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The State Control of Private Prosecutions in Cameroon: The Good, The Bad, and The Way Forward

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ABSTRACT

The right of an individual to initiate a private prosecution continues to be of fundamental importance in the Cameroonian criminal justice system in ensuring access to justice by making sure that people who cause them harm are pursued in a court of law without their rights being fettered. However, being a formidable tool in criminal litigation which can be quicker and more effective than other legal remedies available to victims of offences; it can be a veritable weapon of abuse against accused persons. Private prosecution is prone to abuse with the tendency of private prosecutors fabricating evidence or maliciously pressing charges against accused persons. To check these abuses, the state of Cameroon has adopted measures to prevent the misuse of private prosecutions. However, the application of these measures can be counterproductive due corruption and fascism. Nonetheless, the state must continue to fine-tone these measures to ensure sanity in private prosecution while constructing a reliable and robust criminal justice system. This article tries to justify states' intervention in private prosecutions by highlighting the reasons for the intervention, its effects on the criminal justice system, and the manner of making the intervention more acceptable by the society.

Keywords*: State, Control, Private, Prosecution, Cameroon.*

I. INTRODUCTION

Private individuals reserve the right to institute criminal prosecutions though the public prosecutor has the powers to discontinue any private prosecution that has the potential for abuse. These abuses take different forms but they commonly include pressing charges against a person without bringing the charges to his knowledge for him to prepare his defence, or instituting a private prosecution after the expiry of the limitation period for prosecution. Jamil Ddamulira Mujuzi writes that, in the United Kingdom, in the case of ***Crawford Adjusters & Ors v. Sagicor General Insurance (Cayman) Ltd & Anor (Cayman Islands),*** Lord Sumption observed that the tort of malicious prosecution was created in the seventeenth and eighteenth centuries to deal

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with the problem of abusive private prosecutions which was a serious social evil.[2]

The delegation of the criminal prosecution function to private actors no matter its normative attractiveness does not always advance ethics, due process and accountability.[3] It is therefore incumbent on the state to control the exercise of this sovereign power to mitigate damage to important values that public prosecutions norm advances through mechanisms that are fair and accessible to all parties.

The control that the state exercises over private prosecutions is reminiscent of that over public prosecutions with the aim of ensuring social cohesion and the implementation of judicial policies of the state. The control operates to put a temporal or a permanent end to a criminal proceeding that the state sees as having the potential of harming social interest or not aligned with the policies of the state. While this sounds obvious with public prosecutions, its conception over private prosecutions sounds fallacious and to an extent vexatious because it is difficult to comprehend why the state will discontinue criminal proceedings initiated by private individuals wherein the state has no direct interest. To better appreciate this power of the state to exercise control over criminal proceedings including private prosecutions, it is important to understand the reasons for state control over criminal proceedings and the mechanisms they employ when exercising this control.

II. WHY STATES CONTROL PRIVATE PROSECUTIONS

The term criminal prosecution function includes a variety of tasks associated with the prosecution of a criminal case, from the charging decision, to plea bargaining, to the litigation of a case through trial, sentencing, and appeal. These functions are principally performed by the public prosecutor who incarnates the sovereign power of the state. There is therefore a direct nexus existing between criminal prosecution function and state sovereignty and this can be demonstrated through the various decisions taken by the prosecutor at all the stages of a criminal prosecution with their impact on individuals and institutions. As one writer puts it,

Prosecutors, first and foremost, make decisions and these decisions are of a tremendous importance. The decisions made by a prosecutor in setting enforcement priorities have far reaching impact on commerce, politics, and everyday lives of those who must order their conduct and behaviour accordingly. Prosecutorial decisions regarding whether and what to

[2] Mujuzi, J.D., (2016), Victim participation in the criminal justice system in the European Union through private prosecutions: Issues emerging from the jurisprudence of the European Court of Human Rights, Vol. 24, p. 14 retrieved from https://repository.uwc.ac.za.
[3] Austin Sarat et al., (2008), Beyond Discretion: Prosecution, the Logic of Sovereignty, and the Limits of the Law, Law and Social Inquiry, Vol. 33, Issue 2, p. 407.

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investigate and what tactics and tools to use in the course of an investigation can have consequences for those who fall under the government's scrutiny. The ability to decide whether and what to charge gives the prosecutor perhaps the most power of any single actor in the criminal justice process. Furthermore, plea bargaining, referrals for mediation, and conditional and unconditional dismissals all require the prosecutor to make significant decisions. Moreover, although the vast majority of criminal cases are disposed of by guilty plea, for those cases that proceed to trial, the prosecutor continues to exercise substantial discretion. In the course of trying a case, a prosecutor must decide the general strategy and theory of the case. Often, the prosecutor must take difficult decisions regarding unanticipated developments during the course of the evidence presentation. The sentencing phase requires the prosecutor to establish the government's position on the appropriate punishment to vindicate the public's interest in retribution, deterrence, and rehabilitation. When a guilty judgment is challenged on appeal or on collateral review, the prosecutor must decide whether and how best to protect the verdict…decisions about which arguments to make and emphasize, and, perhaps, when to concede points of law that will impact the government's position in other cases. Importantly, all of the examples of prosecutorial decision making involve discretion that is, for the most part unreviewable.[4]

The exercise of prosecutorial discretion has the potential of impacting on individuals and institutions, and can be subject to abuse. Thus, it is normal that the state ensures probity in the exercise of the discretionary powers of prosecutors not only to instil sanity in criminal prosecutions but also to ensure the efficient management of resources, the safeguard of public function, guarantee objectivity, preserve social interest, curb abuse, and maintain diplomatic ties[5] in order to mitigate the negative impact it might have on our criminal justice system.

