THE ROLE OF THE EXAMINING MAGISTRATE AS AN INVESTIGATOR IN THE ANTI-CORRUPTION DRIVE IN CAMEROON

Written by ***Kwei Haliday Nyingchia***

Assistant Lecturer, Bamenda University of Science and Technology (BUST), Northwest Region, Cameroon

ABSTRACT

Cameroon like other countries in the world has tremendously been ravaged by corruption and measures taken to contain this cankerworm have proven inadequate. One of the recurrent forms through which corruption is manifested in Cameroon is through the misappropriation of public property. In the prosecution of this offence, the role of the Examining Magistrate is crucial. Consequently, the Examining Magistrate can be regarded as an amphibious figure in our judicial organization with exorbitant powers to conduct preliminary inquiries or pre-trial investigations in complex criminal matters. When performing investigative functions, his powers are akin to those of judicial police officers. The Examining Magistrate is a magistrate of the bench usually seen in countries with the civil law inspiration wherein the inquisitorial system originated. In this system, he is a judge who carries out pre-trial investigations into allegations of crime and in some cases through a committal order recommends for prosecution. Matters can only be brought to him by the prosecution through a holden charge or a complaint with a civil claim made by a victim of an offence since he cannot commence preliminary inquiry of his own motion. In the fight against corruption, his actions can be control by the parties, the State Counsel and the Inquiry Control Chambers of the Court of Appeal. He enjoys independence in the exercise of his functions though this independence is affected by the absence of the functional independence of the judiciary. The qualitative research approach was adopted in this research. Through the doctrinal method, on desk review of primary and secondary data was made. This paper recommends that the functional independence of the judiciary should be adopted and that the Examining Magistrate should be capable of opening

preliminary investigations in matters relating corruption without being seized by the prosecution or a civil party.

Keywords: Judiciary, independence, corruption, Examining Magistrate, judge, preliminary inquiry

INTRODUCTION

In all countries, magistrates greatly contribute in stabilizing the balance of power and their action can reinforce the confidence of the public in the integrity of the State[i]. The way corruption is alarming in the world and Cameroon in particular is glaring eloquence of the fact the judiciary has failed in its duty of stabilizing the balance of power. Corruption continues to triumph over the world despite all the efforts deployed in combatting it. In Cameroon, the cornucopia of legal and institutional measures put in place have proven unproductive due to limited independence of anti-corruption bodies and absence of anti-corruption law. The talk about corruption and the efforts deployed all over the globe seems not to be yielding cogent results as the pandemic continue to pose unprecedented threats to governance, democracy and development. It has an insidious nature and a damaging effect on the welfare of the entire nation and their people[ii]. Acknowledging the fact that there is no universal definition of corruption; it regarded as a fiduciary's or official use of a station or office to procure some benefit either personally or for someone else, contrary to the rights of others[iii]. Grand corruption is that which pervades the highest level of a national Government, leading to a broad erosion of confidence in good governance, the rule of law and economic stability[iv] is the form that is trading in Cameroon for almost 3 decades today. Since the country was declared as world champion for corruption successively in 1998 and 1999 by Transparency International, it has continued to be ranked among the most corrupt countries in the world[v].

The 1998 and 1999 classification came as a stimulus pushing the government to trigger many reforms to combat corruption. The major breakthrough was the ratification of the United Convention Against Corruption in 2004[vi]. This led to the creation of the National Anti-Corruption Commission and the National Agency for Financial Investigation. This triggered the anti-graft campaign (operation sparrow hawk, a code name given by the press) which has

ensnared many top cabinet ministers, general managers and directors of public enterprises and establishments[vii]. This pushed many Cameroonians to complain about the intrusion of politics in the justice system due the manner in which 'Operation Sparrow Hawk' was being heralded especially as it was seen by many to be selective and a tool to seal the ambitions of political contenders to oust the President of the Republic[viii]. To jettison this allegation, the Special Criminal Court (SCC) was created by Law no.2011/048 of 14 December 2011 as amended by Law no. 2012/011 of 16 July 2012 with jurisdiction to hear matters relating to the misappropriation of public property wherein the amount of loss caused to the State is above 50 million F CFA (approximately 80368 US Dollars) and a possibility for the Minister of Justice to discontinue proceedings in case of restitution of corpus delicti. Examining Magistrates have been appointed to this Court and other Courts over the country to conduct preliminary inquiry (PI) but the level of embezzlement and corruption has remained rife in Cameroon.

No sector is immune to this cankerworm and corrupt practices are endless: the forces of law and order turn a blind eye to corruption or invent offences to extort money from drivers, magistrates request bribes for favourable judgments, officers at checkpoints set up by the police, the gendarmerie, customs or road safety officers hold truck drivers for kickbacks and university lecturers sell marks to their students[ix]. The unfortunate thing is that the offence, that frequently comes to Court is the misappropriation of public property perpetuated among others means through over-invoicing and fictitious mission orders used to massively swindle public money; it is estimated that over 40 per cent of public expenditure is diverted in this way[x].

