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A Critical Appraisal of the Principle of Equality before the Law in the Cameroon Criminal Justice System

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ABSTRACT

The principle of equality has been a subject of contemporary debate among legal scholars. While some regard it as pragmatic, others maintain that it remains a philosophical concept beset by several hurdles to its realisation. Although the principle of equality before the law is deeply enshrined in the criminal justice system in Cameroon, access to the courts is still impeded by certain procedural lapses. The absence of legal aid, corruption, poverty, language barriers, the status of the Legal Department as a principal party, and the absence of judicial independence are major impediments to achieving equality. The harmonisation of the criminal law throughout the country, effected by the promulgation of the Criminal Procedure Code in 2005, outlawed the disparate elements of the criminal laws hitherto applicable in both regions. This paper critically examines the extent to which the principle of equality is effective in the Cameroon criminal justice system. In so doing, it adopts a qualitative research methodology, the principal research method being the doctrinal method. Although equality is a cardinal principle of the country's justice system, it is undermined in several ways, as illustrated by the procedures of the Special Criminal Court. The main finding is that, notwithstanding the great strides made by the State in securing equality before the law, the principle remains largely ineffective in the criminal justice system, since it proceeds on the basis that everyone should be tried before a competent, fair and impartial tribunal in the determination of a charge against him, and should be treated without bias or discrimination.

Keywords: Equality; law; Cameroon; criminal justice system

I. INTRODUCTION

The Cameroonian judicial landscape is characterised by the co-existence of two received judicial cultures, two judicial systems inherited from the colonial past: the common law from England and the civil law from France. Cameroon has undergone a triple colonial experience, from the Germans to the combined British and French domination. By 1887, German sovereignty over Kamerun had been firmly established, and for some thirty-two years thereafter,

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until February 1916, Kamerun was a German colony subject to Imperial German laws.^{1,2,3} Following the outbreak of the First World War, the joint Anglo-French forces in Cameroon defeated the Germans in 1916, and on 4 March 1916 the victorious powers partitioned Cameroon into two parts.⁴ The Treaty of Versailles confirmed that partition in 1919,⁵ and the mandates that followed were identical and were confirmed by the League of Nations and signed in London on 20 July 1922. Article 9 of the Mandate Agreement stipulated that:

The mandatory shall have full powers of administration and legislation in the area subject to the mandate. This area shall be administered in accordance with the laws of the mandatory as an integral part of his territory.... The mandatory shall therefore be at liberty to apply his laws to the territory subject to his mandate, with such modification as may be required by local conditions.

The Cameroon criminal justice system is predominantly bijural, comprising the common law and civil law systems, and its legal provisions explain this phenomenon, which officially set the platform for the beginning of the duality of these Western legal systems. Owing to these influences, and as further reflected in its Constitution, Cameroon has experienced, and continues to experience, a multi-jural, though still predominantly bijural, legal system, which has remained to this day. Indeed, the Cameroon judicial systems were largely shaped by colonial influence, the British and the French, since the German era was short-lived.

On this basis, the British administered their portion as an integral part of Nigeria, through which they transplanted and practised the English justice system in British Cameroon, while France administered its portion as an integral part of French Equatorial Africa, together with its other colonies.

Following the rise of nationalism and the wind of change that blew through the African continent in the early 1960s, French-administered Cameroon gained its independence on 1 January 1960 from France, and later that year, on 1 October 1960, Nigeria became independent. In a plebiscite organised by the United Nations, British Northern Cameroon joined Nigeria while Southern Cameroon joined the Republic of Cameroon.^{6,7} A federal structure came into

¹ Mark W. DeLancey, *Cameroon: Dependence and Independence* (Westview Press 1989). DeLancey was Professor of Government and International Studies, University of South Carolina, Columbia.

² George Benneh, Professor of Geography and Resource Development, University of Ghana, Legon.

³ Victor Julius Ngoh, *History of Cameroon Since 1800* (Presprint 1996).

⁴ Martha Simo Tumnde, *Insurance Law in Cameroon* (Presses Universitaires d'Afrique 2012) 1.

⁵ For the Franco-British Declaration of 1919 fixing the frontier line between the two Cameroons, see Annexes 374f and 374g to the Minutes of the Nineteenth Session of the Council of the League of Nations, LEAGUE OF NATIONS OFFICIAL JOURNAL (August 1922) 872, 877.

⁶ On 11 February 1961.

⁷ On 1 October 1961.

being, but it was short-lived, because it was abolished by a referendum of 20 May 1972, which brought into being the United Republic of Cameroon.⁸

With its new status, yet without its own laws, the United Republic inherited all the existing laws in both federated states, and this dual system accounts for the distinctive character of the Cameroon legal system.

This triple formula, by which English law was generally transplanted into British Cameroon and other British territories, gave rise to academic controversy as to whether the cut-off date of 1 January 1900 applies to all three sources of law: common law, equity and the statutes of general application.⁹ The laws in force in the French colonies of West Africa and French Equatorial Africa did not apply *ipso facto* in Cameroon. In 1924, all laws applicable in French Equatorial Africa were made applicable to the mandated territory of Cameroon by the Decree of 22 May 1924, which is therefore the enabling statute that renders French laws applicable in Cameroon.

The present-day Cameroonian criminal justice system therefore draws its inspiration from the inquisitorial French civil law system and the accusatorial tenets of the common law. A description of the Cameroon criminal justice system can best be understood not only on the basis of its colonial past but also by reference to the laws creating it. It was not until the adoption of Law No. 2005/007 of 27 July 2005 to lay down the Criminal Procedure Code of Cameroon that a uniform law came into force to harmonise the procedures before the law courts in criminal matters. Before then, the two systems applied different pieces of legislation in criminal matters.¹⁰ The Criminal Procedure Code entered into force on 1 January 2007, and it introduced some novelty in the application of the law in criminal cases in both the civil law and common law jurisdictions of the country. The Criminal Procedure Code is of general application, except where there is a provision to the contrary, as provided in the Code of Military Justice¹¹ or any

⁸ By the constitutional amendment of January 1984, the epithet 'United' was dropped from the name of the country, which is henceforth known simply as the Republic of Cameroon.

⁹ Southern Cameroons High Court Law 1955, s 11.

¹⁰ In the French-speaking regions, the applicable laws included the *ordonnance du 14 février 1838 portant Code d'Instruction Criminelle*; the *loi du 20 mai 1863 sur l'instruction des flagrants délits*; the *loi du 22 juillet 1867 relative à la contrainte par corps*; the *decret du 30 novembre 1928 instituant les juridictions spéciales pour les mineurs*; the *decret du 26 février 1931 sur l'instruction préalable*; the *decret du 2 septembre 1954 relatif au casier judiciaire*; and the *arrêté du 20 août 1955 fixant le taux de consignation d'aliments sur l'exécution de la contrainte par corps*. In the English-speaking regions, the applicable texts included the Criminal Procedure Ordinance (Cap 43 of the Laws of Nigeria 1958); the Evidence Ordinance (Cap 62 of the Laws of Nigeria 1958); the Children and Young Persons Ordinance (Cap 32 of the Laws of Nigeria 1958); the Prisons Ordinance (Cap 159 of the Laws of Nigeria 1958); the Southern Cameroons High Court Law 1955; and the Magistrates' Courts (Southern Cameroons) Law 1955.

¹¹ Law No. 2017/012 of 12 July 2017 to lay down the Code of Military Justice (Cameroon). The Code is a composite code embodying elements of both substantive law and procedure.

special law.¹² Complementary to the Penal Code are the Criminal Procedure Code¹³ and the Law on Judicial Organisation, which create and determine the various criminal courts sitting as courts of original jurisdiction, as well as courts with special and appellate jurisdiction.¹⁴ The Cameroonian criminal justice system is therefore established by a combination of general and special laws creating ordinary jurisdictions and special jurisdictions for trying particular offenders.

The Cameroon judicial system has embraced universal standards governing legal proceedings. The State of Cameroon has acceded to the International Covenant on Civil and Political Rights, which guarantees equality before the courts and other trial guarantees.¹⁵ To ensure the full observance of these rights, the Constitution of Cameroon, in its preamble, guarantees to everyone the right to be presumed innocent before the law courts.¹⁶ These provisions are reinforced by Section 1(1) of the Penal Code, which stipulates that everyone shall be subject to the criminal law, thereby establishing the principle of non-exemption and upholding the principle of equality of persons before the law. Despite these protections enshrined in both national and international law, the achievement of equality before the law is undermined in numerous ways. Among these is that the law creating the Special Criminal Court has conferred a privileged status on offenders who have embezzled funds above 50 million CFA francs, affording the State the opportunity to enter a *nolle prosequi* if the amount misappropriated is refunded. In reality, these are offenders who ought to serve terms of imprisonment but often go free with impunity, a privilege that is unavailable to ordinary accused persons.¹⁷

Although the principle of equality before the law is enshrined in the criminal justice system of Cameroon through pertinent provisions, from the presumption of innocence¹⁸ to the presumption that complaints are received and justice administered free of charge,¹⁹ the principle is undermined in numerous ways. Access to the courts has become an impediment on account

¹² Some of these special provisions are found in legislation such as Law No. 2011/028 of 14 December 2011 on the creation of the Special Criminal Court (Cameroon), as amended and supplemented by Law No. 2012/011 of 16 July 2012, and Law No. 2014/028 of 23 December 2014 on the Repression of Acts of Terrorism (Cameroon).

¹³ Law No. 2006/015 of 29 December 2006 on Judicial Organisation (Cameroon), as amended and supplemented by Law No. 2011/027 of 14 December 2011.

¹⁴ Law No. 2016/007 of 12 July 2016 relating to the Penal Code (Cameroon).

¹⁵ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art 14.

¹⁶ Preamble to Law No. 96/06 of 18 January 1996 to institute the Constitution (Cameroon), read with art 45; see also Criminal Procedure Code (Cameroon), s 8.

¹⁷ *Ministère Public v. Atangana Kouna*, Arret No. 018/CRIM/TCS of 12 August 2021 (Special Criminal Court, Cameroon).

¹⁸ Criminal Procedure Code (Cameroon), s 8.

¹⁹ *ibid* s 135(4)(b).

of high cost, the absence of legal aid,²⁰ the Legal Department, corruption,²¹ poverty,²² language barriers,²³ double standards in trials and the absence of judicial independence, all of which are major impediments to achieving equality before the law in Cameroon.²⁴

Further, the procedures applicable in the criminal justice system have not helped the situation. In the Special Criminal Court, the procedures for rendering justice have been distorted, as high-profile offenders accused of misappropriating²⁵ over 50 million CFA francs are given the opportunity to return the stolen funds and may thereby be spared incarceration (although restitution in cash or kind does not automatically lead to a *nolle prosequi*), a privilege unavailable to ordinary offenders.²⁶ In practice, this undermines the principle of equality before the law, as the case of *Ministère Public v. Haman Adama Nee Halimatou Kangue & Ors*²⁷ illustrates.²⁸ This study therefore investigates the effectiveness of the principle of equality within the criminal justice system, paying special attention to the challenges identified.

II. EMPIRICAL AND THEORETICAL UNDERPINNING OF THE PRINCIPLE OF EQUALITY AND CRIMINAL JUSTICE

There are several empirical views on the principle of equality and criminal justice in Cameroon and elsewhere. Carlson Emmanuel Wunde Anyangwe, in his thesis, examines how justice is administered in a unitary state with two extraneous legal systems, the common law and the civil law.²⁹ The author explains how Cameroon, from its colonial past, came to have two extraneous legal systems. He examines the administration of criminal and military justice on the one hand, and those branches of civil law on the other, from which there is now a common substantive law and procedure. He concludes his study with an examination of issues concerning human rights, law reform, legal education and the cost of justice. This researcher observes a lapse in that the author does not bring out the weaknesses decried here as disadvantages of the harmonisation process, namely the complex trial procedures resulting from the harmonisation

²⁰ Law No. 2009/009 of 14 April 2009 (Cameroon).

²¹ *Jeune Afrique Economie*, no 388, 11; see also TRANSPARENCY INTERNATIONAL, *Frequently Asked Questions About the Corruption Perceptions Index* (2012).

²² REPUBLIC OF CAMEROON, *National Development Strategy 2020-2030* (Ministry of Economy, Planning and Regional Development 2020) 90.

²³ Criminal Procedure Code (Cameroon), s 354.

²⁴ Law No. 2011/027 of 14 December 2011 to amend and supplement certain provisions of Law No. 2006/015 of 29 December 2006 on Judicial Organisation (Cameroon).

²⁵ Penal Code (Cameroon), s 184(1).

²⁶ Penal Code (Cameroon), s 30, on the entry of a criminal record.

²⁷ Decree No. 2013/288 of 4 September 2013 (Cameroon).

