

APPRAISAL THE INDEPENDENCE OF THE JUDICIARY IN CAMEROON IN THE FIGHT AGAINST CORRUPTION *

Abstract

This article explores the substantive and institutional independence of the judiciary in Cameroon as laid down by the Constitution in relation to its ability in repressing corruption without interference. This paper adopted doctrinal research methodology approach It is the position of this paper that apart from the Constitutional recognition of judicial independence, no mechanisms have been put in place to ensure the functional independence of the judiciary thereby subjecting judges to all sorts of pressures with the most grievous being financial, social and political pressures. Also courts operate like deconcentrated services of the Ministry of Justice without any financial autonomy, while the Higher Judicial Council which manages careers and promotion of judges is headed by the President of Republic. As such, we contend that the judiciary cannot effectively fight against corruption because of the absence of real independence. The National Development Strategy for 2020-2030 has acknowledged that complaints about the independence and inefficiency of the judiciary are rife. This paper recommends an urgent reform of the judiciary in conformity to international standards on judicial independence. This should be superseded by the Constitutional recognition of the Chief Justice as the Head of judiciary, financial autonomy, automatic system of career management and a significant increase of financial treatment for judges.

Key-Words: *Corruption, Judiciary, Independence, Tenure, Justice, Judges, Military Courts.*

1 Introduction

The judiciary is one of the three pillars of the modern democratic State and is indispensable to the process of checks and balances which are so important to the way States are meant to operate and function.¹The process of checks and balances is seen as arising from the doctrine of the separation of powers between the executive, the legislature and the judiciary as described by Montesquieu in his book “the spirit of laws” published in 1748.²The central thesis of this

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¹ M I Sarwar. ‘Corruption: The Role of The Judiciary’, *The Journal of the Malaysian Bar*, (2004); XXXIII, no. 1: 1-13.

² O Fineface; ‘The Theory of The Separation of Power in Nigeria: An assessment’, *African Research Review*, 2012, Vol. 6(3), Serial No. 26:127-134.

celebrated doctrine is that the Constitution must provide means of effective checks and balances on the exercise of power.³ In Cameroon, the Constitution prescribes the separation of powers into legislative, executive and judiciary.⁴ Consequently, a system that does not respect or adhere to separation of powers and constitutional supremacy is a major impediment to the promotion of judicial independence and democracy.⁵

The word “independence” can be understood in different ways depending on the context in which it is employed. In this context, it means not subject to control or influence of another, not associated with another entity and not dependent or contingent on something else.⁶ It is manifested by the freedom of the judge to enter a judgment not bound by any hierarchy or pre-existing norms.⁷ During the solemn session of the Supreme Court of Cameroon on the 26th of February 2010, the Chief Justice, Justice Alexis Dipanda Mouelle intimated that the independence of the judiciary is an essential condition to quality justice. He further identifies the threats affecting the independence of judges with the most grievous being financial pressure, social pressure and political pressure.⁸ Financial pressure according to him led to corruption and the Learned Justice stressed that such pressures should be eliminated or allayed by some mechanisms protecting judges.⁹ More than five years that this strong observation was made by the highest Justice in the country, nothing has been done to guarantee the independence of the Judiciary in Cameroon.¹⁰ This paper therefore seeks to critically examine the ability of the judiciary to fight against corruption when its independence is not properly guaranteed and to militate for Cameroon’s compliance with international standards on judicial independence.

Corruption is a general phenomenon and the definitions applied to it vary from country to country in accordance with cultural, legal or other factors, including the nature of the problem as it appears in each country.¹¹ Its specificities stem essentially from the patrimonial nature of the State, to behaviours and the practices of administrative bureaucracy.¹² The World Bank defines corruption as the “the abuse of public office for private gains.”¹³ Transparency International (TI) further defines corruption as “inappropriate or illegal behaviour of the public sector official (politician or public officer) by misusing the entrusted power for private gain of

³ *Ibid.*

⁴ See The Constitution of the Republic of Cameroon 1996, articles 5, 14 and 37.

⁵ R Ellet; ‘Judicial Independence Under The APRM: From Rhetoric to Reality’, *South African Institute of International Affairs*, 2015; SAIIA Occasional Paper 212, at 6.

⁶ B A Garner; *Black’s Law Dictionary*, (10th edition, USA: Thomson Reuter, 2014), at p 887.

⁷ F Hourquebie; *L’Indépendance De La Justice Dans Les Pays Francophones Les Cahiers De La Justice*, 2012, vol 2, pp 41-60.

⁸ A D Mouelle; ‘Indépendance-De-La-Justice-au-Coeur-De-Larentree-Solennelle’ <http://www.cameroon-info.net/article/cour-supreme-lindependance-de-la-justice-au-coeur-de-larentree-solennelle-122667.html> visited 15/07/2020.

⁹ *Op cit*

¹⁰ <http://www.cameroon-info.net/article/cour-supreme-lindependance-de-la-justice-au-coeur-de-larentree-solennelle-122667.html> visited 15/07/2020.

¹¹ M A Ros. ‘Corruption under Cameroon Law’, available at <http://fakoamerica.typedpad.com/files/corruption-under-cameroon-law-justice-mbah-acha.pdf>, (accessed 02/05/2020), p. 1

¹² *Jeune Afrique Economie-ete* (2012)- no 388, p. 11.

