

## BERICHTE / REPORTS

Reflections on Judicial Independence in Cameroon's  
Public AdministrationBy *Simon Tabe Tabe*, Dschang\***1. Introduction**

Judicial independence is the idea that the judiciary needs to be kept away from the other branches of government. That is, courts should not be subject to improper influence from the other branches of government, or from private or partisan interests. Most constitutional theories require that the judiciary is separate from and independent of the government, in order to ensure the rule of law – that is, to ensure that the law is enforced impartially and consistently no matter who is in power, and without undue influence from any other source.

The independence of the judiciary in Cameroon is guaranteed by the Constitution<sup>1</sup>. The Constitution states that the Supreme Court, the Courts of Appeal and Tribunals shall exercise judicial power<sup>2</sup>. It further states that judicial power shall be independent of the executive and legislative powers<sup>3</sup>. By virtue of Article 37 (1) of the Constitution, “justice” shall be administered in the territory of the Republic in the name of the People of Cameroon. The word “justice” according to Rawls, “is the first virtue of social institutions as truth is of systems of thought<sup>4</sup>. “He noted that in “...justice as fairness, the original position of equality corresponds to the state of nature in the traditional theory of social contract”<sup>5</sup>. In the context of social contract theory justice as fairness simply means the observance of rights, duties and obligations on the part of both the governor and governed<sup>6</sup>. It is the ability to strike a balance between guaranteeing the fundamental rights of citizens by the governed<sup>7</sup>.

The judiciary is constituted the ultimate interpreter of the Constitution and to it is assigned the delicate task of determining the extent and scope of power conferred on each

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<sup>1</sup> See Law N°96-06 of 18 January 1996 to amend the Constitution of 2 June 1972.

<sup>2</sup> See generally, Article 37 of the Cameroonian Constitution.

<sup>3</sup> Ibid.

<sup>4</sup> *J. A Rawls*, *Theory of Justice*, the Belknap Press, Cambridge 1971, p. 3.

<sup>5</sup> Ibid.

<sup>6</sup> *A.B. Dambazau*, *Criminology and Criminal Justice*, Nigerian Defence Academy Press, Kaduna, Nigeria, 1999, p. 87.

<sup>7</sup> Ibid.

branch of Government, the limits on the exercise of such power under the Constitution, and whether any action of any branch transgresses such limits<sup>8</sup>. It is also a basic principle of the rule of law which permeates every provision of the Constitution and which forms its very core and essence that the exercise of power by the executive or any other authority must not only be conditioned by the Constitution but also be in accordance with law and it is the judiciary which has to ensure that the law is observed and there is compliance with the requirements of law on the part the Government.

In Cameroon Article 37 (2) of the Constitution acknowledges the special position of the judiciary by charging it with the responsibility of guarding individual liberty. Accordingly the said article provides:

Judicial power shall be exercised by the Supreme Court, Courts of Appeal and Tribunals. The Judicial Power shall be independent of the executive and legislative powers. Magistrates of the bench shall, in the discharge of their duties, be governed only by law and their conscience.

Judicial power means the power which every sovereign authority must of necessity have to decide controversies between its subjects, or between itself and its subjects, whether the right to life, liberty or property<sup>9</sup>. Judicial power has also been defined as the power which the state exerts in the administration of public Justice, in contra-distinction to the power which it possesses to make laws and to execute them<sup>10</sup>. Judicial power in this sense simply implies the power to give a binding decision and determination<sup>11</sup>. And according to the Constitution of Cameroon<sup>12</sup>, this power is vested in the Courts and Tribunals<sup>13</sup>; and the President of the Republic who appoints magistrates, guarantees the independence of this judicial power<sup>14</sup>. He is assisted in this task by the Higher Judicial Council<sup>15</sup> which gives him its opinion on all nominations for the bench and disciplinary action against judicial and legal officers.

<sup>8</sup> N. O. Osita, Human Rights Law and Practice in Nigeria, Enugu, 1999, p. 261.

<sup>9</sup> Per C.J. Griffith of the High Court of Australia in Huddart, cited by Osita, supra, note 8, at p. 262.

<sup>10</sup> Charles M. Fombad, Judicial Power in Cameroon's amended Constitution of 18 January 1996, *Juridics Périodiques* N°.34, 1998, p. 65.

<sup>11</sup> Ibid.

<sup>12</sup> See Article 37 (2) of the 1996 revised Constitution.

<sup>13</sup> Judicial power even though vested in the courts, is exercised by the Judges.

<sup>14</sup> See Article 37(2) of the 1996 revised Constitution.

<sup>15</sup> The Higher Judicial Council is made up of the President of the Republic who is President of the Council, the Minister of Justice who is Vice President, a Secretary General who should be a Magistrate appointed by the President of the Republic. The Supreme Court and the National Assembly each nominate three of their members to sit in the Higher Judicial Council. The Council gives its opinion on all appointments to the bench and on disciplinary measures against judicial and legal officers. See generally, Law N°.82-14 of 26 November 1982, fixing the organization and functioning of the Higher Judicial Council.

This paper therefore purports to examine how the administrative set-up in Cameroon guarantees the independence of the judiciary. It also seeks to examine the factors that undermine the independence of the judiciary in Cameroon. But before all these, a word needs to be said on the organisation of judicial power in Cameroon's public administration.

