PARTICIPANTS' PAPERS

THE CRIMINAL JUSTICE SYSTEM IN CAMEROON: PROBLEMS FACED WITH REGARD TO CORRUPTION AND SUGGESTED SOLUTIONS

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I. INTRODUCTION

Cameroon is a bi-jural state, a legacy of colonialism. The country is however gradually departing from this heritage towards a unified system that will give it a legal identity of its own. A lot has already been done to advance in this direction. Several laws have been unified and promulgated, with still a lot more left to be done. The most recent of such unified laws is the Criminal Procedure Code which went into effect on 1 January 2007. Before now, the country operated a dual criminal procedural system reflecting its bi-jural nature; the inquisitorial system derived from French civil law, and the accusatorial which emanates from English common law. The new code is a hybrid system merging key features of both systems with the accusatorial procedure adopted as its basis, with the presumption of innocence.

II. LEGAL STRUCTURE

Our legal system is structured and placed under the supervisory authority of the Ministry of Justice with Courts of First Instances at the District and sub-divisional levels. High Courts are distributed at Divisional level; Courts of Appeal at Provincial level; and at its helm is the Supreme Court.

Promotions, appointments, transfer and the discipline of magistrates and judges passes through the hierarchy of the Minister of Justice who makes proposals and recommendations to the Presidency of the Republic before it gets to the Higher Judicial Council. This council is presided over by the head of the executive branch of the government who is the President of the country. He promotes, appoints, transfers and integrates magistrates and judges into the judiciary. Magistrates are trained and integrated into the Magistracy directly from the country's school of administration and magistracy.

It is also important to note that while judges perform the role of decision making in a judicial process, they are but one part of a long chain of people with influence over a law suit. In the private sector, we have legal professionals like lawyers, bailiffs and the notary public. Lawyers are constituted into a bar association with an elected president and a bar council. Bailiffs and the notary public likewise have similar orders. These private legal professions are placed under the directorate of legal professions and control in the Ministry of Justice, which acts as an overseer. The Minister remains the general supervisor. In the absence of a law school in the country, where these private legal professionals can be trained, aspirants are admitted into legal chambers. At the end of their training they write an end of course examination directed by the Ministry of Justice in collaboration with the Bar Council. Bailiffs and notaries go through the same process.

A. The Criminal Justice System

Our justice system consists of two major departments; the bench and the criminal department, commonly known as the legal department. The legal department is the prosecuting arm in charge of all criminal matters. Magistrates and judges are moved from one department to the other. A presiding magistrate on the bench can be transferred to the legal department as a prosecutor and vice versa. In other words, there aren't specific magistrates and judges assigned to the bench and to the legal department. They all work inter-changeably.

In the criminal department, we have the State Counsel's Chambers at the level of the Courts of First

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Instance and the High Courts, and the Office of the Attorney General at the levels of the Courts of Appeal and Supreme Courts, with the Minister of Justice as the hierarchical supervisory authority. This department supervises, controls and directs all investigations, and prosecutes same at different levels.

B. Investigative Methods

Investigation in Cameroon is regulated by the newly promulgated Criminal Procedure Code. Investigations are directly placed under the supervision of a magistrate acting as a state counsel, who in turn is answerable to the Attorney General at the level of the Court of Appeal.

Investigations are carried out by the judicial police and gendarmes who act as auxiliaries of the state counsel. The duties of the judicial police are performed by judicial police officers, judicial agents and all other civil servants or persons to whom judicial police duties are assigned by law. They are responsible for investigating offences, collecting evidence, identifying offenders and accomplices, and bringing them before the legal department. They also receive complaints and reports against persons and carry out investigations, but must inform the state counsel without delay of the offences of which they have knowledge. They equally execute rogatory commissions of judicial authorities.

Investigations can be commenced by way of written or oral information, a written or oral complaint or a written report by a competent authority sent to the state counsel. The state counsel may also be seized of his or her own motion. Any person who has knowledge of an offence classified as a felony or misdemeanor can inform the state counsel or any judicial police officer thereof. In the absence of any of the two, any administrative authority of the locality could be informed. In like manner, any public servant who in the exercise of his or her duties has knowledge of a felony or misdemeanor is required to inform the state counsel and forward to him or her any document relating thereto.