(A) Maintenance of Peace and Public Order

Public order is an assembly of obligatory rules that touches on the organisation of the society, its economy, morals, security and public peace, the rights and liberties essential for an individual's self-determination.[6] Put differently, public order is a set of values that tie a society together and characterises the operation of a legal system that individuals rely upon for the attainment of their full potentials as members of a particular society. These values address the

[4] Roger A. Fairfax, Jr., (2009), Delegation of the Criminal Prosecution Function to Private Actors, University of California, Davis Law Review, Vol. 43, p. 411.
[5] Chimontoh Z. Akomandoh, (2020), The Department of Public Prosecution and Judicial Police in Cameroon, Miraclaire Publishing in association with Ken Scholars Publishing, USA, p. 161.
[6] Gnasiri Tchago B., (2023), Traditional Authority and the Maintenance of Public Order in Cameroon, International Journal of Management Studies and Research (IJMSR), Vol. 11, Issue 2, p.3.

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social, moral and economic standards that regulate the behaviours of individuals and enforced as standards in the society.[7] The maintenance of these standards is important to our economic development and tranquillity in society because it prevents and deters attempts at disrupting social harmony, stability and public peace. Where public order is disturbed, there is a high propensity that social ills will increase, economic development will be retarded, insecurity will reign with the probability that the state may fail and this reduces the recognition of the statehood by the international community.

It is the responsibility of the state to defend morals and enforce rules and regulations in society. However, the responsibility of the state doesn't begin and end with enforcement of rules and regulations but extends to undertaking the obligation to make full reparation to persons who have suffered from disruptions in public order. One such rampant disruption is in the area of criminal prosecutions where individuals are subject to malicious prosecutions and probably their detentions.

The state of Cameroon through the Commission for Compensation of Victims of Illegal detention now expends fabulous sums of monies to compensate individuals who have been victims of illegal detention. To pre-empt and curb these abuses, it is paramount for the state to check and control all shortcomings in criminal prosecutions including those in private prosecutions because they have the potential to endanger public order. A society where frivolous and vexatious suits are entertained provides an opportunity to some litigants to bother, embarrass, or cause defendants to incur unnecessary expenses when they know they have no reasonable basis to subject the litigant to such hardship. Private prosecutions have these tendencies, thus, it is imperative that the state puts in place measures to check these abuses because they undermine the credibility of the criminal justice system.

(B) Protection of Human Rights

States are the primary duty-bearers of human rights obligations according to the standards of international law. When states ratify international human rights treaties, they take upon themselves the obligations contained in the treaty. And once a matter has become a subject of treaty obligation, such a subject is deemed internationalized and thus removed from the domestic jurisdiction of the state which is party to such treaty.[8] While the balance between these obligations may vary according to the rights involved, they apply to all civil, political, economic, social and cultural rights. Moreover, states have a duty to provide a remedy at the

[7] Ibid.

[8] Osita N. Ogbu, (2013), Human Rights Law and Practice in Nigeria, 2nd Ed., CIDJAP Press, Enugu, vol.1, p.18.

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domestic level for human rights violations.[9] It is on this basis that states, generally speaking, should create the legal, institutional and procedural conditions that rights holders need in order to realize and enjoy their rights in full.[10]

In the furtherance of these widely accepted principles of international human rights, states are readily divulging some segments of its sovereignty for the common good of the population. Prosecutorial discretion, being sovereign power, can therefore be delegated to private actors by state to enhance access to justice and the respect for human rights of persons in general. In the process of private prosecution therefore, states carry the obligation to ensure that all its treaty obligations pertaining to human rights are respected. It is in its role as protector of human rights therefore that the state intervenes to control criminal proceedings initiated by way of private prosecution. The state owes the international community this obligation and the state taking or putting in place measures to ensure that human rights are respected during private prosecution proceedings justifies state's control over private prosecutions.

(C) The Efficient Management of Resources

Tamlyn Edmonds and David Jugnarain in assessing private prosecution and a potential anticorruption tool in English law determines that in recent times, with law enforcement agencies experiencing bigger caseloads and increasingly stretched resources, private prosecutions are another option for individuals and businesses seeking redress for criminal activity conducted against them.[11] The current lack of resources available to public investigators and prosecution agencies, combined with increasingly complex digital technologies that are used to commit more complex offences such as fraud and financial crimes, means that private prosecutions are becoming increasingly common. Whereas previously these offences would be investigated and prosecuted by the police, the prosecution services, or other agencies, this is often no longer the case. States, faced today with budget cuts and limited resources, very readily delegate some of its prosecutorial functions to private actors to palliate the shortages in resources. Even with the privatisation of the prosecutorial function, the state still expends resources during private prosecution proceedings. The state employs considerable resources in terms of personnel during private prosecutions due to its status of principal party conferred on it by the law.[12] There is therefore a need in the management of these resources to reduce waste and guarantee efficient management of the available resources employed during private

[9] Ibid, at pp.92-95.
[10] Ibid, at p.114.
[11] Tamlyn Edmonds et al., (2016), Private Prosecutions: A Potential Anticorruption Tool in English Law, Open Society Foundations, New York. Retrieved from https://www.justiceinitiative.org.
[12] Section 128 of the Criminal Procedure Code.

prosecutions. It is in efforts to efficiently manage resources that the intervention of the state to control certain private prosecutions is justified.

The numerous and varied reasons recognised to the state as justification for its command over private prosecution usually translate into its desire to protect social interest or public order through initiatives that are consistent with good governance and respect for human rights, and the rule of law within a duly approved process or system.

The reasons for the state to control private prosecution above are not exhausted. There exist a plethora of other reasons that the state might find compelling to intervene in a private prosecution that include the protection of a state interest, to ensure the respect for the rule of law, to protect an investment, to preserve diplomatic ties, to safeguard public function, the pursuit for objectivity amongst others. This is not to say that these are the only reasons that justify the states' intervention in a private prosecution, but that these reasons are many and varied and can either be singly or cumulative be advanced to justify states' control over private prosecutions.

III. MECHANISMS OF CONTROL OF PRIVATE PROSECUTIONS

The authority the state exercises over private prosecutions can be perceived through the various attempts by the state to bring the process within a desired pattern. While these attempts vary depending on the particular circumstances of each case, they are mostly bureaucratic controls employed by the state to influence the conduct of private prosecutions to protect social interests and maintain tranquillity in the society. These bureaucratic controls are aspects concerned with controlling human behaviour through an organisational structure that replaces direct control with indirect control through hierarchies, roles, policies, rules, procedures, and any other structural means necessary for the standardization of the procedure.[13] Since a piece of legislation doesn't operate in isolation in the furtherance of a given policy but in synergy with other pieces of legislations, while some of the mechanisms employed by the state to control private prosecutions are provided in the Criminal Procedure Code, others are not but can be inferred from other legislative enactments.