Judges and prosecutors have been entrusted with the responsibility of facing corruption so that they can guarantee the rights of members in the society[xi]. Thus the UN Convention Against Corruption which is a fundamental instrument particularly its Art 11, requires State Parties to take sufficient measures to strengthen the integrity of the judicial system and avoid any chance of corruption among its members, without prejudice to its independence[xii]. It is in this perspective that paper seeks to examine the role of the EM in facing corruption in Cameroon. Consequently, the Examining Magistrate may not have been instituted to fight corruption, but he plays a crucial role in the criminal process as far as certain high profile and complex cases are concerned.

The Examining Magistrate (EM) was abolished by the 1972 Ordinance on judicial organization and his functions transferred to the Legal Department (LD) or the Prosecution Service until Law no. 2006/015 of 29 December 2006 on the judicial organization as amended by Law no. 2011/027 of 14 December 2011 reintroduced it back. The role of the EM is to conduct preliminary inquiry and commit offenders for trial before the trial court.

The preliminary inquiry (PI) procedure is the phase of criminal proceedings, which constitutes a kind of pretrial that permits the establishment of the existence of an offence and to determine if the ingredients against the person to be prosecuted are sufficient enough for a trial court to be seized[xiii]. This form of investigation is conducted by a bench magistrate bearing the designation "Examining magistrate". The examining magistrate thus has as mission to assemble elements in favour and against the defendant[xiv]. Since the examining magistrate is a neutral judge who is only guided by his conscience and the law, this constitutes a moral support and guarantee of impartiality.

As per the Criminal Procedure Code (CPC), preliminary inquiry is mandatory in felonies[xv] except the law provides otherwise and optional in case of misdemeanours. It is mandatory in case of misdemeanours and felonies committed by minors, as stipulated by S 700 of the CPC. This form of investigation is governed by sections 142 to 287 of the CPC. The mode of seizing the EM, his prerogatives and independence may determine whether his role in the criminal justice system can tremendously contribute to the criminalization of corruption.

THE STATUS OF THE EXAMINING MAGISTRATE

Before understanding the status of the EM in our judicial system, it is trite to note that the Cameroonian judiciary is a career judiciary made up of judges and prosecutors. The generic term 'magistrate' is attributed to prosecutors (State Counsel) and judges or legal and judicial officers respectively. They receive a common training at the National School of Administration and Magistracy known in its French acronym as ENAM and therefore share a common status as judges or prosecutors. The entry requirement is a Post Graduate Diploma in private and public law for those specialized in ordinary law and administrative law respectively. Upon

completion of two years training, magistrates are first appointed to serve in the Legal Department (prosecution service) as prosecutors and in the course of their career, magistrates can be appointed to serve at the bench as adjudicators or Examining Magistrates after 4 years[xvi] and in the Ministry of Justice when they have attained at least the second scale. The judicial corps is made up of magistrates serving at the Ministry of Justice, magistrates on secondment, Legal Assistants, and magistrates serving at the bench and the Legal Department as stipulated by Art 1 of Decree no. 95/048 of 8 March 1995 on the general rules and regulations of the Magistracy as amended. This Decree does not make mention of the Examining Magistrate but since he is a magistrate of the bench, the general rules and regulations and specifically the provisions applicable to magistrates of the bench are applicable to him. The EM can be regarded as an amphibious figure in our judicial organization with exorbitant powers to conduct preliminary inquiries. Unfortunately, his status is not defined apart from the fact that he is regarded as a magistrate of bench even when performing investigative functions akin to those of judicial police officers. His powers and functions are defined by the Criminal Procedure Code (CPC) laid down by Law no. 2005./06 of 27 July 2005. The 2011 Law on the Special Criminal Court also has some special provisions relating to preliminary inquiry proceedings and the competence of the EM.

Though the CPC does not define the EM, he is a magistrate who has as mission to search and gather evidence that will facilitate the ascertainment of the veracity of the facts for which he has been seized[xvii]. His functions are well defined and do not conflict with that of magistrates of the LD and trial courts by virtue of the principle of the separation of the function of prosecuting authorities, investigating authorities and adjudicating authorities[xviii]. The 2006 law on judicial organization provides that the Court of First Instance and the High Court when it comes to Preliminary Inquiry shall be composed of one or more Examining Magistrates[xix]. The EM is a magistrate usually seen in countries with the civil law inspiration wherein the inquisitorial system originated. In this system the EM is a judge who carries out pre-trial investigations into allegations of crime and in some cases through a committal order recommends for prosecution[xx].

