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Challenges in the Cameroonian Criminal Justice System: The Criminal Procedure Code and Judicial Independence in Perspective

SUMELONG HENRY AWASUME[1]

ABSTRACT

This article examines the challenges faced by Cameroonian Criminal Justice System the spectrum of the Criminal Procedure Code and Judicial Independence. It specifically appraises the road the Criminal Procedure Code did not follow and how judicial independence is stifled. The article focuses on the main difficulties plaguing the Cameroonian Criminal Justice System such as challenges under the Criminal Procedure Code (CPC) prior to trial touching on sensitive aspects like judicial police investigations and Preliminary Inquiry. Legal hurdles during criminal trial itself such as the notion of a charge, the tendering of documents in the absence of witnesses, unbailable offences and the presumption of innocence, the time limit to determine criminal matters, amendment of a criminal charge in the course of a trial. Challenges under the CPC with Appeals, extension of time and admissibility of Appeals, appeals and enforcement of any lower court's decision. Finally, the Independence of the judiciary and interference by the executives. The paper adopts qualitative analyses of legal doctrines, statutes, and judicial precedents and views from scholars to appraise the challenges inherent in the Cameroonian Criminal Justice system. The paper recommends that a new dimension in addressing the challenges is needed by revisiting the Criminal Procedure Code and making amends of the issues raised by the paper.

***Keywords**: Challenges; Criminal Justice, Judicial Independence.*

I. INTRODUCTION

Cameroon is a bi-jural country having the common law system which obtains in the two English-speaking Regions of the North West and South West and the civil law system which is practiced in the eight French-speaking Regions.[2] Not until the adoption of the Criminal

[1] Author is a Ph.D Research Fellow, Department of English Law, Faculty of Laws and Political Science, University of Buea & Barrister at Law and Managing Partner of Inglis & Sumelong Law Firm Buea.

[2] Section 3(3) of Law No. 2019/024 of 24 December 2019 bill to institute the general code of regional and local authorities recognizes the common law as a separate system of law in Cameroon, even though its existence has been a historical fact.

Procedure Code[3] of Cameroon that a uniform law came into force to harmonize the procedures before the law courts in criminal matters, both systems use to apply differing pieces of legislations in criminal matters.[4] The Criminal Procedure Code which entered into force on the 1st day of January 2007 brought about some novelty in the application of the law in criminal cases in both the civil and the common law jurisdictions of the country. It should be stated that the Criminal Procedure Code is of general application except where there is a provision to the contrary as provided in the Code of Military Justice[5] or any special law.[6] Complementary to the Criminal Procedure Code (CPC) is the Penal Code[7] and Law on Judicial Organization which creates and determines the various criminal courts sitting as courts of original jurisdictions as well as courts with special and appellate jurisdictions. [8] The Cameroonian criminal justice system is therefore established by the combination of both general and special laws creating ordinary jurisdictions and special jurisdictions for trying particular offenders.

The ordinary law courts are the High Court and the Court of First Instance (Magistrates' Court) which are courts with original jurisdiction sitting at first instance to try offences. The High Court has the competence to try felonies and related misdemeanors,[9] while the Court of First Instance has jurisdiction over cases of misdemeanors and related simple offences.[10] However, Section 709 as read with Section 713 gives the Court of First Instance a special jurisdiction to try offences committed by minors aged more than ten (10) years but less than eighteen (18) years. This competence can only be exercised in cases of juvenile delinquency where there are no accomplices or co-offenders who are adults.[11] The courts with special jurisdictions sitting in

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[3] Law No.2005/007 of the 27/07/2005 to lay down the Criminal Procedure Code of Cameroon

[4] In the French-speaking regions, the applicable laws included: the 'ordonnance du 14 fevrier 1838 portant Code d'Instruction Criminell'; the 'loi du 20 mai 1863 sur I'instruction des flagrants delit'; the 'loi du 22 juillet 1867 relative a la contrainte par corps'; the 'decret du 30 novembre 1928 instituant les jurisdictions speciales pour les mineurs'; the 'decret du 26 fevrier 1931 sur l'instruction prealable'; the 'decre du 2 septembre 1954 relatif au casier judiciare'; the 'arrete du 20aut 1955 fixant le taux de consignation d'aliments sur l'execution de la contrainte par corps' etc., while in the English-Speaking regions the following texts were applicable; the provision of the Criminal Procedure Ordinance (Cap 43 of the Laws of Nigeria 1958); the Evidence Ordinance (Cap. 62 of the Laws of Nigeria 1958) as regards criminal trials; The Children and Young Persons Ordinance (Cap 32 of the Laws of Nigeria 1958); The Prison Ordinance (Cap159 of the Laws of Nigeria 1958); The Provisions of the Southern Cameroons High Court Law 1955 as regards criminal trials; The provisions of The Magistrates' Courts (Southern Cameroons) Law 1955, etc.

[5] Law No.2017/012 of 12 July 2017 to lay down the Code of Military Justice (The code of military justice is a composite code which embodies elements of substantive law and procedures)

[6]Some of these special provisions are found in legislations like Law No. 2011/028 of 14 December 2011 as amended and supplement by *Law No*. 2012/011 of 16 July 2012 on the creation of Special Criminal Court; Law N°2014/028 of the 23rd December 2014 on the Repression of Acts of Terrorism in Cameroon, etc.

[7] Law No. 2016/007 of the 12 July 2016 relating to the Penal Code

[8] Law N° 2006/015 *of the* 29 December *2006* amended and supplemented by the *Law N°* 2011/027 of 14 December, 2011 on Judicial Organization

[9] Section 18 of the Judicial Organization Law *(supra)*.

[10] Section 15 of the Judicial Organization Law

[11] Section 713 of the Criminal Procedure Code

criminal matters are the Special Criminal Court and the Military Tribunals. The jurisdiction of the Special Criminal Court is to hear and determine matters relating to the misappropriation of public funds above Fifty Million (50.000.000) FCFA and other offences provided for in the penal code and international conventions ratified by Cameroon. The military tribunals have exclusive competence to hear and determine; military offences and war crimes, crimes against humanity and crimes of genocides, offences relating to acts of terrorism and the security of the state, offences of piracy and unlawful acts against the safety of maritime navigation and platforms, offences committed by servicemen or civilian personnel serving in the defense forces, with or without civilian co-offenders or accomplices in a military establishment or in the exercise of their duties, offences against the law governing 1st, 2nd, 3rd, and 4th category weapons, as specified in the law to lay down general weapons and ammunition regulations in Cameroon, etc.[12]

Appeals against the judgments of the ordinary trial courts sitting in criminal matters as well as that of the military tribunal are subject to appeal to the Regional Courts of Appeal[13] and to the Supreme Court as a court of last or final resort.[14] Appeals emanating from the Special Criminal Court are determined by a specialized section of the Supreme Court comprising judges from the Administrative, Judicial and the Audit Benches designated by the Chief Justice with two judges from each bench.[15]

Despite the existence of the laws and the organizational frameworks of the courts and tribunals as highlighted above, there exists quite a number of difficulties and challenges confronted by judicial actors (judicial police officers, prosecutors, lawyers and judges) in the dispensation of criminal justice in Cameroon. These difficulties can be comprehended prior, during and after the determination of the case on appeal and are most often prejudicial to the rights of the defense (suspect, defendant or accused as the case may be). These lapses do not only place a suspect/defendant/accused in a position of weakness but equally violates his fundamental rights under international human rights treaties. The challenges faced prior to the trial are those envisaged during investigations and preliminary inquiry proceedings. In fact, it is argued in this work that preliminary inquiry in itself being conducted by an examining magistrate who doubles as a judge of that court amounts to double trial and the law makes it mandatory in certain cases.[16]

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[12] Section 8 of Law No.2017/012 of 12 July 2017 to lay down the Code of Military Justice
[13] Section 436 of the Criminal Procedure Code
[14] Section 2 of Law No. 2006/016bof the 29 December 2006 to lay down the Organization and Functioning of the Supreme Court
[15] Section 13 (New) Law No. 2011/028 of 14 December 2011 as amended and supplement by *Law No*. 2012/011 of 16 July 2012 on the creation of Special Criminal Court
[16] Sections 142 and 700 of the Criminal Procedure Code.

