should be free to join associations that promote their professional training and protect their judicial independence.²⁷

The judges have a vital role in preventing ultra vires actions by the executive and parliament

Ultra vires acts occur in both private and public entities, but they are most commonly associated with governmental bodies. When a governmental body, such as a regulatory agency or a local government, exceeds its statutory authority or acts in a manner inconsistent with its stated powers, it commits an ultra vires act. This can include making decisions or taking actions that go beyond the scope of its jurisdiction, violating procedural requirements, or exercising powers not conferred upon it by law, which violates human rights.²⁸

It empowers the judges to review the actions of governmental bodies and determine their legality. When a court finds that an action is ultra vires, it has the authority to declare it null and void, ensuring that the entity stays within its prescribed limits.

Other than remedying violations committed against the public, the courts also stand in defense of the public when the executive or parliament acts or threatens to act in excess of their powers as conferred under the law.

Identifying ultra vires acts can be a complex task, as it requires a thorough analysis of statutory provisions, regulations, and the intent of the legislature. Judges often face challenges in determining the exact boundaries of an entity's authority and whether a particular action falls within or outside those boundaries. This necessitates a careful examination of the legal

²² Section 183 of Cameroon Criminal Procedure Code (CCPC)

²³ Cameroon 2021 Human Rights Report, page 17, file:///C:/Users/THINKBIG%20COMPUTER/Desktop/my%20doc/313615_CAMEROON-2021-HUMAN-RIGHTS-REPORT.pd. Accessed on Saturday 30 November 2024, at 3.30 am

²⁴ *Ibid.*

²⁵ *Ibid.*, human rights report 2021.

²⁶ United Nations Human Rights Office of the High Commissioner, <https://www.ohchr.org>. Accessed on Wednesday 5 February 2025 at 7.am

²⁷ Nouakchott M auritania, (2018), *op.cit.*P.177.

²⁸ <https://fastercapital.com/content/Unraveling-Ultra-Vires-Acts--The-Crucial-Role-of-Judicial-Review.html#:~:text=It%20empowers%20the%20judiciary%20to%20review%20the%20actions,that%20the%20entity%20stays%20within%20its%20prescribed%20limits>. Accessed on 12 December 2024.

framework, precedents, and legislative intent to arrive at a well-reasoned decision.

Ultra vires acts²⁹ have far-reaching consequences on human rights, affecting not only the entity that committed the act but also the individuals or entities impacted by it. Any decision or action taken beyond the legal authority of an entity is considered void *ab initio*.³⁰ This can lead to the invalidation of contracts, regulations, or other decisions that were based on the ultra vires act. Additionally, individuals who have suffered harm or incurred losses due to an ultra vires act may seek legal remedies, such as compensation or injunctive relief, to address the injustice caused.³¹ Human rights violations have been perpetrated in Cameroon via ultravires acts especially during elections and demonstrations from the opposition parties as evidenced above.

Judges Correct Mistakes Made by Human Rights Institutions

The judge corrects mistakes made by quasi-judicial human rights institutions such as the Human Rights Commissions. At times, lower courts and other quasi-judicial institutions may make fundamental legal mistakes when they are moderating cases brought before them, which may constitute violations of the rights of individuals and institutions. When such a case arises, the judiciary can correct the mistakes through appeals and review.

Clarify Human Rights Issues

When a dispute is brought before a court, it is the responsibility of the judge to determine the facts involved and clarify issues in the case.³² The usual way the courts determine the facts is through the evidence given by the contestants. Once the facts have been established, the court proceeds to decide what law applies to a particular controversy or circumstance. In this way, the judge becomes the interpreter of laws, which is its prime function.³³ So, the major task of the judge is to determine the facts of laws and to apply them to circumstances.

Setting human rights standards

When the courts make fair and just decisions, those decisions set a valuable precedent for the future resolution of disputes between the states and individuals.³⁴ The judicial process provides for the effective implementation of the law, the protection of the rights of individuals and groups, and sets standards in the form of precedent for the subsequent equitable enforcement of the law³⁵.

