

# The Judiciary and the Enforcement of Constitutional Rights in Cameroon: Emerging Challenges

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## I. Introduction

Cameroon's amended Constitution of 14 April 2008<sup>1</sup> contains some inalienable and sacred rights of the human person in its Preamble.<sup>2</sup> These rights include the right to freely enjoy and use property; the freedom of communication, of expression, of the press, of assembly, of association, and of trade unionism; the right to life; freedom from torture and inhuman treatment; freedom from slavery and forced labour; the right to a fair hearing before the courts; freedom of thought, conscience, religion and worship; the right to marry and found a family; the right to participate in one's government either directly or through freely elected representatives; the right to nationality and equality before the law; the right to education; the right to participate in cultural life and to enjoy the benefits of scientific progress; the right to work; the right to just conditions of work; the right to fair remuneration; the right to settle in any place and to move about freely; the right to a healthy environment; the right to privacy<sup>3</sup>. Viewing from the perspective of the importance of these fundamental human rights to Cameroonians,<sup>4</sup> it is of no minor interest to examine the material scope of the enforcement of these rights by the judiciary. The aim of this article therefore is to analyse the role of the judiciary in the protection of constitutional rights. In doing so, the article will

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1 See Law N° 2008/001 of 14 April 2008, purporting to amend the constitution of 2 June 1972.

2 See the Preamble of the Constitution which affirms the attachment of the Cameroonian people to the "... fundamental freedoms enshrined in the Universal Declaration of Human Rights, the Charter of the United Nations and the African Charter on Human and Peoples' Rights..."

3 See generally the Preamble of Cameroon's amended Constitution of 14 April 2008. See also Articles 3 to 29 of the Universal Declaration of Human Rights which sets out a catalogue of human rights and fundamental freedoms.

4 Cameroon has ratified a number of international Conventions and instruments relevant to Human Rights. Some of these include: the Universal Declaration of Human Rights and the African Charter on Human and Peoples' Rights; the Convention on the Elimination of all forms of Racial Discrimination (ratified 24<sup>th</sup> June 1971); the Convention against Torture and Other Cruel Inhuman and Degrading Treatment (ratified 19<sup>th</sup> December 1986); the Convention on the Elimination of all forms of Discrimination against Women (signed 6<sup>th</sup> June 1983, ratified 23<sup>rd</sup> August 1994); the Convention on the Rights of the Child (ratified 11<sup>th</sup> January 1993). In addition, the legal history of Cameroon in the last decade has been marked by a number of laws dubbed "liberty laws" protecting basic fundamental rights and freedoms. See Law N°. 90/053 of 19 December 1990, on the freedom of association as amended by Law N° 99/011 of 20 July 1999. See also Decree N° 90/1459 of 8 November 1990, creating the National Commission for Human Rights.

examine the procedure for the enforcement of constitutional rights; the *locus standi* to sue for breach of constitutional rights; the issue of whether breach of a constitutional right is a cause of action in tort, and if so, what remedies are available. It will also discuss the limitations on the enforcement of constitutional rights by the judiciary. But before all these a word needs to be said on the competence of the court to hear and determine issues of violations of constitutional rights.

## **II. Has the High Court in Cameroon got Jurisdiction to entertain Matters relating to the Violation of Constitutional Rights?**

Before adjudicating on a case of violation of constitutional rights, a court of law normally asks the question whether or not it has jurisdiction<sup>5</sup> to try and hear the matter before it. By virtue of Section 18 (1) (c) of Law N° 2006/015 of 29 December 2006 on Judicial Organization, the High Court has original jurisdiction to entertain matters relating to breach of fundamental human rights<sup>6</sup> as provided for in the Preamble of the Cameroonian Constitution. In non-administrative matters the High Court has been conferred jurisdiction 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) and 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).<sup>7</sup>

From the above, the jurisdiction to entertain any suit which alleges that any of the constitutional rights has been breached can only be exercised by a High Court. So, a person whose constitutional rights is breached, being breached, or about to be breached by an ordinary citizen, may apply under Section 18 (1) (c) of the 2006 Law to the High Court of the judicial division in which the breach occurred or is occurring or about to occur<sup>8</sup> for redress. The law is settled that an application for the enforcement of constitutional rights may only be filled in the High Court within or covering the division where the alleged breach occurred. Where the breach occurs partly in one division and partly in another division, a High Court in any of the two divisions can hear the matter.<sup>9</sup> It is to be recalled that before the 2006 Law in Cameroon, Sections 9 (3) and (4) of Ordinance N°. 72/06 of 26 August

5 The word “jurisdiction” is used here in two senses. First, it is used to denote the territory over which the court has power. In its second sense the word “jurisdiction” means the court’s power to hear and determine particular proceedings.