The most recognised power of control in the arsenal of the state over private prosecutions is the power to discontinue any criminal proceeding that has the potential of offending social interest or endangering public order. The question as to whether the state has the power to discontinue

[13] Peter Wendorff, (2022), Bureaucratic Control, Apress, published online on the 27/02/2022, retrieved at https://www.link.springer.com>chapter.

private prosecution by entering a *nolle prosequi*[14] is no longer of essence as it is clearly stated that any proceeding liable to imperil social interest or public order may be discontinued. Therefore, by implication, 'any proceeding' doesn't exclude private prosecutions.

The state exercises control over private prosecutions through the instrumentality of the Legal Department. Thus, to better appreciate how the state controls private prosecutions, it is important to examine the role of the Legal Department over private prosecutions before examining the various methods of control put at its disposal.

(A) The Role of the Legal Department in Private Prosecutions

The Legal Department is an indispensable legal institution whose role is paramount in the exercise of the right of private prosecution. Its interventions in the proceedings though limited in the pre-trial phase of the private prosecution, is omnipresent at the trial phase of the proceedings. Whether a private individual is initiating private criminal proceedings by virtue of a direct summons under section 60 of the Criminal Procedure Code, or by virtue of a complaint with a civil claim attached under section 157 of the same code, the status of principal party ascribed to the Legal Department in all criminal matters under section 128 of the CPC and section 29 of law N0. 2006/15 of 29 December 2006 on Judicial Organisation as amended by law N0. 2011/027 of 14 December 2011 has made the Legal Department the master of all criminal proceedings in Cameroon. Ferry Armand Mpinda asserts that,

...It is the Legal Department that is the sole agent of prosecution in the Cameroonian criminal law system. It is important to make the distinction between institution of criminal proceedings and prosecution of a criminal proceeding, it is the prosecution of criminal proceedings that is the sole prerogative of the Legal Department...thus, even if the faculty to institute a criminal action in court is allowed to the victim of an offence, its prosecution is reserved for the Legal Department, it is therefore imperative that the Legal Department be informed of the matter in view of having his opinion regarding the prosecution of the matter.[15]

In private criminal actions, the role of the Legal Department cannot be ignored because the private prosecutor only sets the criminal action in motion whereas the prosecution of the matter is entirely the affair of the Legal Department. The Legal Department is a principal party in a criminal trial before the Court and is always represented at such trials under pain of rendering

[14] Ewang Sone A.,(1997), " Can the State Prosecutor Discontinue a Private Prosecution by Entering a Nolle Prosequi?", F. NEKO v. Sam Mofor (1971) Appeal N0. WCCA/11/71, unreported, Judgment per O'Brien Quinn, J.," *Juridis Periodique*, N0. 31, July-August-September 97, pp.39-44.

[15] Ferry A. Mpinda, (2016), Le Procureur de la République au Cameroun, Presses Universitaires d'Afrique, pp.37-38.

the entire proceedings and the resulting decision null and void.[16] He has the latitude to intervene and make submissions at any stage of the trial.[17] He has the obligation, at the close of the hearing in every case, to address the Court or tender written submissions without being denied the right of hearing or stopped when addressing the Court[18] and he must be heard even when these submissions are based only on the civil claim.[19] The private prosecutor is dependent on the Legal Department in the proceedings not only because it wields enormous powers in criminal proceedings but mainly because his status of principal party primes above any other status accorded any other party to the proceedings. This position of the Legal Department in criminal proceedings changes very little even when the criminal action was commenced by way of a complaint with a civil claim attached before an Examining Magistrate. The powers and duties of the Legal Department as stated in sections 128, 129 and 130 of the Criminal Procedure Code confirm our position that it is an indispensable institution in our criminal justice system.

(B) The Methods of State Control over Private Prosecutions

To prevent abuses in private prosecutions, states adopt measures aimed at bringing the procedure under control and foster the common good of society. These is why the law has circumscribed and clearly defined some of these mechanisms though the state still goes out of the confines of the law to employ other unorthodox mechanisms to control private prosecutions especially when it is fostering a political agenda or protecting an individual or institution; very often members of the police force or administrative officials. We therefore have orthodox and unorthodox control mechanisms that the state uses to control private prosecutions.

a. The Orthodox Control Mechanisms

These are legal measures that the state employs to stop or take-over a private prosecution that may hurt public policy. Prominent amongst these measures is the ability of the Minister of Justice and Keeper of the Seals to discontinue any preceding that has the potential of hurting good morals or being against the public interest.

i. *NOLLE PROSEQUI*

A *nolle prosequi* is a formal entry on the record by the Procureur General himself or through the Legal Department by which he declares that he will not prosecute the case further, either as to some of the counts of the indictment, or as to part of a divisible count, or as to some of the

[16] Section 128(1) of the Criminal Procedure Code.
[17] Ibid, paragraph 2.
[18] Ibid, paragraph 3.
[19] Ibid, section 129.