Additionally, human rights receive effective protection from the Judges. One of the vital ways to keep human rights safe is by preserving the prevailing role of the Judge. Standards developed by the courts through the judges which have a significant beneficial effect on making the lives of people better and the accomplishment of the government goal easier. More so, these standards ensure a better relationship between the people and their government on the one hand, and among the members of the international community on the other³⁶.

Human rights institutions sometimes refer to some of the rulings of the judiciary when dealing with cases brought to them. Moreover, countries such as Cameroon have great responsibility, under their international weight in democratic governance, to help promote human rights.

TOOLS USED BY THE JUDGE IN PROTECTING HUMAN RIGHTS

The constitution³⁷ mentioned the various tools or writs that the court can use to protect human rights. These include orders of habeas corpus, certiorari, mandamus, Prohibition, and quo warrant as it may consider appropriate for enforcing or Securing the enforcement of any of the provisions on the fundamental human rights and freedoms to the protection of which the person concerned is entitled. These tools are worth examining.

Habeas corpus

Today, habeas corpus is recognized at the regional and international level by various treaty bodies as a means of protecting the right to liberty³⁸ of the

²⁹ These are any deeds performed beyond the scope of legal authority outlined for corporations actions.

³⁰ This means an action that never had legal effect. Or treated as if it never existed

³¹ <https://fastercapital.com/content/Unraveling-Ultra-Vires-Acts--The-Crucial-Role-of-Judicial-Review.html#:~:text=It%20empowers%20the%20judiciary%20to%20review%20the%20actions,that%20the%20entity%20stays%20within%20its%20prescribed%20limits.> Accessed on 12 December 2024.

³² The role of the judges in advancing the protection of human rights in domestic courts. Commonwealth library, <https://www.Thecommonlibrary.org>. Accessed on Wednesday 5 of February 2024

³³ *Ibid.*

³⁴ Obene Charles. A (2023), *The Role of the Judiciary in the Promotion and Protection of Human Rights in Ghana*, p.2.

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ Article 33 (2) of the 1996 constitution as amended in 2008.

³⁸ International covenant on civil and Political rights (adopted 16 December 1966, entered into force 23 March 1976) 999 untS 171 (IccPr); African charter on human and Peoples' rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 (African charter).

African Charter on Human and Peoples' Rights³⁹ (African Charter), which provides that everyone has the right to liberty and no one shall be arbitrarily arrested or detained. The African Commission recognizes that anyone deprived of his liberty shall have the right to challenge the legality of his detention before a court.⁴⁰

Similarly, to further strengthen the right to liberty guaranteed in other International Covenant on Civil and Political Rights (ICCPR)⁴¹, Article 9(4) provides that anyone deprived of his liberty is entitled to undertake proceedings before a court for the court to determine the legality of the detention.⁴² If detention is unlawful, Article 9(4) requires that the court be empowered to order the release of the detainee. Although signatories to international and regional instruments such as ICCPR and the African Charter have made their commitments at the international level, effect must be given to these at the domestic level.⁴³ Thus state parties are required to enact domestic legislation giving effect to their regional and international obligations.⁴⁴ Concerning habeas corpus, it does not suffice for a state party's domestic legislation to simply provide for recourse to habeas corpus. The provision of this remedy must also be effective in achieving its purpose of securing the right to liberty.⁴⁵

A writ of habeas corpus which means "may you have the body" is a writ (legal action) that requires a person under arrest to be brought before a judge or into court. The principle of habeas corpus ensures that a prisoner can be released from unlawful detention that is, detention. The remedy can be sought by the prisoner or by another person coming to the prisoner's aid. This right originated in the English legal system and is now available in many nations including Ghana. It has historically been an important legal instrument safeguarding individual freedom against arbitrary state action.

³⁹ Article 6 of ACHPR.

⁴⁰ Principles and guidelines on the right to a Fair trial and Legal assistance in Africa (African commission on human and Peoples' rights, Doc/oS(XXX)247, 2003) Principle M(4) <www.achpr.org/instruments/principles-guidelines-right-fair-trial/> accessed 7 november 2024. These principles and guidelines were adopted by the African commission on human and People's rights in May 2003.

