THE ADMINISTRATION OF JUSTICE IN A BI-JURAL COUNTRY - THE UNITED REPUBLIC OF CAMEROON

by

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ABSTRACT

This work is an exercise in practical comparative law. It examines how justice is administered in a unitary State with two extraneous legal systems, the common law and the civil law. The whole work is divided into six main parts. Part One explores the phenomenon of law in pre-colonial societies and explains how Cameroon came to have two extraneous legal systems. The German, French and British systems of colonial justice in Cameroon are critically discussed in Part Two. Part Three takes the machinery of justice as its focus of inquiry. It begins with a survey of the constitutional setting and them proceeds to deal with the courts system and the outward manifestation of the legal order - the magistracy and the legal profession. Part Five treats the administration of criminal and military justice while Part Four concentrates on those branches of the civil law on which there is now a common substantive law and procedure, namely, labour law, le contentieux administratif, and customary law. Part Six rounds off this study with an examination of a number of topical issues - human rights, law reform, legal education, and the cost of justice. The entire thesis runs to twenty chapters. Style and treatment have not been the same in all of them. Nor has an attempt been made to give equal space and attention to each part or chapter - as if one were dividing an academic cake into symmetrical slices. There are topics which call for and have received more detailed analysis than others.

PRINCIPAL ABBREVIATIONS

A.J.D.A.: Actualité Juridique de Droit Administratif

Bulletin: Bulletin des Arrêts de la Cour Suprême

C.F.J.: Cour Fédérale de Justice

C.S.C.: Cour Suprême du Cameroun

C.S.C.O.: Cour Suprême du Cameroun Oriental

C.U.P.: Cambridge University Press

Crim. L.R.: Criminal Law Review

D.: Recueil Dalloz

Gaz. Pal.: Gazette du Palais

H.L.R.: Harvard Law Review

H.U.P.: Harvard University Press

I.C.L.Q.: International and Comparative Law Quarterly

I.F.A.N.: Institut Francais de l'Afrique Noire

J.A.L.: Journal of African Law

J.C.P.: Juris-Classeur Périodique

J.I.C.J.: Journal of the International Commission of Jurists

L.G.D.J.: Librairie Générale de Droit et de la Jurisprudence

M.U.P.: Manchester University Press

P.U.P.: Princeton University Press

R.C.D.: Revue Camerounaise de Droit

R.D.P.: Revue du droit public et de la science politique

R.D. Pen. Mil.: Revue de droit pénal militaire et de droit de la guerre

R.J.P.: Revue Juridique et Politique

R. Jur. Pol. Ind. Coop.: Revue Juridique, indépendance et Coopération

Rec. Lebon: Recueil Lebon [Recueil des décisions du Conseil d'Etat]

'Recueil Mboyoum': Recueil des grands arrêts administratifs de la Cour Fédérale de Justice par F.X. Mboyoum

Rev. Fr. Sc. Pol.: Revue Francaise de Science Politique

Rev. Sc. Crim.: Revue de Science Criminelle et de Droit Pénal Comparé

S.: Recueil Sirey

S.L.R.: Stanford Law Review

S.U.P.: Stanford University Press

T.C.: Tribunal des Conflits

U.C.L.R.: University of California Law Review

U.C.P.: University of California Press

U.P.C.: Union des Populations du Cameroun

U.P.L.R.: University of Pennsylvania Law Review

W.C.L.R.: West Cameroon Law Reports

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TABLE OF CONTENTS

LIST OF TABLES

APPENDICES

TABLE OF CASES

1. Cameroon

Page

Page

Page

Page

Page

Page

2. Britain

3. France

TABLE OF LEGISLATION

Decree No. 60/224 of 5 December 1960 (Legal aid)

Decree No. 60/280 of 31 December 1960 (Organisation of the gendarmerie)

Decree No. 61/DF/15 of 20 October 1961

Decree No. 61/DF/73 of 28 December 1961 (Buea permanent military tribunal)

Decree No. 52/DF/349 of 21 September 1962 (Buea Tribunal militaire aux armées)

Decree No. 63/DF/3 of 8 January 1963 (Amendment to decree No. 60/280 of 31 December 1960 organising the gendarmerie)

Decree No. 64/DF/84 of 29 February 1964 (Federal law reform commission).

Decree No. 64/DF/155 of 6 May 1964 (Legal aid)

Decree No. 64/DF/218 of 19 June 1964 (Procedure in administrative cases before the Federal Court of Justice)

Decree No. 64/DF/496 of 23 December 1964 (Suppression of Dschang temporary military tribunal)

Decree No. 65/DF/93 of 2 April 1965 (Legal aid)

Decree No. 65/DF/427 of 9 October 1965 (Organisation of the Ministry of Armed Forces)

Decree No. 65/DF/565 of 29 December 1965 (Compulsory insurance)

Decree No. 66/DF/205 of 28 April 1966 (Judicial and Legal Service Rules)

Decree No. 67/DF/495 of 17 November 1967 (Automobile guaranteed fund)

Decree No. 67/DF/636 of 15 December 1967 (Localities in which Yaoundé Permanent Military Tribunal may sit)

Decree No. 67/DF/542 of 20 December 1967

Decree No. 68/DF/235 of 10 June 1968 (Reorganisation of ENAM)

Decree No. 69/DF/50 of 13 February 1969 (Suppression of Douala Temporary Military Tribunal)

Decree of 30 June 1969 (Financial libaility of public accountants)

Decree No. 70/DF/253 of 2 June 1970 (Law governing the magistracy)

Decree No. 70/DF/264 of 4 June 1970 (Internal security of the State)

Decree No. 72/DF/239 of 9 May 1972 (Referendum on proposed unitary constitution)

Decree No. 72/424 of 28 August 1972 (Organisation of the Justice Ministry)

Decree No. 72/550 of 14 October 1972 (Extension of state of emergency)

Decree No. 72/706 of 13 December 1972 (Amendment to 1972 Bar law)

Decree No. 72/736 of 29 December 1972 (Civil authorities empowered to institute proceedings in military courts)

Decree No. 73/121 of 23 March 1973 (Number of members of the National Assembly per Province)

Decree No. 73/458 of 16 August 1973 (Organisation of the National Security)

Decree No. 73/657 of 22 October 1973 (Off licences)

Decree No. 73/658 of 22 October 1973 (Firearms legislation)

Decree No. 73/774 of 11 December 1973 (Prisons administration)

Decree No. 74/26 of 11 January 1974 (Social Insurance)

Decree No. 74/138 of 18 February 1974 (General Rules and Regulations of the Public Service)

Decree No. 74/357 of 17 April 1974 (National Forestry regime)

Decree No. 75/596 of 25 August 1975 (Rules & Regulations governing the Judicial & Legal Service)

Decree No. 76/247 of 24 June 1976 (Amendment to Judicial and Legal Service decree)

Decree No. 76/521 of 9 November 1976 (Legal aid)

Decree No. 76/570 of 4 December 1976 to grant certain powers relating to personnel management to Governors of Provinces and Prefects

Decree No. 78/188 of 2 June 1978 (Reorganisation of the Ministry of Justice)

Décret du 16 avril 1913 (création de justices de paix à compétence étendue en Afrique équatoriale francaise)

Décret du 6 mai 1916 (service de la justice dans les territoires occupés de l'ancien Cameroun)

Décret du 12 janv. 1917 (réorganisation du service de la justice dans les territoires occupés de l'ancien Cameroun)

Décret du 14 avril 1920 (création de conseil du contentieux administratif au Cameroun)

Décret du 8 août 1920 (création du tribunal de première instance de Douala)

Décret du 29 déc. 1922 (création des tribunaux francais au Cameroun)

Décret du 16 avril 1924 (French Head of State may render French laws executory in Cameroun)

Décret du 31 juillet 1927 (justice indigène)

Décret du 30 nov. 1929 (suppression des mariages des impubères)

Décret du 26 fevr. 1931 (procédure pénale devant les tribunaux francais)

Décret du 21 nov. 1933 (application du Code d'Instruction Criminelle au Cameroun)

Décret du 11 mai 1934 (réorganisation du service de la justice dans les colonies)

Décret du 31 déc. 1934 (réorganisation judiciaire au Cameroun)

Décret du 30 juin 1936 (réorganisation judiciaire au Cameroun)

Décret du 17 juillet 1944 (Code pénal indigène)

Décret du 26 juillet 1944 (tribunaux indigènes)

Décret No. 46/277 du 20 avril 1946 (suppression des peines de l'indigénat)

Décret No. 46/877 du 30 avril 1946 (justice de droit francais)

Décret du 30 avril 1946 (suppression de la juridiction pénale des tribunaux indigènes)

Décret du 27 nov. 1947 (tribunaux francais au Cameroun)

Décret No. 47/501 du 16 avril 1947 (statut du Cameroun)

Décret No. 59/123 du 27 juillet 1959 (création de l'Ecole Camerounaise d'Administration)

Décret No. 59/247 du 14 déc. 1959 (organisation judiciaire - mésures transitoires)

Décret No. 60/172 du 20 sept. 1960 (notaires)

Evidence Ordinance, Cap. 62 of 1958

Federal Labour Code, 1967

German Imperial Decree of 15 June 1896 (Crown lands)

German Imperial Decree of 17 October 1896 (Crown lands)

High Court (Southern Cameroons) Law, 1955

Labour Code, 1974

Labour Code Ordinance, Cap. 91 of 1958

Law No. 63/LF/7 of 13 June 1963 (Judicial and Legal Service Rules)

Law No. 63/LF/67 of 5 November 1963 (West Cameroon Law)

Law No. 64/LF/22 of 13 November 1964 (National Identity Cards)

Law No. 65/LF.9 of 22 May 1965 (Compulsory Insurance)

Law No. 65/LF/29 of 19 November 1965 (Reform of administrative litigation)

Law No. 66/LF/7 of 10 June 1966 (The medical, dental and midwifery professions)

Law No. 66/COR/2 of 7 July 1966 (Law on marriages in East Cameroun)

Law No. 67/LF.6 of 12 June 1967 (Labour Courts)

Law No. 67/LF/9 of 12 June 1967 (National Defence Organisation)

Law No. 67/LF.19 of 12 June 1967 (Associations)

Law No. 68/LF.2 of 11 June 1968 (Civil status registration)

Law No. 68/LF.8 of 11 June 1968 (Use of names and pseudonyms)

Law No. 68/LF.18 of 18 November 1968 (Industrial injuries and occupational diseases)

Law No. 69/LF.3 of 13 June 1969 (Law on the profession of pharmacist)

Law No. 69/LF.1 of 14 June 1969 (Composition, jurisdiction and procedure of F.C.J.)

Law No. 69/LF.14 of 10 November 1969 (Amendments to certain provisions of the 1961 Constitution)

Law of 10 November 1969 (Financial liability of public accountants)

Law No. 72/LF.5 of 23 May 1972 (Practice at the Bar)

Law No. 73/4 of 9 July 1973 (National civic service for participation in development)

Law No. 73/10 of 7 December 1973 (Conditions for election to the Presidency of the Republic)

Law No. 73/12 of 7 December 1973 (Civil protection)

Law No. 73/15 of 7 December 1973 (Cooperative Societies)

Law No. 74/11 of 16 July 1974 (Amendment to 1972 Bar Law)

Law No. 74/14 of 27 November 1974 (Labour Code)

Law No. 74/21 of 5 December 1974 (Clandestine emigration and immigration)

Law No. 74/22 of 5 December 1974 (Sports and socio-educational equipment)

Law No. 75/16 of 8 December 1975 (Procedure and functions of the Supreme Court)

Law No. 75/18 of 8 December 1975 (Recognition of arbitration awards)

Law No. 76/16 of 8 July 1976 (Amendment to 1972 Bar law)

Law No. 76/28 of 14 December 1976 (Amendment to Ordinance No. 72/6 of 26 August 1972 organising the Supreme Court)

Legal Practitioners Ordinance, Cap. 110 of 1948

Loi-cadre No. 56/619 du 23 juin 1956 (Assemblée territoriale du Cameroun)

Magistrates' Courts (Nigeria) Ordinance No. 24 of 1943

Magistrates' Courts (Southern Cameroons) Law, 1955

Native Courts (Nigeria) Ordinance No. 5 of 1918

Native Courts (Nigeria) Ordinance No. 44 of 1933

Native Courts Ordinance, Cap. 142 of 1948

Nigeria (Constitution) Order-in-Council, 1954

Nigeria Letters Patent, 1946

Nigeria (Protectorate of Cameroons) Order-in-Council, 1946

Nigeria (Protectorate) Order-in-Council, 1922

Notaries Public Ordinance, Cap. 161 of 1948

Order No. 3277/MFP/DP of 27 October 1977 (Procedure for making confidential reports on staff)

Ordinance No. 60/8 of 2 February 1960 (East Cameroun corps d'avocats-defenseurs)

Ordinance No. 60/20 of 22 February 1960 (Organisation of the gendarmerie)

Ordinance No. 61/OF/4 of 4 October 1961 (Military judicial organisation)

Ordinance No. 61/OF/6 of 4 October 1961 (Composition, jurisdiction and procedure of F.C.J.)

Ordinance No. 61/OF/9 of 16 October 1961 (Creation of the West Cameroon Supreme Court)

Ordinance No. 62/OF/18 of 12 March 1962 (Repression of subversive activities)

Ordinance No. 62/Of/33 of 31 March 1962 (Vacancy of the Presidency and vice-Presidency of the Republic)

Ordinance No. 72/4 of 26 August 1972 (Judicial Organisation)

Ordinance No. 72/5 of 26 August 1972 (Military Judicial Organisation)

Ordinance No. 72/6 of 26 August 1972 (Organisation of the Supreme Court)

Ordinance No. 72/7 of 26 August 1972 (Court of Impeachment)

Ordinance No. 72/7 of 26 August 1972 (Higher Judicial Council)

Ordinance No. 72/12 of 26 August 1972 (Regime of immunity for members of the National Assembly)

Ordinance No. 72/13 of 26 August 1972 (State of emergency)

Ordinance No. 72/17 of 26 August 1972 (Repression of acts of lawlessness)

Ordinance No. 72/18 of 17 October 1972 (General regime of prices)

Ordinance No. 72/21 of 19 October 1972 (Amendment to judicial organisation ordinance)

Ordinance No. 73/14 of 10 May 1973 (Insurance bodies)

Ordinance No. 73/17 of 22 May 1973 (Social Insurance)

Ordinance No. 73/18 of 22 May 1973 (National forestry regime)

Ordinance No. 73/27 of 30 August 1973 (Banking activities)

Ordinance No. 74/1 of 6 July 1974 (Rules governing land tenure)

Ordinance No. 74/2 of 6 July 1974 (Rules governing state lands)

Ordonnance No. 58/1375 du 30 déc. 1958 (nouveaux statut du Cameroun)

Ordonnance du 11 nov. 1959 (création de l'armée camerounaise)

Ordonnance No. 59/86 du 17 déc. 1959 (organisation judiciaire)

Ordonnance du 31 déc. 1959 (création des tribunaux militaires)

Petition of Rights Act, 1860 [English]

Petition of Rights Ordinance, Cap. 149 of 1948

Police Ordinance, Cap. 154 of 1958

Protectorate Courts (Nigeria) Ordinance No. 45 of 1933

Provincial Courts (Nigeria) Ordinance No. 7 of 1914

Southern Cameroons (Constitution) Order-in-Council, 1960

Supreme Court (Nigeria) Ordinance No. 6 of 1914

Supreme Court (Nigeria) Ordinance No. 4 of 1933

Supreme Court (Nigeria) Ordinance No. 23 of 1943

Supreme Court (Nigeria) Ordinance, Cap. 211 of 1948

West African Court of Appeal Ordinance No. 47 of 1933

West Cameroon Legal Notice No. 8 of 1961 (Ban on witchcraft practices)

INTRODUCTION

The United Republic of Cameroon is not only a language but also a law laboratory. Here is a unitary republic consisting of an amalgamation of an English- and a French-speaking territory. It has two official languates, English and French (the government has no policy with regards to indigenous languages). It has a single legislative body (a 120-member National Assembly) in which English- and French-speaking parliamentarians sit. It is in essence a bi-jural state and also a country where one encounters conflicts of legal ideas. Official policy towards customary law is nonchalant, if not negative. So, although millions of Cameroonians are, in matters of marriage and inheritance, governed by traditional law, the common law and the civil law remain the manifest bases of Cameroon's national legal systems. Each of these two legal systems operates in a well-defined geographical area; the common law in the English-speaking part and the civil law in the French-speaking part. But there is a constant interplay of the two systems. Thus, Cameroon has a single bar, judiciary, courts system, supreme Court, a number of bi-jural and bilingual codes (Labour Code, Penal Code, Criminal Procedure Code) in force in both parts of the country, and an active law reform programme geared towards a synthetic legal system. Nor does Cameroon's distinctiveness ends there. Most judges, advocates and state prosecutors in Cameroon have had their legal education and

forensic training either exclusively under the common law system or exclusively under the civil law system. Furthermore, at the Supreme Court civil-law trained judges and their common-law trained brothers sit together. Also, advocates schooled in one legal system hold briefs for clients in courts operating under the other legal system. The situation is something like English barristers appearing in French courts and French advocats-defenseur appearing in English courts. All this is the more intriguing when one bears in mind that the vast majority of advocates and judicial and legal officers in Cameroon are both mono-lingual and mono-jural.

For the legal researcher therefore, especially if he is interested in comparative studies, Cameroon provides a very fertile, fascinating and compelling field for research and a fruitful arena for a great deal of comparative legal activity.

*

Cameroon is however not the only bi-jural country in the world. Other bi-jural jurisdictions certainly exist. But they fall in a different category of theirs. Take the United States of America. Louisiana is a civil-law jurisdiction. However, Louisiana is a lonely exception among the American States as all others are common-law jurisdictions. Besides, in Louisiana one finds a situation

where a foreign law (French law) is being administered in English.

In Canada, French-derived laws apply in the minority French-speaking province of Quebec. The rest of Canada is English-speaking and a common law jurisdiction. No attempt has ever been made to unify the laws in both parts of the country. Hence in Canada neither the common law nor the civil law has had any influence whatsoever on the other.

Turning to Britain one finds that the law in Scotland (akin to French law), is different from that in the rest of the country. But Scotland and the rest of Britain share a common language (legal terminology is however not the same in both parts of the country), a common Court of Appeal, and a common legislative assembly (Westminster Parliament). Moreover, Scotland has never had a code and it is doubtful how much that is Scottish law shall be retained by the Scottish law reform commission.

Only in the Republic of South Africa does one encounter a situation close to that in Cameroon, although not exactly on all fours with it. South Africa has one body of law, a synthesis of the common law and Roman-Dutch law, administered in two different languages, English and Afrikaans. However, there are no two distinct law districts in South Africa as there are in Cameroon.

The situation which obtains in Cameroon is therefore a unique one and that is why Cameroon remains a compelling field for study.

*

Cameroon is a triangle-shaped medium-size African state of 7½ million inhabitants (average annual birth rate is 40‰ and death rate is 22‰) wedged between West and Central Africa and covering an area of 475,442 sq. km. (183,569 sq. miles). It is bordered by the Atlantic Ocean to the Southwest, Nigeria to the Northwest, Chad to the Northeast, the Central African Empire to the East, Congo to the Southeast, Gabon and Equatorial Guinea to the South. Ethno-linguistically, Cameroon is a racial crossroads and a tower of Babel. It is composed of more than 200 different ethnic groups, each speaking its own tongue. It is the confluence of the three principal African races, namely, the Nigritic peoples from the Guinea coast, the Western Sudanic peoples from North Africa, and the Bantu from Southern Africa. The oldest inhabitants of the territory are however the pygmies who are found in the Southeastern forests. They have been hunters and food gatherers for hundreds of years and live in small hunting bands.

Of Cameroon's 7½ million inhabitants, about half the population adheres to traditional beliefs while the other half is made up of Roman Catholics, Protestants and Muslims - about a million adherants in each group. Douala (roughly 500,000 inhabitants), Yaounde (approximately 300,000 inhabitants), Nkongsamba, Kumba, Bamenda, Foumban, Bafoussam, Garoua, Maroua and Victoria are the principal towns of the country. The national economy is basically

agricultural and is dominated by French financial institutions and banking houses. Cameroon falls within the communauté financière africaine (C.F.A.) franc zone. The cfa franc is tied to the French franc at the fixed exchange rate of 50 francs cfa to 1 French franc.

Cameroon underwent a triple colonial experience - German, English and French. During the German colonial period (1884 - 1916), German was the official language and German laws applied as the general law of the colony. In 1916 the territory was wrested from the Germans by the British and the French who proceeded to partition it, the French making away with the lion's share. German and German laws were replaced, in the British sphere of the territory, by English and English-derived laws and, in the French sphere, by French and French-derived laws.

In 1960 the French Cameroun, by far bigger in size and population than the British Cameroons, became independent and in 1961 united with the southern half of the British Cameroons (the northern half was incorporated into Nigeria) to form the Federal Republic of Cameroon. The young Republic inherited two extraneous legal systems (the common law and the civil law) and two official languages (French and English). In 1972 Cameroon adopted a new constitution under which it became a highly centralised unitary republic. Politically, Cameroon is a conservative de facto one-party State. French influence is very strong in the country. No field of activity has escaped this influence. This has led to a swallow-up phobia among the

minority English-speaking Cameroonians and to great anxieties about the ever increasing 'French connection' in the country. Officially however, French and English are on an equal footing. So too the common law and the civil law.

*

This treatise is an essay in practical comparative law. The author has been concerned (i) to identify the common-law and the civil-law systems as they operate in Cameroon, (ii) to ascertain how far they differ (if at all) from their parent systems, (iii) to assess the extent of the interaction between the two systems, and (iv) to detect the direction towards which things are moving. All the available material bearing on the subject has been assembled, weighed and assessed as objectively as possible. As there is a dearth of literature on the subject the bulk of the information has come from statutes, interviews, personal observations and experiences. Twelve months were spent in Cameroon doing field work. Throughout this work the emphasis is on the courts and the reality of the law in action. The thesis is descriptive, analytical and critical. It is divided into six main parts, each part into chapters and each chapter into sections and sub-sections.

Part I, entitled 'Origin of the dual legal system', opens with a discussion on the phenomenon of law in pre-colonial African (and Cameroonian) societies and then goes

on to explain how Cameroon came to have two extraneous legal systems. Part II focuses on 'Colonial justice in Cameroon'. It deals with a period when the foundations of Cameroon's judicial and legal systems were laid. Although innovatory legislation has since independence been introduced here and there by the national government most laws in Cameroon bear the marks of their colonial origins.

Part III concentrates on 'The machinery of justice'. It is a crucial part of the work because the administration of justice can only be done through courts set up for that purpose. Here one begins to see the interplay of the common law and the civil law systems in Cameroon. The courts system inherited at independence has been altered, unified and simplified. Customary courts have been removed from the courts system. The writs of habeas corpus, mandamus, certiorari and the order of prohibition hitherto applicable only in Anglophone Cameroon have been extended to the Francophone part of the country. At the Supreme Court cassation and renvoi apply also to cases originating from Anglophone courts. Whereas the Cameroonian magistracy is faithfully patterned on the French model, the Bar reflects influences from both the English and the French Bar. Generally, Cameroonian judges and advocates take a rather cavalier attitude towards the problem of law in a developing country. Apart from a few, most of them show little creativity, broad-mindedness and boldness. They shy away from any form of

academic exercise. There is need for a strong, able and fearless Bar and an independent, incorruptible and fearless magistracy. It is the contention of this writer that in a one-party state membership of the Party (as opposed to engaging in open party activity) is not necessarily incompatible with judicial fearlessness and independence.

The comparative method is a powerful tool for the analysis and understanding of legal systems. So in dealing with the criminal and the civil law the comparative approach is often resorted to whenever it is thought that this will illuminate the issues or point a parallel or divergence in the familiar fields of English or French laws. Part IV deals with three disciplines - customary law, labour law and administrative litigation. Official policy suggests a relentless move in the direction of abolition (at least on paper) of customary law. It is however submitted that such an abolition is neither feasible nor desirable.

Labour law is governed by the Labour Code which drew heavily from the old French Code du Travail d'Outre-Mer of 1952. Only in the area of trade union law has the Code drawn from the law in Anglophone Cameroon. Due to lack of an adequate machinery for enforcement and lack of workers' education on the subject, much of the law relating to contracts of employment, payment of wages and working conditions are in practice disregarded. Furthermore, the Code itself does not deal with the issues of

industrial accidents and occupational diseases. These matters are, oddly enough, dealt with only in a separate law - Law No. 68/LF/18 of 18 November 1968. Finally, Cameroon labour law has not been placed entirely within the matrix of contract law but wedged between the criminal law and the law of contract. The Labour Code attaches penal consequences to breaches of certain of its provisions. Thus any employer who pays his employee less than the minimum guaranteed wage may be sentenced to pay a fine of up to 100,000 francs. In fact in the case of breach of certain other provisions the sentence may be up to two years' imprisonment.

The law on administrative litigation in Cameroon is practically nothing more than a re-statement of French law on the subject. French literature and case-law on the subject still carry much weight in Cameroon. This is partly due to the paucity of Cameroonian literature and case-law on the subject. The extension of administrative law on the French pattern to the common-law part of Cameroon is another fascinating aspect of Cameroon's legal system.

In the criminal law area synthesization of the common law and the civil law has been achieved. The Penal Code and the Criminal Procedure Code are both bi-jural and bilingual and the criminal procedure may be described as a mixed system. It may however be noted that the civil law system has come out on top in parts dealing with pre-trial procedures (police powers, state prosecutor's

powers) while in the parts on trial procedures the common law system has come out on top.

The Cameroonian penal system is progressive on paper but leaves much to be desired in practice. The purpose of the prisons system need not be wholly punitive. Humanitarian considerations should be paramount. In other words, the emphasis should be on reforming the offender and helping him through consistent work and education to regain his self-respect. It is proper that prisoners should be obliged to work. But while serving their sentences prisoners ought to be given compulsory education and vocational training that will fit them to take their place in society and normal work. Schooling is in fact an important means of reforming law-breakers, particularly those anxious to atone for their past. Tuition in prison sets prisoners on the road of honest work and often gives them a taste for further education which they pursue on their release. Home visits should be experimentally introduced for prisoners with a record of good conduct. Only hardened criminals deserve the strictest discipline. The law should explicitly guarantee and stipulate the rights of convicted persons. These rights should be made known to every prisoner at the time of his admission into prison. It should be the duty of the local State Prosecutor to supervise the observance of these rights.

Military law in Cameroon is another discipline where the law is almost entirely French. The military

tradition in Cameroon is French and the Cameroonian army is a French-monolingual institution. One thing which strikes anyone groomed in the common law system is that military courts in Cameroon exercise jurisdiction not only over soldiers but over civilians as well. However, military law in Cameroon has not completely escaped some amount of common law influence. Thus, cross-examination is allowed in military courts.

The last part of this twenty-chapter thesis is headed 'Envoi' and deals with human rights, legal education, the cost of justice, and law reform in Cameroon. Law reform in Cameroon is carried out through ad hoc law reform commissions (consisting of part-time members) set up from time to time to codify a given area of the law. This is the typical method of law reform in civil law jurisdictions. It is cheaper and particularly suitable for a country like Cameroon that suffers from a shortage of qualified law personnel. In common law jurisdictions however law reform is approached through a permanent law reform commission (consisting of full-time members) set up to deal with the whole of the law.

The absence of law reporting and the unavailability of laws and legal literature remains a perennial problem in Cameroon. So too is the poor quality of legal draftsmanship and translation. It is strongly suggested that all laws should be drafted and passed in French and English,

both versions being of the same validity. Laws should not be drafted in French and then merely translated into English. There is also a pressing need for bi-jural/ bilingual law reports. A law reporting council should be set up to report decisions of the Supreme Court and Courts of Appeal. Such a council should be attached to the Ministry of Justice and funded by it. There is also a need for a closer relationship (at the moment nonexistent) between law teachers, members of the magistracy and the Bar. This could take the form of occasional seminars or conferences at which all three participate. This will foster an esprit de corps among Cameroonian jurists of various fields of activity and provide an avenue for the exchange of ideas and experiences.

PART ONE

ORIGIN OF THE DUAL LEGAL SYSTEM IN CAMEROON

This Part seeks to show how Cameroon came to acquire two extraneous legal systems. As the answer evidently lies in her colonial history, Chapter two gives a historical account of how Cameroon came to be annexed by the Germans and later occupied by the French and the British, and demonstrates that the international tutelage Agreements for Cameroon gave Britain and France legal licence to introduce their laws into Cameroon. The general question whether pre-colonial societies in Africa south of the Sahara had laws and a legal machinery is disposed of, with particular reference to Cameroon, in Chapter one.

CHAPTER ONE

JUSTICE IN PRE-COLONIAL CAMEROONIAN SOCIETIES

Before focusing attention on the position as it was in those societies which subsequently constituted the entity known today as Cameroon, the position as it was in Black Africa as a whole will be discussed in the broadest outline.

I. The Phenomenon of Law in Pre-colonial African Societies

The ascertainment of law in pre-colonial societies in Africa South of the Sahara presents some difficulties. Writing was either unknown or still very rudimentary and this is why the people of that time left no records. Partly because of this hiatus the phenomenon of law in pre-colonial African societies was often given a cavalier treatment by some researchers who claimed that these societies had no law but simply customs rooted in taboos and magico-religious practices.

1. The controversy

The question has often been raised whether pre-colonial African societies had laws which regulated their affairs. This is the familiar quarrel among lawyers and anthropologists as to whether so-called primitive societies

had law. A great deal of heat has gone into it. On the one hand there are those who strongly argue that law did exist in those societies.[1] On the other hand there are those who strenuously deny its existence there.[2] Their denial is based on the questionable claim that those societies had no legislature, courts, or police force. It is argued that those societies had neither structures for formal legislation nor for judicial decisions nor law enforcement officers of any kind. Only grudgingly is it conceded that these societies had at least some 'lawstuff'. Even then, it is further claimed that modern jurists have tended to exaggerate the significance of this 'lawstuff' and "have added to this exaggeration by excessive use of the concepts of modern legal analysis whether as descriptive aids or for jural evaluation".[3]

There are basically two main reasons for the cavalier treatment of law in pre-colonial African societies. First, there was li ited amount of material available on the subject. Besides, such literature on African law as there was had been written predominantly by non-jurists,

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1. Cf. T.O. Elias, The nature of African customary law, Manchester University Press, Manchester, 1956; M. Gluckman, Judicial Procedure among the Barotse of Northern Rhodesia, Manchester University Press, Manchester, 1955.

2. E.A. Hoebel, The law of primitive man, Harvard University Press, 1964; Middleton & Tait, Tribes without rulers, Routledge & Kegan Paul, London, 1958; G. Sawer, Law in Society, Oxford University Press, Oxford, 1965, chapter 3.

3. Sawer, op.cit., p. 43.

particularly anthropologists and ethnographers, using the tools of their discipline to investigate the phenomenon of law in Africa. Such explorations often led to a propagation of mutilated and confused exposition which fortunately has now been rectified and clarified with the tools of informed African jurisprudence.[4] Secondly, law in pre-colonial African societies apparently did not fit into the Austinian theory of law as a command imposed upon society by the sovereign ruler of a state, "an omnipotent authority standing high above society, and issuing downwards its behest".[5] Classical Austinian theory links the existence of law to the emergence of a state; no state, no law. As societies in Africa were seen only in terms of ethnic groups and tribes they were characterised as 'stateless' and being'stateless' they were said to have no law.[6] This doctrine is now exploded. States and even empires did exist in Black Africa even before European colonisation.[7] Besides, it is a mistake to link the phenomenon of law with the notion of sovereign state. What else is a state but a form of political society? It

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4. A.K. Mensah-Brown, Introduction to law in contemporary Africa, Conch, New York, 1976, p. 22.

5. C.K. Allen, Law in the making, Clarendon Press, Oxford, 7th ed., 1964, p. 1.

6. Cf. E.E. Evans-Pritchard, The Nuer, Oxford University Press, London, 1940.

7. P.F. Gonidec, Les droits africains - evolution et sources, 2e ed., L.G.D.J., Paris, 1976, p. 7.

is certainly the best integrated form of society but all the same a political society fundamentally like others, simply une espèce dans le genre. In approaching the phenomenon of law as a social fact, one must eschew dogmatism and any philosophical prise de position.

However, the controversy over the existence or not of law in pre-colonial African societies is today largely dépassé because the theory denying the existence of law in those societies has been debunked by in depth analyses of scholars steeped in African jurisprudence. An eminent authority on African law has asserted that "Before the arrival of the British or other European colonisers, indigenous legal institutions were everywhere found. These institutions were for the most part customary in origin and type, though there was a certain amount of legislated law in the centralised monarchies, and Islamic personal and public law was applied in varying degrees in those areas where a large part of the population was Muslim, or the rulers belonged to the Islamic faith."[8] Besides, the fact is often overlooked that the controversy arises because there are various theories of law.[9] Law may be defined in general terms simply as any rule of human conduct which is regarded as obligatory in any society. So defined, law exists in any given society for, all societies

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8. A.N. Allott, New essays in African law, Butterworths, London, 1970, p. 10.

9. Cf. R.W.M. Dias, Jurisprudence, 3rd ed., Butterworths, London, 1970, chapters 14-20; Elias, op.cit., chapter 4.

have compulsory rules of conduct. These rules of conduct may be labelled by some as mere customs. But customs that are fixed and generally obeyed are indistinguishable from laws. If law, as Savigny points out, is the manifestation of the common consciousness of the people (the volksgeist), then what else is custom but the volksgeist. Law may also be defined in narrow legalistic terms to embrace the idea of a court, legislation and police force: law is the social control through the systematic application of the force of politically organised society. A denial of the existence of law in pre-colonial African societies even on the basis of this narrow definition will be "an overstatement because it does not only ignore the village councils which hold regularly to adjudicate on matters affecting the inhabitants and to enforce such decisions through the instrumentality of secret societies like the nqumba society, but places too much reliance on the fact that law is only obeyed because of the fear of force - a fact which most psychologists dealing with the problem of obedience to law will take issue with".[10]

Since research on the phenomenon of law in pre-colonial African societies has been carried out during or after the colonial period, it may be suspected that the results obtained reflect the image of an African law already distorted by European influence. It is submitted that this is not necessarily the case. In many parts of Africa

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10. J.N. Monie, 'The place of customary law in modern Africa', Ann. Fac. de Droit du Cameroun, No. 3, 1972, p. 66.

there were and there are still communities in which the mode of life of the people and system of social organisation remains unsullied by European influence. Furthermore, serious research by well-informed investigators during the early hours of European colonisation ought to give a fairly accurate picture of the phenomenon of law in areas covered immediately before colonisation.

2. The nature of indigenous African law

Law in pre-colonial African societies was derived from custom, that is, ancient usages and observances (sometimes rooted in divine beliefs) so generally accepted and practised by the people that they have formed a body of standardised patterns of behaviour and acquired the force of law. This custom was however not static. It was dynamic and evolutionary. "Human society is a dynamic-evolutionary entity, the dynamism of which is constantly being actuated by the historical and contemporary inputs of change. From this dynamic-evolutionary concept of society, it follows that change is a significant feature of every society. Also, since law is an integral part of a people's cultural fabric making up the society, it goes without saying that legal change cannot be divorced from societal change".[11] Although inadequately organised, custom was backed up by some coercive sanction. The nature of the

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11. Mensah-Brown, op.cit., p. 22.

sanction itself reflected the type of political organisation attained by the traditional polity - centralised or acephalous.

Given its predominantly illiterate environment, indigenous law was generally an unwritten law; it was an oral law. French writers on African law speak of l'oralité juridique and stress that it is the fundamental characteristic of African law.[12] Early investigators had tended to regard the unwritten nature of African law as a negative rather than a positive trait. It was argued, to some extent correctly, that because it was unwritten indigenous law was vague and difficult to ascertain as people were wont to differ in their interpretation or recollection of events or traditions. But this does not entirely correspond with lived realities. The argument tends to substitute appearance for reality.

Another characteristic of indigenous law is that it contained legislative enactments. This was true of both centralised and acephalous polities. The chief or council of elders made decrees for better conduct of tribal affairs or to abolish old usages which the tribe had outgrown.[13] These enactments, for the most part straight-

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12. E. Le Roy, 'Justice africaine et oralité juridique', I.F.A.N., No. 3, juillet 1974, p. 566: "L'oralité juridique est le caractère fondamental qui permet de dégager la logique propre des systèmes juridiques et judiciaires autochtones". See also Michel Bechelet, Systèmes fonciers et réformes agraires en afrique noire, L.G.D.J., Paris, 1968, p. 93; H. Deschamps, L'Afrique noire pre-coloniale, P.U.F., 1962; P.F. Gonidec, op.cit.

13. E.N. Kwayeb, Les institutions de droit public du pays Bamileke - evolution et regime actuel, L.G.D.J., Paris, 1960, pp. 27-28; I. Schapera, A handbook of Tswana law and custom, 2nd ed., O.U.P., 1959, p. 4.

forward prohibitions or injunctions, usually presented no complication in wording and content and were consequently not easily forgotten. They were indeed 'masterpieces of simple and general drafting'.[14]

In Africa, there were (and there still are) geographical varieties and wide differences and variations of habit, economic activities, social and political organisation, ideas, language, and peoples. Since law is influenced by a people's culture and socio-politico-economic organisation, diversity in these aspects meant some diversity also in the indigenous law that obtained in Africa. But there was a certain unity in this diversity. Besides, one should not over-emphasize the differences that existed in the law because a certain measure of basic uniformity of content did and does exist over a considerable range of matters. It is possible to classify traditional law into categories (law of property, succession, wrongs, marriage, and so on) and to identify similarities of principles in the different systems of law. "For comparative and related studies, therefore, it is possible to group together different phenomena of law which are found in these societies under a collection of rubrics. In this way, one can reduce the degree of diversity that exists between the various socio-legal systems, without necessarily minimizing the lack

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14. Gluckman, op.cit., p. 249. Schapera, op.cit., at page 41, asserts that this type of legislation was very marginal and inconspicuous, the chief being more concerned to maintain the existing law than to alter it.

of uniformity which is still very great."[15]

Indigenous law distinguished between substantive and procedural law and also between norms which had the quality of 'lawness' and those which had not. In other words, a distinction existed between those norms compliance with which was obligatory on members of the community and those which were just matters of social observance not touching upon any important aspect of life of the community and as to which the individual could afford to be indifferent.

II. The Structure and Content of Cameroonian Native Law

There are variations in the structure and content of legal and judicial systems between societies with differing political, social, cultural and economic structures. Cameroon is made up of differing traditional societies each with its own laws. That being the case one should perhaps speak of Cameroonian native (or traditional or indigenous) laws and not law. However, such differences as exist between the various Cameroonian societies are not as big or important as may at first sight seem. Cameroon is a country with a heterogenous mixture of several petty tribes or societies, none of which is either wholly centralised (that is, one having a strong monarchical government),

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15. Mensah-Brown, op.cit., p. 27; see also, Allott, op.cit., p. 10.

acephalous (one having a gerontocratic government), or segmentary (that is, one in which there is a kind of 'anarchy', each family head exercising full authority over his family and recognising no superior authority over him). The pygmies, the coastal tribes and the tribes in the hinterland in Cameroon are sometimes labelled as having respectively a segmentary, acephalous and centralised system of political organisation. But one finds neither a real gerontocracy among the coastal gribes nor 'anarchy' among the pygmies. In the hinterland, Hausa-Fulani pastoralists cohabit with native agriculturalists and in some chiefdoms real power lies not with the nominal chief but with either the council of elders or the secret societies. There is no single tribe in Cameroon which has been so powerful as to completely subjugate its neighbour and compel it to accept its own laws.[16] Instead, there has always been a great deal of borrowing and inter-dependence between the various tribes. The cumulative result is that, minor differences apart, one finds almost identical jural phenomena in the various Cameroonian societies.

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16. The Muslim invaders who have now settled in the northern portion of Cameroon may be considered an exception. But even there, Islamic law which the invaders brought along with them has not been accepted <u>in toto</u> by the native tribes. Nor has Islamic law itself escaped being diluted by the local law. Skirmishes did occasionally take place between various tribes in other parts of Cameroon. But these were on a minor scale and undertaken with the limited objective of getting slaves or booty.

1. Structure

The customs of the people constituted the law. These customs were not identical in each and every tribe. But similarities were abundant.[17] These customs were not written because writing was unknown in those societies at that time.[18] There was a mechanism for the settlement of disputes. Cases, whenever they arose, were decided, depending on the gravity of each case, either by the family head, quarter head, or the chief and his council. The boundary between what we know today as civil and criminal cases was sometimes blurred. But a distinction between the two did exist although the labels 'civil' and 'criminal' were probably not known. Civil cases were generally settled by arbitrament, the defaulting party being required to apologise and to make restitution. A real trial took place in criminal cases and the party found guilty was penalised.

Marriages, divorce, the right to children or affiliation, inheritance, disputes concerning farms and the soil, the pawning or pledging of property, co-operative labour agreements - these were all civil cases. There even existed a public as well as an inter-tribal law. The public law centred around the chief - his enstoolment

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17. See supra, p. 19

18. A notable exception relates to the invention by Sultan Njoya of Foumban of his own writing shortly before European colonisation.

and de-stoolment; his powers, spiritual and temporal; his relations with his people, the elders of his council, and the various secret societies; payment of tribute; communal labour; and the status of strangers. Inter-tribal law regulated such matters as the waging of war, parleys, the taking of prisoners as slaves, war booty, boundary disputes, trade agreements, the right of passage through one tribe by another tribe.[19]

Criminal offences were relatively few, and those that there were may be classified into four groups: (i) There were offences against sexual morality - incest, rape, and adultery. (ii) As regards offences against property, theft was the common crime. (iii) There were also offences against the person - wounding or killing whether by physical violence, poisoning or by esoteric means. (iv) There were offences against the chief, the prototype of which was adultery with any of the chief's wives, and offences against the community as a whole such as witchcraft per se,[20] desecration of revered objects and places, and treason (that is, deserting the village).

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19. P.N. Nkwi, Traditional government and social change. A study of the political institutions among the Kom of the Cameroon grassfields, Studia Ethnographica Friburgensia 6, The University Press, Fribourg, 1976, p. 45.

20. Witchcraft (or sorcery) and not divination was punished. Witchcraft is used for malevolent ends while divination is used for benevolent purposes.

