

RETHINKING CONSUMER ACCESS TO JUSTICE

Written by *Comfort Fuah Kwanga*

*Senior Lecturer, Department of English Law, Faculty of Law and Political Science,
University of Douala, Cameroon*

ABSTRACT

The consumer has been at the center stage with substantive laws being enacted to regulate the activities of manufacturers and protect consumers against unscrupulous business persons. For consumer protection to be effective, there is the need to lay some emphasis on access to justice. The Cameroonian legal framework has put in place some regulatory responses to consumer access to justice by introducing alternative dispute mechanisms, collective actions, reversal of burden of proof and also, the fact that the law on judicial organization has made it possible for courts to be created in every sub-division. Despite all these measures, consumers are faced with a lot of hurdles in enforcing their substantive rights due to excessive cost of action, lack of legal aid, lengthiness of procedures, the non-use of alternative dispute mechanisms and collective actions and the problem of burden of proof. The aim of this paper is to find out how consumer access to justice can be enhanced by making effective use of alternative dispute mechanisms, reducing the hurdles encountered in the normal court proceeding, encourage collective actions and the grant of legal aid to consumers. It would be strongly argued that consumers' rights have been taken into consideration; however their effective application to guarantee access to justice is still questionable and thus renders consumer rights unenforceable. It can be concluded that the normal rules of civil procedure and the non-effectiveness of arbitral bodies acts as a disincentive for consumers to pursue their legal rights. Thus the need for possible solutions to the existing gaps.

Keywords: *Consumer, consumer protection, Access to justice, Consumer rights, Enforcement.*

INTRODUCTION

The Black's law dictionary defines the consumer as "one who buys goods or services for personal, family or household use, with no intention of resale; a natural person who uses products for personal rather than business purposes.ⁱ The law on the legal framework on consumer protection in Cameroonⁱⁱ defines the consumer as "*the person who uses products to meet his own needs and those of his dependents rather than to resell, process, or use them within the context of his profession or any person enjoying the services provided*".ⁱⁱⁱ This definition limits a consumer to a user but it has gone further by extending the consumer to include not only the buyer but anyone who uses the products or procures them for use by others. As such anyone who uses goods for commercial purpose as well as in the context of his profession would not be considered as a consumer for the purpose of the law.

Access to justice is not limited to the institutional access but it involves the right to effective access to dispute resolution bodies, the right to fair proceedings, the right to timely resolution of disputes and the right to adequate redress. Access to justice to consumers is to find out whether consumers are provided with proper procedural and substantive rights to effectively protect their interest. For access to justice to be considered effective and efficient there is the need for effective remedies, redress, access to courts, judicial protection, fair trial and due process. Access to justice stems from the consumer's right to redress and the right to be heard. As per the Black's Law Dictionary, "it is the ability within the society to use the courts and other legal institutions effectively to protect one's rights and pursue claims."^{iv} The preamble of the Cameroon constitution of January 1996 has guaranteed the rights to a fair hearing and the legal framework on consumer protection in Cameroon taking from the United Nations guidelines also guarantees various rights of the consumer that contributes to access to justice.^v Access to justice which is considered as a means to which the consumers can be heard, consumers can exercise their rights and can challenge discrimination poses challenges such as: problems of access to courts, lack of legal awareness by consumers as to the procedure of handling claims, lengthiness and costly litigation, lack of arbitral bodies, non-use of collective action and to an extent lack of legal aid. Several efforts have been made in seeing that access to justice can be made effective but there are still some gaps such as: the normal civil procedures are still the same and there is the ineffective operation of arbitral bodies in the various regions of Cameroon.^{vi} This poses the problem of how to protect consumer needs in the best way possible? It is based on this that potential shortcomings will be analyzed and future

steps that will eventually enhance the search for a suitable and effective access to justice mechanism for efficient consumer protection will be considered.

DEFINING THE PROBLEM OF CONSUMER ACCESS TO JUSTICE

According to G. Howells and S. Weatherill,^{vii} “consumer rights are only as effective as their enforcement” and we cannot talk of effective enforcement if access to justice is a challenge. Consumers are faced with numerous hurdles in accessing justice which are both substantive and procedural and ranges from legal aid; access to courts; consumer awareness of their rights and court procedures, cost of redress, effective remedies and the availability of alternative dispute mechanisms.^{viii}

Access to courts and Procedural Difficulties

Access to courts is considered not only based on the institutional accessibility of courts to consumers, but also as to the procedural difficulties such as cost of accessing these courts, the burden of proof, the length of court actions and the execution of court judgments.

Nearness of Courts to consumers

In designing civil justice, the goal or economic objective is to achieve equilibrium in the market for consumer justice^{ix} and this cannot be possible without an effective access to justice mechanism in place. The preamble of the constitution holds that everyone has the right to fair justice and this right is collaborated with the right to be heard of the consumer and article 37 of the constitution provides that justice has to be administered by the Supreme Court, the Courts of appeal and tribunals. For the consumer to be heard he must have access to the courts as mentioned above. In Cameroon in order to bring justice nearer to the people the judicial organization has opted for the decentralization of the justice system.^x Courts are to be located at various territorial levels throughout the country with the exception of the Supreme Court. There is a Court of Appeal for each Region, a High Court for each Division and a Court of First Instance for each sub-division. This is based on the desire to bring justice nearer to the people especially those of the rural areas because the more the nearness of instruments of justice, the more secured the consumer in his person, honour and property.^{xi} This is to avoid that litigants should travel long distances to seek legal redress in law courts or to pay high transport cost in

order to arrive the seat of the court. In Cameroon, we have about 269 sub-divisions which means there are supposed to be 269 courts of first instance. Section 15 (1) of Law No.2006/015 of 29 December 2006 on the judicial organization in Cameroon as amended by law no. 2011/027 of 14 December 2011, provides that each Court of First Instance operating at the level of the Sub-Division has a criminal and civil jurisdiction. Civil matters, commercial and labour matters where the amounts does not exceed 10.000.000 CFA Francs and also competent in the recovery of civil or commercial debts not exceeding 10.000.000CFA Francs through simplified debt recovery procedures. Given the above provisions of the law, if every Sub-Division was to be endowed with a Court of First instance then access to justice will be a dream come true but it is not the case as we still find many Sub-Divisions without a court and this makes justice inaccessible to litigants who have to travel out of their areas of jurisdictions to seek justice at the Divisional level thus making the consumer reluctant to seek justice especially based on the fact that it makes it costly for the litigant. The claimant's needs to pay the transport fare, hotel bills and feeding, to which many consumers cannot afford and thus will not pursue their rights even if they have a genuine claim.