⁴¹ Article 9(1) of ICCPR.

⁴² here are similar provisions in the convention for the Protection of human rights and Fundamental Freedoms (adopted 4 november 1950, entered into force 3 September 1953) 213 untS 221 (European convention on human rights) art 5(4); american convention on human rights (adopted 22 November 1969, entered into force 18 July 1978) 1144 untS 123 (am chr) art 7(6).

⁴³ David clark and gerard Mccoy, (2000), *The Most Fundamental Legal Right: Habeas Corpus in the Commonwealth*, p.6.

The silence of the law in sanctioning executive disregard for court orders also provides scope for further violations of the right to personal liberty as administrative authorities sometimes show further contemptuous conduct by failing to release detainees irrespective of court orders. That problem was illustrated in a case regarding the detention of two Cameroonian citizens arrested in Ebolowa (Cameroon) for theft allegedly committed in Equatorial Guinea.⁴⁶

The Mvila High Court considered that the remand warrant authorizing the detention was invalid and ordered the immediate release of the detainees. Regrettably, that order was not complied with and the detainees remained in detention. It is rather interesting that the State of Cameroon cited this case (amongst others) as an example of its commitment to the protection of personal liberty employing habeas corpus even though it demonstrates a blatant disregard for the rule of law.⁴⁷ The more disappointing aspect though is that the State did not attempt to condemn that conduct.⁴⁸

Under the CPC, which applies to both sides of the legal divide in Cameroon, an application may be made personally by the detainee or by someone acting on his behalf.⁴⁹ Upon receipt of an application, the judge shall order the detaining authority to produce the detainee in court on a date and time to be specified in the order, together with the documents authorizing the arrest and detention.⁵⁰ This provision is significant for at least two reasons. First, it does not give the judge any discretion. Second, it is more time effective in that it eliminates the former procedure, which requires two levels of applications. Upon receipt of an application, the judge shall make the order which will specify the date and time for a hearing. After the hearing, if the judge determines upon the facts of the case that the arrest or detention is illegal, he shall order the immediate release

⁴⁴ ICCPR (n 20) art 2(1); African Charter (n 20) art 1.

⁴⁵ ICCPR (n 20) art 2(3)(a); african charter (n 20) art 56(5). See also decision of the african commission on human and Peoples' rights in *Anuak Justice Council v Ethiopia* (2006) ahrLr 97 (achPr 2006) 105.

⁴⁶ Judgment no 19/cIV/LI/tgI of 19 July 2002 on the arrest and detention of ngoa J Bienvenue and tachoula Jean in the Ebolowa prison, reported in unhr, 'consideration of reports Submitted by States Parties under article 40 of the covenant: Fourth Periodic report of States Parties: Cameroon' (11 May 2009) ICCPR/c/cMr4 [309]

⁴⁷ The State's exact comments proceeding discussion of the case, 'Decisions on habeas corpus abound. The following court decisions are illustrative' indicates a greater interest in quantitative analysis rather than the quality or effectiveness of available remedies.

⁴⁸ *Ibid.*

⁴⁹ CPC s 584(3).

⁵⁰ *Ibid.*, s 585(3).

of the detainee.⁵¹ That decision may be subject to appeal. However, the detainee shall be immediately released according to the decision, irrespective of any appeal.⁵² Again, this is a significant feature of the law as it is underlined by the CPC's which emphasis on the liberty of the citizen, since it goes against the general trend of the law in Cameroon under which an appeal has the effect of suspending the execution of the judgment below.⁵³ Worthy of note is the section of the law⁵⁴ which states that in the event of non-appearance of the detainee in court, the judge shall consider the reasons for this and make a decision based on the documents presented in the application. Thus, the non-appearance of the custodian or the detainee does not preclude the judge from deciding on the legality of the detention. However, a major flaw in the new law is that it does not go as far as to provide for penalties or any sanctions against a custodian who refuses to comply with a court order to produce the detainee in court and explain the basis of the detention. As a result, the problem of non-compliance which plagued the law before 2006 has persisted. That problem is vividly illustrated by the Oyebowale case.