¹³ World Bank. ‘Helping Countries Combat Corruption: The Role of the World Bank’, Washington DC, 1997, at p 5.

the person or related people.¹⁴ It has become so systematic in Cameroon to the extent that the country has persistently been classified by TI as one of the most corrupt in the world.¹⁵

The alarming consequences of corruption have paved way for the enactment of multilateral Conventions against it. The United Nations Convention against Corruption adopted in New York on the 31st of October 2003 was the first of its kind at the international level.¹⁶ In addition, the African Union Convention on Preventing and Combating Corruption adopted on 11 July 2003 at Maputo is regarded as measure to combat and prevent corruption within the continent.¹⁷ The Inter-American Convention Against Corruption was adopted on 29 March 1996 and came into force on 6 March 1997 as a means to promote and strengthen the development States Parties of the mechanisms to prevent, detect, punish and eradicate corruption.¹⁸

All these instruments provide for the creation of independent Anti-corruption agencies but unfortunately do not talk about the independence of the judiciary in the fight against corruption. Nevertheless, standards have been set at regional and international levels on the independence of the judiciary. The Basic Principles on the independence of the judiciary herein after referred to as UNBPIJ which will be under focus are the oldest and were adopted by the UN.¹⁹ The role of the judiciary in any society becomes daunting when it is itself corrupt and weak. The UN Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, warned that the existence of corruption in the judiciary remains a disconcerting challenge in many countries, and urged world governments to place the independence of judges, prosecutors and lawyers at the centre of their policies to prevent and fight corruption and to strengthen the rule of law and human rights.²⁰

2 A Brief Overview of Cameroon's Judicial Organization

The judicial organization of Cameroon is laid down by Law no. 2006/015 of 29 December 2006 amended by Law no. 2011/027 of 14 December 2011. The legal system is comprised of the following courts: Customary Law Courts; Courts of First Instance; High Courts; Military Courts;²¹ Lower Courts of Administrative Litigation; Lower or Regional Audit Courts; Special Criminal Court; Courts of Appeal; and the Supreme Court.²² Several actors intervene in the

¹⁴ Transparency International. Frequently asked questions about corruption perception index, (2002); press release 28 August 2002. Available at www.transparency.org, Accessed 05/11/2020.

¹⁵ K Haliday; 'A Critical Appraisal of The Mechanisms for Preventing and Combating Corruption in Cameroon: A Legal Treatise, PhD Thesis, University of Dschang, Faculty of Law and Political Science, (2020), p. 226.

¹⁶ S Yawaga. 'Avances Et Reculades Dans La Repression Des Infractions De Detournement Des Deniers Publics au Cameroun: Regard Critique Sur La Loi No. 2011/028' *portant creation d'un Tribunal criminel special, Juridis Périodique*, (2012); no 90, 41-64.

¹⁷ Cameroon ratified the Convention on 01/04/2020

¹⁸ The United Nations Convention against Corruption adopted in New York on the 31st of October 2003, article II (1).

¹⁹ These principles were adopted at the 7th Congress of the UN on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly Resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985.

²⁰ G Knaul, 'Corruption in the Judiciary Threatens the Rule of Law and Protection for Human Rights Warns UN Expert' New York, 24 October 2012. Available at <http://humania.org/2012/10/26/corruption-in-the-judiciary-threatens-the-rule-of-law-and-protection-for-human-rights-warns-un-expert>. Accessed on /10/09/2020.

²¹ The military court is made up of civil and military magistrates but its management is solely under the responsibility of military magistrates who do not constitute part of the judicial corps.

²² The Law no. 2006/015 of 29 December 2006, section 3.

judicial system: magistrates; lawyers; bailiffs; notaries; registrars; judicial police officers; and the penitentiary. The Cameroonian judiciary is a career judiciary made up of judges and prosecutors. They receive a common training in the National School of Administration and Magistracy known in its French acronym as ENAM and therefore share a common status as judges or prosecutors. Upon completion of two years training, magistrates are first appointed to serve in the Legal Department (prosecution service) as prosecutors and in the course of their career, magistrates can be appointed to serve on the bench as adjudicators or Examining Magistrates after 4 years²³ and in the Ministry of Justice when they have attained at least the second scale. It should be noted that there is a Legal Department attached to each court and those of the lower courts are directly answerable to that of the Courts of Appeal which are directly answerable to the Minister of Justice who is not apolitical. The judicial system is organized based on colonial past and is similar to what obtains in France.

The Prosecution Service is not independent as opposed to what obtains in Anglo-Saxon countries. The Law on Judicial Organization states that justice shall be administered in the name of the people of Cameroon and that Judicial Power shall be exercised by the Supreme Court, Courts of Appeal and Courts.²⁴ The forgoing provision is encapsulated in the Constitution.²⁵ Though magistrates of the bench and the Prosecution service constitutes the judicial corps as stipulated by Art 1 of Decree no. 95/048 of 8 March 1995 on the general rules and regulations of the Magistracy as amended. This paper shall focus on the bench which is responsible for adjudication.

3 The Substantive and Institutional Independence of the Judiciary in Cameroon

Substantive independence is an affirmation of a standard aimed at guaranteeing judicial independence but not a sufficient guarantee of independence although it can be complemented by mechanisms to ensure judicial autonomy.²⁶ Institutional independence on the other hand denotes independence of the judiciary from other branches of government that is, the legislature and the executive.²⁷ As a condition for the realization of the rule of law, independence guarantees to each power within the domain reserved for it by the Constitution the prerogative to freely express a portion of national sovereignty; thus, it is independence that helps to ensure the balance of powers.²⁸ The independence of the judiciary in Cameroon is guaranteed by the Constitution and purportedly ensured by the Higher Judicial Council.

3.1 The Independence of the Judiciary as Established by the Constitution

Judicial independence is a fundamental constitutional value, commanding almost universal approval. The UNBPIJ requires that judicial independence be guaranteed by the State and

²³ L S Eposi; 'Judicial Independence and Accountability in Cameroon: Balancing A Tenuous Relationship', *African Journal of Legal Studies*, 2012, vol. 5, pp313-337.