Cost of Accessing the Courts

The cost of civil and commercial litigation raises the fundamental question about the efficiency of the civil procedure and determines access to justice. The intrinsic level of the cost that a given system has in play, has a significant implication, not only for efficiency of the system but also for its ability to deliver effective access to justice.^{xii} The size and predictability of cost of dispute and of dispute resolution process needs to be evaluated to see whether the risk and benefits of using the process are favourable in pursuing legal action.^{xiii} If the cost at risk are too high, there is no better alternative pathway, the result will be a denial of justice and potential wrongs will not be remedied or compensated.

Submitting a case in court or in arbitration is subject to regulations and also the manner in which the procedures has to be handled. The procedure normally starts with a summons that has to be served the defendant either by the court clerk after the case has been filed to the court or by a bailiff directly to the defendant in accordance with the procedural law.^{xiv} The formalities to be observed when submitting a claim and also during procedure leads to high cost on the part of the plaintiff and even lengthiness of the procedure. Undue delay in judicial proceedings, corruption of the judicial system as well as enforcement of court judgments all makes taking

action costly and compounds the problem of access to justice. Cost for civil and commercial proceedings at times stand to be outrageous based on various aspects such as: the cost for starting proceedings, the cost of hiring a lawyer, cost for expert opinion and witness hearing and the idea of the loser pays the principle all serve as obstacles to consumer access to justice.

The cost of legal proceedings undoubtedly constitutes the most important burden for consumers to submit their claims to the courts. In most cases, consumer claims are of very little financial value and the cost involved in bringing a claim deters the consumer from taking action. The higher the cost, the more likely that the enforcement of consumer rights would be of little importance to them due to the lack of the heavy sums needed to enforce their rights. Where consumers are unable to enforce a claim, it means access to justice is being denied and consumer wrongs are not remedied or compensated.^{xv} The cost to be borne by the consumer are manifold: the cost of travelling to the place of the court, accommodation, feeding, charges to start the procedure (court fee, the cost of service of the bailiff), the cost of legal advice and representation and the principle that parties will need to pay for these costs when they occur. However, generally the cost is shifted to the losing party based on the loser pays principle or indemnity principle.

The consumer plaintiff would necessarily have to pay the court fee at the start of the proceeding and also fees for summons by the bailiff. The fee may seem modest and might be refunded in case judgment is granted to the consumer; however this jeopardizes access to justice.^{xvi} Again parties are required to hire the services of a lawyer^{xvii} and we can understand that the lawyer fee in Cameroon is not at the disposition of most consumers especially based on the fact that consumer claims are small claims. The services of a lawyer are not for free, as the claimant has to pay consultation fee before he or she is granted access to the lawyer. This easily stands in the way of filing a claim against the wrong doers and therefore limits considerably access to justice for very few can afford such fee given that the minimum wage rate in Cameroon stands at CFA 36, 270 CFA Francs.^{xviii} In Cameroon the idea of “no win, no fee” is not practiced and paying off the fee from the start of the procedure and other additional cost during the procedure discourages taking action therefore limiting access to justice especially as most claimants are not sure of the outcome. Lawyer fee in Cameroon varies from 50,000 CFA Francs from the introduction of the case file to any amount. Actually, there is no standard amount and so at the end, it is even difficult to predict what the lawyers cost would be. Such unpredictability deters

parties from taking action in court altogether for reasons of uncertainty of amounts that may go above the amount of the claim.^{xix}

Cost of expert hearing and witnessing also poses as an obstacle to taking action. In most consumer claims there is the need for experts to be brought in to determine whether the defect existed before the delivery or the defect actually caused the injury. This is because certain consumer issues require the resolution of questions with artistic, scientific or technical ingredients. Consumer claims at times need technical and sophisticated evidence which can only be given by an expert. It is the responsibility of the party who requires such evidence to call to an expert to adduce it. Most often consumers are called to pay the expenses and also the cost of the transportation, accommodation, feeding and even accommodation of experts. This leads to additional cost that the consumer will not be able to bear and complicates the whole process of access to justice.

Consumers who are judgment creditors according to the law are required to pay five (5) percent of the quantum of damages.^{xx} This is a great hindrance to the consumer who is already facing final hardship after the lengthy court procedure. Such a practice is regrettable for those who cannot deposit such amounts cannot get legal redress as the judgment cannot be enforced without the payment of the said amounts and this can be considered as denial of justice.

The loser pays principle is that which holds that all cost of the proceedings incurred by the winning party are to be borne by the losing party further reduces the anxiety for consumers to take action especially due to the uncertainty of the final outcome of the procedure. The risk of not having to bear only her own cost, but also having to compensate the cost incurred by the other party stands in the way of consumers asserting their claims given the fact that the outcome of claims are not always predicted from the outset. In most cases, consumers would not want to run such a risk and this maintains the status-quo of the low enforcement of consumer claims. With such amounts to be spent, it would be intimated that the judicial system is not generally affordable and not many people can decide to go to court given the standard of living in Cameroon.