In the course of an investigation, a suspect can be arrested and placed under police custody for a period of forty eight hours renewable once. An investigator may question any person whose statement is likely to lead to the discovery of the truth. Witnesses are heard separately and as much as possible in the presence of the defendant. If any person summoned for questioning fails to appear, the state counsel may issue a writ of *capias* compelling him or her to come. The assistance of any expert or any person capable of assisting the investigator at any phase of the investigation can be requested. In cases of felonies and misdemeanors attracting imprisonment of at least two years, Section 92 (3) of the Code gives an investigator the right to intercept, record or transcribe all correspondences sent by means of telecommunications, and the right to take photographs at private premises, provided he or she has written authorization from the state counsel. Section 102 of our Code demands that investigation processes should be secret and any person who assists in the investigations shall be bound by professional secrecy. A suspect should be immediately informed of the allegations against him or her and treated humanely both morally and materially as per Section 122 (i) of the Code. He or she should also be informed of his or her right to silence.

Preliminary investigation is obligatory in all felonies. It is conducted by an examining magistrate at the request of the state counsel by way of a judicial act in writing, known as a holding charge. The state counsel may at any stage of the preliminary investigation, by an additional holding charge, request the examining magistrate to perform any acts which he or she deems necessary for the discovery of the truth.

The examining magistrate is at liberty to visit any area within his or her jurisdiction to carry out all measures of investigations necessary for the discovery of the truth. He or she can carry out searches and seizures. Searches and seizures may also be carried out by judicial police officers who possess a search warrant as per Section 93 (1) of the Code. He or she may however carry out searches without a search warrant in cases of misdemeanors committed in *flagrante delicto*. Where a search and seizure has been done by a judicial police officer, he or she is expected to make an inventory of the entire objects seized. They shall be placed under seal and deposited with the legal department.

An examining magistrate can issue a bench warrant against a witness who fails to appear. He or she may also give a rogatory commission to any other examining magistrate or to a judicial police officer as per Section 152 of the Code. Where in the cause of hearing a witness, it is discovered that he or she is likely to be charged as a co-offender or an accomplice, he or she may be remanded in custody.

As per Section 198 of the Code, an examining magistrate, by way of an international rogatory commission, can carry out all measures of investigations in a foreign country, in particular to question an individual charged in Cameroon, to hear a witness, and to carry out searches and seizures. The rogatory commission should be accompanied by a detailed report. If the presence of a Cameroonian examining Magistrate or of a Cameroonian Judicial Police Officer is necessary to follow-up the execution of a rogatory commission in a foreign country, the Cameroon Government shall accredit him or her to the foreign country. Sections 673 and 674 of the Code make provision for an extradition order against a suspect or a convict who resides outside the national territory.

Remand in custody is an exceptional measure as per Section 218 (1) of the Code, which shall not be ordered except in the case of a felony or a misdemeanor. A self bail or conditional bail is available for suspects accused of misdemeanor and simple offences as long as they provide sufficient security or guarantee. The decision of an examining magistrate is subject to appeal before the inquiry control chambers of the Appeal Court.

At the close of his or her investigations, the originals of the police case files are forwarded to the state counsel without delay as well as all other relevant documents. The state counsel on receipt of the case file can prepare charges or an indictment order against an accused, close the file or send back the file for further investigations.

III. INVESTIGATION AND PROSECUTION OF CORRUPTION CASES

The fight against corruption has become a global concern. Corruption in Cameroon, like in many other countries, has gradually found its way into the very fabric of everyday life. It poses as a serious developmental challenge and has become a pivotal obstacle to economic development. Whether in politics, administration, the private or public sectors or the economy, one thing is certain: corruption is spreading like a canker worm, which needs to be urgently halted before it attains the proportion of an epidemic. Corruption has several facets. It can be passive or active bribery, embezzlement, illicit enrichment, money laundering, bid rigging and many other forms. Corruption in almost all of the forms enumerated above constitutes an offence in our Penal Code and other related legal instruments. To further lend support in this fight against corruption, specialized investigative bodies have recently been instituted, such as the National Agency for the Investigation of Financial Crimes, an Anti-corruption Commission, and the Law on Asset and Property Declaration. Putting good laws in place is one thing, but for such laws to become productive there has to be effective enforcement, effective investigation and prosecution, and an efficient judiciary. Law enforcement has an important preventive effect in that it helps to create the necessary awareness of the crime. Its preventive measures can however only be effective if those called to implement the rules rid themselves of those corrupt tendencies that tend to undermine good laws, and make them stand out like white elephants. Successful law enforcement can generate momentum and mobilize society against corruption. Without investigation and prosecution of corruption in all its forms, including the prosecution of high-level corruption, the chances of success of specific prevention measures may be fairly slim.

