

# ACCESS TO JUSTICE AND LEGAL AID IN CAMEROON: A CRITICAL ANALYSIS

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## ABSTRACT

Whereas the Constitution of Cameroon, as well as duly ratified International Treaties and Conventions guarantee the right of every person to a fair hearing before the courts, this is not possible without a well-organized system of administration of justice, which incorporates the grant of legal aid through well-established structures. This becomes incumbent and exigent in a developing country such as Cameroon with a very low per capita income and a large rural population. Access to justice is hindered by a system of administration of justice that is characterized by the lack of an independent judiciary and fraught with corrupt practices and high cost of litigation. This paper critically examines the judiciary system in Cameroon in an analytical and comparative manner. It expatiates on the basic principles of administration of justice and its shortcomings. It looks at legal representation and its hindrances in the form of inaccessibility of lawyers to the criminal justice system when representing their clients, a concentration of lawyers in urban areas, irregularity and uncertainty in the organization of entrance examinations for aspirants to the legal profession amongst others. It equally examines the adequacy of the form of legal aid available to the poor and vulnerable in society, amongst whom are the indigent, women, children and the handicapped. Proposals are made for constitutional amendment in order to ensure a more independent judiciary as well as an amendment of the law on legal aid, a reform of the institutions in charge of disciplining magistrates as well as the use of paralegals as a form of legal aid and hence access to justice for the poor and vulnerable.

## Keywords

Justice, Access, Legal Aid, Independence of the Judiciary, Legal Representation

## 1. INTRODUCTION

### 1.1. The concept of justice

The idea of justice is central to the functioning of any society which is governed by the rule of law. Justice can be defined as “the fair and proper administration of law.”<sup>i</sup> It could be natural justice, which involves the right to a fair trial in which all the parties are given the chance to be heard, hence the rule of natural justice, *audi alteram partem*.<sup>ii</sup> The Preamble of the Constitution of Cameroon<sup>iii</sup> clearly provides that the law shall ensure the right of every person to a fair hearing before the courts. Thus the right to obtain justice is in principle, guaranteed to all Cameroonians irrespective of sex, class; race or any form of discrimination. The criminal law is equally applicable to all, subject to all.<sup>iv</sup>

Justice has been characterized as “distributive.” Aristotle,<sup>v</sup> the Greek philosopher distinguished between “corrective justice” and “distributive justice,” considering the Law of Torts in terms of corrective justice. The concept of distributive justice was adumbrated by John Rawls in *A theory of Justice*, later published in 1993 as *Political Liberalism*.<sup>vi</sup> The concept of justice for which Rawls argues has been summarized to include the following:

“i) the maximization of liberty, subject only to such constraints as are essential for the protection of liberty itself; ii) equality for all, both in the basic liberties of social life and also in distribution of all other forms of social goods, subject only to the exceptions that inequalities may be permitted if they produce the greatest possible benefit for those least well off in a given scheme of inequality (“the difference principle”); and iii) “fair equality of opportunity” and the elimination of all inequalities of opportunity based on birth or wealth.” Distributive justice as such guarantees the common welfare.

One can also speak of procedural justice (that is the fairness of the judicial process used in deciding what is to be distributed), restorative justice (An alternative delinquency sanction focused on repairing the harm done, meeting the victim’s needs and holding the offender responsible for his or her actions) and retributive justice (punishment imposed as repayment or revenge for the offence committed) within the framework of judicial organization and the criminal justice system in particular, when dealing with criminology<sup>vii</sup> and penology.<sup>viii</sup> Retributive justice is intended to have a deterrent effect although its effectiveness is debatable.

We do not intend to go into the intricacies of the purpose of crime and punishment in this paper. It is intended to be an analysis of the access by the population to the administration of justice and more particularly to all the available services.

## **1.2. The meaning of Legal Aid**

Legal aid is generally understood as free or subsidized services to eligible individuals or groups, mainly poor and vulnerable people, provided as a means to strengthen their access to justice, for example, legal information and education, legal advice and assistance, Alternative Dispute Resolution and/or legal representation.<sup>ix</sup> Legal aid also means that the State or society can provide an arrangement so that the machinery of administration of justice becomes easily accessible and is not out of reach of those who have to resort to it for the enforcement of rights given to them by law. This is usually in some form of help to indigent persons who would otherwise not be able to afford some legal services without such help. If legal aid is not available for certain kinds of proceedings, then access to that part of the law is effectively denied to a section of the population. In the English case of *Moses-Taiga V. Taiga*<sup>x</sup> a husband was ordered to make payments to his wife during the litigation of her ancillary relief claim so that she could afford to instruct a firm of experienced solicitors. There is equally a law on legal aid in Cameroon, the adequacy and effectiveness of which would be examined in this paper.

### **1.2.1. International Regulation and Standards on Legal Aid**

International Human Rights Law cannot be ignored when dealing with legal aid provisions at national level. International law sets standards to be followed and implemented by signatories to various international treaties, which may or may not have been ratified<sup>xi</sup> by them. According to the Cameroon Constitution, all treaties mentioned in the Preamble of the Constitution are incorporated in its body by virtue of Section 65 which renders the Preamble part and parcel of the Constitution. Duly approved or ratified treaties and international agreement equally override national laws by virtue of Section 45 of the said Constitution.