Again, when courts hands down judgment, it does not proceed to enforce them on the successful party or judgment creditor without further actions. In the case of voluntary execution, there is no problem. But where there is no voluntary enforcement, the successful party initiates forceful enforcement measures.^{xxi} This is usually carried out by bailiffs or

enforcement officers.^{xxii} This further increases cost and some successful claimants even abandon the recovery of their judgment debts. The law needs to make it that immediately a judgment is passed the judgment debtor should execute the judgment without further actions by the judgment creditor.

The promotion of the rule of law and the importance of social and economic stability demand that justice be sufficient accessible and cost should be low to allow individuals vindicate their rights and get the necessary compensation from the wrong doers. Without strict rules in the area, it gives room to high and disproportionate cost and access to justice is adversely affected.

Lengthiness of Actions

Justice delayed is justice denied^{xxiii} and this is what most consumers go through when it comes to taking action in court. A consumer would need a lot of patience and stamina to pursue a claim through the court system. Most often in consumer claims parties have to provide expert opinion or witness testimony or at times may be called to visit the production site and such might lead to an average duration of about one year with all the adjournments that go on in Cameroon.^{xxiv} Again the full duration of the procedure will be tripled if one of the parties decide to go on appeal. The possibility of appeal against the judgment of the courts with ordinary jurisdiction or even appellate courts as a means of fighting against arbitrariness, has led to a clear delay in the handling of consumer claims. Although the possibility of appeal is advantageous to claimants in the case of mistake by the parties or by the courts and such a mistake may be rectified by the appellate court, it would be intimated that this actually leads to a prolongation of the proceedings and may easily deter consumers from enforcing their rights through the court system. There is a need for a strict observation of the various time limits so as to avoid delays.

If the consumer claim is granted by the court and is no longer subject to appeal, the consumer may demand the immediate compliance with the judgment. Where the defendant voluntarily complies with the judgment, there is no further delay or additional cost on the part of the claimant. It is different where the defendant does not comply with the judgment and there has to be forced execution of the judgment. In that case the consumer would have to invoke the assistance of a bailiff to serve the writ of execution. The procedure for force execution of the judgment would also take time and additional cost and thus constitutes an obstacle to consumer redress and this jeopardizes consumer access to justice.

Burden of Proof

The burden of proof is generally considered as the legal obligation imposed on the party to persuade the tribunal of fact, to the required standard of proof and the whole evidence of truth of every essential fact at issue.^{xxv} One of the greatest obstacles faced by consumers in accessing justice is that of burden of proof when the matter is brought to the judge. A consumer who suffers any damage from a consumer product must be able to establish that there is a link between the damage and the consumer good. The claimant has to prove that the loss, damage or injury was a direct consequence of the defendant's breach of duty of care i.e. there must exist a chain of causality from the defendant's action to the claimant's loss, damage or injury. The onerous burden lies on the plaintiff, but the Cameroonian Legal Framework with the need to facilitate consumer access to justice has gone a step forward by providing for the reversal of the burden of proof.^{xxvi} However, it does not still make the situation easier for it is the defendant that understands his goods or products and can easily give a contrary proof to the allegation of facts by the plaintiff. With this in mind, consumers get discouraged in taking action because proving the link between the product and injury suffered from is not all that simple and also takes time. This is because the plaintiff will have to find the manufacturer or may have simply forgotten the identification marks. Even when the claimant is able to identify the manufacturer or supplier the next issue is that of proving the causal link between the product and the injury suffered and this has never been a simple issue. It can be said that most claims fail not because there are bad or wrong claims but because the parties are unable to prove with precision the facts of the case. Therefore, due to the uncertainty of the outcome of a claim, due to the burden of proof, most consumers prefer not to take action. The reversal of burden of proof is welcome but strict liability would be more suitable to curb with the burden of proof that seems not to be an easy task and this will encourage access to justice.

Consumer Awareness and Willingness to Take Action

The enforcement of consumer rights presupposes that the consumer takes action if not satisfied with the goods or services rendered or by opposing a claim of her counterpart for payment for such dissatisfactory goods or services rendered.^{xxvii} For there to be effective consumer access to justice there must be consumer awareness of their rights and consumers must be ready to take action without which access to justice would simply be an ideology or a fight without any reason.

Knowledge of Consumer Rights

Consumer access to justice is at no moment limited by the absence of enforcement mechanisms in place but also limited by the fact that many consumers are unaware of their rights while others are simply lukewarm as to their rights. For consumers to enforce their rights it presupposes that consumers have to be informed of such rights or at least are willing to be informed thereof. The four basic rights as stated by J. F. Kennedy are “*the right to choice, safety right to be heard and right to be informed consumers.*”^{xxviii} The preliminary issue of information starts with the fact that the consumer needs to be adequately informed prior to entering a transaction and after the transaction has failed, the consumer needs to be informed on the enforcement of his rights. The hindrance to consumer information is that consumers are largely illiterate and uninformed and thus lack the expertise to understand their consumer rights.^{xxix} Law no. 2011 on the legal framework on consumer protection in Cameroon has brought out the principle of information “according to which consumers have the right to access to information to enable them to make informed choice during any transaction concerning the supply of technology, goods and services.”^{xxx} It can be said most Cameroonian consumers are not informed consumers and as such readily accept anything proposed to them by businessmen who are more informed and understand the consequences of their action. Even those who are informed and are ready to take actions, their efforts are thwarted by lack of knowledge of the legal procedures to follow in order to ascertain their rights.