2. Content

Perhaps no other document can give us a better and probably accurate picture of the content of Cameroonian indigenous law as it was before effective European colonisation than an ethno-legal document on certain Cameroonian tribes produced by the Germans almost eighty years ago. The document was produced as a contribution to the over-all policy of the then German government to ascertain and codify the native laws and customs in all of Germany's colonial possessions. In 1896 an ethno-legal questionnaire was produced in Berlin by a committee set up for that purpose and under the direction of a certain Professor J. Kohler. Copies of this questionnaire were subsequently sent to the Governor of each colony for distribution to officials who were to undertake the research. Each questionnaire was divided into five parts - law of family and persons, the regime of property, criminal law, civil and criminal procedure, and public and intertribal law - and consisted of one hundred main questions and several subsidiary ones. In Cameroon, the questionnaires were distributed to various German officials in the territory and the research began in earnest in 1909. The project was however frustrated by the First World War. By the time that war broke out only six coastal tribes had been studied. These tribes are the Bassa, Boulou, Bakossi, Banok, Mabea, and Batanga; and the questionnaires dealing with them are still available

at the National Archives in Yaounde.[21] The answers from these tribes reflect, with only minor variations, the indigenous law as it was in Cameroon before European colonisation. That this is so may be seen from the answers given to questions on land law, criminal law, and the law of evidence.

With regards to land, the law in all six tribes was the same. The law was recorded to be as follows. "The tribe has its own specific land (originally acquired by immigration). The clan possesses land within the tribe and the family possesses land within the clan. Each member of the tribe may, without any particular authorisation, cultivate any piece of uncultivated tribal land. But he must request certain rights over palms, trees, etc., even with regards to trees growing in virgin forests. Virgin forests are not ownerless. They are divided judiciously and their non-utilization does not entail a loss of rights over them. Land cannot be sold. No compensation is paid for the temporary cultivation of land. Mineral rights do not exist."[22] It was further recorded that among the Batanga "the chief or the community cannot alienate land; from the point of view of land rights the chief is in the same position as any other Batanga".

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21. Situation juridique des peuples dits primitifs, File No. TA-18, Cameroon National Archives, Yaounde.

22. My translation.

The criminal law was recorded to be as follows. "Vendetta exists for cases of murder whether voluntary or involuntary. Talion [that is, the eye-for-an-eye tooth-for-a-tooth rule] also exists and was carried out by the nearest relative (son, brother) or the chief. Elders judge and punish offenders. The various punishments are: fine, banishment, death, mutilation such as cutting of fingers or ears, confiscation of property. Imprisonment does not exist. Sentence is pronounced by the secret society. The chief may grant mercy depending on the situation and behaviour of the offender. If a thief is caught in flagrante delicto he is smeared with cow, pig and human excrement. Some of it is also put in his mouth. The thief is also beaten up on the orders of the chief. The secret societies act as a police force. If a person fails to appear for his trial after having been ordered to do so he must pay a fine of one cow. At the beginning of the trial one of the elders sings a song having a connection with the case and then dances. At the end of the singing and dancing he is greeted by all present and the case will begin. Witnesses may be called to testify. There are no case-files. There are various oath forms. For example, 'if I lie may my father come back from the dead'."

On the law of evidence this is what the questionnaire recorded. "Testimony exists. Each party calls his witnesses. The witness is not bound to appear and is not punished if he does not. Greater weight is attached to the testimony of witnesses of substance or

credibility. The feathers of chickens killed during a particular transaction may be produced as evidence in court. There are various means of proof. An accused person who cannot otherwise vindicate his innocence will go along with a guarantor to a fetish priest. There he will undergo one of several forms of ordeals: (i) A magic grain of corn is forced into the eye of the accused. If he is innocent the grain of corn will come out, but if he is guilty it will remain in his eye. (ii) The accused may be given a certain poisonous substance to drink. If he can throw it out, he is innocent; but if he cannot, he is guilty. (iii) The accused may also be given the bark of poisonous tree to eat. If he is innocent he will vomit out the bark. If he is guilty he will be unable to do so and will fall ill or die. If a murderer is unknown the assistance of a diviner is sought in order to discover the murderer."

It is of interest to note that although this was the statement of the traditional law as it was almost a century ago, the law has not changed much even today. The Muslim Foulbe or Peuhl in northern Cameroon need special mention because they have a different system of law from the one just discussed for the other Cameroonian societies. These people were invaders from North Africa who entered Cameroon via Bornu and Sokoto about the early nineteenth century. They conquered the Fali aboriginese whom they called infidels. The Foulbe had an archaic feudal society founded on conquest and organised into castes, victor and

vanquished, slaves and non-slaves.[23] The sedentary Foulbe were grouped into patriarchal families under the authority of a village head known as djaouro. Those Foulbe who were nomads were scattered all over the Adamawa region, each group under the leadership of an ardo. The djaouro and the ardo came under the authority of a chief, the lamido. It was the French colonial administration which gave the wandering Foulbe a territorial base by re-organising them into villages so as to facilitate the collection of taxes and the counting of heads.[24] It was the Foulbe then who introduced Islamic law into Cameroon. Today however, given the interaction over the years with the local natives and their customs, the Islamic law which obtains in the northern part of Cameroon has become diluted and its sources heterogenous and nebulous.

III. Juridical Techniques and the Judicial Process

There were various sets of adjudicating authorites in the traditional judicial system and diviners and secret societies played a crucial role in the administration of traditional justice.

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23. J.C. Froelich, 'Ngaoundere - la vie economique d'une cite peul', Etudes Camerounaises, No. 43-44, 1954, p. 7; P. Malzy, 'Les Fali du Tingelin', Etudes Camerounaises, No. 51, 1956, p. 3.

24. J.C. Froelich, 'Le commandement et l'organisation sociale chez les Foulbe de l'Adamaoua', Etudes Camerounaises, No. 45-46, 1954, p. 52.

1. The role of diviners and secret societies

The administration of traditional justice was supported by the belief in the supernatural or the spirit world.[25] That belief was a great deterrent to the commission of crimes. A person who had decided to commit an offence was often deterred from doing so for fear that some evil consequence would befall either him or his family.[26] A person who wanted to murder someone would fear revenge from the spirit or ghost of the murdered person. It was for this reason that whenever a man was afflicted by some disease he would enlist the assistance of his ancestral spirits, saying that he had lived a clean life and that he had wronged no one to deserve the calamity that has befallen him. It was also for this reason that an accused person swore by inviting a conditional curse either upon himself or his family: 'If I killed him (or if I stole his property) may my ancestors curse me for the rest of my life'.

This deep religious belief resulted in a preponderant role being accorded to the diviner (or fetish priest) in the community. He was both priest and judge in some communities. In other communities he was a kind of expert

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25. Nkwi, op.cit., p. 57; B.T. Sakah, 'Nso magico-religious practices', ABBIA No. 2, May 1963, p. 67.

26. Cf. P. Mukoko-Mokeba, 'Philosophical basis of Bakweri mysticism', ABBIA No. 3, 1963, p. 39.

witness whose evidence was often conclusive on the matter in dispute. The diviner exercised religious and lay functions. He decided cases between individual litigants. He acted as umpire in inter-village disputes. He served as the medium between man and the mystical world of the unknown. He took charge of supernatural matters which defied the competence of the uninitiated such as invoking rain, ensuring success in war, and foretelling the future. He was the spiritual protector of the village against evil intruders. He accompanied the chief on his various missions to foriegn lands, acting as his seer and protector.[27]

Secret societies existed; for example, the Kom kwifon, the Bali nqumba, the Bassa um and munqi, the Bamileke kamve and kuentan. They were an arm of the traditional government. They worked hand in hand with the elders and the chief. But they enjoyed a large measure of 'constitutional' autonomy. Their functions were multiple and diverse. They exercised judicial, executive and legislative functions. Sometimes they acted as a police force, a tribunal, gaolers, or bailiffs. The role they played "was neither a feudo-vassalage nor of political clientship".[28] These societies "apprehended wrongdoers,

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27. Cf. P. Gebauer, Spider divination in the Cameroons, Milwaukee Public Museums Publications in Anthropology 10, 1964; J.C. Froelich, 'Le commandement et l'organisation sociale chez les Fali du Nord Cameroun', Etudes Camerounaises No. 53-54, p. 20; Malzy, op.cit.

28. Nkwi, op.cit., p. 89.

policed the market, inflicted punishment imposed by the king and his council, tried cases of witchcraft, murder and adultery with the king's wife referred to it by the king, disciplined its own members, and dealt with infringement of its injunctions. These took various forms which involved prohibitions of movement, use of disputed land, raffia and kola plantations and immobilisation of persons for breaches of law".[29] They constituted the feared arm of the law, the secret weapon of the chiefs who carried out fearful punishment on witches, adulterers and murderers.[30];

2. Adjudicating authorities

Justice was administered in traditional society by a set of ad hoc bodies for there were no standing courts staffed with professional judges as we know them today. Depending on its nature and gravity a controversy was adjudicated upon either by the family head, the quarter head, or the chief and his council of elders.[31] Various

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29. P.M. Kaberry, 'Retainers and royal households in the Cameroons', Cahiers d'Etudes Africaines, Vol. 3, No. 2, 1962, p. 289.

30. R. Brian, Bangwa kinship and marriage, Cambridge University Press, 1972, p. 6; R. Delarozière, 'Les institutions politiques et sociales des populations dites Bamileke', Etudes Camerounaises, No. 25-26, 1949, p. 136.

31. Kwayeb, op.cit., p. 78; A. Seidel, Deutsch-Kamerun, Berlin, 1906, p. 214; Delarozière, op.cit., p. 36; Nkwi, op.cit., p. 97. V. Kanga, Le droit coutumier Bamileke au contract des droits européens, Imprimerie du Gouvernement, Yaounde, 1959, p. 72.

societies and associations dealt with controversies involving their members or any of their members and an outsider; they also dealt with offences committed by non-members against the society's interest. A fascinating example was the women's society in Kom known as anlu. It dealt with offences considered to be against womanhood such as having sexual intercourse with a woman under her menses, beating a pregnant woman, using vulgar abuse about a woman's genitals and so on.[32] Cases of juvenile delinquency were generally dealt with by the age-group association to which the miscreant belonged. This often took the form of jeering by the delinquent's age mates, beating and a threat that if he did not desist from his delinquent behaviour a fearful masker or spirit would be invited to come and take him away.

The jurisdiction of the family head was limited to internal family matters - petty thievery within the family, an obligation owed by one family member towards the other, family property, succession, sorcery within the family, marriage, divorce, filiation and paternity. The family head also chastised juveniles guilty of petty stealing and of disrespect to their seniors and parents. Cases of unnatural sexual conduct and incest were regarded as a curse on the family. The offender was regarded as a

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32. P. Ritzenthaler, 'Anlu - a women's uprising in the British Cameroons', African Studies, Vol. 19, No. 3, 1960, p. 151; Nkwi, op.cit., pp. 102, 131 and 178.

patient and attempts were made to treat him by a cleansing ritual. Libations were poured to the gods and sacrifices made to expiate the curse. The family head was both master of the family community, father and conciliator. He dealt mainly with what today may be classified as civil matters. He also exercised a disciplinary power against the party at fault. The defaulting party was ridiculed, shamed, and subjected to expressions of reprobation. But he was neither fined, jailed, nor sentenced to death no matter the gravity of the offence.[33]

A village was territorially divided into quarters, each quarter being made up of compounds. Disputes within a quarter were settled by arbitrament. Such disputes were reported to the quarter head for his intercession. The quarter head could fine the party at fault or require him to make restitution. The fine was usually a goat or pig plus a calabash of palm wine. However, the quarter head had no power to ostracise or condemn to death.

At the village level, the chief together with the elders of the village (men steeped in the customs of the people) constituted the highest adjudicating body. The village court exercised unlimited jurisdiction over the infringement of any village law, from matrimonial offences to treason, and could pass the death sentence.

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33. F. Hutter, Wanderungen und Forschungen im Nord-Hinterland von Kamerun, Berlin, 1902, pp. 377 et seq.; Delarozière, op.cit., p. 36; Froelich, '... chez les Fali', op.cit., p. 24.

It was essentially a criminal court. Few cases of controversies which one would today regard as civil came before this court because they would already have been dealt with either by the family or quarter head. It was the village court that most researchers saw in action and since it dealt mainly with criminal cases, some of these researchers hastily and erroneously concluded that traditional law consisted mainly of repressive justice.

3. Judicial proceedings

The village court sat in the palace. There was no special form for commencing an action in the court. In much earlier times when the communities were not yet stable and close-knit, self-help either by way of vendetta or blood revenge was not unknown. But when the societies became more politically organised, cases were started by the aggrieved party complaining to the chief. In cases of witchcraft, treason, or sacrilege however it was not necessary for anyone to complain in order that an offender may be prosecuted.[34] This was so because those offences were considered to be offences against the community as a whole. If a complaint was made against someone, that person was summoned to court by the chief sending him a token, such as a palm leaf, through a retainer. If the

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34. Hutter, op.cit., p. 378; Seidel, op.cit., p. 214 et seq.

person so summoned failed to appear he could be brought to court manus militaris by members of the secret society. Often however, the offender was apprehended following a hue and cry levied by someone, caught in flagrante delicto, or taken unawares by night in bed by members of the secret society. He was then brought before the chief who would convene his council and proceed to try the case.

Proceedings were entirely oral. The prosecutor (the complainant in most cases, or a member of the secret society, or the quarter head of the area where the offence was committed) first presented his case in full to the court, produced his witnesses who did likewise, was then cross-examined and perhaps challenged by the other side. After which the accused was called upon to give his own version of the story. He could call his own witnesses too. Each person terminated his narrative with an oath. There were several of such oaths: If I do not speak the truth may the chief's feet cause my stomach to swell until I die; If I am lying may the clouds blind me; If I lie may I drop dead; If I lie may thunder strike me dead; If I lie may the gods of my father and mother curse me; I swear on my mother's tomb ... The parties swore touching either a human bone or a revered object such as a fetish.

No lawyers existed. But sometimes a defendant 'briefed' an eloquent family member to speak for him.[35]

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35. Cf. A.F. Calvert, The German African empire, Werner Laurie Ltd, London, 1916, p. 256.

The modern relevancy rule was also unknown in the traditional judicial process. Each party spoke at length, time and again embellishing and punctuating his account with irrelevant histories, hearsays, and asides. Besides, if the accused happened to be a notorious rogue in the village many witnesses gave evidence against him simply because they believed in his guilt. However, much weight was attached to the evidence of eye witnesses and senior and respected members of the community. There was always room for what modern lawyers call cross-examination. This often resulted in an altercation between accused and accuser until the chief called for silence. The place of documentary evidence was taken by the use of real or tangible evidence of a transaction. Tokens, gifts, symbols, stolen objects, and objects used for the commission of a crime could all be produced as real evidence. The chief and the elders themselves questioned the accused closely. But no matter what was produced or said in court as evidence, at the end of the day, it was the chief and his elders who assessed what weight to give to which evidence. The system strangely resembled what contemporary jurists have identified as the inquisitorial process.

The pre-trial stage was one of the most interesting stages in the traditional judicial process. As in some modern states various means of torture were used to extort confessions from the accused. Beating was liberally administered. Divination was resorted to in order to detect an unknown criminal.

In complicated cases such as sorcery where it was difficult to ascertain his guilt or innocence, the accused was subjected to various forms of ordeals as a means of demonstrating his guilt or vindicating his innocence. There were various forms of ordeals.[36] The commonest ones consisted of drinking a poisonous concoction, putting of hands in boiling palm oil or water, holding red-hot iron or coal, inserting a grain of corn or a snake's tooth in the eye. The accused was innocent if the ordeal produced no ill effect on him. But if he died as a result of drinking the poison, or if his hands got roasted as a result of putting them in boiling oil or handling red-hot coal, then he was guilty.

A suspected accuser was also subjected to the same ordeals. This was to ensure that an innocent man was not wrongly accused. Hence, when the modern police came, the secret societies found it strange that

> "When you arrest a man doing wrong
> When you catch a man stealing,
> And you bring him to the police,
> The police will ask you questions;
> When you cannot answer the questions,
> They will instead accuse you and the thief is set free;
> This is not our custom
> It is not the way of our people
> To accuse the innocent
> It was never the manner of our people
> To take pride with the guilty." 37

When an offence was committed and a complaint made but the offender was not apprehended, two favourite

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36. Kwayeb, op.cit., 81-82.

37. Nkwi, op.cit., p. 155.

methods were used to detect him. A diviner was called to reveal the identity of the offender. The second method of detecting and punishing an offender was by requiring all those suspected of the crime to swear over a venerated object such as a fetish, the ancestral stone, or the drum or gong of a dreaded secret society.[38] The guilty person was the person who was visited by some evil consequence. For example, he lost a family member, or was afflicted with a dreaded disease such as yaws or leprosy, or was struck dead by thunder.

At the end of the trial, the chief briefly consulted with his notables and pronounced the accused guilty or innocent. If the verdict was guilty, the chief indicated the penalty to be inflicted and the notables nodded their heads in agreement. There were various forms of punishment: payment of a fine, beating, being sold into slavery, ostracization, imprisonment in stocks,[39] mutilation, death. In traditional society, "judgements were given with a view to righting wrongs, adjusting claims and defending norms".[40] The fine (payment was made either in goats, pigs, poultry, bangles, cowries or palm/raffia wine;

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38. Didactic stories about the severe mystical consequences of telling lies on oath abound in Cameroon.

39. P. Ritzenthaler, The Fon of Bafut, Cassell & Co. Ltd, London, 1967, p. 85.

40. J.N. Monie, The development of the laws & Constitution of Cameroon, Ph.D. Thesis, London University, 1970, p. 400.

the exact combination of these being indicated by the elders) and flogging were the usual penalties for such offences as cases of minor thefts (stealing of a chicken, foodstuff, etc.) and adultery committed with a woman other than one of the chief's wives. The beating of a notorious thief was sometimes accompanied by his hut being ransacked[41] and his property confiscated. The property thus confiscated was handed over to the elders who decided on what to do with it.[42]

Adultery with one of the chief's wives, wounding intentionally, treason and repeated serious thefts (for example, of livestock or cattle) attracted severe penalties. The offender was either declared an outlaw and sold into slavery, or mutilated by cutting of his ears or fingers to publicize the fact that he was a dangerous criminal,[43] or publicly executed,[44] being despatched in like manner and by the same means as that employed by the criminal.[45]

As the 'grand judge' of the village, the chief was vested with the right and power to grant mercy. Upon hearing his sentence, the prisoner fell at the chief's feet,

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41. Froelich: ... Chez les Falis, op.cit., p. 26.

42. Elements de Droit Coutumier Bassa, ABBIA No. 4, 1963, p. 150.

43. Ibid.; Seidel, op.cit., p. 216.

44. Ritzenhaler, The Fon of Bafut, op.cit., p. 83.

45. Calvert, op.cit., p. 257.

fawned on him and craved his mercy. The chief acceded to his solicitation if he found his appeal for mercy to be meritorious. The prisoner was then granted a reprieve or his sentence commuted to say a fine which was paid to the elders and members of the secret society.

Moral persecution and ostracization were the common penalties for sexual crimes and offences against traditional morality (for example, disrespect for one's seniors, the use of vulgar language, consuming forbidden substances or food - e.g. women and children were forbidden to eat certain classified animals, eggs, and the gizzards of chickens). A well-known persecution technique was that employed by the Anlu women's association of Kom against anyone who committed a misdemeanour deemed to be against womanhood.

"The women of the quarter and sometimes of the neighbouring quarters ... were enlisted. On a set day they dressed in leafy vines, articles of woman's clothing, and paraded to the culprit's compound around five o'clock in the morning. There they danced, sang mocking and usually obscene songs composed for the occasion, and defiled the compound by defecation or by urinating in the water storage vessels. If the culprit was seen, he could be pelted with stones or a type of wild fruit called 'garden eggs' ... They would prohibit the offender from visiting other compounds and instruct the people that no one should visit him. Sometimes the culprit fled to another compound or even another village, but Anlu was

continued. At the next weekly market the women voluntarily attended, dressed in their vines, and publicly ridiculed the culprit by dancing and singing mocking songs. When his endurance was at an end, he put the Anlu vines around his neck as a sign of capitulation and went to the women to plead for pardon. If his pleas and indemnity goods were accepted, they took him naked to the stream and bathed him ..., a ritualistic act which removed the guilt."[46]

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46. Risenthaler, 'Anlu - A Women's Uprising in the British Cameroons', Zaire, Vol. 19, No. 5-6, 1960, p. 482.

CHAPTER TWO

ALIEN DOMINION AND THE IMPORTATION OF ALIEN LEGAL SYSTEMS

After a period of Anglo-German rivalry for spheres of influence along the Cameroonian coast, Germany outwitted Britain and annexed Cameroon. But thirty-two years later, by one of those ironies of history, the British were back in Cameroon; this time, with the French (I). Although Britain and France held Cameroon under international tutelage Agreements, each power pursued its own separate colonial policy in the sector it occupied(II) and introduced its own laws therein (III).

I. From the German Annexation to the Anglo-French Partition of Cameroon

By the middle of the nineteenth century there were already intensive missionary and commercial activities at the mouth of the Rio Camerones. British and German traders constituted the two main mercantile communities in the area. In order to gain a monopoly over the trade in the area, each trading community urged its home government to annex the coastal enclave and its hinterland. While Britain hesitated, Germany acted quickly and proclaimed the area the German protectorate of Kamerun. During the First World War Anglo-French forces wrested Kamerun from Germany

and the territory was partitioned between Britain and France.

1. The acquisition of the Schutzgebiet von Kamerun

Hanno the Carthaginian was probably the first foreigner to visit the Cameroonian coast; and that was as early as the fifth century B.C. He espied the Cameroon Mountain and named it 'the chariot of the gods'.[1] For several centuries thereafter no other foreigner visited the area. It was not until the emergence of the lucrative transatlantic slave trade in the fifteenth century A.D. that European interest in West Africa was kindled. From that time onwards Europeans began to visit the Cameroonian coast to trade in slaves. First came the Portuguese who called at the Ambas Bay about 1480 and, close on their heels, the Spaniards who reached the mouth of the River Wouri which was rich in shrimps and named it Rio Camerones (River of Shrimps), from which the name Cameroon is derived.

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1. V. Le Vine, The Cameroons from mandate to independence, University of California Press, Berkely & Los Angeles, 1964, p. 16; J.N. Monie, The development of the law and constitution of Cameroon, Ph.D. Thesis, London University, 1970, p. 21. Contra, R.P.J. Bouchand, 'Notes d'histoire du Cameroun - le char des dieux', Etudes Camerounaises, No. 10, 1945, p. 85. Bouchand strenuously argues that it is very unlikely that Hanno ever got as far as the Cameroonian coast and that reference to 'chariot of gods' in Hanno's account of his voyage cannot possibly be a reference to Mount Cameroon.

In the early nineteenth century there was an uprush of humanitarian feeling in England. Britain, hitherto a great slave-trading nation, became penitent and not only outlawed slavery (the Slavery Act 1833) and the slave trade (the Slave Trade Act 1876) but actually embarked upon a crusade in the High Seas for the abolition of the trans-atlantic slave trade. Slaves liberated by British men-of-war were re-settled in such places as Sierra Leone and Jamaica. In 1843, Alfred Saker an English Baptist missionary who had been evangelising the liberated slaves in Jamaica, arrived on the Spanish island colony of Fernando Po off the Cameroonian coast to christianise the liberated slaves there. He established a missionary post there. In 1858 however Spain proclaimed Roman Catholicism as the sole and only permitted religion on the island.[2] Alfred Saker and his Baptist congregation therefore had to leave the island. After protracted negotiations by the British diplomatic services with the Spanish government, the latter paid a compensation of £1,500 to the Baptist Mission for the missionary post Saker was forced to abandon in Fernando Po.[3]

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2. See Proclamation by Carlos Chacon, Governor-General of the Spanish Islands in West Africa, dated 27 May 1858, to the effect that "The religion of this colony is that of the Roman Catholic Church as the only one in the Kingdom of Spain, to the exclusion of any other". See Victoria Centenary Committee, Victoria - Southern Cameroons 1858-1958, Spottiswoode, Ballantyen & Co., London, 1958, p. 102.

3. J.R. Brutsch, 'Fernando Po et le Cameroun', Etudes Camerounaises, Nos. 43-44, 1954, p. 77.

Saker was desirous of founding a new settlement where he and his converts would practise their religion without molestation. He made two trips to the Cameroon coast and found the bay around Bimbia suitable. He brought his converts over and bought a piece of King Billie (William) of Bimbia's territory for £2,000.[4] He named this new settlement 'Victoria' after Queen Victoria of England. He hoisted the British flag over the tiny settlement and requested the British government to take it over as a British colony. The Foreign Office politely refused to do so but assured Saker of the government's protection. The settlement was consequently placed under British protection while it was governed by the Baptist Mission. As founder and missionary-in-charge of the settlement Saker acted as the 'governor' of the small colony.

He drew up rules and regulations for the good governance of Victoria. "A Court of Justice[5] was set up, composed of a dozen negro leaders of the township. The Chairman (of the Court), Sammuel Brew, was a fine character, a man greatly respected by all. He acted as agent of a German Trading Company, and was in charge of the local factory. Every Saturday he was in his place at the tribunal. All evil-doers respected him, for they knew

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4. Victoria Centenary Committee, op.cit., p. 102.

5. This court is sometimes grandiloquently referred to as the Victoria Court of Equity. It was not an equity court and there was nothing equitable about it.

that 'Daddy Brew' had a summary way of dispensing justice. For ordinary breaches of the law fines were imposed, as money was needed for the treasury, but for flagrant offences he depended on the corrective powers of a heavy strap, which he always displayed on the table as a warning to those who were brought before him. As the cases were disposed of, I had to make detailed notes - so many fines and so many strokes. The execution of the sentence took place in the yard at the back of the court after the court had finished its ordinary business. Daddy Brew and most members of the Tribunal sat in sate to see the thing done."[6]

The Court's jurisdiction did not extend beyond the tiny settlement which was 120 sq. miles big. The court dealt with theft, failure to attend Sunday services, sexual immorality and so on. It did not open its doors to "pagans", who continued to be under the jurisdiction of the various traditional courts.

At this time the rivalry and mutual jealousies between the major European Powers in Europe had shifted to Africa. Colonial enterprises in Africa were being earnestly pursued to meet the various needs of the emerging industrial nations of Europe. But no nation openly advocated the exploitation of natives as the reason for acquiring colonies. Humanitarianism, trade, religion and science were often invoked. It was said that the white man was anxious to stop the inhuman practice of slave trade, that

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6. T. Lewis, These Seventy Years, London, 1930, p. 60.

he wanted to bring the light of God to shine upon the heathen people of the Dark Continent, and that he wanted to carry out research for the benefit of science and mankind. And so European Missionaries, adventure-seeking explorers and traders came to Africa all in the name of bringing civilisation to primitive peoples. Traders, whether as individuals or chartered companies,[7] priests, and explorers were always the avant-garde of European colonialism.

By 1830 there were already several European traders vying for territorial possessions, under the protection of their various countries, along the West African Coast. The fifty years from 1830 to the Congress of Berlin in 1884-5 was to witness an intense political activity by the major European powers along the West African coast. Each nation tried to out-manoeuvre the other. The era of the aggressive acquisition of territories had dawned. The role of protector was assumed over ill-defined areas (the geographical limits of which were usually nebulous) by means of the now familiar technique of declaring 'spheres of influence'. "Emissaries of

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7. The first British experiment of colonial rule was that of Chartered Companies. The Hudson's Bay Company brought Canada into the British Empire. The East India Company secured India, the Royal Niger Company secured Nigeria, the East Africa Company secured British East Africa, and the British South African Company secured Southern Africa.

Governments moved about in mysterious ways and by divers routes, visiting African chiefs and negotiating treaties with them, with a view to securing a foothold for their respective Governments on the shores of the Dark continent, that they might claim the hinterland for their own. One got tired of hearing about 'hinterlands' and 'spheres of influence' in this race for the territory of the black man. Engineers on board the coastal vessels were kept busy cutting tin sheets and making them into gaudy crowns for the heads of the deluded chiefs who were ready to sign away their territory for a few bottles of gin and the title 'King'."[8]

This rivalry was particularly heightened after Germany delivered a crushing defeat over the French in the Franco-Prussian War of 1870. After her crippling defeat of 1870, France more than ever before became convinced that she must look to 'la France Outre-Mer' especially in Africa for honour and rehabilitation. And although she suffered another humiliation at the hands of the British at Fashoda in 1898, she dug in her heels in Africa. The nascent united and powerful Germany sought to demonstrate her greatness by also acquiring a colonial empire particularly in Africa. She was a late-comer to the race, but this did not matter as there was always room in the sun for everyone. The acquisition of a colonial empire

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8. Thomas Lewis, op.cit., p. 69. See also Lugard, The Dual Mandate in British Tropical Africa, 3rd ed., William Blackwood & Sons Ltd, London, 1926, p. 16.

was then a mark of greatness.

Now, it was against this background that events along the Cameroon coast were taking place. By 1850 there was already a large European mercantile community carrying on trade in Douala. They were often at loggerheads with each other; mainly German versus British traders. But Douala was a British 'sphere of influence' because of the numerical superiority of British traders in the town. In 1856 a 'Court of Equity' was set up under the aegis of the local British Consul, to settle disputes between the traders inter se.

As British 'spheres of influences', Douala and Victoria fell under the general supervision of the British Consul in charge of the Bight of Benin and Biafra with residence at Fernando Po. The steady increase of German traders in Douala made British traders suspicious of Germany's motives. To protect their trading advantages, they requested the local British Consul formally to annex the territory for Britain. Much as he was sympathetic to their desire, he courteously refused to accede to their request, pointing out that he had no authority to annex the territory. The traders then decided to achieve their aim by working through the local chiefs. The stratagem was to influence the Foreign Office in favour of their request by inspiring and instigating the local chiefs to write letters to the Crown inviting the British to annex the territory. It would then be said that the chiefs voluntarily handed or ceded their country to Britain.

The plan was put into action. On the 7th of August 1879, King Acqua, Prince Dido Acqua, Prince Black, Prince Joe Garner and Prince Lawton of Douala[9] jointly wrote this oft-quoted letter to Queen Victoria:

> "Dearest Madam, - We your servants have join together and thoughts it better to write you a nice loving letter which will tell you about our wishes. We wish to have your laws in our towns. We want to have every fashion altered, also we will do according to your consul's word. Plenty wars here in our country. Plenty murders and idol worshippers. Perhaps these lines of our writing will look to you as an idle tale.
>
> We have spoken to the English Consul plenty times about having an English Government here. We never have answer from you, so we wish to write you ourselves.
>
> When we heard about Calabar River, how they have all English laws in their towns, and how they have put away all their superstitions oh, we shall be very glad to be like Calabar now." 10

Her Majesty the Queen did not even favour the 'King' and 'Princes' with the courtesy of a reply. It looked as though the chiefs had been ill-advised by the traders to write directly to the Queen instead of to the Prime Minister. This apparent error was repaired two years later when, by the advice of the traders, Kings Bell and Acqua appealed to the Prime Minister saying that "as we heard here that you are a chief man in the House of Commons, ... do for mercy sake please to lay our request before the Queen and

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9. Note the liberal distribution of the title 'King' and 'Prince' as well as the alien names.

10. E. Lewin, The Germans and Africa, Cassell & Co. Ltd, 1915, p. 138; S.G. Ardener, Eye-Witnesses to the Annexation of Cameroon, Gvt. Press, Buea, 1968, pp. 19-20.

to the rulers of the British Government".[11] Her Britannic Majesty's Government sent an official reply on the 1st of March 1882 to the effect that "although Her Majesty's Government are not prepared as at present advised to undertake the Protectorate of your country they will further examine the matter and write to you again".[12] But they never wrote again.

While Britain procrastinated, the German trading community in Douala decided to beat the English at their own game. They began to negotiate so-called treaties with the chiefs. In May 1884, Adolf Woermann specifically instructed his company in Douala to obtain the "cession of sovereignty" from the local chiefs.[13] Meanwhile, Bismarck, who had all along shown an indifference to the acquisition of colonies, was won over by the pro-colonial caucus and the traders' lobby in the Reichstag. He despatched Dr Nachtigal, a one-time explorer in the Sudan and diplomat in Tunisia, to Douala with a secret brief to annex it for Germany and to declare its 'hinterland' a German 'sphere of influence'.

When news came that Dr Nachtigal was already on his way to the Cameroon coast, Britain became suspicious of Germany's designs and hastily despatched Consul Hewitt

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11. Lewin, op.cit., p. 139.

12. Ibid.

13. See letter dated 6th May 1884 and reproduced in 'Eye-Witnesses ...', op.cit., pp. 84-86.

to the same area also with a secret brief to declare it formally as a British 'sphere of influence'. He got there only to find the German flag already fluttering over the territory. Nachtigal had arrived there on July 12th 1884 and had concluded a treaty with the Douala chiefs dealing with trading rights and the surrender of sovereignty to Germany.[14]

The acquisition of colonial empires whether by Germany, Britain or France in fact followed a well-known process. "First travellers, missionaries, and traders; then treaties of commerce and friendship; then a kind of protectorate half concealed under the form of an unequal alliance; afterwards the delimitation of spheres of influence and a declaration of a kind of right of priority; then a protectorate properly so called, the establishment of tutelage, the appointment of Residents and all that follows in their train; and finally annexation pure and simple."[15]

With the declaration of Cameroon as a German protectorate (Schutzgebiet von Kamerun), a rudimentary system of administration was set up under Dr Buchner (he

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14. This was the famous Douala Treaty of 12th July 1884. It is more than probable that this treaty was not concluded by Nachtigal himself. German traders may well have concluded the treaty with the local chiefs behind the back of the English traders and all Nachtigal did was to ratify it on behalf of the Imperial German Government.

15. Lugard, op.cit., p. 16.

was Nachtigal's aide) with Douala as capital of the protectorate. But the English-supervised Douala court of equity was not abolished, because the English argued (without foundation, it is submitted) that an abolition of the court would constitute a unilateral abrogation of an international agreement. In any case, that argument became untenable six months later when, following the Douala insurrection of December 1884 (it was essentially a quarrel between pro-German and pro-British natives), the Germans abolished the court. Britain and France, desirous not to offend the Iron Chancellor, especially in view of the impending Berlin Conference, recognised Germany's annexation of Cameroon. Germany then proceeded to demarcate the western boundary between German Cameroon and British Nigeria, as well as the eastern boundary with French Equatorial Africa.[16] But Victoria continued to remain under British protection until May 7th 1886 when Britain agreed to relinquish her to Germany in exchange for German Forkados at the mouth of the Niger and Saint Lucia in Southern Africa.

While these events were taking place along the coast, Muslim invaders were advancing from the Lake Chad region. As they pushed their conquest southwards and the Germans extended theirs northwards, there was bound to be a clash in the middle somewhere.

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16. See appendix to Confidential Handbook on Cameroon, prepared by the British Foreign Office in Feb. 1919, for the delimitation agreements.

In the seventeenth century the Muslim Fulani who had declared a 'jihad', began to push southwards, spreading the Islamic faith. It was their avowed intention to sweep down south, metaphorically dipping the Quran in the ocean. From his Sokoto headquarters, Usuman Dan Fodio[17] in 1806 commissioned one of his lieutenants, by name Adama, from Bornu, to carry the jihad down to the Cameroon coast. Adama, on whom Usuman Dan Fodio gave the title 'Lamido Fumbina' (Lord of the South), made Yola his base. He raised a large army into which he recruited many Hausa mercenaries. He carried the Crescent south into present-day Fumban, sweeping across Mora, Garua, Marua, Mandara, and Ngaundere. After heroic resistance on the plains, the Kirdi, aborigenes of this part of Cameroon, were forced to reatreat to the mountain regions where the cavalry of the invading Hausa-Fulani could not reach.

Adama's sons Lawal and Zubeiru consolidated the territorial gains made by him. But by the time Zubeiru came to the throne in Yola in 1890, Cameroon was already five years old under the Kaiser's rule and Germans were already actively engaged in the exploration of the hinterland of the territory,[18] making treaties with local chiefs, deposing some, and establishing military stations as they went along. As a result of these expeditions, the entire

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17. He is that same great Nigerian Fulani warrior whose southward thrust in Nigeria was only arrested by the British advance from the south.

18. E.M. Chilver, Zintgraff's Explorations in Bamenda, Adamawa, and Benue Lands, 1889-1892, Government Printer, Buea, 1966.

Adamawa region, named after Adama, passed to Germany as part of her Cameroon Protectorate. However, the Fulani (locally known as Peul or Fulbe) continued to be restive and hostile towards the Germans. So in 1899, Captain von Kamp, commander of the military garrison at Wute-Adamawa, led a punitive military expedition to Tibati where he deposed and captured the incumbent Sultan, Mohama. On the 11th of September 1899, the Peul sued for peace and signed a peace treaty with the Germans. The amenable Jerima Chiroma was installed as the new Sultan of Tibati. He undertook to pay war damages assessed at 100 elephant tusks and 250 heads of cattle. He also undertook to obey and follow faithfully, unflinchingly and unconditionally the orders of the German Governor. In exchange the new Lamido Chiroma was to be under the protection of the Kaiser and to be honoured with an award of the German flag.[19]

With this defeat the last vestige of Hausa-Fulani resistance to German suzerainty was broken. By 1900, Germany's authority was acknowledged all over the country although in remote areas the Germans were yet to make their presence felt. German control was more effective in the coastal areas. As the territory was vast and the means of communication virtually non-existent, the

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19. For the Germano-Peul Peace Treaty of 1899, see Etudes Camerounaises, No. 51, Mars 1956, pp. 42-43. The treaty is not in the original German but has been translated into French.

Germans wisely decided to rule peoples in the remote hinterland through their own traditional institutions which were left undisturbed. Hence, with the exception of the coastal urban centres and the few military stations in the interior, traditional institutions and way of life elsewhere in the territory were but little affected by the German presence.

Germany had no colonial policy in Cameroon as such. Her overriding interest in the territory was the intensive exploitation of its natural resources to feed the expanding industries of Germany. To achieve this goal, her rule was direct in some areas of the territory and indirect in others. In the coastal areas where German authority was firmly entrenched, the Germans ruled directly. A number of traditional institutions were disbanded and the chiefs were only chiefs in name. They could be de-stooled. They could be flogged. Some of them were absorbed as paid auxiliaries of the German administration. They received their orders from the local district officer. They owed their chiefly stool not to their people or by inheritance but to the German Administration. In the interior, the story was different. The Germans adopted a system of indirect rule mainly for practical reasons. The protectorate was vast, communication poor, and German personnel scarce. The Germans therefore signed treaties with local inland chiefs and relied upon them to support the Administration; German control and influence being only very remote. So long as

the chiefs recognised German hegemony over them, so long as they collected the required taxes, supplied their own quota of able-bodied men for the colonial armed forces (Schutztruppe) and for compulsorty labour, and so long as they maintained the peace, they were not molested by the Germans. Although their wings had been clipped a little, they still retained their authority over their people and their traditional institutions were respected.

The payment of tax was not new. Before the Germans came, Cameroonians were wont to paying to their chiefs a form of tax known as 'tribute'. It was however the Germans who in 1902 introduced direct taxation in the coastal areas and in the interior in 1909. "When the head-tax was introduced in 1909, every able-bodied male had to pay six marks commutable to 30 days of tax-labour (Steuerarbeit). What was known as a head-tax was really a quota or district tax. The station officials sent the foyn [i.e. chief] only a determined number of tax-tickets and expected in return the required lump-sum. When the tax-tickets or metal tags reached the foyn, he despatched his retainers to village heads and sub-chiefs telling them how much they had to send in to him. When they paid in the money the foyn sent to the Administration ... the lump-sum amount and the rest went into the royal coffers."[20]

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20. P.N. Nkwi, Traditional Government & Social Change, Fribourg, 1976, p. 149.

It is a trite observation that German rule was repressive. However, theirs was a pioneering effort and it is to their everlasting credit that they laid the basic foundations for modern Cameroon. They neither disdained traditional institutions and customs nor tried to assimilate Cameroonians. Indeed shortly before the First World War they were seriously considering the use of native Secret Societies as an arm of the colonial police force.

2. The German defeat and the consequent Anglo-French partition

When the First World War broke out Germany found herself fighting a two-front war in Cameroon. The British attacked on the west from neighbouring Nigeria and the French on the east from French Equatorial Africa. The German forces were crushed in the middle like a nut in a nutcracker. The last German stronghold, Mora, which was gallantly defended by Captain von Raben, fell on February 20th 1916. Cameroon was lost.

France and Britain would there and then have partitioned the territory along their respective combat zones as war booty. But who was to take Douala, Britain or France? That town had been jointly wrested from the Germans in 1914 and provisionally placed under an uneasy

Anglo-French Condominium,[21] headed by Britain's Brigadier-General Dobell. Moreover, in 1915 it had been agreed to maintain the Condominium until the collapse of German resistance in the territory.[22] The question as to which Power was to acquire Douala, which had been jointly conquered, delayed the partition of Cameroon for about two weeks after the collapse of German resistance. Surprisingly, Britain readily surrendered Douala to France. The latter scored a diplomatic victory over Britain who thereby threw away another opportunity of acquiring Douala. The question as to who was to get Douala having been resolved, the way became clear to carve out the territory along the respective combat zones of the two Powers. Accordingly, hardly had the smoke of the last battle with the Germans dispersed than Britain's Secretary of State for the Colonies, Viscount Milner, and France's Minister for the

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21. The Condominium was placed directly under the Foreign Office and the Quai d'Orsay which issued directives for execution by the military Governors. But up to the partition of Cameroon in March 1916 the social, administrative and judicial situation in the territory was very chaotic.

22. On the 24th of September 1915, the French Foreign Minister, M. Delcassé sent a letter to the British Ambassador in Paris saying that "Until the Allied offensive has broken the German resistance, the administration of the occupied zones of the country by the forces under the command of General Dobell shall fall on the military authorities assisted by civil servants delegated for this purpose and chosen from the neighbouring English and French colonies." Quoted by Adamou Ndam Njoya, Le Cameroun dans les Relations Internationales, L.G.D.J., Paris, 1976, p. 86. (My translation).

Colonies, Monsieur Simon, met in Paris on the 4th of March 1916 and formally partitioned Cameroon along what came to be known as the Simon-Milner Line. On March 29th 1916 the partition agreement was initialed in Douala and the Condominium was liquidated.

France made away with the lion's share of the spoils. Britain was afraid of incurring great financial responsibilities over another colonial territory. Her primary concern was to secure what she regarded as better boundaries for her vast territory of Nigeria. This explains why Britain was content with only a tiny strip of Cameroon. "We shall not, indeed," said Viscount Milner in his memorandum of May 29th 1919, "have added much to our possessions in West Africa, either in the Cameroons or in Togo. But the additional territory we have gained, though not large in extent, has a certain value in giving us better boundaries."[23]

The Supreme Council made up of Lloyd George for Britain, Clemenceau for France, Wilson for the United States of America, and Orlando for Italy, acting as a de facto international government, met in Paris on May 7th 1919 and agreed to allow Britain and France to make a joint declaration to the League of Nations with regards to the future of Togo and Cameroon. On the 28th of June 1919 the Treaty of Versailles (that ominous document stigmatised

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23. Quoted by P.Y. Ntamark, Constitutional development of the Cameroons since 1914, Ph.D. Thesis, London University, 1969, at p. 35.

by the Germans as a 'diktat') was concluded and Germany signed. Article 119 of that treaty said Germany renounced her rights to her overseas possessions in favour of the Principal Allied and Associated Powers. Two weeks later, on July 10th 1919, Britain and France made their joint declaration confirming the partition of Cameroon which had already been carried out in March 1916. They however undertook to administer their respective spheres in accordance with article 22 of the League of Nations Covenant. That article expressed Europe's latest conscience when it pontifically declared that "the well-being and development of peoples not yet able to stand by themselves form a sacred Trust of Civilisation".