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accused persons, or altogether.[20] This power is the express provision of section 64(1) of the CPC wherein it is stated that the Procureur General of a Court of Appeal may, by express authority of the Minister of Justice, enter a *nolle prosequi*, at any stage before judgment on the merits is delivered, if such proceedings could seriously imperil social interest or public order. It is a judicial determination in favour of the accused and against his conviction, but it is not an acquittal, nor is it equivalent to a pardon as the discontinuance of the criminal proceedings shall be without prejudice to their reinstitution when it becomes necessary.[21]

Though the provision for *nolle prosequi* in the CPC, its definition is still illusive, however, practice hints that where it is entered, proceedings against the person or persons on whose behalf it is entered must be stayed.[22] By its very nature, *nolle prosequi* is akin to a suspension of proceedings and by no means, mean its end.[23] Many a time, some accused persons have been rearrested almost immediately after their cases have been terminated via *nolle prosequi*.[24] The reason is simply that the effect of a *nolle prosequi* is a discharge and not an acquittal. Consequently, it does not serve as a bar to future prosecution, meaning that the person discharged on the basis of a *nolle prosequi* can be re-arraigned for the same offence or a similar or an entirely different offence.[25] In the case of ***The State v. S.O Ilori & 02 Ors***, the court held that a *nolle prosequi* is only a temporary proceeding which has the effect only of a stay and not of quashing of the indictment which technically may later be prosecuted without a fresh indictment.[26]

The power to control criminal prosecutions is also provided in sections 13(4) and 14(1) of Law N0. 2017/012 of 12 July 2017 to lay down the Code for Military Justice, and in section 18 of Law N0. 2011/028 of 14 December 2011 setting up the Special Criminal Court, as amended and supplemented by law No. 2012/011 of 16 July 2012.

The exercise of the power of *nolle prosequi* is a veritable manner of control of not just private prosecutions but all criminal prosecutions. It's a power that is not subject to any appeal or judicial review. Its application is entirely at the discretion of the Minister of Justice and Keeper of the Seals. This discretion is expressly provided by the use of the word 'May' in section 64 of

[20] Bryan A. Garner, (2009), Black's Law Dictionary, 9th Ed., Thompson Reuters, St. Paul, MN, USA, p. 1147.
[21] Section 64(4) of the Criminal Procedure Code.
[22] Dashaco Tambutoh (J.), (2017), *Nolle Prosequi* under the Cameroonian Criminal Procedure Code, in Readings in the Cameroon Criminal Procedure Code, Presses Universitaires d'Afrique, (PUA), P.82.
[23] J. A. Agaba, (2017), Practical Approach to Criminal Litigation in Nigeria, Revised 3rd Ed., Yola-Nigeria, p.361.
[24] Ibid.
[25] Ibid.
[26] (1983) 1 SCNLR 94 at p.109, also, Ewang S. Andrew, (2013), The Cameroon Criminal Procedure Code: A Guarantor of Due Process of Law, PhD thesis, Faculty of Law and Political Science, University of Yaoundé II, Soa, p.90.

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the CPC, in section 18 of Law N0. 2011/028 of 14 December 2011 setting up the Special Criminal Court as amended, and section 13 & 14 of law N0.2017/012 of 12 July 2017 to lay down the Code of Military Justice, which signify the faculty to stop criminal proceedings against an accused person even after restitution of the money or property misappropriated. In the case of **The People of Cameroon & Cameroon Civil Aviation Authority v. Ntongo Onguene Roger & 01 Or**, it was held that the discontinuance of criminal proceedings against an accused person even after restitution of the stolen property is not a legal process but an administrative process which is the prerogative of the executive branch of government.

Commenting on the question of restitution of *corpus delicti* and the effects of entering a *nolle prosequi,* Dzeukou Guy Blaise intimated that the authorisation to stop criminal proceedings that depends on the effective restitution of the *corpus delicti* is purely an administrative act.[27] The entry or not of a *nolle prosequi* is not an obligation, it is instead a favour or a show of mercy towards an accused person in pursuit of a governmental policy that the government is not under any obligation to explain its decision to any person and the decision is not reviewable.

The provision for *nolle prosequi* in all these laws is to check on prosecutions that may have the propensity to injure social interest and public order and stop their continuation. While in other Common Law countries, a *nolle prosequi* may issue because the charge cannot be sustained due to weak or fatally flawed evidence,[28] in Cameroon, it issues for the protection of social interest or public order. This is why even after the restitution of the *corpus delicti,* the discontinuance of criminal proceedings is not automatic but contingent on the appreciation of its impact on society. Though it is seriously hoped that the discontinuance of criminal proceedings in matters of misappropriation of public funds under section 18 of Law N0. 2011/012 of 14 December 2011 as amended will be automatic upon the restitution of the stolen property to the state, for the time being, the decision to stop proceedings remains facultative. Philippe Keubou suggests that to guarantee the automatic discontinuance of criminal proceedings or the discontinuance be made a matter of right, it will be necessary to amend section 18 of Law N0. 2011/012 of 14 December 2011 setting up the Special Criminal Court on certain points, notably, conditions necessary for entering a *nolle prosequi* must be well defined in the law.[29] In a previous article with his friend, they alleged that the facultative manner of discontinuing criminal proceedings

[27] Observations after the ruling n0.002/Crim of 31 January 2013 of the Special Criminal Tribunal in l'affaire MP et Etat du Cameroun (Cameroon Civil Aviation Authority) c/ Ntongo Onguene Roger et Fotso Yves Michel made by Dzeukou Guy Blaise in "Les Grandes Decisions de la Jurisprudence Penale Camerounaise", URDA, Université de Dschang, (2018), pp.553-590.

[28] FonkwE, J.F., et al., (2019), Cameroon Criminal Procedure and Practice in Action, Editions Veritas, Douala, p.317.

[29] Philippe Keubou, (2021), La Procédure Pénale au Cameroun, L'Harmattan, Paris, p. 187.

against an accused person after he has restituted the *corpus delicti* does not guarantee the respect of the principle of equality of all before the law enshrined in the various international and national laws.[30]

ii. Transfer of Cases

The possibility for a case to be transferred from one jurisdiction to another is another way private prosecutions can be controlled. Questions of jurisdiction are usually matters of public policy which are matters for the state and it reserves the prerogative to adjudicate over such matters. Public policy broadly described is principles and standards regarded by the legislature or by the courts as being of fundamental concern to the state and the whole of society.[31] The state therefore can implement principles that prevent harm from being done to the public good. Thus, any proceeding that has the potential of causing injury to public good in one locality can be transferred to another locality to warn-off any such imminent harm.

The CPC has provided for the possibility of transfer of a case from one jurisdiction to another when it states that the application for transfer of a case can be made by the Legal Department or by any other party to the suit with the Legal Department reserving the right to base its application on grounds of public policy.[32] By implication, even suits instituted by way of private prosecution that may offend public policy in a particular jurisdiction can be transferred to another jurisdiction for trial by the Legal Department.