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During the trial, while the law gives the Legal Department in addition to the other powers conferred on them, the right to tender documents under Section 336 of the Criminal Procedure Code, the same right is not given to an accused person. To further compound issues, the code prohibits an accused who is charged with an offence punishable with death or life imprisonment from being admitted to bail thereby contradicting the human right-oriented spirit of the Code that presumes that an accused shall be taken to be innocent until his guilt is legally established before a court of competent jurisdiction.[17] This study argues that the criminal procedure code further contravenes international human rights tenets which safeguard expeditious hearings, a balanced and a fair trial. Indeed, the code has not laid down any timeframe within which cases are to be determined and it does not amount to a nullity if an accused continues to stand trial for an indeterminate period of time. In addition, the powers granted by the court to amend the charge runs counter to the principle of *nemo judex in causa sua,* which is to the effect that one cannot be a judge in his own cause. When a court amends a charge, especially on its own motion, it is submitted that the court leaves the stool of an impartial umpire to join the prosecution.

Again, the Criminal Procedure Code under Section 440 has not created any possibility as to extension of time within which to go on appeal, thus irrespective of whether there are reasonable grounds which may likely succeed on appeal. At the appellate court, the notion of filing a further ground(s) of appeal is not feasible under the code. It is contended here that the obligation for an appellant to file his memorandum of grounds of appeal within 15 days from the date of notice of appeal, without a corresponding obligation on the part of the respondent(s) to equally file the same within a stipulated timeframe amounts to discriminations against the appellant. Above all, the notion that the President of the Republic guarantees the independence of the judiciary and appoints magistrates of the bench and of the legal department is not only a characteristic huddle in the administration of criminal justice but to the entire judicial ecosystem as a whole.[18]

This study therefore sets out to appraise the difficulties associated with the Cameroonian judicial system in the dispensation of criminal justice. These challenges as pointed out are encountered by the various judicial actors prior to the hearing, during the hearing and even after judgments on appeal. The investigation proceeds on the analysis of legal provisions, decided case under the current and the previous dispensation in order to critically examine the extent to which the current Criminal Procedure Code protects the rights of the parties particularly that of

[17] For the Presumption of Innocence see Section 8 of the Criminal Procedure Code; The Preamble of the 1996 Constitution of Cameroon as amended and as read with Article 65 of same; The International Covenant on Civil and Political Rights (1966) Article 14(2).
[18] Article 37 of the Constitution of Cameroon

the defense.

II. DIFFICULTIES UNDER THE CRIMINAL PROCEDURE CODE PRIOR TO TRIAL

With the advent of the criminal procedure code, two categories of investigations precede the hearing and determination of a charge against an accused. These include investigations conducted by a judicial police officer and a preliminary inquiry by an examining magistrate. In both cases, the main objective is to inquire whether there exists sufficient evidence to sustain a trial. This paper argues that the difficulties arising prior to trials under the criminal procedure code substantially emerge from these two proceedings in the application of the law which often times violates the rights of the parties.

1. Judicial Police Investigation

Under the Criminal Procedure Code, prior to the trial and in almost every case, an investigation is commenced or authorized by the competent State Counsel and all such proceedings during the investigations are done under his auspices.[19] Any individual against whom there exist any information or clue which tends to establish that he may have committed an offence or participated in its commission is referred to as a suspect; anyone who has been informed by an examining magistrate that he is an offender or co-offender is referred to as a Defendant and; before the court, anyone called upon to answer a charge is known as an accused person.[20] In the course of judicial police investigations, two main constraints are envisaged namely; the extent to which the Criminal Procedure Code compels a judicial police officer to adhere to the rules of criminal procedure and in safeguarding the right of a suspect to counsel and the right to remain silent as stipulated under international laws[21] and the Criminal Procedure Code.[22] The other issue which emerges is the lack of will, incompetency, credibility and want of due understanding of mandatory provisions on the part of some investigators. The rights of suspects are often violated by investigators who usually detain them because they have by law elected to remain silent or insist on making their statements in the presence of their counsel. At times, they are even subjected to torture and administer degrading treatments on them. The results of such detentions and cruel treatments are usually based on the conception that the suspect is presumed to have committed the offence or to extract confessional statements from them at all cost. These detentions at times are construed to be punitive than being procedural. In the case

[19] Section 82 as read with 89 of the Criminal Procedure Code
[20] Section 9 Criminal Procedure Code
[21] Article 14(b & d) of the International Covenant on Civil and Political Rights (1966)
[22] Section 116 of the Criminal Procedure Code.

of *The People of Cameroon v. Tamukum Fonjiyang Ferdinand & 1or*,[23]the then judge of the Court of First Instance Buea Magistrate Eware Ashu took this view.

It must be emphasized that the absence of a mechanism independent of the Police and the State Counsel to monitor their activities and legal aid to assist those who cannot afford lawyers to have one during investigations always results to violations of the rights of the defense. However, even though the law provides for actions for compensation to be instituted for illegal detention,[24] most of those whose rights are being violated are uneducated and at times do not have time to pursue a case against a police officer. The effect of such statements during investigation can lead to a conviction in some cases especially were the suspects are unrepresented in court by a counsel thereby leading to a substantial miscarriage of justice. The code allows judicial police agents to perform the convoluted task of investigations irrespective of whether or not they are knowledgeable and vest with legal provisions.[25] This often leads to the drawing up of a report which is likely to be declared a nullity for want of compliance with the mandatory provisions of Section 124 of the Criminal Procedure Code. This was the position of the Court of Appeal North West region in the case of *Ndi Tangiri James & 54 others v. The People of Cameroon*,[26] wherein the court declared the police report a nullity for want of compliance with Section 124 of the Criminal Procedure Code.

Also, language barrier emerged as a problem which partly contributed to the lawyers' strike action, as judicial police officers deployed to work in the North West and South West Regions do not speak nor understands English. This was exacerbated by fact that there were no translators in the course of the proceedings. This constrain is further compounded with the attitudes of some of the investigators who see lawyer rs as coming to interrupt the conduct of their investigations, so that they cannot torture or coerce a suspect to state facts which are not from his volition. In addition to this cantankerous behaviors, such investigators do not show up in court to establish the circumstances under which statements were recorded from the offender. A classic example where these are commonly obtained is before the Gendarmerie brigades and the Gendarmerie Legions headquarters. In the case of *Ministere Publique v. Ekome Mejang*,[27] in addition to the disbelieving investigations conducted at the Gendarmerie Brigade Kumba and the fact that the victim's statements were recorded in French in spite of her English-speaking background, the investigators never showed up during the hearing at the Military Tribunal in

[23] CFIB/015f/2012, S.L.R. Vol. 2 at p. 152-172
[24] Section 136 of the Criminal Procedure Code
[25] Section 78(1) of the Criminal Procedure Code
[26] Suit No. CANWR/MS/60c/2012 S.L.R. Vol. 4 at p.60-74
[27] *Ministere Publique v. Ekome Mejang, supra*

Buea and the statements together with the entire file was simply tendered in evidence by the prosecution. Their absence though often times deliberate, they do so to avoid being embarrassed with the caricature of what they consider to be an investigation to be destroyed during cross-examination.

2. Preliminary Inquiry

A preliminary inquiry is a hearing held to determine whether there is sufficient evidence to require an accused person to stand trial for an alleged offence.[28]Under the Criminal Procedure Code there is no definition of a preliminary inquiry. It is important to resort to jurisprudence to have an understanding given by the courts as to its meaning. In the case of *Ayissi Awah Stella & 1or. v. The People and anor*,[29] the Inquiry Control Chamber of the Court of Appeal North West Region, defined a Preliminary Inquiry in the following expressions;

"…It is also elementary that a preliminary inquiry is an investigation and the Examining Magistrate is not expected or required by law to form and opinion on the credibility of the witnesses or the truth of the parties' case. In fact, the first duty of the examining magistrate is to determine whether or not the complaint or holding charge laid before him, prima facie discloses a case that he deserves to be investigated by conducting a preliminary inquiry. His next duty which comes at the closure of the preliminary inquiry is to determine whether or not the available evidence discloses a case, (even if considered slight) that requires trial. Proof of that case however is at the trial…"

It follows from the above that a preliminary inquiry is an investigation or a continuation of criminal investigation in view of verifying if sufficient evidence exists to sustain a trial and it is not a trial in itself. The law makes a preliminary inquiry obligatory in cases of felonies and in cases of juvenile delinquency and optional in cases of misdemeanors.[30] It must be recalled that before the advent of the Criminal Procedure Code, preliminary inquiries were conducted by the State Counsel unlike the current dispensation where it is conducted by an examining magistrate.[31] The conduct of the preliminary inquiry was regulated by the ordinance on judicial organization.[32] The State Counsel had the same attributions under both prosecutorial systems (i.e. the common law and the civil law systems).[33] This practice as contended by contemporary

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[28] N. Bala and S. Anand, *Youth Criminal Justice Law*, Irwin Law; 3rd Revised ed. Edition (December 17, 2012) https://irwinlaw.com/cold/preliminary-inquiry/ last accessed 24/09/2020
[29] Suit No. CANWR/ICC/10C/2012 S.L.R. Vol. 2 at p.6
[30] Section 142 of the Criminal Procedure Code
[31] P. C. Ngo Mandeng, 'The Role and Function of Prosecution in Criminal Justice' (Participants Paper) https://www.unafei.or.jp/publications/pdf/RS_No53/No53_18PA_Mandeng.pdf last accessed 24/09/2020
[32] Ordinance No.72/04 of the 26th of August 1972 on Judicial Organization
[33] Ibid

writers was strange to have preliminary inquiry conducted by the Legal Department.[34] This was due to the astonishment of many scholars and practitioners in other countries who could not understand how Preliminary Inquiry could be conducted by the Legal Department in contravention of the principle of separation of prosecution and adjudicatory functions.[35] However, this study does not seek to examine the controversies under the previous dispensation. Rather, it seeks to critically examine some of the flaws in the present criminal justice system of Cameroon in terms of the laws in force.