²⁸ Suit No. 026/CRIM/TCS of September 2013 (Special Criminal Court, Cameroon).

²⁹ Carlson E. Anyangwe, *The Administration of Justice in a Bijural Country: The United Republic of Cameroon* (ProQuest 1979).

of criminal trials, their detrimental effects on the poor, ordinary accused person, and problems of misinterpretation greater than before. The present study expresses the idea of the functioning of a legal system and thus relates to the first research objective. It distinguishes itself from Anyangwe's thesis in that it examines the concept of equality in the context of a unified and harmonised criminal procedure code. It essentially appraises the notion of equality before the law within the context of the criminal justice system of Cameroon.

F. Fang Helen Ike postulates that Cameroon's bijural nature is a colonial legacy.³⁰ She emphasises that the country is gradually departing from its former heritage towards a unified system that will give it a legal identity of its own, especially as much has already been done in this direction, with many laws unified and promulgated and many others still to be enacted. To this author, the most recent of these unified laws is the Criminal Procedure Code. Before then, the country operated a dual criminal procedure system reflecting its bijural nature: the inquisitorial system derived from French civil law and the accusatorial system that emanated from English common law. She contends that the new code is a hybrid system, merging key features of both systems, with the accusatorial procedure adopted as its basis, together with the presumption of innocence, which is a cardinal principle of law in criminal proceedings. The author does not discuss the equality of all persons before the law courts and tribunals.

In the same light, E. Eban, in his study, sets out the framework and procedural mechanism involved in rendering the police accountable through the criminal trial process in Cameroon.³¹ He examines the possibility of getting police officers to answer for their criminal misconduct, given the co-existence of the civil law and common law systems. He further examines the challenges facing the criminal trial process before and after the enactment of a single Criminal Procedure Code. His writing is intended to emancipate the ordinary layman, the man on the Clapham omnibus, from judicial obscurity to prominence in the knowledge and conduct of criminal investigation, and to secure the assistance to be accorded to every party during criminal police investigations, all within a legal aid package. In examining the investigating functions of the police, he recommends that, to enhance the effectiveness of the Code and improve the criminal trial, police officers in Cameroon should be tried without hampering the smooth running of their duties. His work contributes to the reinforcement of the rights of parties, with or without legal aid or advocates, in their access to justice, especially the poor and the less

³⁰ F. Fang Helen Ike, 'The Criminal Justice System in Cameroon: Problems Faced with Regard to Corruption and Suggested Solutions' (2008) 76 RESOURCE MATERIAL SERIES 145, 145-152 (10th International Training Course on the Criminal Justice Response to Corruption, UNAFEI).

³¹ E. Eban, 'Criminal Liability of the Police in Cameroon: Prospects and Challenges' (2011) 5(1 & 2) AFRICAN JOURNAL OF CRIMINOLOGY AND JUSTICE STUDIES.

privileged, who are more often than not victims of police harassment and illegal detention. This study is related to the present research, as it deals with the police as an important institution in the Cameroon criminal justice system and seeks to enable a broad section of the poor to become knowledgeable about police excesses and to gain privileges that are affordable and accessible to them before, during and after investigation and trial, thereby giving them the opportunity of access to justice with or without money.

R. F. Fombalang begins his work with a definition of access to justice, which to him denotes the ability and the possibility to seek and obtain justice in the law courts.³² He examines the various legislative enactments, such as Ordinance No. 72/4 of 26 August 1972 on Judicial Organisation and subsequent legislation amending the law and decentralising the court structures in Cameroon, as well as the decree establishing the Legal Aid Commission at every court, so that the poor and helpless should not be barred from seeking justice merely by reason of their impecuniosity. The author treats justice as a multi-faceted term and expounds corrective justice as identified by Aristotle, within which jurists have identified three types, namely legal or formal justice, substantial justice and rational justice.

The author further outlines some of the problems of access to justice in Cameroon, which include excesses in the exercise of prosecutorial discretion as a bar to access to justice, denial of justice and delay in rendering justice, poor publicity of the legal aid scheme, and periods of prescription and limitation as bars to the application of criminal law. In his conclusion, the learned author takes the view that the Cameroonian legal system is a composite one, constituted by the common law and the French civil law. He notes that the legal system faces the attendant hurdles of harmonisation. More importantly, in his observation of the bijural character of the country, he considers that this makes what may be referred to as the crisis of justice inevitable. He states that the civil law threatens to encroach upon and whittle down the importance of the common law, and that the applicability in Anglophone Cameroon of some treaties signed between Cameroon and certain French-speaking countries remains open to debate.

Furthermore, T. Ojong regards the legislative framework on the administration of juvenile justice in Cameroon as adequate and in compliance with the international conventions ratified by the State, and holds that the implementation of national law should be the primary mechanism through which human rights are realised.³³ He observes that Cameroon is often said to be a country with good laws but poor implementation. He examines the criminal law and

³² R. F. Fombalang, 'The Problem of Access to Justice in Cameroon' in C. M. Lambi (ed), *Cameroon: A Country at Crossroads, An Anthology in the Social Sciences* (NAB Ventures 2009) 309-318.

³³ T. Ojong, 'The Protection of Juveniles under Cameroon Criminal Law and Procedure through the Lens of International Standards' (2017) 7 JURIDICAL TRIBUNE (Special Issue) 200-224.

procedure in Cameroon through the lens of internationally recognised principles. He calls on the government and all its stakeholders to establish the structures provided for, and to ensure effectiveness in the enforcement of juvenile justice in the country, so as to overcome the weaknesses that the system is experiencing.

The author decries the situation of minors involved in juvenile delinquency and the poor manner in which, despite positive legislation, such cases are handled, which is indicative of a wider problem of executive disregard for the rule of law and of the judiciary. This study aligns with the second research objective, as it examines the novelty in the reforms concerning juvenile delinquency, thereby throwing light on the legal frameworks that are essential to the study. This is so because the judiciary is not doing as much as expected to fulfil the rights of juveniles during and after trial. The researcher also examines the treatment of juveniles and how the criminal justice system is not effective or fair in applying justice to all, since there are preferred offenders who receive special treatment on return of the corpus delicti, as opposed to the ordinary person, who is taken through an excruciating trial and may in the end not be found guilty after a long period of illegal detention.

In the same vein, Tchana Anthony Nzouedja,³⁴ in his book,³⁵ provides comprehensive and reliable reference material for the study of criminal procedure in Cameroon, especially with regard to the increasing involvement of minors in juvenile delinquency. His work covers the ongoing reforms in criminal procedure in the country and other recent developments, such as electronic evidence, based on the Criminal Procedure Code and the 2010 law on cyber criminality. Like this researcher, he aims to assist in the production of evidence in a system that is rapidly being overtaken by the modernisation of the criminal justice system, but is impaired by a shortage of personnel, so as to facilitate the expeditious conduct of the criminal justice system.

Pia Letto-Vanamo, in her work³⁶ *Access to Justice: A Conceptual and Practical Analysis with Implications for Justice Reforms*,³⁷ and in keeping with the third research objective, discusses the principle of access to justice and its practical implications for judicial reform, by focusing on the role of the court system in guaranteeing individuals' access to justice. The work evaluates the capabilities of the court system as a whole, as well as the judiciary, and identifies the

³⁴ Tchana Anthony Nzouedja is a lecturer in the French Private Law Department, University of Buea, and a practising advocate, solicitor and notary public resident in Buea.

³⁵ T. A. Nzouedja, *Principles and Practice of Criminal Litigation in Cameroon* (Optimist Press 2022).

³⁶ Pia Letto-Vanamo, LL.D., Docent, Director of the University of Helsinki Institute of International Economic Law; INTERNATIONAL DEVELOPMENT LAW ORGANISATION, Research and Publications Unit, vol 2, no 1 (2005).

³⁷ Pia Letto-Vanamo, *Access to Justice: A Conceptual and Practical Analysis with Implications for Justice Reforms* (2005).

principle of independence as the main requirement. It further analyses the concept of judicial independence as defined under various international agreements, and its relevance to access to justice. The fundamental and practical problems of court procedures are also examined, since courts must have the substantive and procedural capacity to handle disputes, and the lack of such capacity can become an obstacle to access to justice. The popularity of alternatives to court proceedings in response to court problems is also considered. Lastly, the economic and procedural obstacles to individuals' access to justice are examined, specifically issues relating to legal aid and alternatives to ordinary court procedures.

Alan S. Gutterman states that research on access to justice³⁸ has moved through a series of thematic waves that began by focusing on equality of access to legal services and continued by addressing structural inequalities within the justice system, establishing informal justice processes to prevent disputes from occurring and escalating, focusing on efficiency and competition to drive down the costs associated with the justice system, and understanding and meeting the actual legal needs of communities.³⁹ Access to justice has been described as a cross-cutting right that must be understood and interpreted in line with other principles, such as equal recognition before the law, and which enables and enhances other rights, such as the right to health, as it guarantees judicial and administrative protection of that right.

Thus, access to justice guarantees that people can go before the courts to demand that their rights be protected, regardless of their economic, social, political, migratory, racial or ethnic status, their religious affiliation, gender identity or sexual orientation.⁴⁰ Another definition of access to justice focuses on the ability of people to seek and obtain a remedy through formal or informal institutions of justice, and in conformity with human rights standards.

Accordingly, the requirements for effective access to justice, which include a legal framework, legal protection, legal awareness and knowledge, legal aid and representation, access to justice institutions, fair procedure and adjudication, enforceable solutions, and civil society and parliamentary oversight, should be tailored to the specific legal problems that disadvantaged persons commonly face, such as forced evictions and forced labour under unsafe and inequitable conditions.⁴¹

³⁸ Alan S. Gutterman and others, *Older Persons' Access to Justice* (Older Persons' Rights Project 2022), available at SSRN: <https://ssrn.com/abstract=3889752>.

³⁹ *Access to Justice for Older Persons*, Sustainable Impact Entrepreneurship Project.

⁴⁰ V. Lima and M. Gomez, 'Access to Justice: Promoting the Legal System as a Human Right' in W. Leal Filho and others (eds), *Peace, Justice and Strong Institutions: Encyclopedia of the UN Sustainable Development Goals* (Springer 2019) 1-10.

⁴¹ *ibid.*

Sage Sage-Jacobson describes the evolution of research on access to justice as moving through a series of thematic waves that began by focusing on equality of access to legal services and continued with structural inequalities within the justice system, informal justice, preventing disputes from occurring and escalating, and efficiency and competition to drive down the costs associated with the justice system.⁴² She observes that each of these waves was based on universalist ideals and focused on levelling the playing field by recognising the impact of social disadvantage on access to existing justice system institutions and removing the barriers to these services.

She also notes the emergence of a new fifth wave of research and reform activity relating to access to justice, which shifts attention away from normative notions of substantive justice within the community towards identifying and analysing what the community actually wants from the justice system and what it needs in order to claim and protect its rights. In other words, this fifth wave seeks to understand not only who should have access, but also which forms of justice should be prioritised in order to fulfil the actual legal needs of the community.⁴³ Sage-Jacobson cautions that legal needs are a complex issue that should not be limited to considering what the community believes it wants.

Article 12 of the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas, adopted by the General Assembly on 17 December 2018, provides:

Peasants and other people working in rural areas have the right to effective and non-discriminatory access to justice, including access to fair procedures for the resolution of disputes and to effective remedies for all infringements of their human rights. Such decisions shall give due consideration to their customs, traditions, rules and legal systems in conformity with relevant obligations under international human rights law....

In decentralising the judiciary, as this researcher has noted, the government fails to appreciate that every attempt to give ordinary or rural people access to equality is impeded by their lack of means to bribe those who hold the mantle of authority, as well as by the influence of other administrative actors, in particular the executive, which helps to frustrate the independence of the judiciary. Furthermore, this researcher notes the lack of government will to assuage the plight of the despondent and depressed in society, in circumstances where, even when ordinary citizens are awarded a claim, the execution of the award becomes an uphill task, especially as execution is at the discretion of the powerful against the weak.

⁴² S. Sage-Jacobson, 'Access to Justice for Older People in Australia' (2015) 33(2) AGEING AND THE LAW 142, 143.

⁴³ R. Macdonald, 'Access to Justice and Law Reform' (1990) 10 WINDSOR YEARBOOK OF ACCESS TO JUSTICE 287.

Ihayambwa Mwanawina holds the view that the principle that a court of law should be independent and impartial is not only firmly embedded in all legal systems and in all major international human rights instruments,^{44,45} but must also be truly practised by every modern state in order to hold the government accountable for its acts or omissions that affect private persons. The learned author anchors his argument in the case of *S v. Van Rooyen*,⁴⁶ where the South African Constitutional Court held, *inter alia*, that:

Judicial independence and impartiality are also implicit in the rule of law that guarantees access and equality to justice, which is foundational to the South African Constitution. This implies that the rule of law cannot exist without judicial independence; therefore, for the Southern African Development Community to uphold its treaty principles, it should foster judicial independence.