The Preamble of the Constitution affirms Cameroon's attachment to the fundamental freedoms enshrined in the Universal Declaration of Human Rights (U.D.H.R.), the Charter of the United Nations and the African Charter on Human and People's Rights as well as all duly ratified international conventions relating thereto. It goes ahead to enumerate certain special provisions found in some of these treaties, including the right of every person to a fair hearing before the

courts. Some of these treaties ratified by Cameroon include amongst others: the 1966 International Covenant on Civil and Political Rights (ICCPR)<sup>xii</sup>; the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR); the 1979 Convention on the Elimination of all Forms of Discrimination against Women (CEDAW); the 1989 Convention on the Rights of the Child (CRC).<sup>xiii</sup>

In this connection, the U.D.H.R. although not binding, clearly provides in Section 11(1) that everyone charged with a criminal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence. The ICCPR has a number of specific provisions concerning access to justice and legal aid. It guarantees the equality of all before the law and the right to a fair and public hearing by a competent, independent, and impartial tribunal established by law.<sup>xiv</sup> However, these rights are more specifically in cases of criminal trials. Section 14 (3) (b) also obliges State parties to ensure that everyone charged with a criminal offence is guaranteed adequate time and facilities for the preparation of his defence and to be able to communicate with counsel of his choice. The right to legal aid especially with regards to criminal trials is specifically provided for in section 14 (3) (d) “to be tried in his presence and to defend himself in person or through legal assistance of his own choosing, to be informed if he does not have legal assistance; of this right and to have legal assistance assigned to him, in any case where the interests of justice so require and without payment by him in any such case if he does not have sufficient means to pay for it.” Article 37 (d) of the 1989 Convention on the Rights of the Child (CRC) provides that “every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.” However, it is common to find children in pre-trial detention for lengthy periods.

Regional Human Rights Instruments are equally important in securing access to justice and legal aid for all citizens. These include, the African Charter on Human and Peoples’ Rights (The Banjul Charter); the African Charter on the Rights and Welfare of the Child. Article 17 (2) (C) (iii) provides that States have to provide legal and other appropriate assistance in the preparation and presentation of his defence, to every child accused of infringing the penal law

when he is unable to appoint an advocate at his cost. This is in a bid to ensure access to justice for the poor, especially children who are vulnerable.

A number of International Declarations on standards of legal aid are equally important although they do not have any binding effect. Firstly, the African Commission on Human and Peoples' Rights' Resolution in 1999 on the Right to a Fair Trial and Legal Aid in Africa (the Dakar Declaration)<sup>xv</sup> emphasizes the importance of access to justice as part of the right to a fair trial, and places the primary responsibility for ensuring legal aid in criminal cases on the government: "Access to justice is a paramount element of the right to a fair trial. Most accused and aggrieved persons are unable to afford legal services due to the high cost of court and professional fees. It is the duty of governments to provide legal assistance to indigent persons in order to make the right to a fair trial more effective". Since reference is made not only to "accused persons", but also to "aggrieved persons", the declaration should probably be understood as stipulating a duty for the state to provide legal aid services to other persons, such as victims of certain crimes and persons with certain civil claims.

The Dakar Declaration recommends that State parties to the Banjul Charter "urgently examine ways in which legal assistance could be extended to indigent accused persons, including through adequately funded public defender and legal aid schemes". The declaration also recommends that State parties "in collaboration with Bar Associations and Non-Governmental Organizations (NGOs) enable innovative and additional legal assistance programs to be established including allowing paralegals to provide legal assistance to indigent suspects at the pre-trial stage and pro bono representation for accused in criminal proceedings".

Following the Dakar Declaration, in 2001 the African Commission on Human and Peoples' Rights adopted the "Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa"<sup>xvi</sup>

These principles, which it is urged should be incorporated into national legislation by the State Parties to the Banjul Charter, entail a series of recommendations, including:

- "States shall ensure that efficient procedures and mechanisms for effective and equal access to lawyers are provided for all persons within their territory and subject to their jurisdiction, without distinction of any kind, such as discrimination based on race, colour, ethnic origin, sex, gender, language, religion,

Political, or other opinion, national or social origin, property, disability, birth, economic or other status”

- “States shall ensure that an accused person or a party to a civil case is permitted representation by a lawyer of his or her choice, including a foreign lawyer duly accredited to the national bar”
- “States and professional associations of lawyers shall promote programmes to inform the public about their rights and duties under the law and the important role of lawyers in protecting their fundamental rights and freedoms”
- The accused or a party to a civil case has a right to have legal assistance assigned to him or her in any case where the interest of justice so require, and without payment by the accused or party to a civil case if he or she does not have sufficient means to pay for it”

The principles define 2 criteria which should be taken into account when deciding whether “the interest of justice” require the state to offer legal aid free of charge in criminal cases: “the seriousness of the offence” and “the severity of the sentence”. It is provided that “the interests of justice always require legal assistance for an accused in any capital case, including for appeal, executive clemency, and commutation of sentence, amnesty or pardon”. The principles also lay down some specific requirements concerning how lawyers appointed by state-run legal aid schemes (criminal as well as civil law) should operate. The lawyer who is appointed is equally expected to be qualified, experienced and be able to independently exercise professional judgment free from any influence whatsoever. He or she should equally be sufficiently paid in order to have the incentive to represent the indigent person, who has been granted legal aid. While most of the lawyers who handle state briefs are usually qualified, the incentive in the form of prompt and adequate compensation is not usually guaranteed. Likewise, their professional judgment is not always totally free from State influence as we shall see from subsequent analyses.

## **2. JUDICIAL ORGANIZATION IN CAMEROON**

### **2.1. Some Basic Principles of the Administration of Justice**

The administration of justice in Cameroon obeys a number of principles that have been elaborated and carefully laid down. The Cameroon Constitution provides that justice shall be administered in the territory of the Republic in the name of the people of Cameroon. These

principles are intended to guarantee an independent, impartial, free, fair and accessible justice system but there are nevertheless loopholes in their elaboration and application.