Contrary to general belief, the League of Nations never gave Britain and France mandates each to administer portions of Cameroon. Before the birth of the League of Nations, Britain and France had already partitioned the territory and had since 1916 been administering their respective parts as appendanges of their respective contiguous colonial possessions. The future of Cameroon was decided by Britain and France and not by the League which was simply presented with a fait accompli. True they placed their respective spheres of the territory under the League's mandates system. But this was on the terms presented to the flimsy and pusillanimous League by the two Powers and not on the League's own terms.

The terms of the mandate formulated for Cameroon by Britain and France were approved in toto by the League's

Council (in which sat Britain and France with preponderant voices) on the 20th of July 1922. But the mandate did not come into force until September 29th 1923. It is significant that France saw her own portion of Cameroon as "a sort of colonial Alsace-Lorraine" which would return to the "full sovereignty of France".[24] Cameroon in her eyes was nothing short of plunder taken in war from an arch-enemy.

It is generally allowed that the idea to place ex-German colonies under a mandates' system came from General Smut, the South African. But surely there was nothing new about this idea.[25] The mandates system was novel in 1919 only in the sense that it was systematised at the international level. By the end of the nineteenth century 'annexation' had become anathema as a means of acquiring colonial territories. The methods of 'protectorate' and 'mandate' were however not objectionable. So

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24. Buell, The Native Problem in Africa, Vol. II, 1928, p. 276.

25. At the Paris Conference of 1815, Russia, Prussia, and Austria gave Britain mandate to assume protection over the Ionian Islands. Again at the Paris Conference of 1860, France was mandated to intervene in Lebanon and Syria to protect the Christian minorities against Muslims. Within the British Empire itself Britain had given mandates to certain dominions under the Union Jack to administer backward territories, e.g. in 1886 a mandate was given to Australia to administer Papua New Guinea, in 1909 the Union of South Africa was given mandate to administer the contiguous British possessions. See Njoya, op.cit., pp. 98-99.

the European Powers began to talk not in terms of annexing territories but acquiring mandates or protectorates.[26] In 1919 the mandates system found favour with President Wilson of the United States of America because he advocated an 'open door' policy in the mandated territories, opposed annexation, and preached self-determination especially for the Balkan peoples who were under the Ottoman Empire. He was in fact out-witted because the mandates system was nothing but annexation in disguise.

II. Conflicting Value Systems in Cameroon

1. French colonial policy

The partition of Cameroon in March 1916 left Britain and France with a free hand to deal with their respective portions of the territory as they deemed fit. As France was still at war with Germany in Europe, she saw her presence in Cameroon as the military occupation of the territory of an enemy country. Accordingly she decided

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26. The Berlin Conference put an end to the era of aggressive acquisitiveness. By the Berlin Act of 1885, the signatory Powers set up an international free state in the Congo Basin, under the mandate of the Powers for free trade and navigation. The Brussels Act which came into operation in 1892 dealt more explicitly with the moral obligations of the Powers towards natives. The Treaties of Versailles, the Covenant of Sept. 1919 and the Mandates System were merely wider and more practical versions of the Berlin and Brussels Acts; the great innovation being the declared principle of self-determination. See Lugard, op.cit., Chap. 3, passim.

to govern her part of Cameroon (which became known as 'French Cameroun') in accordance with the Fourth Hague Convention of 1907, Section III, Articles 42 to 56 dealing with military authority over the territory of an enemy State.[27] But in taking this view which was in fact correct, she ran into difficulties. In the first place the enemy territory in question was a colonial one. Secondly, the military occupation of a territory does not entail the transfer of sovereignty. There is only a provisional and limited substitution of power by the occupying State (in this case France) vis-a-vis the occupied state (in this case Cameroun). The legal sovereign, Germany, having disappeared, the problem arose as to how to exercise the judicial, legislative and administrative powers which in principle normally fall on the legal sovereign.

But France was not to be tied down by these legal hair-splittings. In 1911 she had voluntarily ceded to Germany a strip of territory from French Equatorial Africa to form an integral part of German Kamerun. In 1916, France amputated this strip of territory from French Cameroun and re-absorbed it into French Equatorial Africa (made up of Congo Brazzaville, Gabon, Tchad and Oubangui-Chari).[28] At local level the territory was carved out

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27. Njoya, op.cit., p. 90; Le Vine, op.cit., p. 34.

28. Fifty years later, in 1961, Britain also cut a portion of her own share of Cameroon and annexed it to Nigeria by way of a most controversial plebiscite ever organised in the history of de-colonisation. This thinly disguised annexation moved the Cameroun Government to take Britain to the International Court of Justice. The Court however did not repair the injustice committed. It ruled that it had no jurisdiction to entertain the matter. Cf. Incorporation of Northern Cameroons into Nigeria, Cmnd Paper No. 1567; Johnson, D.H.N.,'The Case Concerning the Northern Cameroons', I.C.L.Q., vol. 13, p. 1143, 1964.

into the same districts as the Germans had done. German laws and regulations in force at the end of the war continued to be enforced until the mandates system became operative in 1923.[29] By a decree of September 5th 1916 Paris appointed a civil Governor, Fourneau, to replace General Aymerich who had hitherto been administering the French Section of the occupied territory.

The Governor, styled 'Commissaire de la République' was up to 1921 a subordinate Governor, for he was responsible to the Governor-General of French Equatorial Africa based in Brazzaville. France, like Britain, used art. 9 of the Mandate to administer French Cameroun along with her neighbouring colonial possessions as a French colony. However, by a decree of 23rd March 1921, French Cameroun was granted administrative and financial autonomy within French Equatorial Africa. The French Commissaire in Cameroun was granted the rank of full Governor and made the depository of the powers of the French Republic in Cameroun. He "received his instructions from the Minister [for the Colonies] and was responsible for his actions before the French Government".[30] No legislation passed by the French Government could enter in force until it had been promulgated by the Commissaire in the local official Gazette

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29. Le Vine, op.cit., p. 34.

30. P.F. Gonidec, Droit d'Outre-Mer, Tome I - De l'empire colonial de la France à la Communauté, ed. Montchrestien, Paris, 1959, p. 200 (My translation).

by means of Orders (arrêtés). The Commissaire had special powers (pouvoirs réglementaires) which allowed him to attach criminal sanctions to the breach of a rule. He made all but the most senior appointments in the territory. All correspondence passed through him. The administrative functions of his office were assumed by a Secretary-General. At local level the day-to-day running of the territory was carried out by various categories of district officers (préfets, sous-préfets, chefs de circonscriptions et arrondissements, maires, etc.). But it was the Commissaire's duty to ensure that French colonial policies were successfully pursued in the territory.

To accomplish what she regarded as her 'civilising mission' in the colonies, France pursued two basic colonial policies. Civilisation in politico-cultural terms meant assimilation and therefore direct rule. In socio-economic terms it meant resorting to forced labour as a justifiable means to an end - the much vaunted advancement of natives.[31]

Assimilation was the cornerstone and substratum of France's colonial policy.[32] It meant fostering

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31. In its 1912 Report, the traditionally conservative Roman Catholic clergy had no qualms in saying that "it is necessary to impose labour on the blacks in order to secure the modification of their mentality, and to bring them to realise their duty as civilised people do." Quoted by Lugard, op.cit. at p. 413. France is predominantly a Roman Catholic country.

32. For French policy of assimilation in French Cameroun see also D.E. Gardinier, Cameroon - United Nations challenge to French policy, Oxford University Press, London, 1963, pp. 10-24.

the concept of the 'evolue'. A distinction was made between citizens (citoyens) and subjects (sujets), a kind of separating the sheep from the goats. A 'citoyen' was a Frenchman or a native who had evolved and attained such standard of French culture as qualified him to be assimilated to a Frenchman. A 'sujet' was a native who had not yet been assimilated.

Assimilation in fact meant self-denial. The native had to deny himself and claim, irrespective of his black skin, that he was a Frenchman.[33] It was a very seductive invitation to commit racial and cultural suicide. The French educational system taught the native to deny his language and culture and instead to learn the French language and adopt French culture. It taught him to look down on his tribal customs and institutions and encouraged him to break with his tribal world. It taught him not to ask for the 'whys' and 'hows' of issues or things. It taught him that only the civilised French laws really mattered.

However to become a Frenchman the native had to meet a number of requirements. He must be an adult (about 18 years of age), be able to speak French like a Frenchman, practise a 'civilised' profession such as law, medicine and engineering, earn a sufficient income, be prepared to shed blood for France by serving in the French colonial

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33. Cf. Frank Fanon's explosive book, Black skin, white masks, Paladin, London, 1972, originally published in France as Peau noire, masques blancs, ed. de Seuil Paris, 1952.

army, be of good character and possess the qualities of a Frenchman, consume only goods (including water) imported from France, et cetera. Having thus acquired a 'civilised' way of life, the 'sujet' could then carry the tag 'citoyen' and be guaranteed the same judicial rights as those enjoyed by a born Frenchman, for example the right to take a French spouse.

In theory therefore, assimilation was only a transition through an evolutionary process by which the entire native population was to acquire French citizenship. In reality however, only few Camerounians ever became citoyens. There was really no desire and in fact no wisdom in assimilating every Camerounian, making them 'citoyens'. France still needed sujets to do the dirty work, to dig the mines and cultivate the plantations for her. And since citoyens were by law exempted from such labours, there was no sense making every 'sujet' a citoyen. The Mandates Agreement forbade the Mandatory Power to confer her nationality on the natives of the mandated territory. But France construed this prohibition as referring to the conferment of French nationality on the natives en bloc. According to her there was no prohibition on French citizenship being granted to individuals "par un acte individuel de naturalisation".[34]

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34. Gonidec, op.cit., pp. 195, 301. Those natives who did not renounce their 'sujet' status to become French citizens were deemed to be of no nationality. France saw them as merely 'administrés francais' to whom she was kind enough to give diplomatic protection.

The policy of assimilation served France very well, because it fostered in the colonised people a subservient attitude and enabled France to adopt a paternalistic attitude towards them. The French President (especially Charles de Gaulle) was regarded as a 'bon père de famille' and France itself was 'la patrie'. The policy of assimilation was a political trojan horse by which natives were made to depend upon the metropole for virtually everything. It engendered in them the belief that they were incapable of ruling themselves and managing their own affairs, and that their destinies and fate were by some divine Providence bound to that of France.[35] Consequently the French monopolised political and economic power to the exclusion of natives. "Everything began and ended in the Ministry for the Colonies ... Up to 1946,

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35. "It must, besides, be well observed that a Cameroun made up of four different population groups and difficult to weld together is not viable in the present circumstances; think of the 1,250,000 Bantus more or less Christianised, of the 370,000 Foulbe Muslims, of the 940,000 primitive pagans and of the 540,000 Bamileke and Bamoum with an original civilisation. Cameroun runs the risk, the day autonomy shall be granted to her, of splitting up into two or three little states, each too small to be able to live an economically independent existence." - J.C. Froelich, Cameroun-Togo, territoires sous tutelle, ed. Berger-Levrault, Paris, 1956, p. ix (my translation). The author, a French colonial civil servant who had seen service in Cameroun, then called on France to make the people of Cameroun realise that their future, welfare and development lay not in seeking for autonomy, least still for independence, but in the continued association with and loyalty to France. What a dramatic irony.

there was no representative assembly. The Council, placed under the French Representative [i.e. Commissaire] was made up mainly of high French civil servants and was purely consultative."[36] The Administration was autocratic and very centralised.[37]

The dispensation of two types of justice, la justice indigène and la justice européene was merely the policy of assimilation in practice in the judicial sphere. "Before 1946, judicial organisation in Cameroun rested on the distinction between la justice indigène and la justice européene. This distinction was the expression in the judicial field of the indigenat system which, on the political, economic, and social level perpetrated its principles of violence, exactions and dehumanisation practically known under the expression of the exploitation of man by man."[38] Unassimilated natives were subject to droit indigène regarded as being made up of primitive and uncivilised customs. Once the sujet had evolved from a primitive Camerounian to a modern Frenchman he was branded citoyen and subject to droit européen.

Sujets became ashamed of their own traditional

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36. Gonidec, op.cit., p. 200 (my translation).

37. Ibid.; See also the same author in his La République Fédérale du Cameroun, Encyclopédie Politique et Constitutionnelle, ed. Berger-Levrault, Paris, 1969, p. 19.

38. Victor Kanga, Le droit coutumier Bamileke au contact des droits européens, Imprimerie du Government, Yaounde, 1959, p. 71 (my translation).

laws. The policy of assimilation militated against and undermined traditional laws and institutions. The rough-handedness with which the French handled customary law was eloquently evidenced by the fact that it was given a very low place in the scale of justice[39] and was mutilated almost beyond recognition under the apparently attractive proposition of codification. Like customary justice, traditional institutions were only tolerated. De-stooling traditional authority and enstooling stooge chiefs became the order of the day. These new breed of 'arrêté' chiefs became mere subordinate agents of the colonial administration in their various 'chefferies'. They were employed in matters of sanitation, the levying of taxes, road construction, engagement of labour and so on. Moreover, the French instituted a hierarchy of chiefs (chef du quartier, chef du village, chef superieur, etc.). But denuded of any real power or authority over their people these chiefs were chiefs only in name. (And even the name or title 'chief' depended on the will, whims and caprices of Monsieur le Commissaire de la République.)

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39. Recognised native courts were presided over by French civil servants who were assisted, as assessors, by 'chefs' and 'notables'. The activities of these native courts were closely supervised by the French district officer. It was said that these courts should not be staffed by the natives themselves because the chiefs and notables would be tempted to settle personal scores with a litigant by imposing on him a very harsh penalty. This was the familiar German excuse for presiding over the coastal native courts. The truth however, was that the natives whom the French regarded as little more than immature and incompetent children could not be trusted to run these courts which brought in much revenue by way of court fees and fines to the administration.

The French wanted through the duplication of their educational system in the colonies to inculcate loyalty to France and French culture. But at the same time they entertained great misgivings about giving the natives a good and sound education. For a long time they limited the education of natives to primary school level. (The primary school was divided into two grades: a lower elementary and a higher elementary which was grandiloquently styles école supérieure.) The French were in a dilemma. By educating the young natives they hoped to make them Frenchmen. But they knew that they were also giving them tools to become aware of their African character. Low education and therefore access to only inferior jobs in the colonial administration served France well because it put the natives under French influence and led to political passivity and acquiescence; but job, economic and political monopoly by the French led to frustration and thence to conscious opposition. This was the more so as "public liberties did not exist. The great French laws on public liberties were not declared applicable in Togo and in Cameroun."[40]

The other face of French colonial policy in French Cameroun was forced labour.[41] The French often

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40. P.F. Gonidec, Droit d'Outre-Mer, op.cit., p. 200.

41. Assimilation as a colonial policy was not the prerogative of the French. It was a colonial disease found in all latin countries in Europe: France, Belgium, Italy, Spain and Portugal. This is how Portugal's Caetana defended the Portuguese concept of the 'assimilados' in 1954: "The blacks ... have to be directed and indoctrinated by Europeans ... The Africans have not learnt how to develop alone the territories they have inhabited for thousands of years, they have produced no one useful invention, made no valuable technical discovery, no conquest that has

/Continued over

talk in rather glowing terms about their so-called mise en valeur du Cameroun or l'oeuvre de la France au Cameroun,[42] conveniently forgetting that they inherited an already good framework from the Germans. True they added improvements here and there. But their methods were hardly different from the much criticised German methods. Fettered to each other, requisitioned persons[43] (chiefs were required under pain of de-stoolment and harsh penalties to supply quotas of men to the French administration, planters, and concessionaires) were marched to go and work on private plantations (the notorious one was at Dizangue) and mines (especially at Betare-Oya) as well as on projects of a public nature such as the completion of the half-finished German railway to Yaounde. They worked under slave

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Footnote 41 continued from previous page.

counted in the evolution of humanity, and have done nothing that can compare to the accomplishments in the fields of culture and technology by the European or even the Asian." Quoted at p. 50 by Bruno da Ponte, Portuguese colonialism in Africa, International Defence and Aid Fund, London, 1974. This view has been debunked by scholarly research. See Chancellor Williams, The destruction of Black civilisation, Third World Press, Chicago, 1976.

42. Cf. P. Chaleur, L'Oeuvre de la France au Cameroun, Yaounde, 1936.

43. Requisitioning of persons for public works is something known in French law. It rests on the general concept of French Public Law. Although its origin may be traced back to ancient Rome, the system existed in France during the Ancien Regime and is linked with military history. See generally, J.P. Dorly, Les requisitions personnelles, L.G.D.J., Paris, 1965.

conditions and were to say the least quasi-slaves. They were flogged at will, paid starvation wages, poorly fed and lived under extremely poor sanitary conditions. Hundreds died. The tribulations of the natives shocked the world. France however continued to issue categorical denials claiming that the situation had been grossly exaggerated by people envious of her.[44] But critics of this inhuman policy tenaciously pursued by France in Cameroun have been vindicated by a Camerounian who himself lived through these gruesome events and who has poignantly compared them to the woes of the Nazi concentration camps.[45]

The legal framework of the policy of forced labour was the ignominous system known as the indigénat. The term forced labour (travail forcé) was itself a blanket term. It "covered several different legal categories of compulsory work: travail publique obligatoire; prestation or tax in labour for public works, generally levied through the chiefs and redeemable in cash; and military conscripted labour, or the deuxième contingent of the colonial army, used to carry on public works."[46] There were in fact two

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44. Le Vine, Cameroon from Mandate to Independence, op.cit., p. 108 et seq.

45. Henri Manga Mado, Complaintes d'un forçat, ed. CLE, Yaounde, 1970.

46. R.S. Morgenthau, Political parties in French-speaking West Africa, Clarendon Press, Oxford, 1964, pp. 1-2. The 'travail publique obligatoire' is also known as 'corvée'. The Tiers Etat had experienced this kind of forced labour in pre-Revolutionary France. It figured prominently in the 'cahiers de doléances' as one of their major grievances. The French justified the introduction of this system of forced labour in Cameroun on the dubious claim that under African custom, it was part of the normal obligations of community life. The French were once more harping on the familiar German argument. Group work under traditional society cannot properly be compared to the colonial system of forced labour.

systems of forced labour, one to achieve certain economic objectives, the other as a means of political coercion.[47] Both were combined in the 'indigénat'[48] which was by a decree of 8th August 1924, introduced in Cameroun and allowed for imprisonment for up to ten years.[49] The reason for importing the indigénat from Togo into Cameroun appeared in a covering letter (appended to the decree) from M. Daladier French Minister for the Colonies to the President of France, M. Doumergue:

Paris, the 8th 8.1924

Mr President,

The Order of the Chancellor of the [German] Empire, dated April 1896, regulated (in the Cameroons under German domination) the application of disciplinary punishment to the natives : the stipulated penalties were imprisonment in irons for a period of 14 days and the cudgel or whip up to the limit of 20 or 25 blows, respectively.

Since 14th May 1916, the Commissioner of the Government in the occupied territories of the Cameroun has substituted for the penalties imposed by the German laws penalties more in conformity with our principles of civilisation: simple penalties or a fine.

Despite certain similarities, the indigenous

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47. Dorly, op.cit., p. 330.

48. Originally, the indigénat was the special provision in the criminal law applicable to French West Africa and which permitted French Governors and local administrators to take speedy punitive action against African sujets. See Morgenthau, op.cit., p. 5.

49. Lamine Gueye, Etapes et perspectives de l'Union Francaise, ed. de l'Union Francaise, Paris, 1955, pp. 37-38; Morgenthau, op.cit., p. 6; Le Vine op. cit., pp. 99-111 and Appendix C.

> races which populate the Cameroun present certain apparent differences from those of French Equatorial Africa: their social and moral level seems, on the whole, to be higher.
>
> It appears under these conditions, that it is of interest to regulate (by special decree) this important question and suggest [for adoption] the text already proposed for the territory of Togo ..." 50

Camerounians of citoyen status (and they were very few) were outside the purview of the indigénat. The system applied only to Camerounians of sujet status; that is, virtually the entire native population. By way of recompense for serving France, certain categories of sujets were however exempted from the indigénat. These were those who had spilled their blood for France by serving in the colonial army together with their wives and children, those chiefs who had been anointed and enstooled by the French, those serving in the colonial administration and receiving a stipend, and those who have been decorated with a médaille militaire.[51] But like the other sujets they could still be subject to extraordinary penalties, for example, internment for ten years or more, sequestration of property, and collective fines imposed by the Commissioner where he thought there was menace of insurrection of 'grave political troubles'. The Commissioner alone decided whether there was such a menace.

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50. Quoted by Le Vine, op.cit., in English at page 99.

51. This fact is satirically portrayed in The Old Man and the Medal by the Cameroon novelist Ferdinand Oyono.

Under the indigénat French officials imposed disciplinary penalties on the sujet for the violation of an alarmingly wide and ill-defined range of trivial acts; such as for example, 'acts of disorder', 'acts showing disrespect to a duly authorised officer', 'failure to provide articles requisitioned for essential public works', 'giving aid to malefactors', 'giving aid to natives who have fled their villages', etc.[52] These breaches were not triable by any court of law. They were summary extra-judicial penalties exacted by French administrative officers arbitrarily and on the spot without resort to the courts. On paper, the penalties were not excessive, being only a maximum of 15 days imprisonment plus a 100^{FF} fine. But in practice (and practice is what matters) people could be interned for up to ten years.

> "The indigenat deprived the masses of freedom of speech, association, and movement and also rendered them liable to severe punishment for quite minor offences. It was a symbol of French policy designed and superbly calculated to repress the masses in the hope that they would feel the strain and burden of this intrusive 'code of law' and accept French culture and institution for all their worth. The expected result was that the general acceptance of French culture and institutions would deter the masses from seeking self-government ... The indigenat only hardened the attitude of the colonial peoples against French policy ..." 53

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52. See 'Arreté' determining the special infractions of the indigénat in accordance with the 'Decret' of 8th August 1924, in Le Vine, The Cameroons from Mandate to Independence, appendix C.

53. P.Y. Ntamark, Constitutional Development of the Cameroons since 1914, Ph.D. Thesis, London University, 1969, pp. 78-79.

The Brazzaville Conference which was held from 30.01.1944 to 08.02.1944 has often been quoted as the watershed in French colonial policy.[54] But the Conference wrought no fundamental change in French colonial mentality. France continued to see the future of her clonies as tied to her. The Conference made deceptive use of the seductive notions of independence and political advancement. In reality, it rejected even the idea of self-government or autonomy in the Anglo-saxon sense of the word.[55]

A decree of 21st August 1930 authorised the use of forced labour for works of a 'public nature'. This was an additional legal basis for requisitioning porters and using them as beasts of burden, and for requiring every able-bodied sujet to work as and where French officials determined, as well as employing tax defaulters. The compulsory labour tax known as prestation was additional to

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54. The meeting, convened by the exiled Charles de Gaulle, was attended by the French colonial Governors in Africa and their assistants, and representatives of the Provisional Assembly in Paris. The aim of the meeting was to put French colonial policy in Africa on a new footing. Would France liquidate her colonial empire? To do so would be suicidal for a France which had itself just experienced colonial domination under the swastika.

55. "French policy offered African territories only the possibility of self-administration, under which the Africans would participate in the central government of a French Republic dominated by the French and would acquire a local administration like that of metropolitan France." D.E. Gardinier, op.cit., p. 1.

the capitation tax which the French imposed on both men and women.[57] The indigénat, corvée, and prestation were greatly resented by many natives who, despites attempts by the administration to hem the exodus,[58] continued to fly to neighbouring British Cameroons where they constituted a large emigré community. The indigénat was abolished in December 1945 and following the International Labour Convention of 1946, forced labour was also abolished by Act No. 46-645 of 11th April 1946. But it was not until the passing of the Labour Code for Overseas Territories in 1952 by the Law of 15th December 1952 that forced labour ceased in French Cameroun.[59]

The Brazzaville Conference had resolved that "The objectives of the task of civilisation accomplished by France in her colonies rule out any idea of autonomy, any possibility of an evolution outside the French bloc of the Empire; the eventual creation, even in the distant future of autonomy for the colonies should be ruled out."[60]

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56. France still lords it over her ex-colonies by means of the equally hazy slogan, indépendance et coopération'.

57. Under the Germans, women paid no tax. The French had calumnised the German 30 days per annum labour tax. But the prestation was that same labour tax, this time in French accoutrement.

58. Decree of 9.7.1925, art. 2 & 3; Njoya, op.cit., p. 136; Le Vine, op.cit., p. 105.

59. Le Vine, op.cit., p. 110; J.P. Dorly, op.cit., p. 328.

60. La Conférence Africaine-Francaise, Brazzaville, 30 janvier au 8 fevrier 1944, Paris, 1945, pp. 32-35, quoted by Ntamark, op.cit., p. 92.

The 1946 Constitution therefore brought all French colonies (including Cameroun) under a sort of confederacy known as Union Française presided by France. Camerounians were granted the status of 'Citoyen' in this French Union, and allowed to enjoy the rights and freedoms envisaged in the preamble of the 1946 Constitution.

For the first time they were given the vote and allowed to participate in politics. Cameroun was represented in the French Parliament by two senators and in the Union Assembly by five counsellors. But there were two electoral colleges, one for Europeans and the other for Camerounians. Moreover, the vote was very limited; 38,507 voters in 1946 and 600,000 in 1953. Executive power continued to be exercised by Monsieur le Commissaire de la République and his team of administrators.[61]

By this time a new international order had set in following the Allied victory over German forces. The sick League of Nations was dead and so too its child, the Mandates System. The United Nations Organisation was created and under its aegis was placed a new international system of tutelage, the Trusteeship System. But the change from 'mandate' to 'trusteeship' was only a change of nomenclature; a case of old wine in new bottles. It brought no fundamental change to the life of the people

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61. See P.F. Gonidec, La République Fédérale du Cameroun, op.cit., p. 20.

and the powers of the administering authority were in no way curbed. Such political changes as were taking place in the territory were slow and, in any case, the result of the wind of change which was at that time beginning to blow across Africa and which the colonial powers could hardly contain, although they tried their utmost to do so.

Following several nationalist petitions to the U.N. and the U.P.C.-led popular uprising in 1955 against the French,[62] France in 1956 passed the Loi-Cadre for Togo and Cameroun. But the Cameroun version of the Law was less explicit than the Togolese version.[63] In Cameroun it was a question of bringing about 'institutional reforms' and the creation of provinces with their own organs (assemblies and councils). Political autonomy came under what was known as le Statut du Cameroun spelled out by a Decree of the 16th of April 1957 and later modified by Ordinance of the 30th December 1958. Cameroun was granted its own Legislative Assembly and a Government headed by a Premier. But France retained power over

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62. These were all agitations for independence. When the French ruthlessly crushed the 1955 popular demonstrations and began tracking down the 'U.P.Cists', the movement took to the forest and waged a guerilla campaign against the French, a war ferociously and tenaciously fought by both sides and which was to plague the country for nearly two decades.

63. The Togo version provided that both Togo and France would share power in a Togolese Assembly and Executive.

certain listed matters (and these were the more important matters): law and order, defence, the administration of justice, foreign affairs and so on. On 1st January 1960, France at last politically relinquished her own sector of Cameroon.

2. British colonial policy

Following the partition of Cameroon on March 4th 1916, Britain proceeded to administer her own part of the territory as part of the adjacent British Colony and Protectorate of Nigeria. Accordingly, laws in force in Nigeria were extended to British Cameroons. Proclamation[64] No. 1 of 1916 which came into force retrospectively[65] on January 24th 1916 provided that:

> "All British military officers in command of detachments of troops and all British civil officers appointed to temporarily administer any territory in the Cameroons are hereby authorised as from the date of their appointments to hold courts with full jurisdiction in civil and criminal matters in which natives are concerned in so far as it is known, and, if not known, the laws of that part of Nigeria

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64. In British colonial lexicon, the laws of a Protectorate or Mandate were styled 'Proclamations' while the laws of a Colony were known as 'Ordinances'. The officer administering the government of a Mandate or Protectorate was called a 'High Commissioner', while his counterpart in a Colony went under the appellation 'Governor'. Before long however, these fine distinctions fell into desuetude.

65. The Proclamation was made after March 4th 1916.

in which they hold appointments immediately prior to their present appointments." 66

Having defined the international status of Cameroon as a Mandated Territory[67] of the League of Nations Britain proceeded to make permanent administrative arrangements for the territory. Relying on Art. 9 of the Mandate and on the Foreign Jurisdictions Act of 1890[68] Britain enacted the Cameroons Under British Administration Order-in-Council No. 1621 of June 1923[69] according to which Cameroon was to be administered as though she formed part of the Protectorate of Nigeria.[70]

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66. Nigerian Gazette No. 15 of March 9th 1918.

67. Britain assimilated a Mandated Territory to a Protectorate. So like the inhabitants of a British Protectorate, the inhabitants of a British Mandated Territory were styled 'British Protected Persons' and did not like the inhabitants of a Colony, enjoy the status of British subjects.

68. The ancestry of this Act can be traced back to the Foreign Jurisdiction Acts of 1843. This Act was amended in 1866, 1875, and 1878, and then consolidated and replaced by the Foreign Jurisdiction Act of 1890. The Act provides that "it shall be lawful for Her Majesty to hold, exercise and enjoy any power or jurisdiction which Her Majesty now hath or may at any time hereafter have within any country or place out of Her Majesty's dominions in the same and as ample a manner as if Her Majesty had acquired such power or jurisdiction by cession or conquest of territory." See Read & Morris, Indirect rule and the search for justice, O.U.P. 1972, p. 44.

69. See the 1923 Report on the British Cameroons, pp. 77-78.

70. Art. 3 of the Order-in-Council provided that the northern part of British Cameroons and the southern portion were to be administered as if they formed part of Northern and Southern Nigeria respectively.

The Governor-General of Nigeria with the advice and consent of the Legislative Council of Nigeria and in accordance with art. 4 of the Nigeria Protectorate Order-in-Council, 1922 and art. 5 of the Nigeria Legislative Council Order-in-Council, was empowered to provide for the administration of justice, the raising of revenue, and generally for the peace, order and good government for the Cameroons. The British Cameroons Administration Ordinance No. 3 of 1924 was enacted with effect from February 28, 1924. By this Ordinance, German law, in so far as it was previously in force, was automatically superceded. These provisions formed the basis of all legislation in the Cameroons until the introduction of the Richardson Constitution of 1946.

There were two corner-stones of British colonial policy; indirect rule and trade. Britain, perhaps more than any other colonial power, saw her colonial possessions mainly as a source of raw materials to feed her booming industries as well as an outlet for her surplus industrial products. Hence the success of any colonial possession which Britain had was measured by the stimulus it gave to British commerce. So long as British mercantile interest was preserved, it was believed that liberty and self-development could best be secured to the natives by leaving them free to manage their own affairs through their own rulers, proportionately to their degree of advancement under the guidance of the British staff, and subject to the laws and policy of the Administration.

The British policy of indirect rule is often associated with that veteran British colonial master, Lord Lugard, who served the British Empire so well in East and West Africa. Indirect rule was however not uniformly applied to all British colonial territories. Since it was a system by which the British colonial administration governed the colonised peoples through their own traditional institutions, indirect rule was applied in varying degrees depending on the circumstances and degree of advancement of each territory.

The British maintained tribal institutions and acted merely as supervisors of native affairs. One effect of this system of administration was that it encouraged tribal allegiances; for, within a given territory the various tribes behaved as though they were states within a state. Theoretically, whereas direct rule has the advantage of fostering a national spirit in the natives, indirect rule militated against national consciousness. However, history has shown that the former Belgian and French possessions in Africa (territories in which direct rule was pursued) are no less torn by tribal strife than the former British territories.

Although she pursued a policy of decentralisation and continuity, Britain also maintained a strong central coordinating authority in order to avoid centrifugal tendencies and the multiplication of units without a sufficiently cohesive bond. This apparently contradictory policy smacked of a deliberate policy of divide

and rule.

The system of indirect rule was however flexible and inculcated a sense of responsibility in the natives. Their traditional institutions were adapted for the purposes of local government or native administration.[71] These traditional institutions were left almost intact "so that they may develop in a constitutional manner from their own past, guided and restrained by the traditions and sanctions which they have inherited, moulded or modified as they may be on the advice of the British officers, and by the general advice and control of those officers".[72]

Traditional chiefs[73] were integrated into the colonial administrative hierarchy. The Governor-General, appointed by a Royal Commission was the highest authority

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71. The system of Native Administration was "the procedure of which a colonial government whose European establishment is necessarily restricted in numbers has provided itself with the administrative machinery required for certain definite purposes of whose most important are the supervision of the tribal or other institutions which regulate the domestic affairs of most African communities, the maintenance of law and order, the assessment and collection of native tax ...": Hailey, Native administration in the British African territories, Part 3, W. Africa, H.M.S.O., London, 1951, p. 1.

72. Latham, G.C., 'Indirect Rule and Education in E. Africa', AFRICA, vol. 7, No. 4, p. 423, quoted by Nkwi, op.cit., p. 137.

73. Chiefs were stratified: sub-chiefs, village chiefs, clan chiefs, and paramount chiefs. This was a colonial innovation.

responsible to and representative of His Majesty in the colony. He appointed and dismissed officers of the colonial service. He assented to or refused to assent to Bills passed by the local legislative council. He had the power to grant pardons and remit penalties. He was in fact an autocrat. He was only controlled by His Majesty's Secretary of State for the Colonies. He was in charge of the whole territory; occupied Government House and was styled 'His Excellency'. Under the Governor-General was the Lieutenant-Governor who assumed the administrative charge of group of provinces for which he was responsible. Next below was the Resident. He assumed the administrative charge of a Province. He was responsible for the efficiency of the public service in his province, the native administration and the conduct of provincial and native courts. He was Judge of the Provincial Court; supervisor and guide of native rulers. He acted "as sympathetic adviser and counsellor to the native chief, being careful not to interfere so as to lower his prestige, or cause him to lose interest in his work".[74] Below the Resident were Divisional Officers. Every Province was divided into Divisions, each under a Divisional Officer. Upon the D.O.s largely depended the maintenance of law and order in the Divisions. They came of the class which made and maintained the British Empire. So far as the masses

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74. Lugard, Dual Mandate, op.cit., p. 201.

of the colonised people were concerned, the administration was mainly carried on by the D.O.s for they wielded considerable power in their Divisions. Power was delegated down from the Governor-General to the District or Divisional Officer who was in direct contact with traditional chiefs.

The policy of indirect rule was a reflection of Britain's proverbial conservatism as well as her artistocratic tradition. "Indirect Rule is characteristically a British reaction to the political problems of Africa. It derives partly from our conservatism with its sense of historical continuity and its aristocratic tradition. Our experience has not taught us to believe in fresh constitutional starts, or in the existence of political principles of universal applicability ... But indirect rule derives equally from our liberalism with its respect for the freedom of others and its conscious reaction from the old selfish type of imperialism."[75]

It was however not until 1922 that indirect rule was introduced in British Cameroons. Between the partition in March 1916 and the League of Nations Mandate in July 1922 British administration in the Cameroons was poor and confused. The territory was administered from faraway Lagos. Not only was the territory geographically segregated from Lagos, seat of the British colonial administration

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75. M. Perham, 'The System of Native Administration in Tanganyika', AFRICA, July 1931, p. 302, quoted by Nkwi, op.cit., p. 137.

for the Cameroons and Nigeria, but it was also understaffed particularly in the Bamenda grassfields, where as late as 1945 there were only five British officers to supervise the native administration. Britain's knowledge of the territory was very sketchy. And from distant Lagos came contradictory orders for the local district officer. It was a period of virtual laissez-faire, confusion and maladministration.

When the British Secretary of State for the Colonies directed that indirect rule be extended to Cameroon, the Lieutenant-Governor in Lagos did so, stressing "the consolidation of tribal units, the resuscitation of indigenous forms of government ... , the selection of the rightful chief, his installation with appropriate ceremonial, the re-establishment of the clan council together with the definition of the jurisdiction and power of the clan council or chief".[76]

The Clan Council or the Chief constituted the Native Authority. As instruments of Government having responsibility for the management of their own affairs and promotion of development at the local level (building schools, dispensaries, undertaking communal projects such as the building of bridges and the digging of roads, collecting taxes and maintaining a native treasure, etc.),

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76. Chilver, E.M., 'Native administration in the West Central Cameroons 1902-1954' in Essays in Imperial Government, ed. K. Robinson and F. Madden, Basil Blackwell, Oxford, 1963, p. 108.

Native Authorities were endowed with executive, judicial, fiscal and partly legislative powers, as well as being granted statutory authority. A number of selected chiefs received a stipend. The Native Authority had its own 'police' (known as N.A. Messengers) who maintained the peace in their various localities. They had power to arrest, detain, and bring before the native courts anyone who infringed public order. Native law and custom remained in force to the extent that it was not repugnant to English ideas of justice nor incompatible with any written law in force in the territory.

Court fees and fines as well as native taxes were paid into the Native Treasury. "Tax quotas were fixed at a percentage of an estimate of the gross income of villages based on yields per acre, the annual value of livestock, wage income, and the disposal of crop surpluses and manufactures at local market prices."[77]

The maintenance of traditional institutions as instruments of the colonial administration was very much detested by the Christian missions who saw them as pagan institutions. For a long time during the colonial period there was constant cleavage between the missionaries and their new converts on the one hand and the vast majority of natives on the other hand whom they regarded as heathen. Native converts, aided and abetted by missionaries, refused to obey traditional authority. They would refuse to pay

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77. Chilver, op.cit., p. 110.

tax into the native treasury, to take part in communal labour, and to obey the chief. With zeal and alacrity they declared Christ to be their one and only ruler and would receive orders from none but the priest whom they saw as the messenger of Christ. Many young men and women, newly converted, fled from their homes and marriages and took refuge with the Missions who refused to hand them over on request. In certain places, this antagonism almost brought the native administration to a standstill. The colonial administration had to step in and called for moderation on the part of the Missions. The converts were told to give until Caesar what is Caesar's and to God what is God's. But it took a long time for the Missions to accept native institutions and practices.

But apart from this participation in local government the natives in British Cameroons were politically, socially and economically in no way better than their brothers in French Cameroun. Up to the end of the Second World War the territory was politically dormant. The new post-World War II status of 'Trusteeship Territory' brought no real change in the territory. Although the political agitation of Cameroonians in the Eastern Nigerian Assembly spilled over into Cameroon, the territory remained economically as destitute as before. There was always a chronic penury of administrative and judicial personnel. Educational opportunities for the natives were lacking. Responsibility for education was placed in the hands of native authorities. Emphasis was laid on character building

and adaptation to the needs of natives. The use of vernacular or a local lingua franca was encouraged. But there was no wish to create a corps d'élite. The whole educational system was geared towards the learning of the 3Rs (Reading, Writing, Arithmetic), handicraft, hygiene, and manual labour. Opportunities for further education existed only in Nigeria; and very few were the Cameroonians who had the means to get there. No Cameroonian occupied any position of consequence.

However, unlike the French who believed that natives were not yet fitted for the full measure of individual liberty which it has taken European countries centuries to evolve for themselves, the English respected fundamental human rights and freedom of expression (although throughout their 44 years rule in Cameroon the British established neither a written nor the spoken Press in the Territory). Before re-unification in 1961, natives of British Cameroons knew nothing about having to carry passes, identity cards, or their homes being raided by the forces of law and order, or even seeing policemen on duty with a pistol hanging at their hips.

But then the territory was very poorly developed. Infrastructure and means of communication were a disgrace. Only a few miles of narrow motorable roads existed. Most of them were impassable during the rainy season. Electricity was a rare commodity. And there was hardly a modern town anywhere in the territory. The capital, Buea, perching on the slopes of Mount Cameroon, was a very

small town and such good buildings that existed there were built by the Germans. Even Her Majesty's Commissioner for the Cameroons lived in the German built 'Schloss'.

No industry existed in the territory. The Cameroon Development Corporation (successors of the various German plantations in the territory) in Victoria was the major employer. Its task was to exploit the agricultural wealth of the territory allegedly for the benefit of all Cameroonians. But no Cameroonian occupied any high post in the enterprise. Most Cameroonians were poorly paid and poorly housed plantation labourers. Compulsory labour also existed in British Cameroons; although not in its dehumanising form as in French Cameroun. The British view was that the object of compulsory labour was purely educative. It was an unavoidable and disagreeable necessity in order to carry on the work of administration and development and resorted to only where labour cannot otherwise be procured for public works of an essential and urgent nature.

After the Richardson Constitution in Nigeria in 1946, political events in the southern part of British Cameroons began to move fast. Maintaining benevolent neutrality in Nigerian politics, Cameroon politicians in Nigeria continued to agitate for an autonomous Southern Cameroons. By 1954, that autonomy came and Southern Cameroons was granted its own House of Assembly. On 1st October 1961, Southern Cameroons gained her independence and also re-unified with the former French Cameroun to

form the Federal Republic of Cameroon. (Since 1972 it has been transformed into the United Republic of Cameroon.)

Colonialism whether by the Germans, British or French was basically the same in Cameroon; the economic exploitation of the territory, the imposition of alien culture, rule and law, and the rough treatment of natives. There were always contradictions and differences in the value systems implanted by these colonial powers in Cameroon.

Germany's legacy to Cameroon is undeniably her initial contribution to the economic development of the country and especially the creation of the concept of a Kamerun Nation although Johnson[78] and Ardener[79] take the view that this is a myth which has been exaggerated by Cameroon Nationalists. Cameroon has inherited from Britain and France their cultures and legal systems.

III. International Tutelage: Carte Blance to Import Alien Laws

The two regimes of international administration, the Mandates and the Trusteeship Systems,[80] were like ad hoc

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78. W.R. Johnson, The Cameroon Federation - political integration in a fragmentary society, Princeton University Press, Princeton, New Jersey, 1970, chapter 3.

79. E. Ardener: 'The Kamerun Idea', West Africa, June 7th 1958, p. 533 and June 14th 1958, p. 559.

80. See generally, A. Ndam Njoya, op.cit., ch. II, pp. 95-153; D.E. Gardinier, op.cit., ch. 1; H.G. Nicholas, The U.N. as a political institution, 5th ed., O.U.P., London, 1975, ch. 2 and 6; A.G. Mezerik (ed.), Colonialism and the United Nations, International Review Service, New York, 1964, passim.

bodies charged with the definite responsibility of protecting and guiding weak and uncivilised peoples; of seeing that they progressed and gained self-government or independence. Once this 'sacred' mission of seeing to the "well-being and development of people not yet able to stand by themselves" was accomplished, the system would liquidate itself, for, in the circumstances, there would be no raison d'être to maintain it.