Quite apart from the technical hitches arising from judicial police investigations, one can also point out that the introduction of preliminary inquiry with the advent of the Criminal Procedure Code to be conducted by Examining Magistrates who double as judges assigned to these courts amounts to double trials. The conduct of the proceedings such that the Examining Magistrate is seized with a holding charge,[36] upon receipt, he informs the defendants of the reasons why he is before him,[37] and the opportunity open to the parties to examine and cross-examine witnesses makes it more or less a trial.[38] This is also because by the implications of the law, a defendant who is in lawful remand can be under detention for a period of six months while awaiting the determination of the preliminary inquiry proceedings. This period may be extended to twelve months in cases of felonies and six months in the case of a misdemeanor.[39] The period under which the inquiry is envisaged is a reasonable time within which a trial should be conducted and judgment handed down.

Besides, decisions of the Examining Magistrates are subject to appeal as if it was a trial to the Inquiry Control Chamber (ICC) of the Court of Appeal.[40] Even though their decisions are supposed to be delivered within thirty days,[41] at times the hearings are prolonged and the Lord Justices of the Court of Appeal usually takes the ordinary trend in the determination of such appeals. In the case of *Ngwa Emmanuel v. The People of Cameroon*,[42] an appeal against the committal order of an Examining Magistrate by the defendant was determined within a period of more than one year and eight months by the Inquiry Control Chamber of the Court of Appeal North West Region. After all these legal encounters by the parties, the Inquiry Control Chamber

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[34] J. F. Fonkwe & A. Eware, *Cameroon Criminal Procedure and Practice in Action*, (Edition Veritas: Douala 2019) at p.151
[35] *Ibid*
[36] Section 143 of the Criminal Procedure Code
[37] Section 167, *ibid*
[38] Section 175, *ibid*
[39] Section 221, *ibid*
[40] Section 272(1), *ibid*
[41] Section 275, *ibid*
[42] Suit No. CASWR/ICC/7C/2011, S.L.R. Vol. 4 at pp.20-27; see also *Chief Tabe Tabe Moses v. The People & 48 Or*s, S.L.R. Vol. 4 at pp.2-9, wherein the appeal before the ICC took a similar duration.

held that the defendant was bound to stand trial at the Mezam High Court.[43] This clearly illustrates that Preliminary Inquiries cannot only be seen as double trial but the time used in the determination thereof are often not practicable to that which is contemplated under the law. Although, the law sanctions any violation of rules of criminal procedure under Section 3 when it is prejudicial to the rights of the defense and contrary to public policy, there is no specific sanction when rulings and judgments are rendered out of the statutory period stipulated in the law. Perhaps this justifies why judgments and rulings at times are rendered out of the time limits prescribed by the law.

Another controversy raised under the Criminal Procedure Code as concerns preliminary inquiry is the confusing compass to which concurrent powers is granted to the trial court to determine issues of nullities on the one hand and to the Inquiry Control Chamber on the other hand. Pursuant to Sections 252(1), 253(1) and 254 (1b) where it appears to the parties (Legal Department, Civil Party and the Defendant as the case maybe) or the examining magistrate that an act of the inquiry constitutes a nullity it shall cause the file to be forwarded to the Inquiry Control Chamber in view of annulling such acts. This clearly shows that as a body competent to review the acts of the examining magistrate, it is only the Inquiry Control Chamber that can nullify same. However, Section 255 now sets in to contradict the above provisions by giving powers to a trial court to decide on such issues relating to a nullity.

This raises an existential problem of conflict of jurisdiction between the trial court and the Inquiry Control Chamber. Even though the same provision gives the parties the right to refuse to take advantage of such nullities, the court still has the powers to proceed with the determination of the matter and deliver a single judgment. The question which begs for an answer is whether, if a party becomes dissatisfied with the aspect of the judgment deciding on the nullity, where does it go to? Certainly, it will proceed to the ordinary bench of the Court of Appeal sitting in criminal appeals and not to the Inquiry Control Chambers. Also, if the nullity has to do with an issue touching on incriminating evidence against the accused, this will certainly defeat the intention of the legislature which precludes an examining magistrate who conducted the inquiry to hear the matter.[44]

It should however be mentioned here that the criminal procedure code gives the examining magistrate the widest powers to carry out all acts he deems necessary for the discovery of the truth.[45] This wide powers which include the powers to arrest, remand, summon anyone and to

[43] *Ibid*
[44] Section 24 of the Judicial Organization Law
[45] Section 150 of the criminal Procedure Code.

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give a rogatory commission was generally intended to enable him carry out his functions expeditiously. The same powers are attributed to the Inquiry Control Chamber. However, in practice, expeditious inquiries have indeed not been observed as there are cases of protracted inquiries with most of them commencing with an order remanding the defendant, in spite of the fact that he is presumed innocent.

Equally, even though defendants have been granted the right to counsel during preliminary inquiries,[46] the law has not made it a duty for the examining magistrate to provide one to a defendant during preliminary inquiries even for the most serious offences.[47] The most serious offences in this perspective are those offences punishable with death or life imprisonment.[48] Paradoxically, Section 417(2) of the Criminal Procedure Code gives a judge the powers to appoint a counsel to an accused where the accused is being prosecuted for a felony punishable with death or loss of liberty for life and he has no counsel. It is submitted that the right to a counsel is an inherent component of the right of an accused to a defense. This defense does not only exist during prosecution in court and in felonious cases but do exist at all times and in all cases during investigation, at the preliminary inquiry, trial and even on appeal. The Cameroonian legislator has not fully lived up to international standards as to the right to counsel and to provide one to an offender is envisaged only in the context of felonious offences punishable with death or life imprisonment. Cameroon has obligations under international law which it must assume by virtue of treaties duly ratified. As a fundamental human right, the right to counsel must not only be respected and protected, the state also has an inherent duty to see that it is fulfilled at all the stages in a criminal proceeding.[49] It is further argued here that the rights of a suspect may be violated during investigations and the preliminary inquiry to the extent that it becomes incurably bad to make amends in court.

III. Challenges observed during trial

1. The Notion of a Charge

A criminal court is seised of a matter by a charge,[50] whether preferred by an Examining Magistrate in a committal order,[51] judgment of Inquiry Control Chamber, a direct summon from

[46] Section 170(2) of the Criminal Procedure Code
[47] Section 21(1) of the Penal Code defines a felony to mean an offence punishable with death or with loss of liberty for a maximum of more than 10(ten) years and fine where the law so provides. This is the highest category of offences classified under the law as felonies. The classification of offences into indictable and non-indictable offences as in other jurisdictions does not obtained in Cameroon.
[48] Example includes offences such as Murder punishable under Section 275 and Capital Murder under section 276 of the Penal Code.
[49] Article 14(3d) of the International Covenant on Civil and Political Rights (1966)
[50] Section 359 of the Criminal Procedure Code
[51] Section 256, *ibid*

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the State Counsel, a direct summon from private individual under private prosecution,[52] or by the procedure applicable to offences committed flagrante delicto.[53] Under the Criminal Procedure Ordinance (CPO) Cap 43 of the Laws of Nigeria (1958) which use to apply in the common law jurisdictions of Cameroon, it was simply possible for an accused to be discharged or perhaps the matter dismissed on grounds of a defective charge sheet or for want of diligent prosecution. This is an area uncovered under the new Criminal Procedure Code. The other key areas of constrain during the hearing of a criminal matter which is discussed in this paper includes; the tendering of documents by the prosecution under circumstances which the accused may not be able to test through cross-examination, the introduction of the idea of bailable and unbailable offences, the execution of court judgments through the legal department which is a mere party in all the proceedings.