6 It has been suggested that where human rights are entrenched in a written constitution, they are called fundamental rights. See *Ransome Kuti and Others V. A.G. Federation*, (1985) 8 NWLR (para 6) p. 211.

7 See generally Section 18(1), (C) of Law N°. 2006/015 of 29 December 2006 on Judicial Organisation.

8 The proceedings must be brought before the High Court in the division in which the right has been, is being or is likely to be contravened. Any other High Court apparently lacks jurisdiction to entertain it. See *Minister of Internal Affairs V. Shugaba* (1982) 3 N.C.L.R. 915.

9 See *Uzoukwu V. Ezeonu* (1991) 6 NWLR (P. 200) 708.

1972 fixing the organization of the Supreme Court as modified by Laws N°. 75/16 of 8 December 1975 and 76/28 of 14 December 1976 also spelt out those areas over which ordinary courts have jurisdiction over certain acts committed by the administration or an administrative officer. Section 9(4) of the said law permits a person to bring an action against an administrative officer or an auxiliary of the administration in the ordinary courts under the doctrine of *voies de fait*.<sup>10</sup> Indeed the Mezam High Court in the case of *Nyoh Wakai & 172 Others V. The People*<sup>11</sup> articulated on this point when it ruled that:

*The Common Law court has competence to check cases of excesses in the use of administrative powers (voies de fait). In this, it has extensive powers. It can use all means to bring such violations to an end. It may not only award pecuniary redress in the form of damages, but May also pass an injunction by all legal means.*

Of course, such an action will be brought in the administrator's personal name. But however, the irregularity in question must have infringed some fundamental right of the individual, such as liberty of the person, sanctity of property or inviolability of the home.<sup>12</sup>

### III. The Procedure for the Enforcement of Constitutional Rights

The procedure for enforcement of constitutional rights in Cameroon is very simple. It is much like that for application for the prerogative writs. An aggrieved person could come to court by evoking Section 18 (1) (c) of Law N°. 2006/015 of 29 December 2006 on Judicial Organization dealing with prohibition and mandamus.<sup>13</sup> This Cameroonian position follows the position in Ghana and the United States wherein resort is made to the prerogative writs in cases of violations of fundamental rights.<sup>14</sup> So, there is no lacuna for the enforcement of constitutional rights in Cameroon. There should be first made an *ex parte*<sup>15</sup> application for leave to apply for the redress. It may be made by motion. The *ex-parte* application must be supported by a statement setting out the name and description of the applicant; the relief

10 “Voies de fait” loosely translated in English means excessive use of force by a state official. It is an irregularity on the part of the administration which is so flagrant and gross that cannot be regarded as an administrative act at all but it is treated as if it were the act of a private person, thereby losing the privilege of being adjudicated upon only by the administrative courts and falling within the cognizance of the ordinary courts.

11 (1997) 1 CCLR 130.

12 The administrator will be more personally responsible if such an act which is flagrantly irregular or illegal and hence arbitrary infringes some fundamental right of the individual as contained in the preamble of the Constitution or any other law which is a derogation of one or more of the fundamental rights enshrined in the preamble of the Constitution.

13 These are extraordinary writs issued by a court exercising unusual or discretionary power. They are also term prerogative writs. The also include certiorari and habeas corpus.