1. The mandates agreements

The Mandates Agreement drawn up for Cameroon by Britain and France was approved by the League of Nations in 1922. Article 2 of the Agreement provided:

> "Art. 2. The Mandatory shall be responsible for the peace, order and good government of the territory and for the promotion of the utmost material and moral well-being and social progress of its inhabitants."

This provision conferred upon the Mandary responsibility for every aspect of life of the inhabitants of the territory. Article 9 of the Agreement gave her the means by which to discharge those responsibilities.

> "Art. 9. The Mandatory shall have full powers of administration and legislation in the area subject to the Mandate. The area shall be administered in accordance with the laws of the Mandatory as an integral part of his territory ... The Mandatory shall therefore be at liberty to apply his laws to the territory under the Mandate subject to the modifications required by local conditions ..."

This article gave Britain and France licence to introduce their respective laws and legal systems into Cameroon. However, the fact must not escape notice that well before the formulation of the Mandates Agreement, the two Powers had each extended to their respective parts of Cameroon some of their laws in force in their respective contiguous colonial territories. Articles 2 and 9 merely gave a legal basis to a de facto situation. Article 2 confirmed responsibilities which Britain and France had already arrogated to themselves; while article 9 gave both full rein to legislate in and administer the territory.

Britain and France had the right to administer Cameroon each in accordance with its laws and as an integral part of its territory. On this basis, English and French laws were imported into Cameroon. Under this provision, international agreements were also made enforceable in the territory. The Mandatory was moreover at liberty to apply its laws to the territory under Mandate. This did not mean that the Mandatory was positively required to introduce its laws into the mandated territory. It was 'at liberty' to do so or not to. If it chose to introduce its laws into the territory, it did so "subject to the modifications required by local conditions".

The Mandates Agreement was conspicuously mute on the question of customary law in general. Only in regards to the holding or transfer of real property did the Agreement make reference to customary law.

> "Art. 5. In the framing of laws relating to the holding or transfer of land the Mandatory shall take into consideration Native Laws and Customs and shall respect the right and safeguard the interests of the native population."

This provision required 'native law and custom' to be taken into 'consideration' in land matters. It placed a positive obligation on the Mandatory to "respect the right and safeguard the interests of the native population" when framing laws relating to land tenure.

However, nowhere in the Agreement is the Mandatory even required to 'take into consideration', let alone observe and enforce the observance, of customary law in general. The Mandatory could therefore have elected to be blind to the existence of customary law. But this she could not honestly and practically do. The vast majority of the natives were illiterate and governed by customary law. Besides, the villages were remote and not easily accessible, and the Mandatory had neither the economic means and desire to open up every corner of the territory nor an abundance of the requisite trained legal personnel to squander in the territory. Hence even if the Mandatory had chosen to ignore customary law and to enforce only her own imported laws she would have found it an uphill task to make a complete tabula rasa. Practical reasons more than anything else obliged the Mandatory to observe and enforce the observance of customary law; although she did so with a very powerful reservation - that it passed the 'repugnancy' (Britain) or 'civilisation' (France) test.

2. The trusteeship agreements

At the end of the Second World War,[81] the nascent United Nations Organisation established an 'international trusteeship system' to replace the mandates system which had been set up by the defunct League of Nations.[82] By art. 75 of the U.N. Charter, the Trusteeship System was established "for the administration and supervision of such territories as may be placed thereunder by subsequent individual agreements".

The 'individual agreements' did not, as may be thought, consist of agreement between the Administering Power and the United Nations.

> "Art. 79. The terms of the trusteeship for each territory to be placed under the trusteeship system, including any alteration or amendment, shall be agreed upon by the States directly concerned, including the Mandatory Power ..."

The clause "shall be agreed upon by the States directly

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81. Between Versailles and San Francisco, most countries had come to look on colonialism and imperialism as a thing of shame. There came to be a polarisation of Nations into pro- and anti-colonialists. This ambivalence was reflected in the U.N. whose Charter was signed at San Francisco on June 26th 1945.

82. See Chap. 12, art. 75 to 85 of the Charter. The U.N. was both sympathetic to the aspirations of colonised peoples for independence and concerned about the interests of the Great Powers. The USA and the USSR were however in an anti-imperialistic mood; the former still reminiscing over the Spirit of 1776, and the latter prompted by the principles of Marxism-Leninism as interpreted by Stalin and the October 1914 Revolution.

concerned" was vague and nebulous and so gave rise to divergent interpretations. It was however taken to mean agreement between the administering authority and neighbouring States. In the case of Cameroon therefore, it meant agreement between Britain and France.

The Agreement had however to be approved by the U.N. General Assembly, the organ on which ultimate responsibility for the Trust Territories rested; except for strategic ones where ultimate responsibility rested with the Security Council. In practice, the degree of the U.N.'s jurisdiction over these territories was limited because the Charter used tentative language. There was no obligation to place a mandated territory under the new system.[83] Article 77 merely said that the system "may be applied to territories now held under mandate". The Trusteeship Council was required to consider reports from the Administering Authority and examine petitions from the trust territory "in consultation with the Administering Authority". If the Council wanted to make periodic visits to the trust territory, it could only do so "at times agreed upon with the Administering Authority". Hence as under the League, oversight could only be exercised by agreement with the controlling trusteeship power. Moral

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83. E.g. South Africa refused to place Namibia under the system, a stand upheld by the I.C.J. in its judgment of 11.12.1950. It was only after international moral pressure on her that France reluctantly placed French Cameroun under the system.

pressure was the Trusteeship Council's only weapon, if the 'basic objectives' of the system were being deviated from.

> "Art. 76. The basic objectives of the trusteeship system ... shall be -
> (a) to further international peace and security;
> (b) to promote the political, economic, social and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the peoples concerned and as may be provided by the terms of each trusteeship agreement;
> (c) to encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion, and to encourage recognition of the interdependence of the peoples of the world; and
> (d) to ensure equal treatment in social, economic and commercial matters for all Members of the U.N. and their nationals, and also equal treatment for the latter in the administration of justice ..."

As under Art. 22 of the League, this provision was merely an unenforceable expression of good intent.

It is against this background that the Trusteeship Agreements must be considered. As under the Mandates system, Britain and France gave themselves <u>full powers</u> of administration and legislation in their respective spheres of Cameroon. The British Trusteeship Agreement for the Cameroons provided:

> "Art. 5. For the above-mentioned purposes and for all purposes of this Agreement, as may be necessary the Administering Authority:
> (a) Shall have full powers of legislation, administration and jurisdiction in the Territory and shall administer it in

> accordance with the Authority's own laws as an integral part of its territory with such modification as may be required by local conditions ..." 84

This was merely Art. 9 of the Mandates Agreement suitably reframed.

As under the Mandates Agreement nothing is said about customary law in general. There is reference to 'native law and custom' only with regards to land tenure.

> "Art. 8. In framing laws relating to the holding or transfer of land and natural resources, the Administering Authority shall take into consideration native laws and customs, and shall respect the rights and safeguard the interests, both present and future, of the native population. No native land or natural resources may be transferred except between natives, save with the previous consent of the competent public authority. No real rights over native lands or natural resources in favour of non-natives may be created except with the same consent." 85

Again this provision merely recapitulated and amplified Art. 5 of the Mandates Agreement. It did not say that customary law governed matters relating to land and natural resources. The Administering Authority was only required to take that law 'into consideration' when framing laws relating to land and natural resources. The Administering Authority was however bound to respect the rights and safeguard the interests, both present and future, of the native population.

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84. See Art. 4 of the French Trusteeship Agreement for Cameroun.

85. See Art. 7 of the French Agreement. The French provision talks of 'local law' and not 'native law and customs'. More significantly, it is silent on the question of 'natural resources'.

Native land and natural resources could only be transferred between natives with the consent of the competent public authority. The provision was apparently designed to prevent native lands and natural resources falling into the hands of non-natives be they intending settlers, concessionnaires or planters. This did not mean that non-natives were totally debarred from acquiring real rights over native lands and natural resources. They could acquire such rights upon obtaining the requisite consent. For example, Art. 13 of the Agreement provided that missionaries could 'acquire and possess' property in the territory subject to 'local law'. However, the terms 'competent public authority', 'native' and 'non-native' were vague. Nor was it clear what 'native land' meant. Could there have been any land in the territory which did not belong to the natives?

The Mandates Agreement had not made it very clear whether any international treaty could be applied to the territory. The Trusteeship Agreement put the matter far beyond the region of any doubt.

> "Art. 7. The Administering Authority undertakes to apply in the territory the provisions of any international convention and recommendations already existing or hereafter drawn up by the U.N. or by the specialised agencies ..., which may be appropriate to the particular circumstances of the Territory ..." 86

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86. See Art. 6 of the French Trusteeship Agreement for Cameroun under French Administration.

The regime of international tutelage therefore gave Britain and France a blank cheque to import their laws as well as international treaties into Cameroon. With the exception of the provision requiring the Administering Authority to take native law and custom into consideration when framing laws relating to the holding and transfer of land, the Trusteeship Agreements say nothing about customary law in general. There was no requirement that customary law be ascertained and enforced. The Administering Authority was at liberty to ascertain and enforce it or not to.

In keeping with the paternalistic attitude which the United Nations adopted towards colonial territories, the system of international tutelage assumed that the 'basic objectives' of the System could only be achieved by the introduction in the trusteeship territories of the value systems of the Administering Authorities: their culture, policies, laws and legal systems. In the final analysis, this so-called system of international administration by Britain and France did not constitute a panacea. Cameroon was in no way privileged. The situation in the territory was not different from that in other African countries under colonial rule: the same economic exploitation, poor social and educational facilities, and the wholesale importation of alien cultures and legal norms.

PART II

COLONIAL JUSTICE IN CAMEROON

Law and the judicial process occupied no small place in colonisation. They commanded and controlled a growing civilisation. They contributed to stability, peace and order. The acquisition of a colonial territory, whether by settlement, purchase, conquest, cession, or agreement, at once necessitated the introduction of an extraneous law and the creation of new courts to administer it, and the evaluation and qualified application of the local customary laws. At the end of the day there was always in a colonial territory a dual system of courts, one administering exclusively the domestic law and the other administering basically the imported law. This was generally true whether such a colonial territory was labelled a 'colony', 'protectorate', or 'trusteeship territory'.

It is true that Cameroon was styled a German protectorate and not a colony.[1] It is also an historical fact that following the defeat of Germany in Cameroon, German Kamerun was in March 1916 partitioned by Britain and France. British Cameroons and French Cameroun became, in 1922,

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1. Schutzgebiet and not Kolonie. H.N.A. Enonchong, Cameroon Constitutional Law, Centre d'Edition et de Production de Manuels, Yaounde, 1967, argues at p. 49 that Cameroon was never a German colony. It is however submitted that the tag 'protectorate' was merely a labelling swindle for the territory was to all intents and purposes a German colony.

mandated (trusteeship, after World War II) territories under Britain and France.

But, by and large, the way Cameroon was administered by the various colonial powers (Germany, Britain and France), and the policies they each pursued in the territory were, with minor differences[2] basically the same as what obtained in their various colonies or protectorates. Take Germany. By 1907 she had clearly come to see and to treat Kamerun as a colony.[3] British Cameroons, a trusteeship territory, was not administered any differently from other British

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2. The following differences were said to exist between a colony on the one hand and a protectorate or trust territory on the other hand: (a) A colony was headed by a Governor or Governor-General while a protectorate or trust territory fell under the administrative head of a Commissioner or High Commissioner. But Governor and Commissioner had the same powers and were subject to the same legal constitutional limitations. (b) The legislative enactments of a colony were called Ordinances while those of a protectorate or trust territory were styled Proclamations. In practice, legislative enactments for protectorates and trust territories were also called Ordinances. (c) The inhabitants of a colony were called 'subjects' while those of a protectorate or trust territory were known as 'protected' or 'administered' persons. But this distinction had little practical consequences. (d) There was in theory another difference in terms of British jurisdiction in each type. Jurisdiction in a colony was said to be unlimited and in a protectorate, limited. Again this was only in theory since jurisdiction in a protectorate could be extended indefinitely. "In Kenya Colony the jurisdiction of the British Crown is unlimited; but in the Kenya Protectorate, it is limited. It is limited to such jurisdiction as the Crown has acquired. ... The limits may in fact be extended indefinitely ..." per Denning, L-J. (as he then was) in Nyali v. Att. Gen. (1955), 2 W.L.R. 649. Cf. Martin Wight, British colonial constitutions 1949, Clarendon Press, Oxford, 1952, pp. 5-14.

3. Cf. Area handbook for United Republic of Cameroon, Washington, 1974, p. 12; E. Mveng, Histoire du Cameroun, Presence Africaine, 1963, p. 293.

possessions such as, for example, protectorates. France too, like Germany, eventually came to refer to, to regard and to treat French Cameroun as a colony.

This state of affairs was not altered by the fact that after World War II, the French Government thought the use of the word 'colony' so anathema that the Quai d'Orsay had to request the Minister for France Overseas to instruct French colonial administrators to desist from using the term 'colony' or 'colonial' in their official texts and despatches.[4] "... This terminology," wrote the French Foreign Minister, "does not tie in with the statute of the French Union such as it had been spelt out by the Constitution of 1946. It evokes a notion which from the formal legal point of view, is now outmoded ... Abroad, this lack of change is in danger of taking a vexatious turn, particularly in circles where our policy towards those Territories under our charge is, out of good faith or not, being systematically misrepresented ..."[5]

By letter number 7651 of the 2nd September 1949 the Minister for Overseas France replied to his political colleague at the Quai d'Orsay that laws and decrees which were passed before the 1946 Constitution, for France's overseas territories made frequent use of the terms 'colony'

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4. Letter No. 2533 SC dated Paris, 17th August 1949, National Archives, Yaounde, File No. 12053/C: Circulaire 7653 Emploi des mots 'colonial' et 'colonie'.

5. Ibid. My translation.

and 'colonial', and therefore that it was impossible, when referring to or quoting from such laws, not to use those same words. He however assured the Foreign Minister that steps were already being taken to get rid of the adjective 'colonial' hitherto appended to certain names. Thus for example, 'le Service Administratif Colonial' became 'le Service Administratif Outre-Mer'; 'Office de la Recherche Scientifique Coloniale' became 'Office de la Recherche scientifique Outre-Mer'.

In Cameroun the Haut Commissaire, Monsieur Soucadaux, instructed his subordinates to refrain from using the words 'colony', 'colonial', and 'indigène'. For the last word he substituted the word 'africain'.[6]

It would seem that this operation was merely a cosmetic exercise, a window dressing prompted by the feeling that French policy in her overseas territories was being systematically misrepresented abroad.[7]

Be that as it may, the term 'colonial' is used here in a wide and not a restrictive sense. It does not refer exclusively to a colony as opposed to a protectorate or trust territory. The word is used here in an elastic

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6. Circular No. 99/5P dated Yaounde, 16th August 1950, National Archives, Yaounde, File No. 12053/C.

7. At this time many colonial territories were already agitating for independence from their colonial masters. In this the U.N. proved an appropriate platform from which to castigate colonialism. French colonial policy was one of those policies which frequently came under fire.

sense to describe the dependent or subordinate politico-economic relationship which existed between a subjugating State (the colonial power) and a subjugated territory irrespective of whether such a territory was styled 'colony', 'protectorate' or 'trust territyr' in colonial terminology.

The expression 'colonial justice' is therefore used here as referring to the system of legal justice which obtained in such a subjugated territory during the period in which it was under the tutelage of the colonial power. Indeed, the expression 'colonial justice' conjures up the picture of a system, a system of justice which was peculiar to and obtained in colonial territories. This was in fact the case. For, the manner in which justice was administered by Germany, Britain and France in Cameroon reveals similar basic characteristics. There is no reason to suppose that this was a mere coincidence. On the contrary, it does seem to me that it was a deliberate judicial policy pursued by colonial powers in their colonial territories.

The following common characteristics are discernable in the systems of justice which obtained in Cameroon during German, British and French colonial rule:

- a qualified recognition and enforcement of customary law;
- the introduction by the colonial power of his own law;
- the existence of two parallel systems of courts, one primarily for whites and the other

exclusively for 'natives';

- the use of the administrator-cum-judge; the separation of powers hardly existed since the colonial administrator was also a 'judge';
- the colonial judicial service was merely an arm of the colonial civil service; judges were recruited like all other colonial civil servants;
- the Germans and the French had an arbitrary and a rough system of justice for 'natives'; the Germans called it disziplinarstraf and the French, l'indigénat. Due to the absence of legal representation, the British also administered a rough system of justice as regards the indigenous population.

At least, if only for these common traits, one is justified in speaking of a system of colonial justice in Cameroon. It would however be naive to conclude from this that the systems of justice which obtained in German Kamerun, British Cameroons and French Cameroun were wholly identical. Indeed each system had features peculiar to it and which marked it out from the other systems. Colonial justice in Cameroon will therefore be studied under the following three headings:

Chapter 3. The German system

Chapter 4. The British system

Chapter 5. The French system.

CHAPTER THREE

THE GERMAN SYSTEM

Cameroon was annexed by imperial Germany in 1884.[1] Thirty-two years later, in 1916, Germans were defeated and forced out of the territory by English-led and French-led forces. During those thirty-two years of German rule, civil administration in German Kamerun was closely allied to jurisdiction in courts.[2] The court was always the first means through which various areas of the territory were administered. The use of local chiefs as judges in the village courts meant that complaints came in via the courts to the Administration.

Although Germany had annexed Cameroon in 1884, the English-supervised Douala Court of Equity, which had been set up in 1856 by the European mercantile community to resolve trade disputes between them and the autochonous traders, continued to operate as before. Such a surviving vestige of British influence in the territory was irksome to the Germans. Accordingly, the Douala Court of Equity was abolished in 1885.

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1. Douala Treaty of 12 July 1884. See supra, Chapter 2. The acquisition of Cameroon by Germany received the benediction of the Berlin Conference.

2. Cf. The Victoria Centenary Committee, Victoria - Southern Cameroons 1858-1958, published by the Basel Mission Book Depot, Victoria, and printed by Spottiswoode, Ballantyne & Co., London, 1958, pp. 79-80.

Following his abolition of that Court, Governor Soden set up a temporary court (something like the early consular courts in British territories) in Douala with himself as president. He appointed two lay members of his staff to assist him in his judicial duties. They held office for one year. This temporary court exercised jurisdiction in matters between Europeans inter se. An issue involving a European and a Caermoonian was first of all tried by a panel of ad hoc 'judges' appointed by the Governor. An appeal from here lay to the temporary court over which the Governor personally presided. Matters between Cameroonians inter se continued to be dealt with by the various traditional courts which had been in existence before the arrival of Europeans. This arrangement went on until 1892 when a system of courts was set up for Cameroonians in Douala. As the German flag was laboriously but surely carried deeper and deeper into the territory so too the system of courts established in Douala was extended to the hinterland.[3] As for Europeans it was not until around 1900 that a durable system of courts was also organised for them.

Thus there existed in German Kamerun two different systems of courts, one for Europeans and the other

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3. The territory was structured differently from area to area. In areas where German rule was not yet firmly established, areas on a military footing such as Garoua, Bamenda, and Yaounde, the district administrator had a free hand in the dispensation of justice.

for Cameroonians. The former courts applied essentially German law as obtains in metropolitan Germany while the latter courts applied basically customary law. Hence, there was judicial segregation between Europeans and Cameroonians.

I. The System of Justice for Europeans

Europeans in the territory were subject to German law which was administered by a separate courts system.

1. Content of the applicable law

In 1886 debates began in the German Reichstag on measures aimed at laying the constitutional foundations for a government in Kamerun.[4] But it was not until 1900 that the administration of justice, as regards the white community in the territory, was regulated.[5]

Two basic Acts were passed declaring German law applicable to Europeans in the German colonies generally. The first was the Law regarding Consular Jurisdiction

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4. H.N.A. Enonchong, Cameroon Constitutional Law, Centre d'Edition et de Production de Manuels et Auxiliaire, Yaounde, 1967, p. 50.

5. Victor Lehmann, 'The German appellate practice', in Barnett Hollander, Colonial justice - the unique achievement of the Privy Council's Committee of Judges, Bowes & Bowes, London, 1961, p. 109.

(Gezetz ueber die Konsulargerichtsbarkeit) dated 7th April 1900. The second was the Colonial Law (Schutzgebietsgesetz) dated 10th September 1900. In terms of these instruments the administration of justice with regards to Europeans in the territory was to be governed by the laws of the German Empire.

Accordingly, the German Civil and Criminal Codes became applicable in Kamerun. The Civil Code, dated 1896, consisted of five books. Book I dealt with general principles, Book II with the Law of Obligations, Book III with the Law of Things, Book IV with Family Law, and Book V with the Law of Inheritance.[6]

The Imperial German Criminal Code had come into force in Germany itself only in 1871 as the Criminal Code of the German Empire.[7] The Code adopted the traditional division of offences into felonies (Verbrechen), misdemeanours (Vergehen), and simple offences (Uebertretung). A 'Verbrechen' was any offence punishable either with death, or penal internment or military detention of more than five years. A 'Vergehen' was any offence punishable with military detention not exceeding five years, with confinement, or with a fine not exceeding 150 Marks. Part I

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6. Chung Hui Wang, The German Civil Code 1896, Stevens & Sons, London, 1907.

7. Gage & Waters, The Imperial German Criminal Code, Hortor & Co. Ltd, Johannesburg, 1917; G. Drage, The Criminal Code of the German Empire, 1885.

of the Code dealt with the punishment of crimes in general. Decapitation was prescribed as the mode of carrying out the death penalty. Another mode of punishment was solitary confinement. Part II of the Code was devoted to particular crimes. The famous offences of treason and high treason were respectively contained in sections 80 and 93.

2. The courts system

The courts system was very simple. There were just two types of courts, courts of first instance and a unique appellate court.[8]

The court of first instance was the district court - so called because there was one of such courts in each of the administrative districts into which the territory was divided. Called Bezirkgerichte, the district court was presided over by a solo judge known as the Bezirksrichter. The Bezirksrichter's jursidiction in civil matters was analogous to the civil jurisdiction exercised by a court of first instance in metropolitan Germany. His powers in criminal matters were also similar to those exercised by juries in criminal matters in Germany. Where

8. A separate system of courts for Europeans was in fact not really necessary. The white community was small. For example, the Governor's staff in 1890 consisted of only 12 officials, in 1900 it was made up of 200 officials, and in 1916, 240 officials. See Area handbook for the United Republic of Cameroon, U.S. Government Printing Office, Washington, 1974, p. 13.

a district judge sat with two lay assessors, the court's civil jurisdiction was the same as that of a court of first instance back in Germany. In criminal matters, a district judge sitting with four lay assessors had the same jurisdiction as that exercised both by the police court and the assizes court in Germany.

An appellate court, the Obergericht-, was established and served as a court of appeal for Germans in Cameroon as well as those in Togoland. It sat in Douala but was moved to Buea in 1905 when that town became the new capital of German Kamerun. The President of the court, Ober-richter, sat with four lay assessors, Beisitzer. It was a court of last resort.

There were demands in the German Reichstag for the creation of a colonial supreme court, a Kolonialgerichtshof, either in Berlin or Hamburg to entertain appeals from Germans in the colonies. Complaints had been reaching Berlin from the colonies about the quality of justice dispensed there. The idea was to have a German counterpart of the English Judicial Committee of the Privy Council. The proposed Kolonialgerichtshof was however to serve as an appellate court for civil appeals arising from Germans in the colonies. The proposals did not materialise into anything concrete.[9]

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9. H.R. Rudin, Germans in the Cameroon 1884-1914: a case study in modern imperialism, Jonathan Cape, London, 1938, p. 200; B. Hollander, op.cit., passim; contra M.E. Townsend, The rise and fall of Germany's colonial empire 1884-1918, The Macmillan Company, New York, 1930, p. 280, where it is suggested that the Kolonialgerichtshof was in fact established in Germany in 1914.

Up to 1900 Germans appeared to have been immune from prosecution. Even when they began to appear in court after 1900, charged with offences, they were often readily acquitted. This was especially the case where the German stood to go to jail if convicted of an offence. In such a case it was thought better to acquit rather than send him to jail. However, if he must be sentenced to a term of imprisonment, then he was to be deported to the mother country to serve his term there and not in Cameroon.

This judicial attitude was based on two theories. The first was that if a German were ever sent to prison the white man's ego would be hurt. No German would again ever command the respect and esteem of Cameroonians.[10] So a German who was jailed could appeal even to the Reichstag on the 'proper' ground that sending him to prison would dangerously compromise German prestige and authority among Cameroonians. The second theory was that it was revulsive and repugnant to deport German criminals to serve their terms in Germany. This was the more intolerable as at that time all the other colonial powers were dumping their convicts in far away colonial possessions.[11]

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10. For, Cameroonians would then realise that Europeans were also capable of committing crimes.

11. Britain's dumping ground was Australia, and France's was French Guyana. Portugal, Spain, and Holland had similar dustbins for dumping human refuse.

And so it came to pass that the fine became the commonest penalty for European offenders. In the judicial year 1909-1910, one hundred and fourteen Europeans appeared in court charged with various offences. But nearly all of them were discharged and acquitted.

Most of them were charged with assault occasioning bodily injury to Cameroonians. The fact that they were so readily discharged and acquitted gives rise to at least two observations. First, the ill-treatment of Cameroonians went on unabated and was in fact condoned by the local authorities. Secondly, the courts were not inclined to punish European offenders.[12]

Having seen how justice, as regards Europeans, was administered in German Kamerun, let us now look over on the other side of the fence and see also how justice, as regards Cameroonians, was administered.

II. The System of Justice for the Indigenous Population

In the early years of the exercise of sovereignty over Cameroon by Germany, disputes between Cameroonians were

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12. H. Schnee, German colonization, past & future, George Allen & Unwin Ltd, London, 1926, at p. 124 argues that "This phenomenon repeats itself in all colonies with a mixed population. Since the judges work independently, it is a matter on which the government is practically powerless to interfere." One must strongly disagree with this assumption. To talk of the separation of powers, least of all of the independence of the judges in the colonies, is nothing but a palpable falsehood bordering on farce.

settled by individual German officials with the help of interpreters. Account was taken of local customs. In serious cases, such as for example a feud between two rival tribes or villages which had previously resulted in bloodshed, the Governor of the colony was petitioned to mediate in the matter. Missionaries also occasionally assumed a similar office.

The administration of justice was, with regards to Cameroonians, governed by ordinances.[13] Section 4 of the Colonial Law of 1900 vested in the Kaiser the right to legislate for the colonies by virtue of his royal prerogative.[14] The Kaiser could however delegate this authority to such persons or corporate bodies, as he deemed appropriate. Generally, the exercise of his powers was delegated mainly to the Imperial Chancellor. For Cameroon he did so by a Decree of 3rd June 1908. The Imperial Chancellor could in turn sub-delegate these powers to the Governors in the colony by the authority or consent of the Kaiser. In fact this sub-delegation of powers to the Governors became the rule rather than the exception.

1. Content of the applicable law

By direction of the Imperial Chancellor, the dispensation of justice, as far as concerned the Cameroon

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13. L'Abbe T. Ketchoua, Contribution a l'histoire du Cameroun de 450 avant Jesus-Christ a nos jours, Yaounde, 1962, p. 80.

14. V. Lehmann, op.cit., p. 110.

population, fell under the administrative authority of the Governor and his subordinates. They were enjoined to give due consideration to local customs in settling disputes. Here, there was no bifurcation of the administrative and judicial functions. The German colonial civil servant was both judge and administrator.

There was no codification of the procedure and the substantive laws which applied in issues between Cameroonians.

In civil matters the set of courts for Cameroonians in theory applied exclusively the known customary law and procedure of the area of the court. In practice, the German Civil Code, tempered by such customary law as could be ascertained, applied. If a court for Europeans was seised of a matter between Cameroonians, the court took native law and custom into account in settling the issue. In an issue between a Cameroonian and a European the question as to which court could properly claim jurisdiction depended on the race of the defendant. If he was a European the courts for Europeans had jurisdiction; if he was a Cameroonian, the courts for Cameroonians were competent.

In the early days of the colony there was no attempt to define criminal offences. It was largely left in the hands of each German District Officer (Bezirksamtmann), leader of an expedition or military commander of a station in the interior, to determine what acts or omissions by

Cameroonians constituted an offence as well as the punishment appropriate for such an offence.[15]

After 1900 the Criminal Code of Germany was made applicable to Cameroonians as well, with the important qualification that offences punishable under the Code by 10 years' imprisonment could, if committed by a Cameroonian, be punished with death. These offences included rape and allied offences committed by Cameroonians against Europeans, attempts to endanger railway trains, and forcible resistance to a German official in the discharge of his duties.[16]

In addition to offences contained in the Criminal Code, offences against employers by any 'native' servant or employee (e.g. carelessness, laziness, disobedience, desertion) could be summarily punished by a Disziplinarstraf involving flogging or confinement in chains. Moreover, the administrative official could use 'administrative coercion', Verwaltungsstrafverfahren, for non-compliance with any executive order which the official concerned had the power to issue.[17]

The Kaiser, by an Imperial Decree dated 15th June 1896, vested in the German Crown the ownership of all lands

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15. Sir Hugh Clifford, German Colonies, a plea for the native races, John Murray, London, 1918, p. 69.

16. Report on the British Sphere of the Cameroons, 1921, Cmnd. 1647, p. 54.

17. Ibid.

in the Cameroon hinterland on the highly questionable ground that such lands were 'vacant and ownerless'.[18] The Decree sanctioned the claim by white planters to private titles to land.[19] Dealings in land were conducted in accordance with the received principles of German Law of real property. A system of registration of titles to land in a land register (Grundbuch) was introduced in the territory.[20] In theory, titles which were so registered in the Grundbuch are valid today in Cameroon.[21]

2. The courts system

A system of courts with a triple hierarchy was set up in 1892 for Cameroonians: Village Courts, Native Arbitration Tribunals, and the Governor's Court.

The lowest court was the Village Court. It was presided over by the Chief of the village. But it was subject to the control of the local German administrator.[22]

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18. This decree of 15th June 1896 must be read together with that of 17th October 1896. See Ruppel, Die Landesgesetzgebung fur das Schutzgebiet Kamerun, Ernst Siegfried Mittler und Sohn, Berlin, 1912, pp. 687, 689.

19. Cf. C. Anyangwe, 'German colonial land policy in Kamerun', Cameroon Tribune, May 17 & 24, 1978, p. 9.

20. Ibid.

21. Cf. J.N. Monie, 'The Influence of German Law in Cameroon', Ann. de la Faculté de Droit du Cameroun, 1973, No. 5, pp. 3-12.

22. H. Rudin, op.cit. at p. 202 informs us that there were abuses where 'native' chiefs settled cases. So much is the 'native's' love for litigation, he says, that the 'native' courts became flooded with cases as a result of which the Administration had to require the advance payment of a fee for the hearing of any case. It seems the amount payable was originally fixed by the chiefs for, in 1900 action had to be taken to protect 'natives' from the excessive fees charged by the chiefs.

This court was competent only in matters in which small amounts were involved - issues with a monetary value of up to 100 marks in civil matters and criminal offences carrying a penalty of up to 300 marks fine or six months imprisonment.

Native Arbitration Tribunals had original jurisdiction in civil and criminal matters beyond the competence of the Village courts. They also exercised appellate jurisdiction in matters coming from the Village courts. A Native Arbitration Tribunal however had no jurisdiction to try murder, manslaughter, or crimes punishable with death. For all other offences it was competent and could pass sentences of up to two years. The Tribunal was required to keep a record of its proceedings. The Governor could attend its sessions in person or appoint someone to represent him. A multi-member court, the Native Arbitration Tribunals were set up only in districts of some importance well-defined ethnographically and economically. Members of the court were appointed by the District Officer.

The court of last resort for Cameroonians was the Governor, sitting as a court. The Governor could however transfer his judicial functions to the European Chief Justice who then sat as a court of last resort for Cameroonians in the place of the Governor. In fact the Governor almost always delegated his judicial functions to the Chief Justice. But this practice did not contradict the principle according to which the administration of

justice vis-a-vis Cameroonians was subject to the supervision and control of the administration.

Whenever the Governor delegated his judicial duties to the Chief Justice, the latter did not act qua Chief Justice but decided the case as the Governor in the circumstances would have done.

Moreover, in matters outside the scope of the Village Court and the Native Arbitration Tribunal, the District Officer (Bezirksamtmann) or the chief of a military station (Stationsleiter) exercised first instance jurisdiction while the Governor, or by his delegation the Chief Justice (Oberrichter), exercised appellate jurisdiction. No further appeal lay from here.

3. Punishment of Cameroonian offenders

Police[23] cruelty was not unknown.[24] Various means were used to extort confessions, denunciations, and similar evidence. Even before his conviction the Cameroonian accused could be knocked about in court by the police. "If the accused or his witnesses did not stand at attention strictly; if he moved his hand when making

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23. The German police force in the territory was in reality not a purely civil force; it was semi-military, the Polizeisoldat. In addition Germans had soldiers (Schtuztruppe) stationed in various barracks in the territory. See Report on the British Sphere of the Cameroons, Cmnd 1647, 1921, p. 54.

24. F. Weston, The black slaves of Prussia, U.M.C.A., London, 1917, p. 9.

his statement; if he called the German 'master' instead of 'great master'; if he should hesitate in answering ..., the police boxed his ears or hit him with their fists. It was the custom. It exalted the Germans' dignity. That it did not serve justice was no matter."[25]

Methods of punishing Cameroonians included the death penalty, imprisonment, corporal chastisement, and fines. There were acquittals in certain cases, and sentences of imprisonment were seldom long. But this must be understood against the background that Germans showed no particular readiness to send the Cameroonian to prison.[26]

A number of beliefs deeply held by Germans in the territory explains this general disinclination to pass prison sentences. It was believed that, unlike the European, the African attached no value to freedom. It was also a commonly held belief among Europeans that Africans regarded the prison house as a sort of mansion where one led a life of ease with the problem of social security solved. Again the Germans believed Africans took imprisonment as a reward rather than as punishment for crime. The imposition of fines to be paid in ivory became frequent.[27]

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25. Ibid. This account is probably an exaggeration. But it does not distort the truth.

26. Rudin, op.cit., p. 200; Schnee, op.cit. at p. 119; Enonchong, op.cit. at p. 52.

27. In this way the administration came to have a large stock of ivory much to the envy of individual German traders.

As for the death penalty, the carrying out of any execution was subject to confirmation by the Governor. But provision was made for summary trials and the immediate carrying out of the death penalty during an 'emergency' riot, or war'. The use of summary procedures became the rule rather than the exception. The public was excluded from law courts. Cases were often heard in camera.[28] Indeed the leader of an expedition or the commander of a military garrison in the far interior had the power to exact the death penalty should he feel convinced of the need to do so.[29] He would no doubt make a report to the Governor. But then the execution would already have taken place.

However, it is notorious that flogging, torture, and vicarious punishment remained the favourite and most cherished ways of 'civilising' Cameroonians. It mattered not that whipping was criticised by liberals in the Reichstag and that regulations placed limitations on it. What counted, it seemed, was that it was highly recommended by protagonists of colonialism as the best cure for African delinquency and the proper way of civilising primitive races.[30] And so the whip ruled in Cameroon.

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28. Clifford, op.cit., p. 75.

29. Rudin, op.cit., p. 206.

30. According to Schnee, op.cit. at p. 119, "The whip or cane is used in all colonies where there are primitive races to deal with, the native territories under British and French rule not excepted. It is really impossible to do without it altogether, for the native in many respects resembles a child."

In a move advertised as representing a liberal policy, the Imperial Chancellor promulgated a number of decrees aimed at curbing and regulating the punishment of natives in the colonies.[31] The first decree dated 17th February 1896 provided that "In proceedings at law where natives are concerned, any measures for the purpose of obtaining confessions or declarations other than those allowed by the German Rules of Court are forbidden. The infliction of unusual punishments particularly in the cases of suspected guilt, is likewise prohibited."

But another decree was passed on the 22nd April 1896 providing that "The admissible punishments are: corporal chastisement (whipping, flogging), fines, imprisonment with hard labour, imprisonment in chains, death[32] ... A sentence of flogging is to be carried out with an instrument approved by the Governor, that of a sentence of whipping with a light cane or switch. A sentence of flogging or whipping may specify a single or double flogging or whipping. The second flogging must not take place until after the expiry of two weeks."

The decree proscribed the whipping of women and children. It further provided that flogging or whipping was to be administered in the presence of an official and a doctor or sanitary officer.

The decree indeed took care to describe the whip

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31. See Clifford, op.cit., pp. 71-72; Rudin op.cit., p. 203.

32. It was only as from 1900 that Germans began to keep statistics of sentences passed on convicted persons in Cameroon. Statistics for 1900 to 1913 show that an average of 30 Cameroonians were being executed yearly, i.e. at least 390 death penalties carried out between 1900 and 1913. See Rudin, op.cit., p. 203.

itself with detail. The German whip was ropes' ends softened by being beaten with a hammer or piece of wood and issued by the Governor as a necessary item of equipment for the good administration of the colony. It was 60 cm long and 2 to 2½ cm thick. A record of all floggings was required to be kept. Finally, it was provided that flogging should be administered as a punitive measure only, never as a disciplinary one, and never legally by a private person.[33]

Perhaps no instance illustrated the cleavage between paper legality and social reality in German Kamerun than this one. What transpired in practice belied the theory on paper. The decrees made no provision for means of control of possible and easily foreseeable excesses by individual Germans. They were glaringly silent as to any form of trial being a necessary preliminary to punishment. They ignored the desirability of evidence being taken and committed into writing.[34]

The decrees themselves represented an official admission of malpractices that had become commonplace in the German colonies. They confirmed that indeed improper

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33. Townsend, op.cit., p. 286.

34. "The German method in the colonies was of a patriarchal character. The officials in charge were expected to use their knowledge of human nature and familiarity with native customs and usages rather than lose themselves and bewilder the litigants in the technicalities of a Europeanized procedure." See Schnee, op.cit., pp. 123-124.

methods were being used to obtain 'confessions and declarations'; that 'unusual punishments were being inflicted even to mere suspects; that 'corporal chastisement' was the ordinarily 'admissible' form of punishment; and that a sentence of flogging was being carried out all at one flogging session.

That the 1896 decrees were honoured more in breach than in their observance is amply evidenced by the fact that in 1907 another decree was passed in another attempt to regulate the manner in which 'natives' were being punished. Jesko von Puttkamer who held the governorship[35] in Cameroon during this period was more interested in the mercantile prosperity of Germans than in the bien-être of Cameroonians. So the 1907 decrees were largely ignored. No one bothered about legal niceties, and the status quo ante went on unperturbed.[36] The notorious 'law of floggings' was carried out in a manner which was nothing short of brutality.[37]

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35. Six Germans held the Governorship in Cameroon throughout the whole period of German rule: Soden (1885-1891), Zimmerer (1891-1895), Puttkamer (1895-1907), Seitz (1907-1910), Gleim (1910-1912), and Ebermaier (1912-1915).

36. Out of the 2,700 Cameroonians punished in 1906-1907, 906 were subjected to flogging; in 1907-1908, the number was 924 out of 3,150. In 1912-1913, of the 11,229 Cameroonians who appeared in court 4,800 were sentenced to flogging. See Rudin, op.cit., p. 203, fin. 3.

37. Weston, op.cit., at p. 7 has noted that "The condemned man is not tied up, as he ought to be. He lies on the earth, his face in the dust or on a hard floor, as the case may be. After the first two or three stokes he usually has to be seized and forced to keep still. If he continues to wriggle and scream, he is liable to

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With a system in which the administering authority either participated actively or acquiesced in forms of torture the police usually supplied a criminal to meet every case. Common forms of torture were: beating day by day for several days, putting the victim in the iron-hat, finger-bending, and the chain-gang.[38]

Germans never hesitated to inflict vicarious punishment on Cameroonians. Parents were made to suffer for the faults of sons. A wife was also made to suffer for the faults of her husband. And this not only for local offences where connivance or complicity could be suspected but for offences committed in distant places as well.

Footnote 37 continued from previous page.

receive the same number of strokes again, there and then. Again when the punishment is over, if in his pain and excitement he forgets to come to attention and salute the German, he is liable there and then, to receive the whole punishment again. Thus while the law orders fifty lashes to be received in two instalments, a man gets fifty at one time: 25 for his offence and 25 for his breach of etiquette."

38. The iron-hat was a special device consisting of a band of iron. It was passed round the victim's head and then tightened by means of a vice-like screw. The screw was tightened progressively to produce pain especially around the temples until the victim confesses to an alleged crime. Finger-bending was a form of torture by which a string was tied to the middle finger of the victim, passed back under and around the fore-arm and tightened until the man confessed. The chain-gang operated like this. A number of 'natives' were chained by the neck to one very heavy chain. They remained so chained until they had purged their prison sentences. Day and night, at all times and in all circumstances, the men lived more as one, while they were entirely at the mercy of the gaolers who used on them freely heavy nail boots, or the butt-ends of their rifles. The chain-gang was the method used by slave traders to fetter Africans before transporting them to America. The Germans must have fallen in love with this method. Cf. Weston, op.cit., pp. 7-11; Cmnd No. 1647, 1921, op.cit., p. 54.

Women were particularly vulnerable because it was believed 'natives' treasured their wives as the most important item of property they possess.

The excuse for the application of the principle of group responsibility here was that the jungle provided an excellent asylum for delinquent Cameroonians, thereby making arrest of offenders almost impossible. It was also contended that Cameroonians tended to shield their brothers.

For these reasons, whenever an accused person evaded arrest his spouse, parent, nearest of kin, or fellow tribesman was seized and held hostage until the culprit returned. A man's property could also be seized and impounded for the payment of a debt owed by his relative.

The ex post facto justification for abandoning the principle of individual responsibility in respect of Cameroonians was that such practices were current among 'natives' themselves. Hence, the Germans never hesitated to arrest the chief of a village or to flog him as propitiation for offences committed by escaped subjects.[39] A worse fate befell a chief seen to be taking sides with or leading his people in making just claims from the administration.

A case in point was the sad Affaire Rudolf Duala

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39. See Rudin, op.cit., p. 206; Enonchong, op.cit., p. 52.

Manga.[40] We shall close this chapter on it just as the case itself closed the period of German rule in Cameroon.

When his father, chief Manga Ndumbe of Douala, died on September 2nd 1908, Rudolf Duala inherited the Douala chiefdom of Bell. He was officially enthroned on May 2nd 1910. As chief, he was absorbed into the German administrative system and was on a salary of 3,000 marks[41] a year.

In 1910 the Germans decided to expropriate the people of Douala of land in the area today known as 'Quartier Joss' so as to make it a white residential area with Government services.[42] The Douala rightly resisted the plan and made representations to the Reichstag. When the official decree dealing with the expropriation was published in January 1913 protests increased. That same year the German Secretary for the Colonies, Dr Solf, visited Cameroon. The Douala seized the opportunity to make their animosity to the expropriation plan known to him.