The Criminal Procedure Code to begin with does not specifically define what constitutes a charge, rather a summons under the present dispensation is liken to a charge sheet and it is provided for under Section 40 and following of the Criminal Procedure Code. The Code has in its Section 41 stipulated the content of a summons and more specifically, subsection (2) enacts that:

"a summons shall state the facts of the case and provisions of the law under which the defendant is charged. It shall also state, as the case may be, the Examining Magistrate or the court seize of the matter, the place, date and hour of the hearing, and shall specify whether the person has been summoned as defendant, accused, civil party, person vicariously liable, witness or as insurer"

The above cited provision has adequately described the nature of a charge which is intended to give a defendant or an accused, adequate opportunity to know the case for which he has been charged for and to prepare for his defense prior to the date fixed for the trial. Other components of a charge include: the name, affiliation, date and place of birth, occupation, address, residence of the parties.[54] It is well established that a defective charge that is, a summons that does not comply with the rules, cannot bring to an end the criminal matter. The law simply gives the court the discretion to basically declare it null and void.[55] This however does not put an end to the matter as such a matter can be adjourned for the said irregularity to be cured no matter the timeframe.

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[52] Section 42, *ibid*

[53] Sections 114 and 409, *ibid*

[54] Section 41(1) of the Criminal Procedure Code.

[55] Sections 54 and 55, *ibid*

Conversely, under the CPO a defective charge could summarily put the matter to an end. The court could either strike out the matter or acquit the accused as the case may be. It is contended that this position is significantly reasonable because by striking out the matter, the accused will be free of the allegations over his head and will once more be permitted to go about his businesses. Again, making a formal accusation against someone is not something that should be treated with levity and so the Legal Department must be cautious when drafting an indictment. So, if there is any impropriety with the charge, it should not be construed in favour of the Legal Department that has everything at their disposal to ensure that justice is done. In the case of *The People v. Gwet Alexandre & Anor*.[56] Chief Justice G. S. Ekema took the view that:

"it is unethical if not immoral but certainly illegal for a judge to discover a serious defect in an indictment and then proceed to fold his hands until the end of the proceedings and then turn round to use that defect to declare his own proceedings a nullity"

This view takes us to the understanding that a charge which is characterized with serious defects can cause the suit to be struck out on the basis of a preliminary objection. However, it was the views of the Learned Justices that a trial court which discovers a defect in an indictment which may lead to the quashing of a judgment flowing from such defective indictment by an appellate court, is bound to amend the defect at any stage of the trial before delivery of the judgment with due care to the provisions of Section 164(1) -(4) of the Criminal Procedure Act. It must be pointed out rather clearly that under the Criminal Procedure Code, a charge can only be amended under Section 362 and 363 when evidence have been led and new facts emerged from such evidence. Nevertheless, the law gives the Legal Department the powers to raise any procedural irregularity and seise the competent court with a view of annulling the irregular act. Small wonder whether the Legal Department can rely on this provision when the irregularity is at their instance and when it relates to a question on the defectiveness of a charge raised by the defense. In the case of *Nche Che v. The People*,[57] Justice Epuli M. (as he then was) noted that:

"Our law of theft under Section 318(1)(a) P. C., however does not allow of any exceptions in the framing of the charge. By virtue of the provisions of Section 152(1) C. P. O. the owner of the property alleged stolen has to be named in the charge, therefore a misnomer as well as failure to name the owner of the property alleged stolen will be fatal to the charge…"

The drafting of an indictment is however critical in every criminal justice system. Irregularities

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[56] Suit No. CASWP/21.C/84 (1994) CAJ-CLC Part 1 at p. 13
[57] Suit No. CASWP/38C/90 (1994) CAJ-CLC Part 1 at p. 27

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arising therefrom may be the result of poorly conducted investigations, share laziness and incompetence from some magistrates of the Legal Department and want of mastery on the part of legal practitioners who institute actions by private prosecution. Nevertheless, care and caution must be taken by judicial actors when initiating criminal proceedings to always have a circumspect evaluation of the charge/indictment before seising the courts for hearing.

2. The Tendering of Documents in the Absence of Witnesses

After dealing with the notion of a charge or an indictment, the next essential question which pricks the criminal justice system is that which relates to the means of proving an offence. At the hearing and determination of a case, the burden of proof lies permanently with the prosecution in keeping with Section 307 as read with Section 395(2) of the Criminal Procedure Code. The burden can only shift if an accused pleads any fact in justification of his criminal irresponsibility such as an alibi.[58] To discharge this burden, the law provides a wide range of means to establish every offence including oral evidence, documentary evidence, real evidence and circumstantial evidence, etc.[59]

However, Section 336 gives the prosecution the right to tender documents in evidence even in the absence of the makers of such documents. This leverage has often led to a situation of substantial miscarriage of justice whereby an accused will be unable to test these statements through cross examination. A judicial police office notwithstanding the investigation which he conducts may in addition testify as a witness. In this connection, such an investigator stands out clear to be the proper person through which a casefile can be tendered. In *The People of Cameroon & 1Or. v. Tume Evelyne Mainsah*,[60] the Court of Appeal noted that:

"OP2 Fuchi Cyprain positively stated that he investigated the matter and that they recorded statements from the parties and the witnesses. This piece of evidence was never challenged by the defense. Being an author or one of the authors of the casefile, he was indisputably the proper person through whom it had to be tendered…"

It follows therefore that the proper witness through which a document should be tendered is one that has adequate knowledge as to the origin or making of such a document. It is unmaintainable that the Prosecuting Counsel should just directly tender documents in court in the absence of the makers of such statement. Indeed, in the case of *Ndimai Jerrey Simo v. The People of*

[58] Section 309 of the Criminal Procedure Code
[59] For oral evidence see Section 335: Documentary Evidence Sections 313, 314, 318 and 336 of the Criminal Procedure Code
[60] Suit No. CANWR/MS/19C/2012 reported in S.L.R. Vol. (2016)

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Cameroon[61] the accused stood trial before the High Court of Fako Division for indecency punishable under Section 346 of the Penal Code among other things and was convicted by Justice Mboge Wilson Ebong Ngole based on statements that were tendered by prosecution during hearing. While reversing the decision on appeal, the Court of Appeal noted that the court assisted the prosecution in lowering the standard of prove, by admitting documents when all the mechanisms put in place by the law to secure the presence of the witnesses had not been exhausted and that the court was unaware of the fact that Section 336(b) of the Criminal Procedure Code could not be construed in isolation of Section 336(a) and even at that while admitting statements, such statements constitute only information.[62] Certainly, it is trite law that an accused cannot be convicted based on a mere information which is as good as a romour. It has been equally held by the Court of Appeal South West Region in *Obasse Motoko Elvis v. The People of Cameroon & Anor*[63] that the tendering of documents under circumstances which the accused will not be able to test through cross-examination is prejudicial to the rights of the defense.

It is contended that the right to cross-examine the witnesses of the adverse party constitutes one of the fundamental pillars of fair hearing. The tendering of documents under Section 336(b) of the Criminal Procedure Code has contributed in the laxity on the part of the Legal Department to compel or accost their witnesses to appear in court to assist justice. It has been held in many decided cases that a denial of the right to cross-examine a witness to test the veracity of his evidence is a breach of fair hearing.[64] Thus it was held in *Shofolahan vs. The State*[65] that:

"a court or tribunal should never act on the evidence of a witness who gave evidence in chief but was unable to present himself for cross examination… in such a case the totality of his evidence including any exhibit tendered through him will be expunge from the records of the court"

Under the present the Cameroonian situation, individuals make statements at the level of the judicial police but do not even show up in court for such evidences to be tested through cross examination, yet they are received in evidence and heavily relied upon. See the *Ndimai Jeffery case* cited s*upra*. In some jurisdictions the court even allows the Legal Department to state the facts of the case before tendering such statements even when the accused pleaded not guilty in total violation of the law. While upholding the objection of counsel for the defense, Magistrate

[61] Suit No. CASWR/15^{CR}/2018 (Unreported)
[62] Section 91 of the Criminal Procedure Code
[63]Suit No. CASWR/36C/2012 (unreported)
[64] *Okereke v. Ibe* (2008) LPELR 4714: *Ogolo v. Fubara* (2003) 11 NWLR (PT.831) p. 231.
[65] (2013) 17 NWLR (PT.1383) p. 281; see also *Umukoro vs. The State* (2018) LPELR-46 159 (CA)

Asonganyi sitting at the Court of First Instance Buea, in the case of *The People of Cameroon v. Ngalle Rapheal* correctly barred the prosecuting Magistrate from stating the facts of the case before tendering the documentary exhibits thereto especially as the accused pleaded not guilty.