14 See Osita Nramani Ogbu (1999), *Human Rights Law and Practice in Nigeria*, Enugu, p. 258.

15 Applying *ex parte* means applying without giving notice to the other side. See John O'Hare and Robert N. Hill, (1997), *Civil Litigation*, 8th Ed., Glasgow, Bell & Bain Ltd, p. 7.

sought, and the grounds on which it is sought and by an affidavit verifying the facts relied on.<sup>16</sup>

The applicant must file the application not later than the day preceding the date of hearing and must at the same time lodge in the court enough copies of the statements and affidavits for service on any party or parties as the court may order.<sup>17</sup> There is a time limit of twelve months from the date of the happening of the event, matter or act complained within which an application should be made.<sup>18</sup>

On leave being granted, the applicant will then make the substantive application by notice of motion or by originating summons. There must be at least eight clear days between the service of the motion or summons and the date fixed for the hearing. The motion or summons itself must be entered for hearing within fourteen days after leave to apply has been granted.<sup>19</sup>

In principle all the parties directly affected must be served with the motion or summons and where the object is either to compel a court or its officer to do any act in relation to the proceedings or to quash them or any order made therein, the motion or summons must be served on the registrar of the court and where any objection to the conduct of a judge is made, on the judge.<sup>20</sup>

#### IV. The Applicant's *locus standi* to sue

The term *locus standi* denotes legal capacity to institute proceedings in a court of law and is used interchangeably with terms like “standing” or “title to sue”.<sup>21</sup> It has also been defined as the right of a party to appear and be heard on the question before any court or tribunal.<sup>22</sup> It is “the right or competence to institute proceedings in a court of law for redress or assertion of a right enforceable at law”.<sup>23</sup> The question of the applicant's *locus standi* to sue for the enforcement of breach of a constitutional right is important because, it is not, of course, every individual who can bring a dispute before the courts: he or she must have *locus standi*, that is some degree of interest in the outcome of the dispute.<sup>24</sup> This question may seem both simple and unnecessary, but it is in fact fundamental because a court of law cannot embark on the application of the law without settling the issue of whether the person in-

16 See Nwadialo, F. (1990), *Civil Procedure in Nigeria*, Lagos, MJ Professional Publishers Ltd., p. 867.

17 *Ibid.*

18 *Ibid.*

19 *Ibid.*

20 Nwadialo, F. (1990), *op. cit.*, p. 868.

21 Bryan A. Garner, (1999), *Black's Law Dictionary*, 7<sup>th</sup> Ed., West Group, St. Paul, Minn., p. 952.

22 *Ibid.*

23 See Senator Abraham Adesanya V. President of the Federal Republic of Nigeria and Another [1981] 5 S.C. 112 at 128-129 per Fatayi-Williams, C.J.N.

24 Dickson, B., (1994), *Introduction to French Law*, London, Pitman, p. 127.

tending to sue has the *locus standi* to do so. No one else can properly sue for the enforcement of that right.<sup>25</sup> It is therefore necessary for a prospective litigant to ask the question as to whom the enforceable right in the cause of action is vested to enable him decide whether he, himself, can properly sue.<sup>26</sup>

A distinction should, however, be drawn between private and public law litigations as far as the notion of *locus standi* is concerned. In public law litigations an ordinary individual generally does not have *locus standi* as a plaintiff.<sup>27</sup> This is because such litigations concern public rights and duties which belong to or are owed to all members of the public including the plaintiff.<sup>28</sup> It is only where he has suffered special damage over and above that suffered by the public generally that he can sue personally.<sup>29</sup>

Another point worthy of note is that of determining against who can an action be brought for violation of constitutional rights. The initial position of the courts was that fundamental rights could only be enforced against the government and governmental agencies but not against private persons.<sup>30</sup> In the Nigerian case of *Peterside V. IMB (Nig) Ltd*<sup>31</sup> the Court of Appeal held that it is wrong in law to say that fundamental rights can be enforced against government but cannot be enforced by one individual against another. By Section 18 (I) (c) of the Cameroonian Law on Judicial Organisation of 2006, the High Court has jurisdiction to hear and determine all applications for 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. From the wording of this sub-section an action for the enforcement of constitutional rights can be enforced against both the government and private individuals. This is the more so as the word “authority” has been mentioned. However, whether a constitutional right is enforced against the government or a private person or both will depend on whether the right guaranteed in the constitution is directed to the state only or against the state and private persons.