Though there is this law in place, most consumers are yet to avail themselves with it and there is also the laissez faire attitude where though consumers are informed, they still do not care. This law needs to be vulgarized so that consumers can become aware and take their rights seriously. For example, consumers do not know the exact time limit in which to refund goods in case there are defective or do not even know the delay in which to take action and may only take action when the prescription period is over. Some consumers do not know who to cease in a claim, whether the middle businessman or the manufacturer directly. This poses a problem in that some cease the manufacturer directly and by the time they are coming back to the retailer, to the courts, the time limit must have elapsed. This right is not only limited to consumers making an informed choice, but it has to be extended to information on claims procedure. The consumer associations have been given the right to educate consumers on their rights so as to make consumers to become informed consumers.^{xxxi} It should be said that consumer associations have not taken this responsibility of education and information of the

consumers seriously either due to lack of resources, personnel or due to the fact that their priorities are tilted to other areas that are more lucrative. It has been observed that consumers are very passive in utilizing their rights. As such it should be recommended that consumer associations should take up their role effectively in educating the consumers on their various rights and by so doing, consumers would become informed consumers, ready to fight for their rights whenever there are infringed.

Consumer ignorance most often is not the only reason for the enforcement of a claim but there are other obstacles that make the consumer unwilling to take action.

Willingness to take action

Most consumers are lukewarm as to their right to be heard and to redress and as such in Cameroon legal action is taken by consumers in very limited cases. This is because of the low individual amounts at stake or risk of losing a case and also the potential lack of time and legal knowledge.^{xxxii} Consumers that are frustrated by defective products or imperfect service hardly even complain.^{xxxiii} Taking legal action presupposes the consumers are aware of their rights and are ready to fight for such rights. Very few consumers, even those that are aware of their rights, see the need of taking action and are willing to carry out the whole procedure. Most often consumers give up and bear the loss themselves. Majority of the consumers simply prefer out of court negotiations by going back to where the contract was concluded or where they bought the product or some might simply resort to self-help mechanisms by withdrawing from the contract or refraining from purchasing from the trader.^{xxxiv}

Again, consumers' willingness to take action is lacking because most often consumer claims are of small or insignificant amounts, the cost of taking action may be too great, the formality and remoteness of the courts may be too daunting and the amount the consumer stands to recover, if successful may not make litigation worthwhile.^{xxxv} Consumers complain of the cost of action, lengthiness of procedure and as such prefer to stay without any action.

DIFFICULTIES IN RELATION TO ALTERNATIVE DISPUTE RESOLUTION MECHANISM, COLLECTIVE ACTION AND LEGAL AID

The law in a bit to facilitate access to justice has put in place mechanisms for rapid redress of consumer claims through arbitration and mechanisms for the reduction of cost through collective actions and even the provision of legal aid to certain categories of persons. However these measures are of a limited nature and cannot fully guarantee access to justice because of their non-applicability, ineffectiveness and imprecise nature.

Ineffective Alternative Dispute Resolution Mechanism

The united nations guidelines on consumer protection holds that “governments should establish or maintain legal and/or administrative measures to enable consumers or, as appropriate, relevant organizations to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible and that such procedures should take particular account of the needs of low income consumers”^{xxxvi} Based on this, the law on consumer protection in its article 26(1) has stated that the defense of the interest of a consumer or group of consumers have to be in court or any arbitration body.^{xxxvii} The adequacy of the application of this rule poses a problem in that the cost of litigation and lengthiness of procedure has made consumers unwilling to take actions. The law has provided that action can be taken to arbitration bodies where the procedures are less expensive, flexible and rapid in resolving consumer issues but it would be said the arbitration bodies and their functioning are not known to consumers. There is still much that has to be done in the sensitization of consumers as to the taking of action.

The United Nations impose on member states to take all the necessary measures for consumer protection in relation to facilitation of access to justice to consumers as to ordinary jurisdictions and also to alternative modes of resolution of disputes notably arbitration^{xxxviii}

Alternative dispute resolution (ADR) as defined by the Black’s Law dictionary is “the procedure for settling a dispute by means other than litigation such as arbitration or mediation”^{xxxix} Alternative dispute resolution is considered as an incontestable means of resolving consumer disputes.^{xl} It is on this United nations Guidelines that article 5^{xli} and 30^{xlii} of the legal Framework on consumer protection has provided for the possibility of consumer claims

to be resolved through arbitration^{xliii} and to make this effective, a Prime Ministerial text of application of 2012 organizes the functioning of redress commissions for the arbitration of consumer disputes.^{xliv} This is because arbitration has become the order of the day in most fields and the area of consumer protection is not left out.^{xlv} The reason for choosing arbitration is because it is flexible, less costly, rapid, and transparent. Given the importance of arbitration in the area of consumer protection a Prime Ministerial Order of 2012 organizes its functioning and makes it an uncontestable means of resolving consumer disputes. The law puts to place institutional arbitration through commissions as seen in article 30^{xlvi} of the Legal Framework and contractual arbitration as demonstrated in article 5 of the legal Framework.

With all the above in place, the question is can arbitration be effectively handled to ensure efficient consumer protection. The answer to an extent is somehow doubtful based on the fact that arbitration by redress commissions seems to be faced with many obstacles. Meanwhile, for contractual arbitration the regime is not very clear.^{xlvii}

With arbitration by redress commissions, the first difficulty is that these commissions are on paper and cannot be seen in the various divisions and therefore makes it difficult for the consumer to seize. Also, the composition of the arbitral tribunal poses a problem in that it is composed of the Divisional Officer who is territorially competent, the chief of brigade of control and repression of fraud of the Sub-Division, a representative of the consumers and a representative of the professionals chosen by the Divisional Officer^{xlviii} and most of these persons that make up the commission have other jobs and it is difficult to get all of them in place at the same time and delays the putting in place of the redress commissions. Normally, the Divisional Officer who is the president of the commission once seized needs to summon it within 15 days for reasons of rapidity of procedure as per the United Nations guidelines.^{xlix} It is noticed that it cannot be possible given that they have other things to do since most of them are civil servants having other duties to perform and most often lives out of the jurisdictions. As from the date of the first appearance the decision must be given within 5 days^l and the parties must be notified within 5 days.^{li} This means that the whole procedure takes 25 days which is good for reasons of rapidity but consumer disputes most often needs expert knowledge which cannot be given within 25 days and it makes it difficult for the commission to handle matters within this delay.