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40. Rudin, op.cit., pp. 408-411; J.R. Brutsch, "Autour du Procès de Rudolf Duala Manga', Etudes Camerounaises, No. 51, Mars 1956, pp. 44-51; Townsend, op.cit., pp. 282-283.

41. The value of one German mark in Cameroon in 1917 was 85 French centimes or 8 British pence. See Arrêté of 3rd April 1917 'fixant le taux du mark dans les Territoires Occupés de l'Ancien Cameroun,' Journal Officiel des Territoires Occupés de l'Ancien Cameroun, 1 Mai 1917, p. 65, Douala.

42. A similar segregationist policy pursued in German South West Africa jumps to mind. According to Rudin, op.cit., pp. 408-4)9, health reasons prompted the expropriation. Cf. Carlson Anyangwe, "German Colonial Land Policy in Cameroon", op.cit.

Naturally, as leader of his people, Rudolf Duala spearheaded these protests. The Germans pointed out (right, it must be conceded) that his role in the matter was completely incompatible with his duties as a functionary of the Administration with sworn allegiance to the Kaiser. Consequently, on August 4th 1913, he was 'dethroned'.

But the Douala were not deterred in their opposition to the expropriation. They collected money and sent an emissary, Ngoso Din, to Berlin. They also instructed two German counsels, Dr Fleming of Hamburg and Dr Halpert of Berlin, to hold briefs for them before the German Parliament. The local administration in Cameroon got alarmed at the new dimension the matter was taking. It had Ngoso Din arrested and brought back to Cameroon where he was charged together with Rudolf Duala with high treason.

The particulars of the charge were: (i) that Rudolf Duala Manga had tried, in a letter supposed to have been sent through a messenger, Ndane, to incite Chief Njoya of Foumban to rebel against the Kaiser, and (ii) that he had made contacts with a foreign power, namely, Great Britain. Whether Rudolf Duala Manga did in fact make contact with the British and whether he actually attempted to incite Chief Njoya to rise against the Germans still remains a highly controversial issue.[43] The truth would

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43. The Douala have consistently maintained that the so-called Ndane mission to Sultan Njoya was a German fabricated tale. But J.R. Brutsch (op.cit.) maintains that Rudolf Manga did send Ndane with a written message to

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probably never be known. However, it is on record (i) that neither chief Njoya nor Ndane was ever called upon to give evidence at the trial,[44] and (ii) that no

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Footnote 43 continued from previous page.

Njoya calling on him to take up arms against the Germans. The message, he claims, was translated for Njoya by a Christoph Geprag, a German Basel Mission missionary at Foumban. After reading the message, Njoya is said to have had Ndane arrested and handed over to the German authorities. Brutsch then refers to Histoire et Coutumes des Bamum, a book written under the direction of Sultan Njoya and published in 1952 by the Institut Francais d'Afrique Noire. At page 214 of that book the following account is found.

"The Germans were masters of Bamum country. It happened that Duala, son of Manga, sent Ndane to King Njoya. Sold a long time ago to the people of the forest, Ndane had come to inform Njoya of the conflict which existed between the Germans on the one hand, the French and the English on the other hand. It is through him that Duala, son of Manga, advised Njoya to start the fight against the Germans in his country. King Njoya sent messengers to tell Duala, son of Manga: 'The Germans are my fathers, and he is as my brother, how then can I go to war against them?' Then he arrested Ndane and handed him over to the German authorities who were not displeased by this kind of action. Ndane was put in prison, and, shortly afterwards, Duala, son of Manga, was arrested and executed." (The translation is mine.)

The controversy goes unabated even to this day. One author has recently pointed out that while Njoya was in exile in Yaoundé, he denied he ever received an emissary or letter from Duala Manga Bell. See, Iye Kala Lobe, Douala Manga Bell hero de la résistance Douala, ed. A.B.C., Paris, 1978, pp. 60-75. Oddly enough, in his biography of Sultan Njoya, Adamou Ndam Njoya throws no light on this matter. See, A.N. Njoya, Njoya: le reformateur du royaume Bamoun, ed. A.B.C., Paris, 1978.

44. According to Brutsch, the Germano-Duala Treaty of 12th July 1884 and Ndane's mission to Njoya are crucial to a better understanding of the case.

"It is in fact on the 1884 Treaty, concerning the complete surrender to the Germans by the Douala of their rights relating to sovereignty, legislation, and

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evidence was adduced to show that Rudolf Duala did make contacts with the British.[45]

There were two sets of trials; one in Douala on the 7th August 1914 for Rudolf Douala and Ngoso Din, and the other in Soppo-Buea on August 14th 1914 for a group of elders who had been arrested in Douala on July 21st 1914 and charged with complicity in the matter. These elders were either relatives, friends, or advisers of the principal accused.

Rudolf Duala and Ngoso Din appeared before Justice Niedermeir assisted by one assessor, a Mr Dix. A defence counsel, Dr Etscheit, was assigned to the defendants.

Footnote 44 continued from previous page.

> administration of the Territory, that was legally based the expropriation of the Joss plateau. From the point of view of European law, German as well as French, such a surrender of the rights of sovereignty would not exclude the principle of legal expropriation for public purposes. That is why the French Administration went ahead with the German urbanisation plan on the Joss plateau." (The translation is mine.)
>
> But there is authority that the expropriation was, contrary to Brutsch's claim, contrary to the Treaty in question. See Adamou Ndam Njoya, Le Cameroun dans les relations internationales, Librairie Generale de Droit et de la Jurisprudence, Paris, 1976, p. 78.

45. It is probable that the charge was based on mere suspicion. A. Ndam Njoya's assertion that 'Des 1914 les Douala, mecontents se rallieront aux Anglais', (ibid., loc. cit.), is an over-statement. The Douala certâinly had pro-English sympathies. But that was nothing new. Their pro-English stance dated as far back as the 1850s when the Douala chiefs unsuccessfully pleaded with Britain to take over their country.

The trial was summary and in camera.[46] To no one's surprise the two accused were convicted and sentenced to death. At 5 p.m. on August 8th 1914 after a Rev. Philipp Hechlinger, the incumbent head of the Basel Mission in Douala, had in vain pleaded with Governor Ebermaier to commute the death sentence to one of deportation, Rudolf Duala Manga and Ngoso Din were sent to the gallows. After the execution, Ebermaier immediately issued the following statement:[47]

> "People of Duala,
>
> "I am addressing you to inform you that Manga (Rudolf) Bell was today sentenced to death by hanging because he showed himself a traitor to the Kaiser and the Empire.
>
> "He confessed at the last moment that he had been activated by fear of vengeance from his fellow countrymen, from those whom you all know, those who, for fear, remain secretly behind the scenes, those who brew poison and seduce the people.
>
> "The blood of Manga shall be on those who pushed him unto the path of crime!
>
> "Anyone who does not himself want to be a traitor like Duala Manga should detach himself from these seducers who stay secretly in the dark and prepare poison!
>
> "Anyone with loyal intentions shall be welcomed. The Kaiser's Government shall always

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46. Brutsch justifies this on the ground that for about a week Cameroun had been placed on a war footing which meant that the normal trial procedures had to be waived and an expeditious one adopted.

47. Cf. Brutsch, op.cit. The translation is mine. One takes with a pinch of salt the Governor's claim that Rudolf Manga confessed at the last minute to being a traitor and that he entreated the Douala people to be faithful to the Kaiser.

be fair and grateful to its loyal assistants and faithful subjects.

"What you deplore is the consequence of the activities of these men of darkness who - the Government knows it - have always been at work inciting the people, keeping them in a state of terror by their poison and holding them under their sway for their own gain.

"Desert them and you shall be happy.

"Manga himself in his last hour entreated his people that with his death, faithfulness to the Kaiser and obedience to the Government should return to the hearts of the Douala people.

Duala, this 8th day of August 1914.

The Imperial Governor, Ebermaier."

Predictably fear ran through Douala. Many Douala, justifiably fearing a witch-hunt, fled into the bush.

A week after the Imperial Governor's statement the second trial opened in Soppo, Buea. The 14 accused appeared before a von Krosigk, presiding judge. Ndumb'a Kum, Mwane Etoa and Din a Manga were discharged and acquitted. Tokoto Esome got a life sentence. Misipo Mulobi, Maso Eyango, Ekande Epana, Ekwela Dumbe, Kofi and Njala were each jailed for ten years. Lob à Manga Priso got eight years while Njembele Ekwe and Pastor Mod'a Din were each sentenced to five years imprisonment. Luck was however on their side. Barely a couple of weeks after these sentences had been passed the whole coastal area stretching from Douala through Victoria to Buea fell into the hands of allied troops led by Britain's Brigadier-General Dobell.

By the end of February 1916 the Germans had been completely driven out of Cameroon by British and French led soldiers.

The German system of justice in Cameroon was at an end. Since then, German law has had no bearing on the development of law or any legal instututions in Cameroon. It has however been suggested that certain land titles today in Cameroon can be traced to the German times.[48]

The harshness of German justice - this is one of the things Cameroonians always talk about whenever they discuss German colonisation in Cameroon. Indeed, German justice was rough[49] and its colonial system a military despotism founded on the characteristic German glorification of militarism.[50] The system of justice did lead to confusion, dissatisfaction and injustice. The combined judicial and administrative powers of the District Officer and the leeway given to leaders of military expeditions in the interior proved an excellent opportunity for abuse. The dual system of courts and applicable laws

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48. Cf. Monie, op.cit.; Ordinance No. 74-1 of 6th July 1974 establishing rules governing land tenure; Ordinance NO. 74;2 of 6th July 1974 establishing rules governing state lands.

49. German justice is sometimes described as 'strict, harsh, rough but just'. See Rudin, op.cit., p. 210; Le Vine and Nye, Historical Dictionary of Cameroon.

50. "The German colonial system, so young in years, ever remains the oldest system, because the most tyrannic, the most oppressive and illiberal ...", Signor Giordani, The German Colonial Empire, cited by Clifford, op.cit., pp. 67-68.

was based on colour segregation.

However, the Germans did recognise and took account of the various customary laws in Cameroon. It is to their credit that they did embark on a project to ascertain and compile the laws of the people.[51] It is a matter of pity that time and events were not in their favour. Germany's legacy to Cameroon lies not in the juridical but rather in the politico-socio-economic spheres.[52]

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51. Cf. I. Kohler: Questionnaire pour l'etude de la situation juridique des peuples dits primitifs, Berlin 1896; Reponse au questionnaire pour l'etude de la situation juridique des peuple dits primitifs - Bassa, Bakossi, etc. Both the questionnaire and the answers from six tribes in Cameroon are to be found in the National Archives, Yaounde, File No. TA-18.

52. Undoubtedly, the greatest and lasting legacy which Germany bequeathed to Cameroon is what one 'Cameroonologist' has aptly called 'The Kamerun Idea'. See Edwin Ardener, "The Kamerun Idea", West Africa, June 7th 1958, p.533 and June 14th 1958, p. 559. The Kamerun Idea became the symbol of nationalism in Cameroon politics. It created the myth of a 'Cameroon Nation'. It prompted the Reunification Movement. It gave meaning to the irredentist effort by Cameroon to recover via the International Court of Justice the Northern Cameroons annexed to Nigeria by Britain. In the socio-economic field, "The German Administration laid the foundation for modern Cameroon's social overhead capital (i.e. basic transportation, communication and power facilities): wharves and docks at Douala, Kribi, Campo, Tiko, and Victoria; rail lines north from Douala to Nkongsamba and east almost to Yaounde; many bridges, roads and paths; and well-constructed public buildings many of which are still in use. The plantations and development projects begun by the Germans gave the subsequent French and British Administrations an established basis for further economic development.", Le Vine and Nye, op.cit., loc. cit. Today's Trans-Cameroon Railway is the realisation of the German Mittellandbahn railway planned to link Douala with Garoua.

CHAPTER FOUR

THE BRITISH SYSTEM

The administration of justice in Cameroon suffered a serious dislocation in the interregnum between the outbreak of World War I and the coming into force of the mandatory system in 1922. It was not until after 1922 that the judicial and legal services in the British Cameroons were put on a systematic footing.

In the interval between the outbreak of World War I and 1922, the dispensation of justice in the territory was haphazard and uncertain. When Britain got her own share of Cameroon in March 1916, she decided to administer it along with her contiguous territory of Nigeria. The Governor General of Nigeria issued Proclamation No. 1 of 1916 authorising

> "All British military officers in command of detachments of troops and all British civil officers appointed to temporarily administer any territory in the Cameroons ... as from the date of their appointments to hold courts with full jurisdiction in civil and criminal matters in which natives are concerned in so far as it is known, and, if not known, the laws of that part of Nigeria in which they hold appointments immediately prior to their present appointments."

Justice in the British Cameroons was, until further notice, to be administered by British administrative and military officers. They held courts in which they exercised full jurisdiction in civil and criminal

matters. However, they could only try cases in which all parties were natives. Each court applied the law which obtained in the place of its location. If there was doubt as to which law to apply, the law of the place in Nigeria where the presiding officer previously held appointment applied. It was however unclear whether this referred to the imported English law or customary law. This was clearly a chaotic way of dispensing justice. It was also unsafe because everything was virtually left to the individual whims and caprices of the officers concerned. However, this was only a stop-gap as the British had not by then established a durable administrative structure in the territory.

Subsequent Proclamations provided, inter alia, for the application in the British Cameroons of various ordinances already in force in Nigeria. Thus it was that the legal system in the British Cameroons came to be similar to that in Nigeria. Britain made provisions for the administration of the British Cameroons along with Nigeria.[1]

This chapter is divided into two sections. Section I examines the various courts which existed at different periods in the history of British rule in the

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1. British Cameroons Administration Ordinance, 1924, amended by Ordinances No. 1 of 1925, No. 13 of 1925, No. 1 of 1927, No. 13 of 1928, and No. 24 of 1929. The 1924 Ordinance bisected the British Cameroons. The Northern Cameroons was administered along with Northern Nigeria while the Southern Cameroons was administered along with Southern Nigeria. This chapter deals only with the Southern Cameroons.

territory as well as the laws they applied. Section II is devoted to an appraisal of British colonial justice in Cameroon.

I. The Courts System and the Applicable Law

Between 1924 and 1961, the year when the Southern Cameroons became independent, the courts system was overhauled on four occasions; in 1924, 1933, 1943, and 1954.

1. The Courts System: 1924-1933

Between 1924 and 1933 justice was administered in the territory by three types of courts which already existed in Nigeria. These were the Supreme Court, the Provincial Courts, and the Native Courts.

A. The Supreme Court

Under the Supreme Court Ordinance No. 6 of 1914, the Supreme Court of Nigeria had original jurisdiction throughout the colony of Lagos as well as in a number of small localities, styled 'Supreme Court areas' in the other parts of Nigeria. Outside these Supreme Court areas, the Supreme Court had jurisdiction over non-natives only. This jurisdiction was concurrent with that of the Provincial Courts. The Supreme Court's original jurisdiction was additional to its usual appellate jurisdiction.

The idea to create a Supreme Court area in the Southern Cameroons had been mooted in 1925 in Lagos but left in abeyance. As a result no such area was ever created in the territory. Only once did the Supreme Court sit in the Southern Cameroons: that was in 1928, when a European was charged with manslaughter. The Supreme Court had to hold an assize in Buea to try him.

Civil appeals from the Provincial Courts in the Southern Cameroons were heard by the Supreme Court sitting in one of the Supreme Court areas in Nigeria. On the application of the accused or of the Chief Justice, a criminal case could be transferred from the Provincial Court to the Supreme Court. In 1932, a man who was charged with manslaughter in the Southern Cameroons elected to be tried in Calabar, which was the nearest Supreme Court area to the Southern Cameroons.

When sitting as a court of appeal, the Supreme Court was, by s. 7 of the Supreme Court Ordinance, fully constituted by two judges. For other purposes it was composed of three judges. Under s. 4 of the Ordinance Judges held office during His Majesty's pleasure. Section 14 of the Ordinance directed the Supreme Court to apply the common law, the doctrines of equity and statutes of general application which were in force in England on 1st January 1900. However, by s. 78, the court was required not to enforce against a debtor native any such obligation if it appeared to the court that it was not reasonably probable that the native was fully aware of the nature of

the obligation and the consequence of failure to perform the same.

B. Provincial Courts

By ss. 11 and 12 of the Provincial Courts Ordinance No. 7 of 1914, Provincial Courts (before which no legal practitioner was allowed to appear) exercised complete jurisdiction over all persons, natives and non-natives, and were presided over by the Residents of the Provinces concerned.

The Resident had civil jurisdiction in such matters as the issuing of habeas corpus, appointment of guardians, granting of injunctions and in any case where the amount involved did not exceed £50. In criminal cases they could pass sentences of up to two years imprisonment or a £50 fine.

By s. 22 of the Ordinance, all sentences of imprisonment in excess of six months, sentences of corporal punishment exceeding twelve strokes, and fines exceeding £50 required the confirmation of the Governor of Nigeria. In respect of the Southern Cameroons, however, power to confirm such sentences was practically delegated to the Chief Justice. All capital sentences were reviewed by the Chief Justice and, where confirmed by him, were considered by the Governor who, after consultation with the Executive Council, decided whether or not the prerogative of mercy should be exercised.

The applicable criminal law was that which obtained in Nigeria, which was basically English criminal law suitably adapted to suit local conditions and the juridical sentiments of the natives.

The civil law, in so far as it was not contained in local ordinances, was the English common law, doctrines of equity, and statutes of general application which were in force in England on 1st January 1900, modified by the proviso that in civil cases affecting natives, especially in matters relating to marriage, land, and inheritance, the courts should recognise native laws and customs when they were not repugnant to natural justice and humanity.

In the Provincial Courts the Resident in charge of the Province could sit with native assessors if he so wished. The choice was entirely his.

Every male person between the ages of twenty and sixty being of sound mind and not afflicted with deafness, blindness or any other infirmity, who is resident within the jurisdiction of the court could serve as an assessor.

In addition to trying cases in court, administrative officers dealt with a large number of petty cases which usually arose in the form of complaints. Most of these cases were settled by executive action. A few were sent to Native Courts for adjudication.

C. Native Courts

Established under the Native Courts Ordinance No. 5 of 1918, there were in 1933 sixty-four Native Courts in the Southern Cameroons classified as either grade B, C, or D courts. These courts exercised limited civil and criminal jurisdiction over natives, applying native laws and customs. Grade B courts were native appeal courts. Decisions of native courts were subject to review by the local administrative officers. A review fee used to be payable but it was abolished in 1932. Although no lawyer was allowed to appear before a native court, the relative of a litigant could represent him in certain cases.

2. The Courts System: 1934-1943

In November 1933 four bills were passed by the Nigerian Legislative Council reorganising the judicial system in the Protectorate of Nigeria and in the Southern Cameroons.[2] These laws came into force on 1st April 1934.

This reform innovated in two respects. It separated the judicial from the executive function of government. It also afforded a right of appeal from the

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2. The Supreme Court (Amendment) Ordinance No. 46 of 1933, the Protectorate Courts Ordinance No. 45 of 1933, the West African Court of Appeal Ordinance No. 47 of 1933, and the Native Courts Ordinance No. 44 of 1933.

Native Courts in certain prescribed cases and the newly created Magistrates and High Courts to the newly established West African Court of Appeal.

The Protectorate Courts Ordinance No. 45 of 1933 established High Courts and Magistrates Courts as superior and inferi·r courts respectively. It abolished the Provincial Courts. Magistrates and High Courts were collectively styled 'Protectorate Courts'.

The High Court was constituted as far as possible in the same way as the Supreme Court; but with a simpler form of procedure. It tried indictable offences, especially murder, with a jury of twelve. It had no original jursidiction in land matters under customary law. It could take such matters only on appeal from a Native Court. Probate, matrimonial causes, admiralty, divorce suits, and cases under certain ordinances[3] were reserved for the Supreme Court which was largely confined to Lagos. Legal practitioners were now allowed to appear before the High Court and the Magistrate's Court.

Protectorate Courts were not subordinate to the Supreme Court. Appeals from the Magistrate's Court lay to the High Court. But appeals from the High Court lay, as in the case of appeals from the Supreme Court, to the West African Court of Appeal. Moreover the High

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3. For example, the Companies Ordinance, the British and Colonial Probates Ordinance, the Intestate Estates Ordinance, the Wrecks and Salvage Ordinance, the Legal Practitioners Ordinance.

Court possessed, concurrently with the Supreme Court, unlimited criminal jurisdiction over non-natives throughout the Protectorate and over natives in the townships. Furthermore, the Chief Justice and puisne Judges of the Supreme Court were also judges of the High Court.

No High Court was however located in the Southern Cameroons. The territory was included in the Calabar-Aba judicial division of the High Court. Judges of this court seldom visited the Southern Cameroons owing to the paucity of cases from there as well as difficulties of communication. The jurisdiction of the High Court was, under s. 3 of the Protectorate Courts Ordinance, exercised in the Southern Cameroons by the Resident of the territory. He was invested with the powers of an Assistant Judge of the High Court.

Magistrates' Courts were courts of summary jurisdiction. The powers of magistrates were limited in civil cases to matters of not more than £100 in value and in criminal cases to imprisonment of up to one year or a fine of £100.

There was no substantive magistrate in the Southern Cameroons. The District Officer of each Division exercised the powers of a magistrate, except the District Officer of Bamenda Division who had and exercised the powers of an Assistant Judge of the High Court. Monthly list of cases heard by 'magistrates' in the Southern Cameroons were forwarded to the High Court in Calabar and operated as appeals on behalf of the persons convicted.

The Native Courts Ordinance 1933 took away the executive functions hitherto exercised by Native Courts. Cases heard by these courts were, however, still subject to review by administrative officers. Moreover, in the Southern Cameroons appeals from Native Courts lay to the District Officer, then to the Resident in Buea and finally to the Governor in Lagos.

The Criminal powers of grade B native courts comprised imprisonment of up to one year, a fine of up to £50, and whipping of up to twelve strokes. They had jurisdiction in civil cases regarding any issue under customary law involving up to £100. The civil jurisdiction of grade C courts was limited to suits of up to £50. In criminal matters a grade C court could sentence to six months' imprisonment (or twelve months in the case of theft of foodstuff or livestock), to a £10 fine and a whipping of up to twelve strokes. A grade D native court could sentence to a maximum of three months' imprisonment (six months in the case of theft of foodstuff or livestock), a £5 fine, and twelve strokes of the cane. Its civil power did not go beyond an issue involving an amount of £25. Each Native Court kept a Judgment Book, a Cash Book and a Cause Book.

3. The Courts System: 1943-1954

In 1943 the judicial system was again reformed. The 1933 reorganisation had been unsatisfactory in that it

had created a High Court which was distinct from but co-ordinate with the Supreme Court. The 1943 reform therefore abolished the High Court.

The Magistrates' Courts Ordinance No. 24 of 1943 set up a chain of Magistrates' Courts in Nigeria and in the Southern Cameroons. Magisterial districts, each with its own magistrates, were established. These magistrates' courts had increased powers and were graduated according to the grade of the magistrate concerned. Magistrates were ex officio justices of the peace and were classified into 1st, 2nd and 3rd grade magistrates.[4]

The Supreme Court Ordinance No. 23 of 1943[5] established a new supreme court, the Supreme Court of Justice for the Colony and Protectorate of Nigeria with unlimited civil and criminal jurisdiction throughout Nigeria and the Southern Cameroons; subject only to the jurisdiction of the Native Courts in land tenure, family status, guardianship of children, and testamentary disposition

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4. A Grade I magistrate could pass a sentence of up to two years imprisonment or £200 fine. In civil matters he could determine a suit where the pecuniary value involved was up to £200. Grade II and Grade III magistrates tried cases involving a maximum of £100 and £25 in value, respectively. A Grade II magistrate could sentence to a maximum of one year imprisonment, while a Grade III magistrate could not sentence to more than six months imprisonment. A grade of Chief Magistrate was later on added. He had a wider jurisdiction and the other magistrates were administratively subordinate to him.

5. This Ordinance came into force on 1st June 1945.

of property, under customary law. The Supreme Court exercised both appellate and supervisory jurisdiction over Magistrates' Courts.

The West African Court of Appeal was retained as an appellate court for appeals from the Supreme Court in respect of matters in which provision was expressly made in any ordinance for such appeal. From the West African Court of Appeal appeals lay, as of right, to the Judicial Committee of the Privy Council, as before, in all cases where the pecuniary value was over £500. Where the pecuniary value was less than £500, an appeal to the Judician Committee of the Privy Council was available only with leave of the West African Court of Appeal.

The Children and Young Persons Ordinance No. 41 of 1943 set up two Juvenile Courts in Nigeria but none in the Southern Cameroons.

4. The Courts System: 1954-1961

The 1954 constitutional changes in Nigeria and the Cameroons[6] necessitated the re-organisation yet again of the judicial system. The Nigerian (Constitution) Order-

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6. The Nigerian Littleton Constitution of 1954 granted Southern Cameroons the status of 'quasi-federal territory'. The Nigerian Richardson Constitution of 1947 had divided the territory into the Cameroons and Bamenda Provinces. Now, however, it was simply known as 'the Southern Cameroons'. The territory had a 13-member House of Assembly and an Executive Council. Six Southern Cameroonians sat in the Nigerian House of Representatives in Lagos.

in-Council, 1954 regionalised the courts system.

The High Court which was abolished in 1943 was resurrected and established in each Region. A High Court was also set up in the Southern Cameroons.

In Lagos was established a Federal Supreme Court to which appeals from the High Court went.

The West African Court of Appeal ceased being a court of appeal for Nigeria and the Cameroons. Appeals from the Federal Supreme Court lay direct to the Judicial Committee of the Privy Council in London.

The Southern Cameroons, like the Regions of Nigeria, had her own Magistrates' Courts, subordinate to the High Courts. These new High Courts and Magistrates' Courts were set up in the Southern Cameroons on December 31st 1955 by the Southern Cameroons High Court Law, 1955 and the Magistrates' Courts (Southern Cameroons) Law, 1955.

As of 1st October 1961 when the Southern Cameroons became independent, the courts system in the territory consisted of courts primarily administering customary law, namely, Native Courts;[7] and courts primarily administering the received English law, namely, the High Court[8] and the Magistrates' Courts.[9] The Privy Council in

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7. Native Courts Ordinance, Cap. 142 of the 1948 Revised Laws.

8. Southern Cameroons Order-in-Council 1960, s. 50(1); S.C.H.C.L., 1955.

9. Magistrates' Courts (Southern Cameroon) Law, 1955.

London and Federal Supreme Court in Lagos exercised appellate jurisdiction over cases from the Southern Cameroons High Court.[10] These courts will now be examined in turn.[11]

A. Customary courts

The appellation 'customary courts' became current only after 1964. Hitherto, these courts were known as 'native courts' and were governed by the Native Courts Ordinance, chapter 142 of the 1948 revised Laws of Nigeria.

That Ordinance conferred on the Commissioner of the Southern Cameroons the power to grade Native Courts and to prescribe the jurisdiction to be exercised by each. As of 1964, only grades C and D Native Courts existed in the Southern Cameroons. In civil matters the suit value limit of both grades of court was £25. Both courts had full jurisdiction in cases relating to land, inheritance, testamentary dispositions, the administration of estates and matrimonial cases other than those arising from or connected with a Christian marriage as was defined in the Criminal Code of Nigeria. Grade C Native Courts had jurisdiction over offences which could be adequately punished by imprisonment for six months or a fine of £10. Grade D courts could sentence to three months' imprisonment, twelve

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10. Southern Cameroons (Constitution) Order-in-Council, 1960.

11. Cf. A.N. Allott (ed.), Judicial and Legal Systems in Africa, Butterworths, London, 1960, pp. 76-81.

strokes of the cane or a fine of £5.

In 1956 the Southern Cameroons Customary Courts Law 1956 was assented to. Section 1 of that law however provided that the law "shall come into operation on such date or dates to be appointed by notice in the Southern Cameroons Gazette". No such notice was ever given. And so the Native Courts Ordinance, chapter 142 of the 1948 Laws continued to apply. This was confirmed in the case of Jesco Manga Williams v. The President, Native Court Victoria.[12]

The Adaptation of Existing Laws Order 1963 substituted the name 'customary court' for 'native court' and 'Customary Courts Ordinance' for 'Native Courts Ordinance'. This Order was brought into operation by West Cameroon[13] Legal Notice No. 23 of 1964. The old Native Courts Ordinance was largely retained by the Adaptation of Existing Laws (Customary Courts Ordinance) Order 1965 which was brought into operation by Legal Notice N. 119 of 1965. The Customary Courts Ordinance as amended, is found in the Customary Courts Manual Volume I. But this Manual is merely a guide and claims no force of law.

Section 14(1) of the Customary Courts Ordinance provided that "Every customary court shall have full

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12. (1962-64), W.C.L.R. 34.

13. On October 1st 1961, the Southern Cameroons became independent by unifying with the Republic of Cameroun (former French Cameroun) to form a federation, 'the Federal Republic of Cameroon'. In that Federation, the Southern Cameroons became the federated state of West Cameroon.

jurisdiction and power, to the extent set forth in the warrant establishing it, and, subject to the provision of this law, in all civil and criminal matters in which all the parties belong to a class of persons who have ordinarily been subject to the jurisdiction of customary tribunals."

The Ordinance set up three grades of customary courts, A, B, C. All three grades had civil jurisdiction in causes and matters concerning marriage, land, and succession under customary law. The suit value limit for grade A courts was £200, for grade B £100, and for grade C £50. In criminal matters, grade A courts had jurisdiction in causes which could be adequately punished by imprisonment for one year, six strokes, or a fine of £50 or the equivalent by native law and custom. The maximum a grade B court could pass was six months' imprisonment, six strokes, or a fine of £30; and a grade C court, three months' imprisonment, six strokes or a fine of £15.

Customary courts however had no power to try a certain number of criminal offences. These were: homicide, treason, sedition, counterfeiting, trial by ordeal, slave dealing, child stealing, judicial corruption, fraudulent false accounting, obtaining goods by false pretences, offences against the public revenue, offences relating to the Posts and Telegraphs or to the railway, official corruption, official secrets, defilement of girls, procuration, rape, defamation (libel), forgery, corrupt practices, conspiracy, perjury, witchcraft.

The old system of review of customary court cases was abolished. But District Officers still had access to customary courts which they inspected and supervised. In cases where there was an apparent miscarriage of justice or where an obvious error needed to be corrected, the District Officer ordered the matter to be transferred to the appropriate appeal court, which court was empowered to deal with the matter as an appeal. The District Officer could also transfer cases from one customary court to another customary court, to a Magistrate's Court or to the High Court.

The High Commissioner of the Southern Cameroons was empowered to appoint such persons as he thought fit to be appeal officers having appellate jurisdiction to hear and determine appeals from the decisions of a customary court in any matter other than a land cause. Appeals in land cases lay to the District Officer. Appeals from the decisions of Appeal Officers lay to the Magistrates' Courts. Appeals from the decisions of District Officers in land cases lay to the High Court.

The Deputy Commissioner of the Southern Cameroons could, subject to confirmation by the High Commissioner, establish such customary courts as he considered necessary and appoint thereto such persons as he thought fit. Such appointments were held at the pleasure of the Commissioner who dismissed or suspended any member who appeared to have abused his power, to be unworthy, or to be incapable of exercising it justly, or for 'sufficient reason'.

Presidents and vice-presidents of customary courts could, from time to time, be designated by the Commissioner. But he seldom did so. Normally, members of a customary court bench elected their own president for each session. Benches were kept as small as local sentiment and tribal feeling allowed. Five members, of whom three formed a quorum, were considered the most suitable number.

Customary courts exercised jurisdiction over all persons who "have ordinarily been subject to the jurisdiction of native tribunals". The Commissioner could, however, direct that some or all of the powers of customary courts should not be exercised over any natives or class of natives, or, that persons or class of persons not normally subject to the jurisdiction of customary courts should be subject to a particular customary court or class of customary courts. Direction of this kind was put into effect only when the consent of the Southern Cameroons House of Assembly, signified by resolution, had been obtained. One such direction was made extending the jurisdiction of customary courts to all natives of Nigeria and all 'native foreigners' who, though not normally subject to the authority of customary courts, nevertheless agree to accept their jurisdiction.

Customary courts administered both the general law of the territory as well as customary law. The general law comprised the provisions of any written law which the court was authorised to enforce by an order made under

section 21, and the provisions of all rules and orders made under the Native Authority Ordinance, bye-laws and so on. By section 18(1)(a) of the Customary Courts Law, customary law is "the native law and custom prevailing in the area of the jurisdiction of the court so far as it is not repugnant to natural justice equity and good conscience, nor incompatible either directly or by natural implication with any written law for the time being in force". Islamic law was administered as part of customary law. The interpretation section of the Southern Cameroons High Court Law 1955 provided that the phrase 'native law and custom' includes moslem law.

Customary law has never been recorded or codified. But a Native Authority could, and if the Commissioner required, must record what in its opinion native law and custom is on any point within its jurisdiction, and if the Commissioner was satisfied that such a declaration was correct, it became effective within the jurisdiction of the Native Authority which made it. Similarly a Native Authority could recommend to the Commissioner that native law and custom be amended within its jurisdiction. The Commissioner approved the amendment if he was satisfied that it was expedient, not repugnant to natural justice, equity, or good conscience, and not in conflict with any law.

Legal practitioners were not allowed to appear before customary courts. But a husband, wife, guardian, servant, master, or any inmate of the plaintiff's household

or the defendant's household, could appear for a party provided satisfactory evidence was given of their authority so to appear. "The essential reasons for forbidding legally trained representatives of the parties in a customary court are that it is felt desirable to keep the proceedings as simple and inexpensive as possible. The atmosphere and approach are a good deal less formal in a customary court than in the Magistrates' and High Courts and the court itself participates to a much greater extent."[14]

After independence in October 1961 the most important change affecting customary justice was the reduction of the criminal jurisdiction of customary courts. They became entitled to try only minor criminal offences. The question has been raised whether the Cameroon Penal Code, Book II which came into operation in 1967, repealed the criminal jurisdiction hitherto exercised by customary courts. One view[15] is that the Penal Code took away the criminal jurisdiction of customary courts. Another view is that this is not the case.[16] It is argued that the Penal Code contains no specific provision repealing the criminal jurisdiction of customary courts. In practice

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14. J.A. Howard, Law of marriage and succession among the Kom of Cameroon, Ph.D. Thesis, London University, 1972, p. 67.

15. J.N. Monie, The development of the Constitution and Laws of Cameroon, Ph.D. Thesis, London University, 1970, p. 238.

16. J.A. Howard, op.cit., at p. 63. For a full discussion of this issue, see infra, chapter 12.

however, it was only in 1977 that customary courts ceased exercising any criminal jurisdiction.

B. Magistrates' Courts

The High Commissioner appointed magistrates who were either styled chief magistrates or 1st, 2nd, and 3rd grade magistrates. Every magistrate so appointed had civil and criminal jurisdiction throughout the Southern Cameroons. But a magistrate could be assigned to any specified district or transferred from one district to another by the Chief Justice.

It was usual for Chief Magistrates and Grade I Magistrates, which were full time appointments in the Judicial Department, to be qualified to practice as advocates. Posts of second and third class magistrates were often occupied by District Officers. There was a Chief Magistrate stationed at Buea. He was in administrative charge of all the Magistrates' Courts in the Southern Cameroons and was responsible for seeing that they functioned expeditiously. Only Bamenda and Victoria had Grade I magistrates.

The extent of the jurisdiction of a magistrate varied according to his grade. A Chief Magistrate had the following civil jurisdiction: (a) personal suits to the value of £500; (b) landlord and tenant cases to the suit value of £500; (c) actions for the recovery of any penalty, rates, expenses, contribution or other like

demands, to the value of £500; (d) proceedings in respect of which jurisdiction has been conferred upon a magistrate's court by the Land and Native Rights Ordinances. A Chief Magistrate did not exercise jurisdiction in causes and matters subject to the jurisdiction of customary courts. His criminal jurisdiction was however complete. He tried and determined summary offences. He sentenced to a maximum of £500 fine, and/or five years jail.

The jurisdiction of other magistrates was similar except that the money value was scaled down.

Magistrates' Courts had appellate jurisdiction over appeals from a party aggrieved by the decision or order of an appeal officer given on appeal from a customary court. Appeals from the decisions of Magistrates' Courts in both civil and criminal matters lay to the High Court.

The Chief Justice could require specified magistrates to forward a monthly list to the Chief Justice or to another Judge for review. The Southern Cameroons High Court had powers of revision in respect of all proceedings in the Magistrates' Court.

A Magistrate could himself transfer a cause or matter before him to another magistrate in the same district. A magistrate could of his own motion report certain causes to a judge for transfer either to any other magistrate's court or to the High Court. A magistrate could also transfer any case pending before him to a customary

court having jurisdiction in that matter, except, for example, matrimonial causes arising out of or in connection with a marriage under the Marriage Ordinance; or a cause or matter which had been transferred to his court by the High Court.

Magistrates' Courts administered the same law as administered in the High Court.

C. The High Court

The High Court was composed of a Chief Justice (President) and Judges.[17] They were appointed by the Governor-General of Nigeria by Instrument under the Public Seal in accordance with such instructions as he may have received from Her Majesty. They held office 'during Her Majesty's pleasure'. No person could be appointed a judge of the Court unless he was or had been a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of Her Majesty's dominions, or he was qualified to practise as an advocate in such a court, and he had been qualified for not less than ten years to practise as an advocate or a solicitor in such a court.

Sections 50(2) and 51(1) of the Southern Cameroons Order-in-Council 1960 however provided that the Southern

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17. The Nigerian (Constitution) Order-in-Council provided that for the time being the Chief Justice and Judges of the High Court of Lagos were to be the Chief Justice and Judges of the South Cameroon High Court.

Southern Cameroons High Court shall consists of a single judge appointed by the Commissioner of the Southern Cameroons by Instrument.

The High Court was a superior court of record[18] and, subject to the limits imposed by the Constitution Order-in-Council 1960 and the High Court Law 1955, exercised all the jurisdiction, powers and authorities, other than admiralty jurisdiction, vested in or capable of being exercised by Her Majesty's High Court of Justice in England. This included all Her Majesty's civil and criminal jurisdiction which immediately before the coming into operation of the Southern Cameroons High Court Law was, or at any time afterwards may be exercisable in the Southern Cameroons.[19]

The High Court did not, unless otherwise directed, exercise original jurisdiction in any suit or matter which (a) concerned title to land subject to the jurisdiction of a customary court; (b) related to marriage, family status, guardianship of children, inheritance or the disposition of property on death, and was subject to the jurisdiction of a customary court. However, the High Court had jurisdiction in respect of the above-mentioned suits on transfer to it under the provisions of the Customary Courts Ordinance, or any law replacing the same.[20] The High Court

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18. A court of record was one which maintained a record of its proceedings.

19. Southern Cameroons High Court Law, 1955, ss. 7-8.

20. Ibid., s. 9.

administered law and equity concurrently.[21]

The jurisdiction of the High Court in probate, divorce and matrimonial causes and proceedings could, subject to the provisions of the High Court Law, be exercised by the court in conformity with the law and practice for the time being in force in England.[22]

The appellate jurisdiction of the High Court was governed by the High Court Law and s. 54 of the Southern Cameroons Constitution in Council. The Court had appellate jurisdiction to hear and determine all appeals from the decisions of Magistrates' Courts. Further , it had power to hear and determine appeals from the decisions of Magistrates' Courts and District Officers on appeal from Customary Courts.

Appeals from the High Court lay to the Federal Nigerian Supreme Court in Lagos. The Chief Justice could also, at any time or at any stage before judgment, transfer any cause or matter before a judge to any other judge. A judge could transfer any cause or matter before him to a Magistrates' Court which had jurisdiction in such cause or matter. A judge could furthermore transfer any matter before him to a customary court.

The general law applied by the High Court consisted of:

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21. Southern Cameroons High Court Law, 1955, s. 12.

22. Ibid., s. 15.

(a) the common law;

(b) the doctrines of equity; and

(c) the statutes of general application which were in force in England on January 1, 1900, so far as these relate to any matter with respect to which the Legislature of the Southern Cameroons is for the time being competent to make laws.[23]

The High Court also had a duty to observe and enforce the observance of every existing customary law which was not repugnant. Section 27 of the Southern Cameroons High Court Law, 1955 provided:

> "(1) The High Court shall observe, and enforce the observance of, every native law and custom which is not repugnant to natural justice, equity and good conscience, nor incompatible either directly or by implication, with any law for the time being in force, and nothing in this law shall deprive any person of the benefit of any such native law or custom.
>
> (2) Such laws and customs shall be deemed applicable in causes and matters where the parties thereto are natives and also in causes and matters between natives and non-natives where it may appear to the court that substantial injustice would be done to either party by a strict adherence to the rules of English law.
>
> (3) No party shall be entitled to claim the benefit of any native law or custom, if it

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23. Southern Cameroons High Court Law, 1955, s. 11. This 'reception provision' is found in most former British colonial territories. The dominant opinion at the moment is that the received common law is the narrow unenacted judge-made law of England and not the Anglo-American system of jurisprudence known as Common Law (as opposed to the Civil Law system). This issue is exhaustively treated by A.N. Allott in Allott's New Essays in African Law, Butterworths, London, 1970, chap. 1.

> shall appear either from express contract, or from the nature of the transactions out of which any suit or question may have arisen, that such party agreed that his obligations in connection with such transactions should be regulated exclusively by English law or that such transactions are transactions unknown to native law and custom.
>
> (4) In cases where no express rule is applicable to a matter in controversy, the court shall be governed by the principles of justice, equity and good conscience."

Section 27 was therefore available for the resolution of any problem of internal conflict of laws.

The seat of the Southern Cameroons High Court was Buea. But it held assizes in Kumba, Mamfe, and Bamenda. Appeals from Buea went to Lagos.

D. The Federal Supreme Court

This Court, situated in Lagos, heard appeals from all final judgments and decisions of the Southern Cameroons High Court as well as of the High Courts in Nigeria.

In criminal matters a person convicted in the High Court could appeal to the Federal Supreme Court against his conviction:

(a) on any ground of appeal which involved a question of law alone;

(b) with leave of the court, or on the certificate of the judge who tried him, on any ground of appeal which involved a question of fact alone, or a question of mixed law and fact. With leave of the Court he could also appeal against

the sentence passed on his conviction unless the sentence was one fixed by law.

Appeals from this Court lay to Her Majesty in Council.

E. The Judicial Committee of the Privy Council

Appeals lay from the Federal Supreme Court, when hearing appeals from the Southern Cameroons High Court also, to the Judicial Committee of the Privy Council in London.[24]

The Privy Council developed from the early advisory council or cabinet set up by the English King to advise him. This became the King's Privy Council. It evolved to become the Judicial Committee of the Privy Council, a superior court which acted as the final Court of Appeal from all Courts in the British Empire save those of England, Scotland and Northern Ireland.