Detecting, investigating and prosecuting corruption are particularly difficult endeavours. Bribery and corruption are indeed often characterized by a high degree of sophistication in committing and camouflaging the crimes. It is most often submerged in a lot of secrecy and at times involves high-ranking officials who wield financial and administrative powers, with strong political connections. In most instances, those who could have either reported such offences or been called as witnesses are reluctant to co-operate. Despite all of the investigative modalities instituted in the new Criminal Code as summarized above, investigating and prosecuting corruption cases still constitute enormous problems arising from its peculiarities. Let's examine some of these obstacles.

A. Problems and Limitations in Investigating and Prosecuting Corruption Cases

1. Corrupt Investigators

One of our major constraints begins with those assigned to carry out investigations in corruption cases. Some of them will readily release information to a suspect of his or her imminent arrest in return for some financial gain. Such an illegal release of information enables the suspect to either go into hiding or proceed to destroy all incriminating evidence. Most of the time, escapees go out of the country. These suspects stay in hiding until prescription of the offence as per Section 65 of the Code. Many are those who have been

intercepted at airports or borders trying to escape. Suspects most often use the huge amount of resources they have accumulated fraudulently to bribe and corrupt investigators and even witnesses. The reports of internal auditors often hardly reflect the true situation since they themselves are easily bought off. There are recurrent cases where statements of suspects have been modified to hide the truth. Criminal exhibits are destroyed or made away with in return for financial rewards. Suspects, aided by investigators, escape from police custody. We have cases of criminals who constantly fall into the dragnet of the police and walk out at will as long as they are ready to pay the corrupt price.

As a judge, sitting in the military court of the Southwest Province, I tried cases brought against military officers for extorting money from criminals in the course of carrying out investigations. I also tried some other cases involving high-ranking military officials for corruption and embezzlement of huge financial and material resources destined for soldiers at the Bakassi conflict zone between Cameroon and Nigeria which were converted into private gain.

2. Poor Working Conditions

The lack of adequate resources hinders effective investigation. Investigating corruption cases requires a lot of resources, especially in cases of transnational involvement. Unfortunately, most investigative services in Cameroon lack even the basics such as ink, paper, computers and vehicles for rapid interventions, etc. There also exist acute technological limitations such as quick access to computerized information, telephone lines and calls, Internet facilities, etc.

3. Lack of Expertise and Effective Training

Most often those assigned to detecting and investigating corruption cases lack effective training in specific relevant matters. Investigators assigned to investigate corruption cases should be professionally and properly trained and should be persons of undisputed integrity to be able to withstand the temptations of being corrupt. This lack of expertise constitutes an acute limitation.

4. Lack of Verifiable Information

The lack of verifiable information hampers investigation. This comes as a result of long delays in reporting within public administration and as such gives the suspects enough time to hide their misdeeds. Some citizens are reluctant to report cases of corruption for fear of being victimized.

5. Cross-border Co-operation

Another handicap is that of obtaining evidence from abroad where the corruption case in issue involves many different countries. The process of rogatory commission and extradition procedures can be very time-consuming, especially where there is no existing convention or a treaty for mutual legal assistance. Many corruption cases today go beyond our national boundaries and thus require a great deal of international assistance.

6. Lack of Confidentiality

This is one other important element needed for an effective investigation. Information should not be prematurely divulged, especially before the arrest of an accused person. Unfortunately, there are times when even before an investigation opens, it already makes headlines in our newspapers. This explains why several suspects run away to unknown destinations and others proceed to destroy valuable evidence and exhibits. Section 102 of the CPC calls for secrecy at all stages of in investigation.