In Cameroon, it is not uncommon for some members of the executive (to which the gendarmerie belongs) to show contempt towards the judiciary. This is usually manifested in the defiance of court orders. A glaring example of executive arrogance towards the judiciary was exhibited in *Benjamin Itoe v Joseph Ncho*,⁵⁵ where an administrative authority trespassed on the claimant's property, ransacked his home, confiscated and retained his property (a petrol tanker) and tried to escape liability by claiming to have acted in his capacity as a public official. The Bamenda High Court issued an order for the release of the claimant's petrol tanker. This order however was denied by the administrative authority.⁵⁶

Defiance of court orders has even greater consequences in the area of securing the right to liberty which almost exclusively involves administrative authorities and security forces. Given that they are the state representatives charged, also with enforcement, such conduct undermining the image of the state must be deemed reprehensible and untenable. The implication for

the judiciary is the ensuing dent in its credibility and by extension, its ability to protect human rights, but more importantly for a detainee is the continued violation of their human rights.

The case of *Wakai v The People*⁵⁷ demonstrates the untenable position of a detainee resulting from non-compliance with a court order. The case concerned an application for bail in the Bamenda High Court in the Northwest Region. The problems in this case originated from the arrest and detention of a large number of protesters (which included some of the applicants) reacting to the proclamation of the results of the 1992 presidential elections in Cameroon. A State of emergency was proclaimed in that region, which prompted massive violations of the right to liberty and security.

Some of the catalogued violations against the applicants included arrests without warrants, night arrests, and the issuing of post-dated warrants to legalise unlawful detentions, and detentions beyond the four-month limit imposed by the emergency Law.⁵⁸ Some of the applicants had also been arrested in different jurisdictions but brought to the northwest region where the emergency laws were applicable. The court considered these procedures highly irregular and a violation of human rights and on those bases granted bail. Yet, the government without appealing the decision failed to release the applicants. In further violation of their right to liberty, it instead transferred them to the Kondengui prison in Yaoundé, a different jurisdiction from Bamenda.⁵⁹ The problem of executive disregard for court orders is exacerbated by the fact that the courts have to rely on these same authorities to assist in the enforcement of judgments. For bailiffs and process servers to enforce judgments or orders, they must necessarily rely on the acquiescence of these executive bodies to provide support in case of resistance from the public. Executive officials such as the company commander in the Oyebowale case have little respect for the judiciary and therefore any orders ensuing from the courts. It is perhaps for this reason that the company commander in that case felt able to contend that he defied the court order because he was only answerable to the

⁵¹ *Ibid*, s 586(4).

⁵² *Ibid*, s 586(2).

⁵³ *Ibid*, s 453, which states that an appeal shall stay the enforcement of a judgment rendered by the trial court.

⁵⁴ Section 585(5) of CPC

⁵⁵ *Benjamin Itoe v Joseph Ncho no Bca/1/81*.

⁵⁶ *Innocent Bonu v Bakongo Simon* (1997) 1 ccLr 142 where the orders of a State counsel were disobeyed by a police officer and *SDO v Shey & Oku Rural Radio Association*, Suit no. hcB/05M/2003–2004, affd (2005) Bca/17/2005 where the Senior Divisional officer failed to make appearances in court in defiance of a court order and

persistently interfered with the activities of a radio station in defiance of a court order.

⁵⁷ *Wakai v The People* (1997) 1 ccLr, 127.

⁵⁸ Law no 90/47 of 19 December 1990 on the State of emergency, s 2 & s 3(a).