Therefore, in such cases, it is wrong for a judge to even rule that there is sufficient evidence to warrant an accused to put to his defense in keeping with Section 366 of the Criminal Procedure Code when only statements are tendered. It is submitted that safe in the instances of a confessional statement made in the course of a judicial proceeding that a court of law should hold that there is sufficient evidence to warrant the accused to put to his defense when only statements are tendered. Relying on statements which are not confessional to hold that there is sufficient evidence for the accused to put up a defense, is like shifting the burden of proof from the prosecution to the accused person. As earlier noted, such statements are only information and not evidence.

a. Unbailable Offences and the Presumption of Innocence

The preamble of the Constitution of Cameroon[66]guarantees the principle of the presumption of innocence in favour of anyone on whom an indictment has been conceived against. This judicial guarantee is enforced under Section 8 of the Criminal Procedure Code. It follows therefore that no matter how probable the evidence may be or exist against an accused person, he must be presumed innocent until his guilt has been legally established.[67] It is for this reason that the character of an accused person cannot be put into question whilst the hearing is pending unless he puts the character of the witnesses brought by the adverse parties in issue.[68] Since a trial usually does not take a single day to be heard and at times it can even extend to months or years, bail becomes paramount. The notion of bail sets in to reinforce the principle of presumption of innocence in the sense that an accused person who has been detained should be provisionally released since he may at the end of the trial be found not guilty. It was thus held in the case of *Dogo v. The Commissioner of Police*[69] that:

"it is trite law that an application for bail should not be refused as a punitive measure"

However, legislative provisions have casted serious aspersion as to the veracity of this principle and have rather tend to establish clear contradictions to the presumption of innocence. This is perceived from the idea of offences which are bailable and those wherein bail cannot be granted. Although this is the case in some conventional legal systems with allegations of certain category

[66] Law No. 96/06 of the 18th of January 1996 as amended and supplemented by Law No. 2008/ 0
[67] Section 312 of Criminal Procedure Code
[68] Ibid
[69] (1980) 1 N.C.R. 14

of capital offences, international law has not created any dichotomy.

Under the Cameroon Criminal Procedure Code, a distinction has been drawn between offences wherein bail can be granted and those in which bail cannot be granted. Section 224(1) of the Code provides that:

"any person lawfully remanded in custody may be granted bail on condition that he fulfills one of the conditions referred to in Section 246(g) in particular to ensure his appearance either before the judicial police or any judicial authority."

(2) the Provisions of sub-section (1) above shall not apply to persons charged with felonies punishable with life imprisonment or death"

The above section invariably establishes a distinction as to those offences where bail can be granted and those for which it cannot. This study observes that this distinction violates the principle of presumption of innocence and there is no need for such a distinction. One may be tempted without more to suggest that the accused charged with felonies punishable with life imprisonment or death would have committed the offence, reasons why bail is not provided for with such capital offences. It is important to note that within the Cameroonian context all the offences before the Court of First Instance are bailable offences. This is so because the Court of First Instance (Magistrate Court) does not have the competence to hear and determine criminal matters punishable with death or life imprisonment (felonies in general). Consequently, all offences before the Court of First Instance are all capable of being granted bail without any statutory limitations. However, since bail is not permissible for felonies punishable with death or life imprisonment, it follows therefore that even the High Court cannot grant bail in cases where the accused is standing trial for an offence punishable with death or life imprisonment such as acts of terrorism, secession, murder or capital murder.

It should be mentioned that this study does not seek to address the conditions and circumstances under which bail is to be granted. Rather, it strives at articulating the contradiction raised under the provisions of Sections 8 and 224(2) of the Criminal Procedure Code. It is important to note that this position is equally tenable to an extent under the Nigeria Criminal Justice System. According to the learned author Bob Osamor,[70] he noted thus:

"Section 118(1) of the C.P.A. and 134(1) of the C.P.C both provide that a Magistrate's Court in Nigeria cannot grant bail to a person charged with the commission of an offence punishable with death. However, in the Southern states by virtue of section 118(1) of the C.P.A. a person

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[70] B. Osamor, *Fundamentals of Criminal Procedure Law in Nigeria* (Dee-Sage Nigeria Limited 2004)

charged with an offence punishable with death may be granted bail by a High Court."[71]

The above assertion unambiguously brings to mind the fact that there are statutory limitations by the Magistrate's Courts in Nigeria to grant bail for an offence punishable with death. Nevertheless, the High Court can grant bail in every case. This in principle goes to uphold the very character of the High Court which is a court with unlimited jurisdiction. The philosophical basis for the denial of bail or statutory limitations to the grant of bail for certain category of offences may be envisaged in the dictum of the court in *Oladele v. The State*[72] wherein the court noted that:

"it is very unusual for a person accused of murder to be on bail pending the trial. Murder being a very serious offence it is not in the interest of the public that a person charged with murder should be released on bail"

Compared with the Cameroonian system, the Nigerian position is more significantly relaxed. Under Section 341 of the C.P.C. applicable to the Northern States of Nigeria, the High Court has been out rightly prohibited from admitting a person charged with a capital offence to bail. However, section 341(3) of the same law provides that:

"Notwithstanding anything contained in subsections (1) and (2), if it appears to the court that there are not reasonable grounds for believing that a person accused has committed the offence, but that there are sufficient grounds for further inquiry, such person may, pending such inquiry, be released on bail."

The above flexible position overrides the prohibition imposed in subsections (1) and (2). Under the Cameroonian context, even though nothing has been provided for by the law to give a High Court the powers to grant bail for the very serious offences, bail has been granted even when a person has been charged for murder or other offences punishable with loss of liberty for life or death penalty. In the case of *The People of Cameroon v. Nkeh Peter & 2ors*,[73] the Examining Magistrate of the High Court of Fako Division granted bail while the inquiry was pending. However, it should be noted that the Military Tribunals and the Examining Magistrates thereto have aligned with the provisions of Section 224(2) of the Criminal Procedure Code by not entertaining an application for bail once a person is charged or accused of committing an offence punishable with life imprisonment or with death, even when cogent and compelling reasons exist for them to do so. Similarly, the Court of Appeal North West Region also took the view

[71] *Ibid* at p. 84
[72] (1993) 1 N.W.L.R. (pt. 269) 294 at p.308
[73] Suit No. HCF/67C/2014 (unreported)

in the case of *The People of Cameroon v. Tenoh Lawrence Ndangoh*[74] that:

"the Respondent was before the Examining Magistrate for committing an offence contrary to Section184(1)(a) of the penal code. It is an offence punishable with life imprisonment. Section 224(2) of the Criminal Procedure Code in very clear terms prohibits the grant of bail in such an offence. So, an examining Magistrate has no right to grant bail in such a case".

This study therefore concludes in this connection that the presumption of innocence represents the fabric of every criminal trial and it has attained the status of a *jus cogen* from which no derogation may be made. In fact, it is the pillar from whence all other judicial guarantees in a criminal matter emanates and once a legal provision conflicts with it, the principle embodied in the presumption of innocence should prevail. It is for this reason that this study takes the view that the hands of a judge is not tied down by the provision of Section 224(2) of the Criminal Procedure Code. Once there exist compelling reasons or if it appears to the court that there are not reasonable grounds for believing that a person accused has committed the offence, then bail should be granted. The preamble of the Constitution of Cameroon guarantees the observation of this principle and does not draw a dichotomy between offences where bail should be granted and those which it should not be granted. International conventions duly ratified take precedence over domestic legislations like the Criminal Procedure Code[75] and have equally not impose any limits under international law for the grant of bail in certain offences.

b. Time Limit to Determine Criminal Matters

The Criminal Procedure Code was instituted not only to harmonize criminal procedures and practices all over the national territory, but it was equally enacted to live up to Cameroon's obligations accruing from international treaties and human rights conventions which guarantee fair hearings and expeditious trials. Cameroon being a party to several international human rights treaties is duty bound to align itself with the standards and guidelines stipulated in these international agreements.[76] These guarantees or standards *inter alia* include; the obligation to ensure that persons standing trial over a criminal charge should be tried within a reasonable timeframe. What amounts to a reasonable time though has not been defined, but it will depend on the circumstances of each case. While the law has imposed time limits to determine certain classes of actions, it has not done so for the hearing of an ordinary offence or has it imposed a timeframe for trying a case in court. This constitutes the main thrust of the arguments under this

[74] Suit No. CANWR/ICC/6C/2012 reported in S.L.R. Vol. 4 at pp. 10-19
[75] See Article 45 of the Constitution
[76] International Covenant on Civil and Political Rights (1966); The Convention against Torture, Cruel and other Degrading Treatments (1984); to name a few.