7. Lack of an Effective Complaint System

For the fight against corruption to be more effective, the participation of all actors is required; hence the need for an effective complaints system through which informants and whistleblowers can transmit information which can help trigger investigation and eventual prosecution. It should however be a system that will guarantee confidentiality and protection for this category of persons.

8. Lack of Sufficient Incriminating Evidence and the Absence of Witnesses during Prosecution

Besides the absence of investigators who are supposed to be witnesses for the prosecution during trial, one other major handicap is the absence of incriminating exhibits to buttress the prosecution's case. In situations where valuable incriminating evidence was destroyed at the stage of investigation, it makes it

difficult for the prosecution to prove its case beyond reasonable doubt, as required by law. As per the accusatorial process, the burden of proof is on the prosecution. A similar handicap arises from the absence of prosecution witnesses who in several cases hesitate to come and testify, partly for fear of being victimized and in some cases because they have been bought off by those seeking to hide their criminal deeds. With neither incriminating exhibits nor witnesses, the case for the prosecution suffers frustration which might lead to an unmerited discharge of an accused person under Section 365(3) of the Code for want of incriminating evidence.

9. Insufficient Independence of the Law Enforcement Agencies

Investigation can only be effective if those charged with investigation are given some degree of independence from undue influence. With our criminal justice system placed directly under the supervisory authority of the Ministry of Justice, the independent latitude needed in investigating corruption cases is considerably narrowed down.

B. Problems at the Trial Stage

There are no specialized courts, nor specific judges assigned for corruption cases. The same judges hear civil, criminal, labour and other matters, including interlocutory applications. In very busy jurisdictions, which most often are the jurisdictions with the highest number of corruption cases, judges are over-burdened with a backlog of cases. A single judge at times has more than a hundred criminal cases besides civil, labour and interlocutory applications. Given the complexity of most corruption cases, many witnesses are involved and a lot of documentary evidence is needed to buttress the case of the prosecution. The defence in like manner does same. This also contributes to delays during trial. Defence counsels also cause undue delay by constantly raising objections to the admissibility of documents even when it is uncalled for, and the judge at such instances has to make a ruling. Most defence counsels operate independent chambers, making it difficult for them to single-handedly keep up with the number of cases they have. As such, they constantly ask for adjournments under the guise of other reasons.

With the institution of the new Criminal Procedure Code, the recording of court proceedings is done by the judge and is handwritten which makes trials long and laborious. Counsels often tend to conduct very long cross-examinations which are also time-consuming. Even when judgments are delivered, it takes a long time for judgments to be typed and appeals processed, because of insufficient resources such as computers, photocopy machines, etc.

Judges, court assistants and private practitioners also need a lot of training and continuous education to enable them to understand and master the new Code and other international legal instruments which they are called to implement. The judges as per the new code are called to be neutral arbitrators, which demands a high degree of integrity, fairness, justice and the ability to live far above corruption itself Unfortunately, some judges at times fall prey to the attractions of corruption, which tends to make it difficult for them to be neutral.

IV. SUGGESTED SOLUTIONS

Plagued with so many problems, our criminal justice system needs urgent and systematic transformation to make it clean and transparent. Solutions need to be put in place to enable effective investigation, prosecution and fair trial. Public confidence in the criminal justice system is an important pre-requisite for an effective system. Listed below are some suggested solutions.

A. Effective Training and Education

Training programmes should be organized for legal personnel, including members of the private legal professions. Continuing legal education for magistrates and judges are essential to ensure that they understand their laws, especially the new Criminal Procedure Code and applicable international treaties so that their rulings are legally unassailable. A law school should be created for the proper training of lawyers.

One of the best defences against improper influence is full knowledge of applicable laws. Systematic distribution of laws and amendments on a timely basis to all judges is essential to combating corruption. Young magistrates are often in no position to counter legal arguments presented by individuals seeking to influence the outcome because they do not have ready access to current laws and amendments.

B. Improve Work Conditions

Legal officials should be provided with proper and adequate work conditions. Offices should be well-equipped with all that is needed to render effective services, increase productivity and prevent corruption. Provision should be made to ensure a decent living for legal staff and their families, in the absence of which legal personnel would continuously find themselves under a strong compelling force to succumb to the temptation of committing dishonest acts in return for a favour related to the discharge or performance of their official duties. Consequently, there is a need for adequate salaries and facilities. This will go a long way to curb need–based corruption at the lower and middle levels of legal personnel, if not totally reduce it.