²⁴ The Law on Judicial Organization, section 2

²⁵ The Constitution of the Democratic Republic of Congo 2006, See Article 37 (1) and (2).

²⁶ L S Eposi; 'The Problem of Systemic Violation of Civil and Political Rights in Cameroon: Towards A Contextualized Conception of Constitutionalism', PhD Thesis, (2013), *University of Warwick, School of Law*; at p 159.

²⁷ S Rugege. 'Judicial Independence in Rwanda', Paper Presented at *the Judicial Independence and Legal Infrastructure: Essential Partners for Economic Development Conference, University of the Pacific, McGeorge School of Law, Sacramento, California*, October 28, 2005: 411-425, also available at <https://www.mcgeorge.edu/Documents/Conferences/JUDIND RUGEGE MASTER.pdf> visited 14/04/2020.

²⁸ B Kassi; 'Francophonie Et Justice: Contribution De L'Organisation Internationale De La Francophonie A La Construction De l'Etat De Droit', thèse de doctorale (2015), *Ecole Doctorale de Droit, Université de Bordeaux*, at. 67.

enshrined in the Constitution or the law of the country, and further provides that it is the duty of all governmental and other institutions to respect and observe the independence of the Judiciary.²⁹The importance of judicial independence is bolstered by its inherent relationships with democracy, the separation of powers and the rule of law.³⁰The independence of the judiciary is guaranteed in the Constitutions of most countries³¹ and many international and regional standards have been developed to promote judicial independence.³²Article 37 (2) of the Constitution provides that the judicial power shall be independent of the executive and legislative powers. It further provides that magistrates of the bench shall in the discharge of their duties be governed only by the law and their conscience. Apart from Art 6 of the 1995 Decree on the Rules and Regulation of the Magistracy³³ and section 310 of the Criminal Procedure Code.³⁴

The forgoing provision is jettisoned by the next paragraph of the Constitution which further provides that the President of the Republic (POR) shall guarantee the independence of the judicial power and shall appoint legal and judicial officers. In this task he is assisted by the Higher Judicial Council (HJC) which gives him its opinion on all nominations for the bench and on disciplinary action against justices.³⁵The insertion in the Constitution that the independence of the Judiciary is guaranteed by the POR as inscribed in the French Constitution³⁶ seemed to have been blindly copied by almost all Francophone States of Africa.

This provision makes one to feel that the Judiciary is a weaker power that needs protection from another power. It is palpable that, the judiciary is considered less as a major power than a minor institution whose independence is guaranteed by the president.³⁷It is therefore not an overstatement to assert that by giving one branch of government the power to guarantee the independence of the other, the framers of the Cameroon Constitution could not have been thinking of a truly independent judiciary or separation of powers in Cameroon.³⁸Moreover, the Constitution does indicate whether the POR is bound by the opinion of the HJC especially as after its session, the President unilaterally acts by Decree. The dependence of the judiciary to the executive is clearly formalized to the level that the judicial power is closed to a line ministry

²⁹ Article 1 of the UNBPIJ.

³⁰ R A Welsh and G Williams. 'Judicial Independence from the Executive: A First-Principles Review of Australian Cases', *Monash University Law Review*, 2014, vol 40, no.3, pp593-638.

³¹ The Constitution of the DRC, article 149, the Constitution of Ivory Coast, article 139, Constitution of the Republic of Congo, article 133. The Constitution of Nigeria Chapter vii and of the Constitution of Ghana, section 125.

³² The UNBPIJ 1985, 'The Bangalore Principles on Judicial Conduct 2002', European Charter on the Status of Judges 1996, The Latimer House Guidelines 2003, Montreal Declaration 1983, Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA Region 1995. This list is not exhaustive but our focus will be on the UNBPIJ.

³³ which stipulates that magistrates of the bench shall in the discharge of their duties be guided by the law and their conscience.

³⁴ which reproduces the same provisions and further adds that the decision of the Judge shall not be influenced either by public rumour or by his personal knowledge of the facts of the case; the substantive independence is not accompanied by any mechanism to protect judges against social and political pressures, threats and interference.

³⁵ The 1992 Constitution of Ghana, article 37 (3) of the Constitution.

³⁶ The French Constitution 2008, article 64.

³⁷ K Kamdem; The Political Independence of The Judiciary in Cameroon: Fact or Fiction?', *Africa Review* 2019, vol 11, No 1, pp. 46-62.

³⁸ B Ndifor; 'The Politicization of the Cameroon Judicial System', *Regent Journal of Global Justice and Public Policy*, 2014, vol 1: 27, pp. 27-57.

and an anteroom of the executive power.³⁹This can be buttressed by the role played by the ministry of justice in the functioning of courts which sends the signal that the judicial power is a mere branch of the ministry of justice.

Provisions that the independence of the judiciary is guaranteed by the POR are rare to come across in Anglo-Saxon countries wherein the judicial independence is almost total and guaranteed by the Chief Justice.⁴⁰In the Constitutions of some countries with an independent Judiciary, it is not mentioned anywhere that the Judiciary shall be independent of another power.⁴¹This is because it is considered as one of the three powers of the State and it will be superfluous to indicate in the Constitution that it is independent. Under the 1972 Constitution, the judiciary was an authority and became a power under the 1996 Constitution howbeit, no reform has been put in place to enable it operate like a real power. No one can discard the fact that the judiciary in Cameroon is not independent and this justifies why the National Development Strategy of 2020-2030 has acknowledged the fact that complaints about its inefficiency, transparency and independence are rife. The only mechanism to guarantee the independence judicial in Cameroon is the institution of a HJC which deals with the transfer, appointment, promotion and discipline of judges.