## 2. The Organisation of Judicial Power in Cameroon's Public Administration

According to Montesquieu's theory of the separation of powers, there are three branches of Government: the Executive, the Legislature, and the Judiciary<sup>16</sup>. The legislature makes the laws, the executive executes them and the judiciary administers public justice<sup>17</sup>.

Judicial power in Cameroon reposes strictly in the courts<sup>18</sup> and the structure and organisation of the courts reflect the executive and legislature<sup>19</sup>. A court has been defined as "...an agency set up by Government to define and apply the law, to order its enforcement, and to settle disputed points on which individuals or groups do not agree<sup>20</sup>. Courts play a pivotal role in the administration of justice. As the symbols of justice, depicted by the justice scale, the public sees the courts as the platform for fairness and impartiality<sup>21</sup>. The courts provide the forum for resolving disputes through the application of the law and citizens perceive the courts as the guarantors of their fundamental rights. Infact a very important characteristic of the courts is the fact that they have asserted the right to be authoritative interpreters of the Constitution<sup>22</sup>.

The administration of justice in Cameroon is on a tripartite basis<sup>23</sup>. There are constituted courts, special courts and indigenous courts<sup>24</sup>. The constituted courts and the special courts administer the written and foreign laws, while the indigenous or customary courts administer the domestic law<sup>25</sup>. In all, courts of law vested with judicial power in Cameroon can be divided into three broad classes, namely, courts with original jurisdiction, courts which appellate jurisdiction and courts with special jurisdiction<sup>26</sup>.

16 *Carlson Anyangwe*, *The Cameroonian Judicial System*, CEPER, Yaounde, 1987, p. 125.

17 *Ibid.*

18 *Charles M. Fombad* (supra note 10), p. 65.

19 *Ibid.*

20 *Charles F. Hemphill Jr.*, *Criminal Procedure : The Administration of Justice*, Santa Monica, CA : Goodyear, 1978, p. 139.

21 *Dambazau* (supra note 6), at p. 102.

22 *Ibid.*

23 *A.N.T. Mbu*, *The Mill of Justice*, Yaounde, January, 1986, p. 42.

24 *Ibid.*

25 *Ibid.*

26 See generally Law N°.2006/015 of 29 December 2006 on Judicial Organisation.

### 2.1. Courts with Original Jurisdiction

The courts of original jurisdiction in Cameroon include: Traditional law courts<sup>27</sup>, “*Justices de Paix Tribunaux*”<sup>28</sup>, Courts of First Instance, and High Courts. These courts are competent to hear and determine certain issues at first instance, whether civil or criminal.

By virtue of Section 15 (1) of Law N°.2006/015 of 29 December 2006 on Judicial Organization, the Court of First Instance shall have jurisdiction:

In criminal matters:

- To try all offences classified as misdemeanours or simple offences;<sup>29</sup>
  - To hear applications for bail lodged by persons detained or charged with criminal offences within its jurisdiction;
  - To try felonies committed by minors without adult co-offenders or accessories.
- (a) In civil, commercial and labour matters:
- To recover, by way of the simplified procedure, all unquestionable, liquid and due civil and commercial debts not exceeding 10.000.000 (ten millions) CFA francs;
  - To hear matters where the amount of damages claimed does not exceed 10.000.000 (ten millions) CFA francs. where the amount of damages does not exceed five (5) million CFA francs;

In theory a High Court shall be established in the chief town of each Division in Cameroon<sup>30</sup> and the territorial jurisdiction covers the Division in which it is located. In reality however, the practice belies the theory. Not every Division infact has a High Court and it is the jurisdiction of the Court of Appeal that covers several Divisions. In Divisions without a resident High Court Judge, Judges from the local Court of Appeal periodically hold High

<sup>27</sup> These courts are set up at the level of traditional units, often the tribe, clan or village and their jurisdiction is limited to "persons of traditional law status". See in general *Carlson Anyangwe* (supra note 16) at p. 153 et seq.

<sup>28</sup> The « *Justice de paix Tribunal* » was located at the district level and was constituted by a district officer (sous-prefet) sitting alone and acting both as persecutor and judge in criminal cases. Its criminals jurisdiction was limited to petty offences. There were four of such “*Justices de Paix Tribunaux*” located at Banyo, Tibati, Yoko and Moloundou. See generally *Carlson Anyangwe* (supra note 16), p.152. Today however in outlining the courts vested with the administration of justice Law N°.2006/015 of 29 December 2006 on Judicial organisation, makes no mention of “*Justice de Paix Tribunaux*”. Courts of First Instance have been created in Tibati in 1984, Banyo in 1985 and others quite recently in Yoko and Yokadouma. So mention of the “*Justice de Paix Tribunaux*” here is only for historical interest.

<sup>29</sup> It is to be recalled that Section 21 (1) of the Cameroonian Penal Code classifies offences into felonies, misdemeanours and simple offences according to the principal penalties provided for them as follows : (a) a felony shall mean an offence punishable with death or with loss of liberty for a minimum of more than ten years ; (b) a misdemeanour shall mean an offence punishable with loss of liberty or with fine, where the loss of liberty may be for more than ten days but not for more than ten years, and the fine more than twenty-five thousand francs; (c) a simple offence shall mean an offence punishable with imprisonment for up to ten days or with fine of up to twenty-five thousand francs.