SEIZING THE EXAMINING MAGISTRATE

The manner in which matters come to the EM will obviously have an impact in his role in the fight against corruption. However, based on the separation of the functions of prosecution and investigation as regards PIs, the EM cannot seize himself suo moto even in case of felony or misdemeanour committed flagrant delicto. This stipulation is amplified by S 143 CPC which states that subject to the provisions of S 157 CPC, the EM may carryout PIs only if the State Counsel, by a judicial act, requests him to do so. Section 157 of the CPC in this case is referring to a complaint with a civil claim filed by anyone who alleges that he has suffered injury or loss resulting from a felony or misdemeanour. There are only two ways that the EM can be seized.

The Seizing of the Examining Magistrate by the State Counsel

According to S 143 (2) CPC, the judicial act through which the State Counsel seizes the EM is called a holding charge. The holding charge emanating from the State Counsel is mandatory even if the EM is seized in a different manner, to wit by a complaint with a civil claim. In this wise, the judicial act of the State Counsel is not called a holding charge, but will take the appellation submissions of the State Counsel. The absence of a holding charge of the State Counsel renders any procedure of the EM null and void. The format to be taken by the holding charge is indicated in S 144 of the CPC. It must be in writing and made against a known or an unknown person; it must also contain the statement of offence and mention that prosecution has not been discontinued by virtue of any of the circumstances referred to in S 62 of the CPC[xxi]. Finally, the holding charge must be signed by the State Counsel. The State Counsel seizes the EM through the president of the court after the preparation of the holding charge accompanied with all necessary documents/exhibits and the suspect if he was brought before the said State Counsel. At this stage, it is left for the President of the Court to assign the file to any EM of his/her choice. All the courts in Cameroon have at least two or more EMs. This can contribute to expediency in the investigation of corruption offences when matters are commenced by the preliminary inquiry procedure. It is necessary to note that the State Counsel may at any stage of the PI by an act known as additional holding charge, request the EM to perform any acts which he deems necessary for the discovery of the truth and in particular to prefer new charges[xxii].

The effect of the holding charge is that it commences criminal action and seizes the EM within the limit of the facts mentioned on it. The nullity of the holding charge entails the nullity of the whole procedure because the EM will be considered not to have been properly seized[xxiii]. Once it has been transmitted to the President of the court, the State Counsel cannot carry out any other act in relation to the same procedure until a reply is gotten from the EM.

Seizing the Examining Magistrate by way of a Complaint with a Civil Claim

On the strength of S 157 CPC, anyone who alleges that he has suffered injury resulting from the commission of a felony or misdemeanour may when lodging a complaint with the competent EM, file a claim for damages. The mechanism of a complaint in this context strives to guarantee an effective recourse in the case of refusal to commence criminal investigation by the LD within the measure whereby civil action puts into motion criminal action[xxiv].Certain conditions must be fulfilled by the civil party who decides to seize the EM directly. Nevertheless, the victim may still file his claim during trial notwithstanding that he is not the one that instituted criminal proceedings. As such, we have substantive conditions and conditions of form.

The CPC is not explicit when it comes to substantive conditions. As such, these conditions relate to the offence and subsequently to the victim. A complaint with a civil claim as per S 157 (3) of the CPC is not applicable to simple offences and to offences, the prosecution of which is solely reserved for the legal department. However, this category of offences is very difficult to be discerned in the absence of a text expressly reserving the monopoly to prosecute certain offences to the LD. Also, if the law expressly provides for a particular mode of seizing the court, the complaint with a civil claim will not be admissible in this context. For conditions relating to the victim, the person alleging to have suffered injury or loss must fulfil the necessary conditions to file an action in justice which are: capacity, interest and locus standi.

Section 71 (1) of the CPC stipulates that a non-emancipated minor or any other person who has lost his legal capacity may not by himself make a claim before the court, but can only do so through his legal representative (committee or next friend). As per S 75 of the CPC, the prejudice suffered must be direct, certain and actual. It must not be barred by prescription which

is 30 years. Thus, the existence of prejudice suffered as a result of the offence is a conditio sine qua non for the admissibility of the claim.

As regards the conditions of form, the CPC has not imposed any conditions stricto sensu. However, the complaint must be in writing as S 160 CPC provides that the EM shall forward the complaint to the State Counsel for his submission immediately the caution provided for in S 158 has been deposited. This communication cannot be by parole, thus it must be in writing. S 135 (4) (b) CPC provides that information and complaints shall not be subjected to any formalities or fiscal stamps; the CPC is silent in the case of a complaint with civil claim. It will not be wrong to intimate that a fiscal stamp must be affixed on the complaint on the basis of article 428 (8) of the General Tax Code.

Though not provided by the CPC, upon receipt of the complaint, the EM establishes a report of deposit of a complaint with a civil claim that is signed by him, the registrar and the complainant. The EM also has to make sure that the complainant who has manifested his intention to make a civil claim chooses an address to enable service or identify the person whom service will be made through him. This is because any party who fails to choose an address for service will not be heard to say that he had no knowledge of any documents which he ought to have been served with, as provided by law[xxv].