3.2 Guarantee of Judicial Independence by the Higher Judicial Council (HJC)

Consecrated in the 1972 Constitution and maintained under the 1996 Constitution, the HJC is a Constitutional organ that ensures the independence and the functioning of the Judiciary in a democratic system. As per Art 37 of the Constitution, the POR in guaranteeing the independence of the judiciary is assisted in this task by the HJC which shall give him its opinion on all nominations at the bench and on disciplinary actions against judges. It is organized by Law no. 82/14 of 26 November 1982.⁴² It is regrettable that since the 1996 Constitution, the HJC has not been reformed to give impetus to the provision which makes the judiciary a power. The composition, attributions and functioning of the HJC is fundamental and ensures the effective independence of the Judiciary⁴³ especially in the guarantee of the rule of law. It should be noted that military magistrates who handle very serious offences attracting heavy jail terms like life imprisonment or death capital have nothing to do with the HJC. These courts depend directly on the Ministry of Defence which is attached to the Presidency. The trial of civilians before the Military Courts in Cameroon has been strongly jettisoned by practitioners and human rights organizations to be in contrast with international rules on the right to fair trial before an independent and impartial court but the system has persisted.⁴⁴

The composition of the HJC greatly determines whether the judiciary is independent or not. As per Art 1 of the 1989 law, the HJC is chaired by the President of the Republic (POR) and the Minister of Justice is the vice president though the POR can designate some other personality

³⁹ K Kamdem *supra* note 37.

⁴⁰ Section 125 (4) The Constitution of Ghana provides that the Chief Justice shall, subject to the Constitution, be the Head of the Judiciary and shall be responsible for the administration and supervision of the Judiciary.

⁴¹ Chapter VII of the Nigerian Constitution, chapter VII Constitution Act of 1982 of Canada and Article 4 of the Constitution of the DRC.

⁴² As amended by Law no. 89/16 of 28 July 1989.

⁴³ Union Syndicale Des Magistrats; 2013, Le Conseil Supérieur De La Magistrature, available at http://www.union-syndicale-magistrats.org/web/upload_fich/publication/vos_droits_2013/carriere/2013_96-113.pdf, p. 95, visited 24/02/2018.

⁴⁴ Military courts are organized in Cameroon by Law no. 2017/012 of 12 July 2017 to lay down the Code of Military Justice.

as vice president. The Council further comprises of: three Parliamentarians taken from a list of 20 designated at a secret ballot by 2/3 of the members of Parliament and proposed for nomination by the POR; 3 grade IV judges in active service selected from a list of 10 designated by the session of joint benches of the Supreme Court; one other personality who neither belongs to the judicial corps nor to the National Assembly, without having the status of auxiliary of justice designated by the POR. The permanent secretariat of the Council is ensured by a magistrate who is based in Yaounde and is appointed by a Decree of the POR.⁴⁵The persons designated are appointed by Presidential Decree for a five years term and their mandate expires with that of alternate members designated in the like manner.⁴⁶

The mode of designation and composition of the HJC does not make it an institution that can actually guarantee the independence of the Judiciary. Primo, the President and Vice President of the Council directly belong to the Executive indicating that the judiciary is subordinated to the Executive. Secondly, the designation of members of Parliament means the interference of the legislature in the management of the judicial power considered in the Constitution to be independent. Also the mode of designation signposts the absolute discretion of the POR to appoint anyone from the list submitted to him. Moreover, judges do not constitute the majority in the HJC and are not represented as per the various grades. This is not in line with the European Council standards, which hold that both magistrates of the bench and of the Prosecution Service should have the majority in the composition of the HJC.⁴⁷The composition of the HJC shows that it has been institutionally spliced to the executive power to the extent that what would have been a threat to the function (political interference) has been integrated within the state's apparatus and is now part of the legal praxis of the political system.⁴⁸

A proper organization and functioning of the HJC that guarantees the independence of the judiciary can be seen in countries like France where Art 65 of the Constitution stipulates that it is chaired by the Chief Justice. In Ghana⁴⁹ and the Democratic Republic of Congo,⁵⁰ it is chaired by the Chief Justice and President of the Constitutional Council respectively. In Anglo-Saxon countries where there is a high degree of judicial independence, the HJC is presided by the Chief Justice. The Principal mission of the HJC is to assist the POR on every question concerning the functioning and the independence of the magistracy. It can equally be consulted by the President on any question relating to the independence of the judiciary. This type of function is seen mostly in countries with the civil law inspiration, especially those having a lot of attachment to France. In Ghana, the Constitution is very categorical that the Judiciary shall be independent and only subject to the Constitution and that the Chief Justice shall be the responsible for the supervision of the Judiciary.⁵¹

Also the HJC gives its opinion on the transfer and appointments of judges, the transfer of judges to the Prosecution Service and vice versa. Such opinions have never been made public and the law does not indicate how such opinions are given and whether the POR is bound to follow them. The HJC also establishes the table of advancement for judges in view of their promotion

⁴⁵ The Higher Judicial Council 1989, article 9.

⁴⁶ Articles 2,3 and 4 *ibid*.

⁴⁷ Union Syndicale Des Magistrats. *Supra* note 36.

⁴⁸ K Kamdem *supra* note 31.

⁴⁹ The Ghanaian Constitution, article 153.

⁵⁰ The Constitution of the Democratic Republic of Congo 2006.

⁵¹ The 1992 Constitution of the Republic of Ghana, articles 125 and 152.

from one scale to the other.⁵²The appointment of judges before military courts does not respect the provisions of the Constitution which requires the HJC to give its opinion on all appointments to the bench. This strongly undermines the independence of a court with a wide jurisdiction over both civilians and military men.