<sup>30</sup> See Section 16 of Law N°2006/015 of 29 December 2006 on Judicial organisation..

Court assizes<sup>31</sup>. Judges of the High Court are therefore necessarily Judges of the Court of Appeal. This interim measure leaves the High Court with no real personnel of its own, but regularly draws from the judicial officers of the Court of Appeal<sup>32</sup>. This court like the Court of First Instance, is not a collegiate court. Cases or pending matters before the court are heard by a single Presiding Judge from the Court of Appeal, except in labour matters where the Judge also sits with two lay assessors<sup>33</sup>.

The jurisdiction of the High Court is spelt out in Section 18(1) of Law N°.2006/015 of 29 December 2006 on Judicial Organisation. That Section provides:

The High Court shall have jurisdiction:

- (a) In criminal matters:
  - to try felonies and related misdemeanours subject to the provisions of Section 13 (1) to (3) above;
  - to hear and determine applications for bail lodged by persons detained or charged with criminal offences within its jurisdiction.
- (b) In civil, commercial and labour matters:
  - to hear and determine suits and proceedings relating to the status of persons, civil status, marriage, divorce, filiation, adoption and inheritance;
  - to hear matters where the amount of damages claimed exceeds 10.000.000 (ten millions) CFA francs;
  - to recover, by way of the simplified procedure, all unquestionable, liquid and due civil and commercial debts exceeding 10.000.000 (ten million) CFA francs, as well as all unquestionable, liquid and due commercial claims, of whatever amount, whether the obligation arises from a cheque, a promissory note or a bill of exchange.
- (c) In non-administrative matters:
  - to hear and determine all applications for an order prohibiting any person (s) or authority from doing or performing any act in respect of which he is not entitled or competent to do by law (prohibition);
  - to hear and determine all applications for an order commanding any person(s) or authority to do or perform any act which he is required to do by law (mandamus).

## 2.2. *Courts Vested with Appellate Jurisdiction*

The courts competent to hear issues on appeal includes; the Court of Appeal<sup>34</sup>, the Supreme Court<sup>35</sup> and to some extent the Common Court of Justice and Arbitration at Abidjan<sup>36</sup>.

<sup>31</sup> *Carlson Anyangwe*, (supra note 16), at p. 166.

<sup>32</sup> *A.N.T. Mbu*, (supra note 23), at p. 45.

<sup>33</sup> *Ibid.*

<sup>34</sup> See Section 22 of Law N°2006/015 of 29 December 2006 on Judicial Organisation.

<sup>35</sup> By Section 7 of Law N°2006/16 of 29 December 2006 to lay down the organisation and functioning of the Supreme Court, the Court shall compose of a Judicial Bench; an Administrative Bench, a Panel of Joint Benches; a Full Bench; a Bureau; a Secretariat General; and a Registry.

<sup>36</sup> It is to be recalled that the OHADA Treaty created the Common Court of Justice and Arbitration to serve as the court of ultimate appeal in commercial matters. The OHADA Treaty entered into

Each of the ten regions in Cameroon has an Appeal Court located at the headquarters of the region. The Court of Appeal has jurisdiction to hear appeals against judgments delivered by the lower courts including appeals against the ruling of the investigating magistrate as well as appeals on matters such as bail, rehabilitation and so on.

The Supreme Court, with its seat in Yaounde, is at the apex of the Cameroonian judicial pyramid<sup>37</sup>. Like in the American Constitution, the Supreme Court is the only court specially mentioned in any detail in the Constitution of Cameroon<sup>38</sup>. By Article 39 of the Constitution, the Judicial bench shall give final rulings on:

appeals accepted by law against final rulings given by the various courts and tribunals of the judicial system; -judgments passed by the lower courts of the judicial system that have become final in cases where the application of the law is challenged; – all matters expressly devolving upon it by law.

The Supreme Court also has jurisdiction to examine all administrative disputes involving the state and other public authorities. It examines appeals on regional and council election disputes; and also give final ruling on appeals against final judgments passed by lower courts in cases of administrative disputes<sup>39</sup>.

### 2.3. *Courts with Special Jurisdiction*

A court with special jurisdiction is one which deals with either specific matters formally provided for by statute or with a particular class of persons<sup>40</sup>. In Cameroon, the courts with special jurisdiction includes: the Court of Impeachment, the Military Court, the State Security Court and the Constitutional Council.

The Court of Impeachment is mentioned in Article 53 (1) of the Constitution. It has jurisdiction in respect of acts committed in the exercise of their functions, to try the President of the Republic for high treason and the Prime Minister, Members of Government and persons ranking as such and senior Government officials to whom powers have been delegated in pursuance of Articles 10 and 12 of the Constitution, for conspiracy against the security of the State.

Governed by Ordinance N°.72/5 of 26 August, 1972, as amended by Law N°.87/9 of 15 July, 1987, Law N°.90/48 of 19 December 1990, Law N°.98/7 of 14 April, 1998, an Law

force on 19 September, 1995, and Cameroon ratified the Treaty by Decree N°.96/177 of 5 September, 1996.