The British King in the twelfth century did not only reign. He also governed, taxed, judged, and administered. He was assisted by a feudal Council variously known as the concilium regis, curia regis, magnum concilium, or commune concilium. The King came to be regarded as the fountain of all justice throughout his Dominions - a doctrine which was already an axiom of the British constitution. Any subject of the King could therefore make a

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24. Southern Cameroons (Constitution) Order-in-Council, 1960, s. 57.

petitory appeal to the Sovereign, as the fountain of justice, for protection against an unjust administration of the law. The right extended to judgments in criminal as well as in civil cases.

The Privy Council was re-organized and regulated in a series of statutes. For example, the Judicial Committee Act, 1835 recited that "from the decisions of various courts of jurisdiction in the East Indies and in Plantations, Colonies and other Dominions of His Majesty abroad, an appeal lies to His Majesty in Council". The Judicial Committee Act of 1844 enacted that it shall be competent to Her Majesty by general or special order in Council to "provide for the admission of any appeal or appeals to Her Majesty in Council from any judgments, sentences, decrees or orders of any Court of justice within any British Colony or Possession abroad". The theory is that all jurisdiction exercised in countries owing obedience or allegiance to the King is derived from the Crown. It is a cardinal principle in English law about jurisdiction that judges stand in the place of the Sovereign in whose name they administer justice. The administration of justice is regarded as a prerogative of the Crown.

Thus it came about that the appellate jurisdiction of the Judicial Committee of the Privy Council in Commonwealth and colonial countries originated from the prerogative of the King, as the fountain of all justice, to receive petitions from his subjects who had failed to

get justice from the ordinary courts of law.[25]

Appeals from the Southern Cameroons High Court in Buea to the Nigerian Federal Supreme Court were rare. There is no known case from the Southern Cameroons which ever got to the Judicial Committee of the Privy Council. The High Court in Buea was practically the final court of appeal in the Southern Cameroons. Cost, time, and distance militated against any further appeal from the High Court.

Barring minor cosmetic amendments, this was by and large the judicial structure in the Southern Cameroons up to the time of independence and unification on 1st October 1961.

II. Appraisal of British Colonial Justice in Cameroon

It is a trite observation that unlike the French, the British never encouraged the concept of the evolué or the assimilé in her colonial administration. But Britain, like France, operated two parallel systems of courts in Cameroon. Native Courts were for the traditional sector of the population. Non-Native Courts were for the modern sector of the population. No doubt the dual system of

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25. For a detailed account of the Judicial Committee of the Privy Council, see, Barnett Hollander, Colonial justice, the unique achievement of the Privy Council's Committee of Judges, Bowes and Bowes, London, 1961; George Rankin, 'The Judicial Committee of the Privy Council', Cambridge Law Journal, vol. 7, 1939, pp.2-21.

courts which the French introduced in Cameroun jumps to the eye. But this is because it was based on a division between whites plus assimilated natives on the one hand, and unassimilated natives on the other hand. The difference between the dual system of courts introduced by the French in French Cameroun and by the English in British Cameroons is simply this: the former was based on a vertical segregation, and the latter on a horizontal segregation.

The first part of this section describes the personnel of the law in the Southern Cameroons and the content of the colonial law therein applied. This shall be followed by a critical analysis of the penal system which obtained in the territory.

1. Personnel of the law

One of the most untoward effects of the administration of the Cameroons by Britain merely as an adjunct of Nigeria was that the territory almost came to losing its identity. It was regarded and treated merely as an appendage of Nigeria. Up to 1960 the Southern Cameroons had neither its own proper services nor laws. Generally, Nigerian services and laws were merely extended to the territory. The laws were the 'laws of Nigeria' quoted from the 'revised editions of the laws of the Federation of Nigeria'. Cases cited in court were invariably Nigerian cases from the Nigerian Law Reports. The legal system was

the 'Nigerian legal system', the judiciary was the 'Nigerian judiciary', the legal department was the 'Nigerian legal department', the bar was the 'Nigerian bar', and so on and so forth.

It may be argued that this was only a question of labels. Perhaps. But it was a paternalistic attitude which helped to cloud the identity of the territory. It hurt the feelings and pride of the inhabitants of the territory because it made it look as though they were being colonised by a neighbouring African country. Witness the large Nigerian population in the territory. The Bar, the Legal and Judicial Services in the Southern Cameroons were virtually the monopoly of Nigerians.

A. The Judiciary

The Judiciary consisted of the Chief Justice, Judges and Magistrates. Up to 1956 there was no resident Chief Justice in the Southern Cameroons. The Chief Justice of Nigeria was also the Chief Justice for the Southern Cameroons. The Chief Justice was head of the colonial judiciary. He headed the Judicial Department. Puisne Judges (that is, superior court judges who are below the rank of Chief Justice) and magistrates came under the Judicial Department. In theory the Governor appointed the Chief Justice and other members of the judiciary. In practice however, the Chief Justice owed his appointment not to the Governor but to the Secretary for the Colonies. He, as well as the other members of the judiciary, held

office 'during Her Majesty's pleasure'. The Chief Justice came after the Governor in protocol. But he was independent of him and was neither a member of the Executive nor of the Legislature.

The Chief Justice had the power to appoint Commissioners of Oaths.[26] A Commissioner of Oaths received production of documents, took affidavits and declarations and the examination of witnesses on interrogation or otherwise, which was necessary to be taken in respect of any proceedings in court. The Chief Justice also appointed Notaries Public on payment of an admission fee of £10. The Notary Public attested the execution of deeds or writings and made certified copies of them for use in court or abroad.

To qualify for appointment to a judgeship the candidate must have practised as an advocate for at least five years in a court in the United Kingdom or some other part of Her Majesty's dominions having unlimited jurisdiction either in civil or criminal matters, or been a member of the colonial legal services for not less than five years.

The Secretary of State for the Colonies had the last word in the appointment of Judges and magistrates. Often, appointment was made after consultation with or on

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26. Supreme Court Ordinance, Cap. 211 of the 1948 Laws of Nigeria, s. 72.

27. Notaries Public Ordinance, Cap. 161 of the 1948 Laws of Nigeria.

the recommendation of the Chief Justice. Magistrates were usually appointed from among practising barristers of at least three years experience. Judges were normally appointed from magistrates. In other words Judges were magistrates promoted to hold that post.

The foregoing was not always put into practice in the Southern Cameroons. Here, it was common practice to appoint administrative officers to posts of magistrates and assistant judges. Indeed, the magistrates in the Southern Cameroons were ex officio Justices of the Peace (that is to say, lay magistrates). The administrator-cum-magistrate was the rule rather than the exception in the Southern Cameroons. The main reason for this practice was probably financial. The use of the administrator-cum-magistrate partly explains why there was such a conspicuous absence of career magistrates and judges in the territory.

District officers did not directly preside over Native Courts. But they closely supervised them as well as exercised appellate jurisdiction over cases from there. Thus with regards to the Southern Cameroons, the theory of the separation of powers remained largely a pious verbal assertion. The separation of the judicial from the executive functions was stoutly disrecommended for the African context by Lord Lugard (he was the architect of the policy of indirect rule) on the dubious ground that it "would seem unnatural to the primitive African since

they are combined in his own rulers".[28]

The District Officer was both an administrative officer and a judicial officer. There was no safeguard against the possibility of his decisions being politically tainted. It was naive of the colonial administration to have assumed that the District Officer was necessarily a good man. A system such as this was congenial for abuse of the judicial process in the hands of the wrong District Officer.

It is therefore not surprising that as of 1948 there was only one career magistrate serving in the Southern Cameroons under the employ of the Nigerian Judicial Department. He was British and on a yearly salary of between £450 to £1000. He was assisted by one registrar, one clerk, one assistant clerk, and one office messenger.[29]

Ten years later, in 1958, there was a significant improvement in the number of judicial personnel serving in the Southern Cameroons. In that year 27 persons employed in the Nigerian Judicial Department were posted to the Southern Cameroons to serve in various capacities. Of this number, one was British, 11 were natives

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28. Lugard, The dual mandate in British Tropical Africa, 3rd edition, London, 1926, p. 539.

29. 1948 Report on the British Cameroons, p. 298. The messenger was on a salary of between £42 - £240 per annum. There were a total of 70 court clerks and 294 court messengers employed by the Native Authority in the various Native Courts in the territory. A Native Court messenger earned betw en £24 - £80 per annum. 1948 Report, p. 303.

of Nigeria and 15 were natives of the Southern Cameroons. But Cameroonians held only inferior posts: court clerks, office boys, messengers.

The Nigerian Legal Department had only four persons serving in the Southern Cameroons. Of the four, two were natives of the Southern Cameroons, one was a native of Nigeria, and the other was a white.[30]

Of the 153 persons employed by the Nigerian Prisons Department in the Southern Cameroons, 147 were natives of the Southern Cameroons, 4 were Nigerians, and 2 were British. The number of persons who served in the Southern Cameroons under the employ of the Nigerian Legal, Judicial, and Prisons Departments between 1954 and 1958 were as follows:

Table 1

Year	Judicial Dept.	Legal Dept.	Prisons Staff	N.A. Judiciary
1954	9		81	
1955	22	4	91	325
1956	26	4	121	308
1957	32	3	136	273
1958	27	4	153	333

Source: Compiled from data at pages 307, 313, 314 of the 1958 Report.

30. 1958 Report on the British Cameroons, p. 305.

The large number of Native Authority judicial staff results from the fact that there were far more Native Courts than non-Native Courts, the traditional sector of the population was by far larger than the modern sector, and the bulk of litigation consequently took place in the Native Courts.

Although the Prison staff situation rose from a handful in the 1920s to 158 in 1958, the number was still very small in view of the fact that there were approximately two thousand prisoners in the Southern Cameroons as of 1958.

One further issue needs to be mentioned here. It concerns court fees. Litigants appearing before any court in the Southern Cameroons paid court fees. There were no special arrangements for legal aid to needy persons. But court fees could be waived or remitted by a judge on grounds of poverty.

Court fees, the bulk of which came from Native Courts, accounted for about 1% of the territory's Government income while 1.1% of Government expenditure in the territory went to the Judicial and Legal Departments.[31] What this meant was that money derived from the courts in the Southern Cameroons was sufficient to run the courts. The courts were therefore self-financing.

B. The Bar

a) The official bar: the legal department

In keeping with British tradition there was no

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31. 1958 Report on the British Cameroons, pp. 332-334.

Ministry of Justice in Nigeria or the Southern Cameroons. There was instead a Legal Department and the Judicial Department. The Legal Department was headed by a Law Officer known as the Attorney-General.

In England, the Attorney-General is the chief Law Officer of the Crown. He is assisted by the Solicitor-General and a number of Crown Counsels known as Junior Counsels to the Treasury. He is head of the English Bar. The Attorney-General and the Solicitor-General are legal advisers to the Crown. Both are political appointees made from eminent members of the Bar who are sympathetic to the political party in power. Apart from his political duties, which include advising Government Departments and answering questions in the House of Commons, the Attorney-General represents the Crown in certain civil proceedings and, as a matter of practice, in trials for treason and other important offences with a political or constitutional element. He also exercises the prerogative power of staying prosecutions on indictment by the entry of a nolle prosequi and, by statute, leave of the Attorney-General is required for the commencement of certain criminal proceedings.

Under the Colonial Legal Service, however, the Attorney-General and the Solicitor-General were civil servants appointed by the Secretary of State for the Colonies. The Attorney-General was also the Director of Public Prosecutions. He advised the Executive on the institution of prosecutions for political offences such as sedition or treason. Like the English Lord Chancellor,

the Attorney-General sat in the Council of Ministers. He was responsible for the preparation of Bills for reform of the law. He drafted Bills for Government Departments (as does the English Parliamentary Counsel to the Treasury) and conducted Crown litigations in the courts. He was a member of the Legislature and was often appointed chairman of almost all its Select Committees. Finally, he was head of the local Bar.

The Attorney-General was, and still is in England, the living denial of Montesquieu's theory of the separation of powers.

Up to 1956 there was no resident Attorney-General in the Southern Cameroons. The Nigerian Attorney-General was also the Attorney-General for the Southern Cameroons. Criminal litigation was conducted by the Police in the name of the Crown or the Commissioner of Police. As of 1958 the Legal Department in the Southern Cameroons counted only four officers (two Cameroonians, one Nigerian, and one English).

b) The private bar

There were no Inns of Court in the Southern Cameroons and Nigeria. All legal education was undertaken in England. Up to 1959 there was not a single Southern Cameroonian practising law. Barristers who appeared before the courts in the Southern Cameroons were all Nigerians.

Admission to the Bar was governed by the Supreme

Court Ordinance NO. 4 of 1876. Under this Ordinance, the Chief Justice could admit and enrol to practise as barristers and solicitors of the Supreme Court of Nigeria persons already admitted as barristers or advocates in the United Kingdom. But the Chief Justice could refuse on other sufficient grounds to admit an applicant. No one whose name was not duly enrolled in the Roll of Court kept by the Chief Registrar was entitled to practise. There was a penalty of up to six months' imprisonment and a fine of £100 for anyone practising law without a Certificate of Enrolment.[32]

The Chief Justice could also admit anyone who had been for five continuous years in the service of a practising barrister or solicitor and who had passed an examination in Principles and Practice of Law. Before admission such a person had to subscribe the oath or affirmation of allegiance and fidelity in his office in the form prescribed by law.

The law provided that the Chief Justice could in his discretion approve, admit and enrol to practise as a barrister and solicitor in the Supreme Court, the High Courts, and the Magistrates' Courts:

> "(a) any person who is entitled to practise as a barrister in England or Ireland or as an advocate in Scotland; and who
> i) produces testimonials sufficient to

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32. The Legal Practitioners Ordinance, Cap. 110 of the 1948 Laws of Nigeria consolidated earlier ordinances on the subject, notably the L.P.O., No. 44 of 1917 (drawing of land instruments), the L.P.O. No. 57 of 1933 (discipline of members of the legal profession).

satisfy the Chief Justice that he is man of good character; and

ii) has read in the Chambers of practising barrister or advocate of more than five years standing for at least one year, or has practised in the courts of the country in which he has been called or admitted for at least two years subsequent to his call or admission; or

iii) has subsequent to his call to the Bar or admission as an advocate read in Nigeria in the Chambers of a practising barrister of more than ten years standing for at least two years; or

iv) has practised as a barrister or solicitor in the courts of a territory under British administration for at least two years;

(b) any person who has been admitted as a solicitor in any of the Courts of London, Dublin or Belfast, and produces testimonials sufficient to satisfy the Chief Justice that he is a man of good character;

(c) any Law agent admitted to practise in Scotland who produces testimonials sufficient to satisfy the Chief Justice that he is a man of good character."

Native Courts are excluded from the list of courts before which barristers may appear. No legal practitioner could appear or act for or assist any party before a customary court.

Persons qualified to practise law were enrolled as 'barristers and solicitors'. This meant that every barrister was entitled to practise also as a solicitor and proctor, and every solicitor was entitled to practise also as an advocate, and subject to the Rules of Court, to sue for and recover his fees. The fusion of these two professions was significant in at least two respects. First the classic dichotomy between barristers and solicitors with differing functions and status was abolished. Each could henceforth perform the functions of the other.

For example, the barrister could also draw deeds and the solicitor could also plead in court. Secondly, barristers who by English law could not sue for their fees were enabled to do so on account of the fact that they practised also as solicitors who by English law could sue for their fees.

The Full Bench of the Supreme Court could, 'for good reasons', suspend for a stated period or strike off the Roll of Court the name of any barrister or solicitor.

C. The content of the law administered

The law which was administered in the Southern Cameroons emanated from three sources, namely, customary law, laws specifically enacted for or extended to the territory, and English received laws.

Laws specifically enacted for or extended to the territory included various Proclamations and Orders-in-Council made for the territory, Nigerian Ordinances expressly extended to the territory, and British Imperial Acts of Parliament specifically made applicable to the territory either directly or through Nigeria. There was no comprehensive list of all the laws which were in force in the Southern Cameroons. But a large section of these laws existed in various colonial statute books known as 'the revised editions of the laws of the federation of Nigeria'.

Section 27(1) of the Southern Cameroons High

Court Law 1955 enjoined the High Court in the territory to observe and enforce the observance of rules of customary law which passed the 'repugnancy-incompatibility' test.[33] Customary law was deemed applicable in causes and matters where the parties thereto were natives and also in causes and matters between natives and non-natives where it appeared to the court that substantial injustice would be done to either party by a strict adherence to the rules of English law. No party was entitled to claim the benefit of customary law if it appeared either from express contract or from the nature of the transaction that English law governed the matter or again, if the transaction was one unknown to customary law. Where no express rule was applicable to a matter in controversy, the court was governed by the principles of justice, equity and good conscience.

However, the fact that the parties to a dispute

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33. The 'repugnancy clause' was used to abolish barbarous customs (e.g. slavery, witchcraft, trial by ordeal) and also as a Trojan Horse by which English juristic ideas (e.g. prescription - laches and acquiescence, the right to be heard before being condemned, child custody to be governed by the welfare principle) were infused into customary law. But this omnibus provision was not always easy to apply. Excess of judicial zeal sometimes led to customary law rules being struck down as being repugnant simply because they offended against the law of England or English ideas of justice. For an in depth treatment of this issue, see, Allott's New Essays in African Law, op. cit.; T.O. Elias, British colonial law - a comparative study of the interaction between English and local laws in British Dependencies, Stevens & Sons Ltd, London, 1962; Morris and Read, Indirect rule and the search for justice, O.U.P., London, 1972.

were natives did not call for the automatic application of customary law because not all natives were subject to the operation of customary law. Furthermore, the mere lack of repugnancy in an alleged custom did not bind the court to apply customary law. For customary law to apply, the court had to be satisfied not only that the alleged custom has passed the repugnancy test but, further, that the matter before it was purely customary or that all the circumstances taken into account were connected with native life, habit or custom.

Customary law governed the following matters: title to land subject to the jurisdiction of a customary court; marriage, family status, guardianship of children, inheritance or the disposition of property on death, subject to the jurisdiction of a customary court.

The general law applicable in the Southern Cameroons was the English common law, the doctrines of equity and statutes of general application[34] which were in force in England as of the 1st January 1900. Hence the general principles of the English law of tort, contract, crime, evidence, civil and criminal procedure, mercantile law, commercial law, land law (applicable only as regards leasehold and freehold estates), constitutional law, private international law, etc. were applicable in the territory. In every case however, these principles of English

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34. In the Nigerian case of Att.-Gen. v. John Holt (1910),2N.L.R.1. Osborne, C.J. put forward the following test as decisive of what a statute of general application is: by what courts and to what classes of the community in England was the Act enforced in England? Allott, op.cit., proposed the following test: was it a public general Act? was it suitable for general application outside England?

law applied only in so far as they had not been expressly modified by legislation, judicial decision, or local laws.[35]

Because the limitation date was 1st January 1900, post-1899 English statutes did not apply in the Southern Cameroons.[36] By the same token post-1899 English decisions based on post-1899 English statutes did not apply as well. But post-1899 English decisions applied if they were based on pre-1900 English statutes or if they did not involve a change of any particular common law doctrine or principle. One effect of all this was that although a pre-1900 English statute may have been repealed in England, it continued to be in force in the Southern Cameroons.[37] The situation was otherwise with regards to family law matters. In probate, divorce and matrimonial causes and proceedings jurisdiction was exercised by the courts in conformity with the law and practice 'for the time being in force in England'.[38]

2. The Penal System

The criminal law applicable in the Southern Cameroons was the Criminal Code of Nigeria. The Code

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35. E.g. the Nigerian Criminal Code (cap. 42), the Evidence Ordinance (cap. 62), Criminal Procedure Ordinance (cap. 43).

36. E.g. the Contributory Negligence Act 1945, the Crown Proceedings Act 1947, the Law Reform (Frustration Contracts) Act 1943.

37. E.g. the Fatal Accidents Acts, of 1846 and 1864.

38. In the Southern Cameroons that phrase has always been construed as being ambulatory; i.e. 'from time to time in force' in England.

together with other Ordinances such as the Immigration Ordinance defined offences and set out the penalties for each. Convicted persons generally served their sentences in prisons inside the territory. Sentences of imprisonment were however seldom high as the incidence of crime was low and offences were, for the most part, never serious and complicated.

A. Penalties

The following penalties existed: hanging, jail, fine, imprisonment in stocks, corporal chastisement, and deportation.

Hanging was the prescribed penalty for capital murder. Execution took place inside a prison on enclosed gallows. All death sentences in the Southern Cameroons were carried out in the Buea Prisons which was the only prison in the territory which had a gallows and a hangman. A ligature or a running noose was put round the condemned person's neck, his head having been covered with a black hood. The ligature is pulled and he is suspended, the constricting force being the weight of his body.

Terms of imprisonment were generally never high. There were seldom sentences of more than five years. But it was common practice to sentence prisoners to a term of imprisonment 'with hard labour'. Fines too were not excessive. If an act or omission offended both against customary law, the criminal code and some other enactment, a Native Court could not impose punishment in excess of

the maximum punishment permitted by the criminal code or such other enactment.

Up to 1960 an offender in the Southern Cameroons was still liable to corporal punishment. It differed from the German method only in that it was administered with some respectability. Thus, the flogging was carried out 'with a light cane' in enclosed premises after medical examination. Twelve strokes on the bare buttocks was the maximum permissible. From 1958 onwards however corporal punishment could be inflicted only on juvenile offenders.

Up to the 1930s offenders in the Southern Cameroons could still be sentenced to imprisonment in stocks. This method of punishment was also similar to the German method; the only difference being that the English replaced iron chains with wood. Moreover, prisoners who were thought might try to escape from prison were fettered to their cell walls with chains.

One striking similarity with what obtained in the French Cameroun was that a court in the Southern Cameroons could recommend to the Governor-General of Nigeria that a person be deported from one part of the territory to another. The recommendation was made if that person had been convicted of an offence punishable by imprisonment without the option of a fine and it seemed that deportation would be in the interest of peace, order and good government. Similar considerations applied where a person was likely to commit or provoke a breach of the peace and failed to give security for good behaviour.

The same applied to people who sought to incite enmity against the Queen and to anyone who intrigued against constituted power and authority. That was not all. If the Governor considered that a former chief, village headman, member of a Native Authority, or member of a Native Court, ought in the interest of the maintenance or re-establishment of public order to leave the neighbourhood where he used to exercise authority, the Governor could cause him to be removed to such other part of the territory as was directed.

This was a powerful weapon in the hands of the Governor to deal with troublemakers, nonconformists and political activists. This provision was however apparently never used in the Southern Cameroons. Likewise, the Governor's power to reprieve condemned persons in appropriate cases does not seem to have been used in the territory.

B. The incidence of crime

The African population in the Southern Cameroons passed from 299,000 in 1921, 410,482 in 1936 to 752,700 in 1953. The 1953 figures consisted of 383,900 males and 368,800 females.[39] Of this number only 666,900 were natives of the Southern Cameroons while 85,800 came from

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39. 1958 Report on the British Cameroons, pp. 294, 297.

various tribes in Nigeria.[40] By 1960 the population of the territory had risen to 800,000.

The white population[41] rose from a mere 374 in 1936, 797 in 1954 to 1,142 in 1958.[42] As of 1954 therefore there were at least 86,597 foreigners in the Southern Cameroons as against 666,900 indigenes; that is a ratio of roughly 1:8. In 1958 the ratio of aliens to Southern Cameroonians was something like 1:6.

Unfortunately available statistics do not disclose the proportion of offences committed by foreigners and those committed by the indigenes; nor do they indicate what offences were committed by foreigners. Because of the insufficiency of statistical information, it is difficult to determine the real incidence of crime with regards to Southern Cameroonians.

However, offences in the territory were seldom of a complicated nature. Offences against property (mainly petty thefts of foodstuff or livestock or some common household utensil) were the most common. The number of persons tried in the Provincial Courts between 1925 and 1927 were as follows:

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40. 1958 Report on the British Cameroons, p. 301. Of the 85,800 Nigerians, 26,000 were Ibos. In 1951, the C.D.C. alone had 4,000 Nigerians in its employ.

41. In 1958 this white population consisted of 19 nationalities.

42. 1958 Report, p. 303. There were 598 British in 1954 and 786 in 1958.

Table 2

Division	1925			1926			1927		
	Civ.	Crim.	Total	Civ.	Crim.	Total	Civ.	Crim.	Total
Victoria	108	384	492	88	499	587	94	596	690
Kumba	11	83	94	18	122	140	16	230	245
Mamfe	11	105	116	28	162	190	8	104	112
Bamenda	5	100	105	2	130	132	2	104	106
Total	135	672	807	136	913	1049	120	1034	1154

Source: compiled from data at p. 19 of the 1928 Report on the British Cameroons by His Majesty's Government to the League of Nations.

Most criminal cases came from Victoria and Mamfe Divisions. Data showing the number of criminal cases tried in the Provincial Courts in 1927 reveal that 55 persons were convicted of fighting in public places (affray), 5 of murder (of whom 2 had the death sentence and were executed), 63 of assault, 147 of stealing, 309 of various offences under the Nigerian Customs Ordinance, 41 of a number of offences under the Forestry Ordinance, 22 of offences under the Public Health Ordinance and 10 of witchcraft. There were a total of 846 convictions and 188 acquittals. Of those convicted, 2 were sentenced to death and were hanged, 459 were sentenced to various terms of imprisonment, and 385 were fined or otherwise disposed of. Imprisonment was the favourite penalty imposed by Provincial Courts. Only in respect of petty offences under various Ordinances were fines often imposed.

While Provincial Courts used imprisonment more frequently than any other penalty, Native Courts consistently sentenced offenders to pay fines. In 1927 for example, Native Courts sentenced 673 offenders to various terms of imprisonment, 2,148 to pay fines, 22 to be flogged, 23 to be locked in stocks and admonished 21.

Native Courts dealt with far more cases than did Provincial Courts. In 1927 Native Courts disposed of 8,379 civil matters and 3,739 criminal cases. Most civil cases concerned debts (3,810 cases), the greatest number coming from Kumba and Mamfe, and matrimonial matters (3,554 cases), the bulk of them from Bamenda Division. There were 78 cases of adultery, 76 of which came from Victoria. Thirty-six adultery cases in Mamfe were punished as criminal offences.

Up to the eve of independence, this pattern remained unaltered. In 1957 for example, more and more people were appearing before Native Courts charged with contravening various Native Authority Rules and Orders as well as Nigerian Ordinances such as the Customs and Excise Ordinance (cases of contraband). Assault cases still remained high. But the number of theft cases coming before the courts had fallen. There were more adultery cases reported in Bamenda than the southern part of the territory which hitherto led in this type of cases. Most convicted offenders were fined (at most £5). A fairly large number received prison terms not exceeding six months each.

Between 1954 and 1958 the Southern Cameroons High Court dealt with 165 cases of which 77 resulted in acquittals and 88 in convictions. Of the 88 convicted, 25 were cases of theft and 18 were cases of manslaughter. Twelve were sentenced to death, 62 to imprisonment, 12 to pay fines and 4 to be whipped.[43]

Over the same period (1954 - 1958) about 300 juveniles were charged before the Magistrates' Courts. Most of these juvenile delinquents were boys charged mainly either with offences against property or the person (simple assault). Approximately half the number of those charged were discharged and the others convicted. None of those convicted was sent to prison or borstal. Most of them were whipped, 8 were fined and 17 were bound over. Over the same period and in the same courts, roughly 20,000 adults (including 300 female adults) appeared in court charged mainly with theft, assault and failing to pay tax. Imprisonment remained the most used form of penalty. It was perhaps thought that imprisonment served as a deterrence. Offenders who were minors were either bound over or flogged.

What emerges is that simple and unsubtle forms of stealing were the most frequent offences. Next in order of frequency were offences against the person (assault, wounding). By 1957 cases of smuggling and tax evasion were becoming significant. The High Court had

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43. 1958 Report on the British Cameroons, p. 322.

comparatively an insignificant number of cases to deal with. The entire sentencing range was used. However, whipping and binding over were infrequently used. But whereas Native Courts usually sentenced offenders to pay fines, non-Native Courts consistently resorted to imprisonment. After 1956 more and more cases of adultery were coming before Native Courts, especially in Victoria. This was probably due to urbanisation and the plantation economy in that part of the territory.[44] Up to 1958 there was no recorded prosecution for prostitution, rape, criminal abortion, and soliciting.

C. Prison administration

Prison administration in the Southern Cameroons was governed by the Prisons Ordinance. As there were only a few cases of juvenile delinquency in the territory there was no special legislation, courts, or prisons for them. The few juvenile delinquents who appeared before the courts were sent either to the Approved School at Enugu or the Borstal Section of the prisons at Port Harcourt, both of them located in Nigeria. There they got a general education and some knowledge of a trade. Upon the discharge of a former juvenile delinquent from the Approved School or the Borstal Institute, it was the duty

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44. Cf. Edwin and Shirley Ardener and W.A. Warmington, Plantation and Village in the Cameroons, O.U.P., 1960.

of the District Officer of the Division to keep an eye on him and give him what assistance he needed; for, there were no Probation Officers in the territory.

There were four prisons in the Southern Cameroons, at Buea, Bamenda, Mamfe, Kumba. The last three were prisons for short term prisoners; that is, those serving terms of less than two years. Buea prison received long term prisoners. In some cases prisoners with suitably long sentences were sent to convict prisons outside the territory in Nigeria where they learnt a trade.

Ultimate responsibility for the administration of all prisons in the territory rested with the Director of Prisons in Nigeria. But the immediate responsibility for the Buea, Kumba and Bamenda prisons rested with the Superintendent (to whom the power of assistant Director was delegated) and the Assistant Superintendent of Prisons, the former resident in Buea and the latter in Bamenda. Mamfe Prison was controlled by the District Officer of the Division assisted by a chief warder who supervised the routine work and maintained discipline. These officers inspected the prisons regularly to ensure that prisons regulations were duly observed and that there were no abuses. As of 1958 there was only one Southern Cameroonian as 'senior officer' in the Prisons Department.

Prison warders were recruited from both men and women with at least a standard six Primary School Leaving Certificate. Pay was equivalent to that of the Police Force. Engaged in the first instance on an agreement for

six years, a warder who was re-engaged (he was re-engaged if his services or conduct were satisfactory) served continuously up to the age of 45. Warders worked for eight hours and their duties were mainly that of supervision of prisoners out at work. They were supplied free quarters or paid an allowance in lieu.

Prisoners lived mainly in association cells of about 360 cubic feet of space each. On addmission a prisoner was issued with a prisons uniform and three blankets. From 1957 prisoners began sleeping on vono double-deck beds. Male and female prisoners were separated from each other, and first offenders from recidivists. Unconvicted prisoners or those awaiting trial were kept away from convicted ones. Prisoners of unsound mind were either detained at Kumba Prison or transferred to asylums in Eastern Nigeria.

Prisoners worked mainly outside the prison - cutting grass, carrying firewood and water, farming, building and so on. Indoors, prisoners learnt how to make mats, ropes, baskets, stools. They also learnt carpentry and how to sew. With the establishment of the Buea Dairy Farms in 1957, selected prisoners were housed and employed there under 'open prisons conditions' where they got a constructive agricultural training in cattle grazing, milking of cows, pig farming, the growing of vegetables. Prisoners put in $6\frac{1}{2}$ hours of work per day. Supervised by wardresses, female prisoners were chiefly employed in the preparation of meals. Those serving long

sentences were taught sewing and handicrafts. Educated prisoners were encouraged to teach illiterate ones. Adult education classes were held inside the prisons.

A prisoner who conducted himself well and worked hard usually earned remission to the extent of 1/3 his sentence. After two years in jail, a long-term prisoner earned two shillings a month; one shilling to spend on luxuries, in the shape of food or tobacco, the other shilling to save in a till until he was discharged.

Prison discipline was maintained by the deprivation of privileges and the loss of remission, which was considered to be a great deterrent against bad behaviour. Other sanctions included the reduction of food rations, and solitary confinement. If a prisoner was thought to be violent or likely to escape, he was put in leg irons. Flogging was the common punishment for mutiny, incitement to mutiny and assault on prison officers.

Medical officers regularly visited prisoners and those who were seriously ill were removed to the nearest General Hospital. The health conditions of prisoners was apparently good. Some indeed did put on weight. In 1927, there were 14 deaths reported in the four prisons in the territory. The total number of inmates in all four prisons was 1,100. The deaths were attributed to an outbreak of pneumonia. Prisons medical statistics for 1958 reveal that prisoners who died did so mainly as a result of dysentary, pneumonia, heart failure

and pulmonary tuberculosis. There were a few cases of suicide. The contraction of an infectious disease such as chicken-pox was fairly common although those so afflicted were always removed to infectious diseases hospital.

Upon their discharge from prison destitute ex-convicts were repatriated to their homes or place of conviction at the Government's expense. They were also given a few shillings to tide them over until they reached their destination. A long term prisoner could however, be given substantial pecuniary aid on discharge or the tools of the trade he learnt in prison.

CHAPTER FIVE

THE FRENCH SYSTEM

French colonial legislation in Cameroun was all a matter of trial and error. No sooner was a law enacted than it was quickly amended, repealed, re-enacted, or replaced. "Au Cameroun ... il existe un amas de textes juridiques, véritable labyrinthe dans lequel se perd le profane. En effet, la diversité, l'instabilité, la complexité sont les caractères principaux et reconnus de notre législation d'Outre-Mer. ... Bon nombre de textes sont bien vite dépassés par les événements, ce qui conduit à les remanier , à les modifier, à les abroger, très souvent, trop souvent ..."[1]

There were three characteristics of French legislative policy in Cameroun. First, a law passed in France had to be specifically promulgated in Cameroun to be valid in the territory. As Cameroun was married to French Equatorial Africa for legislative purposes, France usually legislated for the whole of that federation by means of décrets and it was left to the French Commissaire in Cameroun to promulgate the law in question in the territory by means of arrêté. However, before the approval of the

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1. H. Chêne, Répertoire général des textes législatifs et règlementaires applicables au Cameroun, Compagnie Africaine de Diffusion, Douala, 1954, p. III, X.

the terms of the Mandates Agreements in 1922, the Commissaire had, in the exercise of his regulatory and legislative powers, introduced certain aspects of French laws into the territory by means of arrêtés. But in 1924, Paris made it clear that laws, decrees and regulations in force in France could be rendered executory in Cameroun only by a decree of the French Head of State.[2] The only exception related to the French Constitution and 'les principes généraux de droit' which were executory in the territory without having to be specifically promulgated therein.[3]

Secondly, under the tutelage Agreements France assumed full powers of legislation and administration as well as the right to introduce her laws in Cameroun. She vested legislative authority for Cameroun in the central government in Paris. Article 72 of the French Constitution of October 27th, 1946 specifically provided that only the French Parliament could legislate for the overseas territories with regards to criminal law, civil liberties and political and administrative organisation. The French Parliament in fact had full powers to enact laws for Cameroun on any subject. The French Head of State could

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2. Art. 1 & 2 of Decree of 16 April 1924. Hence in Procureur General, Yaounde c. Fende et Malika, Penant, 1959, p. 434, the Chambres Reunies of the Cour de Cassation held that "in the absence of a special clause of applicability and failing local promulgation, a penal law cannot be held applicable in Cameroun".

3. Chêne, op.cit., p. VI; Syndicat Général des Ingénieurs Conseils, C.E., 26th June 1959, Penant, 1959, p. 572.

also legislate by decree on those matters not governed by existing laws or not reserved to Parliament. This legislative competence of the Head of State was not based on the Senatus-Consulte[4] of 1854 but upon article 8 of the Constitution of the 16th July 1875 which gave the Head of State power to execute treaties.[5]

Thirdly, the French organised two parallel systems of courts in Cameroun; one for Frenchmen and assimilated Camerounians, and the other for the unassimilated Camerounians styled indigènes or natives.[6] This dual system of courts reflected in the judicial sphere, the French policy of assimilation which distinguished between Camerounians of citoyen status and those of sujet status.[7]

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4. The Constitution of the 14th January 1852 of the Second French Empire directed the French Senate to draw up a Constitution for French colonies by means of an instrument known as Senatus-Consulte. This colonial constitution or senatus-consulte was duly drawn up and promulgated on May 3rd, 1854. It gave the French Emperor, into whose shoes the French President has stepped, the exclusive power to rule the African colonies by decrees.

5. See generally, J.W. salacuse, An introduction to law in French-speaking Africa, the Michie Co., Charlottesville, Virginia, 1969, Ch. 1.

6. "Est indigène ... (a) individu originaire des territoires sous mandat du Cameroun, Togo, des possessions de l'A.O.F. et de l'A.E.F. ne possèdant pas la qualité de citoyen francais; (b) individus originaires des pays étrangers entre ou limitrophes des possessions francaises énumerées ci-dessus et ne possedant pas dans leurs pays d'origine le statut des nationaux européens." Justice Indigène - Principe, File No. 10942/A, Cameroon National Archives, Yaounde.

7. See supra, Chapter Two.

To facilitate exposition, the dichotomy between what the French called 'justice de droit francais' and 'justice de droit indigène' will be followed.

I. Justice de Droit Français

People of French nationality[8] and citoyen status had their own system of courts. These courts applied French laws in force in metropolitan France. The colonial Bench and Bar were however different from the metropolitan magistracy and Bar.

1. The system of courts for Frenchmen[9]

Shortly after the Anglo-French partition of Cameroon in March 1916, France set up a tribunal in Douala to assist the French army in maintaining law and order.[10] This court, which was later re-constituted,[11] was however superseded in 1918 by a court of first instance presided over by

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8. In 1954 there were 10,200 Frenchmen in Cameroun.

9. These courts were variously styled tribunaux francais, tribunaux europeens, tribunaux modernes, etc. Other whites as well as Cameroonians of citoyen status were also justiciable before these courts.

10. Arrêté du 8.8.1916 promulgant le décret du 6.5.1916 reorganisant le service de la justice dans les Territoires Occupés de l'Ancient Cameroun. This court was akin to the justices de paix à compétences étendues set up in A.E.F. by Decree of 16th April 1913.

11. Decree of 12th January 1917 brought into force by Arrêtés of 12.4.1917.

a career magistrate.[12] Appeals from this court lay to the Court of Appeal for French Equatorial Africa situated in Brazzaville.

A later decree[13] set up a hierarchy of courts to administer French law in all matters involving Frenchmen, aliens belonging to nations recognised diplomatically by France, and Cameroonians of 'citoyen' status. These courts were: tribunaux de premier instance, justices de paix, conseil d'appel, and an ambulatory cour criminelle. This last court sat in Douala but on the request of the Procureur de la République and with the approval of the Commissaire de la République, it could sit in any other town. With the creation of the Conseil d'Appel appeals no longer went to Brazzaville.

1934 was a notable year with regards to French judicial policy in her overseas possessions. She cut down her colonial judicial personnel as well as the number of courts in her possessions.[14] Once more the Brazzaville Court of Appeal became the appeal court for Cameroon as well as being the court of appeal for French Equatorial Africa.[15] The Cameroun Conseil d'Appel was therefore abolished. The composition of the cour criminelle was altered and a justice de paix à compétence étendue was set

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12. Decree of 8th August 1920.

13. Decree of 29.12.1922 promulgated by Arrêté of 17.3.1923.

14. Decree of 11.5.1934.

15. Decree of 31.12.1934.

up in Garoua.[16] These reforms were later consolidated.[17]

This situation remained unchanged until after World War II. In 1947 the following set of courts were established for Frenchmen:[18] a tribunal supérieur d'appel with a chambre d'accustion,[19] cours criminelles,[20] tribunaux de première instance, justice de paix à compétences étendues, justices de paix investies d'attributions correctionelle limitées, and justices de paix à compétences ordinaire. Appeals no longer went to Brazzaville.

In 1951 the Tribunal Supérieur d'Appel with its seat in Douala was upgraded to a Cour d'Appel and moved to Yaounde. There were in all six courts for Frenchmen in Cameroun distributed as of 1959 as follows: 1 Cour d'Appel, 1 Cour Criminelle, 7 Tribunaux de Première Instance, 13 Justices de Paix à Compétences Étendues, 4 Justices de Paix à Attributions Correctionnelles, and 25 Justices de Paix à Compétences Ordinaires. These courts shall now be examined.

A. Cour d'Appel

Composed of career magistrates, the Cour d'Appel

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16. Ibid.

17. Decree of 30.6.1936 extended to Cameroun by Arrete of 15.2.1936.

18. Decree of 27.11.1947.

19. The Tribunal Supérieur d'Appel was the equivalent of the Cour d'Appel in French West Africa and French Equatorial Africa.

20. This court was the Cameroun equivalent of the Cour d'Assises.

was presided over by a judge-president, assisted by at least two assessors chosen yearly by the Haut Commissaire on the proposition of the court. These assessors were usually French civil servants. The court also had a registrar and one or two assistant registrars. The Procureur-General at the Cour d'Appel was also the head of the judicial and legal services in Cameroun "avec la charge d'administrer la justice dans le territoire sous l'autorite du Haut Commissaire".[21]

The court heard appeals from inferior courts except appeals from the Justices de Paix à attributions correctionnelles which went first to the Tribunal de Première Instance. Like the metropolitan Cour de cassation, the Cour d'Appel saw to the correct interpretation and application of the law. It had two benches; a chambre d'accusation and a chambre d'annulation. The former had the same role and powers as the chambre de mise en accusation in France; the latter could annul or quash decisions given by inferior courts.

However, appellate jurisdiction over the most important cases was exercised by the Cour de Cassation in Paris. Appeals for cassation were available against the infringement of a law by a French authority. Sometimes the Cour d'Appel was called upon to apply customary law. In such a case, an appeal for cassation to the Cour de Cassation was unavailable.

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21. B. Lembezat, Le Cameroun, 3rd ed., Editions Maritimes et Coloniales Paris, 1954, p. 99.

B. Cour Criminelle

The Criminal Court had its seat in Douala but could hold sessions in other towns by authority of the Haut Commissaire after consultation with the Procureur. Its jurisdication was exclusively criminal. It differed from the Cour d'assises in France in that it had no jury system. But it had assessors who sat with the court's judges (these were judges from the court of appeal) and all of them decided on the question of guilt and punishment. Questions of jurisdiction, procedure and applications for the award of damages were however decided by the judges alone. Half the number of assessors were chosen from French civil servants and the other half from among Camerounian civil servants.

C. Tribunal de Première Instance

This court exercised original jurisdiction in civil, commercial, and minor criminal matters which were outside the purview of the Justice de Paix à attribution correctionnelle limitée. Appeals from this latter court lay to the Tribunal de Première Instance.

In principle this court was presided over by a career magistrate. But it was common practice for the High Commissioner to appoint French civil servants, after consultation with the Procureur Général, to preside over it. Appeals from here lay to the Cour d'Appel.