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heading.

As earlier submitted with regards to Preliminary Inquiry proceedings in the discussions in this paper, by the implications of the law, a defendant who is lawfully remanded can be under detention for a period of six months while awaiting the determination of the preliminary inquiry proceedings. This period may be extended to twelve months in cases of felonies and six months in the case of a misdemeanour.[77] An appeal against the ruling of the Examining Magistrate is supposed to be decided within thirty days. At least with Preliminary Inquiry proceedings, time limits have been established under the Criminal Procedure Code to determine how long proceedings in this regards should take. However, this has not been the case with trials of accused persons before the court as no time limit have been enunciated to conduct a trial. This adds to the already very relax and laissez-faire judicial system compounded with the inadequacy in judicial facilities such as court halls, judicial and legal personnel, libraries, motivations, etc., resulting in very long and protracted hearings. A case in point is that between *The People of Cameroon v. Nemulue Roger & 2Ors*,[78] pending hearing before the Court of First Instance Buea between 2011 to 2020.

This difficulty is also envisaged before the Court of Appeal where cases are determined several years after such appeals where initiated and parties' submissions exchanged. By an interlocutory ruling on a charge registered in the Court of First Instance Tiko in Suit No. CFIT/260C/2016 between *The People of Cameroon & 1Or v. Ikechukwu John Iwu & 2Ors*, the Court declined jurisdiction and declared itself incompetent to proceed with the determination of the matter on the 17th Day of August 2016. Dissatisfied by the said ruling, the Legal Department initiated an appeal on the 18/08/2020 and was registered as CASWR/91CR/2016 and up till December 2020, no ruling has been delivered by the Court of Appeal in the matter. Supposed that the Court of Appeal finds favour in the appeal, the case file will be remitted to the court below for the trial proper to start de novo four years after. This constitutes a major constrain in dispensing justice and upholding the guarantees under domestic and international laws to fair hearing.

In the absence of a timeframe stipulated under the Criminal Procedure Code, guidance may be taken from treaties duly ratified and approved by the state. In keeping with the Constitution of Cameroon, duly ratified treaty overrides national legislations.[79] The international Covenant on Civil and Political Rights (1966) is to the effect that:

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[77] Section 221 of the Criminal Procedure Code
[78] Court of First Instance Buea.
[79] Article 45

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"in the determination of a criminal charge against him, everyone shall be entitled to the following minimum guarantees in full equality (a) to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) to have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing;

(c) to be tried without delay;…"[80]

The above provision gives one a clear impression as to the conduct of a criminal proceedings as it relates to time. The expression 'without delay' must be construed to mean that within a reasonable time taking into account the peculiar circumstances of the case, the number of witnesses, the time taken for a visit to the locus in quo, other force majeure, etc. Unjustified adjournments and want of readiness to prosecute a case by the prosecution should not be put into contemplation. Certainly, the expression does not suggest a rush in the dispensation of justice as the adage goes 'justice rush may be justice crush'. On the other hand, it is also important to borrow the aphorism which is widely expressed in this connection that 'justice delayed is justice denied'. *The case of The People of Cameroon v. Nemulue Roger* cited *supra* is a classic example wherein justice have been denied as the charge has been maintained on the head of the accused persons for over nine years. The fate of the accused persons has been unknown for all these while and they are unable to go about their daily activities freely as at one point in time, they are bound to report to court. This does not only amounts to psychological torture but it has equally physically weighed down on the accused persons who are on able determine their livelihood. Such a long trial may invariably be construed to be persecution and no longer prosecution.

On the non-prescription of a maximum period for which a trial can last and supported by punitive sanctions for judges who violate this period, it is recommended that a time limit should be introduced designed to try felonies, misdemeanours and simple offences. There should equally be a limited amount of adjournments that should be granted to a party in a proceeding especially to the party prosecuting. This is because at the time of initiating the action, the presumption is that he is prepared to prosecute same.

c. Amendment of a Criminal Charge in the Course of a Trial.

It is contended here that once a court has been seised of a case as a general rule, all directives are given or made under the auspices of the court. In this capacity the court can make orders

[80] Article 14 (3) International Covenant on Civil and Political Rights (1966)

and directives as it deems fit and as provided for by law. In principle, the court is not a party to any proceedings before it and that is why there exist parties different from the court. At times some of the parties may be attached to a court but does not constitute part of the Court such as the Legal Department (The People of Cameroon).[81] A charge is what initiates a criminal action in court and it is brought by the party prosecuting same (whether by the Legal Department or by way of private prosecution) as was decided in *Fuh Gideon Bakeh & 5Ors. v. The People of Cameroon & 3ors.*[82] Whatever the case, the parties are always on the same pedestal with the accused person not only because he is presumed innocent, but because everyone is considered equal before the law courts.[83]

Just like legislative enactments in other legal systems, the Criminal Procedure Code empowers a judge to amend a charge *sou moto* that is, with or without an application by an interested party. This study therefore finds it problematic and inconsistent with the rules of fair hearing for a judge who at all times remains a neutral umpire in a matter to make a case against an accused person.[84] Even though it emerges from the intention of the legislation that the law should not allow an offender to be set free if evidence exists against him, such an amendment should be done at the behest and diligence of the prosecution. Section 362(1) of the Criminal Procedure Code provides that:

"if the court finds that the facts of the case as presented by the prosecution sustains a different offence, it shall amend the charge and inform the accused accordingly"

If the Court takes the initiative of amending a charge against an accused person, the court then undoubtedly puts on the cap of the prosecution by becoming the one bringing the accused henceforth to justice. Certainly, it will be very difficult to discharge him after such amendment as the judge would have been convinced that the accused is guilty of the offence in the charge so amended. Therefore, putting the charge for him to plead to it will be a mere facade or better still formality. This was observed in the case of *The People of Cameroon & 1or. v. Nganju Tumfong Abel*,[85] Magistrate EnowMbi Ashutangtang as she then was correctly amended the charge following an application from the Prosecuting Counsel and added a new count. The formalities under Section 362 of the Criminal Procedure Code were complied with and at the end of the proceedings, he was convicted on both counts. What is demonstrated here is the fact

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[81] See Generally Law N° 2006/015 of the 29 December 2006 amended and supplemented by the Law N° 2011/027 of 14 December, 2011 on Judicial Organization
[82] (2016) S.L.R. Vol. 4 at pp.29-24
[83] Article 14 (1) and (2) of the International Covenant on Civil and Political Rights (1966)
[84] Section 362 and Section 363 of the Criminal Procedure Code.
[85] Court of First Instance Buea

that most of these amendments always result in a conviction on the amended charge, since the judge would have by the express provision of Section 362 make a finding of fact in that case as presented by the prosecution constitutes a different offence. Here the position is more significantly better than the amendment contemplated under Section 363 of the Criminal Procedure Code. This is because the amendment suggested under Section 362 is one to be made after the prosecution's case and as such an accused would not have been heard thus having an opportunity to make a defense in order to debunk the new charge. In other words, the charge is amended prior to the defense's case. Section 363 gives the court a very wide latitude to amend a charge against an accused person in the course of a trial. This provision stipulates that:

"If in the course of the hearing, new facts emerge against the accused, the Presiding Magistrate shall amend or alter the charge in that respect and proceed as provided for in Section 362(1), (2) and (3)."[86]

This provision does not determine at what stage should a Presiding Magistrate amend or alter a charge against an accused person. The phrase 'if in the course of the hearing' suggests that at any time before the matter is adjourned for judgment. It is argued therefore in this study that it is prejudicial to the right of the defense for the Court to amend a charge against an accused person after he has adduced evidence in his defense. This is more the case as the court is not a party to the matter and should not be seen doing the job which a party would have been circumspect in dealing with. In fact, when an accused has testified in his defense, the court should proceed to judgment and not to amend a charge for him to put up another defense when the prosecution would have heard his evidence.

It is important to note that as a cardinal principle of law, a judge should at all times remain neutral and should not be seen performing a task which would have otherwise been performed by a party in the proceedings. Like in the *Nganju Abel's case supra*,[87] the application for an amendment emanated from the Learned Prosecuting Counsel who was circumspect and diligent in the prosecution of the case and not from the court. This study holds this practice as the proper position which should prevailed in the light of every criminal proceeding. This is further justified by the fact that the Legal Department becomes very relax in the handling of their cases as the courts will always be seen trying to secure a conviction for them should new facts emerge or their cases put differently to constitute another allege offence.