### **2.1.1. Public Justice**

The Law on judicial organization in Cameroon provides that justice shall be administered in public and judgments delivered in open court, failure of which, the proceedings are rendered null and void *ab initio*.<sup>xvii</sup> Justice must not only be done but must be seen to be done.<sup>xviii</sup>

Generally speaking, all cases are heard in open court and anybody can attend court sessions. The principle of public justice does not however mean that a court may not hear a case in camera, that is, in chambers. Section 6 (3) of Law N<sup>o</sup> 2006/15 of 29<sup>th</sup> December 2006 on judicial organization further provides that hearings shall take place in camera or in chambers where expressly provided for by the law. In addition to that, any court may of its own motion or on the application of one or more of the parties, order a full or partial hearing in camera of a given matter, where any publicity thereof may undermine State security, public peace or morality. In such a case, hearing shall not be opened to the public and mention thereof shall be made in the decision which shall be public. For example, the juvenile court, when so constituted to try minors for offences committed, shall do so in camera and not in open court.<sup>xix</sup> Public justice also ensures transparency. It is another means of assuring judicial neutrality, impartiality and independence as provided for by the constitution.

### **2.1.2. Free Justice**

Another basic principle is the free nature of the administration of justice in Cameroon. According to section 8(1) of Law N<sup>o</sup> 2006/015 of 29<sup>th</sup> December 2006, justice shall be administered free of charge, subject only to the fiscal provisions concerning stamp duty and registration and those concerning the reproduction of the records of proceedings for appeals. Magistrates, who are on the payroll of the State are as such not supposed to receive any money from litigants. Litigants are nevertheless expected to pay all court fees,<sup>xx</sup> as well as lawyers' fees. Stamp duty and registration, as well as fees for the reproduction of the record of proceedings for appeals are equally to be paid by litigants. The procedural fees that are required to be paid by litigants in some matters however seem relatively exorbitant and beyond the reach of the average Cameroonian. This is where legal aid comes in, albeit to a limited extent.

Statutory fees and expenses of counsel and other auxiliaries of justice, the cost of prosecution and the execution of court decisions are supposed to be advanced by the party who loses the action, except where there is a contrary reasoned decision of the court.<sup>xxi</sup> The court usually requires the party who loses the action to pay the cost. Practically fees of counsel are paid by the party who incurs them, as well as all costs incurred in commencing the action and executing the judgment. This can only be recovered in the final judgment awarding costs. As far as the Legal Department is concerned, the public treasury advances funds and where necessary, bears all expenses incurred by the said Department.<sup>xxii</sup>

The cost of litigation is generally high for the average litigant in Cameroon, including the stamp duty and registration fees. In the High Court for instance, according to Circular N0 001/MJ/SG/DAG, issued on the 13<sup>th</sup> March 1996 by the Minister of Justice, litigants are supposed to deposit five percent (5%) of the amount claimed as stamp duty, upon filing their claims in court.<sup>xxiii</sup>

### **2.1.3. Reasoned Judgments**

All judgments must be reasoned. Section 7 of Law N° 2006/015 of 29<sup>th</sup> December 2006 on judicial organization provides that all judgments must set out the reasons upon which they are based in fact and in law. Any breach of this provision shall render the judgment null and void. Dating of the judgment is also important. One reason for this principle is to provide a safeguard against judicial arbitrariness, which could be based on personal feelings or the whims and caprices of the person passing judgment.

Provided the judgment is reasoned and written, it will not be invalid simply because it is brief. The principle of reasoned judgments also provides a means by which the superior courts are enabled to control decisions by inferior courts. The losing party in a trial has the right to appeal to a higher court which can quash, amend or uphold the decision of the lower court. This method of controlling decisions of the lower courts by superior courts would not be possible if judges were not required to give reasons for their judgments.

A judge cannot refuse to deliver judgment in a matter once he has been properly seized of it. According to section 147 of the Cameroon penal code, it is a denial of justice for any person exercising judicial functions to decline, after having been duly moved in that connection to issue a decision.<sup>xxiv</sup> Delay in deciding a case may amount to denial. In practice however, many



cases usually delay in court for many years, before judgment is delivered. The judgment contains the *ratio decidendi*, which forms binding precedent, when it emanates from a superior court.

#### **2.1.4. Decentralization of the System of Administering Justice**

The court structure in Cameroon is relatively highly decentralized. Courts in Cameroon are found at sub-divisional, divisional, regional and national level in that hierarchical order based on the severity of the offence or whether it is a court of original or appellate jurisdiction.<sup>xxv</sup> With the exception of the Supreme Court whose territorial jurisdiction covers the entire nation, all other courts are located at various territorial levels throughout the country for purpose of accessibility.

The courts can be classified as courts of Ordinary jurisdiction and courts of special jurisdiction. The Courts of Ordinary jurisdiction include courts of original jurisdiction, viz; Customary Courts, Courts of First Instance and High Courts, as well as appellate courts (Court of Appeal and Supreme Court). The Courts of special Jurisdiction are the following: audit courts, administrative courts, Administrative Courts, the Constitutional council, the Higher Judicial Council, the Parliamentary Court of Justice, courts for Social Insurance matters as well as the Special Criminal Tribunal, Military Courts and the State Security Court. Apart from these, there are Supranational Appellate Regional Courts such as the Common Court of Justice and Arbitration (CCJA) in Abidjan-Ivory Coast and the Court of Justice of the Central African Economic and Monetary Union, commonly known by its French acronym 'CEMAC'.<sup>xxvi</sup>

Judges in the various courts usually dispense justice at the seat of the court. On the other hand, they may go on assizes or move from one town to another, dispensing justice. In this case, they are referred to as itinerant judges. Accessing the courts is however not very easy for the majority of the population, due to the complex procedures and cost involved in litigation.

There are legal aid commissions at the level of Courts of First Instance, High Courts, Military Tribunals and Courts of Appeal and the Supreme Court.<sup>xxvii</sup> No provision is made for the grant of legal aid at the level of customary courts, whose territorial and material jurisdiction are not clearly spelt out by the law on judicial organization.