<sup>37</sup> *Charles M. Fombad* (supra note 10), at p. 65.

<sup>38</sup> *Ibid*, See especially Article 38 (1) of Law N°.96-06 of 18 January 1996 to amend the Constitution.

<sup>39</sup> See generally Article 40 of Law N°.96-06 of 18 January 1996 to amend the Constitution of 2 June 1972. By Article 41 of the said Law, the audit bench is competent to control and rule on public accounts, as well as on those of public and semi-public enterprises. It also gives final rulings on final judgments passed by lower audit courts.

<sup>40</sup> *Carlson Anyangwe* (supra note 16), at p. 176.

N°2008/015 of 29 December 2008, the Military Court<sup>41</sup> deals with only a limited category of cases. It has jurisdiction to try the following offences committed by any person over 18 years of age: offences of a purely military nature provided for in the Military Code of Justice; offences of whatever nature committed by soldiers, with or without civilian co-offences or accomplices, either inside a military establishment or in the course of service; any offence against the law relating to offensive and defensive weapons, and to theft committed with the aid of a firearm; offences of all kinds involving a soldier committed in an area subject to a state of emergency or siege; offences related to those hereto for listed.

The State Security Court was set up by Law N°.90/60 of 19 December 1990 with its seat in Yaounde but with jurisdiction over the national territory. It has jurisdiction to try felonies and misdemeanours against the internal and external security of the state and related offences. The court does not try persons below 14 years of age.

Law N°.96-06 of 18 January 1996 to amend the Constitution of 2 June 1972, made provisions for a Constitutional Council. By Article 46 of the said Law, the Constitutional Council shall have jurisdiction in matters pertaining to the Constitution. It shall rule on the constitutionality of laws. It shall be the organ regulating the functioning of the institutions. The Constitutional Council shall also give a final ruling on: the constitutionality of laws, treaties and international agreements; the constitutionality of the standing orders of the National Assembly and the Senate prior to their implementation; conflict of powers between State institutions; between the State and the Regions, and between the Regions<sup>42</sup>

### 3. Does the Administrative Set-Up in Cameroon Guarantee the Independence of the Judiciary?

Generally speaking, the independence of the judiciary means that the judge is expected to be independent, neutral and impartial. It means that judges are free to bring their own sense of value to bear in interpreting a law and do not simply reflect the values of Government.<sup>43</sup> It also means that judges should not be influenced in their decisions by other motives other than the motive of justice<sup>44</sup>. There can be no protection against abuse of power, even when

<sup>41</sup> By Section 3 (1) of Law N°2008/015/ of 29 December 2008 to organize military justice and lay down rules of procedure applicable before military tribunals, a military tribunal shall be set-up in each region.

<sup>42</sup> See Article 47 (1) of the revised Constitution of 1996. See also Article 48 (1) which provides that the Constitutional Council shall ensure the regularity of Presidential elections, Parliamentary elections and referendum operations. It shall proclaim results thereof. By Article 48 (2) any challenges in respect of the regularity of one of the elections provided for in the preceding paragraph may be brought before the Constitutional Council by any candidate, Political party that participated in the election in the constituency concerned or any person acting as Government agent at the election.

<sup>43</sup> *N. O. Osita* (supra note 8), at p. 264.

<sup>44</sup> *Ibid.*

safeguards are enshrined in a written Constitution if the judges who have to interpret these whenever the Government is challenged are mere puppets of Government<sup>45</sup> A judge must decide issues in accordance with the law His personal bias and prejudices as well as his political and religious views must not be allowed to influence his decisions, for litigants expect a fair and full trial from him<sup>46</sup>

In all, The United Nations Congress on the Prevention of Crime and Treatment of offenders, held in Milan in 1995, adopted the basic principles of the independence of the judiciary as follows<sup>47</sup>:

1. It is the duty of the Government to respect the independence of the judiciary;
2. It is duty of the judiciary to decide matters impartially;
3. Judges must not be subject to or accept:
  - a- restrictions, b- improper influence
  - c- inducements, d- pressures
  - e- threats or interference of any kind with the judicial function.
4. Judges have the exclusive authority to decide all issues that come before them;
5. judges should properly be trained and selected without any discrimination;
6. The appointment of judges should be guaranteed up to fixed retirement age, or the end of their term of office;
7. Judges may only be removed for incapacity, or behaviour that makes them unfit to discharge their duty.

In Cameroon's Public administration, judicial officers are required to take the judicial oath before taking up their judicial functions<sup>48</sup>. The oath is couched in these terms<sup>49</sup>:

I ... swear before God and all Men honestly to serve the people of the Republic of Cameroon in my capacity as a Member of the Judicial and Legal Service to render Justice impartially to all in accordance with the laws, regulations and customs of the Cameroonian people without fear, favour or malice, and in all ways, in all places and at all times to bear myself as a worthy and faithful member of the service.

From the wordings of the oath, independence of the judiciary therefore means that the Cameroonian magistrate must first know his law, and only the law and his conscience should govern his objective decision unhampered by extra-judicial sources or criteria, for example social class, tribal affinity or loyalty to a superior, or gifts offered to pervert a

45 Ibid. cf. *R.W.M. Dias*, Jurisprudence, London, 1985, p. 99.

46 *Carlson Anyangwe*, The Magistracy and the Bar in Cameroon, CEPER, Yaounde, 1989, p.23.