The author contends that the concept of judicial independence is derived from the doctrine of the separation of powers as advocated by Montesquieu, the French jurist and philosopher, whose work is considered one of the great works in the history of political theory and jurisprudence and inspired the Declaration of the Rights of Man and the Constitution of the United States.⁴⁷ He maintains that judicial independence should not be qualified by any other law or decree.

He further argues that the notion of equality in any justice system can only be feasible in a society where judges enjoy both institutional and individual independence to exercise their consciences, and where citizens possess the resources needed to ventilate their grievances. Mwanawina's argument is very important to the present study, since he is an advocate of the separation of powers among the three arms of government.

Like him, this paper underscores the role of a liberal, flexible and independent court system in guaranteeing non-interference and the enjoyment of uninterrupted judicial processes in a criminal justice system where corruption and the executive have hijacked the free will and independence of the judiciary, especially through the power of *nolle prosequi*, which is now more often used to serve personal rather than community interests. This is illustrated by the case of *Ministere Public v. Atangana Basile Kouna* in the Special Criminal Court in Yaounde, as well as by *The State of Cameroon v. Haman Adama Nee Halimatou Kangue Maonde & Co*,⁴⁸

⁴⁴ Ihayambwa Mwanawina, Senior Law Lecturer at North-West University, South Africa; see (2013) 46(3) LAW AND POLITICS IN AFRICA, ASIA AND LATIN AMERICA 321-335 (Nomos Verlagsgesellschaft).

⁴⁵ African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58, art 26. The article imposes an obligation on States parties to the Charter to guarantee the independence of the court system and to ensure that it functions free from the executive and legislative arms.

⁴⁶ *S v. Van Rooyen (General Council of the Bar of South Africa Intervening)* 2002 (5) SA 246 (CC).

⁴⁷ Charles de Secondat, Baron de Montesquieu, *The Spirit of Laws* (Collingwood 1823).

⁴⁸ Suit No. 026/CRIM/TCS of September 2013, *The Public Ministry and the State of Cameroon v. Haman Adama Nee Halimatou Kangue Maonde & Others* (Special Criminal Court, Cameroon).

concerning the restitution of the corpus delicti, in which the former was released by a presidential order.

Nicola Lacey observes that the obstacles to achieving criminal justice in a society marked by structural injustice have long been recognised.⁴⁹ Inequalities in social attitudes towards certain groups and in the distribution of resources and opportunities in fields ranging from family life, education and health to shelter and employment are most obviously relevant, while the experience of abuse, prejudice, and nutritional or emotional deprivation affects both life opportunities and psychological development. The threat to the legitimacy of punishment is particularly acute when the state itself bears responsibility for creating, or failing to alleviate, the relevant conditions. Doing criminal justice remains important, however, because the disproportionate impact of criminalisation and punishment on groups disadvantaged by injustice is matched by comparable disproportionality in criminal victimisation. This challenge has been exacerbated by the growth and entrenchment of economic inequalities.

Laura Enonchong, identifying one of the improvements introduced by the 2006 law on habeas corpus in Cameroon, credits the Criminal Procedure Code with ushering in a substantial improvement.⁵⁰ She posits that there is a major flaw in the new law, namely the absence of provisions dealing with executive compliance with habeas corpus orders, which had existed prior to the reforms. She examines the reforms and seeks to demonstrate that the problem of executive disregard for habeas corpus orders experienced under the old regime continues to undermine the effectiveness of habeas corpus. She holds the view that this problem is symptomatic of a wider problem of executive disregard for the rule of law.

Carlson Anyangwe focuses on the criminal law, a branch of law that articulates society's reaction to crimes and criminals, as it seeks to secure compliance with rules of behaviour, primarily through the threat of punishment when the rules are broken.⁵¹ He contends that criminal law forbids and punishes conduct that unjustifiably and inexcusably inflicts or threatens substantial harm to individual or public interests; that it differentiates on reasonable grounds between serious and minor offences; that it safeguards faultless conduct from condemnation as crime; that it gives warning of the conduct declared to be an offence; and that it subjects to public control persons whose conduct indicates that they are disposed to commit crimes. His book remains an embodiment of both the statutory provisions and their interpretation and application

⁴⁹ Nicola Lacey and others (eds), *Tracing the Relationship between Crime, Punishment and Inequality: Space, Time, and Politics* (Oxford University Press 2020).

⁵⁰ L. S. Enonchong, 'Habeas Corpus under the New Criminal Procedure Code of Cameroon: Progress or Status Quo?' (2014) 14 OXFORD UNIVERSITY COMMONWEALTH LAW JOURNAL.

⁵¹ C. Anyangwe, *Criminal Law in Cameroon: Specific Offences* (Langaa Research and Publishing CIG 2011).

in the cases cited. In this study, the researcher brings out the legal frameworks applicable in the context of specific criminal law issues, which is in line with the second research objective. This researcher emphasises the need for policies and laws not only to prevent the suppression of people's rights, but also to enhance, protect and assure the rights of the underprivileged, especially considering that Cameroon is a signatory to many international conventions and treaties that have been domesticated.⁵²

S. Tabe states that the fundamental innovation of the 2005 Cameroon Criminal Procedure Code is the harmonisation of the juvenile justice system, which had operated differently in the English-speaking and French-speaking legal systems.⁵³ In the English-speaking Regions, the major source of procedural law in juvenile justice was the Criminal Procedure Ordinance, which applied alongside the Children and Young Persons Ordinance, while in the francophone Regions it was the Code d'Instruction Criminelle. According to him, these laws operated until the coming into force in 2005 of a unified Criminal Procedure Code to replace the colonial laws on the administration of youth justice, being the first formal instrument since independence on matters of juvenile justice. In examining the harmonisation, the author fails to notice the double-standard role of an examining magistrate or judge. This is because juvenile cases often begin with a preliminary inquiry,⁵⁴ which may take a considerable time, especially if it goes on appeal to the Inquiry Control Chamber,⁵⁵ while the defendant is in detention. Thus, contrary to the author, this researcher regards this as double jeopardy, because in every criminal trial time should be of the essence, especially where a criminal charge, though merely alleged, hangs over someone whom the law presumes innocent until the contrary is established. In such circumstances, the person's activities and movements are restricted because of his partial loss of liberty. This study also deals with the standard of procedural frameworks in criminal matters and therefore links up with the second research objective.

Samagena D. Galega approaches the study from the perspective of the processes of combating crime in Cameroon.⁵⁶ He examines the roles of the various actors, including the police and the

⁵² Constitution of Cameroon, art 45.

⁵³ S. Tabe, 'A Critical Appraisal of the Juvenile Justice System under Cameroon's 2005 Criminal Procedure Code: Emerging Challenges' (2012) 15(1) JOURNAL.

⁵⁴ A preliminary inquiry is an investigation, and the examining magistrate is not required by law to form an opinion on the credibility of the witnesses or the truth of the parties' case. The first duty of an examining magistrate is to determine whether the complaint or holding charge laid before him *prima facie* discloses a case that deserves to be investigated by way of a preliminary inquiry. His next duty, at the close of the preliminary inquiry, is to determine whether the available evidence discloses a case, even if slight, that requires a trial. Proof of that case, however, is a matter for the trial.

⁵⁵ Criminal Procedure Code (Cameroon), s 267, provides that the decisions of the examining magistrate may be subject to appeal before the Inquiry Control Chamber of the Court of Appeal.

⁵⁶ S. D. Galega, 'Contemporary Challenges to the Cameroonian Criminal Justice and Penitentiary System' in C. M. Lambi (ed), *Cameroon: A Country at Crossroads, An Anthology in the Social Sciences* (NAB Ventures 2009) 357-

judiciary, and outlines some of the probable consequences of the porous nature of the judicial system.⁵⁷ He posits that, quite apart from the acute shortage of personnel, the Cameroonian criminal justice system, like the police, is gripped by the allure of corruption. The author further examines the notion of offenders and the theories and forms of punishment as perceived under criminal law, such as retribution, deterrence, incapacitation and rehabilitation. As to penalties, he articulates the punishments perceived under the Cameroonian Penal Code, namely the principal and the accessory penalties. For the purposes of his study, he adopts a threefold classification, namely material penalties, corporal or capital penalties, and alternative forms of correction or sanction. He also analyses the types of prison and the concepts of prisoners and human rights. In his conclusion, he urges the government to be forthright in the fight against corruption within the police and the judiciary, among other things.

P. C. Ngo Mandeng opines that the harmonisation of the Criminal Procedure Code could be readily attained, notwithstanding the divergence that had obtained before it, and describes the mechanism put in place to achieve it.⁵⁸ The author further highlights the responsibilities of the personnel at the different levels who are expected to enhance the prosecution and execution of the law, and who are expected to display high moral qualities, especially through their training. This, the author believes, is a prerequisite to the sanctioning of defaulting personnel who fall short. The author concludes by requesting commensurate remuneration for such personnel to deter them from corrupt practices, and better relations with the auxiliaries of justice. What distinguishes this author's perspective from that of the present research is that, while he examines the institutions and persons trained to carry out their functions by virtue of their training and reputation, he neglects to propose a way to prevent the executive from influencing their decisions.

Michael A. Yanou's work comprises sixteen chapters dealing with important topics covering both specific offences and procedures in criminal practice.⁵⁹ The author draws largely on Cameroonian authorities in elaborating the concepts of access to justice and equality. He deals with the various modes of seizing the courts when confronted with criminal cases, as well as the constitution of different cases before the Court of Appeal. In this respect, the book outlines issues relating to the legal and institutional framework governing criminal proceedings in Cameroon, and some of the associated challenges. However, although the book contains no

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⁵⁷ Scarce resources, changes in litigation and litigant expectations, and certain changes in the law challenge the judiciary's effective and prompt delivery of justice.

⁵⁸ P. C. Ngo Mandeng, 'The Role and Function of Prosecution in Criminal Justice' No. 53_18PA.

⁵⁹ M. A. Yanou, *Criminal Law and Procedure in Cameroon* (Excel Publishers 2014) 122.

discussion of the Special Criminal Court and the Military Tribunals, which are among the issues discussed in this study, the author, like this researcher, examines the influence of the executive over the judiciary.

Owing to the influence of one arm over the other, the author argues that the ideals of democratic governance can only be sustained by a liberal, independent and courageous judiciary, which he expresses in the following words:⁶⁰

In the face of the overwhelming political power of the executive and the latter's complete dependence on the ruling party, the country needed a strong judiciary capable of counterbalancing this influence by delivering justice in cases of disputes over the electoral process. However, on the contrary, the executive has over the years successfully used a weak judiciary and slanted procedures for the resolution of electoral disputes in the country to achieve the present democratic deficit that undermines the right to vote.

This scholar concludes by criticising the executive for promoting interference with judicial proceedings in order to frustrate the course of justice, with unpleasant effects on the common man. He supports his argument by reference to the locus classicus of *Fon Doh Gwanyin v. The People of Cameroon*,⁶¹ as well as *Luma Stephen Njoke v. Elections Cameroon (ELECAM)*, *The Cameroon People's Democratic Movement (CPDM) & Mbella Etoga Gervacius*.⁶²

In the former case, Yanou states that it is an excellent illustration of the challenges the courts face in cases involving gross human rights violations where the political interest of a corrupt government is involved. In the latter, Yanou examines the influence of the ruling party in the handling of an electoral petition against the interest and rights of the common man.

The significance of Yanou's contribution to the present research lies in the fact that, like Yanou, this paper embarks on an appraisal and critique, after identifying the lapses, not only in access to justice by the common man and the inequality of the justice system, but also in the corrupt and influence-peddling manipulation of the judiciary by the executive, in order to enhance the sanctity of legal proceedings and the quality of the criminal justice system administered by the judicial arm of government.

The gap to be addressed here is that, unlike Yanou, who dwelt on the politicisation of the nation's judiciary, the present study covers both the politics of the court system and the generalised lack of integrity resulting from the absence of judicial activism. These issues are investigated and recommendations are made from a practitioner's perspective.

⁶⁰ M. A. Yanou, 'Democracy in Africa: A Socio-Legal Appraisal' (2013) VERFASSUNG UND RECHT IN ÜBERSEE (LAW AND POLITICS IN AFRICA, ASIA AND LATIN AMERICA) 314.

⁶¹ *Fon Doh Gwanyin III & 9 Ors v. The People of Cameroon*, Suit No. BCA/5c/2006 (2012) 1 CCLR Part 15, 22.

⁶² *Luma Stephen Njoke v. Elections Cameroon (ELECAM)*, *The Cameroon People's Democratic Movement (CPDM) & Mbella Etoga Gervacius*, Suit No. SWAC/REL/019/2020 (unreported).