The Supreme Court may, on the ground of suspicion or in the interest of public policy, withdraw a case from any court and transfer it for trial to another court of the same jurisdiction or appoint magistrates within the jurisdiction of a different Court of Appeal to hear and determine the matter[33] Whilst in the Nigerian case of ***Ibori v. Federal Republic of Nigeria***, the former Delta State Governor was arraigned along with three others on a 103 counts charge of money laundering and other financial offences by the Economic and Financial Crimes Commission before the Federal High Court, Kaduna. When the charge was amended to 129 counts, the appellant brought an application for the transfer of all cases from Kaduna Division to the Judicial Division where the offences were allegedly committed.[34] In the Cameroonian case of ***Fon Doh Gwanyin III & 9Ors v The People of Cameroon***, it was judges from different

[30] Keubou Philip & Nzeu (A.V.), (2019), "L'arrêt des poursuites suite a la restitution du corps du deli: Réflexion sur une violation acquis du principe de l'égalité de tous devant la loi", Annales de la Faculté des Sciences Juridiques et Politiques de l'Université de Dschang, T.21, pp.357-378.
[31] Bryan A. Garner, (2009), op.cit. p.1351.
[32] Section 604(2) CPC.
[33] Ibid, paragraph 1.
[34] (2009) ALL FWLR (pt.487)159.

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jurisdictions that were appointed to sit in the panel that was setup to hear the matter.[35]

The transfer of a case from one court to another is a matter that must be taken seriously. Reserving that prerogative to the Supreme Court shows the legislator's intention to prevent its use as a tool in the hands of parties to frustrate criminal actions. Nevertheless, it remains a mechanism that the state can employ to control criminal prosecutions.

iii. Fiats

The word 'fiat' is a Latin word which means 'let it be done'.[36] It denotes the grant of a power by a person having complete authority and control to another person to enable that other person exercise the power contained in the fiat.[37] As was explained in the case of ***Nnakwe v. State***,[38] once a fiat is granted by the Procureur-General to prosecute a case, the validity of that fiat would continue until the end of the case including interlocutory appeals arising from the case. It is not uncommon for Public Prosecutors to apply for fiats from the Procureur-General to prosecute certain offences as provided in the Penal Code but it is rare to see private prosecutors seek and obtain fiats from the Procureur-General to prosecute criminal offences.

Technically, in criminal procedure, soliciting a fiat is a tacit acceptance that you do not have the authority to prosecute a particular offence and consequently calling on the person having that authority to permit you prosecute that said offence. The Penal Code, in schedule III(B) on the provisions exempted from the repeals in schedule II, section 46 has listed a series of offences whose prosecution can only be carried out upon seeking and obtaining a prior authorisation from the Procureur-General. In the Court of First Instance Tombel, in ***The People of Cameroon & Nnoko Kingsley v. Esseme Paul***,[39] one Nnoko Kingsley seised the court with a direct summons but when a copy of the direct summons was served on the Legal Department for the establishment of their administrative file, it was determined that the offence; practice of witchcraft, on which the direct summons was based under section 251 of the Penal Code, constituted one of such offences requiring the authorisation of the Procureur-General for its prosecution. The facts of this case are that, the complainant, Nnoko Kingsley lives in the same neighbourhood with the accused person; Esseme Paul. The complainant alleged that the defendant is in the habit of partially shaving the hair of children without any apparent reason and the children later turning into imbeciles. Unfortunately, the State Counsel could not enter appearance and prosecute the matter because he needed a fiat from the Procureur-General to

[35] (2012) CCLR, Part 15.
[36] Bryan A. Garner, (2009), op.cit, p.700.
[37] J.A. Agaba, (2017), op.cit, p.384.
[38] (2014) ALL FWLR (pt.716) 414.
[39] CFIT/14c/2020.

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prosecute the matter. The delay orchestrated by the application for a fiat caused the case to go cold. The complainant was so frustrated and for fear for retribution from the accused person, who is a dreaded wizard in his neighbourhood, he had to relocate to a faraway town and the matter after suffering several adjournments was tried in default of the parties and a verdict of not guilty was entered in favour of the accused person.

Fiats can be used to prevent abuses to the right to institute a private prosecution.[40] The legislature has provided for this kind of control over the prosecution of certain categories of offences and persons because of the probable danger this prosecution might present to the security or wellbeing of the society. Thus, the power to issue fiats is another mechanism through which the state can exercise influence over private prosecutions.

iv. Amnesty

The Criminal Procedure Code has provided for the possibility to discontinue criminal proceedings by stating in its section 62(1)(c) that criminal proceedings can be discontinued by amnesty. Amnesty is an act of a sovereign power officially forgiving certain classes of persons who are subject to trial but have not yet been convicted.[41] The word amnesty is derived from the Greek word 'amnestia' which denotes 'forgetting', and has come to be used to describe measures of a more general nature, directed to offences whose criminality is considered better forgotten.[42] It is pardon extended by the government to forgive certain offences by pretending to act as if they never existed.[43] Where an accused person can show proof that the offence he committed has been amnestied, he cannot be tried because it puts an end to the criminal prosecution where it is ordered before judgment on the merits in the case.[44] Where an offence has been amnestied, it loses its criminality and consequently it cannot be prosecuted and criminal prosecutions are stopped against all those who participated in the offence as well as their accomplices.[45]

The preamble, as well as article 26(6) of the 1996 constitution, section 73 of the Penal Code, and section 62(1)(a) of the CPC all prohibit the trial of any person who can establish he has been pardoned. Section 73 of the Penal Code clearly states that amnesty shall expunge a conviction and shall put an end to the enforcement of all penalties, whether principal or

[40] Mujuzi, J.D., (2019), Private Prosecution in Nigeria under the Administration of Criminal Justice Act, 2015, Journal of African Law, Vol.63, Iss.2, p.237.
[41] Bryan A. Garner, (2009), op.cit, p.99.
[42] Ibid.
[43] Philippe Keubou, (2021), op.cit, p.90.
[44] Ibid.
[45] Ibid.