In fact, the jurisdiction of customary courts is very limited both materially and territorially. Customary courts do not have jurisdiction in criminal matters. According to Article 1 of Decree N° 69/DF/544 of 19<sup>th</sup> December 1969 on the Organization and Functioning of Traditional Law Courts, Traditional law courts of Former East Cameroon are classified into two, viz, The *Tribunaux de Premier Degré* and the *Tribunaux Coutumiers*. The former is a modern customary court while the latter is a purely traditional law court.

In Anglophone Cameroon, Section 18 (1) (a) of the Customary courts Ordinance Cap 142 of the 1948 Law of the Federation of Nigeria applicable in Cameroon defines customary law as; “The native law and custom prevailing in the area of the jurisdiction of the court so far as it is not repugnant to natural justice, equity and good conscience, nor incompatible either directly or by natural implication with any written law for the time being in force.” The *rationae personae* jurisdiction of **customary courts** is stated in section 14(1) of the Native Courts Ordinance of 1948 as follows: “Every native Court shall have full jurisdiction and power, to the extent set forth in the warrant establishing it, and subject to the provisions of this law, in all civil and criminal matters in which all the parties belong to a class of persons who have ordinarily been subject to the jurisdiction of customary tribunals.” The jurisdiction of customary courts depends on whether the parties are natives and in matrimonial causes, whether they contracted a customary marriage.

The *rationae materiae* jurisdiction of customary courts is contained in section 16 of the 1948 Native courts Ordinance which provides: “The customary courts have full jurisdiction in matters and causes relating to succession and administration of estates under customary law and in causes and matters in which no claim is made for, and which do not relate to money or other property and full jurisdiction in all matrimonial causes other than those arising from or connected with a Christian marriage as defined in section 1 of the Criminal code.”

Section Section 14 of the Former west Cameroon Ministry of Local Government “Customary Courts Manual of Practice and Procedure for Court Clerks.” Volume II provides as follows: “Any claim for a refund of dowry or for land may be determined by a customary court, but a claim for debt or damages exceeding 138.000 francs in the case of a grade ‘A’ court or 69.200 francs in the case of a grade ‘B’ court may not.”<sup>xxviii</sup> It is limited to customary marriages although marriages celebrated at the civil status registry where the parties choose polygamy are also entertained in customary courts. The effect of this limited material jurisdiction is that

most cases end up on appeal for financial provision and property adjustment, with the resultant costs involved. Those who cannot afford the cost of appeal usually end up with the limited meagre awards from the customary courts, especially upon divorce and could not be said to have obtained justice.

Section 9 (1) (b) of the Southern Cameroons High Court Law 1955 is also material as far as the exercise of jurisdiction by customary courts in matrimonial causes is concerned. It provides: “Subject to the provisions of the Land and Native Rights Ordinance and of any other written law, the High court shall not exercise original jurisdiction in any suit or matter, which is subject to the jurisdiction of a native court relating to marriage, family status, and guardianship of children, as well as inheritance or the disposition of property on death.” The proof of customary law in customary courts can be done through witnesses as provided by section 40 of the Customary Courts ordinance which provides: “Any person present at the customary court, whether party or not in such cause or matter, may be required by the court to give evidence, if and when summoned to attend and give evidence.”

Customary Courts in Anglophone Cameroon include Alkali courts by virtue of the Southern Cameroons High Court Law 1955, which classifies Islam as custom. Alkali courts equally do not have the jurisdiction to entertain criminal matters. Islamic law applies only to those who practice Islam. Their jurisdiction, which is exclusively civil, is limited to personal law issues such as marriage, divorce, custody, affiliation and inheritance.

### **2.1.5. Bi-jural Nature of Procedure before the Courts of the Two Legal Districts**

Cameroon is a bi-jural State. The constitution provides for the maintenance of various laws inherited from France and England. While there have been attempts at harmonization of laws in various areas such as criminal law and procedure, labour law and business law for example, the procedure before the courts, are a reflection of the bi-jural nature of the legal system. The procedure before courts in the Francophone regions is quite different from that in the Anglophone regions and are governed by different laws. There is no common Civil Procedure Code. Although there is a common Criminal Procedure code<sup>xxix</sup> (which was influenced to a certain extent by the common law procedure), the court arrangement and the conduct of civil and criminal proceedings in the courts of the two legal districts remain different. The law on judicial organization<sup>xxx</sup> envisages a common civil procedure code to be elaborated in a separate

legal instrument but this has not yet seen the light of day. This bi-jural nature of the legal system leads to an internal conflict of laws, and in some cases to lengthy trials in both law districts concerning the same matter.

## 2.2. The Independence of the Judiciary

The independence of the judiciary is very essential in guaranteeing access to justice, especially for the underprivileged and indigent members of the society. The independence of the judiciary implies that judges act without any influence from the government in power, the ruling party or whosoever wields some power in the society. The total independence of the judiciary is relatively guaranteed in a legal system such as that of England. The Home Secretary, M. Butler in October 1958, in response to the demands of certain members of parliament (acting under pressure from public opinion concerning the rising crime wave and asking him to admonish judges to be more severe when deciding cases in court) had this to say “It is a fundamental principle of our constitution that the executive does not interfere with the judiciary.”<sup>xxxix</sup> This total independence of the Judiciary in England is made possible through the irremovability of senior judges (that is, the security of their tenure), the guarantee of their number and reasonable salary, age of retirement, the absence of a regular system of promotion, the appointment of judges of superior courts from the ranks of seasoned learned and experienced lawyers, as well as the fact that judges make law through the doctrine of precedent.<sup>xxxii</sup>

Part V of the Cameroon Constitution deals with Judicial Power, according to which, Justice shall be administered in the territory of the Republic in the name of the people of Cameroon.<sup>xxxiii</sup> It is equally stated that judicial power shall be exercised by the Supreme Court, Courts of Appeal and Tribunals. It is further provided that the judicial power shall be independent of the executive and legislative powers as well as the fact that magistrates of the bench shall in the discharge of their duties, be governed by the law and their conscience, thereby further enunciating the fundamental principle of Separation of Powers and the independence of the Judiciary.<sup>xxxiv</sup>