Another reputable author writing on access and the right to equality of justice is Upendra Baxi, who has steadily pursued, through his actions, research and legal writing, the task of promoting the right to development and equality of justice for the impoverished.⁶³ He contends that, in the quest to break the existing structural, attitudinal and financial barriers to justice, attention must be devoted to the protection of the ignorant, the vulnerable and the poor, especially those in rural communities.

His writings, intended to emancipate the ordinary Indian from obscurity to prominence, have had considerable impact on the democratisation process in India. Baxi's work has contributed to the reinforcement of the right of access to justice for the less privileged, principally through his advocacy of legal aid for the poor and the masses. This is very relevant to a case such as the present one, where corruption and favouritism, among other things, have taken centre stage in the criminal justice system. The importance of Baxi's work to this study, especially on the strategic protection of the poor and the need for legal aid advocacy, cannot be overemphasised, especially in a criminal justice system where the State, contrary to international standards, provides counsel to litigants only in felony cases, and not in misdemeanours and simple offences, some of whose terms of imprisonment give cause for concern.

That notwithstanding, the procedure to be undertaken in order to be accorded legal aid or assistance in a criminal case is very lengthy and cumbersome, and may only be completed when the case has already ended.

The author opines that the judicial system must promptly and unconditionally support low-income earners, the poor and the vulnerable in strengthening justice in areas including monitoring and evaluation; empowering the poor and marginalised to seek redress and remedies for injustice; improving legal protection, legal awareness and legal aid; civil society and parliamentary oversight; addressing challenges in the justice sector such as police brutality, inhumane prison conditions, lengthy pre-trial detention, and impunity for perpetrators of sexual and gender-based violence and other serious conflict-related crimes; and strengthening the linkages between formal and informal structures.

Further, Cappelletti Mauro and others elaborate on the idea of making the justice system available to the ordinary members of society.⁶⁴ They maintain that what constitutes access to justice in a modern state is the formal, practical and real existence of the facilities of the court

⁶³ Upendra Baxi, 'Access, Development and Distributive Justice: Access Problems of Rural Population' (1976) 18 JOURNAL OF THE INDIAN LAW INSTITUTE.

⁶⁴ Mauro Cappelletti and Bryant Garth, *Access to Justice: The Worldwide Movement to Make Rights Effective, A General Report* (Dott. A. Giuffrè Editore 1978).

system, including the means at the disposal of an aggrieved party to vindicate his grievance. They trace the origin of access to justice and equality of all to the French Constitution of 1946. They argue that, because these are natural rights, a modern democracy must be ready to make them accessible and affordable to all. They conclude that effective access can be gained by empowering other rights, such as the right to work, to health, to material security and to education.

For his part, Justice Chukwudifu Oputa holds the view that the right of access to the courts is inherent and cannot be taken away by parliament or a treaty.⁶⁵ He argues further that every contemporary judicial system must afford protection to the legally injured by insisting on substantial justice rather than technicalities. Oputa defines the role of the contemporary judiciary in guaranteeing access and equality in a criminal justice system as follows:

The judiciary has been described, and correctly too, as the last hope of the common man. What our judiciary urgently needs in the democratic process is a new humanism and a well-founded and growing concern for the poor and the helpless. The judiciary should be the hope for the hopeless, the help for the helpless and a welcome hospice for the legally injured. It is therefore the duty of the judiciary to run to the aid of the common man, struggling against legislative or executive excesses, or against the tyranny of the majority, or against political, social or economic injustice. It is the duty of the judiciary to guard against the state's loneliness and abuse of power in regard to the poor and powerless, the common man.⁶⁶

Oputa's opinion is very relevant to this research, as it recognises the fundamental role a judge plays in reinforcing the right of access to justice, even in a dictatorial political system such as obtains in most African countries.

Fonkwe J. and Eware Ashu make an appraisal of criminal procedure in Cameroon, which consists of setting out the values, principles and rules of criminal procedure, illustrated with decided cases from all the courts of Cameroon and a few foreign cases where necessary.⁶⁷ Their book is a practical exposition of criminal procedure in Cameroon and is devoid of abstract theory. It touches on all aspects of the procedure in an analytical manner, from criminal investigation, through the preliminary inquiry, to the procedures before the various trial courts, the Court of Appeal and the Supreme Court. The book is a derivation of good practice from decided cases in both the common law and civil law jurisdictions of Cameroon.

⁶⁵ C. A. Oputa, 'The Judiciary and the Bar in the Democratization Process in Africa' (paper presented at the FAKLA Law Dinner, 4-5 June 2005, Seme Beach Hotel, Limbe) 13.

⁶⁶ *ibid* 13 (C. A. Oputa).

⁶⁷ Fonkwe J. and Eware A., *Cameroon Criminal Procedure and Practice in Action* (Veritas 2019) 285, 323.

It is evident from this review that little or no attention has been given to the notion of equality and preferential offenders in the criminal justice system in Cameroon with a view to enhancing fair, equal and expeditious trials. More often than not, the authors adopt an analytical approach to the subject. This research therefore comes in to fill the gap by bringing out the lapses in the criminal justice system in Cameroon, especially in areas where the shortcomings are not addressed: that the suspect has a right to medical attention and to counsel, and that judgment should be delivered fifteen days after the close of the hearing. These matters are significant, as their intended effects are not being realised.

This research study adopts a distinctive approach in assessing the grey areas in the criminal justice system in Cameroon and proposes recommendations for enhancing fair, equal and expeditious trials. It also appraises the international legal challenges associated with adjudication.

According to Bolima Sylvia Ambang, the right to a fair trial is a fundamental safeguard in ensuring the protection of individuals from the unlawful or arbitrary deprivation of their human rights and freedoms, especially the rights pertaining to liberty and security of person.⁶⁸ She notes that the administration of justice in Cameroon is based on substantive and procedural principles of law, and that Cameroon has ratified many treaties and instruments of international law that have overriding effect on national law and procedure in matters of fair trial. The right to a fair trial is a foundational principle of every stable and democratic society, which is why various national and international legal regimes have established safeguards to guarantee it.

Notwithstanding the harmony in its application under the Cameroon criminal procedure system,⁶⁹ fair trial rights constitute an unchallengeable principle, and those bestowed with the sole responsibility for the strict administration of justice must ensure that this right is respected and guaranteed to the full, without any infringement or violation. These principles, accompanied by rules and procedures, are implemented throughout the entire process of a court trial.⁷⁰ The author, in discussing the possibility of a fair trial, lays emphasis on the institutions and legal frameworks put in place, without considering or recommending the consequences that may arise if they fail to do so.

⁶⁸ B. S. Ambang, 'The Right to Fair Trial as Guaranteed under the Cameroon Criminal Law System: A Critical Appraisal of the Cameroon Criminal Procedure Code' (2021) 7(2) JOURNAL OF LEGAL STUDIES AND RESEARCH.

⁶⁹ Law No. 2005/007 of 27 July 2005 to institute the Criminal Procedure Code (Cameroon).

⁷⁰ These include the pre-trial, trial and post-trial criminal procedures.

The works reviewed above are related to the present paper in that they make specific reference to some of the key issues raised and to be addressed in terms of the research objectives of this study.

However, these works differ from the present study in a number of ways. While some of the reviewed literature addresses the criminal justice system on a holistic basis, this study is specific to the principle of equality before the law and the related shortcomings that undermine it. For instance, while Michael A. Yanou⁷¹ and Fonkwe J. and Eware Ashu⁷² expound the state of the law and its direct application through a case-by-case approach, this study differs in that it directly brings out both the lapses in the law and the practical realities of the Cameroon criminal justice system.

Unlike Yanou, who dwelt on the politicisation of the nation's judiciary, the present study covers both elements of criminal justice through the court system, as well as the comprehensive lack of integrity resulting from the absence of judicial independence, among other vices. These issues are investigated and recommendations are made from a practitioner's perspective.

Yanou sought to investigate, within the Cameroonian criminal context, the notion of the right of access to justice as one of the fundamental human rights under international and national legislation. His work centres on the independence of the court system and the extent of the government's commitment to international best-practice standards, as well as the gross violations by the State and its actors of the rights of citizens. Yanou reveals that respect for human rights in Cameroon, as a constitutional claim, remains doubtful. His work recommends that the government of Cameroon should adopt a federal type of judiciary in which the colonial heritage is given due preference.

This study, on the other hand, seeks to examine the notion of judicial independence within the context of the principle of equality before the law, using different assessment tools such as the right to be represented by counsel of one's own choice, legal aid, privileged proceedings and the impartiality of the adjudicating body.⁷³

Also, R. F. Fombalang⁷⁴ addresses the problem of access to justice in Cameroon through the 1972 Judicial Organisation Ordinance and a review of the Cameroonian legal system, while F.

⁷¹ M. A. Yanou, *Criminal Law and Procedure in Cameroon* (Excel Publishers 2014).

⁷² Fonkwe J. and Eware A., *Cameroon Criminal Procedure and Practice in Action* (Veritas 2019).

⁷³ K. N. Ogbe, 'Access to Justice and the Exercise of Judicial Powers in Cameroon: A Professional Practice Perspective Appraisal' (Thesis, University of Buea 2020).

⁷⁴ R. F. Fombalang, 'The Problem of Access to Justice in Cameroon' in C. M. Lambi (ed), *Cameroon: A Country at Crossroads, An Anthology in the Social Sciences* (NAB Ventures 2009) 309-318.

Fang Helen Ike⁷⁵ and Carlson Emmanuel Wunde Anyangwe⁷⁶ postulate that Cameroon's bijural nature is a colonial legacy, and expound the evolution and nature of the two systems, the common law and the civil law. In principle, this study differs from the above literature in that it seeks to bring out the lapses in the notion of equality in the law, and how some offenders are given preferential treatment arising from the existing laws in the present-day criminal justice system of Cameroon.

This researcher, like T. A. Nzouedja, hopes to provide comprehensive and reliable reference material for the study of criminal procedure in Cameroon, covering the ongoing reforms in criminal procedure and other recent developments in the country, such as electronic evidence, based on the Criminal Procedure Code and the 2010 law on cyber criminality. Like this researcher, that work assists in the production of evidence in a system that is rapidly being overtaken by the modernisation of the criminal justice system, but is impaired by a shortage of personnel, so as to facilitate the expeditious conduct of the criminal justice system.

There are a number of theories and concepts associated with these studies. The use of theoretical and conceptual frameworks is vital in this study, because they guide the researcher in determining and appreciating the application and effective implementation of the principle of equality before the law under the criminal justice system in Cameroon.

Whereas a theory is a set of ideas or principles intended to explain why an event occurs or exists as it does, a concept is an idea and its relevance to the occurrence of an event, such as the effectiveness of the application of equality before the law under the criminal justice system. Thus, for the researcher to achieve his objective, concepts and theories are used interchangeably in this study.

III. THEORETICAL AND CONCEPTUAL FOUNDATIONS OF THE PRINCIPLE OF EQUALITY IN CRIMINAL JUSTICE SYSTEMS

The theories employed in this paper are the triple-pronged theory, the natural law theory, the theory of justice, the theory of egalitarianism, the social contract theory and the concept of fair hearing.

A. The triple-pronged theory

⁷⁵ F. Fang Helen Ike, 'The Criminal Justice System in Cameroon: Problems Faced with Regard to Corruption and Suggested Solutions' (2008) 76 RESOURCE MATERIAL SERIES 145-152 (UNAFEI).

⁷⁶ C. E. Anyangwe, 'The Administration of Justice in a Bijural Country: The United Republic of Cameroon' (Thesis, 1979; ProQuest 2018).

This theory, as developed by Henry Shue, holds that States must respect, protect and fulfil the fundamental human rights of their citizens.⁷⁷ The triple-pronged obligation was elaborated in the Maastricht Guidelines.⁷⁸ This model illustrates that human rights impose obligations on the State. Some examples of these fundamental rights include the right to life, the right to liberty, the right to health, dignity and equal treatment, self-determination, the right to a fair trial, the right of an accused to defend himself and the right to counsel.

The duty to respect requires that the State should not directly infringe upon its citizens' rights, for instance by failing to provide citizens with the basic necessities or means for the realisation of their rights, such as access to justice and equality before the law. In the context of criminal justice, the State is under a duty to ensure that all the minimum guarantees established by law are observed when trying an accused person.

In the context of socio-economic rights, the duty to protect obliges States to take all measures to ensure that third parties do not infringe the rights of citizens. States must protect citizens both from infringement by the State's own instrumentalities and from other persons within its jurisdiction. The duty to fulfil requires States to take positive measures towards the ready realisation of the rights of citizens. These measures may be administrative, financial or legislative, in the form of policy initiatives and the monitoring of the environment.