A perusal of the 1989 Law on the HJC shows that the Minister of Justice plays an active role in the management of the career of judges, which is a serious affront to the independence of the Judiciary.⁵³A change from one grade to another is six years and is done based on very opaque mechanisms wherein favoritism and influence peddling override merit. This is because Art 42 of the 1995 Decree provides that the number of magistrates likely to be included in the advancement table is set by an order of the Minister of Justice within the limits of budgetary appropriations and taking into account foreseeable needs. As such not all judges who are due for promotion are elevated to the next grade as only about 2/3 are elevated. The fixing of the number on budgetary appropriations is really an aberration because judges are poorly remunerated and other corps with better salaries do not limit promotions based on budgetary allocations in Cameroon.

This system of promotion is designed to constraint judges to remain loyal to those managing their careers and to manifest deference to Executive interference whenever they are solicited. The change of grade is based on voting wherein the candidate who obtains the highest number of votes is promoted to the next grade though the question that remains unanswered is the criteria for voting, especially as members of the HJC don't know those they are voting for.⁵⁴Apart from annual reports used in assessing judges by their bosses, no objective criteria have been put forth to be promoted to another grade. The worst is appointment to head a court considered by most judges to be the highest achievement in their careers. This is the consequence of poor remuneration and those appointed see this as a means to make money. It is therefore compelling for the conditions of tenure to be based on objective criteria in order avert discretion which has been used to repress judges. Epuli and Anyangwe have acknowledged that aspects of judicial tenure such as appointments, promotions, transfers and discipline are used as punitive measures against judges.⁵⁵Moreover, promotion from one grade to another should be automatic like what obtain in other francophone countries. Moreover, appointments should be transparent and accountable and the sole criteria should be suitability of a candidate for such office by reason of integrity, appropriate training or learning ability as provided by the Principles and Guidelines on the Right to Fair Trial and Legal Assistance in Africa.⁵⁶

The HJC does not have a budget and does not have a permanent structure. It holds its sessions at the Presidency where the head of the Executive is lodged. This means that it does not function on a daily basis and hardly holds every year. Thus, to guarantee the independence of the judiciary, it is very necessary for the Council to have personnel and get involved in the daily management and supervision of the activities of magistrates of the bench in order to avert the persistent intervention of the Minister of Justice in the activities of the judicial power. As such, public confidence in the judiciary is very crucial, not only for the immediate purpose of dealing

⁵² The 1989 Law on the HJC, articles 11 and 12.

⁵³ The 1995 Decree, article 40.

⁵⁴ The 1995 Decree, articles 28, 31, 37, 39 and 40.

⁵⁵ L S Eposi *supra* note 24.

⁵⁶ Rule A (4), (h).

with corruption, but for democracy to truly work; lack of confidence can stem from the way magistrates are appointed and promoted.⁵⁷

The HJC equally deals with the discipline of magistrates of the bench and we saw the various sanctions that can be levied against magistrates' right up to dismissal. Art 22 of the 1989 Law on the HJC provides that where the Minister of Justice is seized by a complaint against a magistrate of the bench, he proceeds to verify the facts; addresses a query letter to the concerned magistrate and subsequently forwards the file to the POR with all the supporting documents and his observations. The same article further provides that if circumstances warrant, he can suspend the said magistrate by an order for a period of six months. This is a glaring interference of the executive in the independence of the Judiciary. In normal setting, complaints against judges should be addressed to the HJC and not to the Minister of Justice.

However, the President upon receipt of the file appoints a college of 3 members among the members of the HJC to investigate and make its proposals on the matter and if it decides that the judge should be brought before the disciplinary council, he will be heard during the session of the HJC. There is no code of ethics for judges and the reasons for sanctions are essentially vague and subject to incoherent interpretation which does not assure judges in the exercise of their profession.⁵⁸ What constitutes disciplinary fault is contained in Art 46 of the 1995 Decree which provides that a disciplinary fault constitutes any act contrary to the oath of the magistrate, any breach of honour, dignity and good morals and any fault resulting from professional insufficiency. This is really vague and can be used against a judge who will not have any weapon to fire back. Another shocking thing is that the 1995 Decree in Art 47 enumerates sanctions applicable to magistrates without attaching any incrimination to those sanctions. The consequence is that less severe faults may end up being sanctioned as severe faults and vice versa.⁵⁹ The non-incrimination of faults violates the principle of legality of sanctions. Another shortcoming is that the law does not provide for any means of appeal against the decisions of the HJC and it is our wish that those who are not satisfied with the sanctions pronounced against them should petition the Administrative Courts.

The reform of the HJC is therefore compelling to properly guarantee the independence of the Judiciary in Cameroon for it to effectively fight against corruption. It is only when judges are sure of full guarantee of their independence that a majority of them will handle corruption cases involving certain public figures without yielding to pressure.

4. Compelling need to ensure the functional Independence of the judiciary in Cameroon
Certain conditions must exist to avert the possibility of interference in the functioning of courts and to arm judges with the requisite guarantees to deliver justice without fear and in all impartiality. These conditions, otherwise known as institutions of judicial insulation include measures to secure the judicial tenure, adequate remuneration of judges and arrangements for administrative and financial autonomy of the judiciary.⁶⁰ These conditions in Cameroon do not conform to international standards thus giving room for possibilities of interference. The powers that be must put in place an independent judiciary because it guarantees the rule of law. As such, the independence of judges is not a privilege or prerogative granted to their proper

⁵⁷ M I Sarwar. *supra* note 1.

⁵⁸ U Xavier; 'Sous Le Bandeau De Thémis, Les Larmes, Panser Et Repenser La Justice Camerounaise', 2019, Paris, l'Harmattan, p. 89.

⁵⁹ *Ibid.*

⁶⁰ L S Eposi . *supra* note 20.

interest but it is guaranteed to them in the interest of the pre-eminence of the law and to those who are seeking justice.⁶¹Therefore, to effectively fight against corruption, mechanisms must be instituted to insulate judges from undue influence.