[86] Section 363 of the Criminal Procedure Code
[87] *Fuh Gideon Bakeh & 5Ors. v. The People of Cameroon & 3ors, supra*

IV. Challenges under the Criminal Procedure Code with Appeals

This aspect of the paper tends to look at some of the constraints observed with appeals derived from the judgments of the lower courts sitting in criminal matters to appellate jurisdictions. The Criminal Procedure Code has laid down prescribed time limits for which appeals should be instituted and memorandum of submission filed.[88] The Code has however not provided any grounds for which there can be extension of time within which to appeal a criminal judgement. While the law also imposes a duty on the appellant to file in his documents destined for the appeal within a given stipulated duration under penalty of inadmissibility, no corresponding duty to file responses has been given to the respondents to file within a stipulated timeframe. Also, the vesting of powers to the Legal Department which is a mere party to execute court orders has brought about divergent views with regards to judgment which are the subject of appeals taken by the Legal Department as to whether they should execute such judgments or not.

1. Extension of Time and Admissibility of Appeals

The Criminal Procedure Code imposes a time limit of 48 hours to appeal against the interlocutory rulings and rulings against the decision of the Examining Magistrate in the manner and form as prescribed under Section 271 while Section 440 prescribe ten days. In *Ubi Joseph Abosi v. The People of Cameroon & 1Or.*,[89] the Court of Appeal South West Region held with regards to the time within which an appeal is to be filed thus:

"According to the Criminal Procedure Code, for an appeal to be admissible, the notice of appeal must be filed at the registry of the trial court within 10days from the day following the date the judgement appealed against was delivered pursuant to Section 440(1) and 441(1) of the Criminal Procedure Code. Thereafter the Appellant must file a document called the Memorandum of grounds of appeal, within 15days from the day following the date of the registration of the appeal, where the appeal was filed personally face to face with the registrar of the trial court pursuant to Section 443(1) of the criminal Procedure Code or within 15days from the day following the date of receipt of the registrar's report of receipt of the notice of appeal pursuant to Section 443(2) where the appeal was file by correspondence."[90]

Thus, where an appeal is not instituted following the above stipulated requirements, it shall be

[88] For Interlocutory Appeals and Appeals against the ruling of the Examining Magistrate see Section 271 and following of the Criminal Procedure Code and for appeals against the judgment of trial Courts see Section 440 and following of the Criminal Procedure Code.
[89] CASWR/49^C/2011 reported in S.L.R. Vol. 4 pp.197-208
[90] *Ibid* at p.199

declared inadmissible like in the instant case. Quite apart from filing out of time, several other issues may render an appeal inadmissible. These may include directing the notice of appeal to a wrong court,[91] if the appeal does not follow the prescribed form or if it was not addressed to the right authority,[92] etc.

This aspect of the study seeks to bring to the lamplight the inflexibilities and harshness of the Criminal Procedure Code as concerns time limits to file an appeal. This study reveals that not only is the 10days period not sufficient enough to institute an appeal, the Courts have also been very reluctant to grant leave no matter the situation for extension of time within which to file an appeal outside the ten days' period. Irrespective of whether or not there was a force majeure such as illness or other supervening impossibility that renders a prospective appellant unable to file within ten days. In the case of *CAMPOST v. The People of Cameroon & 1Or.*,[93] the Court of Appeal South West Region concurred to there is no provision in the Criminal Procedure Code for extension of time to appeal or file memorandum of grounds of appeal.

This position runs counter to the laws under the previous dispensation wherein extension of time was allowed under special circumstances. A criminal allegation being very severe as against someone wrongfully discharged or acquitted, the Code in the opinion of this researcher should have been more practically flexible. The notion of extension of time is a safeguard under the doctrines of equity as 'equity will not suffer a wrong to be without a remedy'.

2. Appeals and Enforcement of Lower Court Decisions

Another critical problem dealt with in this study is fact that the execution of court judgements has been vested to the Legal Department which is a party in all criminal matters. Section 545(2) of the Criminal Procedure Code states that:

"A bench or remand warrant or a decision granting bail or any other court order shall be immediately executed at the instance of the Legal Department, which shall forward them directly to the authorities responsible for their execution"

In this capacity they tend to flout court orders which are not favourable to them on grounds that they have gone on appeal. This attitude is indeed spiteful and malevolent as the Legal Department is under the courts and not the other way round. It is trite law that all court judgments, rulings and, orders remain in force until they are set aside by a court of competent

[91] See Suit No. CANWR/MS/19C/2012 between Ayaba Emerencia & 1Or. V. The People of Cameroon & 1Or, S.L.R. Vol (2016) 4 p.109-118; See also Suit No CANWR/MS/5C/2011 between Tamasang Jude Thaddeus v. The People of Cameroon & 2Ors (unreported)

[92] See Suit No. CANWR/ICC/7C/2011 between Ngwa Emmanuel v. The People of Cameroon, S.L.R. Vol. (2016) 4 pp.20-27

[93] Suit No. CASWR/24C/12/1M /2012, S.L.R. Vol. (2016) 4 pp.184-187

jurisdiction. In a rather contradictory exposition the Learned authors Fonkwe J. Fongang and Eware Ashu,[94] took the view as regards enforcement of court orders and appeals that:

"The release order is executable even before elapse of the time-limit to lodge an appeal, provided there is no appeal within this period against the criminal aspect of the judgment."[95]

Whereas it may be contended that the first arm of the above quoted view is in keeping with the law, it is strongly disagreed that the notion that an appeal lodged within the stipulated period on the criminal aspect of the judgment will stay execution. In the case of *The People of Cameroon v. R.M.M (a Minor)*[96] the Examining Magistrate Her Worship Patience Tanyi of the Buea Court of First Instance in Suit No. CFIB/PI/010/2013 granted bail to the Respondent (Minor) who committed the alleged offence of murder. Displeased with the ruling, the Appellant (Legal Department) kept the Respondent in custody since the 17th of December 2013 when bail was granted to the 4th of April 2014 when the Inquiry Control Chambers upheld the ruling of the Learned Examining Magistrate and ordered for the immediate release of the Respondent. This cantankerous and unparalleled attitude have been observed in several other cases.[97]

This unorthodox approach by the Legal Department is explained by the join effects of Section 547 of the Criminal Procedure Code which states that notwithstanding the provision of Section 545(2), a decision shall be enforceable when it can no longer be set aside or appealed against, except otherwise provided for by law and the provision of Section 453 which is equally to the effect that an appeal shall stay the enforcement of the judgment. These provisions no matter how contradictory they may seem, should never be interpreted to give a party in the proceeding a right to flout and sit on the judgments of the court which they are appearing before. The above stipulations have been given succinct judicial interpretations contrary to the contentions of the Legal Department for proper dispensation of justice to litigants.

It is therefore opined here that the courts can forge a sledge hammer capable of enforcing their judgments and orders directly to the authorities responsible without channeling same through the Legal Department. The law gives the Presidents of all Courts the powers to ensure that the orders and judgments of their courts are enforced.[98] The philosophical basis for which the law prescribed execution through the Legal Department was perhaps because the Legal department is in charge of the cells and should visa those who enter or leave those cells or prisons. On

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[94] J. F. Fonkwe & A. Eware, *Cameroon Criminal Procedure and Practice in Action*, (Edition Veritas: Douala 2019) at p.485

[95] *Ibid*

[96] Suit No. CASWR/10ICC/2013 reported in S.L.R. Vol.6 (2017) at p. 173

[97] See Suit No. CASWR/ between *Nyuykongi Gilbert v. The People of Cameroon* (unreported)

[98] Section 545 of the Criminal Procedure Code

another breathe they are in control of the bailiffs and forces of law and order, in that capacity they can easily requisition them when the need so arises. Undisputedly they are not to add or reduce anything in the said judgements, rulings or orders of the court. They are simply to keep the records straight and channel the documents to the authorities concern for execution.

V. The independence of the judiciary and interference by the executives

The Constitution of Cameroon acknowledges the principle of separation of power between the executive, legislative and judicial arms of government.[99] The by the constitution, judicial power is exercised by the Supreme Court, Courts of Appeal and Tribunals. Article 37 of the Constitution of Cameroon enacts:

"(1) Justice shall be administered in the territory of the Republic of Cameroon in the name of the people of Cameroon.