47 Cf. *N. O. Osita*, (supra note 8), p. 264.

48 See generally, Judicial and Legal Service Rules and Regulations (Decree N°.82-467 of 4 October 1982), SS. 23-24.

49 This oath is taken by the newly appointed Judicial officer before the Supreme Court with his right hand raised. In fact, by Section 46 of the Rules and Regulations of the Judicial and Legal Service any violation of the Judicial oath is a disciplinary offence. And Section 126 (a) of the Cameroonian Penal Code sanctions the representative of the executive authority who issues any order or prohibition to any court.

decision or the thought that you will lose a promotion by reason of a certain decision unpopular to members of the Government<sup>50</sup>.

Another statutory guarantee of judicial independence in Cameroon's Public administration is provided for in Section 126 (a) of the Penal Code, which punishes the representative of the executive authority with up to five years' imprisonment, who issues any order or prohibition to any court. Thus a Minister, Prefect or Governor who does so falls foul of the law and can be properly convicted and sentenced<sup>51</sup>. However, this is mere paper legality because the wide ranging powers of the Minister of Justice cannot be affected. The Minister sometimes issue orders to the court on certain matters and the court sheepishly toe the line; besides, it is common knowledge that it is difficult for a State prosecutor for instance, to initiate criminal proceedings against the Minister of Justice, who is his boss<sup>52</sup>.

Judicial independence is also guaranteed in Cameroon's public administration through the principle of irremovability of judges enshrined in Section 5 (2) of the Rules and Regulations of the Judicial and Legal Service<sup>53</sup>. The tenor of this principle is that a judge may neither be dismissed nor suspended nor transferred without his or her consent by the discretionary action of the Government. Here again theory belies practice. The reality in Cameroon is that the executive continues to appoint, transfer, dismiss, suspend and can interfere with the so-called judicial power with no constitutional provisions to control and ensure that this is done in a fair rational, objective and predictable manner<sup>54</sup>.

#### 4. Factors that Undermine the Independence of the Judiciary in Cameroon

The following factors affect the independence of the judiciary in Cameroon:

##### 4.1. *Lack of an Independent Machinery for Enforcing Judgments*

The justice system in Cameroon is a legal entity comprising of the police, the courts and the prisons. A major operating characteristic of the system is that the machinery to enforce a decision owes all its sanctions to the organised coercive forces of the State: the police, prisons service, and the army; all of which are the arms of the executive, by whom their administration and operational use are controlled<sup>55</sup>. The court in Cameroon has no independent force of its own. Reliance is placed on the police force of the State for the enforcement of court decisions. Indeed, the policeman is the "gate keeper" of the justice

<sup>50</sup> *Mbu* (supra note 23), p. 150.

<sup>51</sup> *Carlson Anyangwe* (supra note 46), p. 28.

<sup>52</sup> *Ibid.*

<sup>53</sup> See Decree N°.82-467 of 4, October 1982 on the Rules and Regulations governing the Judicial and Legal Services.

<sup>54</sup> *Charles M. Fombad* (supra note 10), at p. 68.

<sup>55</sup> *Carlson Anyangwe*, (supra note 46), p. 35.

system, he decides who goes into the system and the bailiffs or process-servers who levy execution upon property of the defaulting judgment debtor for instance, depend, to a large extent, on the police in the discharge of their duties because they have no independent force. In this wise it is but normal that the police will not respect a court order, if the order is directed against them.

In the triangular relationship of the justice system, the prisons play a great role in the enforcement of court judgments. The prison is responsible for the custody of the final product in the justice process<sup>56</sup>. Maintaining custody involves carrying out measures to prevent escapes, such as erecting high walls or chain-link fence, placing armed guards, constant checks of cells, providing a system of passes for movements within the prison, constant surveillance, and such stringent measures which may be applied from time to time to prevent escapes, roits and so on<sup>57</sup>. But little wonder the prison authorities are also entirely under the control of the executive. It is suggested that the courts and prisons be provided with well equipped enforcement personnel of their own similar to the Court Marshals in the U.S.A.<sup>58</sup>.

#### 4.2. *Corruption*

The Draft OAU Convention on Combating Corruption<sup>59</sup> in its Article 4 (1) defines acts of corruption as follows:

- (a) the solicitation or acceptance, directly or indirectly, by a public official, of any goods of monetary value, or other benefit, such as a gift, favour, promise or advantage for himself or herself or for another person or entity, in exchange for any act or omission in the performance of his or her public functions;
- (b) the offering or granting, directly or indirectly, to a public official, of any goods of monetary value, or other benefit, such as a gift, favour, promise or advantage for himself or herself or for another person or entity, in exchange for any act or omission in the performance of his or her public functions;
- (c) any act or omission in the discharge of his or her duties by a public official for the purpose of illicitly obtaining benefits for himself or herself or for a third party;
- (d) the diversion by a public official, for the purpose unrelated to those for which they were intended, for his or her own benefit or that of a third party, of any movable or immovable property, monies or securities belonging to the State, to an independent agency, or to an individual, that such official has received by virtue of his or her position for purposes of administration, custody or for other reasons;
- (e) the offering or giving, promising, solicitation or acceptance, directly or indirectly, of any undue advantage to or by any person who directs or works for, in any capacity, a private sector

<sup>56</sup> *Dambazau* (supra note 6), p.111.