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accessory, and of all preventive measures pronounced in consequence of the conviction, save confinement in a health institution and closure of an establishment. Unless otherwise expressed, an act of amnesty shall bar the commencement or continuation of any prosecution against the beneficiary. However, where the act of amnesty contains certain conditions to be fulfilled by the beneficiary, for example, where the subject of amnesty had already been sentenced, the conviction shall be expunged and the person shall be released but it will not relieve him of the liability for the expenses due to the Public Treasury in respect of a conviction which has become final and it shall not affect the right of the Public Treasury to any sums already collected in satisfaction of the expenses, fines, or confiscations, or that it can only apply to suspended sentences, or sentences not exceeding a certain period, or that the offender must have already been tried, or must have served part of his sentence.[46]

The act of governments forgiving offenders and offences in certain circumstances has been regarded as encouraging impunity of offenders who have not even shown remorse for their wrongful acts and jeopardising justice. This is why the grant of amnesty to presumed offenders in international criminal law does not absolve them from prosecution before international tribunals if it concerns certain serious offences of international law or a crime of the *jus cogens* [47] and this was amply illustrated in the International Criminal Court case of ***The Prosecutor v. Joseph Kony & Vincent Otti***,[48] where the pre-trial chamber refused to recognised the amnesty granted by the Ugandan government to warlord Joseph Kony and others who allegedly committed heinous crimes. The move was intended to avoid further bloodshed and bring peace to the country but it was met with plenty of criticism mainly on the ground that it perpetuates impunity and can be used as a bate by other criminals to walk their way out of criminal responsibility.

The power of the state to grant amnesty to certain offenders and offences also covers private prosecutions and this suggests to us that it can be used as a means to controlling private prosecutions especially as it is an absolute measure that is subject to no judicial review process and cannot be questioned by any superior authority concerned with the management of misdemeanours and simple offences covered by the criminal law.

The above methods are the ones expressly spelt out the laws but there exist other legal mechanisms that can be used to control private prosecution that are not directly spelt out in the law but which the Legal Department can use to legal justify control over private prosecution.

[46] Ibid.
[47] Fonkwe Fongang (J.)et al., (2019), op.cit, p.316.
[48] ICC-02/04-01/05. www.icc-cpi.int/uganda/kony, consulted on the 19/12/2022.

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These are the techniques of withdrawal of proceedings and take-over. Though highly controversial, they nevertheless can be used to exert control over private prosecutions.

b. The Unorthodox Control Mechanisms

These are unethical manoeuvres employed by the State Counsel to frustrate private prosecutions through unprofessional conduct or giving whimsical interpretations to statutory provisions cunningly designed to induce a judge into making orders or rulings to discontinue a private prosecution. These techniques are mostly used when the State Counsel is compromised thereby adopting position in a proceeding that doesn't further the course of justice but protects a particular interest to secure a favour from a disadvantaged party in a criminal action.

i. Refusal to Enter Appearance And To Prosecute

Though not clearly stated anywhere in the CPC, increasingly, prosecutors are refusing to enter appearance and prosecute criminal actions instituted by way of private prosecutions on the pretext that their refusals to prosecute is an exercise of their prosecutorial discretion under section 141 of the CPC. [49] While this discretion is recognised, absolute and irreproachable to the Procureur-General, the exercise of that discretion by the Legal Department is questionable and reproachable. Questionable as it might be, Public Prosecutors, who are principal parties to all criminal proceedings, in courtrooms these days, it is not uncommon for the State Counsel to resort to refusing to enter appearance and prosecute criminal proceedings initiated by way of private prosecutions as a way of venting their anger on private prosecutor reproaching them of treating the Legal Department with disdain by circumventing it and seising the court directly. This was observed in the Court of First Instance Tombel in the case of ***The People of Cameroon & Fokabo Engwali Tegum Chantal v. Nkwifor Kenna Syronne***,[50] wherein the Public Prosecutor refused to enter appearance and prosecute the direct summons of the private prosecutor.

The Public Prosecutor's refusal to enter appearance to prosecute in private prosecutions is premised at times on the doubt as to whether the evidence adduced by the private prosecutor is strong enough to be relied upon in prosecuting the case, or whether they will pass the test of admissibility. They also argue that private prosecutions have the propensity of reducing the

[49] Section 141 states that a State Counsel before whom a criminal matter has been brought under conditions laid down in sections 135, 139 and 140, may: (a) refer the information or complaint to a judicial police officer for investigations; (b) return the case file to the judicial police for further investigation; (c) decide to close the matter and inform the complainant of his decision. A copy of the decision closing the file shall be forwarded to the Procureur General at the Court of Appeal within one month; (d) decide to put in archives the written reports on simple offences for which fixed fines have been paid; (e) decide to institute criminal proceedings against suspect.
[50] Suit N0.CFIT/DS/69c/2022.

Public Prosecutor to ridicule because they might find themselves arguing over a case that have not been investigated with little or no chance of winning a conviction.

Though this attitude is reproachable to the State Counsel, it is not reproachable to the Procureur-General because he is under no obligation to give reasons for exercising his discretion in a particular way. In the case of ***Bagudu v. Federal Republic of Nigeria***,[51] it was held that,

The prosecution is not under any regimental duty at all to charge all possible accused persons but a State Counsel who comports himself in such a manner might be subject to disciplinary sanctions if it is established that he acted in 'self-interest'.