The last formality is the payment of a deposit or caution destined to defray the cost of the proceedings. A victim of corruption who sets criminal action into motion by way of a complaint with a civil party claim stands the risk of his complaint being declared inadmissible, if he fails to deposit at the registry of the Court of First Instance an amount considered sufficient to defray the cost of the proceedings[xxvi]. This amount is established by the order of an EM and an additional deposit may be fixed in the same manner in the course of the PI. The payment of the deposit is a setback to a litigant who is victim of corruption and does not have the necessary financial means, though the law makes provision for legal aid but with very cumbersome procedure.

It is imperative to note that public administrations do not pay a deposit. Also, those who have benefited from judicial aid are dispensed from the payment of a deposit as stipulated in Art 32 of Law no. 2009/004 of 14 April 2009 on legal aid. For foreigners, they can only pay the caution

judicatum solvi provided by Art 16 of the Civil Code. Also, civil servants of the police corps who are victims of offenses committed in the exercise of their duties are exempted from the payment of a deposit or caution as per article 17 (2) of Decree no. 2001/065 of 12 March 2001 as amended, on the general rules and regulations of the civil servants of the police corps as amended in 2013.

Thus, after the payment of the deposit has been done, the EM forwards the file to the State Counsel for his submission as provided by S 160 CPC. As such, any charge or indictment preferred and any interrogation done before the file is forwarded to the State Counsel is null and void[xxvii]. Here it is no longer a holding charge as criminal action was already instituted by the complainant; the objective of forwarding the file is just to have the opinion of the LD on the putting into motion of criminal action by the complainant. This is a good procedure for the victim of corruption whose matter cannot be properly investigated and prosecuted because the suspect is having an influence on the proceedings. The danger of commencing criminal action by way of a complaint with a civil claim is that where it results in a no case ruling, the defendant may bring a civil action for damages against the complainant for malicious prosecution[xxviii]. This means, of seizing the EM may be a veritable tool in fighting corruption if there is a good witness protection mechanism. Unfortunately, no mechanism has been put in place except for the fact that the Penal Code punishes anyone who attempts to threaten a witness. Thus, necessary protection methods should be put in place during all stages of a criminal proceeding relating to corruption offences. However, the critical periods for witnesses are usually at the time of an arrest and during the court hearing. Once a conviction has been obtained, the threat usually, but not always, diminishes. By then any harm to a witness would be a matter of straightforward revenge, rather than an attempt to prevent the witness from giving evidence at the trial[xxix].

As soon as the holding charge has been received or the submission of the State Counsel in case of a complaint with a civil claim or a holden charge of the LD, the EM is bound either to issue an order of commencement of PI or order of refusal of commencement of PI. Thus, the EM may either take a positive or negative decision at the start of the PI proceedings. As such, he must verify whether he has subject matter jurisdiction and territorial competence. We shall not be examining the PI procedure here but it is worth analyzing the powers of the EM during investigation.

THE POWERS OF THE EXAMINING MAGISTRATE

The EM in France was considered as the most powerful institution in the judiciary and was the principal revelator of corruption or financial impropriety between the financial and political world[xxx]. However, this magistrate who was considered omnipotent has seen most of his powers abridged to the benefit of the LD seems to be fast disappearing in the French judicial system[xxxi]. The EM is seized in rem, meaning that he is only seized of the facts that were denounced to him[xxxii]. If new facts which constitute another offence come up he must forward the file to the LD for an additional holden charge before he can proceed to investigate the new facts. In this case, the State Counsel can decide whether these facts will constitute part of the same procedure or a different PI should be opened[xxxiii]. He can also equally amend the charge whenever the inquiry permits on a new charge to be made on the facts; he may in addition prefer charges against any person who took part in the commission of the offence[xxxiv].

The powers of the EM is seen here in that he is not bound by the statement of the offence the police has given to the facts of the case and can proceed to commence an inquiry against an unknown person[xxxv]. Thus, preferring a charge against the defendant is the exclusive right of the EM and cannot be subject to a rogatory commission except to another EM[xxxvi]. The EM performs his functions in all independence on condition that he was seized[xxxvii]. He disposes of enormous powers in the manifestation of the truth and can use all the techniques available to Judicial Police Officers (OPJs) during investigation. Moreover, he can request the services of any expert, interrogate whoever he deems necessary for the manifestation of the truth[xxxviii], conduct seizures, searches and arrests and can give rogatory commission for certain acts to be carried out for the manifestation of the truth within the national territory and abroad[xxxix]. One of the most important powers of the EM is the restraint of liberty by remanding into custody of defendants during PI and his discretion to grant bail at any time[xl]. In some countries, the CPC expressly recognizes the status of JPOs to the EM and can equally in the exercise of his functions, directly request the intervention of the forces of law and order[xli]. This type of power is not given to the EM in Cameroon whose acts must go through the LD for execution. This type of practice is very common where the LD receives warrants from the EM and refuses to execute. In effectively fighting corruption, it will be necessary for the EM to exercise the powers of control and direction on JPOs and to exceptionally have the powers to commence

PIs suo moto when it comes to corruption and the misappropriation of public funds. He should equally be given powers to directly ensure the execution of his orders by the Judicial Police Officers and agents and the penitentiary administration. However, the powers of the EM should be subject to control.