D. Justices de Paix

There were three types of Justices de Paix, each different from the other in the extent of its jurisdiction. The Justices de Paix à compétence ordinaire dealt with petty civil and commercial cases while the Justices de Paix à compétence étendue dealt with civil and commercial matters involving a high financial value. The Justices de Paix à attributions correctionnelles limitées exercised limited jurisdiction in petty criminal matters (offences against the administrative authorities of the locality, summary offences). These courts were presided over by district officers appointed by arrêté of the Haut Commissaire after consultation with the Procureur-Général. These 'justices of the peace' were assisted by clerks chosen by the 'justices' themselves.

2. The law applied by the courts for Frenchmen

Courts for those of French nationality and citoyen status applied French laws which were in force in metropolitan France although in some cases they could, with the help of native assessors, apply customary law in matters where only indigenes were litigants. French law as a general principle constituted the ordinary or general law, while customary law was regarded merely as a residual law. As a result, in any case involving a Frenchman and a Camerounian, the jurisdiction of native courts was ousted in favour of

French courts. The only exception was where the Frenchman had affirmed in a written contract that he would submit to the jurisdiction of customary courts.[22]

By Decree No. 46-877 of the 30th April 1946, such jurisdiction as the courts for natives exercised was taken away and vested in the French courts. This was the sequel of the grant of citoyenneté de l'Union française to Camerounians by the 1946 Constitution. The so-called native penal code which had been instituted by Decree of 17th July 1944 was abolished. The French Penal Code was amended to suit local conditions and made applicable to Camerounians as well.

Criminal procedure was governed by a Decree of 26th February 1931. However, another Decree of 21st November 1933 made the French Code d'Instruction Criminelle generally applicable in Cameroun.[23] In particular, articles 590 to 597 relating to the keeping of criminal records were made specifically applicable by Decree No. 54-868 of the 2nd September 1954.[24] Appeal procedures were however determined by the Haut Commissaire after consultation with the Procureur-Général.[25]

In civil and commercial causes the jurisdiction

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22. Decree of 31st July 1927, art. 43.

23. Cf. Nlate Nlate et Autres, Cass. Crim., 7th January 1955, Penant, 1955, p. 62, being an appeal from the Cameroun Cour Criminelle.

24. Penant, 1955, p. 75.

25. Decree of 27th November 1947, art. 29 and 37.

of French courts was general while that of native courts was limited. French courts were competent in all matters, with regards to natives, which did not form part of personal status. Their jurisdiction arose either by virtue of an express legal provision or as a result of 'incompatibilité de la coutume avec l'ordre public ou les principes de nôtre civilisation' or where customary law was silent on the issue being litigated, or again where the native litigant opted for French law.

There were two variants of this option; 'option de législation' and 'option de juridiction'. In the former case the native litigant opted for French law. He did so expressly and in writing. In the latter case, the native litigant merely elected to have his case tried in a French court. Here, the court seised of the matter applied customary law if the issue was one of status and French law in all other cases.

Before the second half of the 1920s, the courts followed a rudimentary system of civil procedure which was fixed by the presiding magistrate of each court. A number of enactments later instituted a system of civil procedure.[26] These were nothing but the piece-meal introduction into Cameroun of the French Code de Procedure Civile. Even

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26. Arrêtés of 1.2. 1926, 12.8.1927, and 11.5.1944; Waffo Thomas c. Société John Holt, Trib. 1ere Inst. de Douala, 15.5.1952, Penant, 1955, p. 36.

provisions of that Code which were not specifically promulgated in Cameroun applied in the territory.[27]

Litigants could be represented by lawyers who combined the functions of solicitor and barrister. The existence of the barrister-cum-solicitor was perfectly normal in French possessions; there was nothing wrong with it.[28] Lawyers were few; four in 1947 and twenty-two in 1952.[29] All were French. No Bar Association existed. The court registrar or clerk often acted as notary, bailiff, or auctioneer (commissaire-priseur). It was common practice for the magistrate of the Tribunal de Première Instance to act at the same time as prosecutor.[30]

3. The judicial service

The separation of judicial and executive powers, laid down as a principle,[31] remained largely theoretical,

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27. In Société de Gestion de la Compagnie Francaise du Gabon, Penant, 1959, p. 499, the Cour de Cassation held on 5th January 1959 that "Provisions of the Code de Procedure Civile not promulgated, apply as written rules in French Equatorial Africa".

28. Cass. crim., 18 January 1955, Penant, 1955, p. 184.

29. Lembezat, op.cit., p. 99. There was then no Camerounian 'avocat'.

30. Procureur de la République près le Tribunal Supérieur d'Appel du Cameroun et Mboumoua, Cass. crim., 12 May 1954, Penant, 1955, p. 59.

31. This principle was confirmed and reinforced by the 1946 Constitution.

especially with regards to courts for Camerounians. French civil servants continued to fill the place of judges. The excuse was lack of trained legal personnel.

Judicial courts however had no power to try cases relating to the functioning of the Administration's services. Such administrative cases were tried by the Conseil du Contentieux[32] which was analogous, not to the Conseil d'Etat, but rather to the Conseil de Prefecture in France. Appeals lay to the Court of Appeal.

The Haut Commissaire and the Parquet were stripped of the powers they used to exercise over the Bench.[33] The discipline and independence of magistrates and the overall administration of courts was ensured by the Conseil Supérieur de la Magistrature.

But the status of colonial judges was in some respects different from that of their metropolitan brethren.[34] Since Cameroun was an associate territory in the French Union, French colonial judges serving in Cameroun came under the French Ministry of Justice and the Ministry of State in charge of relations with Associate States. Their status was fixed by Decree of 22 August 1928 as modified by Decrees of 2nd April 1955, 30 August 1955, 22 October, 1929 and 18 January 1930.

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32. C.E., 31 March 1954, Penant, 1955, p. 11; Emile Mbarga, "L'Evolution de la juridiction du Conseil d'Etat francais sur le Cameroun", Ann. de la Fac. de Droit du Cameroun, No. 7, pp. 3-34.

33. Art. 84 of the French Constitution of 27th October 1946.

34. Cf. art. 83 and 84, ibid.

French colonial judges were regarded and treated as performing 'a public service' under the Ministry for the Colonies, on secondment from the Ministry of Justice. Their salaries were paid from the local budget. They were appointed by decree of the French President on the joint proposal of the Minister of Justice and the Minister for the Colonies. They were not, as their confrères in France, 'inamovible'. Their discipline and independence was ensured by the Conseil Supérieur de la Magistrature. But the Court of Appeal could, as a disciplinary measure, censure, reprimand, and temporarily suspend a judge. However, judges were posted to specific posts by the presidential decree appointing them and could, in theory, only be transferred from one colony to another, without promotion, upon their request or under conditions laid down by their decree of appointment.

In principle, only graduates from the legal section of the Ecole Nationale de la France Outre-Mer or the holders of a Licence en Droit who have passed a special competitive examination were eligible for recruitment as judges. In practice, besides lawyers and other law decree holders, it was usual to appoint civil servants, court clerks, registrars, and les officiers ministériels (legal officers) as judges in the colonial legal and judicial services.

To qualify for promotion, the colonial magistrate must have completed at least one year of service in his current grade. His name must also have figured on the

promotion list (known as tableau d'avancement).

A person appointed judge had to subscribe the following oath: "Je jure et promets de bien et fidèlement remplir mes fonctions de garder religieusement le sécret des déliberations et de me conduire en tout, comme un digne et loyal magistrat." This judicial oath could be taken viva voce or in writing. The oath for interpreters ran as follows: "Je jure de traduire fidèlement les discours échanges entre personnes parlant des langages différents." That for expert witnesses was: "Je jure de bien et fidèlement remplir la mission qui m'est confiée, de faire mon rapport et de donner mon avis avec honneur et conscience."[35]

II. Justice de Droit Indigène

The French established a separate set of courts to deal with cases between unassimilated Camerounians (these constituted the overwhelming majority of the population). There was therefore a dual system of courts in the territory. This dual system of courts survived until it was fused by the judicial re-organisation Ordinance of 1959. At this point, at the threshold of independence, one stops and makes an appraisal of French colonial justice in Cameroun.

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35. 'Justice Indigène', File No. 10942/A, National Archives, Yaounde.

1. The system of courts for the natives[36]

By the Decree of 6th May 1916, France brought the administration of justice in Cameroun within the framework of French Equatorial Africa.

The system of courts instituted by the Germans was provisionally maintained but subsequently suppressed by Decree of 13th April 1921 which set up local courts (tribunaux de lèr degré), district courts (tribunaux de races), regional courts (tribunaux de 2nd degré), and an organ of control, the Chambre d'Homologation. These courts were presided over by French administrators with the help of native assessors nominated by the Haut Commissaire. The Chambre d'Homologation was however presided over by a French career judge assisted by two assessors, one French, one Camerounian, both designated by the Haut Commissaire.

These courts exercised criminal jurisdiction over offences known to and punishable under customary law as well as civil jurisdiction in matters known to customary law. They could sentence to a term of imprisonment. Corporal chastisement was replaced with a fine. Overall supervision of this system of courts was done by the Procureur de la République.

The Decree of 22 May 1922 "rendered executory in

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36. This set of courts bore various labels in the literature: tribunaux indigènes, tribunaux de droit local, juridictions indigènes, juridictions de droit coutumier, etc. etc.

the territory of Cameroun placed under the mandate of France the laws and decrees promulgated in French Equatorial Africa prior to 1st January 1924". Such legislation however applied only in so far as it was not contrary to decrees made specifically for Cameroun. It was in fact as a result of this reception statute that the surviving German laws in Cameroun were replaced.

With the exception of the Tribunal de Races which it abolished, the Decree of 31st July 1927 maintained the court system instituted by the 1921 decree. It granted the right of appeal to native litigants and gave 'le pouvoir déliberatif' to native assessors. The submission of an issue for conciliation either to the village chief or the Conciliation Court was made a compulsory preliminary to any civil or commercial suit.

Although some of its provisions were from time to time amended,[37] the Decree of 31st July 1927 remained, until the judicial reform of December 1959, the basic text governing the system of courts for the indigenous people. The 1927 decree which was brought into force by Arrêté of 11th September 1928, established four courts: tribunaux de conciliation, tribunaux de premier degré, tribunaux de second degré, chambre spéciale d'homologation. A fifth court, the tribunal coutumier, was created by Decree of 26th July 1944.

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37. Decrees of 16.5.1928, 29.11.1929, 24.1.1930, 13.12.1932, 22.6.1934, 24.10.1940, 26.7.1944.

A. Tribunal de Conciliation

Situated at village level, the Conciliation Court took over the existing conciliatory machinery which had been set up by the 1921 decree according to which chiefs were required to make every effort to persuade litigants to settle their differences through conciliation. Only after this attempt had failed could litigants then go to the Tribunal de Races, ancestor of the Tribunal de Premier Degré.

The Tribunal de Conciliation was presided over by chiefs aided by assessors. A successful conciliation had the same effect between the litigants as a binding contract and was recorded as such. Where the conciliation was not binding it was deemed to have the same force as that usually accorded to customary law agreements. A successful conciliation could however be nullified by the Chambre Spécial d'Homologation. In difficult cases, matters relating to jurisdiction and proof, and in cases having an administrative or political leaning, only district officers or important chiefs were empowered to attempt conciliation.

B. Tribunal de Premier Degré

This court was merely the old Tribunal de Races in another name. It heard cases in respect of which conciliation had failed. Each Tribunal de Premier Degré was

established by an arrêté of the High Commissioner. He selected the location of the court (usually at district level) and determined the number of such courts in each locality. The location of these courts was usually influenced by ethnic considerations.

A district officer, or any other French civil servant appointed by the High Commissioner, presided over a Tribunal de Premier Degré. He was aided by two native assessors who acted in an advisory capacity only. Cases of personal status, family matters, marriage, divorce, and filiation were reserved exclusively for this court. In localities with no Tribunal Coutumier, this court also dealt with civil and commercial matters. Up to 1946 it also exercised limited criminal jurisdiction.

A case was begun by an oral or a written complaint of the plaintiff addressed either to the district officer or the presiding judge of the tribunal, enclosing 8 francs in stamps for summons. He did not need to have a solicitor. He could be represented by any duly mandated person. He could swear where customary law so provided. He could also be assisted by an interpreter chosen by him and accepted by the court. The defendant who had to be sued in the court of the place of his residence, had rights similar to those of the plaintiff. A European was not bound to appear before any native court whether as plaintiff or defendant. His evidence was got by commission rogatory or memorandum which was read in court by the presiding judge.

On appeal the plaintiff became the appelant and the defendant, the intimé. An appellant who lost on appeal could be ordered to pay costs assessed at between 1 to 100 francs.

In criminal matters the presiding judge exercised concurrently the functions of juge d'instruction and prosecutor. Appeals from here lay to the Tribunal de Second Degré.

C. Tribunal Coutumier

Created in 1944, this court stood in a coordinate position with the Tribunal de Premier Degré. It had jurisdiction in civil and commercial matters (moveable property, debt, succession, gifts, etc.) except for cases relating to status and the family which were reserved for the Tribunal de Premier Degré. A 'tentative de conciliation' was obligatory in this court but not so in the Tribunal de Premier Degré. Tribunaux Coutumiers were presided over by cantonal chiefs assisted by assessors named yearly. Appeals lay to the Tribunal de Second Degré.

D. Tribunal de Second Degré

It was composed in the same manner as the Tribunal de Premier Degré. It was set up at regional level. It took appeals from the Tribunal de Premier Degré and the Tribunal Coutumier. But it also exercised original jurisdiction in land cases and, up to 1946, serious criminal

offences such as murder, armed robbery, rape, arson, slavery, refusal by a native to obey a French official, and so on. The French administrative officer who presided over the court was assisted by two native assessors with a consultative voice. Appeals from here lay to the Chambre Spéciale d'Homologation.

E. Chambre Spéciale d'Homologation

This court was at the apex of the system of courts for Camerounians. It was not a full court by itself. It was a division or bench of the Court of Appeal exclusively in charge of appeals from the courts for natives.

The Chambre Spéciale d'Homologation was presided over by the president of the Court of Appeal aided by two assessors, a French civil servant and a native notable, with a consultative role.

This chamber ratified, reversed or annulled decisions given by the Tribunal de Second Degré. When a decision was quashed or reversed, the case was sent back to the appropriate subordinate court which had tried it. It was the over-riding duty of this chamber to ensure that courts for Camerounians applied only those customs which were compatible with "les principes de notre civilisation"; a provision which was often used to bend, modify, or transform rules of customary law and, sometimes to strike down rules of customary law the presiding French judge little

understood or was ignorant of, or again, did not tie in with his own concepts of civilisation.

This system of courts survived until December 1959. By that time, despite their ideological differences and tribal proclivities, the various political factions which had sprouted up in Cameroun were all talking of the inalienable right of the people to participate in the running of their own affairs. Indeed, by 1955 there was already open agitation for independence and reunification.[38] Events began to move fast. In 1956 the French National Assembly passed the famous Loi-Cadre (Enabling Law No. 56-619 of June 23) giving greater power to the Cameroun Territorial Assembly and providing that elections would be held on the basis of universal adult suffrage, from a single electoral college.[39]

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38. The re-unification issue was re-affirmed in a Resolution taken by the Cameroun Legislative Assembly in its plenary session on the 24th October 1958: "Conscious of expressing the unanimous sentiment of the populations in all the regions of Cameroun ... Affirm once more its attachment to the principle of re-unification of the two Cameroons and request that all steps be taken to enable the populations concerned to freely express their wish on such reunification before 1st January 1960." See M.D., "Les nouveaux statuts du Togo et du Cameroun", Penant, vol. 69, 1959, pp. 179-198, at p. 197. My translation. See also Haut Commissariat de la Republique Francaise au Cameroun, Cameroun, 1946 - From Trusteeship to Independence 1960 - Next independent country in Africa, Paris, 1959, p. 10.

39. See generally, M.D., "Le statut du Cameroun", Penant, vol. 68, 1958, pp. 85-110; P.M. Gaudemet, "L'Autonomie camerounaise", Rev. Fr. de Sc. Pol., vol. 8, 1958, p. 42; P.F. Gonidec, "De la dépendence à l'autonomie", Aunnuaire Francais, vol. 3, 1957, p. 597. For the first time the vote was given to all adults! The existing Territorial Assembly was dissolved on November 8th 1956. The December elections which were held to elect deputies to the Territorial Assembly were marred by acts of violence and sabotage.

Decree No. 57-501 of April 16, 1957 passed the Statut du Cameroun creating a Legislative Assembly and a Government with authority over internal matters.[40] Article 2 of the 'statut' designated Camerounians as possessing Camerounian nationality. This was novel. But then the territory was still under French Trusteeship and part of the French Union. Moreover, Camerounians were, by virtue of art. 80 of the 1946 French Constitution, citizens of the French Union. Hence, between April 1957 and December 1959 Camerounians were at the same time nationals of Cameroun and citizens of the French Union. There was however nothing anomalous in this for nationality and citizenship are two distinct issues.[41] Under this 'statut' Cameroun retained responsibility over customary justice.

In February 1958, the first Camerounian Government, which had been barely nine months in office, fell following a political crisis, and was replaced by a new one[42] which proceeded to negotiate independence and cooperation terms

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40. See, J.P.G. Mopo, Constitutions du Cameroun, documents politiques et diplomatiques, Editions Stella, Yaounde, 1977, pp. 11-24. In the May 1957 elections, Mr A. Mbida emerged as the Cameroun Premier.

41. See, R. Decittignies, "La condition des personnes au Togo et Cameroun", Annales Africaines, 1957, pp. 7-52. At independence however, Camerounians ceased to be citizens of the French Union. See generally, M. de Bieville, "La naissance d'une nouvelle nationalité en Afrique", Rev. Jur. et Pol., vol. 15, 1961, p. 600.

42. The person who headed this new Government was Mr Ahidjo. He has been in power ever since.

with France. Ordinance No. 58-1375 of 30th December 1958 (it came into force on 1st January 1959) set out a new 'statut' for Cameroun. The Legislature and Government were granted 'full' autonomy over internal matters except for money and security.[43] Independence was scheduled for 1st January 1960. But until then France retained full powers over external affairs.

In theory France relinquished responsibility over the administration of justice in the territory. But, as envisaged in art. 21 of the 1958 'statut', a convention signed with the Camerounian Government left France with the continued superintendence of justice in Cameroun. "Le service de justice est transferé mais, suivant une procédure insolite prévue par l'art. 21 du statut, c'est une convention qui pose les principes de l'organisation judiciaire camerounaise; en outre elle maintient au Président de la République Francaise le droit de grâce et confie au conseil d'état et à la Cour de cassation le contrôle de la justice camerounaise."[44]

Article 5 of the 1958 statut provided that laws and regulations made by Cameroun must respect treaties, international conventions and the principles and fundamental

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43. Art. 23; cf. Mopo, op.cit., p. 27. As of 1958 there were 740 men in the Camerounian Guard, 690 in the 23 platoons of auxiliary Guards, and 635 in the police force. The French Army had 1,200 men stationed in Cameroun, divided into three garrisons. In 1956 a further 1,500 French soldiers were drafted in from French Equatorial Africa. See Cameroun from Trusteeship to Independence, op.cit., p. 20.

44. M.D., "Nouveaux Statuts ... ", op.cit., p. 191.

liberties inscribed in the Universal Declaration of the Rights of Man and the Charter of the United Nations.

Having won a large measure of political autonomy, the Cameroun Legislative Assembly on December 17th 1959 passed Ordinance No. 59-86 overhauling the judicial institutions of the country. The Ordinance provided that justice would be rendered in the name of the Camerounian people. It abolished the distinction between 'justice francaise' and 'justice indigène'. The principal objective of this law was to integrate traditional justice within the mainstream of 'modern' justice by suppressing the two systems of courts which hitherto existed and creating in their place a single unified court system with jurisdiction over all persons, black and white.[45]

Courts created by this Ordinance were: tribunal de conciliation, tribunal de première instance, cour d'appel, cour criminelle, and cour suprême. Article 62 of the Ordinance provided that the Government could, by decree, postpone the date of coming into force of any part of the Ordinance should they find themselves temporarily unable to set up any of these courts. Accordingly, decree No. 59/247 of the 18th December 1959 was passed providing for transitory measures.

With the exception of the Supreme Court, which was entirely new, being the creation of the 1959 Ordinance,

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45. Anne Marticou Riou, "L'Organisation judiciaire du Cameroun", Penant, vol. 79, 1969, pp. 33-86.

the other courts differed from those which they superceded, and whose names they continued to bear, in appearance only. The Tribunal de Conciliation (the requirement that conciliation should be first attempted was now made optional and no longer compulsory) and the Tribunal de Première Instance (now composed of 'magistrats du siège et des magistrats du parquet') now exercised only civil and commercial jurisdiction. Up to 1969 these two courts existed only on paper. The old courts with civil jurisdiction were maintained. The situation was the same with regard to penal justice. The setting up of the Tribunaux Correctionnels and the Tribunaux de Simple Police envisaged by the Ordinance was left in abeyance. Indeed, Decree No. 59/247 of December 18th 1959 expressly retained the old Justices de Paix ('à compétence ordinaire' and 'à compétence correctionnelle').

The special Criminal Court and the Military Tribunal were special courts established to meet specific challenges - the alarming incidence of embezzlement of public funds and the Union des Populations du Cameroun guerilla campaign, respectively.

At first instance level therefore, the courts system remained in practice substantially as before 1959. The distinction between 'justice de droit francais' and 'justice de droit indigène' was replaced with the dichotomy 'justice de droit moderne' and 'justice de droit local'. This was merely the old distinction in a thinly veiled form.

At the appellate level, the situation was different. Decree No.59/246 of the 18th December 1959 (as subsequently amended by Decree No. 62/317 of the 6th September 1962) set up four Courts of Appeal, one each in Douala, Dschang, Yaounde and Garoua. Each Court of Appeal had four divisions: chambre de mise en accusation, chambre correctionnelle, chambre civile, and chambre sociale.

In theory, each Court of Appeal was composed of a President, three Vice-Presidents (for the Yaounde and Douala Courts of Appeal), one Procureur-General, one Advocate-General (for the Yaounde and Douala Courts of Appeal only), one or two assistant Procureurs-General, and two or three puisne judges. In practice, there was not enough personnel to fill all these posts. The Dschang and Garoua Courts of Appeal for example were each presided over by a single Judge. Moreover, the Court of Appeal and the Tribunal de Première Instance shared one Legal Department. Furthermore, the Yaounde Court of Appeal had jurisdiction over two regions, the South-Centre and the Eastern Regions.

The greatest innovation of the 1959 Ordinance was the setting up of the Cameroun Supreme Court with its seat in Yaounde. It was composed of a President, four Counsellors, a Procureur-General, an Advocate-General, and a Chief Registrar.

The Supreme Court was the highest court in the country. It entertained 'appeals' lodged on any of the following ground: lack of jurisdiction, mistake of law,

and miscarriage of justice. Complaints about judges acting ultra vires were also lodged in the Supreme Court by the Procureur-General on the advice of the Minister of Justice.

The received French laws continued to be in force. These consisted of statutes or modified versions thereof in force in France and expressly extended to Cameroun as well as legislation enacted by Paris specifically for Cameroun.[46] The law that governed family and related matters[47] as well as land issues depended upon whether the Camerounian had opted for 'droit moderne' (a euphemism for French law) or 'droit local' (customary). The election needed not be express. It could be implied from conduct or manner of life. A classic example is the case of marriages. Two types of marriages existed and still exist in Cameroun: a customary law marriage and a

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46. Between 1956 and 1958 two Frenchmen, Gaston-Jean Bouvenet and René Bourdin, compiled all the laws in force in Cameroun under a five-volume collection styled 'Codes et Lois du Cameroun'. Tome I dealt with public law. Tome II: Code Civil, Code de Commerce, Code de Procédure Civile, Code Penal, Code d'Instruction Criminelle. Tome III: Droit Social [Enseignment, Santé et Hygiène, Service Social, Droit du Travail]. Tome IV: Economie Générale et Finances Publiques [Règime du Sol, Monnaie et Crédit, Intervention Administrative dans l'Economie, Règime Financier, Droit Fiscal, Impots Directs, Douanes, Enregistrement]. Tome V: Production et Circulation [Agriculture, Elevage, Forêts, Mines, Chemins de Fer, Circulation Routière, Navigation Aeriènne, Navigation Maritime, Postes et Telecommunications].

47. Marriage, filiation, divorce, children, succession, and so on.

registry marriage (mariage à l'état civil). A person who contracted a registry marriage was deemed to have elected 'droit moderne' to govern all issues relating to that marriage. On the other hand, a person who got married under customary law was taken to have evinced an intention that his marriage would be governed by customary law. Camerounians who had acquired the status of 'citoyen' were now styled 'persons of modern status' ('personnes du statut moderne'). These persons were taken to have abandoned customary law altogether. They were subject, in all matters, to the received French laws and local enactments.

2. Appraisal of French colonial justice[48]

The administration of justice was apparently a low priority in the territory. Trade came high on the list of priorities. A glance at the 'Rapports annuels adressés par le Gouvernement francais' to the League of Nations and subsequently to the United Nations, brings this fact out. The section devoted to 'justice européene et

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48. Statistical data used here have been culled from the following sources: Rapports Annuels on the French Cameroun by the French Government; Labouret, Le Cameroun, Hartmann, Paris, 1937, pp. 83-90 and 131; Ministere de la France d'Outre-Mer, Inventaire Social et Economique des Territoires d'Outre-Mer 1950-1955, Paris, 1957, pp. 101-105; Ministere de la France d'Outre-Mer, Annuaire Statistique de l'Union Francaise Outre-Mer 1939-1949, Tome I, Paris, 1951, pp. 278-280; Ministere de la France d'Outre-Mer, Annuaire Statistiques de l'Union Francaise 1949-1954, Paris, 1956, pp. 12-154; J. Binet, "La delinquence au Cameroun", Rev. Jur. et Pol., vol. 12, 1958, p. 523.

justice indigène' hardly covered more than four pages. There is very little literature, almost all the pages being taken up with large statistical tables. One gets the impression that this part of the report is being skated over. By contrast, more time, space and ink are devoted to the section on economic matters. Moreover, in 1935 there were only eleven Frenchmen in the judicial service of Cameroun and three 'avocats-défenseurs et agents d'affaires'. In 1950 there were only 14 judicial personnel serving in the European courts system in the territory. Within four years however, the number had increased to 69.

In 1935 there were persons from at least twenty-five countries residing in Cameroun. These aliens totalled 2,324, of which 1,761 were French.[49] There were 513 persons employed in the Civil Service. They were distributed as follows: 181 in the general administration, 126 in the public works, 71 in the health service, 44 in the Police, 19 in teaching, 18 in agriculture, and 11 in the judicial service. There were 840 persons engaged in the private sector and distributed as follows: 301 in trade, 183 in plantation development, 164 in missionary work, 43 in forest exploitation, 16 in mining activities, 11 in banking, and 3 in the private practice of the law. A probable explanation for the low-keyed position of the

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49. There were also 103 Greeks, 63 English, 63 Lebanese, 60 Americans, 59 Swiss, 40 Germans, 39 Italians, 21 Norwegians, etc.

colonial administration of justice in Cameroun is that neither service on the colonial Bench nor practice at the Bar in the territory provided rosy prospects and particular attraction especially for bright lawyers.

The population distribution of whites and Camerounians in the 20s, 30s, 40s and 50s was as follows:

Table 3

	1921	1936	1946	1954
Camerounians	2,170,000	2,340,000	2,778,000	3,130,000
Whites	1,600	2,300	3,900	12,300

Source: Compiled from data at pp. 12-13 of Annuaire Statistique 1949-1954, op.cit.

The growth of the population of Camerounians was slow. For over a period of thirty years it rose just by one million. For the same period, by contrast, there was a sharp rise in the white population, particularly after the Second World War. The ratio of whites to Camerounians was roughly 1:1360 in 1921, 1:1020 in 1936, 1:712 in 1946 and 1:270 in 1954. Of the 12,300 whites in 1954 at least 10,200 were French; that is, a ratio of approximately 1 French to 307 Camerounians.

Now, it may be thought that it was a large white population which justified the setting up of two separate

systems of courts in the territory, one for whites and the other for blacks. Not so. The dual system of courts was not set up as a result of a large residential white population in the territory. Judicial segregation was part and parcel of French colonial policy. The position would not have altered, it is felt, even if there had been only a handful of Frenchmen in the territory. In theory this judicial segregation was not based on colour (since assimilated natives were also justiciable in the courts for whites). But in practice it virtually was (since there were only a few dozen assimilated natives). To evolve from an indigène or sujet to a citoyen the native had to attain an acceptable level of French civilisation and culture. The metamorphosis was not all that easy.

On the whole French colonial attitude towards the administration of justice in Cameroun can be described as one of judicial paternalism. The penal system however left much to be desired.

A. Judicial paternalism

That France should have adopted a paternal posture in Cameroun is not surprising. Paternalism was at the root of the international tutelage system: the administering power had to look after the infant administered territory until it was able to walk and look after itself. In the judicial sphere, this paternal attitude manifested itself in various ways.

a) Control over the system of courts for natives

The French President exercised the right of pardon over death sentences passed by Natives' courts.[50] It was the French Minister for the Colonies who by decree organised the functioning of courts for natives. The Haut Commissaire saw to the prompt and rapid administration of justice. He appointed court judges and could banish or deport. He could grant bail or revoke a court decision granting bail after consultation with the Procureur. He could remove a case which was before one court and have it tried by a court in another region of the territory. He could in certain cases require the revision of a case.

The local district officer controlled and supervised the courts for natives in his region, and gave accounts to the Haut Commissaire. He authorised the execution of any judgment, signed all orders for expenditure, received appeals from all judgments delivered by the courts for natives, and could take statements and depositions from non-natives. Furthermore, he could require the Procureur to refer a conciliation to the Chambre d'Homologation if he was of the opinion that the conciliation in question offended against 'l'ordre public'.[51]

Courts for natives were single-judge courts presided over by French administrative officers. Natives

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50. Decree of the 31st July 1927, art. 64.

51. Principes de Justice Indigène, File No. 10942/A, Cameroon National Archives, Yaounde.

served in them merely as assessors with either a consultative or deliberative voice, depending on the degree of confidence the French had in them as well as "leurs dispositions naturelles et le stade d'assimilation auquel ils sont arrivés".[52] Any rule of customary law which was incompatible with French 'civilisation' or public order was struck down. French officials presided over these courts, even though that meant that cases had to be heard through the tedious and unreliable medium of interpretation. Apart from their linguistic shortcoming, these officials were also handicapped in that they were generally ignorant of native jurisprudence and ideas of justice.[53] Judicial errors must have been many and a large number of decisions inequitable.

b) 'Option de juridiction' and 'option de legislation'

After the Second World War, unassimilated natives were allowed a special favour. They could, if they so wished, opt for French law and/or courts. Two native litigants could, if they both so agreed, elect to have their

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52. Ministère de la France d'Outre-Mer, Annuaire Statistique 1939-1949, op.cit., p. 257.

53. One Paris-based lawyer who undertook a tour of French Equatorial Africa at the time was astonished to discover that colonial judges here had little knowledge of local customs and languages and that they worked with a small and poorly trained auxiliary staff without any elementary documentation. See Maitre Rolland in Chroniques d'Outre-Mer, January 1952, cited by Thompson & Adloff, The emerging states of French Equatorial Africa, Stanford University Press, California, 1960, p. 82.

case tried in the courts meant for whites. The exercise of this option was known as 'option de juridiction'. But the sole exercise of this option did not confer upon the litigants the right to the benefit of French law. The French court seised of the issue applied customary law. Where the litigants wanted the benefit of French law, they made a declaration in writing to that effect. This was known in the literature as 'option de législation'. The exercise of this option operated to oust customary law and entitled the French court seised of the matter to apply exclusively French law.

The exercise of either of these options was not once and for all time. The law did not in turn permit a litigant to elect to have the benefit of French law in a native court. The exercise of 'option de législation' necessarily meant appearance before the French courts. In theory a native litigant could in one case opt for French law and in another go back on his earlier election and claim the benefit of customary law. In practice, the election was to all intents and purposes final. This was so for two main reasons. First, customary law was usually depicted as a primitive law fit only for the uncivilised sector of humanity.[54] Customary law was always

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54. In a speech made at the opening of the Cameroun Cour d'Appel on the 23rd January 1952, the President of the court, Mr Baptiste had this to say: "Nous verrons parfois des plaideurs rejeter les normes de notre Droit police pour s'en retourner vers leurs lois naturelles, parfois inhumaines, voire curelles. Il conviendra alors que par un lent et patient travail de persuasion, et au besoin, par une repression équitable et bien comprise, nous fassions leur éducation et les orientations vers un idéal de justice moins primitif", cited by M. Nguini, "Droit moderne et droit traditionnel", Penant, 1973, pp. 1-10.

contrasted with 'droit moderne', a deft innuendo that the former was a primitive law and the latter a modern law. To be able to bring one's case before a French court was a status symbol. Secondly, as French courts were staffed with career magistrates who examined cases with more care and attention, it was definitely advantageous to have one's case tried there. The quality of justice here was higher than that in the courts for natives presided over by French administrative officers with barely a nodding acquaintance with legal principles and, less still, customary law.

c) Compulsory preliminary attempt at conciliation

Most disputes between litigants who were natives were settled through conciliation.[55] This was so because natives were required by law to submit their cases first for conciliation before taking them to the Tribunal de Premier Degré if the conciliation attempt failed. The bulk of native litigation was handled by the Tribunal Coutumier and the Tribunal de Premier Degré. Only about 10% of the cases dealt with by these courts ever went on appeal to the Chambre Spéciale d'Homologation. The requirement of a compulsory preliminary attempt at conciliation and the preference for the administrator-cum-judge seems to have been dictated by at least two considerations. First,

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55. 27,010 suits were settled through conciliation in 1950 and 42,482 in 1954.

the penury of trained legal personnel in the territory; and, above all, the desire for a rapid cheap and uncomplicated system of justice. Moreover the insistence on attempt at conciliation evidently stemmed from the erroneous view that indigenous judicial process is marked by procedural informality and emphasis on negotiation and conciliation in contrast with European procedure. As a matter of fact however, informality in traditional judicial process is more apparent than real. Although reconciliation has an important value in the system it is not an ultimate value to which legal norms are sacrificed.

d) Internal conflict of laws rules

Civil cases were generally governed by the personal law of the litigants. In the case of Frenchmen and assimilated natives, this law was the French Civil Code as received in Cameroun. Indeed, French law was said to constitute 'le droit commun', or the ordinary law, of the territory. Unassimilated natives (that is, virtually the entire Camerounian population) were governed by customary law (droit local) which was regarded merely as a residual law. In deciding a customary law matter, the courts applied the customs of the litigants. But as rules of customary law sometimes differed from one ethnic group to another an internal conflict situation was bound to arise where an issue involved two parties from tribes with conflicting rules of customary law. To resolve this problem

four rules were laid down.[56]

Rule 1 In matters relating to marriage, divorce, custody of children, the lot of a wife following the breakdown of marriage by divorce, repudiation, or death of her husband, the court shall apply the custom under which negotiations for the marriage were made or, if there was no contract, the custom of the woman.

Rule 2 In matters relating to gifts the court shall apply the custom of the giver.

Rule 3 In contractual matters other than a contract of marriage and, generally, in all other matters, the court shall apply the custom habitually observed in the place where the contract was made.

Rule 4 In matters of succession and wills, the court shall apply the custom of the deceased.

e) A uniform criminal law and procedure

Before 1946 courts for natives had criminal jurisdiction over offences committed by natives. They could impose a fine of up to 5,000 francs, banish for up to 20 years, imprison for up to 20 years or for life and could even pass the death sentence. The decree of 31st July had

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56. H. Labouret, op.cit., p. 75. My translation.

provided for the fusion of sentences to run concurrently where several offences had been committed simultaneously.

In 1946 the baneful 'indigénat' was proscribed by Decree No. 46/277 of the 20th April. On 30th of that same month and year the criminal jurisdiction of courts for natives was abolished. Also abolished was the common native criminal code for Africans which had been recommended by the Brazzaville Conference and had been instituted by the decree of 17th July 1944. The Decree of 30th April 1946 provided that "as from the 1st of July 1946 ... French courts shall alone have jurisdiction in criminal matters in accordance with the law applied in these courts and, to the exclusion of any native court, jurisdiction over all offences committed by natives".

The French Penal Code was immediately extended to apply to natives. This sudden volte-face resulted in a serious slow down of the criminal process for, the Code had to be tinkered with to meet local conditions. Provisions had to be made for punishing witchcraft, slavery, adultery by a polygamous spouse, anthropophagy or cannibalism,[57] and so on. By 1959, at least 63 out of the 484 articles in the Code had been amended to suit local conditions.[58]

Courts with criminal jurisdiction soon found

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57. Poursuites contres les anthropophages, File No. APA 10816/4, Cameroon National Archives, Yaounde.

58. J.C. Froelich, Cameroun-Togo: territoires sous tutelle, editions Berger-Levrault, Paris, 1956, p. 74.

themselves with much work and a heavy backlog of cases. The result was bottlenecks. At first this increased number of cases was regarded as an indication of widespread confidence in the new system of criminal justice. But as time went on it was realised that natives were becoming disillusioned with the new system. The rural population in particular was disorientated because cases were no longer tried according to customary law and procedure. The French Criminal Procedure Code was introduced, piecemeal, into the territory.[59] Hence, after 1946, the criminal law and procedure in Cameroun was basically the same as that in France.

f) Jurisdiction of the Cour de Cassation over colonial courts[60]

'Appeals' from the Cameroun Cour d'Appel lay to the Cour de Cassation in Paris which reviewed the legal points involved in the case. That court had three divisions: Chambre de Requête, Chambre Civile, and Chambre Criminelle. The chambre de requête decided whether there was a sufficient legal basis for the appellant's appeal to be heard by either the Chambre Criminelle or the Chambre Civile. This was something like a pre-trial of the case

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59. For example the following aspects of metropolitan criminal procedure: bail, legal aid for the accused, concurrent sentences, mitigation, conditional release, rehabilitation, constitution de partie civile.

60. For a summary account of the jurisdiction of the Cour de Cassation over French colonial courts, see Maitre Lapaulle in Hollandar, Colonial Justice, Bowes & Bowes, London, 1961, pp. 107-108.

at cassation level. If the Chambre de Requête decided that there was no basis for the appeal, it refused leave to go to either chamber.

A judgment of the Cour de Cassation sitting in Full Bench (Chambres Réunies) was final. But such a decision had to be recorded by a third Court of Appeal which was bound to enforce it.

The Cour de Cassation usually sent back the case to another court of appeal for judgment because the Cour de Cassation was in principle a court of cassation and not one of judgment. No problem arose where there was more than one court of appeal in a given colonial territory. In Cameroun however, there was only one Court of Appeal. So what happened was that where the Cour de Cassation quashed a decision given by the Court of Appeal in Yaounde, it sent the case back to the same court; but this time, sitting with a different judge. There were however not many appeals from Cameroun to the Cour de Cassation.

g) Court fees

During the German era court fees were assessed at 10% of the pecuniary value of the suit and a fixed fee of 20 marks in matters of status. This fee schedule was abolished by the French in 1933. The new fee schedule was as follows: 6% of the pecuniary value of the suit, 60 fr. where the value of the suit could not be determined, and 75 francs in any action for the recognition of title to land.

But this fee schedule was not commensurate with the ability of most litigants to pay. Judges were therefore empowered either to waive or reduce fees where appropriate.

h) Early attempts at codification of customary law

The history of codification in Cameroon goes back to German times. It was they who first attempted to codify the traditional laws of the people of Kamerun.[61] Their laudable efforts were however arrested by the 1914-18 War.

At their Brazzaville Conference in 1944 the French agreed to draw up a common criminal code for French territories in Africa. That code was drafted and promulgated in Cameroun by Decree of the 17th July 1944. But this so-called Native Criminal Code (it was merely a variant of the French Penal Code) lasted for only twenty months. In April 1945, French courts were vested with exclusive criminal jurisdiction. There was therefore no need to import French criminal law into the territory through the back door. It was brought in through the front door and made to apply to natives as well. The code, like others, had to be tinkered with to suit local situations.

As far as the civil law went, the French followed the path already beaten by the Germans. In 1932, the French undertook to codify customary law. By a Circular

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61. See, Situation juridique des peuples dits primitifis, File No. TA-18, Cameroon National Archives, Yaounde.

of 11th October 1932, the Commissaire de la République Francaise directed all heads of administrative units in Cameroun to carry out research into the traditional laws of the natives in their various circonscriptions to serve as a basis for general codification. But he added a caveat. "This codification", he minuted, "shall not be completely immutable. Custom evolves under diverse influences just as our civil law has undergone those modifications brought about by case-law. But native customary law, without claiming the force of the civil law, shall constitute a precious guide for the native tribes."[62]

The investigators' terms of reference were 'le droit civil tout entier'. They were instructed to use the broad classification in the French Civil Code as a model. Their investigation was to fall under four heads: Collectivity, Persons, Property, Contracts.

The project however failed mainly because it was undertaken by heads of administrative units who were already overworked. Such bits of information as were hastily collected through the tedious and dubious medium of interpretation did not come near the wide scope of the project. Moreover, the envisioned document was to be a code only in name. The Commissaire himself had said that it was to be a mere 'guide' claiming no force of law.

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62. Labouret, op.cit., pp. 79-80. My translation and emphasis.

This attempt having failed, it was decided to embark on less grandiose projects. The French therefore fell back on the so-called codifications spéciales. These were merely compilations of rules of law on specific subjects.[63]

B. The Penal System

It was a feature of French colonial penal system that offences were sometimes imprecisely defined, that the sentencing pattern was not uniform, and that there was a marked preference for sending convicted offenders to jail.

a) Offences

Besides the ill-defined offences contained in the notorious and ignominous 'indigénat' decree,[64] there were also such offences as 'rebellion', 'outrages à fonctionnaire',

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63. Cf. Decree of 30th November 1926 proscribing 'mariage des impubères'; Arrêté of 26th May 1934 regulating customary marriages in Cameroun as amended by the Arrêté of 11th January 1936. See generally, Carlson Anyangwe, Divorce and property rights in Cameroon: a comparative study, Dissertation in part fulfilment of the requirements for the Licence en Droit, University of Yaounde, 1974.

64. Décret No. 46-277 du 20.4.1946 portant suppression des peines de l'indigénat en A.O.F., au Cameroun, au Togo, à la côte francaise des Somalis, à Madagascar et dependences, et en Nouvelle Caledonie. For an exhaustive treatment of the 'indigénat' system, see R.L. Buell, The native problem in Africa, vol. II, the Macmillan Company, New York, 1928, pp. 379-392.