(2) Judicial power shall be exercised by the Supreme Court, Court of Appeal and tribunals. The Judicial Power shall be independent of the Executive and Legislative Powers. Magistrates of the bench shall, in the discharge of their duties, be governed only by the law and conscience.

(3) The President of the Republic shall guarantee the independence of the Judicial Power. He shall appoint members of the bench and of the legal department

He shall be assisted in this task by the Higher Judicial Council which shall give him its opinion on all nominations for the bench and on disciplinary action against judicial and legal officers. The Organization and functioning of the Higher Judicial Council shall be defined by law."

The above cited provision in a rather contradictory manner establishes the Judicial Power and at the same time renders it subservient to the Executive arm of government by making the head of the Executive Arm of Government the guarantor of its independence. This has made the judiciary in Cameroon to be excessively accountable to the executive and has resulted in the absence of judicial independence.[100] The African Commission in Communication No. 266/2003 between *Kevin Mgwanga Gunme & others v. The State of Cameroon,*[101]held that:

"The Commission states that the doctrine of separation of powers requires that the three pillars of the state to exercise powers independently. The executive branch must be seen separate from the judiciary, and parliament. Likewise, in order to guarantee its independence, the judiciary,

[99] See the Constitution Part II Executive Power, Part III Legislative Power and, Part V for the Judicial Power.
[100] L-S. E. Enonchong, 'Judicial Independence and Accountability in Cameroon: Balancing a Tenuous Relationship', *African Journal of Legal Studies* (2012) Vol. 5, at pp.313-337:313
[101] Endorsed at the 45th General Assembly Meeting of Heads of State in Banjul 2010

must be seen to be independent from the executive and parliament. The admission by the respondent State that the President of the Republic, and the Minister responsible for Justice are Chairperson and Vice Chairperson of the Higher Judicial Council respectively is a manifest proof that the judiciary is not independent."

It follows from the above decision of the Regional Body of the African Union that the question of the independence of the judiciary of Cameroon is no longer any issue for any debate. This lack of judicial independence is an overriding problem to the entire judicial system including criminal justice. The executive has systematically used their over bearing influence over the judiciary to coerce judges to render judgments which are apparently perverse.

VI. Conclusion and recommendations

This study has examined some of the problematic in the dispensation of criminal justice in Cameroon particularly arising from the Criminal Procedure Code and the fact of no judicial independence as a general problem hindering the administration of justice in Cameroon generally. Emphases have been dwelled on the hitches encountered by accused persons, victims of offences, judicial police officers, the courts and even the prosecution in the day to day practice of the criminal law. These difficulties are sometimes observed prior to the trials or hearings that are, in the light of judicial police investigations or Preliminary Inquiries conducted by the Examining Magistrate. In the same vein, some problems appear clear from the Code which are as highlighted above, occur during the trial which do not conform with universal principles, international law and human rights tenets. Such as the tendering of documents, the notion of unbailable offences, the tendering of documents, amendment of a charge sheet amongst other things. While an existential problem with appeals have been the absence of a provision dealing with extension of time to go on appeal and the strictness of the law on the one hand to prescribed time limits to file notices of appeal and memoranda, and on the other hand the share levity of the law to impose a corresponding timeframe for respondents to file in replies to the memoranda of the Appellant. All this emerges as some of the lacuna in the laws and practices of criminal advocacy in Cameroon but nevertheless there are other key issues not addressed herein.

A general problem that has been heavily debated upon in both judicial and academic vicinities has been the lack of judicial independence which has accounted for different questionable decisions in criminal matters, civil and electoral matters in the country. This has been the main drive of corruption in the administration of justice as magistrates of the bench and the legal departments are appointed by the Head of State who is the Head of the Executive arm of

Government and the Guarantor of the independence of the judiciary.[102]

Subject to the arguments and the emphasis laid in the conclusion, this study makes the following recommendations;

Firstly, with regards to pre-trial roadblocks in the criminal justice system, the Human Rights Commissions and other accredited human rights organization should be given direct access to the police cells, gendarmerie cells and other detention centers to inspect the conditions of the detainees. In fact, their mandate should in addition to publishing quarterly reports, also extend to empower them to bring actions against officers who violate the Code by torturing detainees both physically and psychologically before the law courts and prosecute them accordingly. With regards to Preliminary Inquiry proceedings the time limit for determining charges for misdemeanors should be reduced to one month and for felonies it should not exceed three months renewable once. Also Magistrates of the Bench should not exercise concurrent functions as Examining Magistrates, this way their work load will be minimal and they can meet up with the datelines to administer their separate functions. They example of the Military Tribunals should be followed whereby Examining Magistrates are different from Magistrates of the Bench and of the Legal Department.

Secondly, with the contentions arising from trials it is recommended that a charge which is porously and defectively drafted should be capable of bringing that particular case to an end even if it should not operate as res judicata. It should not be kept on the cause list for as long as the Prosecution can make the necessary corrections. A charge remains a formal document of accusation and should be treated with the strictest care and seriousness by Magistrates trained and are working for the State.

Furthermore, it is further suggested that quite apart from the fact that the law provides that statements recorded in the course of judicial police investigations shall be mere information, at times some judges rely heavily on them to convict accused persons. This study therefore upholds the views that documents should be tendered through the makers of the statements or someone who has sufficient knowledge as to the origin of the police report such as the investigator. This will provide an opportunity to the accused person to test the circumstances under which the statements were recorded through cross-examination.

With regards to the notion of bailable and unbailable offences, a distinction should not be drawn as it is at the discretion of the court to grant same. A judge should be able to exercise his discretion judiciously and judicial in order to admit an accused or a defendant to bail. Statutory

[102] Article 37(1) and (2) of the Constitution of Cameroon.

limitations should not be imposed to suggest that an offender of a certain category of offence is likely to have committed that offence. In other words, a law should not impute guilt against an accused person while the matter is yet to be determine.

In addition, it is recommended here that the law should divest a judge with the powers to amend a charge *sou moto*. He should only do so upon the request of a prosecuting parties and not by his own initiatives. This always makes him to preconceive that the accused would have committed the offence in the amended charge.

As far as post judgment contentions are concern, it is opined that the courts should be empowered to directly enforce their judgments, rulings, orders, etc. and not necessarily passing to through the Legal Departments who at times are the authors of illegal detention themselves. There have been cases whereby the court held that a person under the detention of the Legal Department or cells controlled by them was under illegal detention. Such detentions usually arise when an accused is discharged and acquitted or granted bail and the Legal Department displeased with the judgment or ruling, decides to go on appeal. In fact, both judicial and administrative sanctions should be conceivable against such Magistrates who without just cause violate legally issued decisions of the courts in contempt. Also, the legislation can formulate a sledge hammer that will provide an enlargement of time under which a prospective appellant can be allowed to go on appeal for the very serious cases outside the statutorily ten days' period. This should be the case where there is a likely potential that there has been some miscarriage of justice. In fact, if it can be established that there was a force majeure or other reasons to suggest that the potential appellant was unable in the circumstances to file within the ten days statutorily provided for, then leave should be granted. In such a case the proposed grounds of appeal should be attached to the application for enlargement of time.

Finally, with regards to the aspect of the independence of the judicial power, it is recommended that the recommendations of the African Commission in Communication No. 266/2003 between *Kevin Mgwanga Gunme & others v. The State of Cameroon,*[103]should be implemented to avoid the over bearing influence of the executive arm of the government over the judiciary. There should be Constitutional amendment to revise Article 37 which empowers the President of the Republic with the powers to appoint Magistrates of the Bench and of the Legal Department and the same president of the Republic who is the head of the Executive arm of Government to be the 'Guarantor' of the independence of the judicial power. In addition, the statute of the Higher Judicial Council should be amended accordingly for the High Judicial Council to be chaired by

[103] African Commission in Communication No. 266/2003

individuals other the President of the Republic and the Minister of Justice as Chairperson and Vice Chairperson respectively or persons appointed by them.

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VII. References

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4. Law No. 2011/028 of 14 December 2011 as amended and supplement by *Law No*. 2012/011 of 16 July 2012 on the creation of Special Criminal Court

5. P. C. Ngo Mandeng, 'The Role and Function of Prosecution in Criminal Justice'

6. Criminal Procedure Code 2005

7. Cameroon Constitution 2008

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11. J. F. Fonkwe & A. Eware, *Cameroon Criminal Procedure and Practice in Action*, (Edition Veritas: Douala 2019)

12. B. Osamor, *Fundamentals of Criminal Procedure Law in Nigeria* (Dee-Sage Nigeria Limited 2004)

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