Another problem with the arbitration procedure is that the decision of the arbitration commissions can be contested in justice by consumers who are not satisfied with the decision of the commission.^{lii} Here it has not been mentioned whether it is an appeal of the decision or it is the beginning of another litigation procedure on its own right. This further lengthens the procedure and arbitration as a means of easy access to justice of arbitration is put to question.

Furthermore in instituting administrative arbitration, the legislator has opted for flexibility, rapidity and less cost by stating that the commissions would be seized by way of a petition,^{liii} parties would not have to pay cost^{liv} and also that there would be the reversal of burden of proof.^{lv} All these measures put in place to facilitate access to justice to the consumer are welcome but can be criticized based on the fact that it may over protect the consumer by not only making the consumer irresponsible but by also overcrowding the commissions which might lead to delay in rendering decisions on the same basis like normal litigation procedures.^{lvi}

As for contractual arbitration as stated in article 5 of the legal framework nothing has been mentioned as to the regime of operation which therefore leads to the fact that the normal arbitration regime that is used in commercial matters and this is regulated by the OHADA Uniform Act on arbitration.^{lvii} From this the consumer will have to go through all the difficulties that are encountered under the OHADA Uniform Act on Arbitration when it comes to costs, flexibility and rapidity.

Absence of Legal Aid to Needy Consumers

One of the problems in taking action is that the consumer has to pay cost of action during the commencement of the action and there is no legal aid in place for consumers to benefit from. It discourages the consumer from taking action. Also there is the rule of who loses the case pays the cost. So consumers are afraid to take the risk to bear the cost of the procedure. With hindsight, it would be advisable to state that there is the need for legal aid to consumers so as to encourage consumers to take action and to curb with the bad practices of the business world.

Legal aid is an important element of access to justice and needs to be improved upon by spreading it to other categories of persons especially consumers because without which judicial remedies will only be available to those who dispose of the financial resources that are necessary to meet the often prohibitive cost of administration of justice and lawyers fee.^{lviii} Legal aid would be seen as necessary tool to encourage consumers to take action but in

Cameroon legal aid which is provided for by Law No. 2009/004 of 14 April 2009 seems to be fraught with a lot of procedural difficulties such as delay that hampers access to justice.^{lix} The law on legal aid provides that legal aid is granted upon request to those with limited means upon authorization by a commission.^{lx} Many citizens are unaware of the existence of the legal aid commission and in most circumstances cannot meet up with the requirements for legal aid due to the cost of documents that have to be produced in order to benefit from the legal aid. An application for legal aid must include the following documents: evidence of impecuniosity, a copy of tax roll or a certificate from the head of the administrative unit specifying where appropriate, if they are liable to discharge taxes and a certificate of lack of means issued by the mayor of the relevant council area, based on inquiry by the appropriate social services. All these must be done within (thirty) 30 days, and failure to produce these documents after having been duly summoned, the application would be considered inadmissible.^{lxi} Knowing the slowness in which our administrative system delivers documents to users, one might be tempted to state that those seeking for legal aid would hardly reach the stage of ceasing the commission because of the difficulty in getting the necessary documents and the cost of getting the documents. For documents to be certified by authorities in Cameroon there is the need for fiscal stamp. Someone seeking legal aid is already someone who lacks the means and having to go through the various hurdles to get the documents needed for it only accentuates the situation and limits access to justice. The legal aid commission is given the right to independently gather information to determine the adequacy of the resources of the applicant and the commission has the discretion to grant legal aid or not.^{lxii} This at times throw some doubt on the objectivity of the commission on legal aid and limits access to justice.

Imprecise nature of Collective Proceedings

Cost is one of the reasons for the limited access to justice. In order to spread cost, there is the need for the mechanism for collective proceedings to be put to work by encouraging consumers to take collective proceedings and it is a form of judicial help to consumers which takes into account the problem of access to justice. Also given the fact that consumer complaints are mostly of little value which discourages consumers from taking action because of the fear of the outcome, there is the need for collective action that would regroup so many collective claims and encourage consumers to fight for their rights.^{lxiii} The Cameroonian law on Consumer protection in its article 27 has mentioned collective proceedings to be carried out by consumer association groups where consumers who have suffered harm due to the same service

or product can regroup themselves and fight for their rights through consumer associations.^{lxiv} This is what is known as class action in America but the challenge to be faced here is that the law to an extent is vague and limited in that it has not brought out the procedure for such actions and as such leaves the consumer confused as to what to do. The first thing to consider is the fact that the consumer protection legal framework is general and there is the need for a text of application for it to go effective. In the area of collective proceedings no text has yet been promulgated which makes the regime for collective proceedings confusing in its application. As such for collective proceedings to be effective and access to justice guaranteed, there is the need for concretization through a text of application and to make its functioning understood.^{lxv} No precision has been made on the number of consumers that consumer associations can handle and this associations have to act benevolently, in an autonomous and independent manner. The fact that the work of the associations is free of charge, makes them reluctant to take action on behalf of consumers.^{lxvi} Also consumer protection associations simply represent consumers and are not parties to the claim and there is no obligation for them to get a mandate from consumers.^{lxvii} They act through declaration or denunciation of the injury by consumers or through their own proper initiative. This makes it difficult for associations to effectively show proof of damage or the causal link and leads to lack of effective redress.^{lxviii} Again in the case of reparation of collective proceedings who benefits from it, is it to be owned by the associations or does it have to be shared out and how is the sharing to be done. So many questions are still left unanswered when it comes to collective proceedings in Cameroon. Thus, making access to justice a nightmare to consumers.