This attitude of the State Counsel subjects private prosecutions to a kind of unorthodox control that affects the proceedings directly or indirectly thereby casting a doubtful image on the entire criminal justice system.

ii. The Abusive Retention of the Direct Summons by the Legal Department

After the direct summons of the private prosecutor has been filed at the registry of the court, a copy thereof is forwarded to the State Counsel for the opening of an administrative file and for prosecution. Once the matter is listed, it is the duty for the Legal Department as principal party in all criminal trials irrespective of the mode of commencement of the action, to lead the prosecution and try to sustain a charge. But many a times, the State Counsel has received copies of the direct summons and instead of inviting the private prosecutor for a pre-trial conference, retains the summons for no just cause. In the case of ***The People of Cameroon & Fokabo Engwali Tegum Chantal v. Nkwifor Kenna Syronne***, (*supra*) the private prosecutor filed a direct summons in the Court of First Instance Tombel and a copy thereof was sent to the State Counsel for the opening of his administrative file and for prosecution. The matter was listed for hearing. Seeing the matter on the cause list and not having knowledge of the file, the prosecuting counsel inquired with his office and found out that the direct summons was duly received at the State Counsel's Chambers and was informed the file was with the State Counsel. The public prosecutor was further informed that they couldn't find the file. At the court hearing, the public prosecutor refused to enter appearance in the matter since he had no knowledge of the matter but advised the court and the private prosecutor to cause a fresh direct summons to be served on the State Counsel again. His advice was heeded to and a second direct summons was served on the State Counsel. Curiously, even this second direct summons, though duly received at the State Counsels Chambers couldn't be traced a few days before the new date for hearing, and for almost a year, and even at the time of this write-up, the direct summons have not been found

[51] (2004) 1 NWLR (pt.853) 183.

and the matter is hopelessly pending before the court. Surprised right?, this is just one of a hundred other cases in our courts because it is a daily occurrence especially in jurisdictions where the Procureur General's Chambers is far away and entails substantial cost to reach, or were the action concerns a layperson who doesn't even know he can make a formal report to the Procureur General to redress the situation. This report to the Procureur General, even if undertaken, might be a waste of time and resources where the Procureur General is complacent in the actions of the State Counsel. Attitudes like this of the State Counsel must be discouraged because they are counterproductive, fume frustrations in society, attracts danger and hatred towards the legal officers of the Legal Department, or more generally at the criminal justice system.

IV. THE COUNTER-PRODUCTIVITY OF STATE CONTROL OVER PRIVATE PROSECUTIONS

The power of the state to control the exercise of the right of private prosecutions have been justified on many grounds but despite these justifications, the acts of government over private prosecutions can be counterproductive having regard to the raison d'être of the procedure in the Criminal Procedure Code; enhancing access to justice, reducing delays in the administration of justice, increase economic development, and the general respect for human rights. The expectation that these denominators of good governance will be on a steady rise has been dashed due to government's constant intervention in private criminal proceedings and its negative effects on the criminal justice system.

(A) Impact on Access to Justice

The state has the power and duty to ensure that there is no abuse of the criminal process and this applies to both public and private prosecutions. However, the exercise of this duty can impact negatively on citizens' constitutional right to access to justice. This is particularly so where a government instead of encouraging an individual to prosecute a particular offence instead discourages the prosecution of the offence in a bid to protect certain classes of persons or institutions. The vague concept of 'public policy" and 'social interest' on which the state can rely to discontinue a criminal proceeding are prone to abuse because they don't have any generally accepted definition. Thus, they are weapons of abuse in the hands of a corrupt government that can be used at any time to thwart the course of justice especially where they have a hidden interest in the matter. This is even more so because there is no review process to decisions of the state to discontinue a private prosecution.

In Cameroon, the review of criminal proceedings as provided under section 535 and following

of the CPC is only permitted when a judgment has become final[52] and does not include decisions to discontinue criminal proceedings both public and private. Unlike in the UK where a request can be made for the decision to be reviewed under the Crown Prosection Service Victim's Right to Review Scheme,[53] they can be subject of challenge by way of judicial review as was done in the case of R(Gujra) v. CPS[54]

The right of an individual to pursue a private prosecution is of fundamental importance in ensuring access to justice and to see that those responsible for committing criminal acts are punished. However, where manoeuvres are employed by unscrupulous state officials to thwart private prosecutions, the direct impact is that they will prevent litigants from having access to justice, or indirectly cause citizens to lose trust in the criminal justice system thereby turning them away from the system.

(B) Impact on Expediency of Trial

Time is of the essence in the administration of justice and it is imperative on all the participants in the judicial process to respect time frames as set out in the CPC because the respect for time limits in the CPC reduces judicial delays, encourages the rapid execution of court decisions, and the rapid recovery of costs and fines pronounced by the courts.[55] Edouard Kitio writes that in criminal proceedings, when a matter is unnecessarily prolonged with time, it works injustice to the defendant who wishes to know his fate, and to the interest of the complainant who might have the feeling of denial of justice.[56] However, practically, though it is difficult to respect time limits in the administration of justice because it is rare to conduct a judicial process from beginning to the end without encountering some difficulties,[57] state intervention in criminal proceedings constitutes a different ballgame.

When a state employs a measure to discontinue a criminal proceeding, that measure can entail an enormous waste of time thereby orchestrating an unnecessary slowdown in the proceedings. For example, when the Minister of Justice enters a *nolle prosequi*, or decides to transfer a matter from one jurisdiction to another, it can jeopardise the rights of one of the parties to the proceeding by either preventing him from better preparing for his defence or the complainant

[52] Section 535(2) of CPC.
[53] http://www.cps.gov.uk/pulications/docs/vrr_guidance_2014.pdf
[54] (2012) 1 WLR 254.
[55] Philippe Keubou, (2021), in Etudes Africaines, Séries Droit, Mélange en l'honneur du professeur François Anoukaha: Réflexion sur le Mécanisme d'Arret des Poursuites suite a la Restitution des Biens Publics Détournes, l'Harmattan, p.1090.
[56] Edouard Kitio, (2016), Les Délais en Procédure Pénale Camerounaise: Entre Célérité et Droit à un Procès Équitable, Les Éditions Recherche Scientifique Universelle (RSU), Yaoundé – Cameroun, p.2.
[57] Ibid, at p.171.

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might find it difficult to assert his rights against the defendant in the new jurisdiction probably because he couldn't transport himself to the new jurisdiction. Thus, when the state exercises its control over private prosecutions, it must do so with circumspection, otherwise, its interventions and their inherent shortcomings will hamper on the right of citizens to institute private proceedings which can be interpreted as barring access to justice.