C. Protection of Witnesses, Informants and Whistleblowers

For corruption practices to be unveiled, adequate protection should be provided to informants who disclose cases of corruption and voluntarily provide information. Witnesses will also be reluctant to testify if they are not sure of being protected.

D. Disciplinary and Legal Actions

Disciplinary measures play an important role in curbing corruption and deterring others from doing the same.

E. Interagency Co-ordination and International Co-operation

Co-operation is not a phenomenon limited to a particular administration, institution or sector. Successful approaches to the prevention of corruption between agencies, services, institutions and administrations are of vital importance in order to exchange experiences on the effectiveness of corruption prevention measures. Cross-border co-operation should be enhanced.

V. GENERAL MEASURES TO PREVENT CORRUPTION

There is no magic set of structures that will reduce corruption in all situations. These suggestions are just minimum standards for developing and maintaining integrity, accountability and transparency within the legal system. A total change will surely emanate from an upright mind anchored in integrity.

A. Enhancing the Independence of the Judiciary

Without the judiciary, there can be no rule of law. For a democratic state to function properly, it needs a legitimate rule of law enforced and protected by an independent and credible judiciary. This should be so because the judiciary also serves the function of creating a balance of power between the legislative and the executive branches. One of the major problems that our legal system encounters is that the rule of law has been historically weak. The executive and the legislative are excessively strong, creating an unbalanced state of affairs where the executive imposes its will and has significant control over the judiciary. The judiciary is frequently viewed as an acquiescent branch of government. In Cameroon, it is the sole prerogative of the president to appoint, promote and transfer judges without the restraints of transparent and objective selection procedures. Given such a situation, the executive and legislative branches are averse to relinquishing their influence over the judiciary. With the judiciary under the Ministry of Justice, a judge feels compelled to respond positively to the dictates of he or she who has the power to determine the rise or fall of his or her career.

Until quite recently, when the executive gave the green light for some senior executive officials to be arrested, there were many people who thought that they were untouchable because of the amount of power they wield and their strong political connections. Without the fiats from the executive, the judiciary could not have commenced legal action against some highly placed officials. Proceedings against political giants like Mr. Ondong Ondong, the Director General of Feicom, and others for corruption and embezzlement of public funds is one example. The same is also true of the ongoing case against Mr. Siyam Siewe, former Minister and former Director General of Cameroon National Ports Authority, and others. Such cases explain why corruption and embezzlement have been ravaging our country for years and yet go unpunished: because of overbearing and influential executive and legislative branches that virtually control the judiciary.

A clean, transparent and independent judicial system is of paramount importance for anti-corruption laws to be properly converted into veritable legal weapons. Our judicial system has been so structured as to foster corruption. The external pressures on a judge to act unethically are great. The Judicial Council should

be detached from the Ministry of Justice to ensure independence of the judiciary. It should also assume responsibility for selection and promotion of judges. The appointment procedures should be transparent and based on criteria that are not compromised by political considerations.

B. Increase the Salary of Judicial Staff

Salaries should be commensurate with the responsibilities of judges and legal personnel. The cost of housing in a secure environment, especially in big cities like Yaoundé and Douala, is exceedingly high for judges on present salaries.

C. Introducing an Accountability Mechanism

One of the major remedies to corruption is to improve the governance structure of the judiciary so that it has significant authority and control over the administration and budget of the courts. Judges must be held legally accountable by providing reasoned decisions and judgments that are open to appeal. Financial accountability ensures that the judiciary account for both the intended and actual use of resources allocated. Structures and standards should be regularly evaluated and improved upon. There is a need for transparency. Judges should be impartial, independent and beyond reproach.

D. Institution of a Code of Conduct

This will go a long way in spelling out the standard of ethical conduct expected of public servants in general and judicial staff in particular. It will also serve as a guide for the public as to what they should expect from a public servant in conduct and attitude. A code of conduct will strengthen the integrity of judges and improve public perception of the courts by clarifying the behaviour expected of judges. Unless judges begin to prosecute their own for disregarding the laws they are expected to enforce, citizens will continue to view the courts with scepticism.