RETHINKING EFFECTIVE ACCESS TO JUSTICE

The United Nations guidelines for consumer protection^{lxix} provides that:

Member states should encourage the development of fair effective, transparent and impartial mechanisms to address consumer complaints through administrative, judicial and alternative dispute resolutions including for cross border cases. Member states should establish or maintain legal and administrative measures to enable or maintain legal and/or administrative measures to enable consumers or, as appropriate, relevant organizations to obtain redress through formal or informal procedures that are expeditious, fair, transparent, inexpensive and

accessible. Such procedures should take particular accounts of the needs of the vulnerable and disadvantaged consumers...^{lxx}

The law of 26th may 2011 on the legal framework on consumer protection has given impetus to the protection of consumer rights by internalizing the United Nations Guidelines in relation to consumer protection but the law to an extent has not properly taken into consideration the interest of the consumer as to access to justice when it comes to procedural and substantive measures that can facilitate access to justice. The reason there is a need to rethink on how to ameliorate the law.

Legal Initiatives to Enhance Access to Justice

The Cameroonian legislator has taken into consideration arbitration as per the united nations guidelines on consumer protection but it is still less effective based on the various shortcomings and needs to be reconsidered by putting in place an arbitration tribunal and reconsidering certain aspects of the law bringing out a governing law to govern the arbitration tribunal so that consumers will not have to refer to the OHADA Uniform Act on Arbitration. Again the procedure for seizure of the arbitration commission should be looked into to make it more accommodating and real.

For access to justice to be effective through collective proceedings, a text of application needs to be promulgated bringing out the regime for collective proceedings; For consumer associations to be interested, they need to be active parties to the claim and needs to be provided with the financial and material resources. This will make them interested to take collective actions and access to justice effective will be guaranteed.

Another important aspects that discourages consumers is that the losing party pays the legal fee. This cost cannot be controlled by the consumer in any way than refraining from the procedure altogether. In practice, the risk of potentially having to reimburse the expenses may deter consumers from enforcing their rights. The system should be made in a way that consumers pay lawyers when they have succeeded in their claim. Consumer claims most often are of small value as such the cost of the court procedures, expenses discourages consumers from taking action. For Effective access to justice, there is a need to rethink how cost of procedure and expenses can be managed when it is for small claims and also making legal aid to be effective.

Making legal aid available to consumers who cannot afford the cost of actions and limiting the procedural difficulties in getting legal aid, will make legal aid to be effective and granted to those who are in need. This would make consumers who cannot afford the cost of procedures to become interested in seeking for redress by getting legal aid and with this, it would enhance consumer access to justice.

However, an important hurdle in access to justice of consumers is that some consumers are found where there are no courts and consumer claims would involve cost of travelling, feeding and hotel bills and it should be said consumer claims are mostly of small value, thus it discourages consumers taking action. Courts need to be moved closer to the consumer through the creation of special consumer courts and the consumer also needs legal assistance which in Cameroon it is not easy to get.

Empowerment of consumers

For the effective implementation of consumer protection measures, consumers need to be empowered with the knowledge on when to fight for their rights and how to fight for these rights so as to make consumer protection efficient. The law has put in place the need for consumers to be informed and to be educated but it would be said most consumers in Cameroon cannot read and even those who can read are not informed consumers because they do not take of time to read. The consumer associations have been given the responsibility to educate the consumers but they are not carrying out the role due to both human and financial constraints. For consumer associations to play their role of education effectively, they should be provided the necessary means to do so. Most consumers do not know about the existence of consumer associations and that the consumer associations are recognized channels through which they can assert their rights. Consumers need to be informed about the associations and be actively involved in using them to enforce their rights through collective proceedings. Consumers need to be educated on the various laws and procedure to use in getting justice and they also need to be educated on the various institutions that are concerned with consumer issues. This is a necessary condition for the individual maintenance of consumer rights, as consumers will only take legal action if there are aware of the existence and if there is high probability that legal action will be successful. However, this barrier to the enforcement of consumer rights may be taken away only to a limited extent: In practice, consumers will only invest time an energy in becoming informed when they believe they should be entitled to a remedy or where, already

from the outset, the monetary value of potential claim does not outweigh the assumed cost and effort in obtaining the remedy, Consumers will simply take their losses.

CONCLUSION

An effective consumer access to justice mechanism would have far reaching effects on consumer protection and effective enforcement of consumer rights. Consumer access to justice is limited due to various obstacles. The first obstacle is that consumers are ignorant of their rights and as such cannot take legal action. The saying “no one is ignorant of the law” is a legal maxim to make consumers to understand that they have to know the law, respect the law and also use the law to fight for their rights. But it can be asserted that many consumers lack legal awareness and therefore cannot enforce rights that there are not aware of. Where consumers are interested in taking action, they are faced with lengthy and costly proceedings. It would be stated that court proceedings take a very long time especially when expert opinion and witnessing has to be considered. Proceeding can take well over four years and parties are again given the possibility to take appeals against the judgment which again doubles the procedure and leads to high cost of taking action. The problem of lengthiness and cost of proceedings would be resolved if arbitration is made effective and if a text of application on collective action is promulgated so as to spread cost among consumers. .

ENDNOTES

ⁱ B. A. Garner, *Black's Law Dictionary*, 9th ed. West Publishing Co., St. Paul Mn, USA, 1999, p 358

ⁱⁱ In Cameroon Law no 2011/012 of 06 May 2011 on the Legal Framework for Consumer Protection was enacted based on the 1985 United Nations Guidelines on Consumer protection.