However, this constitutional independence of the judiciary from the executive and legislative is rather watered down by the fact that it is guaranteed by the President of the Republic, who appoints all magistrates (of the Bench and legal department respectively) assisted by the Higher Judicial Council, which sits to examine the files of magistrates for promotion and disciplinary

measures to be taken.<sup>xxxv</sup> The President appoints even the judges of the Supreme Court and the Constitutional Council.<sup>xxxvi</sup> Although judges take an oath to serve and render justice impartially without fear or favour, that is usually not the case in many instances. When judicial appointments are politicized, the judges are seen to be partisan and represent only the interests of the government. Their impartiality and credibility become very doubtful. Judges are actually not supposed to be involved in politics or affiliated to any political party, else they lose their impartiality and credibility in rendering justice. In Cameroon, judges aspire to be appointed to ministerial and other positions in government and those who benefit from such appointments do not hesitate to express their gratitude by actively and openly militating in the ruling political party.

The court system in Cameroon is subordinate to the Ministry of Justice, which in turn is under the President of the Republic. The constitution designates the president as “first magistrate,” thus “chief” of the judiciary, making him the legal arbiter of any sanctions against the judiciary. While judges hearing a case are technically to be governed only by the law and their conscience as provided for by the constitution, in some matters they are subordinate to the minister of justice or to the minister in charge of military justice.<sup>xxxvii</sup> The Special Criminal Court can equally enter a *nolle prosequi* dropping charges against a defendant who offers to repay the amount he is accused of having embezzled, if the Minister of Justice is in accord and this makes corrupt individuals to get away with impunity.<sup>xxxviii</sup> A *nolle prosequi* may equally be entered by the Advocate general (*Procureur General*) of a Court of Appeal with the express authorization of the Minister of Justice and keep of the seals at any stage before judgment on the merits is delivered, if such proceedings could seriously imperil social interest or public order.<sup>xxxix</sup>

According to Paisley Lord Hodge, Justice of the Supreme Court of the United Kingdom,<sup>xl</sup> the ten pillars of judicial independence include the constitutional commitment to the independence of the judiciary and the rule of law; the exclusion or minimization of political consideration as an influence on the appointment and promotion of judges; adequate salaries to ensure integrity and impartiality; personal immunity from suits as well as acts and omissions in the exercise of their judicial functions; security of tenure; accountability through reasoned judgments, speedy disposal of and efficient disposal of cases and the separation of powers amongst others. All these conditions are exemplary and vital as models for the Cameroonian judiciary.

### 3. THE LAW ON LEGAL AID IN CAMEROON

As we have already seen concerning the principles of the administration of justice, Cameroon has a bi-jural legal system as a result of its colonial history.<sup>xli</sup> It inherited the laws of the former colonial masters which continue to be applicable by virtue of the Constitution.<sup>xlii</sup> Some areas of substantive and procedural law have been harmonized, such as criminal law, criminal procedure, labour law and business law through the OHADA Treaty of 17<sup>th</sup> October 1993<sup>xliii</sup> on the Harmonization of Business Law in Africa, signed by Cameroon in Port-Louis, Mauritius, making it supranational law. Large areas of the law remain untouched and the two legal systems continue to coexist within the national territory. The sources of law in Cameroon generally speaking thus include international treaties and conventions, the Constitution, legislation (in the form of laws from parliament, decrees and Ordinances by the executive (which has law making powers by virtue of Sections 27 and 28 of the Constitution), case law<sup>xliv</sup> and customary laws.

Legal aid is provided for by the law, as a means of facilitating access to justice in Cameroon. The main text on legal aid was Decree N0 76/251 of 9<sup>th</sup> November 1976. This text was replaced by Law N° 2009/004 of 14<sup>th</sup> April 2009 to organize legal aid. This current law stipulates the conditions under which legal aid may be granted and establishes commissions charged with the examination and processing of applications for legal aid. Legal aid can be granted as of right by special legal provisions on account of the nature of the case and on application.<sup>xlv</sup>

According to the 53rd Session of the African Commission on Human and Peoples' Rights of the African Union 3rd Periodic Report of Cameroon, within the framework of the African Charter on Human and Peoples' Rights,<sup>xlvi</sup> out of the applications registered and considered by the commissions in 2010, 141 woman and 113 men benefitted from legal aid in diverse cases and before all the levels of the court system. In 2011, it was 270 for men and 62 for women.

#### 3.1. Types of Legal Aid granted by the State

Legal aid granted by the State of Cameroon according to the main law consists of full or partial legal aid in criminal or civil proceedings. It is granted upon application to indigent persons, whose resources are inadequate to have their rights followed up by a court or to follow up the enforcement of any writ or procedure of execution obtained without legal aid. Such persons

include those subject to the flat rate tax, as well as a spouse with minor dependent children engaged in divorce proceedings and having no source of income.<sup>xlvii</sup> According to Section 5 (5), it could equally be granted upon application, as a special measure to corporate bodies, which are unable to pay their court expenses due to inadequate resources. In this connection, one wonders how justifiable it is for the law to take care of corporate bodies while not expressly mentioning other vulnerable groups such as the disabled.

The target population is however not always aware of the existence of legal aid and are as such discouraged from taking legal action to vindicate their rights. Legal information and education are as such vital in this connection. The commissions in charge of examining applications for legal aid are all headed by judges or judicial officers appointed by them and consist mainly of government officials, apart from the representative of the bar and a bailiff.

Legal aid is equally granted as of right to work accident victims seeking compensation from their employers, unemployed persons without resources deserted by their spouses and seeking to be granted alimony and child support by court order as well as a person under death sentence, making an appeal.<sup>xlviii</sup> While all these cases mentioned are important to be granted legal aid as of right, the categories should reasonably be extended as of right to all trials for felonies when the accused is an indigent person.