This theory characterises human rights as universal guarantees protecting individuals and groups against acts and omissions that may affect their freedom and human dignity, and as inalienable and legally protected rights that every citizen holds.⁷⁹ The triple-pronged theory explains the various human rights that may be violated and the circumstances under which an individual can enforce his individual interest.

Furthermore, if the various legal institutions, frameworks and policies are made not only available but also within the reach of the underprivileged, justice will be seen and heard to be done, not only for those who can afford it, but also for the needy and the community at large.

The duty to respect these rights is established in Article 14 of the International Covenant on Civil and Political Rights, and requires that states not take any action that directly infringes these rights. For instance, the creation under the Criminal Procedure Code of legal regimes that draw a dichotomy between bailable and non-bailable offences really violates the presumption of innocence, as enshrined under Section 8 of the Criminal Procedure Code. This distinction

⁷⁷ Henry Shue, *Basic Rights: Subsistence, Affluence and US Foreign Policy* (Princeton University Press 1980).

⁷⁸ THE MAASTRICHT GUIDELINES ON VIOLATIONS OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS (1997).

⁷⁹ J. K. Boesen and others, *Applying a Rights-Based Approach: An Inspirational Guide for Civil Society* (Danish Institute for Human Rights 2007) 9.

presupposes that bailable offences are those to which the presumption of innocence applies, and that the reverse is true of non-bailable offences.

The triple-pronged theory has been taken a little further by the African Commission through the addition of a duty to promote.⁸⁰ According to the Commission, the internationally accepted understanding of the various obligations engendered by human rights indicates that all rights, whether civil, political, social or economic, generate at least four levels of duty for a state that undertakes to adhere to a rights regime, namely the duties to respect, protect, promote and fulfil these rights.

These obligations apply universally to all rights and entail a combination of negative and positive duties. Indeed, the African Commission noted that, as a human rights instrument, the African Charter is not alien to this concept, and that the order in which the duties are dealt with in a given case is a matter of convenience and not of priority.⁸¹ This theory therefore accords with this researcher's desire to see that the State fulfils its obligations both to the individual, especially those who cannot afford counsel, through the legal aid procedure, and to the community, by enhancing expeditious trials and bringing the courts and other legal institutions closer to the citizens.

The triple-pronged theory is at the centre of state responsibility in line with the human rights obligations arising from statutory instruments. Thus, the concept of equality, which cuts across all human rights, is at the heart of the triple-pronged theory, which the State must respect, protect and guarantee to all its citizens. The State has a duty, through its various organs, to ensure that the rules and regulations intended for every criminal trial are, as far as possible, established in such a way as to ensure equality before the courts. Moreover, the opportunity should be accorded to all parties for equal access to counsel, legal aid and the resources needed to conduct a trial.

B. The natural law theory

This research is also anchored in the concept of the equality and dignity of the human person, as expounded by Aristotle, John Locke and Thomas Aquinas, who take the view that all human beings are equal and should be accorded equal treatment, even in matters of justice and human rights. They contend that every modern state must be accountable to its citizens on the basis of equality. Equality, as a concept, presupposes that no citizen, irrespective of tribe, race, religion

⁸⁰ *SERAC v. Nigeria*, Communication No. 155/96 (African Commission on Human and Peoples' Rights, 30th Ordinary Session, Banjul, 13-27 October 2001).

⁸¹ Asbjorn Eide, 'Economic, Social and Cultural Rights as Human Rights' in Asbjorn Eide, Catarina Krause and Allan Rosas (eds), *Economic, Social and Cultural Rights: A Textbook* (Martinus Nijhoff 1995) 31.

or status, is above the law. Moreover, no citizen may be arrested, prosecuted or imprisoned except in accordance with the procedure laid down by law. The concept of justice therefore inevitably places the court at the centre of the public prosecution of crimes, the determination of disputes and the interpretation of important questions of law affecting the rights of citizens, as well as states as actors of international law.

The study further notes that the idea of the right of access to justice is still tied to the idea of natural law and to the liberal ideologies of Hobbes. These explain the behaviour of the individual state towards its citizens in a political system, from certain basic assumptions about human nature and the obligations of sovereign states.

One of these assumptions concerns the inherent rights of the human race, which must be respected by all organised societies.⁸² The natural law theory states that equality is a natural right that must be respected and recognised by all, especially by judges in rendering justice. That is to say, everyone should be treated humanely and equally in all circumstances, regardless of socio-economic and political status.⁸³

Indeed, as in every justice system, the principle of fair hearing and equality before the law, encapsulated in the maxim *audi alteram partem*, meaning 'let the other side be heard', is as old as humanity itself. It is a rule of natural justice and derives its origin from scriptural sources as well as from jurisprudence, as in *The King v. The Chancellor, Masters and Scholars of the University of Cambridge*, also referred to as *Dr. Bentley's Case*,⁸⁴ in which Fortescue J. held that:

The laws of God and man both give the party an opportunity to make his defence, if he has any. I remember to have heard it observed by a very learned man, upon such an occasion, that even God himself did not pass sentence upon Adam before he was called upon to make his defence.

Under no circumstances should the State derogate from the attainment of the minimum core obligation, as contended by Henry Shue and Aristotle above, because these obligations constitute the bedrock of a democratic government. A democratic society, according to these scholars, is necessarily one that upholds the concept of justice, human rights, equality before the law, freedom of speech, and the freedom to hold and advance a political opinion, free from arrest, intimidation and harassment. It also extends to the right to a fair trial, the right to appeal

⁸² UNIVERSAL DECLARATION OF HUMAN RIGHTS (adopted 10 December 1948) UNGA Res 217 A(III), art 1.

⁸³ J. Locke, *The Second Treatise of Civil Government and A Letter Concerning Toleration* (Basil Blackwell 1946).

⁸⁴ *Dr. Bentley's Case* (1723) 1 Str 557, 93 ER 698; sub nom *The King v. The Chancellor, Masters and Scholars of the University of Cambridge* (1723) Fortescue 202, 92 ER 818.

a decision of the court, and the right to vote and to be voted into any public office without discrimination.

The relevance of this theory to this research is that these constitutional safeguards, in the context of Cameroon, are imperative in order to curb executive excesses and legislative abdication of duty, and to cure the deplorable state of the nation's judiciary, whose recent manifest timidity has become a cause for concern.⁸⁵

C. The theory of justice

This theory is grounded in the writings of John Rawls. To him, 'justice as fairness' is not only a popular phrase widely used across almost all social science disciplines under his influence, but also represents a deep explication of the concept of justice. *A Theory of Justice* is one of the most important works of John Rawls.⁸⁶ In it, Rawls offers two principles of justice. First, that each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all; and secondly, that social and economic inequalities are to be arranged so that they are both to the greatest benefit of the least advantaged, consistent with the just savings principle, and attached to offices and positions open to all under conditions of fair equality of opportunity.⁸⁷

The contractual nature of justice, explored by Kant, influenced John Rawls. Rawls's justice is concerned not only with human welfare but also with individual welfare. The 'veil of ignorance' is a powerful thought experiment by Rawls. Our usual opinions about what is just and unjust are informed by our own experiences; we are shaped by our race, gender, class, education, appearance, sexuality, career, family and so on. If, however, we operate under a veil of ignorance, the resulting society should be a fair one. According to Rawls, the first principle has priority over the second, at least for societies that have attained a moderate level of affluence. The liberties Rawls has in mind are negative rights, such as freedom of thought, while the distribution of social goods can include education, food and housing, which may be considered positive rights.⁸⁸

This theory is fundamental to this study, in that it stresses the notion of equality of means to access the law courts and to be afforded a fair safeguard in the conduct of every criminal proceeding. This is at the heart of an effective legal system and embodies notions such as legal

⁸⁵ See *Fon Doh Gwanyin III & 9 Ors v. The People of Cameroon*, Suit No. BCA/5c/2006, reported at (2012) 1 CCLR Part 15, 1-126, 22 (North West Court of Appeal).

⁸⁶ John Rawls, *A Theory of Justice* (Belknap Press of Harvard University Press 1971).

⁸⁷ *ibid.*

⁸⁸ John Rawls, *A Theory of Justice* (Belknap Press 2005) 60-142.

aid, education and other guarantees that uphold the idea of a fair trial. This theory therefore illuminates the question of whether there exist sufficient legal means to ensure the equality of all parties before the courts and to warrant a fair hearing, such as the provision of counsel and the means to bring and prosecute an action in court.

It is therefore on the basis of the personal welfare postulated by Rawls that, for individuals to be able to stand on the same footing as the State in criminal matters, they must first have the means to sustain their basic livelihood before pursuing cases in court.⁸⁹ At times, the State stands in a position of strength, since it has everything at its disposal, while accused persons feel intimidated because they can barely survive, let alone pursue legal action. This theory therefore undermines the contention of the Legal Department, the state prosecutors, that the notion of a principal party presupposes that they have more rights than the other parties, as perceived under the Criminal Procedure Code.

D. The concept of fair hearing

Fair hearing is a concept intricately linked to the natural law theory, and its proponents are the libertarians David D. Friedman,⁹⁰ Milton Friedman,⁹¹ Ludwig von Mises⁹² and Murray Rothbard.⁹³ It entails that a judicial proceeding must be conducted in such a manner as to conform to the fundamental principles of justice and equality, and that, during a fair hearing, authority is exercised according to the principle of due process of law. It is best expressed in the Latin maxim *nemo iudex in propria causa*, meaning that no one should be made a judge in his own cause, otherwise known as the rule against bias.

Fair hearing means that an individual will have an opportunity to present evidence in support of his case and to discover what evidence exists against him. In order for a hearing to be fair and to comply with due process requirements, it must be held before an independent and impartial tribunal; however, a hearing can be unfair without any intention that it be so. A fair hearing must provide a reasonable opportunity for an individual to be present at the designated time and place, during which he may offer evidence, cross-examine opposing

⁸⁹ John Rawls and others, *Liberty, Equality, and Law* (Cambridge University Press 1987).

⁹⁰ David D. Friedman (born 12 February 1945) is an American economist, physicist, legal scholar and anarcho-capitalist theorist.

⁹¹ Milton Friedman was an American economist and statistician who received the 1976 Nobel Memorial Prize in Economic Sciences for his research on consumption analysis.

⁹² Ludwig von Mises wrote *The Theory of Money and Credit* (1912), arguing that government intervention in the economy could never reproduce the results of a free-market society. The Ludwig von Mises Institute is devoted to the study of praxeology, the study of human behaviour as related to economics.

⁹³ Murray Newton Rothbard was an American economist of the Austrian School, economic historian, political theorist and activist. He was a central figure in the twentieth-century American libertarian movement and a founder and leading theoretician of anarcho-capitalism.

witnesses and offer a defence. The formalities of a court action need not be strictly complied with in order for a proceeding to be considered a fair hearing.⁹⁴

This concept, which ensures procedural fairness, finds its origin in the Latin maxim *audi alteram partem*, meaning 'hear the other side', or more commonly, 'the right to be heard'. The right to be heard has been interpreted quite broadly, conferring on individuals a variety of procedural entitlements, including the right to be presumed innocent, the right to counsel, and the right to legal aid and assistance during trial.

The right to be presumed innocent presupposes that an accused should not be taken to have committed the offence, and thereby places the burden of proving it on the prosecution, or in other words, on his accusers. This aspect of the concept of fair hearing is constitutionally guaranteed and is set forth by the combination of Sections 8 and 307 of the Criminal Procedure Code, read with Section 395(2) of that Code.⁹⁵

Where the facts do not constitute an offence, the court shall acquit the accused and declare itself incompetent to proceed with the civil claim. (b) The same shall apply where the facts have not been proved, or where the facts, though proved, do not implicate the accused. (2) In case of doubt, the accused shall be acquitted. Mention of the benefit of the doubt shall be made in the judgment.

This right is one of the fabrics of every criminal trial and is universally recognised. Furthermore, the right to counsel and to remain silent has gained popular acceptance as the *Miranda* rule, which the United States Supreme Court recognised as a constitutional right in its 1966 decision in *Miranda v. Arizona*.⁹⁶ This rule requires that suspects be informed of their Fifth and Sixth Amendment rights prior to interrogation if their statements are to be used against them in court. This philosophy is captured under the Criminal Procedure Code in its Section 116 and other provisions dealing with trial, such as Section 366.⁹⁷

In addition to the above judicial guarantees for a fair trial, the State, as a duty-bearer, also has the duty to ensure that accused persons who are unrepresented and who wish to have a lawyer are given appropriate assistance under the legal aid scheme.

The second element of procedural fairness is derived from the Latin maxim *nemo iudex in sua propria causa debet esse*, meaning that no one should be a judge in his own case.

Quite apart from the requirement of being tried before an independent and impartial tribunal, the principle of openness or public hearing also underpins the notion of fair hearing. This idea

⁹⁴ W. Schweidler, *Human Rights and Natural Law: An Intercultural Philosophical Perspective* (Academia Verlag 2012) 10.