<sup>57</sup> *Ibid.*

<sup>58</sup> *P. K. Nwokedi*, « Enforcement of Court Orders and the Stability of Government and Society », *Judicial Lecturer: Continuing Education for the Judicial*, Lagos, M.I.J. professional Publishers Limited, (1992), p.114. cf *N. O. Osita*, (supra note 8), p. 278.

<sup>59</sup> See The Draft OAU Convention on Combating Corruption of 29 November, 2001.

entity, for himself or herself or for anyone else, for him or her to act, or refrain from acting, in breach of his or her duties;

(f) the offering, giving, solicitation or acceptance directly or indirectly, or of any undue advantage to or by any person who asserts or confirms that he or she is able to exert any improper influence over the decision making of any person performing functions in the public or private sector in consideration there of, whether the undue advantage is for himself or herself or for anyone else, as well as the request, receipt or the acceptance of the offer or the promise of such an advantage, in consideration of that influence, whether or not the influence is exerted or whether or not the supposed influence leads to the intended result;

(g) the use or concealment of proceeds derived from any of the acts referred to in this Article; and  
(h) participation as a principal, co-principal agent, instigator, accomplice or accessory after the fact, or on any other manner in the commission or attempted commission of, in any collaboration or conspiracy to commit, any of the acts referred to in this Article.

A cursory look at the above provision reveals that corruption takes the form of bribe, undue gratification, fraud and embezzlement. An employee in a public establishment is said to be corrupt if "... he accepts money or money's worth for doing something which he is under a duty to do..."<sup>60</sup> Corruption threatens the independence of the judiciary in Cameroon, especially since the Cameroonian judiciary is composed of Cameroonians. It is open secret that many judges have thrown the judicial tradition to the wind by engaging in corrupt practices. In fact, where the judiciary is corrupt, justice goes to the highest bidder and becomes a question of "cash and carry"<sup>61</sup>. Commenting on corruption in the judiciary in Cameroon, one writer said <sup>62</sup> "Justice in Cameroon, like Father Christmas, is only available to the highest bidder". The ills of corruption affects the judiciary and it will be unrealistic, if not hypocritical to say that the Cameroonian judiciary has not been attacked by this evil.

#### 4.3. *Recruitment, Appointments and Discipline of Judges*

Cameroonian judges differ from their counterparts in the United Kingdom in that they are usually members of a career judiciary rather than former legal practitioners. They qualify as judges after studying at the National School of Administration and Magistracy (Judicial Section) in Yaounde<sup>63</sup>. When they graduate from there they are assigned to be "sitting judges" (*Magistrats du siege*, i.e. judges who actually hear and decide cases) or "standing judges" (*magistrates du parquet or magistrates debouts*, i.e. judges who act as prosecutors). So, in Cameroon, the magistracy is functionally divided into two-the judiciary and the

<sup>60</sup> M. Mc Mullan, « Theory of corruption », Sociological Review, 9, 1961:181-210.

<sup>61</sup> N. O. Osita, (supra note 8), p. 272.

<sup>62</sup> Charly Ndi Chia, "Eseme Murder and Tug of Judicial adjournments", The Post, N°.0575, Monday, June 7, 2004, at p. 4.

<sup>63</sup> Candidates enter the school through a competitive examination. The Minister of Justice sets out the conditions and nature of examination for entry into the Magistracy. He fixes number of places for entry each year. Successful candidates are appointed as "auditeur de Justice" – legal probationers by a joint order signed by the Minister of Public Service and the Minister of Justice. See generally, Mbu (supra note 23), at p. 96.

Legal Department otherwise known as the Department of Public Prosecutions or D.P.P. Those “magistrates”<sup>64</sup> who are judges belong to the judiciary and those who are state prosecutors belong to the Legal Department. However, both exercise their duties within the framework of a single service known as the Judicial and Legal Service<sup>65</sup>. At one time during his career, the Cameroonian “magistrats” may be a judge, at another a prosecutor, at yet another a prosecutor and judge at the same time, and another time still a bureaucrat doing administrative duties in the Ministry of Justice<sup>66</sup>. In all members of the Judiciary and the D.P.P. are recruited (but not removed) in the same way and are governed by the same rules and regulations<sup>67</sup>. With all these, there is chance to believe that the recruitment system of Judges in Cameroon has a serious implication for the independence of the judiciary, since this is tied to the Ministries of Justice and Public Service which are all branches of the Government service.

Furthermore, all magistrates or judges are appointed, promoted, transferred, disciplined or retired by a Presidential Decree on the advice of the Higher Judicial Council<sup>68</sup>. By Article 37 (3) of the 1996 Constitution, the President of the Republic shall guarantee the independence of the judiciary and shall be assisted in doing so by the Higher Judicial Council which shall give its opinion on all appointments to the bench and on disciplinary measures, against judicial and legal officers. Infact, by Sections 11 (2) and 12 of Law N°.82-14 of 26 November 1982, the Council shall give its opinion on proposals for appointments, promotions, transfers, secondment and the awards of honours to members of the bench. It shall draw up the promotion list for members of the bench and give its opinion on disciplinary sanctions concerning any member of the judiciary.