THE OVERSIGHT OF THE POWERS OF THE EXAMINING MAGISTRATE

The PI procedure is a complex one and conducted under strict conditions, the non-respect of which may lead to the nullity of the acts undertaken by the EM[xlii]. Furthermore, any organ in charge of fighting corruption must not be object of corruption, thus the parties to the PI proceedings can challenge certain acts of the EM that are detrimental to their interest, especially their right to defence.

Control by the State Counsel/Defendant/Civil Party

The EM exercises his powers in all independence on condition that he was seized since he cannot seize himself of his own motion; the State Counsel who is the prosecuting party disposes of the right of oversight on the activities of the EM[xliii]. In this regard, the CPC provides that the State Counsel may be present at the interrogation and confrontation of the defendant as well as the hearing of the civil party and witnesses. In this case, he is bound to inform the EM of his intention to do so[xliv]. Section 146 (2) of the CPC provides that the State Counsel may equally by a reason application request the president of the Court to replace the EM in charge of an inquiry with another EM in the interest of the administration of justice. This section further stipulates that the defendant or the civil party may equally make such a request and the president shall, within five days by a reasoned ruling, decide on the application which shall not be subject to appeal. This provision enforces oversight over the EM by the president of the court but this provision is abused by withdrawing files from certain EMs to hand to those that can be easily manipulated. Furthermore, the law is silent in the circumstance where there is only one EM or in the situation where the second one is equally challenged. But in this case,

the victim or the defendant can challenge the EM. The LD or any party has the right to request the EM to annul an act of the PI when he discovers that the act is a nullity[xlv]. It is worth mentioning that the LD exercises the right of surveillance on PI and this surveillance alerts the EM but without really constraining him[xlvi]. The acts of the EM are equally controlled on appeal by the Inquiry Control Chambers of the CA and right to the Supreme Court.

Oversight by the Inquiry Control Chamber

All the rulings or orders made by the EM are appealable before the Inquiry Control Chamber of the Court of Appeal by the parties that the law recognizes them the right to do so. The time limit for appeal is 48 hours which starts to run from the date of service of the ruling or act. Thus, the defendant may only appeal against rulings in respect of remand in custody, judicial supervision, and request for expert or counter-expert opinion and of restitution of articles seized[xlvii]. The civil party on his part may appeal only against rulings in respect of the refusal to commence an inquiry, the inadmissibility of an application to be a civil party in a criminal case, the rejection of an application for expert or counter-expert opinion, the restitution of articles seized and a no case rulings[xlviii]. The CPC also provides in S 268 that the Legal Department may, except otherwise provided by law, appeal against the rulings of the EM in accordance with the provisions of sections 252 (3), 254 (1) and (3). These cases are not exhaustive as the law only uses the word 'may', meaning that any act of nullity brought to the knowledge of the EM who fails to forward it to the Inquiry Control Chambers for annulment may be appealed against.

The role of the Examining Magistrate (EM) as an investigator is greatly hampered by insufficient independence which is a general issue in the Judiciary in Cameroon. In fighting corruption, special powers should be given to the EM to be capable of commencing PI without any pre-condition when he comes across information likely to establish that a corruption offence has been committed. The EM should be given the power of control and supervision over JPOs in the accomplishment of his duties. The objectivity and usefulness of the EM has been jettisoned by so many critics in the French Judicial system and despite some reforms to reduce his powers, he remains a major organ in the judicial system[xlix]. Noteworthy is the fact that he remains a source of rights and guarantee to litigants[l].

THE INDEPENDENCE OF THE EXAMINING MAGISTRATE

Fundamental rights and liberties of the individual can be preserved only in a society where the judiciary enjoys complete independence free from political interference or pressure[li]. The EM is a magistrate of the bench and accordingly should enjoy full independence in the exercise of his functions of investigation. As such, he benefits from statutory guarantees assuring his independence, under the Constitution. This independence must be preserved as concerns the magistrate on the occasion of his appointment or promotion and with regards to matters for which he is investigating[lii].The 1996 Constitution of the Republic of Cameroon recognizes the institutional independence of the judiciary by indicating that the judicial power shall be independent of the Executive and Legislative powers. Surprisingly the same Constitution says that the President of the Republic shall guarantee the independence of the judiciary. In furtherance, it provides that the President of the Republic shall appoint members of the Legal Department and the bench and that he shall be assisted in this task by the Higher Judicial Council which shall give its opinion on all appointments at the bench[liii]. The Higher Judicial Council is organized by Law no. 82/14 of 26 November 1982 as amended by Law no. 89/16 of 28 July 1989. The President is assisted by a Vice President appointed at the discretion of the Head of State and the practice has always been that the Minister of Justice is appointed to assist the President. With this system one may not hesitate to say that the functional independence of the judiciary is not guarantee and obviously that of an EM.