4.1 Operational Independence

The judicial system is an essential check and balance on the other branches of government, ensuring that laws of the legislature and the acts of the executive comply with the rule of law⁶. In doing this, the daily activities and procedures of courts require freedom from Executive interference, which implies on the part of other powers the obligation to respect their respective attributions. While carrying out their activities, courts are not supposed to receive orders, instructions or directives from any other authority.⁶²The independence sought here must be functional, budgetary and administrative. Accordingly, the Executive should not control courts but support them sufficiently to ensure their effective and independent functioning.⁶³This is not case with Military Courts which are under the Ministry of Defence and directly attached to the Presidency. In Cameroon the Ministry of Justice ensures the functioning of courts and the discipline of magistrates, lawyers, auxiliaries of justice and other personnel serving under it⁷. This interference in the functioning of courts greatly disregards the independence of the Judiciary. The National Governance Program has revealed that insufficient material and financial resources given to justice; weak human capacity in some areas; corruption, bribery and pressures of all kinds make the Cameroonian judicial system less credible.⁸

In Cameroon, the role of the Ministry of Justice in the administrative functioning of courts greatly portray the interference of the Executive in the functioning of the judiciary; controls teams usually come from the Ministry and the Minister addresses correspondence to the Presidents of the Courts of Appeal relating to the functioning of Courts who in turn transmit same to the lower courts. The Courts seem to operate as the deconcentrated services of the Ministry of Justice. It is thus, necessary for the function of control to be transferred to the HJC or to the Chief Justice as is the case in Ghana and most Anglo-Saxon countries where a judicial service distinct from the Ministry of Justice exist. The Judicial service of Ghana has as one of its mission the consolidation of judicial independence, especially financial independence and provision of adequate infrastructure for the delivery of justice.⁹

Operational independence also entails sufficient provision of funding. To properly function well, adequate resources must be provided to enable the judiciary to perform its functions¹⁰. In Cameroon, there is no independent budget for the Judiciary except that of the Supreme Court, which is not enough and is allocated by the Executive. Also appropriations for the acquisition of equipment and investment are directly managed by the Ministry of Justice. As such there is budgetary and institutional dependence of the judiciary on the Executive since it relies on it for funding. In the DRC, the budget of the Judiciary is prepared by the HJC and forwarded to the

⁶¹ Consultative Council of European Judges advisory opinion no. 1 of 2001, paragraph 37.

⁶²International Commission of Jurists (2007), *International principles on the independence and accountability of judges, lawyers and prosecutors- A practitioner's guide*, second edition, Geneva-Switzerland, p. 3.

⁶³ Brou Olivier Saint-Omer Kassi. *Supra* note 24 at 74

⁶³ R A Welsh and G Williams. *supra* note 30.

⁷ The Decree on the organization of the Ministry of Justice, 2012, article 1

⁸National Programme on Governance (2016), *op. cit.*, p. 33.

⁹ Judicial Service of Ghana. Annual Report 2017-2018, 2019.

¹⁰ The UNBPIJ, principle 7.

Executive for insertion in the general budget of the State and the Chief Justice who is the president of the HJC, is the Authorizing Officer¹¹. This is what obtains in Anglo-Saxon countries like Ghana, where the Judiciary has an independent budget¹². An independent budget will guarantee good working conditions and integrity in the Judiciary thereby, enabling the effective repression of corruption especially, as the operational capacity of the courts will be boasted.

4.2 Tenure (Appointment, Remuneration and Transfer) of Judges

Judicial tenure usually covers the mechanisms used to determine whether a judge can be removed from office in view of the danger that they may be abused to penalize or intimidate judges¹³. The judiciary can effectively fight corruption when the tenure is well secured by text. This is because judges will perform their duties without fear of being transferred or removed arbitrarily. The UNBPIJ provides that the term of office of judges, their independence, security, adequate remuneration, and conditions of service, pensions and the age of retirement shall be adequately secured by law¹⁴. Legal guarantees of security of tenure and appropriate remuneration are strong incentives to limit risks that judges take in holding powerful individuals and government bodies to account¹⁵. The 1995 Decree lays down the conditions for the management of career, promotion and remuneration. This Decree has become obsolete and does not guarantee the entrenchment of judges and the aspiration of an independent and enviable judiciary.

Art 9 of the 1995 Decree provides that any judge in activity holds a judicial post corresponding to the grade or group to which he belongs. This may be interpreted to mean that judges in Cameroon have a permanent tenure and once appointed its security is guaranteed. Unfortunately, judges can be appointed to the Prosecution Service without their consent and vice versa¹⁶ or to serve in other government bodies. This type of transfer violates the principle of entrenchment of judges, which is a fundamental principle in the functioning of the Judiciary. Judges who have refused to be influenced by the Executive in certain politically sensitive cases have been moved to the Prosecution Service or simply to enclave areas.¹⁷

Thus, tenure ought to be guaranteed by law either for life, until a statutory age of retirement, or for a substantial fixed term without interference by the executive in a discretionary or arbitrary manner.¹⁸ The independence of the Judiciary in Cameroon will be enforced by providing for the tenure of the office of the Chief Justice and the Presidents of the Courts of Appeal. The example of Ivory Coast wherein the Chief Justice is appointed by decree of the POR, decided in a ministerial council after the opinion of the HJC, for a term of 5 years renewable once is worth emulating.¹⁹ This could give the Supreme Court of Cameroon its independence.

¹¹ The Constitution of the DRC Article 159.

¹² The Ghanaian Constitution, section 127 (6).