## V. Is the Breach of a Constitutional Right a Cause of Action in Tort?

Most of the rights enumerated in the Preamble of the Constitution are considered as constitutional torts.<sup>32</sup> A tort is an unlawful act arising primarily from operation of law and not

25 See Buraimoh Oloriode & Others V. Simeon Oyebe & Others [1984] 5, S.C.T.

26 Nwadialo, F. (1990), *op. cit.*, p. 23.

27 *Ibid.*

28 *Ibid.*

29 *Ibid.*

30 See Osita Nramani Ogbu (1999), *op. cit.*, at p. 237. See especially the Nigerian cases of Minister of Internal Affairs V. Shugaba (1982) NCLR 915: Senate of the National Assembly V. Momuh (1983) & NCLR 269.

31 (1993) 2 NWLR (p. 778) 712.

32 For a fine discussion on constitutional tort, see Bryan A. Garner (1999), Black’s Law Dictionary, 7<sup>th</sup> ed., p. 1496.

from breach of agreement between parties; the typical remedy for which is an action for unliquidated damages; and which is not exclusively a breach of contract, or exclusively a breach of trust or other equitable obligation, or exclusively a crime.<sup>33</sup> In relation to the civil liberties torts, like assault, battery and more particularly false imprisonment vindication of rights has a significant part to play, especially in relation to injured feelings and loss of dignity and respect.<sup>34</sup> So, a person, would have a right of action in tort for violation of constitutional right by a private person or a government officer if he or she brings a cause of action<sup>35</sup> redressable by a civil action filed directly against the government officer or the private person.

Such a right however can only arise if certain material facts exist to constitute a cause of action. In fact, a cause of action is constituted by the bundle or aggregate of facts which the law will recognize as giving the plaintiff a substantive right to make a claim for remedy or relief.<sup>36</sup> It is, in short, the factual ingredients of a legal right or claim.<sup>37</sup> So, breach of a legal right as provided in the preamble of the Cameroonian Constitution can be actionable in tort. This view of constitutional tort has been recognized in the case of *Ashby V. White*,<sup>38</sup> a case concerning the breach of the plaintiff's right to free and inhibited franchise, in which the Common Law recognized the breach of such a right as a cause of action in tort. This same strand of reasoning was adopted by Lord *Wright* in the Court of Appeal in the case of *Nicholls V. Ely Beet*,<sup>39</sup> who cited with approval the rule laid down in the *Ashby Case* in the following general propositions:

*"the ability to maintain such an action (for infringement of rights of fishing) depends on a much wider principle, that is, the principle that where you have an interference with a legal right the law presumes damages".*<sup>40</sup>

In general, the law of torts consists of a body of rules establishing specific injuries. There is no general principle of liability. It is therefore for the person whose constitutional rights have been violated to bring an action under one of the recognized heads of tort, not for the defendant to prove that his action was within a recognized class of excuse or justification.

33 Tyas, J.G.M. (1977), *Law of Torts*, 3<sup>rd</sup> ed., London, M.R.E Handbooks, p. 2.

34 Graham Stephenson (1996), *Source Book on Tort*, London, Cavendish Publishing Ltd, p. 5.

35 The term "cause of action" as has been stated in *Read V. Brown* (1888) 2 QBD 128 at 131 per Lord Esher M.R., "denotes every fact (though not every piece of evidence) which it would be necessary for the plaintiff to prove, if traversed to support his right to the judgment of the court". It has also been defined by Lord Diplock L.J. in *Letang V. Cooper* (1965) 1 Q.B. 222 at p. 242 as "simply a factual situation the evidence of which entitles one person to obtain from the court a remedy against another person".

36 Nwadialo, F. (1990), *op. cit.*, p. 18.

37 *Ibid.*

38 (1703) 3Ld. Ryan. 938.

39 (1936) Ch. 343, 380.

40 Tyas, J.G.M. (1977), *op. cit.*, at p. 2.

Furthermore, the names of the various torts survive and continue to be of practical effect; and every set of facts alleged to be a tort must either be brought under one of the existing names or have a new name invented for it.<sup>41</sup> In fact, by virtue of constitutional inclusion, international human rights have become legal rights within the national laws of Cameroon. So, the infringement of a constitutional right can give rise to a tort action. This is especially true with civil liberties torts. In such torts the vindication of rights has an important part to play, especially in relation to injured feelings and loss of dignity and respect.