The Minister of Justice prepares the disciplinary file for the prosecution of any magistrate, whenever there is any offence and informs the Head of State of the allegation against the Judge concerned. Magistrates of the bench and members of the Supreme Court are tried before the Higher Judicial Council, their disciplinary file is sent to the secretariat of the Higher Judicial Council at the Presidency and the decision of the Council is made official by a Presidential Decree. So before he attains the statutory retirement age, a magistrate might be discipline or removed from office. Hence, the judiciary from this premise comes

64 The term “magistrate” is a French word referring to both members of the bench and legal department.

65 See Judicial & Legal Service Rules and Regulations (Decree N°.82-467 of 4 October 1982), S.I.

66 *Carlson Anyangwe* (supra note 46), p. 3.

67 *Ibid.*

68 The Higher Judicial Council is made up of the President of the Republic, who is President of the Council, the Minister of Justice, who is Vice President, a Secretary General who should be a magistrate appointed by the President of the Republic. The Supreme Court and the National Assembly, each nominate three of their members to sit in the Higher Judicial Council. An independent personality of the civil society is also appointed to sit in the Council. See generally, Law N°.82-14 of 26 November 1982, fixing the organization and functioning of the Higher Judicial Council.

out weak, and depends on the whims of the executive branch of Government. It is suggested that judges, should be appointed for life. This is the situation in the Anglo-American system under which superior court judges are appointed *quam diu si bene gesserint* (“for as long as they will have performed well”) – which in effect means for life or until they choose to retire – and so can be removed from office, in America, only by the process of impeachment by Congress and in England, only upon the advice of both Houses of Parliament in a joint address<sup>69</sup>.

#### 4.4. *Funding of Courts and Budgetary Dependence of the Judiciary*

In Cameroon the Courts are run by a budgetary allocation made through the Ministry of Justice. The Minister of Justice goes to parliament each year to seek for funds to run the courts. This aspect has a serious implications for the independence of the judiciary because it depends on both the executive and legislative power for its funding. Furthermore, another factor which is inconsistent with judicial independence is that the judges in the courts, depend on the legal department for any material need to run the courts under their control. The funds the Minister receives are directed to the Legal Department. A judge who needs furniture, stationery, transport facilities and so on, must depend on the Legal department for those items. Infact, the budgetary dependence of the judiciary on the Legal Department is not healthy for judicial independence in Cameroon’s public administration. It is suggested that a fund should be created to run the courts and judges should be given the responsibility to control funds for their various courts.

#### 4.5. *Annual Reports on Judges by Senior Members of the Judicial Service, the Police and Gendarmes*

The independence of the judiciary is also threatened by the system of making confidential reports<sup>70</sup> on judges. Reports on judges emanate from two sources: reports made by hierarchically superior judicial and legal officers, and those made by security officers<sup>71</sup> (Police and gendarmes). Both reports are confidential and are sent to the Minister of Justice under confidential cover<sup>72</sup>.

<sup>69</sup> *Carlson Anyangwe* (supra note 46), p. 10.

<sup>70</sup> All Civil Servants in Cameroon’s Public administration are subject to confidential reports made by their immediate superiors. See the following instruments: Decree N°. 94/199 of 7 October 1994 (General Rules and Regulations of the Public Service); Decree N°.2000/287 of 12 October 2000, to modify and complete certain dispositions of the status of the Civil Servant; Decree N°76/570 of 4 December 1976 to grant certain powers relating to personnel management to governors of regions and prefects; Order N°.3277/MFP/DP of 27 October 1977 to outline the procedure for making confidential reports on staff and, circular N°.6327/MFP/DP of 11 November 1977 relating to confidential reports on public officers.

<sup>71</sup> *Carlson Anyangwe* (supra note 46), p. 45.

<sup>72</sup> *Ibid.*

The President of the Court of Appeal reports on all Court of Appeal judges, High Court judges and magistrates of Courts of First Instance on the bench; and the Chief Justice of the Supreme Court reports on all the President of the ten Courts of Appeal<sup>73</sup>.

Reports by the police and gendarmes are of a general nature and are made on every member of the judiciary<sup>74</sup>. These reports generally reflect the opinion of the local population about a judge and sometimes touches on the private and social life of the judge.

Generally, these reports are detrimental to the judge and his independence because they are used to determine his transfers, discipline, or promotion; and by the General Rules and Regulations of the Public Service,<sup>75</sup> advancement of a civil servant depends on a favourable report on his activities within the service.

#### 4.6. *Undermining the Authority of the Courts by the Administration*

A characteristic feature of the administration in Cameroon is that it can interfere with the administration of justice. Some criminals or litigants, with obviously bad cases run for ministerial intervention in a matter before the court. The Minister of Justice as overall boss, may at any time instruct a judge on how to handle a particular case or may even use his power to exercise prosecutorial discretion to ask a State Prosecutor to discontinue with a case or to withdraw the case from the court.