However, the EM is independent from the Legal Department. Consequently when, he has been seized by the Prosecution, it can only interfere throughout the proceedings by way of submissions and the EM is not bound by the Statement of office as Stated by the State Counsel in his submissions[liv]. In his relation relationship with the State Counsel or the Prosecution, the latter does not dispose of any power of constraint and can only give his opinion through submissions which the EM is not bound to follow[lv]. Unfortunately, the practice before certain courts is that the State Counsel is always the senior of the EM in the profession and consequently may have certain ascendancy over him. Worst of all, the State Counsel at times may be adamant to execute decisions taken by the EM or to forward same to the Judicial Police authorities or prison authorities for execution and return files forwarded for his submissions within the required time[lvi]. The situation is further compounded by the fact that the law does

not provide for sanctions in case of failure to respect deadlines by the prosecution except in case of applications for bail where the EM is allowed to proceed if the prosecution fails to submit within 5 days.

The EM is equally independent from the Trial Court which can only correct some of his acts during trial but cannot give him injunctions to redo or reform his acts. Moreover it is forbidden for him to hear matters wherein he conducted preliminary inquiry. It should be noted equally that though the EM is subordinated to the President of the Court, but he is however not subject to his authority when he is carrying out preliminary inquiry. He cannot obtain from the President of the Court any solution to a particular procedure and is right to shun against any injunctions from him[lvii]. It should be recalled as indicated above that a file can only be withdrawn from him on the request of the parties or the State Counsel based on a reasoned ruling by the President of the Court. In practice this has not always been the case as the EM is subjected to pressure on a daily basis from the President of the Court. It is therefore clear the EM is a special judge within the courts in Cameroon though he lacks operational independence since he is not an independent entity within the organization of the Court and is answerable to the President of the Court who can interfere in his activities at any time. In **The People of Cameroon Vs Atayo Asukwo** & 2ors[lviii] the President of the Ndian High Court in disregard of the law, withdrew a file from another EM who refused to yield to his instructions and handed it to another EM who did exactly what he wanted and committed the Defendants for trial and equally granted them bail. The Legal Department immediately went on appeal when she was notified with the ruling. These types of practices are legion and at times the President of the Court will not assign files to an EM who will be reluctant to yield to his instructions.

Furthermore, the EM, does not have an operational budget and will only depend on the meager running budget allocated to the court. This is further compounded by absence of guarantees to ensure the personal and decisional independence of the EM. We must note the EM cannot commence preliminary inquiry of his own motion even if he is aware of the existence of an offence relating corruption. The decisional and personal independence of judges is recognized by international principles. For example Art 2 of the UN Basic Principles on the Independence of Judiciary of 1985 provides that the judiciary shall decide matters before them impartially, based on facts and in accordance with the law without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any

reason. Value 1 of the Bangalore principles on judicial conduct also frowns against any interference[lix]. Even though, the EMs do not fully have guarantees to ensure their independence in Cameroon, they have handled preliminary inquiries in high profile cases involving top government officials and committed them for trial before the competent court under the anti-graft campaign 'operation sparrow hawk'.

CONCLUSION

It is no news that corruption has devastating effects on the judicial system as a whole since it reduces public confidence in the administration of justice when it is perceived as corrupt[lx].The perception most Cameroonian have of the Judiciary is that it is very corrupt and ineffective; it is widely believed that members of the public pay brides to judges to secure their freedom[lxi]. As such, to reduce the temptation of judges and other judicial personnel from being entangled by corruption, their financial treatment must be raised to the highest scale of salaries in the public service[lxii]. This is a measure usually used by governments to apply to civil servants wherein their probity and efficiency is indispensable to the functioning of the economy[lxiii]. Thus for the EM to effectively fight against corruption, it is necessary for him have the necessary protections recognized in international instruments to ensure his independence and impartiality vis-à-vis any interest that could affect him[lxiv].

In this case it is recommended that the State must take measures to ensure the functional independence of the judiciary and a new Higher Judicial Council headed by the Chief Justice should be put in place. This should be followed by the establishment of financial independence of the judiciary and the consecration of the entrenchment of judges to avert abusive transfers. Also there should be an instrument defining the relationship between the EM and the President of the Court just like the Legal Department or he should be made an independent organ distinct from the Court. Consequently, internal independence which requires that magistrates in the discharge of their duties must be independent from one another and must be, and seen to be, free from any actual or apparent form of duress, pressure or influence from, or interference from a follow magistrate[lxv] will be instituted. In this case, he should be allowed the possibility to directly open investigations when it comes to corruption and related offences. The EM

should expressly be accorded the status of Judicial Police Officers with powers to directly request the intervention of the forces of law and order in the execution of his acts or warrants. In this case expediency and secrecy will be consolidated especially during the investigation of complex matters.