⁵⁹ Charles Manga Fombad, (2004), Cameroon's emergency Powers: a recipe for (un)constitutional Dictatorship? 48 Journal of African Law 62, 79–80. It is ridiculous that the State in response to the un human rights committee on the measures available to redress illegal detention in Cameroon cites the Wakai Case, even though it had failed to comply with the court's order. See unhr (n 48) [309]

governor of the South West region who had set up a commission to investigate the applicant.⁶⁰ Despite the commander's deplorable conduct, the Procureur Général (the highest prosecuting authority in the region) who by law is his superior⁶¹ did not denounce his conduct or take measures to ensure his compliance with the order. Moreover, the conduct was not denounced by the governor of the South West region, the highest executive authority in the region, to whom the respondent pledged his allegiance. It is submitted that the inability of the court to enforce its judgments and to counter defiance from members of the executive encourages such misconduct from authorities responsible for unlawful detentions.

The regrettable consequence is the erosion of confidence in the judicial system and, in this particular instance, the effectiveness of the writ of habeas corpus. It may be asked at this point why there is unbridled arrogance towards the judiciary. It is submitted that the answer lies in the absence of real judicial power.

Certiorari

Certiorari is a legal term that refers to a special order issued by a higher court to review the decision of a lower court.⁶² A writ of certiorari is a writ, or order, sent from a higher court to a lower. It orders the lower court to turn over transcripts and documents related to a specific case for review.⁶³ In general, this order is issued by the highest court in a nation after a request from a petitioner. The decision to grant such a writ is made at judicial discretion. The term comes from a Latin word that means "to be ascertained" or "to make certain." A writ of certiorari is one of how a high court can review a case. When a petitioner asks for this order, the request must include an explanation of why the petitioner is resorting to a writ. The request must also indicate what in the case is under dispute so that the justices are aware of what they are being asked to review.

Mandamus

Mandamus protects individual rights and interests by providing a mechanism for challenging official misconduct or neglect. It empowers individuals

to seek redress for grievances and assert their legal entitlements. Mandamus is a form of an order from a superior court to any government subordinate court, corporation, or public authority to do (or abstain from doing) some specific act which that body is obliged under law to do (or refrain from doing) and which is a public duty, and in certain cases one of statutory duty. It cannot be issued to compel an authority to do something against statutory provision. For example, it cannot be used to force a lower court to reject or authorize applications that have been made, but if the court refuses to rule one way or the other then a mandamus can be used to order the court to rule on the applications.

Qau Warranto

Qau warranto⁶⁴ means "by what warrant" it is a prerogative writ requiring the person to whom it is directed to show what authority they have for exercising some right or power (or "franchise") they claim to hold. It is therefore a challenge to a person allegedly improperly asserting a right to hold a public office. The writ seeks to disenfranchise on the record a person or organization from doing something for which it may not have the legal authority, by demanding to know by what right they exercise the controversial authority.⁶⁵

CHALLENGES ENCOUNTER BY JUDGES IN THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

There is the need to make the judiciary effective mechanism for human rights protection.⁶⁶ However, there are usually attack on judges, lack of judicial independence which consists of material/power dependence and financial dependence. Panelists highlighted challenges faced by the judiciary⁶⁷. In Cameroon, threats to judicial officers in the context of performing their function undermined the independence of the judiciary. The judiciary has faced a backlash from the executive and legislature in the form of budget cuts and physical and verbal abuse. Irregular transfer to duty stations is used as a means to control judges. For example, the constitution of Cameroon provides that, judicial power shall be exercised by the Supreme Court, Court of Appeal, and Tribunals, the judicial power shall

⁶⁰ Francis tim Mbom, (2009), Detained nigerian released on FcFa 2m Bail' The Post (Web edition, 24 august 2009) Issue no 01079 <<http://www.thepostwebedition.com/content.aspx?ModuleID=1&ItemID=1592>> accessed on the 13th of December 2024.

⁶¹ CPC s 78(3) states that in each jurisdiction of the court of appeal the judicial police shall be under the control of the attorney general. See also s 81 which describes gendarmes as judicial police agents.

⁶² <https://www.legalbriefai.com/legal-terms/certiorari>. Accessed on the 29th of December 2024.

⁶³ Diniz Araújo, Luiz, (2020), Constitutional Law around the globe: judicial review in the United States and the

"writ of certiorari". Revista de Investigações Constitucionais. 7. 189-204. 10.5380/rinc.v7i1.73893.