Conversely, a person whose constitutional rights have been breached, can sue in tort, citing the right simpliciter without referring to any Common Law head of tort and such an action will be actionable *per se* under the principle laid down in *Ashby V. White*.<sup>42</sup> Indeed, at the hearing of the motion or summons, the court or Judge concerned may make such orders, issue such writs and give such directions as it or he may consider just or appropriate for the purpose of enforcing or securing the enforcement of any of the constitutional rights provided for in the Constitution to which the complainant may be entitled.<sup>43</sup>

## VI. Limitations on the Enforcement of Constitutional Rights by the Judiciary in Cameroon

The following factors limits the effective enforcement of constitutional rights by the judiciary in Cameroon:

### 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 organized 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>44</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 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 for violation of Constitutional rights, if the order is directed against them.

41 *Ibid.* For example the case of *Rookes V. Burnard* (1964) has apparently established a new tort called intimidation.

42 (1703) 3Ld. Ryan. 938.

43 Nwadialo, F. (1990), *op. cit.*, p. 867.

44 Carlson Anyangwe (1989), *The Magistracy and the Bar in Cameroon*, CEPER Yaoundé, p. 35.

In the triangular relationship of the justice system, the prisons play a great role in the enforcement of court judgment. The prison is responsible for the custody of the final product in the justice process.<sup>45</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, riots and so on.<sup>46</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>47</sup>

## 2. *Limitations Arising from Corruption*

The Draft OAU Convention on Combating Corruption<sup>48</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 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;

45 Dambazau (1999), *Criminology and Criminal Justice*, Nigerian Defence Academy Press, Kaduna, Nigeria, p. 87.

46 *Ibid.*

47 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, *op. cit.*, p. 278.

48 See the Draft OAU Convention on Combating Corruption of 29 November, 2001.



- (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 thereof, 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>49</sup> Corruption threatens the enforcement of constitutional rights by 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>50</sup> Commenting on corruption in the judiciary in Cameroon, one writer said<sup>51</sup> "Justice in Cameroon, like Father Christmas, is only available to the highest bidder". The ills of corruption affect the judiciary and it will be unrealistic, if not hypocritical to say that the Cameroonian judiciary has not been attacked by this evil.

### 3. *Limitations Caused by 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 Yaoundé.<sup>52</sup> When they graduate from there they are assigned to be "sitting

49 M. McMullan, "Theory of corruption", *Sociological Review*, 9, 1961, p. 181-210.

50 Osita Nramani Ogbu (1999), *op. cit.*, at p. 272.

51 Charly Ndi Chia, "Eseme Murder and Tug of Judicial adjournments", *The Post*, N°. 0575, Monday, June 7, 2004, at p. 4.

52 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 the Public Service and the Minister of Justice. See generally: Mbu, A.N.T., (1986) *The Mill of Justice*, Yaoundé, p. 96.

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 Legal Department otherwise known as the Department of Public Prosecutions (D.P.P.). Those “magistrates”<sup>53</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>54</sup> At one time during his career, the Cameroonian “magistrates” 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>55</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>56</sup> With all these, there is chance to believe that the recruitment system of judges in Cameroon has a serious implication for the enforcement of constitutional rights, since the judges are 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>57</sup> By Article 37 (3) of the 2008 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 against judicial and legal officers. In fact, by Sections 11 (2) and 12 of Law N° 82-14 of 26 November 1982, the Council shall give its opinion on proposals for appointment, 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 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

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

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

55 Carlson Anyangwe (1989), *The Magistracy and the Bar in Cameroon*, CEPER Yaoundé, p. 3.

56 *Ibid.*

57 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 organisation and functioning of the Higher Judicial Council.

premise comes 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 se 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 American, 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>58</sup>

#### 4. *Lack of Funds 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 implication on the enforcement of constitutional rights by the judiciary because it depends on both the executive and legislative power for its funding. Furthermore, another factor which is inconsistent with judicial enforcement of constitutional rights 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. In fact, the budgetary dependence of the judiciary on the Legal Department is not healthy for the effective enforcement of constitutional rights by the judiciary. 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.