ENDNOTES

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[v] National Governance Program (2016), Report on the State of governance in 2016, Prime Minister's Office, Cameroon, p.80.
[vi] Decree no. 2004/124 18 May 2004 was signed by the President of the Republic to ratify the Convention.
[vii] National Governance Program (2016), op. cit., p.79.
[viii] Enoh Meyomesse (2011), ' The entry into injustice of the Cameroonian Judiciary', in Operation Sparrow Hawk in Cameroon, a duty of injustice, a collection of articeles published under the coordination of Professor Charly Gabriel Mbock, Montréal, KiyiKaat Editions, p. 27.
[ix] Fanny Pigeaud (2021), Mechanisms of corruption in Cameroon, available at https://www.mediapart.fr/journal/international/020821/au-cameroon-I-hydre-de-la-corruption-gagne-du-terrian visited 9/04/2022. Through Ministerial Order no. 21-00602/MINESUP/SG/DAJ of 7 September 2021 bearing on the suspension of a Lecturer in the Faculty of Economics and Management Sciences of the University of Bamenda, a Lecturer was suspended for a period of one year for irregular attribution of marks to students against remuneration.
[x] Ibid.
[xi] UN Special Rapporteur on the Independence of Judges and Lawyers (2019), Report on the independence of magistrates and lawyers, by Diego Garcia-Sayan, presented before the General Assembly of the United Nations, at the seventy-fourth session on October 16, 2019, available at https:independence-judges-lawyers.org/supplementing-the-un-basic-principles-on-the-independence-of-the-judiciary/ visited 20/05/2022.
[xii] Ibid.
[xiii] Emmanuel Ndjere (2006), *Du Juge d'Instruction … au Juge d'Instruction : quel cheminement pour quel résultat* ?, yaounde, Presses de l'Université d'Afrique Centrale, P. 33.
[xiv] Ibid.
[xv] As per section 21 of the PC, a felony means an offence punishable with death or with loss of liberty for a maximum of more than 10 years and fine where the law so provides. A misdemeanour is an offence punishable with loss of liberty or with fine, where the loss of liberty may be for more than 10 days but not more than 10 years, and the fine of more than 25000 F CFA. A simple offence on the other hand means as offence punishable with imprisonment for up to 10 days or with fine of up to 25000 F CFA.
[xvi] Laura-Stella Eposi E (2012), Judicial independence and accountability in Cameroon: Balancing a tenuous relationship, African Journal of Legal Studies, 5: 313-337.
[xvii] Déborah Lamoury (2005), L'affaiblissement des pouvoirs du juge d'instruction en matière de detention provisoire, Université du droit et de la santé, Lille 2, Ecole Doctoral no. 74, Facultés des Sciences Juridiques, Politiques et Sociales, mémoire du master droit recherché, p. 3.
[xviii] Ibid.
[xix] See sections 14 (1) (b) and 17 (1) (b) of Law no. 2006/12 of 29 December 2006 as amended.