⁹⁵ Criminal Procedure Code (Cameroon), ss 8 and 307, read with s 395(2).

⁹⁶ *Miranda v. Arizona*, 384 US 436 (1966), decided 13 June 1966.

⁹⁷ Criminal Procedure Code (Cameroon), s 116, and other provisions dealing with trial, such as s 366.

is particularly embedded in the adage that justice should not only be done but be seen to be done, and that the public should bear witness to such proceedings. One of the fundamental principles in the administration of justice is that justice in the Republic of Cameroon shall be administered in public and judgment delivered in open court.⁹⁸ This is a procedural safeguard that reinforces the right of an accused not to be tried in fetters or under oppressive circumstances. This concept is captured under the Cameroon Criminal Procedure Code.⁹⁹ Section 302 of the Code stipulates that the hearing shall be conducted, and judgment delivered, in public. Although Section 302 makes provision for certain proceedings to be conducted in camera, or for the public hearing to be restricted, this arises only in limited circumstances and in the interest of the public, or in order to preserve the dignity of a party. It therefore operates as one of the pillars upholding the notion of a fair trial, especially in criminal cases.

The Criminal Procedure Code has been domesticated, and the Cameroon judiciary is alive to this principle of ensuring procedural fairness. The Code enjoins the Registrar of the court to communicate copies of any application filed to all concerned as soon as it is received. This enables the other parties to reply and be heard. This concept is therefore essential to the broader discourse on critically assessing the challenges to criminal justice in Cameroon and enhancing a fair, equal and expeditious trial.

IV. THE CONCEPT OF THE CRIMINAL JUSTICE SYSTEM IN CAMEROON

Legal systems, or families, are often the subject of comparative study. However, the principles of criminal procedure and good practice are almost universally accepted, as is evident in most legal systems. A legal system may be defined, in its narrow sense, as the legal rules and institutions governing a country. Thus, a criminal justice system presupposes those rules and institutions that deal with criminal matters. Examples of legal systems include the common law and the civil law, both of which are analogous to Cameroon as a bijural country. Various legal systems are often studied under comparative law with a view to ascertaining the major differences in concepts and notions, and to determining the similarities and dissimilarities of each system.

At the heart of every criminal justice system is the notion of equality of the parties before the courts. In order to examine this, this section seeks to answer the first research question, namely what is the notion of equality before the law in the criminal justice system of Cameroon, and thereby to respond to the first specific objective, namely to examine the notion of equality in

⁹⁸ Law No. 2006/015 of 29 December 2006 on Judicial Organisation (Cameroon), s 7, as amended.

⁹⁹ Law No. 2005/007 of 27 July 2005 to institute the Criminal Procedure Code (Cameroon), s 302.

the criminal justice system of Cameroon. The theoretical and conceptual frameworks that inform this section are the theory of justice as propounded by John Rawls and the concept of fair hearing, which underpins every legal system as a universal standard. Both are imperative, in that they illuminate the concept of equality, which is crucial to all the parties before every legal system, notwithstanding their historical culture.

The notion of a legal system and the concept of justice are intricately linked.¹⁰⁰ This connection is most readily understood within the context of the relationship between law and justice. The law invariably exists to ensure that justice prevails in society, whether through the court system or administrative channels.¹⁰¹ Justice is an essential ingredient of the legal system, in which the rule of law helps to enforce people's rights. While this link exists, the two precepts are not the same. This aspect of the study makes clear their salient peculiarities. In every legal system, therefore, there are sub-systems concerned with the various classifications of laws, perhaps between public law and private law, or between criminal law and civil law. It is in this sense that the notion of a criminal justice system is conceived as a system applying a distinct standard, different from a court system applying purely the rules and procedures of civil matters, together with the actors concerned with the administration of the criminal justice system in Cameroon.

A. The notion of a legal system

A legal system may be considered as comprising the laws made by the legislature, the judiciary, and the institutions, processes and personnel that contribute to the functioning and enforcement of these laws. With regard to legal traditions, or 'families' of legal systems around the world, there are different traditions of legal systems. A legal tradition reflects deep-rooted, historical attitudes about the nature of law, about the role of law in society and about the way law should be made, applied and studied.¹⁰² The two major legal families, or legal systems, are the common law and civil law systems. The civil law, also referred to as the continental legal system, is the oldest surviving legal tradition in the world, having originated in Roman law and later developed in continental Europe and around the world.¹⁰³ A key distinguishing feature of civil law is that it is a codified system of laws. Jurisdictions with civil law systems have continuously updated legal codes that specify all matters capable of being brought before a court, the

¹⁰⁰ Anthony D'Amato, 'On the Connection between Law and Justice' (2011) Northwestern University School of Law Faculty Working Papers, Paper 2.

¹⁰¹ C. E. W. Anyangwe, *The Administration of Justice in a Bijural Country: The United Republic of Cameroon* (ProQuest 2018).

¹⁰² William Tetley, 'Mixed Jurisdictions: Common Law v. Civil Law (Codified and Uncodified)' (2000) 60 LOUISIANA LAW REVIEW 677-738.

¹⁰³ Examples of civil law countries include France and its former colonies, Germany and Japan.

applicable procedure and the appropriate punishment for each offence.¹⁰⁴ These codes distinguish between different categories of law. In a civil law system, the judge's role is to establish the facts of the case and to apply the provisions of the applicable code. Although the judge often brings the formal charges, investigates the matter and decides the case, he or she works within a framework established by a comprehensive, codified set of laws. The judge's decision is consequently less crucial in shaping the civil law than the decisions of the legislators and legal scholars who draft and interpret the codes.

The common law system, or common law legal tradition, had its roots in developments in England in the eleventh century.¹⁰⁵ In common law systems, legal principles are to be found in the decisions of judges adjudicating individual cases. The common law is usually more detailed than the civil law, and it operates on the basis of binding precedent, so that judges in a particular case must follow the decisions of judges in earlier similar cases. These precedents are maintained over time through the records of the courts, as well as historically documented in collections of case law known as year books or law reports. The precedents to be applied in each new case are determined by the presiding judge.

Modern legal systems comprise a plethora of laws, procedures and institutions to give effect to these laws.¹⁰⁶ With respect to laws, the two broad families of law, civil and common, may also contain within them various categories, including administrative law, the law of tort, constitutional law, mercantile law, criminal law, the law of succession and human rights law, among others.

In addition to laws, a number of procedures complement them. These procedures often dictate the way legal cultures interpret and conceive the law. The institutions are also of great importance in a legal system. They vary depending on the legal system, but often consist of courts and tribunals, the police and other law enforcement agents, the penitentiary administration and the prosecuting administration, among others. These institutions are often staffed by experts implicated in the machinery of justice, including judges, lawyers, prosecutors, bailiffs, solicitors and prison wardens. In short, contemporary legal systems, including the Cameroonian legal system, comprise the totality of laws, procedures, institutions and the human actors staffing those institutions.

B. Understanding the notion of the criminal justice system

¹⁰⁴ See the French Civil Code (Code Civil) of 21 March 1804.

¹⁰⁵ William Blackstone, *Commentaries on the Laws of England* (Oxford University Press).

¹⁰⁶ John C. P. Goldberg, Henry E. Smith and P. G. Turner (eds), *Legal Systems and Legal Institutions* (Cambridge University Press 2019).

The criminal justice system is a complex and multifaceted system that plays a crucial role in maintaining law and order in society. In the twenty-first century, understanding the anatomy of crime and the intricacies of the criminal justice system is more important than ever.¹⁰⁷ With evolving societal, technological and cultural changes, the criminal justice system faces new challenges and opportunities that require comprehensive understanding and innovative approaches. One of the key aspects of understanding the criminal justice system in the twenty-first century is recognising the various perspectives it seeks to regulate.¹⁰⁸ There is generally disagreement as to the real purpose of a criminal justice system. Some scholars believe that its purpose is to control and punish offenders and to protect society, while others look to the idea of rehabilitation as the purpose of the system.¹⁰⁹ Still others believe that the purpose of this unique system is to ensure that all accused persons are treated fairly and to restore justice to the victims of offences. This aspect of the study identifies the major perspectives on the purpose of the criminal justice system. While each is presented as a distinct perspective, they are not necessarily mutually exclusive. The criminal justice system is comprised of four components, namely legislation, law enforcement, courts and corrections, each working both independently and collaboratively to maintain a sense of law and order, justice and peace within communities, and for the people who participate in the criminal justice system.

i. Law enforcement

As one of the main components of the criminal justice system, law enforcement represents the first interaction people will have with the system.¹¹⁰ Law enforcement is designed to uphold order in society, protect citizens and uphold the law at the national, regional and international levels. At every level, law enforcement is responsible for preventing, investigating and responding to criminal activity, and for assisting people who may have been the victims of a crime.¹¹¹

ii. The courts

The courts make up the judicial system, one of the three main components of the criminal justice system. The courts are designed to ensure that people accused of a crime receive a fair and speedy trial and are found guilty or innocent in a court of law. The judicial process involves

¹⁰⁷ C. Lucas, 'The Anatomy of Crime: Understanding Criminal Justice in the 21st Century' (2023) ResearchGate.

¹⁰⁸ 'The Criminal Justice System: Towards the 21st Century' (1994) 1 DUKE JOURNAL OF GENDER LAW AND POLICY 39.

¹⁰⁹ B. Hudson, *Understanding Justice: An Introduction to Ideas, Perspectives and Controversies in Modern Penal Theory* (Open University Press 1996).

¹¹⁰ George T. Patterson, *Introduction to Evidence-Based Practices and Principles in the Criminal Justice System* (Universiteitsbibliotheek Gent 2018) 7.

¹¹¹ BRYANT & STRATTON COLLEGE, 'The Components of the Criminal Justice System' (B&SC Blog Team 2024).

many different people and professions, and can be found in various settings across the country, whether at the trial courts, namely the Courts of First Instance and the High Court, at the appellate courts, namely the Court of Appeal and the Supreme Court, or at the courts of special jurisdiction, namely the Military Tribunal and the Special Criminal Court.

iii. Correctional centres

The correctional centres, which fall under the penitentiary administration, focus on ensuring public safety by housing and rehabilitating people convicted of crimes. Corrections include facilities such as jails and prisons, support services for incarcerated individuals such as substance-abuse counselling and access to education, and liaison services for people who are released, such as probation and parole officers.

Primarily, the correctional centres are designed to carry out the sentences handed down in court. By confining and rehabilitating offenders, the correctional system aims to keep the public safe and to prevent convicted persons from returning to incarceration.¹¹² These facilities include jails, prisons and penitentiaries, which have different levels of security depending on who is incarcerated there. Some are minimum-security, while others are maximum-security, and in the most severe cases, super-maximum-security.¹¹³ These facilities are critical in carrying out the will of the courts and keeping people safe from criminals.

iv. The crime control perspective

Some schools of thought view the criminal justice system as an instrument of crime control.¹¹⁴ This is the popular view, which proceeds on the foundation that the role of the criminal justice system is to prevent crime by punishing offenders swiftly and harshly. This conception, referred to as the crime control perspective, holds that, when punishment is less severe, weak or avoided, offenders do not fear apprehension and continue to commit crimes. In other words, individuals are not deterred from committing crimes, as they may do so and escape with impunity. As a result, society is left unprotected and crime increases. For a system operating under this perspective to function properly, effective law enforcement, long sentences and strict mandatory punishment are required. The Cameroonian legislature is perhaps an eloquent observer of this view, given that, despite the human rights instruments ratified by the country, the death penalty was retained in the 2016 revision of the Penal Code.¹¹⁵ This view has fuelled the construction

¹¹² Michael Braswell and others, *Human Relations and Corrections* (2024).

¹¹³ M. Daniel, 'Supermax Prisons' (2013) 12(4) *CRIMINOLOGY & PUBLIC POLICY* (Florida State University).

¹¹⁴ These include Durkheim's emphasis on the moral effects of punishment, Foucault's view that disciplinary punishments operate as power-knowledge mechanisms within broader strategies of domination, the cultural approach of Robert Elias, and the Marxist perspective.