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

The enforcement of constitutional rights by the judiciary is also threatened by the system of making confidential reports<sup>59</sup> on judges. Reports on judges emanate from two sources: reports made by hierarchically superior judicial and legal officers, and those made by security

58 Carlson Anyangwe (1989), *op. cit.*, at p. 10.

59 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.

officers<sup>60</sup> (police and gendarmes). Both reports are confidential and are sent to the Minister of Justice under confidential cover.<sup>61</sup>

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>62</sup>

Reports by the police and gendarmes are of a general nature and are made on every member of the judiciary.<sup>63</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>64</sup> advancement of a civil servant depends on a favourable report on his activities within the service.

#### 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. Incident 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>65</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>66</sup> This is outrageous because it undermines the power of the Judiciary to enforce constitutional rights.

In fact, one writer,<sup>67</sup> commenting on the meddling by the administration with the course of justice advanced some reasons why local administrators believe they could undermine

60 Carlson Anyangwe (1989), *op. cit.*, at p. 45.

61 *Ibid.*

62 See in general Mbu, A.N.T. (1986), *op. cit.*

63 *Ibid.*

64 See generally, Decree N°94/199 of 7 October 1994 on Rules and Regulations of the Public Service.

65 Reported by Charly Ndi Chia in his article entitled "Eseme Murder and Tug of Judicial Adjournment", The Post N° 0575, Monday, June 7, 2004.

66 *Ibid.*

67 Carlson Anyangwe (1989), *op. cit.*, at p. 52.

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 variably construed by administrators 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>68</sup>

### 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. They pay for their court robes, buy their cars and take care of their families with the salary they earn.<sup>69</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 the effective enforcement of constitutional rights by the judiciary, because as *Clark* puts it, "poverty is the mother of crime".<sup>70</sup>

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

Justice *Adenekan* in the case of *Musa V. Hamza & Others*,<sup>71</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>72</sup> In fact political self-negation is important for the administration of justice and the enforcement of constitutional

<sup>68</sup> *Ibid.*, at p. 52.

<sup>69</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>70</sup> R. Clark (1970), *Crime in America*, New York, 1970, p. 25.

<sup>71</sup> [1982] 3 NCLR.

<sup>72</sup> Mbu, A.N.T., *op. cit.*, at p. 116.

rights 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 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 enforcement of constitutional rights because once the party has a matter in court, his judgment must turn to favour the party.

## VII. Conclusion

From the foregoing, it is clear that the 2008 Constitution<sup>73</sup> of Cameroon provides for the enforcement of constitutional rights by the judiciary, but more fundamental and elaborate work needs to be done to spell out the manner in which the Judiciary should function. Any person who has been deprived of his rights under the Constitution can seek redress from the ordinary courts. There is no lacunae in this area of the law. The High Court is conferred original jurisdiction to hear and determine any such application for breach of constitutional rights whether the breach comes from an administrative officer, an auxiliary of the government or an ordinary citizen. The truth is that in order to guarantee the protection of constitutional rights by the judiciary, the law must set a limit on the powers of the government, because a right without a remedy is no right at all. A proper way of enforcing, constitutional rights against the government and ordinary citizens in the courts should be made clear. Litigants should know that constitutional rights could be asserted both offensively and defensively. The most common defensive use of constitutional rights in Cameroon today is by criminal action in the Penal Code. Judges should encourage persons today in Cameroon to also assert constitutional rights offensively by bringing a civil suit against a person or authority who violates the right by a granting a variety of relief: declarative, injunctive and monetary. The law has to define 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>74</sup> Indeed, since it is evident that the political will of the Government is to guarantee constitutional rights, judges should expound and apply the law without fear or favour. They should avoid merely concurring and endorsing the decisions of the executive or legislative.

73 See in general, Law N°. 2008/001 of 14 April 2008 to amend the Constitution of 2 June 1972.

74 Vile, M.J.C. (1967), *Constitutionalism and the Separation of Powers*, London, p. 303.