E. Public Access to Information on Legal Issues

To reduce opportunities for corruption in administrative processes, court procedures must be simplified and made comprehensible to the court user. They must be precise in order to minimize the discretion of legal staff. The public should be properly informed of the different legal fees required for the processing of legal documents to circumvent corrupt and inflated demands from legal staff. For public perception of the judiciary to improve, citizens must be encouraged to develop a better understanding of their legal rights and obligations as well as the responsibility of the court to provide fair, effective and speedy justice. Civil society organizations can play a role in enhancing public awareness of legal rights and court procedures by devising and distributing legal pamphlets. With such basic information, citizens can learn how to participate more directly in the judicial process, particularly in the areas that most affect them.

F. Enhancing Competency of External Control

Many groups outside the judiciary can work to curb judicial corruption by supporting the judiciary's demands for independence and by continuously monitoring judicial performance and uncovering incidents of corruption. Strengthening these groups and ensuring they have access to the information necessary to perform their monitoring role can contribute to the reduction of judicial corruption. It is also essential for judges to have a vital and effective voluntary association that will safeguard their independence and protect their interests.

The Bar Association should be strengthened to act as a catalyst for changes and enhance the ethics of their members. The Bar Association should recognize as one of it roles the defence of the independence of the judiciary and lobby government to ensure its effectiveness. They should impose sanctions on members who engage in corruption and bring the profession into disrepute. This should also hold true with the order of notary public and bailiffs.

Journalists also have a role to play. To assist in more accurate reporting of cases of public interest, courts should provide briefings to the media. Public perception of judicial corruption is often worse than the reality and part of the reason for this is inaccurate reporting.

By monitoring the judicial process, civil society organizations can also expose unethical judges and create pressure on government for judicial reform.

G. Job Rotation

Enhancing staff mobility can substantially augment integrity. Long-term positions can foster corruption. A job rotation policy should be instituted, especially concerning people in managerial positions who can easily become vulnerable to corruption. This will minimize the risk of corruption, both individual and systematic. In Cameroon, some high-ranking officials retain managerial positions for as long as 20 years, giving them enough time and power to embezzle and possibly seal up all traces of wrongdoing.

VI. LEGAL INSTRUMENTS IN THE FIGHT AGAINST CORRUPTION AND THEIR IMPLEMENTATION

Cameroon has joined the fight against corruption. It is in this light that the President of the Republic promulgated a series of specific corruption laws and ratified some international legal instruments.

A. National Anti-corruption Laws

Besides the Penal Code, which prescribes sanctions against acts of corruption and related offences, specific laws have been promulgated for the prevention and fight against corruption. On 11 March 2006 the National Anti-corruption Commission was created. This Commission is an independent public organ with the goal of efficiently contributing to the corruption fight. In the same vein, on 25 April 2006 the Law on the Declaration of Assets and Property followed suit. This law envisages members of governments, parliamentarians, directors general and a host of other high-ranking officials, who in the execution of their functions should avoid any conflict of interest, declaring their assets when they take public office. Assets to be declared include those in the country and abroad. Laws on banking secrets and creating the National Agency for the Investigation of Financial Matters have also been promulgated.

B. International Instruments

On 21 April 2004 the President of the Republic was authorized to ratify the United Nations Convention against Corruption (UNCAC) and its predicate offences which Cameroon adopted on 31 October 2003. This Convention was effectively ratified on 18 May 2004. The same law also authorized the president to ratify the United Nations convention against Transnational Organized Crime. This law was adopted on 19 November 2004. These laws constitute the basis of our recently promulgated national laws in the fight against corruption. Another law that still has to be ratified by Cameroon is the African Union Convention for the Fight against Corruption which was adopted at the African Union Heads of States summit held in Maputo, Mozambique on 12 July 2003.

VII. CONCLUSION

Corruption control in our criminal justice system calls for concerted efforts and a combination of other factors. Prevention, it is often said, is better than cure and it is cost effective. Measures should be taken to increase public awareness of the ills of corruption, through media intervention, training seminars, and workshops. Anti-corruption programmes should be encouraged in our educational institutions so that our children as early as possible can cultivate anti-corruption attitudes.