¹³ V Z Smit, 'The Appointment, Tenure and Removal of Judges under Commonwealth Principles: A Compendium and Analysis of Best Practice' *The British Institute of International and Comparative Law*, 2015, p. 57.

¹⁴ The UNBPIJ, article 11.

¹⁵ V Z Smith *supra* note 63.

¹⁶ The 1995 Decree article 6.

¹⁷ L S Eposi; *supra* note 22.

¹⁸ R Ananian, W G Williams. *supra* note 26.

¹⁹ The Constitution of Ivory Coast, article 150.

In Cameroon, magistrates are arranged into grades and retire at 58 years for grade I and II, at 60 years for grade III and at 65 years for grade VI and super scale 1st and 2nd groups.²⁰The best practice in modern conditions will probably require the mandatory retirement age to be set at or close to 70 years in order to avoid any conflict of interest so as to ensure that judges are manifestly seen to be independent.²¹In Canada, judges of the superior courts retire at the age of 75 and can only be removed on the address of the Senate and House of Commons.²²The retirement has persistently been extended above 65 in a discriminatory manner since the discretion rest in the Executive and one may be tempted to insinuate that judges who are ready to show deference to the Executive will benefit from such extension.

Concerning remuneration, Cameroonian magistrates are poorly paid and can this be justified by disdain reserved to the Judiciary in Cameroon and regarded by many merely as an ordinary service in the public administration. The remuneration and allowances of judges are determined by the executive through decrees that are susceptible to change at any time²³ and since 1995 such allowances have not witnessed any increment despite the increase in inflation rate and the cost of living. Those appointed judges after 4 years earn about 267 000 F CFA per month (approximately 582 dollars) while judges of the same category in other African countries with the same level of development earn more than double, that is, between 500000 and 700000 F CFA.²⁴Some of these countries are: Gabon, Burkina Faso, Rwanda, Senegal, Tchad, Ivory Coast etc.²⁵Court of Appeal and Supreme Court Judges do not earn up 1200 dollars monthly.

This has greatly reduced integrity in the Judiciary and its ability to effectively fight against corruption because judges easily succumb to financial pressures. The perception most Cameroonians have of the Judiciary is that it is very corrupt and ineffective; it is widely believed that members of the public pay bribes to judges to secure their freedom.²⁶As such, to reduce the temptation of judges and other judicial personnel from being entangled by corruption, their financial treatment must be raised to the highest scale of salaries in the public service.²⁷This is a measure usually used by governments to apply to civil servants wherein their probity and efficiency is indispensable to the functioning of the economy.²⁸Cameroon should copy the Beijing Statement of Principles on the Independence of the Judiciary which provides that where economic constraints make it difficult to allocate to the court system facilities and resources, which judges consider adequate to enable them to perform their functions, the essential maintenance of the rule of law and the protection of human rights, the needs of the judiciary and the court system must be accorded a high level of priority in the allocation of resources²⁹. Hence, adequate funding is an essential component of judicial independence.

²⁰ The 1995 Decree articles 7 and 71.

²¹ V Z Smit *op. cit. supra* note 63.

²² The Constitutional Act of Canada, section 99 (2).

²³ L S Eposi; *supra* note 20.

²⁴ Séverin Djiazet Mbou Mbogning. *L'Accès A La Justice Au Cameroun, Etude De Sociologie Juridique*, 2015, Paris, L'Harmattan, at 239.

²⁵ *Ibid.*

²⁶ J P Nguemegne. 'Fighting Corruption in Africa: The Anti-Corruption System in Cameroon, *International Journal of Organizational Theory and Behaviour* (2011); 14(1): 83-121.

²⁷ J A. Widner. 'Construire l'Etat De Droit', Francis Nyalali Et Le Combat Pour l'Indépendance De La Justice En Afrique, 2003, Paris, Nouveaux Horizons-ARS at 320.

²⁸ *Ibid.*

²⁹ International Commission of Jurists. *supra* note 54 at 35.

4.3 Decisional and Personal Independence

The mechanisms described above guarantee the decisional independence of judges since it assures judges that they cannot be removed. Art 2 of the UNBPIJ provides that the judiciary shall decide matters before them impartially, based on facts and in accordance with the law without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason. Value 1 of the Bangalore principles on judicial conduct also frowns against any interference.³⁰ The Constitution and the law provides that the judge shall be guided in his decision by the law and his conscience as we pointed out above but no further guarantee is provided to ensure the independence of judges.

The mechanisms are far from accomplishing this task since in certain cases, superior judges influence junior judges and advancements may be unlawfully retarded for not yielding to such instructions and interferences. Some bosses even refuse to assign files to judges who rejected to be influenced. Careerism undermines the independence of judges in Cameroon. Judges allow themselves to be given instructions by their superiors, politicians and even family members and friends of influential people.³¹ If you want a Cameroonian judge to lose sleep, have him called by a Parliamentarian, a Minister, a Director General or any other person holding a high office or related to same. Careerism has taken precedence over the oath of judges and it is not uncommon to see judges come to inquire about the position of the prosecution in certain sensitive matters before delivering their judgments.³²

The prosecution service is directly attached to the ministry of justice and is subordinated to the Minister of justice who is part of the executive and is the Vice President of the HJC. The prosecution service which is not independent at times acts as an obstacle to judicial independence. Consequently, judges easily succumb to diverse pressures in order to protect their careers and appointments. Interference in their independence is almost becoming a rule when it comes to certain cases of strong political implications. Accordingly, the decisional independence of judges is bluntly violated in subtle forms.