The granting of legal aid by the State entitles the beneficiary to an exemption from full or partial payment of treasury dues for stamp duty registration and registry fees as well as from any deposit, except for the fee provided for in case of appeal. This equally applies to full or partial payment of sums due to advocates, registrars, bailiffs, notaries and auctioneers for duties, emolument and fees. All documents tendered in evidence are free from any stamp duty. Registrars and notaries are equally expected to issue all documents free of charge.<sup>xlix</sup> Of course, legal representation is provided as a form of legal aid by the State, albeit to a very limited extent.

#### **4. LEGAL ASSISTANCE AND REPRESENTATION IN COURT**

Legal representation is provided for particularly in criminal cases either upon an application or as of right, upon appeal.<sup>1</sup> However, legal aid is not the exclusive preserve of criminal law and could equally be granted in civil cases. Access to justice could be guaranteed through legal

advice, assistance and representation in court either from the members of the bar or paralegals, who have received some form of legal aid.

#### **4.1. Legal Advice and Assistance**

Legal advice and assistance fall within the purview of the lawyer's duties towards his or her client but is not their exclusive domain. Legal advice and assistance could be provided by paralegals in well-established advice offices, as well as Non-Governmental Organizations and Associations and could take the form of legal education and sensitization, writing letters to officials, landlords, tenants, employers, for example. Legal assistance is essential for the poor and illiterate who might not easily understand the complex nature of court procedure and language. Paralegals could play an important role here if recognized by the justice system, albeit in a restricted manner. This means that, they would have to operate from established legal aid clinics run by Civil society Organizations in collaboration with or under the supervision of the Bar council. A Paralegal has been defined to be, "a person who has either received rudimentary la training or has been trained in basics of law to give legal advice to communities and individuals about their legal rights, human rights, administrative matters and constitutional and developmental problems. Paralegals are also trained to provide legal education and assist community organizations. The word 'para' means 'in the same way as' or 'in support of.'<sup>li</sup>

#### **4.2. Legal Representation and Hindrances**

Legal representation in court is provided for by the law on legal aid. A lawyer could be assigned to defend an accused person and be paid from the state treasury. For justice to be done and seen to be done, a party to any court proceedings would need the services of a legal counsel or barrister, who understands and appreciates the nature and gravity of the case as well as the technicalities of the legal system. The language of the law, the procedure used in court and the inaccessibility of lawyers all act as barriers to the indigent litigant.

Lawyers sometimes handle cases for indigent persons *pro bono* but such cases are relatively few. Non-Governmental organizations such as the International Federation of Female Lawyers (FIDA), Lawyers for Women and Children's Rights (LWCR) equally provide legal aid in the form of representation in court for indigent litigants within the framework of their general objectives.



The theoretical training of lawyers takes place in Law Faculties and has an average duration of three years for the acquisition of a Bachelor's Degree in Law (LL.B). The practical training is organized by the Cameroon Bar Council, under the supervision of the Ministry of Justice. This involves a two-year internship period which begins with success at the entry examination for pupil lawyers and ends with the successful completion and passing of the end of pupillage examination.<sup>lii</sup> Both examinations are not organized regularly, thereby frustrating university graduates and aspirants, some of whom seek the option of being trained in the Law schools of neighbouring African countries such as, Nigeria, Sierra-Leone and Rwanda. The present number of barristers and solicitors at the bar is two thousand six hundred and fifty (2.650).<sup>liii</sup> There is a high concentration of these lawyers in the urban centres, with the political and economic capitals of Yaounde and Douala respectively, having the highest number. This does not help the rural poor in having access to justice and for a population of about 25 million people, the ratio of lawyers per person is relatively low.

Lawyers' fees are relatively high and cannot be afforded by the average Cameroonian. However it is common for some lawyers to practice what is known as "the contingency fees model"<sup>liv</sup> according to which legal aid provided by the legal profession in civil cases is granted free of charge. The lawyer bears the risk of the outcome of the case and at the end any award of the sum claimed is shared according to an agreed percentage. This practice is common in labour matters.

The implications of poverty and high costs of litigation was captured by Sir Jack I.H. Jacob in the English context as follows: "The most serious blemish in the system of costs was and still is the excessive and prohibitive amount of the costs of resorting to the courts for determination or resolution of civil disputes or questions. The effect is to put justice out of the reach of people who may be classed as poor or even those with moderate means. Grave injustices may thereby be occasioned and many meritorious claims go unaddressed."<sup>lv</sup>

Another major problem faced by lawyers is their inaccessibility to the criminal justice system in the process of representing their clients. There are reported cases of lawyers being denied access to their clients who are under detention at the police or prison cells.<sup>lvi</sup>

Corruption is another major hindrance to legal representation in court and the administration of justice as a whole. According to the 2018 Corruption Perception Index reported by

Transparency International, Cameroon is the 152 least corrupt nation out of 175 countries.<sup>lvii</sup> There are allegations of corruption at all levels be it at the judicial police, court registry, legal department and magistrates. Justice is therefore seen to be for the rich and not the average citizen. According to a survey carried out by the Friedrich Ebert Foundation in 1999<sup>lviii</sup>, corruption has taken root and is flourishing in the justice department in Cameroon. The grant of bail at all levels of the judiciary (judicial police, State Counsel and the Court) is sometimes monetized and the bribing of magistrates by litigants is not an uncommon practice.<sup>lix</sup>

Corruption in the judiciary has the unfortunate consequence of a mistrust and lack of confidence in the system of administration of justice with repercussions in the form of mob justice. Although corruption is punishable by the criminal law,<sup>lx</sup> the bulk of perpetrators usually get away with impunity.

## **5. CONCLUSION**

Legal aid in all its forms is very vital in assuring access to justice in a developing country such as Cameroon with a low per capita income. Although there is the constitutional guarantee of access to justice for all, as well as basic principles on the effective administration of justice equally found in the law on judicial organization and adjectival law, loopholes and hindrances abound.