Furthermore, it is not uncommon for a local administrator in Cameroon to try to influence the decision of the court or attack the courts' decision. Incidents of such nature abound. Recently according to a news report in the Herald Newspaper, Oku Sub-Divisional Officer, Maurice Fontzem was fined F CFA 750. 000 and restrained from controlling or interfering in whatever manner, with the OKU Rural Radio Station by the Kumbo High Court<sup>76</sup>. Of course, he defied the order of the court and proceeded to issuing a Prefectorial Order banning an enlarged general meeting of the radio<sup>77</sup>. This is outrageous because it undermines the independence of the judiciary.

In fact, one writer<sup>78</sup>, commenting on the meddling by the administration with the course of justice advanced some reasons why local administrators believe they could undermine court decisions. First in terms of official protocol the judge has a low position vis-à-vis the local administrator; secondly, the Minister of Justice's insistence on collaboration between the courts and the local administration is invariably construed by adminis-

<sup>73</sup> See in general *Mbu* (supra note 23) at p. 99.

<sup>74</sup> *Ibid.*

<sup>75</sup> See generally, Decree N°.94/199 of 7 October 1994 on Rules and Regulation of the Public Service.

<sup>76</sup> Reported by *Charly Ndi Chia* in his article entitled « Esemé Murder and Tug of Judicial Adjourment »; *The Post* N°.0575, Monday, June 7, 2004..

<sup>77</sup> *Ibid.*

<sup>78</sup> *Carlson Anyangwe* (supra note 46), at p. 52.

trators to mean that judges must be subservient to them; as they in fact are the representative of the Head of State and of all Ministers in their areas; thirdly local administrators are empowered to make rules and regulations, enforceable by the police, gendarmerie and the courts, for their various administrative units<sup>79</sup>.

#### 4.7. *Remuneration and Working Conditions*

In Cameroon, the salaries of judges, like those of other civil servants are managed and paid by the Ministry of Finance. There is no special fund for the payment of judges. Judges, pay for their court robes, buy their cars and take care of their families with the salary they earn<sup>80</sup>. Salary payments are assessed according to grades. There are five grades of magistrate. The fifth grade is referred to as the super scale grade, and each grade is divided into echelons and allocated index points equivalent to that of other civil servants.

The standard required of a judge is too high to expect that the norms of the profession will be respected to the letter if the judge is not financially viable; So, recently the President of the Republic in one of his decrees increased allowances of judges. The judge now receives a basic monthly salary which is better than what he used to earn a few years ago. Indeed, huge pay packets and good working conditions of judges will help to curb corrupt practices in the courts and guarantee judicial independence, because as Clark puts it, "poverty is the mother of crime"<sup>81</sup>.

#### 4.8. *Judges' Involvement in Politics*

Justice Adenekan in the case of *Musa V. Hamza & Ors*,<sup>82</sup> pointed out the consequence of the court entering the political arena. His Lordship said:

...for the courts to enter into political thicket...would...be asking its gates and its walls to be painted with mud; and throne of justice from where the judgment are delivered polished with mire.

The traditional view of the common law system is that politics must be left at the cloak room, and must not be brought before a judge sitting in court<sup>83</sup>. In fact political self-negation is important for the administration of justice and judicial independence because a judge who involves himself in politics would be forced to support his political party, associate with members of his party and may be extremely reluctant to convict a person from his

<sup>79</sup> Ibid, at p. 52.

<sup>80</sup> By Section 15 (1) of the Rules and Regulations of the Judicial and Legal Service, a judge is not expected to engage into business of whatever nature.

<sup>81</sup> *R. Clark*, *Crime in America*, New York, 1970, p. 25.

<sup>82</sup> [1982] 3 NCLR.

<sup>83</sup> *Mbu* (supra note 23), at p. 116.

political party or a friend within his party. Even in cases where conviction is unavoidable, a judge because of political influence, may decide to give an undeserved minimum sentence.

It cannot be gainsaid that with the advent of multi-party politics in Cameroon, some judges do support the ideologies of some political parties and have even become members of political parties. In such a situation, the judge is forced to mortgage his conscience to the party in question thus threatening the independence of the judiciary because once the party has a matter in court, his judgment must turn to favour the party.

## **5. Conclusion**

From the foregoing, it is clear that the 1996 Constitution<sup>84</sup> of Cameroon provides for the independence of the judiciary, but more fundamental and elaborate work needs to be done to spell out the manner in which this independence is guaranteed. The truth is that in order to guarantee an independent judiciary, the law must set a limit on the powers of the Government. The law has to defined the contours of power to be exercised by the governor over the governed, and it is the job of the courts to ensure that the State does not overstep the boundaries. In all, the freedom of the judiciary to operate must not be curtailed by the executive or legislative powers; the executive should not manipulate the jurisdiction of courts to limit access to the courts<sup>85</sup>. Indeed, since it is evident that the political will of the Government is to guarantee judicial independence, judges should expound and apply the law without fear or favour. They should avoid merely to concur and endorse the decisions of the executive or legislative.

<sup>84</sup> See in general, Law N° 96-06 of 18 January 1996 to amend the Constitution of 2 June 1972.

<sup>85</sup> *M. J. C. Vile*, *Constitutionalism and the Separation of Powers*, London, 1967, p. 303.