The remand and release of the late Minister of Secondary Education Bapes Bapes Louis on the 1st of April 2014 and 2nd of April 2014 by an Examining Magistrate of the Special Criminal Court respectively is glaring indication that it was due pressure from the Executive. This Court is specialized in the repression of the misappropriation of public property and has convicted top state functionaries including a former Prime Minister, 2 Secretary Generals at the Presidency, many former Ministers and General Managers of Public corporations and establishments). As published by Jeune Afrique Newspaper, a Judge of this court has confirmed that they receive political instructions from the Executive through the Minister of Justice though he reiterated that they are not obliged to follow such instructions especially as he will

³⁰ 1.1 A judge shall exercise the judicial function independently on the basis of the judge's assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason.

1.2 A judge shall be independent in relation to society in general and in relation to the particular parties to a dispute which the judge has to adjudicate.

1.3 A judge shall not only be free from inappropriate connections with, and influence by, the executive and legislative branches of government, but must also appear to a reasonable observer to be free therefrom.

1.4 In performing judicial duties, a judge shall be independent of judicial colleagues in respect of decisions which the judge is obliged to make independently.

³¹ U X Ovono. *Supra* note, 52. P, 73.

³² *Ibid.*

not come and write their judgments in their places³³Justice Gilbert Schlick in May 2012 to the general astonishment (astonishment because all former members of government charged with the misappropriation of public property have always been convicted) of everyone acquitted Jean-Marie Atangana Mebera, former Secretary General at the Presidency and was given a query from the Presidency before being transferred.³⁴The prosecution refused to release the accused and immediately when on appeal and equally brought new charges against him. The Supreme Court of Cameroon made itself a laughing stock during the 1992 Presidential election when in delivering a reasoned opinion, the court said it that ‘their hands were tired’.³⁵This means that although they held a different opinion based on the facts, invisible hands prevented the court from the exercise of its true and honest opinion.³⁶

These are glaring demonstrations of Executive interference in the decisional independence of judges. Interference is equally manifested by the withdrawal of case files from judges who decide to ignore instructions from hierarchy or simply they are kept at abeyance with no files being assigned to them. This does not mean judges don’t decide independently in some cases where political interference is involved as some have courageously pursue a course even when it means risking some political dangers and enduring reprisals from the Executive.

This was the case in *The People of Cameroon vs Fon Doh Gah Gwanyim III and 11 Others*³⁷ wherein a college of three judges of the Ngoketunjia High Court shun all pressures and convicted the principal accused who was a very influential Member of Parliament and Mayor of the ruling party. The judges were subsequently transferred to the Prosecution Service. These calibres of courageous judges are becoming very rare in Cameroon as days go by. Personal independence requires that a judge should not accept, nor should the Executive require that a judge should perform, extra judicial role that would be likely to interfere with his/her exercise of judicial power.³⁸

In this case, a judge is not allowed to take other activities that compromise his independence, integrity and impartiality in the discharge of his functions. Article 15 of the 1995 Decree equally prohibits judges from exercising any commercial activity or employment in an enterprise. It further prohibits them from performing the functions of auxiliaries of justice although the POR may authorize or appoint a judge in a public corporation. Personal independence equally means that judges should not be hierarchically subordinated to the Executive or Legislature, nor they are civil employees to these two powers or to be accountable to them.³⁹

5 Conclusion

In any democratic society, the judiciary must be independent from other powers of the State and this is a condition *sine quanon* for the existence of the rule of law. As such a modern and

³³ <https://www.jeuneafrique.com/mag/329227/societe/cameroun-biya-pencher-balance-tribunal-criminel-special/> visited 05/05/2020

³⁴ <https://www.jeuneafrique.com/mag/478983/societe/quant-la-justice-defie-le-pouvoir-qui-sont-ces-juges-africains-qui-ont-decide-de-sopposer-a-la-loi-du-plus-fort/> visited 05/05/2020.

³⁵ N Wakai. ‘Under The Broken Scale of Justice: The Law and My Times, Bamenda-Cameroon, Langaa RPCIG, 2009, at 90.

³⁶ *Ibid.*

³⁷ Suit no. HCND/02C/05-06 of 12/04/2006.

³⁸ R A Welsh and G Williams. *supra* note 26.

³⁹ International Commission of Jurists. *supra* note 54 at 25.

independent judiciary must be constructed based on international standards on judicial independence. Unfortunately, the judiciary in Cameroon is far from being independent as it is administratively, financially and politically dependent on the executive power. This entails that judges cannot independently sanction corruption when some politically powerful individuals stand trial or in matters wherein those responsible for the management of their career are interested.

It is glaring from the discussion above that the substantive independence as affirmed by the Constitution of Cameroon, does not provide adequate guarantee for the independence of judges since no mechanisms exist to ensure their institutional, operational and decisional independence.

6 Recommendations

It is therefore recommended that for the judiciary to effectively fight against corruption, adequate remuneration and conditions for tenure must be immediately put in place to make the judicial an independent and enviable corps in the country.

There must be the installation of the principle of entrenchment of judges and the abolition of transferring judges to the Prosecution Service. A judiciary headed by the Chief Justice is compelling and this should be followed by the creation of an independent prosecution not subordinated to the Minister of Justice as is the current situation.

Equally the judicial police should be attached to the ministry of justice or to the prosecution service. Multilateral conventions on the fight against corruption should include measures enjoining State parties to put in place guaranteeing judicial independence. The National Development Strategy has proffered measures aimed at ensuring judicial independence and quality of justice by fighting against external pressures that hinder the freedom of judges and to move from institutional to functional independence.⁴⁰ It further envisage to strengthen the financial autonomy of the judicial system and to reduce corruption and the adoption of the systematic upgrading of judges.⁴¹ It is our humble submission that these reforms be implemented immediately.

⁴⁰ Republic of Cameroon, National Development Strategy 2020-2030, Yaounde, Ministry of Economy, Planning and Regional Development (2020), p. 90.

⁴¹ *Ibid.*