⁶⁴ It means "by what warrant" it is a prerogative writ requiring the person to whom it is directed to show what authority they have for exercising some right or power (or "franchise") they claim to hold

⁶⁵ Ohene-Amoh, C. (2014), The Role of the Judiciary in the Promotion and Protection of Human Rights in Ghana. UEW. Winneba.

⁶⁶ Abul Ethem Fathed (2002), The Role of the Judiciary in the Protection of Human Rights and Development. A Middle Eastern Prospective, Vol26, PP.766 to 767

⁶⁷ Centre for International Development, <https://cidt.org.uk>. Accessed on Wednesday 5 February 2025 at 8.57am

be independent of the executive and legislative power, and magistrate of the bench shall discharge their duties only by the law and their conscience⁶⁸. However, this very provision is contradicted as it provides that, the President of the Republic shall guarantee the independence of the judicial power, but that he shall appoint members of the legal department, he shall further be assisted by this task by the Higher Council which shall give him its opinion on all nomination.⁶⁹ This shows one of the greatest challenges faced by the judge or the judiciary. This causes most judges not to protect human rights because of fear of dismissal. Also, we have disregard for court orders, as well as affronts to the authority of the court and legitimacy of the judiciary by the state, remain serious concerns. The material or power independence here is exemplified by the fact that the judges' decisions are being influenced by the executive while financial dependence relates to the fact that the judges depend financially on the budget from the executive which is handed to the legal department. There is a great need therefore to enhance the role of the judge in the promotion and protection of human rights by overcoming these challenges.

ENHANCING THE ROLE OF THE JUDGE IN THE PROMOTION AND PROTECTION OF HUMAN RIGHTS IN CAMEROON

We consider judicial independence and financial independence.

Judicial Independence

Fundamental Human Rights can be realized in a state when there is judicial independence (Fredua-Kwarteng, 2014). The judiciary must be free from executive and legislative (political) interference. This enables the judiciary to give out justice even against the government without fear (Tribe, 1985). The judiciary should form part of a system of mutual checks and balances aimed at preventing abuses of power to the detriment of a free society. The judiciary must therefore be independent as an institution and the individual judges deciding cases must be able to exercise their professional responsibilities without being influenced

inappropriately. Only an independent judiciary can render justice impartially based on law, thereby also protecting the human rights and fundamental freedoms of the individual.⁷⁰

Financial Independence of the Judiciary

According to the Ghanaian Constitution, the Judiciary may only exercise its judicial and administrative powers following the law and shall not be subject to the supervision or direction of any person or authority. This includes the financial administration function. All wages, allowances, and administrative costs paid to workers in the judiciary are mandated by the Constitution to be charged to the Consolidated Fund. These salaries and allowances cannot be changed in a way that disadvantages a judge.⁷¹ However, the administrative expenses are subject to the national budgetary process and are therefore re-proposed by the executive (the Minister of Finance) to be approved by Parliament. A perceived or real condition of corruption in the judiciary has the potential to make it an object of public mockery and hinder businesses' capacity to best support the expansion and development of a market economy.⁷²

CONCLUSION

In conclusion, everyone has a role to play in the realization of human rights. Everyone should recognize and respect the role of those who work for the protection of human rights and call on their political representatives to ensure that the rights established in the UN Declaration of Human Rights Defenders are respected and supported, some of the roles judges play in the promotion and protection of human rights to wit upholding the rule of law, interpreting domestic legislation, correcting mistakes made by human rights institutions, etc. they also used tools to ensure this protection such as order mandamus, *ceterari*, as examined above. However despite all their courts or the judiciary face some challenges in protecting these rights such as the attack on judges, judicial dependence, as examined above.

⁶⁸ Article 37(2) of the 2008 Constitution of Cameroon.

⁶⁹ Article 37(3) of the Constitution.

⁷⁰ Ohene-Amoh, C. (2014). *The Role of the Judiciary in the Promotion and Protection of Human Rights in Ghana*.

UEW. Winneba, P.13.

⁷¹ *Ibid*, p.13.

⁷² *Ibid*, p.13.