ⁱⁱⁱ Section 2 of Law No.2011/012 of 06 May 2011 on the Legal Framework on Consumer Protection in Cameroon.

^{iv} B. A. Garner, *Black's Law Dictionary*, 9th ed. West Publishing Co., St. Paul Mn, USA, 1999, p 16.

^v United Nations Guidelines on Consumer Protection 1995.

^{vi} A. L. BOMA, *Principles of Consumer Protection Law*, ULTRANET, Cameroon, 2021, p 176.

^{vii} G. Howells & S. Weatherill, *Consumer Protection Law*, 2nd ed. Aldershot, Ashgate, 2005, p 660.

^{viii} E.F. Rickett and Thomas G. W. Telfer, *International Perspective on Consumer Access to Justice*, Cambridge University Press, UK, 2003, p 26 summarizes it as follows “Right to effective access to dispute resolution body; right to fair proceedings, right to timely resolution of disputes; right to adequate redress; and the principle of effectiveness and efficiency.

^{ix} *Ibid*, p 3.

^x See Ordinance No.72/4 of 26 August 1972 as amended by Law no.89/19 of 29 December 1989 and Law No.90/58 of 19 December 1990, Law No.2006/015 of 29 December 2006 on Judicial Organization and Law No.2011/027

of 14 December 2011 to amend and supplement certain provisions of Law No. 2002/302 of 3 December 2002 on the creation of some courts of first instance and high courts in Cameroon.

^{xi} See S. T. Tabe “The Administration of Justice under the Judicial Organization Laws in Cameroon”, *Recht in Africa, Law in Africa, Droit en Afrique*, 20, 2017, pp 208-228, p 209, Re-quoting C. Anyangwe, *The Cameroonian Judicial System*, CEPER Yaounde, 1987, p 164.

^{xii} C. Hodges & al., *Cost and Funding of Civil Litigation*, Hart Publishing, U.K, 2010, p 4.

^{xiii} *Ibid.*

^{xiv} All process commencing proceedings must be served on the opposing parties. Service in English Cameroon in Civil procedure is ordained by Order 9 Rule 1 of the Rules of Cap 211 and the provisions of Preamble of the Cameroonian constitution on fair hearing when read together with article 65 of the 1996 constitution as amended; Service is a legal notice to the defendant that he has a case pending in court against him. It is at the same time an invitation that he should appear and answer to claim in the process. It is an essential foundation of the golden rule of practice that a claimant should not be taken by surprise. See M.A. Yanou, *Practice and Procedure in Civil Matters of Records in Anglophone Cameroon*, Wusen Publishers, 2012, p 93-94.

^{xv} Hodges & Al., *Cost and Funding of Civil Litigation*, Hart Publishing, U.K, 2010, pp 110-32.

^{xvi} *Ibid.*

^{xvii} Although the law does not assist on the need of a lawyer, it must be observed that practice in the High court is done almost exclusively by lawyers.

^{xviii} Decree No. 2014/2217/pm of 24 July 2014 on the revalorization of the guarantee minimum wage rate in Cameroon.

^{xix} C. F. Kwanga, & S. D., Galega, *The Law of Pharmaceutical Product Liability in context*, Ibandan University Printery, 2018, pp 103-104.

^{xx} Circular no.0012/MJ/SG/DAG issued on the 13March 1996 by the minister of justice and keeper of the seals where it is required that all judgments must carry a stamp duty.

^{xxi} See the OHADA Uniform Act Organizing Simplified Recovery Measures and Measures of Enforcement adopted on April 10, 1998.

^{xxii} Section 1 (1), (b) of Decree No.79/448 of November 5, 1979 modified by Decree No.98/170 of August 7, 1998 regulating the functions and laying down the status of bailiffs and process servers provides that “bailiffs are officers of the court who have quality (legal standing), to carry out the enforcement of judgments and all other acts eligible for forceful or compulsory enforcement.”

^{xxiii} Article 147 of Law no.2016/007 of July12, 2016 relating to the Penal Code provides that “any person exercising judicial functions who declines, after having been duly moved in that behalf, to issue a decision shall be punished with imprisonment for from (3) three months to (2) two years”; Article 4 of the French Civil Code of 1804 provides that the judge who refuses to render judgment on the pretext that the law is silent, obscure or lacking, might be prosecuted as guilty of delay of justice.(Author’s translation); procrastination in deciding a case may amount to a denial of justice. See C. Anyangwe, *The Administration in a Bi-Jural-Country: the United Republic of Cameroon*, Thesis Submitted for the Degree of Doctor of philosophy, School of Oriental and African Studies, London, 1979

^{xxiv} It would not be surprising to find a case being adjourned more than five times for lack of evidence, information or time to visit site.

^{xxv} B. Garner, *Black’s Law Dictionary*, 11th edition, Thomson Reuters, 2019.

^{xxvi} Article 28 of Law No.2011/012 of 06 May 2011 on the Legal Framework on Consumer Protection in Cameroon.

^{xxvii} M. Loos, “Access to Justice in consumer law” *Recht der Werlijkheid*, (2015), pp 113-126, p 113.

^{xxviii} J. F. Kennedy, USA President’s message to the American Congress on March 15, 1962 about the rights of consumers.

^{xxix} Literacy rate in Cameroon is 77.1%, CIA world Factbook, www.indexmundi/cameroon/demographic/profil, 2021 accessed on the December24, 2021.

^{xxx} See Section 3 of Law No 2011/012 of 06 May 2011 on the Legal Framework on Consumer Protection in Cameroon.

^{xxxi} Section 23 of Law No. 2011/012 of 06 May 2011 on the Legal Framework on Consumer Protection in Cameroon.

^{xxxii} E. F. Rickette and Thomas G. W. Telfer, *International perspective of Consumer Access to Justice*, Cambridge University Press, 2003, p 38.