(C) Impact on Due Process of Law

Due process; the conduct of legal proceedings according to established rules and principles for the protection and enforcement of private rights, including notice and the right to a fair hearing before a tribunal with the power to decide a case[58] must be guaranteed to all persons by the state. Unfortunately, when the state intervenes in private prosecution, the private prosecutor is never given any opportunity to assert his rights or at least explain himself on the facts upon which he is pressing charges. The state counsel submits to the court either on the take-over or discontinuance of the proceeding without the consent of the private prosecutor. This is a violation of procedural due process which is the minimal guarantees of due process clauses in the CPC. Due process is a right which society has always considered of fundamental importance, both in terms of the letter of the law or legal text and also of its spirit or intention.[59] Thus, governments must be circumspect in intervening in criminal proceedings as Roza Pati quoting James Crutchfield in her book wrote that,

...any government that truly values the human dignity of persons under its jurisdiction, is obliged to employ the least intrusive means in the curtailment of personal liberty of an accused, and provide the imperative safeguards for the accused in its process of crime punishment, to ensure that even persons accused of a crime are given respect they are owed as humans. While accountability for any criminal for any criminal offence is indispensable, it should be rendered through a due process of law, and obviously, it is in the nature of procedural guarantees to require states to undertake extensive positive measures to ensure these safeguards, which ultimately call for a highly developed legal system.[60]

States' interventions therefore in private prosecution that curtail any guarantee which is indispensable to the proper administration of justice tantamount to denial of justice which can certainly lead to a mistrust of the criminal justice system.

[58] Bryan A. Garner, (2009), op.cit, p.575.
[59] Roza Pati, (2009), Due Process and International Terrorism, Martinus Nijhoff Publishers, Leiden-Boston, p.30.
[60] Ibid, op.cit, p.32.

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(D) Impact on Human Rights

It is true that human rights are not guaranteed in absolute terms because rights without limitations will lead to licentiousness and anarchy.[61] Persons exercise their rights sometimes in the law courts probably by pressing criminal charges against individuals who cause them harm through the commission of a criminal offence. This criminal prosecution process is usually pregnant with human rights that may or may not be in favour of the complainant or the accused person. When states intervene in these criminal processes, there is a high probability of infringing on the rights of one of the parties to the proceedings. For example, when the state discontinues a criminal action instituted by a private individual, it prevents this individual from exercising his rights before the court and this tantamount to obstructing access to justice. Litigants usually frown at those manoeuvres because the reasons for the manoeuvres are never explained to them and the upshot is disgust for the criminal justice system. This is usually considered as abuse of the right to fair trial that international human rights organisation might use to refuse aid to the state if it is established that the state has a track record of the abuse of its citizen's right to a fair trial by wantonly discontinuing private criminal prosecutions.

(E) Impact On The Fight Against Crime

One of the disadvantages of state intervention in private prosecutions is that it reduces the number of criminal prosecutions that would have contributed to the deterrent effects of criminal prosecutions in society. When the state intervenes by stopping the prosecution of a private action because it is against public policy, or state interest, that particular action no longer contributes to instilling the fear of criminal punishment in citizens because the punishment will not be publicised as it no longer exists. Thus, where the state is in the habit of intervening in private criminal proceedings, there will be an increase in crime because the benefits of criminal prosecutions are reduced and criminals will have the tendency to operate with impunity and the cost of fighting crime will increase. Abdul-Rahman Bello Dambazau argues that the cost of crime can be incurred when people anticipate its occurrence either as victims or potential victims.[62] He explains that in such a situation, so much time and resources are expended in order to remove or minimise the risks perceived by the victim or potential victim, who may either be an individual, organisation, community or even the society as a whole.[63] If we hang on this reasoning and establish a link between the reduction in the effects of punishment which

[61] Osita N. Ogbu, (2013), op.cit, p.428.
[62] A.B. Dambazau, (2007), Criminology and Criminal Justice, 2nd Ed., Nigeria Defence Academy Press, Kaduna, p.155.
[63] Ibid.

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state's intervention in criminal proceedings encourages and the cost in fighting crime, then we can conclude by saying that state intervention in private prosecutions has a negative impact which calls on the state to revisit its control mechanisms over private prosecutions.

The impact of states' control over private prosecution can be perceived mainly on the credibility of its criminal justice system and reflected in the economic development of the country. We should not lose sight of the fact that the two are intricately related. A country with a bad criminal justice system has never been attractive to foreign investment and low foreign investment means low economic growth and development.

V. CONCLUSION

It is a general trend today that most democracies the world over, and Cameroon in particular are in a permanent quest for making their justice system better. Among its desires is the enhancement of access to justice, making it expedient and less costly through the concept of private prosecution. Private prosecution remains a fundamental right of individuals and corporations to ensuring access to justice by making sure that people who cause them harm are pursued in a court of law without their rights being fettered by someone or a group of persons.

Private prosecutor's rights may not be fettered, because being a formidable tool in criminal litigation, which can be quicker and more effective than other legal remedies available to victims of offences; it can be a veritable weapon of abuse against accused persons. In other words, private prosecution is prone to abuse with the tendency of private prosecutors fabricating evidence or maliciously pressing charges against accused persons.

Cognizant of this fact, it becomes incumbent on the state to adopt measures to prevent the misuse of private prosecutions while instilling sanity in its use. There are a couple of safeguards the state can undertake to ensure the limit of abuse in private prosecution. However, these measures themselves can be subject of abuse therefore they must be well circumscribed because they have the propensity to impact negatively on the entire criminal justice system. Thus, we think that;

- If the procedures are well-defined, their abusive employment will be brought to a minimum,
- If the Procureur General performed regular controls to check malpractices of State Counsels in their participation in private prosecutions, their shortcomings will be brought to a halt,
- If private prosecutors are given greater control and autonomy in the conduct of their

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private prosecutions, it will encourage more persons to participate in the criminal justice system thereby enhancing access to justice, and

- If State Counsels Shaun influences that compel them into engaging into corrupt practices that undermine the institution of justice then private prosecution will continue to be an indispensable tool in the arsenal of litigation.

This is to say that, though it is necessary that the state intervenes to control private prosecutions it must be done with care because any disruptions will only jeopardise the fairness the legislator intended when it provided for private prosecution in our criminal justice system.

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