¹¹⁵ Penal Code (Cameroon), ss 22 and 23.

of detention facilities and prisons throughout the country and has led to the recruitment of law enforcement officers and criminal justice personnel. This approach is not cost-saving, as the government tends to build up infrastructure.

v. The rehabilitation perspective

Quite apart from the proponents of the crime control perspective, another perspective holds that one of the purposes of a criminal justice system is to rehabilitate offenders. This rehabilitation perspective asserts that the role of the criminal justice system is not only to punish but also to care for and treat those who are delinquent. The rehabilitative perspective is based on the notion that offending is the result of blocked or unavailable opportunities, such as employment, adequate education and funding, and the absence of positive adult role models. In essence, those who commit crimes are victims or products of social inequality. This school contends that, when individuals are given opportunities to achieve and support themselves through lawful means, they will do so and avoid the consequences of committing crimes. This perspective rests on the underlying belief that people commit crimes because it is their only option. It should, however, be reiterated that this is a post-conviction and custodial perspective aimed at reforming offenders before they are released from detention.¹¹⁶ Thus, the role of the criminal justice system is to provide individuals with the means to improve their lives through education, training and social skills, which are necessary tools by which they can support themselves in legitimate ways once released.¹¹⁷

vi. The due process perspective

Another perspective views the criminal justice system from the standpoint of observing the due process of law. The due process perspective focuses on the criminal justice system's purpose of ensuring that everyone accused of having committed an offence is treated fairly and equally. The basis of the due process requirement is embodied in the Constitution of almost all civilised countries, including Cameroon.¹¹⁸ The due process provisions in the Constitution of Cameroon exist to protect citizens accused of crimes from capricious detention and denial of freedom, from inequitable use of capital punishment, and from the taking of property by the government as a result of a criminal or civil proceeding. Indeed, the preamble to the Constitution provides

¹¹⁶ Moss and others, 'When Do People Value Rehabilitation and Restorative Justice over the Punishment of Offenders?' (2019) VICTIMS & OFFENDERS.

¹¹⁷ Atkin-Plunk, 'Should All Violent Offenders Be Treated Equally? Perceptions of Punishment and Rehabilitation for Violent Offenders with Varying Attributes' (2020) VICTIMS & OFFENDERS.

¹¹⁸ See the preamble to the 1996 Constitution of Cameroon, as amended.

equal guarantees before the law to all citizens without distinction. This fair trial safeguard is particularly embedded under international law and has been duly ratified by Cameroon.¹¹⁹

In contrast with the above perspective is the restorative perspective, which seeks to demonstrate that the appropriate role of the criminal justice system is to repair the harm caused by criminal behaviour. This perspective holds that the criminal justice system should operate not through punishment but through cooperation among victims, offenders and members of the community.¹²⁰ Whereas other perspectives tend to focus on punishing the offender and satisfying legal principles, this approach focuses on compensating the victims of the offence. This is the spirit of the law under Section 385 of the Criminal Procedure Code, which provides for victims of offences to make oral or written claims before the court in the determination of a criminal charge, provided that the claims are the direct result of the offence being tried.¹²¹ This perspective compels offenders to take responsibility for their actions and to pay for them through agreed means. The outcome may include payment, restitution, repairing damaged property or serving the community.¹²²

In conclusion, it is difficult to embark on an all-encompassing account of the features of the criminal justice system relating to crime and punishment, but it is worth noting that all of the foregoing is what constitutes a criminal justice system from the Cameroonian perspective. The criminal justice system is therefore one that deters offenders from committing crimes and protects victims and provides them with adequate compensation once their rights have been interfered with, in what may generally be referred to as *restitutio in integrum*.

V. PRINCIPLES RELEVANT TO THE ENJOYMENT OF EQUALITY IN THE CAMEROON CRIMINAL JUSTICE SYSTEM

There are several principles that underlie the administration of criminal justice and that are of universal application. These principles cut across legal systems irrespective of their traditions or practice. In principle, a crime is generally committed against society at large, and every state or nation has a strong interest in every criminal matter. It is generally the preserve and policy of every state or government to investigate and prosecute offences, and to ensure that those found guilty serve their respective terms of imprisonment. This is generally done on the basis of internationally established principles. These principles, including fair and public trial, equality

¹¹⁹ International Covenant on Civil and Political Rights (1966), art 14.

¹²⁰ Y. Sangroula, 'Use of Informal Justice Mechanisms in Criminal Justice System: Critical Observation of Principles, Theories and Prospects' (2016) 5(3) JOURNAL OF CIVIL AND LEGAL SCIENCES 1-13.

¹²¹ See also Criminal Procedure Code (Cameroon), ss 59 and 61.

¹²² For community service, see Penal Code (Cameroon), s 26.

before the law, the non-retrospectivity of the law and the presumption of innocence, serve as important standards in the criminal justice system.

A. The principle of the presumption of innocence

The preamble to the Cameroon Constitution provides equal guarantees before the law to all citizens without distinction. This fair trial safeguard is particularly embedded, as spelt out in the Criminal Procedure Code of Cameroon¹²³ and under international law, and has been duly ratified by Cameroon.¹²⁴ In all criminal cases, the cardinal principle of the presumption of innocence prevails, especially as a guarantee of a fair trial, as it affords both parties the opportunity to present their cases, as provided in Section 366 of the Criminal Procedure Code: (1) If the court finds that there is evidence to warrant putting the accused to his defence, it shall put the following three options to him:

That he may make a statement in his defence not on oath; that he may say nothing; or that he may give evidence on oath as a witness.

The presiding magistrate shall inform the accused that, where he opts to say nothing or to give evidence not on oath, he shall not be asked any questions, and that, where he opts to give evidence on oath, the prosecution, the civil party and the court may ask him questions. The presiding magistrate shall further warn the accused that evidence given on oath shall have greater probative value. The presiding magistrate shall ask the accused whether he has any witnesses he wishes to call or other evidence to adduce. If the court fails to comply with the provisions of Section 366, it shall render the trial and the judgment null and void.¹²⁵ If the accused pleads not guilty to some counts of the charge but guilty to others,¹²⁶ the court shall proceed as if he had pleaded not guilty to all the counts. An accused who pleads not guilty may, at any stage of the trial, change his mind and plead guilty.¹²⁷

The idea of the presumption of innocence has attained the status of customary international law, or *jus cogens*, from which no derogation may be made. The presumption of innocence is widely, if not universally, recognised as one of the central principles in every criminal justice system, as evidenced by its position in almost all international and regional human rights instruments as a standard of fair hearing.¹²⁸ This right is not only established under international law, but has

¹²³ Criminal Procedure Code (Cameroon), s 8.

¹²⁴ See Constitution of Cameroon, art 45.

¹²⁵ Criminal Procedure Code (Cameroon), s 367.

¹²⁶ *ibid* s 368.

¹²⁷ *ibid* s 369.

¹²⁸ Art 6(2) ECHR; art 48(1) EU Charter of Fundamental Rights; art 11(1) Universal Declaration of Human Rights; art 14(2) International Covenant on Civil and Political Rights (1966); art 7(1)(c) African Charter on Human and Peoples' Rights.

also gained constitutional acceptance in Cameroon.¹²⁹ Indeed, the Criminal Procedure Code, which is of general application to all criminal proceedings in Cameroon, further adds impetus to this constitutional adherence in its Section 8, which states that:

Any person suspected of having committed an offence shall be presumed innocent until his guilt has been legally established in the course of a trial where he shall be given all necessary guarantees for his defence. (2) The presumption of innocence shall apply to every suspect, defendant and accused.¹³⁰

The application of this presumption by virtue of Section 8(2) presupposes that, at all levels of the criminal process, including during investigation, preliminary inquiry or at trial, the person must be accorded this safeguard.

The concept of the presumption of innocence imposes a strong burden on the prosecution to establish all the material ingredients that constitute the offence or offences for which an accused is standing trial. The Criminal Procedure Code states that the burden of proof shall lie upon the party who institutes a criminal action.¹³¹ Thus, it is not for the accused to prove his innocence, but for his accusers to do so. This is certainly in keeping with the trite principle that he who alleges must prove. It has been held in *Egbe v. The State*¹³² that, once an essential ingredient of an offence has not been established, this must automatically lead to the acquittal of the accused. In discharging this legal burden, the prosecution is again enjoined by law to establish both the mens rea¹³³ and the actus reus¹³⁴ of the offence.

Moreover, the burden of proof is not only a matter of Section 307 of the Criminal Procedure Code, as to who bears the legal burden. It also behoves the prosecution to discharge this burden to the standard contemplated by the legislator.¹³⁵

The above provision appears to have imposed a higher standard of proof than that provided under Section 137 of the Criminal Procedure Ordinance,¹³⁶ which requires proof beyond reasonable doubt. Under the present dispensation, proof beyond doubt entails a higher standard, in the opinion of this researcher, because, in case of any doubt, notwithstanding that it is reasonable, it must be resolved in favour of the accused.

¹²⁹ See the preamble to Law No. 96/06 of 18 January 1996 to amend the Constitution of 2 June 1972 (Cameroon), read with art 65.

¹³⁰ Law No. 2005/007 of 27 July 2005 to institute the Criminal Procedure Code (Cameroon).

¹³¹ Criminal Procedure Code (Cameroon), s 307.

¹³² *Egbe v. The State* (1974) 12 WACA.

¹³³ The mental elements that constitute the commission of a crime.

¹³⁴ The physical elements that constitute the commission of a crime.

¹³⁵ See Criminal Procedure Code (Cameroon), s 395(2), on proof beyond reasonable doubt.

¹³⁶ Criminal Procedure Ordinance, Cap 43 of the 1958 Laws of the Federation of Nigeria.

This guarantee is therefore conspicuously recognised and elaborated under the Cameroonian criminal justice system.

B. The principle of legality

The principle may be succinctly expressed in the Latin phrases *nullum crimen, nulla poena sine praevia lege poenali, nulla poena sine lege* and *nullum crimen sine lege*.¹³⁷ The principle of legality in criminal law is fundamental, in that it justifies the legality of prosecuting and punishing offenders. This principle proceeds on the basis that a person should not be tried or prosecuted for conduct that had not been defined as a crime before its commission. The principle of legality is the legal ideal that requires all law to be clear, ascertainable and non-retrospective. It requires decision-makers to resolve disputes by applying legal rules that have been declared beforehand, and not to alter the legal situation retrospectively by discretionary departures from established law. It is closely related to legal formalism and the rule of law, and can be traced to the writings of Feuerbach,¹³⁸ Dicey¹³⁹ and Montesquieu.¹⁴⁰ The principle has particular relevance in criminal and administrative law. In criminal law, it can be seen in the general prohibition on the imposition of criminal sanctions for acts or omissions that were not criminal at the time of their commission or omission.

The principle of legality in criminal law often proceeds on the idea that offences are generally defined by legal provisions before their enforcement. Multiple viewpoints have been expressed regarding the principle *nulla poena sine lege*,¹⁴¹ that is, that there exists no punishment without a pre-existing penal law.¹⁴² Some scholars¹⁴³ advocate the inviolability of this maxim because it safeguards personal freedom, an opportunity to do everything not prohibited by law. The Cameroon Constitution, in upholding this principle, provides in its preamble that:

The law may not have retrospective effect. No person may be judged and punished except by virtue of a law enacted and published before the offence was committed.

This in essence echoes the principle of the non-retrospectivity of criminal law as ordained under the Penal Code.¹⁴⁴ Section 3 states that:

¹³⁷ 'No crime without law, no punishment without law.'

¹³⁸ Ludwig Feuerbach, *The Essence of Religion* (1839).

¹³⁹ A. V. Dicey, *An Introduction to the Study of the Law of the Constitution* (Macmillan 1885) 107.

¹⁴⁰ Montesquieu, *The Spirit of Laws* (1748).

¹⁴¹ That there can exist no punishment without a pre-existing penal law.

¹⁴² E. Tikhonravov, 'Nulla Poena Sine Lege in Continental Criminal Law: Historical and Theoretical Analysis' (2019) 13 CRIMINAL LAW AND PHILOSOPHY 215-224.

¹⁴³ The maxim is attributed to Paul Johann Anselm Ritter von Feuerbach, who incorporated it into the Bavarian Criminal Code of 1813.

¹⁴⁴ Penal Code (Cameroon), s 3.

No criminal law shall apply to acts or omissions committed before its coming into force, or in respect of which judgment has not been delivered before its repeal or expiry.

The cardinal principle of *nullum crimen sine lege, nulla poena sine lege* ('no crime without law, no punishment without law') has often operated as one of the most fundamental defences in criminal prosecution. Thus, offences must be defined and classified beforehand, and the categories of those responsible for such offences must be clearly established by the same instruments.

The principle is also thought to be violated when the sanctions for a particular crime are increased with retrospective effect. As such, advocates of the principle are normally opposed to discretionary powers. The Cameroonian Penal Code provides in a pertinent section that:

No penalty or measure may be imposed unless provided by law and except in respect of an offence lawfully defined.¹⁴⁵

An exception to this principle exists in situations of less severe punishment. The criminal law can apply retrospectively where a new law repeals or abrogates an existing law, or imposes a lesser punishment than the previous law. This is captured under Section 4 of the Penal Code, which provides that:

(1) A new provision of criminal law shall, if less severe, apply to any offence in respect of which judgment has not been delivered before its coming into force. (2) Where the new provision is more severe, the old law shall continue to apply to offences committed before the new provision comes into force.