[xx] The inquisitorial system can be defined by comparison with the adversarial or accusatorial system; in the Adversary System, two or more opposing parties gather evidence and present the evidence, and their arguments, to a judge or jury. The judge or jury knows nothing of the litigation until the parties present their cases to the decision maker. In the inquisitorial system, the presiding judge is not a passive recipient of information. Rather, the presiding judge is primarily responsible for supervising the gathering of the evidence necessary to resolve the case. He or she actively steers the search for evidence and questions the witnesses, including the respondent or defendant. Lawyers play a more passive role, suggesting routes of inquiry for the presiding judge and following the judge's questioning with questioning of their own. Advocate questioning is often brief because the judge tries to ask all relevant questions. The goal of both the adversarial system and the inquisitorial system is to find the truth. But the adversarial system seeks the truth by pitting the parties against each other in the hope that competition will reveal it, whereas the inquisitorial system seeks the truth by questioning those most familiar with the events in dispute. The adversarial system places a premium on the individual rights of the accused, whereas the inquisitorial system places the rights of the accused secondary to the search for truth. https://legal-dictionary.thefreedictionary.com/Investigating+magistrate visited 04/03/2018.
[xxi] Section 62 of the CPC enumerates several circumstances under which criminal action can be discontinued.
[xxii] Section 145 of the CPC.
[xxiii] Yahanes Mbunja (2012), Les Revenants, Le Juge d'Instruction, Tome 1, Limbe, Presprint, p. 64.
[xxiv] Maniglier Tristan (2010), Réformer le Juge d'Instruction: historique et perspectives, Université Lumière Lyon 2, Institut d'Etudes Politiques de Lyon, mémoire de seminaire, métiers du droit et pratique du droit dans les enterprises et institutions, p. 20.
[xxv] Section 159 (2) of the CPC.
[xxvi] See section 158 of the CPC,
[xxvii] Johanes Mbunja (2012), op. cit., p. 72.
[xxviii] Section 162 CPC.
[xxix] UNODC (2004), United Nations Handbook on practical anti-corruption measures for prosecutors and investigators, Vienna, UNODC, p. 65.
[xxx] Maniglier Tristan (2010), op. cit., 8.
[xxxi] Caroline Smits (2016), le rôle du juge d'instruction ά l'issue du plan de reform du Ministère de la Justice, Université de Liège, Faculté de Droit, de Science Politique et de Criminologie, Département de Droit, travail de fin d'études, master en droit ά finalité spécialisée en droit pénal, p. 3.
[xxxii] Maniglier Tristan (2010), op. cit., p. 20.
[xxxiii] Ibid.
[xxxiv] Section 169 of the CPC.
[xxxv] Section 167 and 144 of the CPC respectively.
[xxxvi] Section 167 of the CPC.
[xxxvii] Déborah Lamoury (2005), op. cit., p. 12.
[xxxviii] The EM may summoned or caused to be summoned any witness he deems that his statement is necessary for the manifestation of the truth (see Sections 180, 184 and 185). Thus during the PI, the witnesses, the victim are heard and the defendant interrogated and later which the parties are confronted or cross-examined. All this is done in the presence of the defendant (S 175 of the CPC).
[xxxix] See sections 191-197 of the CPC.
[xl] The remand in custody is governed by the provisions of sections 218-221 of the CPC while bail is governed by the provisions of section 222-235 and 256 (g) CPC.
[xli] See section 15 (3) and 41 of the CPC of the Republic of Togo respectively.
[xlii] Nullity of the acts of the EM is dealt with in sections 251-255 of the CPC. Nullity is defined as a sanction pronounced by a court against an act of procedure made in violation of conditions required for its validity. The law most often distinguishes between absolute and relative nullity. We talk of absolute nullity wherein the conditions required or imposed by the law are essential for the validity of the act and tend to protect general interest or public policy. Thus the act posed is considered to lack substance and of no effect in law. This type of nullity can be invoked at any stage of the proceedings. With relative nullity, the act is considered valid until nullity is raised or invoked or the nullity affects only the interest of one party. This relative nullity must be raised in limine litis. Thus the CPC in its s 251 provides that any act done in violation of the provisions of sections 164, 167, 169 and 170 shall be null and void. It further provides that a party may refuse to take advantage of nullity only if his interest alone is affected by it. However any violation of the substantive provisions of this part of the code shall lead to a nullity within the meaning of s 3 of the CPC.
[xliii] Déborah Lamoury (2005), op. cit., p. 12.
[xliv] Section 176 CPC.

[xlv] Sections 252 and 254.
[xlvi] Déborah Lamoury (2005), op. cit., p. 13.
[xlvii] Section 269 CPC.
[xlviii] See section 270 of the CPC.
[xlix] Maniglier Tristan (2010), op. cit., p. 3.
[l] Caroline Smits (2016), op. cit., p. 2.
[li] Ustinia Dolgopol (1984), Protecting the independence of judges and lawyers, Commonwealth Law Bullentin, 10:3, 1369-1372.
[lii] https://www.cairn.info/le-juge-d-instruction--9782130571438-page-35.htm visited 14/05/2022.
[liii] See Article 37 of the 1996 Constitution of the Republic of Cameroon.
[liv] Section 163 of the CPC.
[lv] Yohanes Mbunja (2012), op. cit., p. 23.
[lvi] Ibid.
[lvii] Ibid.
[lviii] Preliminary Ruling in suit No. HCN/P.I/006c/2019 of the 9th of September 2019 High Court Ndian
[lix] 1.1 A judge shall exercise the judicial function independently on the basis of the judge's assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason.
1.2 A judge shall be independent in relation to society in general and in relation to the particular parties to a dispute which the judge has to adjudicate.
1.3 A judge shall not only be free from inappropriate connections with, and influence by, the executive and legislative branches of government, but must also appear to a reasonable observer to be free therefrom.
1.4 In performing judicial duties, a judge shall be independent of judicial colleagues in respect of decisions which the judge is obliged to make independently.
[lx] UN Special Rapporteur on the Independence of Judges and Lawyers (2019), op. cit.
[lxi] Jacques P. Nguemegne. Fighting corruption in Africa: The anti-corruption system in Cameroon, International Journal of Oranizational Theory and Bahaviour (2011); 14(1): 83-121.
[lxii] Jennifer A. Widner. Construire l'etat de droit, Francis Nyalali et le combat pour l'indépendance de la justice en Afrique (2003), Paris, Nouveaux Horizons-ARS at 320.
[lxiii] Ibid.
[lxiv] UN Special Rapporteur on the Independence of Judges and Lawyers (2019).
[lxv] See Commonwealth Magistrates' and Judges' Association 2012 Guidelines for ensuring the independence and integrity of magistrates.