^{xxxiii} *Ibid.*

^{xxxiv} M. Loos, “Access to Justice in consumer law” *Recht der Werlijkheid*, (2015), pp 113-126, p 113.

^{xxxv} A. L. BOMA, *Principles of Consumer Protection Law*, ULTRANET, Cameroon, 2021, p 176.

^{xxxvi} United Nations Guideline E on the Measures enabling consumers to obtain redress, Section 32.

^{xxxvii} Section 26 (1) of Law no 2011/012 of 06 May 2011 on the Legal Framework on Consumer Protection

^{xxxviii} Paragraph F, resolution 70/180 in relation to regulation of disputes and compensation; Also, UN A/RES/70/186, General assembly of 22 December 2015, General Distribution 4 February 2016.

^{xxxix} B. Garner, *Black's Law Dictionary*, 11th edition, Thomson Reuters, p 91, 2019.

^{xl} Alternative dispute resolution can take the form of negotiation, conciliation, mediation and arbitration. Law no. 2011/012 of 6th May 2011 has chosen arbitration as the means of alternative dispute resolution.

^{xli} Article 5 (1), states that...contractual clauses that impose any unilateral arbitration clause shall be void.

^{xlii} Article 30 states that for the protection of consumers it is created at the level of each Division an Arbitration Commission that has as mission to assure the public service of arbitration of disputes relating to consumer protection.

^{xliii} Law no. 2011/012 of 6th May 2011 on the Legal Framework on Consumer Protection in Cameroon.

^{xliv} Order No.199/pm of 10 August 2012 organizing the functioning of redress commissions.

^{xlv} See Article 37, 38, 39, 40 and 41 of the United Nations Guidelines on consumer protection.

^{xlvi} This can be considered as administrative arbitration or forced arbitration.

^{xlvii} L. Lemo, "L'Arbitrage de Litige de Consommation au Cameroun" in *La Protection du Consommateur au Cameroun, Principes, Enjeux et Perspectives*, editions le Kilimanjaro, 2018 pp 433-449, p 442.

^{xlviii} Article 3 of Order No. 199/pm of 10 August 2012 brings out the composition of the Redress commissions; Article 4 (2) of Order No.199/pm of 10 August 2012 organizing the functioning of redress commissions, gives the right for the president of the commission to invite other people to take part in the commissions on a consultative basis, which means the commission is well constituted.

^{xlix} Article 8 of Order No.199/pm of 10 August 2012 organizing the functioning of redress commissions.

^l *Ibid*, Article 10.

^{li} *Ibid*, Article 11.

^{lii} *Ibid*, Article 12.

^{liii} Article 7 of Order No.199/pm of 10 August 2012 organizing the functioning of redress commissions.

^{liv} Article 13 and 14 of Order No.199/pm of 10 August 2012 organizing the functioning of redress commissions.

^{lv} Article 9 of Order No.199/pm of 10 August 2012 organizing the functioning of redress commissions retaking article 28 of Law no. 2011/012 of 6th May 2011 on the Legal Framework on Consumer Protection in Cameroon.

^{lvi} See L. Lemo, "L'Arbitrage de Litige de Consommation au Cameroun" in *La Protection du Consommateur au Cameroun, Principes, Enjeux et Perspectives*, editions le Kilimanjaro, 2018 pp 433-449, p 444-446 referncing Hounabara Kaosiri "less interference processuelles de la loi cadre no. 2011/012 du 06 Ma1 2011 portant protection du consommatuer au cameroun" pp 917 et s..

^{lvii} OHADA stand for the Organisation of Business law in Africa and the Uniform Act on Arbitration was brought out in 1997 and was revised in 2017.

^{lviii} E. F. Rickett and Thomas G. W. Telfer, *International Perspective on Consumer Access to Justice*, Cambridge University Press, UK, 2003, p 21.

^{lix} A. L. Boma, *Principles of Consumer Protection Law*, Ultramet, Baffousam, Cameroon, 2021, p 109, reciting N. J. Sama, "Providing Legal Aid In Criminal Justice in Cameroon: The Role Of Lawyers;" *Access To Justice And Beyond , Making The Rule of Law A Reality*, Penal Reform International and Bluhm Legal Clinique of Northwestern University School of Law, 2007.

^{lx} The commission is made of the president of the Court where the matter is pending, magistrates and representative of the legal profession and legal aid is given based on their discretion.

^{lxi} Article 21 (1) of Law No.2009/004 of 14 April 2009, organizing legal aid in Cameroon.

^{lxii} Article 20 of Law No. 2009/004 of 14 April 2009 on Legal Aid in Cameroon.

^{lxiii} This is based on the Principle of participation that has been brought out by Article 3 of Law no. 2011/012 of 6th May 2011.

^{lxiv} Here the actions can be preventive or reparatory

^{lxv} R. Nemedeu "De l'action de Groupe: Une esquisse venant du Droit Camerounais de la Consommation" in *La protection de Consommateur Au Cameroun, Pricipes, Enjeux et Perspective*, Editions EDLK, 2018, pp 349-362, P 351.

^{lxvi} No Collective action have has taken place since the promulgation of the legal framework on consumer protection in 2011.

^{lxvii} A. Akam Akam, "l'emergence de l'action collective en Droit Camerounais", *Bulletin de Droit Economique*, Universite de Laval, 2017, (2), p 14.

^{lxviii} *Ibid*.

^{lix} United Nations Guidelines were first adopted by the General Assembly in resolution39/248 of 16 April 1985, later expanded by the Economic and Social council in resolution 1999/7 of 26 July 1999 and revised and adopted by the General Assembly on the 22nd of December 2015 by resolution 70/186 modifying paragraph F of Resolution 70/180.

^{lxx} *Ibid*, Article 37.