The principle is therefore ideal, in that it assures everyone of some clarity and requires all laws to be ascertainable and non-retrospective.

C. The principle of public hearing

The principle of public hearing entails that all persons are equal before the courts and tribunals, and that everyone has the right to a fair and public hearing before a competent, independent and impartial court or tribunal established by law.¹⁴⁶ It may also be described as an open gathering of judicial officials and citizens, in which citizens are permitted to offer comments, but officials are not obliged to act on them or, typically, even to respond publicly.

This principle was aptly captured by the Trial Chamber of the International Criminal Tribunal for the former Yugoslavia, which stated that, over and above the reasons that public proceedings

¹⁴⁵ *ibid* s 17.

¹⁴⁶ CENTRE FOR CIVIL AND POLITICAL RIGHTS, *The International Covenant on Civil and Political Rights (ICCPR) Article 14: Right to Equality Before Courts and Tribunals and to a Fair Trial: Factsheets for Legal Practitioners and Civil Society Actors* (February 2024).

facilitate public knowledge and understanding and may have a general deterrent effect, the public should have the opportunity to assess the fairness of the proceedings.¹⁴⁷

The courts are a creation of the law, and their jurisdiction is created by the law or charter creating them. This is an essential safeguard for the proper dispensation of justice in every civilised society. The notion of a 'tribunal' in Article 14, paragraph 1, of the International Covenant on Civil and Political Rights (1966) designates a body,¹⁴⁸ regardless of its denomination, that is established by law, is independent of the executive and legislative branches of government or enjoys, in specific cases, judicial independence in deciding legal matters in proceedings that are judicial in nature. Article 14, paragraph 1, second sentence, guarantees access to such tribunals to all who have criminal charges brought against them. This right cannot be limited, and any criminal conviction by a body not constituting a tribunal is incompatible with this provision.¹⁴⁹ Similarly, whenever rights and obligations in a suit at law are determined, this must be done, at least at one stage of the proceedings, by a tribunal within the meaning of this sentence.

The failure of a State party to establish a competent tribunal to determine such rights and obligations, or to allow access to such a tribunal in specific cases, would amount to a violation of Article 14 if such limitations are not based on domestic legislation, are not necessary to pursue legitimate aims such as the proper administration of justice, are not based on exceptions from jurisdiction deriving from international law, such as immunities, or if the access left to an individual would be limited to an extent that would undermine the very essence of the right. The requirement of competence, independence and impartiality of a tribunal within the meaning of Article 14, paragraph 1, is an absolute right that is not subject to any exception.¹⁵⁰ The African Charter on Human and Peoples' Rights ordains, in its Article 7(1), that:

Every individual shall have the right to have his cause heard. This comprises: the right to an appeal to competent national organs against acts violating his fundamental rights as recognised and guaranteed by conventions, laws, regulations and customs in force; the right to be presumed innocent until proved guilty by a competent court or tribunal; the right to defence, including the right to be defended by counsel of his choice; and the right to be tried within a reasonable time by an impartial court or tribunal.

This guarantee is an encapsulation of all the fundamental guarantees of a fair and impartial trial. It requires that the courts hold a trial without any partiality and in public. This right, established

¹⁴⁷ See May and Wierda (n 27) 281, referring to the view expressed in *Prosecutor v. Kunarac (Foca)* (Order on Defence Motion Pursuant to Rule 79) IT-96-23 & 23/1-T (22 March 2000).

¹⁴⁸ International Covenant on Civil and Political Rights (1966).

¹⁴⁹ UNITED NATIONS HUMAN RIGHTS COMMITTEE, General Comment No. 32, Article 14: Right to Equality Before Courts and Tribunals and to a Fair Trial (23 August 2007) UN Doc CCPR/C/GC/32.

¹⁵⁰ *Gonzalez del Rio v. Peru*, Communication No. 263/1987, para 5.2.

by law, is guaranteed, according to the second sentence of Article 14, paragraph 1, of the International Covenant on Civil and Political Rights (1966), in cases regarding the determination of criminal charges against individuals or of their rights and obligations in a suit at law.¹⁵¹ Criminal charges relate in principle to acts declared punishable under domestic criminal law. The notion may also extend to acts that are criminal in nature with sanctions that, regardless of their qualification in domestic law, must be regarded as penal because of their purpose, character or severity.¹⁵²

In enforcing this right, the legislator laid down the principle that justice shall be administered in public and judgment delivered in open court.¹⁵³ In addition, the court may, of its own motion or on the application of one or more of the parties, order a full or partial hearing in camera of a given matter where any publicity may undermine state security, public order or morality. In such a case, the hearing shall not be open to the public.¹⁵⁴

The above principle is well expressed under the Criminal Procedure Code in its Section 302, which provides:

(1) The hearing shall be conducted in public. However, when a public hearing is repugnant to public order or morality, the court may, at any time, of its own motion or on the application of one of the interested parties and after the submissions of the Legal Department, rule either that the proceedings or any part thereof shall be held in camera, or that the public hearing shall be restricted. Mention of this fact shall be made in the judgment. (2) In every case, judgment shall always be delivered in public.

One of the remedies open to a litigant who feels that the conduct of a trial judge, or the judge's affinity with one of the parties, places the judge in a compromising situation is for such a magistrate to be recused.¹⁵⁵ The Criminal Procedure Code gives a trial magistrate the leverage to abstain from hearing any case where he is affected by any of the circumstances set out in Section 591 of the Code, which provides that:

Any magistrate of the bench or a judge may be challenged for any of the following reasons: (a) where he or his spouse is a relative, guardian or relative by marriage up to the degree of uncle, nephew, first cousin or the child of the first cousin of one of the parties; (b) where he or his spouse is the employer, employee, next of kin, donee, creditor, debtor or companion of one of the parties, or a director of an enterprise or company involved in the case; (c) where he has previously taken part in the proceedings, or has been an arbitrator, counsel or witness; (d) where he or his spouse

¹⁵¹ *ibid.*

¹⁵² UNITED NATIONS HUMAN RIGHTS COMMITTEE, General Comment No. 32, Article 14: Right to Equality Before Courts and Tribunals and to a Fair Trial (2007) UN Doc CCPR/C/GC/32.

¹⁵³ Law No. 2006/015 of 29 December 2006 on Judicial Organisation (Cameroon), s 6, as well as Criminal Procedure Code (Cameroon), s 720.

¹⁵⁴ Law No. 2006/015 of 29 December 2006 on Judicial Organisation (Cameroon), as amended.

¹⁵⁵ Criminal Procedure Code (Cameroon), s 591 and following.

is a party in a case that is to be tried by one of the parties; (e) where he or his spouse is involved in any incident tending to show friendship or hatred towards any of the parties and likely to cast doubt on his impartiality.¹⁵⁶

The above provision makes lucid the intention of the legislature to protect the sanctity and impartiality of the courts.

D. The right to cross-examination

The examination of a witness by a party other than the party who called him is known as cross-examination.¹⁵⁷ Cross-examination is a fundamental requirement in every criminal suit, open to all the parties to test the veracity, authenticity and truth of the opponent's case. This right affords the parties an opportunity to test the truth and veracity of the opponent's evidence. This fair trial guarantee is express under the Criminal Procedure Code and is linked to the right to be heard. The examination of witnesses in criminal cases is governed by Section 332 of the Criminal Procedure Code, which provides:

In the course of examination-in-chief, the witness shall be invited to say what he knows about the facts of the case. The aim of cross-examination shall be twofold: to weaken, contradict or destroy the case of the opponent; and to obtain from the opponent's witness statements favourable to the case of the party cross-examining.

Cross-examination may not be limited to the facts to which the witness testified during his examination-in-chief.¹⁵⁸ A trial in which the accused is not accorded an opportunity to cross-examine the evidence of the other parties is prejudicial to the rights of the defence, as in *Obasse Elvis Motoko v. The People of Cameroon*,¹⁵⁹ in which Mbeng J. held that cross-examination in the accusatorial system is a pillar that should not be overlooked, as its omission may lead to gross irregularities during the trial.

E. The right to appeal

This safeguard presupposes that everyone should be entitled to an opportunity to seek redress in a superior jurisdiction, so that his case may be reviewed if he is not satisfied with the decision of the trial court. Under the Criminal Procedure Code, appeals must be filed within ten days from the date following the day on which the judgment was delivered.¹⁶⁰ Thus, appeals filed after the statutory time limit prescribed under Section 440 of the Criminal Procedure Code will be rejected by the Court of Appeal as inadmissible.

¹⁵⁶ *ibid.*

¹⁵⁷ See Criminal Procedure Code (Cameroon), s 331(2).

¹⁵⁸ Criminal Procedure Code (Cameroon), s 332(4).

¹⁵⁹ T. A. Nzouedja, *Principles and Practice of Criminal Litigation in Cameroon* (Optimist Press 2022) 176, citing Suit No. CASWR/36c/2012.

¹⁶⁰ See Criminal Procedure Code (Cameroon), s 440(1).

As for interlocutory appeals, Section 271 of the Criminal Procedure Code stipulates the form and place in which such appeals may be lodged, and provides that the time limit for appeal is forty-eight hours, with effect from the day following the date of service of the ruling.

An appeal has been defined essentially as a complaint to a superior court of an injustice done by an inferior one,¹⁶¹ or, put another way, as a challenge to court decisions, used here generally to include judgments, orders and rulings.¹⁶² Article 14, paragraph 5, of the International Covenant on Civil and Political Rights provides that anyone convicted of a crime shall have the right to have their conviction and sentence reviewed by a higher tribunal according to law. As the different language versions (crime, infraction, delito) show, the guarantee is not confined to the most serious offences. The expression 'according to law' in this provision is not intended to leave the very existence of the right of review to the discretion of the States parties, since this right is recognised by the Covenant, and not merely by domestic law. The term rather relates to the modalities by which the review by a higher tribunal is to be carried out,¹⁶³ as well as to which court is responsible for carrying out a review in accordance with the Covenant. Article 14, paragraph 5, does not require States parties to provide for several instances of appeal.¹⁶⁴ However, the reference to domestic law in this provision is to be interpreted to mean that, if domestic law provides for further instances of appeal, the convicted person must have effective access to each of them.

A party in a criminal action who is dissatisfied with the judgment of the lower court has a constitutional right to appeal against the decision.¹⁶⁵ This right of appeal, which is available to both the accused and the prosecution, is not limited. The appeal may be on a point of law or of fact, or against the sentence, or on any complaint as the appellant or his counsel deems appropriate.

The law requires every judge to remind the parties, after judgment, of their right to appeal within ten days from the date following the day on which the judgment was delivered.¹⁶⁶ It is of fundamental importance to note that criminal appeals must be brought within the prescribed time in order to be admissible. Thus, Section 441(1) states that:

To be admissible, an appeal shall be lodged at the registry of the court that delivered the judgment, either by a notice filed therein, or by ordinary mail, or by registered

¹⁶¹ J. Saunders, *Mozley & Whiteley's Law Dictionary* (Butterworths 1977) 22.

¹⁶² Michael A. Yanou, *Criminal Law and Procedure in Cameroon* (Excel Publishers 2014) 178.

¹⁶³ *Gomariz Valera v. Spain*, Communication No. 1095/2002, para 7.1; *Salgar de Montejó v. Colombia*, Communication No. 64/1979, para 10.4.

¹⁶⁴ *Rouse v. Philippines*, Communication No. 1089/2002, para 7.6.

¹⁶⁵ See the preamble to the 1996 Constitution of Cameroon.

¹⁶⁶ Criminal Procedure Code (Cameroon), s 399.

letter with acknowledgment of receipt, or by telegram against a receipt, or by any other means with written proof and a precise date, addressed to the Registrar-in-Chief of that court.

This provision is foundational, as an appellant who ignores it does so at his own peril, since such a notice of appeal would be dismissed as grossly incompetent.¹⁶⁷ Grosso modo, the Cameroonian criminal justice system upholds these rights.

F. Equality before the law

This is another cardinal principle of the criminal justice system, and its basis is founded on the non-discriminatory provisions of the Constitution, as complemented by provisions found in the Penal Code and the Criminal Procedure Code. This principle is addressed extensively in the subsequent sections.

VI. CONCLUSION

The principle of equality remains at the bedrock of human rights discourse. It is widely affirmed under universal and regional human rights jurisprudence. Philosophically, the principle is embedded in the works of prominent ancient philosophers such as Aristotle, John Locke, Thomas Aquinas and Cicero, among others. In the same vein, the principle has received universal acclamation from a pragmatic perspective. It is on this basis that this paper has sought to assess the extent to which the principle is respected by states, taking the Cameroonian situation as an example.

¹⁶⁷ See *Ndaka Gabriel v. National Social Insurance Fund*, Suit No. CASWR/c9/2002 (unreported).