The 2009 law on the provision of legal aid has its shortcomings as far as the categories of potential beneficiaries are concerned, as well as the composition of the various commissions and its practical operation. The judiciary is not totally independent to the extent of being capable of administering justice impartially; hence corrupt practices abound. The cost of litigation is relatively high for the average Cameroonian<sup>lxi</sup> and has a deterrent effect, not to talk of the rate of fees charged by lawyers and other liberal professionals (bailiffs and notaries for example) involved in the administration of justice.

An amendment of the Constitution, to guarantee proper independence of the judiciary would go a long way towards assuring access to justice for all without discrimination. This could be done following the English model, which although not perfect is relatively better. An amendment of the law on legal aid to include other categories would equally be welcome, as well as collaboration with Non-Governmental organizations and Associations providing legal

aid through advice offices. The training and use of paralegals would equally go a long way towards assuring access to justice for the indigent. A paralegal has been defined as “A person who has either received rudimentary law training or has been trained in basics of law to give legal advice to communities and individuals about their legal rights, human rights, administrative matters and constitutional and development problems. Paralegals are also trained to provide legal education and assist community organizations. The word ‘para’ means ‘in the same way as’ or ‘in support of’.”<sup>lxii</sup>

A reduction of certain legal fees, which though necessary are exorbitant and prohibitive such as the obligatory deposit in civil claims filed in the High Court is hereby suggested. Anti-corruption laws need to be revised and the prosecution as well as discipline of members of the judiciary intensified. The National Commission for the Fight against corruption, popularly known by its French acronym ‘CONAC’ equally needs to revise its strategy. All these measures would help in ensuring a better, equitable and non-discriminatory administration of justice in a society that is based on the rule of law.

## REFERENCES

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<sup>i</sup> Bryan A Garner (ed.) *Black’s Law Dictionary* 9<sup>th</sup> edition (2009), 942

<sup>ii</sup> A Latin phrase meaning “let the other side be heard as well”

<sup>iii</sup> Law No 96/06 of 18th January 1996 as amended by Law No 2008/001 of 14<sup>th</sup> April 2008

<sup>iv</sup> Section 1-1 of the Cameroon Penal Code

<sup>v</sup> *Nichomacean Ethics*, Book V, paras 3 :1131a – 4 :1132b in M.D.A. FREEMAN, *LLOYD’S INTRODUCTION TO JURISPRUDENCE*, 523 (7<sup>th</sup> ed. 2001) London Sweet & Maxwell

<sup>vi</sup> *Ibid*, P.7, note 7

<sup>vii</sup> Defined in Black’s Law Dictionary as “the study of crime and criminal punishment as social phenomena, the study of the causes of crime and the treatment of offenders, comprising (1) criminal biology, biology, which examines causes that may be found in the mental and physical constitution of an offender, such as hereditary tendencies and physical defects.”

<sup>viii</sup> The study of penal institutions, crime prevention, and the punishment and rehabilitation of criminals, including the art of fitting the right treatment to an offender. *Ibid*, 1248

<sup>ix</sup> Thomas Obel Hansen, “Access to Justice and Legal Aid in East Africa-a Comparative Report”, (2011) *Danish Institute for Human Rights* 176, 17

<sup>x</sup> (2008)1 F.C.R. 696 cited in “The Definition of family Law”, 29, catalogue.pearsoned.co.uk/sample chapter

<sup>xi</sup> Ratification, acceptance and approval all refer to the definitive act undertaken at the international level, whereby a State establishes its consent to be bound by a treaty which it has already signed. It does this by depositing an “instrument of ratification” with the Secretary-General of the United Nations. To ratify a treaty, the State must have first signed the treaty; if a State expresses its consent to be bound without first having signed the treaty, the process is called accession. See: United Nations High Commissioner for Human Rights *The United Nation Human Rights Treaty System: An Introduction to the Core Human Rights Treaties and the Treaty Bodies*, Fact Sheet N° 30, 48

<sup>xii</sup> Ratified by Cameroon on 27<sup>th</sup> June 1984, as well as the Optional Protocol.

- <sup>xiii</sup> Signed on the 25<sup>th</sup> September 1990 and ratified on 10<sup>th</sup> February 1993
- <sup>xiv</sup> Section 14 (1) of the ICCPR.
- <sup>xv</sup> Available at [http://www.achpr.org/english/resolutions/resolution\\_46\\_en.html](http://www.achpr.org/english/resolutions/resolution_46_en.html), Thomas Obel Hansen, "Access to Justice and Legal Aid in East Africa-a Comparative Report", (2011) *Danish Institute for Human Rights*, P.23, note 21
- <sup>xvi</sup> *Ibid*, P. 23 note 23
- <sup>xvii</sup> Section 6 (1) and (2) of Law N° 2006/015 of 29<sup>th</sup> December 2006 on Judicial Organization
- <sup>xviii</sup> *R V. Sussex Justices, Ex parte Mc Carthy* (1924) 1 KB 256, (1923) 1 All ER Rep 233, Dictum of Lord Hewart CJ.
- <sup>xix</sup> Section 720 (1) Cameroon Criminal Procedure code provides "Under pain of the trial being declared a nullity the hearing of any matter in which a juvenile is implicated shall be in camera"
- <sup>xx</sup> Apart from labour matters, which are exempted from procedural fee in court. According to Section 24(4) of the Cameroon Labour Code, "Written contracts shall be exempted from all stamp and registration fees."
- <sup>xxi</sup> Section 8 (2) of Law Number 2006/015 of 29<sup>th</sup> December 2006 on Judicial Organization in Cameroon.
- <sup>xxii</sup> *Ibid*, Section 8 (3)
- <sup>xxiii</sup> See also, Emmanuel Ekoume, *Landmark Developments in Commercial Law Practice in Anglophone Cameroon: Conflicts Beyond Belief*, *Judique Périodique* N° 52. (Oct-Nov-Dec 2002), 81-89
- <sup>xxiv</sup> This attracts a sentence of imprisonment of from three months to two years.
- <sup>xxv</sup> See Law N° 2006/015 of 29<sup>th</sup> December 2006 on judicial organization, as amended by Law N° 2011/027 of 14<sup>th</sup> December 2011
- <sup>xxvi</sup> *Communauté Economique et Monétaire de L'Afrique Centrale*
- <sup>xxvii</sup> Section 7, Law N° 2009/004 of 14<sup>th</sup> April 2009 on Legal Aid.
- <sup>xxviii</sup> This amount has not changed till date irrespective of the devaluation of the Franc CFA, since the law have never been amended or abrogated.
- <sup>xxix</sup> Law N° 2005 of 27<sup>th</sup> July 25 instituting the Cameroon Criminal Procedure Code
- <sup>xxx</sup> Section 5 of Law N° 2006/015 of 29<sup>th</sup> December 2006
- <sup>xxxi</sup> Danièle Frison, *Introduction au Droit Anglais et aux Institutions Britanniques*, (1989) Erasme, 141
- <sup>xxxii</sup> *Ibid*, 141-143
- <sup>xxxiii</sup> Section 37 (1) Cameroon Constitution
- <sup>xxxiv</sup> Section 37 (2) Cameroon Constitution
- <sup>xxxv</sup> Section 37 (3) Cameroon Constitution
- <sup>xxxvi</sup> Most of the current members the Constitutional Council, especially the President are affiliated to the ruling party in Cameroon
- <sup>xxxvii</sup> United States Department of State, Bureau of Democracy, Human Rights and Labour, *Cameroon Human Rights Report*, (2018), P. 11 <https://cm.usembassy.gov/wp-content/uploads/sites/240/2018Humanight>. Accessed on 04.12.2019
- <sup>xxxviii</sup> *Ibid*. See also, Section 18 of Law N°. 2011/028 of 14<sup>th</sup> December 2011 to set up a Special Criminal Court.
- <sup>xxxix</sup> Section 64 (1) of the Cameroon Criminal Procedure Code
- <sup>xl</sup> Paisley Lord Hodge, "Preserving Judicial Independence in an age of Populism" Speech at the North Strathclyde Sheriffdom Conference, 23<sup>rd</sup> November 2018, P.2-5. Accessed on 04.12.2019
- <sup>xli</sup> Cameroon was a German colony from 1884 until the defeat of the Germans in the First World War in 1916. Cameroon was then partitioned between France and Britain as mandated territories of the League of Nations and subsequently became Trust territories under the United Nations Organization after the Second World War.
- <sup>xlii</sup> Section 68 of the Constitution (la N° 96/06 of 18<sup>th</sup> January 1996 as amended by Law N° 2008/001 of 14<sup>th</sup> April 2008 guarantees the application of received laws, which were in force as long as they conform to the constitution and have not been amended by subsequent laws and regulations.
- <sup>xliiii</sup> Amended at Quebec on 17<sup>th</sup> October 2008.
- <sup>xliv</sup> Case law is actually an important source of law in the two English-speaking regions of Cameroon, which apply the common law system.
- <sup>xlv</sup> Section 2 of Law N° 2009/004 of 14<sup>th</sup> April 2009 to organize legal aid
- <sup>xlvi</sup> *Straterep\_Cameroon\_2013\_eng.pdf*\_Adobe Reader, P. 122 §492
- <sup>xlvii</sup> Section 5 (1) & (2) of Law N° 2009/004 of 14<sup>th</sup> April 2009 to organize legal aid
- <sup>xlviii</sup> *Ibid*, Section 6 (1)
- <sup>xlix</sup> *Ibid*, Section 32
- <sup>1</sup> See Section 489 of the Cameroon Criminal Procedure Code
- <sup>li</sup> Chris Maina Peter, "Access to Justice: Creating a Role for Paralegal in the Administration of Justice in Africa", *Recht in Afrika* 2008:101-129, 117

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- <sup>lii</sup> Law N° 90/059 of 19<sup>th</sup> December 1990 to organize practice at the bar.
- <sup>liii</sup> Cameroon Bar Association, Roll of Advocates , 2019
- <sup>liv</sup> Thomas Obel Hansen, “Access to Justice and Legal Aid in East Africa-a Comparative Report”, (2011) *Danish Institute for Human Rights*, 41
- <sup>lv</sup> Chris Maina Peter, “Access to Justice: Creating a Role for Paralegal in the Administration of Justice in Africa”, *Recht in Afrika* 2008:101-129, 108
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- <sup>lvii</sup> <https://tradingeconomics.com/Cameroon/corruption>.
- <sup>lviii</sup> Friedrich Ebert Stiftung, *Corruption in Cameroon*, ed. Pierre Titi Nwel (1999) Gerddes Cameroun, M.Diom Richard (Trans.), 44
- <sup>lix</sup> *Ibid*, 44-46; see also: Transparency International, *Cameroon: Overview of Corruption and Anti-corruption*, P.4, <https://www.transparency.org/files/content/orrupationqas/country>. Accessed on 15.01.2020
- <sup>lx</sup> See Sections 134, 134-1, 134-2,142,143, 161of the Cameroon Penal Code.
- <sup>lxi</sup> Cameroon ranks 150th on the Human Development Index (HDI), with an average per capita income of \$ 3.291. [hdr.undp.org/sites/default/files/hdr2019.pdf](http://hdr.undp.org/sites/default/files/hdr2019.pdf).
- <sup>lxii</sup> Chris Maina Peter, “Access to Justice: Creating a Role for Paralegal in the Administration of Justice in Africa”, *Recht in Afrika* 2008:101-129, 117