'refus d'obéissance', 'pillage en bande et à main armée', 'mariage d'impubère', 'traite',[65] 'mise en gage', 'rapts', 'meutre',[66] 'viol',[67] 'adultère', 'coups et blessures', 'exaction et abus d'autorité', 'vol et escroquerie',[68] 'sorcellerie',[69] 'magi ', 'anthropophagie',[70] 'medecine illégale', 'vagabondage', etc. Most of these offences were not found in the French Penal Code but had been created specifically for the territory. They were however, often vague and nebulous.[71]

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65. Decree of 30th November 1926 proscribing slavery and cannibalism in Cameroun. In May and June 1917 alone the following persons were convicted of slave dealing by the 'tribunal indigène': Barkido dit Tiamake, Moussa Goto, Sarah Robertson, Motasse, Yeme Isaac, Diarra Tiecourre. See, Journal Officiel des Territoires Occupés de l'Ancien Cameroun, June 1917.

66. Between June and July 1917 'tribunaux indigènes' convicted 7 persons of murder and 1 of murder and cannibalism. Journal Officiel, August 1917.

67. In 1932, Albert Chaspoul, Procureur-General and head of the Judicial Service in Cameroun minuted (Circular No. 2607 of 20.9.1932) that 'viol et attentat à la pudeur' offences came frequently before the courts. See, Justice Indigene, File No. APA 10310, Archives, Yaounde.

68. These were the most common offences. See, File No. APA 10310, ibid.

69. This was one of the most ill-defined offences. It was sometimes prosecuted as 'magie' or 'fetichisme'. As early as 1916 the Douala 'tribunal indigène' convicted and sentenced from between 5 to 10 years five persons charged with being 'fetichistes'. See, Journal Officiel of 1st March 1917.

70. As recently as November 1948 a case of cannibalism was reported in Bertoua. A number of Baya hunters living in the forest were alleged to have killed and eaten a person who was mentally deranged. The matter was brought to the attention of the Haut Commissaire in Yaounde by the administrative officer(M. Doudet) for the region of Lom and Kadei in his despatch from Batouri dated 2nd April 1949. Three arrests were made. See Poursuites contre les anthropophages, File No. APA 10816/4, Cameroon National Archives, Yaounde.

71. For example, art. 1 of Arrêté No. 206 of the 26th January

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Offences against property and the person were the commonest types of offences in the territory. The prototypes of the former category were theft and fraud; and of the latter, homicide and other crimes of violence against the person.[72]

Convictions for theft shot up from 3,034 in 1952, 3,358 in 1953 to 4,631 in 1954. Convictions for fraud also rose from 300 in 1952 to 430 in 1954. Convictions for 'rebellion' rose from 17 in 1941 to a staggering 306 in 1948. Convictions for murder were 34 in 1939, 44 in 1952, 57 in 1953, and 52 in 1954. There were 423 convictions for manslaughter in 1953 as against 386 in 1952. In 1952 there were 1,424 convictions for assault causing wound, 1,675 in 1953 and 2,417 in 1954.

Most of these offences were perpetrated in the more advanced districts of the territory such as Douala,

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Footnote 71 continued from previous page.

1946 provided: "Tous acts, paroles, gestes, manoeuvres quelconques, toute dissimulation d'identite, toutes abstentions volontaires susceptibles de constituer une opposition à l'autorite légitime d'un chef de région administrative, d'un chef de sub-division, ou d'un chef de poste administratif, et, par là, d'atteindre l'ordre public ou d'entraver la bonne marche du service seront punis des peines prévues."

72. A colonial officer who once served in Cameroun has remarked that "delinquency is to a large extent linked with professional life. It is not by chance that drivers and motor-boys are often indicted for adultery, and sales employees for theft or fraud." See, J. Binet, 'La délinquance au Cameroun', Rev. Jur. et Pol., vol. 12, 1958, pp. 523-530, at p. 530.

Edea, Kribi, Yaounde, and Garoua, an indication that there must be a nexus between development and criminality.[73]

On the whole, between 1955 and 1958, 35,156 persons were convicted of various criminal offences, 7.4% of whom had been convicted of 'reconstituting an illegal organisation'.[74] The incidence of crime was by far higher in the southern than in the northern part of the territory. Offences by young persons below twenty years were quite frequent. But the vast majority of offenders came from the 20-35 years age bracket.[75]

b) Sentencing

The Germans had leaned in favour of flogging and imposing a fine rather than imprisonment. By contrast the French showed a marked preference for imprisonment. Of the 10,288 natives who were convicted in 1953, 8,873 were sentenced to various terms of imprisonment while only 1,145 were fined.

There was no uniformity in the sentencing pattern. This was particularly so under the 'indigénat' system where French officials sentenced natives as they pleased.[76]

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73. According to Labouret, op.cit., at p. 86, homicide and other offences of violence against the person "ont leur siège dans les règions de Dschang et dans la cuvette tchadienne, sur le territoire de Maroua et de Mokolo. C'est également dans ces deux circonscriptions que les faits de traite et les attaques à main armée sont le plus souvent constatés."

74. Haut Commissariat, Cameroun, from trusteeship ..., op.cit., p. 22.

75. Cf. Binet, op.cit.

76. In 1935 for example, in a Cameroun whose population was only 2,338,000, the number sent to jail under the 'indigénat' was 38,000, i.e. one out of every 64 Camerounians was sent to jail.

Moreover, a decree of May 3rd 1945 gave administrative authorities 'le droit ... de prendre des arrêtés avec pouvoir de les sanctionner de quinze jours de prison et 1,200 francs d'amendes aux maximum'.

Sentences were sometimes harsh. An offender could be jailed for up to ten years (in 1934 for example, 464 convicts were serving terms of above five years each) and could be deprived of such rights as he had; he could be deported from the territory; he could be banished from his locality or exiled for up to ten years. Moreover, murder, assassination carried the death penalty. Executions were however never carried out in public.[77]

c) Prisons

Prisons administration was governed by an Arrêté of 8th July 1933. Article 1 of that law made provisions for the setting up of prison centres in the various administrative areas of the territory to detain native debtors, natives awaiting trial, and natives punished under the 'indigenat' system. White convicts were, subject to the rules governing their transfer to Europe, detained in the Douala and Yaounde prisons where there was a special wing of the prison reserved for them.

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77. An arrêté of 15.5.1944 designated prisons in which executions may be carried out. Art. 3 of that law provided that natives sentenced to death by Native courts would be executed by a firing squad of 12 native soldiers.

Prisoners had to work; women and dangerous ones inside the prison, and the rest outside on 'chantiers administratifs'. Apart from their normal daily corvée, prisoners were in theory taught such productive trades as weaving, bricklaying, carving and so on. Prison labour could be hired by anyone who needed such labour and could pay for it. Prisoners could be transferred from one prison to another inside the territory 'dans l'intérêt d'un bon fonctionnement du règime pénitentiaire et en vue d'une utilisation judicieuse de la main-d'oeuvre pénale'.

There were two categories of adult prisoners, 'détenus de droit commun' and 'détenus administratifs'. The former were segregated from the latter and did not do the same type of work. There were usually more 'détenus administratifs' (these were mainly natives jailed by French officials under the 'indigénat' system) in the prisons than 'détenus de droit commun'. For example, there were 39,730 convicts in the former category in 1934 as against 2,821 in the latter group. In 1935 they were respectively 32,858 and 3,515. The number of 'détenus administratifs' began to fall after 1946 following the abolition of the 'indigénat' in that year.

By 1955 there were 2,583 prison inmates in Cameroun, most of them serving terms of below six years. Of this number, 80 were young offenders of below 18 years of age. There were two types of young offenders. First, those who acted without discernment. These were supposed to be sent

to borstals (maison d'education surveillee). No borstal was in fact ever built in the territory. Second, those young offenders who acted with discernment. These were supposed to serve their sentences in special reformatory centres or, in default, in a special wing for young offenders in the ordinary prisons. An arrêté of 7th December 1933 set up a 'colonie pénitentiaire' for delinquent juveniles on a small island (to prevent possible escape) at the mouth of the River Sanaga, at Malimba. It had 16 inmates in 1933, 26 in 1935, and 36 in 1936. This centre was however closed down in 1939 (arrêté of 10.7.1939) and its inmates moved to the Prison at Saa.

Discipline in the prisons appears to have been lax. Prisoners could obtain permission to attend a dance or cinema outside the prison. Correspondence to and from prisoners were censured except those from counsel or an administrative authority. Article 30 of the arrêté of July 8th 1933 provided, "Les cris, chants, interpellations et tous actes de nature à troubler le bon ordre à l'intérieur des locaux pénitentiaires sont interdits. Il en est de même pour les jeux de toutes sortes." A prisoner who offended against prison regulations could be punished in one of the following manners: extra work to do, deprivation of meat or fish for two weeks, solitary confinement for 15 days, solitary confinement in chains for 15 days without food.

Prisoners were, on paper, entitled to prison uniform. This was in practice not the case. Prisoners

wore their private items of clothing. Prisoners slept on mats on raised floor (bat-flanc). By contrast white detainees slept on beds with complete bedding and a mosquito net. However, the prisons doctor made monthly visits to each prison. Prisoners were required to have a bath or shower at least once a week 'à l'heure chaude de la journée'. Where there was an outbreak of a contagious disease or epidemic, the doctor in accord with the local administrative boss, took 'toutes les mesures de protection et de prophylaxie nécessaires'. Nevertheless, the data below would appear to suggest that prison conditions were probably not quite hygienic.

Table 4

Year	No. of medical consultations	Days of illness	Deaths
1934	81,211	32,605	147
1935	73,742	42,598	216

Even in the 1950s the 'journées d'indisponibilités' were still in the thousands and deaths in the prisons had by no means been brought down to single figures. One is therefore inclined to take with a pinch of salt the claim that "after a month's stay in prison, prisoners put on between three to eight kilogrammes of extra weight. The

accommodation was comfortable, the food far superior to the usual meals, and work very light. It is therefore not surprising that well informed offenders voluntarily have themselves incarcerated during the lean years."[78]

In 1935 the Mokolo Prison, designed to take hardened criminals serving terms of more than five years, was completed.

At the end of 1958, there were 2,191 persons awaiting trial and 3,662 already serving their sentences in the various penitentiaries in Cameroun.

The indigénat remained a sore in the French colonial system of justice. The hallmark of the judicial system was a segregated system of courts based on the distinction between whites and assimilated natives on the one hand, and unassimilated natives on the other hand. Legislative policy was marked by the piecemeal introduction of French laws into the territory.

Although France herself tasted the bitter pill of alien domination during the Second World War, French colonial legislative and judicial policy did not witness a radical change. The only enlightened move was the abolition of the indigénat in 1946. The change of the

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78. P. Decheix, "Réflexions sur la justice pénale Outre-Mer", Rev. Jur. et Pol. d'Outre-Mer, Vol. 13, 1959, pp. 120-126, at p. 126.

political status of Cameroun from mandated to trusteeship territory had little effect on the existing legal and judicial systems in the territory.

Nor did independence in 1960 bring immediate and radical changes in the administration of justice in Cameroun. Firstly, independence merely nationalised, as it were, the existing French laws in force in the country. Secondly, independence did not, as far as the civil law was concerned, destroy the duality of status which existed between 'citoyens' and 'sujets'. The former category of persons (now euphemistically called 'personnes du statut de droit écrit') continued to be subject to the received French Civil Code, and the latter (now styled 'personnes du statut de droit local') to customary law except where they expressly opted out of it. Finally, virtually all the numerous colonial courts were maintained; for, most of the reforms envisioned by the 1959 Ordinance never saw the light of day.

PART III

THE MACHINERY OF JUSTICE

According to Montesquieu's theory of the separation of powers, there are three branches of government: the Executive, the Legislature, and the Judiciary. The legislature makes the laws, the executive executes them and the judiciary administers public justice. There are therefore specially trained people whose duty it is to administer public justice following a machinery established for that purpose.

There was no doubt that political independence and unification of the 'two Cameroons' even under a federal system of government would present the authorities with the crucial problem of law and the administration of justice in the new State. Accordingly, the constitutional approach to the issue was and continues to be pragmatic (Chapter 6). Forty-four years of separate colonial administration had left indelible marks on the country; two official languages, two opposing cultures and mentalities, and two extraneous legal systems. Under these circumstances it was neither wise nor feasible to make a complete tabula rasa.

Accordingly, the 1961 Federal Constitution provided for the continuance of the laws and the courts of the pre-independence period while leaving open the possibility of the creation of new courts (Chapter 7). In 1972,

the process of political unification was carried a step forward with the abrogation of the federal constitution and the adoption of a unitary one. The 1972 constitution maintains "in force" the "legislation resulting from the laws and regulations" applicable in the Federal and federated States on the date of entry into force of the constitution; provided that such legislation is not contrary to the provision of the Constitution or amended by legislative or regulatory process. The Constitution also created a single Supreme Court for the whole country, thereby abolishing the Federal Court of Justice and the Supreme Courts of each of the two federated states. This paved the way for the rationalisation and unification of the hitherto complex and cumbersome courts system in the country (Chapter 8).

However, it is not sufficient for the State merely to establish the judicial organs which are to administer justice and the rules governing the existence and organisation of the various courts. The legal status of the persons in charge of or concerned with the administration of justice must be spelt out (Chapter 9) and the legal profession organised (Chapter 10). Moreover, personnel of the law and matters of judicial administration require control, supervision and coordination by a body created for that purpose, the Ministry of Justice (Chapter 11).

CHAPTER SIX

THE CONSTITUTIONAL FRAMEWORK

Since reunification in 1961, Cameroon has had two Fundamental Laws; the Federal Constitution of 1st September 1961 and the Unitary Constitution of 2nd June 1972. In dealing with the content of Cameroonian law and with the issue of the administration of justice the draftsman of each of those constitutions had to take account of the bi-jural nature of the country. How was this done under the 1961 constitution (section I) and that of 1972 (section II)?

I. The Federal Constitution of 1st September 1961

Before examining how the draftsman of the 1961 constitution approached the question of the administration of justice (paragraph 3), it would be germane to indicate, in the broadest outline, how the 'two Cameroons' came to reunify (paragraph 1) and the peculiar nature of the defunct Cameroonian federation (paragraph 2).

1. The road to independence and reunification

The vociferous Lond- and Paris-based National Union of Kamerun Students and the militant Union des

Populations du Cameroun had advocated the reunification of the 'two Cameroons' before the grant of independence. The reverse took place. Independence preceded reunification[1] and besides, the reunification fervour, kindled and nurtured by the 'Kamerun Idea'[2] was only partly satisfied.[3]

The reunification issue itself was pursued without clear-cut ideas as to what form it was going to take. Meetings between Mr J.N. Foncha and Mr A. Ahidjo resulted in only vague agreements that reunification should take the form of a federation. The All-Party Conference

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1. France granted independence to the French Cameroun on 1st January 1960. It became known as the Rpublic of Cameroun. Following a U.N. organised plebiscite which was held there on February 11, 1961 the Southern Cameroons gained her independence from Britain by uniting with the Republic of Cameroun on 1st October 1961.

2. The 'Kamerun Idea' was based on an irredentist sentiment among Cameroonian nationalists that thirty-two years of German rule had forged a Kamerun Nation and therefore that Britain and France should restore the country to the single unit it was before the Anglo-French partition of 1916. The myth was that the Germans had so welded the various tribes together that one could properly speak of a 'Kamerun Nation'. For a view that this was a mere figment, see E. Ardener, "The Kamerun Idea", West Africa, June 7, 1958, p. 533.

3. In a highly controversial U.N. sponsored plebiscite held in the northern segment of the British Cameroons there was a 60% vote by the inhabitants there to remain within the Nigerian Federation. Yaounde protested to the U.N. alleging that there had been malpractices and irregularities during the conduct of the plebiscite. The U.N. rejected the protest and ruled that the trusteeship of the Northern Cameroons should be terminated on 1 June 1961 - a day observed for some years in Cameroon as a day of national mourning. Cameroon took the matter to the International Court of Justice. By a judgment of 2.12.1963, the court refused to accept jurisdiction in the case on the ground that the U.N. had approved the result of the plebiscite and terminated the trusteeship agreement.

of the political leaders of the Southern Cameroons held at Bamenda from June 26th to 28th, 1961 to define the position of the Southern Cameroons on the reunification issue ended in a failure to reach a consensus on the form reunification should take. There were however a number of interesting proposals put forward at the Bamenda Conferences: (i) that there should be a loose federation with a high degree of autonomy for each of the two states (that is, each state would exercise the powers it already had while a weak central government would exercise only a few residual powers); (ii) that there should be two citizenships for Cameroonians (that is, a state citizenship and a federal citizenship); and (iii) that there should be a clause in the proposed Constitution providing for the legal secession of the Southern Cameroons should that become necessary.[4] These proposals however came to nothing.

The Foumban 'bilateral conference'[5] held from July 17th to 21st, 1961 brought together the representatives of the Republic of Cameroun and of the Southern Cameroons. The Southern Cameroons' delegation was in a weak position to negotiate meaningfully, make strategic demands and secure far-reaching concessions. There were many reasons for this.

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4. J. Benjamin, Les camerounais occidentaux, Montreal, 1972, p. 109.

5. Benjamin, ibid. at page 111 appears to suggest that the expression 'constitutional conference' is a misnomer here.

First, there was political dissension among members of the delegation as to the form unification should take. Secondly, the delegation never presented a common front. Thirdly, the delegation's attitude at Foumban was reverential and suppliant rather than tough and business-like. Fourthly, the delegates were naive and taken in by the idea of meeting and discussing with a 'big brother'. Finally, and very crucial too, was the hard reality that the Southern Cameroons was then still a colonial territory whereas the Cameroun Republic was already a sovereign state. Under these circumstances, defeat was inevitable. The whole conference lasted only four days, during which time there was only one plenary session. The Cameroun Republic's delegation saw the conference as no more than an opportunity given to politicians of the Southern Cameroons to make reasonable proposals for the modification of the existing constitution of the Cameroun Republic (i.e. the March 1960 Constitution) "so as to meet the peculiar situation of a hitherto estranged part of the country returning to the motherland".[6] Although both sides eventually agreed to a federal union, the Southern Cameroons' hopes for strong state autonomy were not realised. The Southern Cameroons delegates "anticipated a loose federation with a dimunitive and weak government at the center,

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6. Note the full title of the 1961 Constitution. See also, Frank M. Stark, 'Federalism in Cameroon: the shadow and the reality', Canadian Journal of African Studies, vol. X, No.3, 1976, p.423.

and robust states endowed with nearly every power they had formerly exercised. This vision and the values that inspired and nourished it could not have contrasted more with what the Ahidjo regime proposed and achieved at the Foumban conference and a few secretive discussions which followed."[7]

2. Federation à la camerounaise

On 1st October 1961 the Federal Republic of Cameroon was formed with the Cameroun Republic as East Cameroon and the Southern Cameroons as West Cameroon. The Constitution, adopted on 1st September 1961 and effective on 1st October that same year, provided for a Federal President, Vice-President, National Assembly, and Federal Ministries, while basically retaining the formal governmental structures which existed in each of the two federated states before independence. Immediately after federation however, Cameroon was divided into six Regions for purposes of 'territorial administration'. West Cameroon constituted a region while East Cameroon was carved out into five regions. Each of these 'administrative regions' was headed by a 'federal inspector of administration' appointed by the President 'not only to

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7. W.R. Johnson, The Cameroon federation - political integration in a fragmentary society, Princeton, 1970, p. 184.

control but also to coordinate' federal services in the region. The Federal Inspector was the President's direct representative in each administrative region.[8]

There were therefore two 'Authorities' in West Cameroon in charge of two levels of administration; the Prime Minister (Anglophone) in charge of state matters and the Federal Inspector (Francophone) in charge of federal services. In the early years of the federation however, federal jurisdiction was limited. Moreover, because of the shortage of qualified personnel the Federal Government decided that civil servants of the federated states should also act as federal civil servants. The Federal Inspector had the power to issue and ensure the enforcement of regulations. His powers increased as federal jurisdiction extended. His omnipresence, his insistence that civil servants came under his authority as the President's direct representative, and his bold claim that he stood in a coordinate position with the West Cameroon Prime Minister, inevitably led to frequent conflicts between him and the West Cameroonian Authorities.[9]

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8. Decree No. 61/DF/15 of 20 October 1961.

9. Benjamin, op.cit., pp. 65-69. There were persistent quarrels, especially in matters of protocol. At public occasions the Inspector wanted to arrive at the same time as the Prime Minister and also be escorted by a police motorcade, to inspect the guard of honour mounted by the forces, to fly the national flag above his residence, etc. This was in effect a psychological battle as to who was the effective authority in West Cameroon. In 1967, Decree No. 67/DF/542 of 20 December 1967 was passed by the President making it clear that in West Cameroon the Inspector came sixth in protocol. But this did not deter the Inspector in early 1968 from insisting, during the opening of the judicial year in Kumba, that it was he and not the Chief Justice as has traditionally been the

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Federation seems to have been agreed upon merely as a means of allaying the fears of Southern Cameroonians of becoming second-class citizens in the new Republic. But the 1961 constitution was more in the nature of a unitary constitution than a federal one. The federated states had virtually no proper powers of theirs. The Federal Government was all-pervading. The relationship between the states and the federal government was not defined. The President was preponderant. "Any federalism supposes a distinction between matters reserved for the Federal State and those which are part of the domain of the Federated States. A simple reading of article 5 et seq. of the Cameroonian constitution shows that the Federal State has got the lion's share for itself ... Thus the autonomy of the Federated States is fairly weak, as much also from the point of view of the exercise of powers."[10] Commentators on the 1961 constitution have always been intrigued by the special kind of 'federation' that was the Cameroonian one.

The division of power between the Federated States

Footnote 9 continued from previous page.

practice in West Cameroon, who had to inspect the guard of honour mounted on that occasion. Once more the quarrel was resolved by the President who instructed the Inspector to respect West Cameroonian traditions. Cf. Benjamin, op.cit., p. 173, footnote 67.

10. P.F. Gonidec, La république fédérale du Cameroun, Berger-Levrault, Paris, 1969, pp. 36, 37. My translation.

and the Federal State weighed heavily in favour of the latter. Federal jurisdiction was defined in articles 5 and 6. Article 6 specified those subjects over which the federated states might continue to assert responsibility until such a time as the federal government chose to take control of them. Article 5 spelt out those matters over which the federal government had immediate and exclusive control. All matters not specifically entrusted to the federal authorities (and these were by far the less important matters) remained, as provided by article 38, within the exclusive competence of the individual states. The strict and immediate application of article 6 would have led to the erosion and disappearance of federalism and the realisation of a unitary state for, "lorsque les autorités fédérales se sont saisies de toutes les compétences énumerées à l'article 6, les Etats fédérés deviendront de simples circonscriptions administratives".[11] But, as already indicated, provision was made for the states provisionally to control many matters, although only for as long as the Federal Government chose to ignore them. In this way the immediate impact of articles 5 and 6 on West Cameroon was softened and not immediately perceived by West Cameroonians. The honeymoon however lasted for only about five years. By 1966 the Federal Government had

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11. J.M. Nzouankeu, 'Remarques sur la constitution camerounaise', Civilisations, vol. 19, no. 2, 1969, pp. 216-223, at p. 219.

effectively pre-empted the matters listed in article 6 from state control by passing legislation concerning them. The process was ironically referred to locally as 'federalisation'.

Another characteristic of the 1961 constitution was that the division of power between the Executive and the Legislature was tilted heavily in favour of the former. The Federal National Assembly consisted of 50 deputies (40 from East and 10 from West Cameroon) elected for a five-year term. The legislative authority of the Assembly was limited to matters specifically mentioned in the constitution. The Federal President, also elected for five years, was both Head of State and Government. Power was heavily concentrated in his hands. He was empowered to appoint ministers, exercise regulatory power, and conduct foreign affairs. He exercised considerable direct control over the state governments: he appointed and dismissed their Premiers,[12] he dissolved the state assemblies,[13] he published their laws, if he disagreed with a Bill passed by a state legislature he could refuse to promulgate it and return it for reconsideration, although it was automatically

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12. Theoretically the President could only appoint as Premier a person who has received the investiture of the state assembly. Such an investiture was however a mere formality particularly after the institution of the de facto one party system in 1966.

13. He did so either when the Premier of a state has lost the confidence of the state assembly or in the event of persistent disagreement between the state assembly and the state government.

published if it passed again; he controlled the appointment of the state Premiers' small cabinet of six secretaries of state, each heading a state ministry.

3. Matters relating to the administration of justice

The failure of West Cameroonian leaders to secure a high degree of autonomy for West Cameroon at the Foumban conference has already been noted. Another failure, at least as the West Cameroonian delegation saw it, was in the area of the administration of justice. During his plebiscite campaigns Foncha had promised his electorate that the English legal system would be preserved in West Cameroon. In his vision of a loose federation, matters relating to justice and the Police were, among other things, going to be the exclusive responsibility of each federated state. This hope was shattered at Foumban. Responsibility for justice was allotted to the Federal Government. Only one concession was made to West Cameroon in this respect. West Cameroon customary courts were preserved and regulated by the rules of that state except for appeals therefrom. It has however been suggested that the allotment of matters relating to the administration of justice to the Federal Authorities was prompted by the desire to unify the differing legal systems which obtained in East and West Cameroon.[14]

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14. A.M. Riou, 'L'Organisation judiciaire du Cameroun', Penant, vol. 79, No. 723, 1969, pp. 33-86.

Under article 5 of the 1961 constitution the powers of the Federal Authorities embraced, inter alia, the following matters: regulations concerning conflict of laws, regulations concerning the Federal Civil Service, the Judiciary, and the organisation and functioning of the Federal Court of Justice. Article 6 also allotted the following matters to federal jurisdiction: public liberties, the law of persons and property, the law of obligations and contracts in civil and commercial matters, judicial organisation including the rules of procedure and jurisdiction of all courts (with the exception of the customary courts of West Cameroon, save as regards appeals from the decisions of those courts), criminal law, prisons administration, legislation relating to state land, labour legislation, and administrative organisation. Even though the federated states were provisionally permitted to legislate in respect of matters listed in article 6, they could only do so after consultation with the Federal Commission for Coordination. By article 24, only a federal and not a state law could deal with the following matters: fundamental guarantees and obligations of the citizen, the status of persons and properties, police, administrative and judicial organisation, the determination of felonies and misdemeanours, the creation of all types of offences, criminal and civil procedure, amnesty, the execution of judgments and the creation of new sets of courts.

The combined effect of articles 5, 6 and 24 was

as follows. Matters enumerated in article 5 were within the exclusive jurisdiction of the Federal Government. The judiciary, for example, was entirely a federal concern. Although article 6 provisionally permitted the component states of the federation to continue to legislate in respect of matters therein listed, article 24 limited that temporary competence of the states by listing matters on which only the federal authorities could legislate. In practice however, the federal authorities did not immediately assume responsibility over the matters listed in article 6. This meant that each of the states of the federation maintained, for the time being, its own civil law, criminal law, civil and criminal procedure and system of courts.

Up to the second half of 1972 therefore, the judicial organisation in the federated states of East and West Cameroon consisted of two separate quasi-autonomous entities controlled by the Federal Ministry of Justice. Article 32 of the Constitution provided that justice would be rendered throughout the country in the name of the people by the competent courts of each state. The effect of this provision was to maintain the courts system which already existed in each of the federated states before independence. However, by article 35 of the constitution, warrants and legal decisions issuing from whatever legal jurisdiction of one of the federated states were executory throughout the federal territory.

Besides the courts of the federated states there also existed a number of federal courts; that is courts whose territorial jurisdiction covered the entire national territory. The constitution itself set up two of such courts, the Federal Court of Justice (art. 33) and the Federal High Court of Justice (art. 36). Two more federal courts, the Military Tribunal and the Exchequer Court, were subsequently created by ordinances.

Access to the Bench and to the Bar were governed in each state by its received laws in this regard. Article 12 vested the prerogative of mercy in the Head of State, who was advised on this matter by the Federal Council of Magistracy. By article 32, the Head of State was also "garant de l'indépendance de l'autorite judiciaire et nomme les magistrats des Etats fédérés ... Il est assisté dans cette mission par le conseil supérieur de la magistrature qui lui donne son avis sur toutes les propositions de nommination des magistrats du siège". This somewhat vague and nebulous provision made the President 'guarantor' of the independence of the judiciary. But the irremovability of judges was established not by any constitutional provision as for example, under article 65 of the 1958 French Constitution, but by a simple law.[15] Article 1(4) of Decree N. 66/DF/205 of the 28th April 1966 provided that members of the Bench shall be irremovable and, in the

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15. Law No. 63/LF/7 of June 1963; Decree No. 66/DF/205 of 28 April 1966.

carrying out of their judicial functions, only be responsible to the law and their conscience.

In the discharge of his duties as guarantor of judicial independence the Head of State was assisted by the Federal Council of Magistracy which gave him its opinion on all proposed appointments to the bench, promotion, secondment, transfer, and bestowal of honours on members of the Bench. The Council also drew up a Bencher's Promotion Table (as prescribed by the Judicial and Legal Service Rules contained in Law No. 63/LF/7 of June 1963) and exercised powers of a disciplinary nature over members of the Bench. By and large however, the Council's role was merely consultative and the President was under no legal obligation to accept its opinion, although he invariably did. The composition of the Council was heterogeneous. Its nine members were drawn from the judiciary, the legislature and the executive.[16] They were required to take oath before assuming their functions and, with the exception of the President and the Minister of Justice, held office for five years.

II. The Unitary Constitution of June 2nd 1972

Economy, efficiency and national unity were the reasons advanced by Mr Ahmadou Ahidjo, the Cameroonian Head

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16. The President (chairman), the Minister of Justice (vice-chairman), one presidential nominee, three members of the Bench nominated by the F.C.J., and three members of the Federal National Assembly.

of State, for the abolition of the federal system of government and the installation of a unitary one.[17] The President's decision to switch over to a unitary constitution was made known to the Federal National Assembly on May 6th 1972 and thrown to a referendum on May 20th of that year.[18] The result of the May 20th referendum was a 99.999% vote (3,177,846) in favour of the adoption of the Unitary constitution. The constitution was promulgated and became law on 2nd June 1972.

1. A highly centralised unitary state

Under the provisions of the new constitution the old Federal Republic of Cameroon became a unitary state styled the United Republic of Cameroon. The legislative Houses of the two former federated states were abolished and State authority was vested in the President of the

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17. For an analysis of the 1972 Constitution and how the unitary state came to be instituted, see Joseph Owona, 'La nouvelle constitution camerounaise du 2 juin 1972: de l'Etat fédéral à l'Etat unitaire', Ann. Fac. de Droit du Cameroun, 1973, no. 4, pp. 17-42. The 1972 Cameroonian constitution was never publicly debated and discussed. Even its actual drafting was shrouded in secrecy and the people were called upon in a referendum to vote for a constitution whose contents they knew nothing about. This is typical of all French-speaking African countries. In English-speaking African countries by contrast, the device of a 'constituent assembly' is always used, the draft constitution is widely publicised and the public is always invited to contribute to the discussions on the draft constitution.

18. See Decree No. 72/DF/239 of 9 May 1972.

United Republic and the 120-member National Assembly.[19] The country was carved into seven provinces[20] each headed by a Governor appointed by the President. On June 30th 1975 substantial changes were made in the constitution resulting in the revision of articles 1, 5, 7, 8, 32 and 34. The President decided to create the post of 'a Prime Minister'. By article 5 of the constitution the President 'shall define the policy of the Nation. He may charge a Prime Minister with the implementation of this policy in given spheres. The Prime Minister shall for this purpose receive a delegation of powers to direct, co-ordinate and control governmental activity in such spheres.' However, no functions relating to the Presidency, foreign affairs, armed forces and security may be assigned to the Prime Minister, who owes his appointment to the President and can be dismissed by him at will. The Prime Minister is in fact not a primus inter pares. He has no cabinet. Ministers get their instructions from the President and not from him. The major civil service appointments are made by the President and not by him.[21]

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19. The distribution of members of the National Assembly is as follows: Centre-South 23, East, 6, Littoral 13, North 36, West 18, North-West 14, South-West 10. See Decree No. 73/121 of 23rd March 1973 to fix the number of members of the National Assembly per Province.

20. The Provinces are: South-West, North-West, West, East, North, Littoral, and Centre-South.

21. Cf. A.P. Blaustein & G.H. Flanz (eds.), Constitutions of the countries of the world, Inc. Dobbs Ferry, New York, 1976. By a recent amendment to the 1972 Constitution the post of Prime Minister has now been institutionalised.

The President of the Republic has control not only over appointments to jobs in the Civil Service and parastatals but also over the selection of members to the country's legislature.[22] "The Constitution of 1972 - like its 1961 predecessor - gave the President the majority of governmental power in nearly all matters, except those of the judiciary, and he made full use of his authority. His control over the Civil Service provided jobs for most of the country's educated minority. His role as head of the dominant political party gave him considerable additional power, notably through his influence in, if not control over, the selection of other government officials, including the members of the National Assembly."[23]

To most political analysts and constitutional lawyers, the abolition of the federation and the institution of a unitary system of government in Cameroon came as no surprise. The writing had been on the wall ever since the promulgation of the 1961 Constitution. The preponderance of the Federal President and the very strong centripetal force exerted by the centre were such that every indication pointed to a unitary form of government. "The federal government was controlled largely by persons accustomed to the concepts of a highly centralized governmental system.

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22. This he does through the One Party, the CNU, of which he is President and which he presides at the decision-making level.

23. Area Handbook for the United Republic of Cameroon, The American University, Washington, 1974, p. 134.

Their experiences are drawn from the French model emulated in their educational system, the authoritarian format of the colonial system, and the theocratic pyramid, which had been the tradition among many of the government leaders' ancestors. The resultant attitude coupled with the provisions of the Constitution and the lack of any effective opposition, led over a decade to the steady growth of federal authority. By 1972 the powers actually exercised by the states were little more than those apt to be vested in a local government unit within a centralized state."[24]

2. Judicial organisation

The 1972 Constitution provides that the control of the constitutionality of laws shall be by the Supreme Court. In reality however, this function is not performed exclusively by the judiciary. When it sits to review legislative acts, the Supreme Court is enlarged by chosen members of the National Aseembly and a number of persons specifically appointed by the Head of State for that purpose. It has been suggested that this arrangement, whereby the review of legislative acts is not left entirely in the hands of the judiciary, has been prompted by fear of the risk of 'gouvernement des juges'.[25]

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24. Ibid., p. 135.

25. Michel Prouzet, Le Cameroun, L.G.D.J., Paris, 1974, p. 212.

The first trait of the judicial system in Cameroon as previewed in the 1972 Constitution is independence of the judicial authority. As under the 1961 Constitution the Head of State is the guarantor of that independence. He is assisted in this task by the High Judicial Council, a body with the same composition, attributes and functions as the Council of Magistracy under the 1961 Constitution. The second feature is the considerable protection of civil liberties provided in the preamble to the 1972 Constitution. This protection has however not yet been tested. Two more characteristics may be mentioned; the establishment of a single system of courts throughout the entire country and the maintenance of laws of colonial heritage.

Article 31 of the 1972 Constitution and Ordinance No. 72/4 of the 26 August 1972 establish a unitary courts system in the country to replace the separate system of courts that up to then existed in Cameroon. Two main reasons appeared to have prompted this reform; economic considerations and judicial policy. There was need for a simple and uncomplicated system of courts for, in the past, litigants were often bewildered by the various types of courts and uncertain as to which of those courts to take their case. Moreover, there was a penury of judicial personnel. There were not enough judges to man all the existing courts. Even if expatriate judges could be hired, there was not always money to pay all of them.

Laws from the colonial period have not been discarded en bloc in Cameroon. The principle has always been that laws not officially or specifically or implicitly repealed survive and continue to be in force.[26] The practical effect of this has been the preservation of a substantial body of laws received from both France and England. Although there has been local legislation here and there, especially on certain aspects of family law, land law, criminal law and labour law, most of the laws in force are still of colonial origin. Thus the English-speaking part of the country apply laws which are of English or basically of English origin while the French-speaking part applies laws of French origin.

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26. See art. 51 of the 1960 Constitution, art. 46 of the 1961 Constitution, and art. 43 of the 1972 Constitution.

CHAPTER SEVEN

THE JUDICIAL ORGANISATION BEFORE AUGUST 1972

Article 46 of the 1961 Constitution provided that previous legislation of the federated states would remain in force insofar as it did not conflict with the provisions of that constitution. Hence, English and French received laws not repugnant to that constitution continued to be in force in West and in East Camerooon respectively. The Judicial system in the two states continued to function through their respective pre-unification courts and administrations.

In West Cameroon a bifurcated system of courts (customary and non-customary) operated under the common law and statutes in use before 1961. Similarly, the 1959 system of courts which derived its inspiration and tradition from French practice continued to function in East Cameroun. At federal level, a number of federal courts were created and the control of all judicial organs was carried out by the Federal Ministry of Justice. Each federated state had a subordinate system of courts of appeal (one in West Cameroon and four in East Cameroun) as well as its own supreme court. There was no common court of appeal except where there was an erroneous interpretation of federal law in either state, in which case appeal lay to the Federal Court of Justice. Moreover, each state had its own judiciary to which the Head of

State appointed members after consultation with the Federal Council of Magistracy.

Before August 1972, therefore, two sets of courts operated in Cameroon; federal courts (Section I) and state courts (Section II). The ratione loci jurisdiction of federal courts covered the entire country while that of state courts was limited to their respective states.

I. Federal Courts

The federal courts were the Federal High Court of Justice (Para. 1), Military Tribunals (Para. 2), and the Federal Court of Justice (Para. 3).

1. The Federal High Court of Justice

This court was in effect a court of impeachment created by article 36 of the 1961 Constitution. It was empowered to try (i) the President of the Republic for high treason committed in the exercise of his duties, and (ii) the Vice-President of the Republic, Federal Ministers, and the Premiers and Secretaries of State of the two federated states for conspiracy against the security of the State. As there was never any impeachment in the country, this court never sat and existed only on paper.

2. Military tribunals

Following independence on 1st January 1960 the Cameroun Republic set up military tribunals to provide what amounted to summary justice to persons convicted of involvement in the Union des Populatios du Cameroun guerrilla campaign or of some particularly heinous crime. A standing Military Tribunal was set up in Yaounde and a temporary military tribunal in Dschang and in Douala.

One month after unification of the Southern Cameroons with the Cameroun Republic on 1st October 1961, a permanent state of emergency was declared in the four West Cameroon Divisions bordering on the Mungo and Bamileke troubled areas. This was because many U.P.C. insurgents took refuge in West Cameroon. Consequently, a standing military tribunal was also set up in Buea. In normal times, the powers of these military tribunals was limited to military offences committed by soldiers or persons assimilated to soldiers. In exceptional times however, these powers were widened to include offences committed against the security of the state, subversion, arson and offences against firearms legislation.

Military tribunals applied three sets of laws: the relevant provisions of the Federal Penal Code, the various special laws promulgated by the State, and the French Code of Military Justice with regards purely military offences (the Cameroonian soldier's training is

basically of French tradition and the Armed Forces remains a French-monolingual institution). The procedure followed in those courts was that provided in the Code d'Instruction Criminelle for the 'tribunaux correctionnels' in East Cameroun or that provided in the Criminal Procedure Ordinance for the Magistrate's Courts in criminal matters in West Cameroon. Judgement of military tribunals were not, as a general rule, appealable. But in certain exceptional cases, a convicted person could petition either the Supreme Court of either of the federated states, the Minister of Justice or the Minister of the Armed Forces, for his case to be reviewed. If a person was sentenced to death he could petition the Head of State to exercise his prerogative of mercy, to reprieve him or to commute the sentence.

All military tribunals came directly under the Ministry of Armed Forces. A military tribunal was presided over by a president who was invariably a civilian judicial officer. The president sat with two officers chosen from the Armed Forces. All three decided on the issue of guilt and sentence. Prosecutions in the military tribunal were conducted by the commissaire du gouvernement who was at first a civilian legal officer; later however, the office passed over to an officer of the Armed Forces.

3. The Federal Court of Justice

Instituted by the 1961 Constitution, the Federal Court of Justice was vested with five distinct sets of

powers. Article 33 of the 1961 Constitution empowered it to: (i) resolve conflicts of jurisdiction between the supreme courts of the federated states; (ii) give final judgments on such appeals as may be granted by federal law from the judgments of the superior courts of the federated states whenever the application of federal law was in issue; (iii) decide complaints against administrative acts of the federal or federated authorities, local authorities and public corporations, whether claiming damages or on grounds of ultra vires; (iv) determine issues between the federated states, or between one of them and the federal Government. A fifth power was conferred on the Federal Court of Justice by articles 14, 29 and 34 of the Constitution: that of judicial review of legislative action and the giving of advisory opinions. These powers were subsequently specified in a number of laws.[1] The Court had, broadly speaking, two types of functions, contentious and non-contentious.

A. Composition of and the law applicable in the Federal Court of Justice

a) Composition

The composition of the Federal Court of Justice

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1. Ord. No. 62/OF/6 of 4 October 1961 defining the composition, jurisdiction, and procedure of the Federal Court of Justice; Decree No. 64/DF/218 of 19 June 1964 (Administrative Procedure in the FCJ); Law No. 65/LF/29 of 19 November 1965 (Reform of Administrative Litigation); Law No. 69/LF/1 of 14 June 1969 (Composition, jurisdiction and procedure of the Federal Court of Justice).

was first spelt out in Ordinance No. 61/OF/6 of 4th October 1961 but modified in 1964 and again in 1969.[2] The Court consisted of a Full Bench which sat in Yaounde and two Local Benches, one in Buea and the other in Yaounde.

1. The Full Bench

Originally, the Full Bench was constituted by nine Judges (five substantive and four alternate), a Procureur General, an Advocate General and a Chief Registrar. The president of the East Cameroon Supreme Court was the permanent president of the Federal Court of Justice while the West Cameroon Chief Justice was one of the five substative Judges of the Court. Of the remaining three substantive Judges, one had to come from the Supreme Court of West Cameroon and two from the Supreme Court of East Cameroon. The Procureur General at the East Cameroun Supreme Court was cumulatively the Procureur General at the Federal Court of Justice while the Court's Advocate General was the Procureur General at the West Cameroon Supreme Court. The other members of the Court were appointed by the Head of State after consultation with the Federal Council of Magistracy. Whenever the court sat to give an advisory opinion or to determine the validity of a legislative measure, its membership was doubled. The Federal Court of Justice had therefore no proper personnel of its own but

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2. Decree No. 64/DF/218 of 19 June 1964; Law No. 69/LF/1 of 14 June 1969.

rather, personnel borrowed from the other courts.

The composition of the Full Bench was later modified to consist of a President, four Federal Judges (substantive or alternate, excluding the judge who participated in the judgment of the case at first instance), a Procureur General or an Advocate General, and a Registrar who acted as secretary during the bi-annual sessions of the court. This new composition was unsatisfactory as nothing was said about the number of Judges that had to come from each of the two federated states if the constitution of the court, when it sat to decide any issue, was to be valid. The Federal Court of Justice resolved the issue itslef by ruling in one case[3] that the court could only be properly constituted if it sat with three French-speaking and two English-speaking Judges. But fear still persisted in West Cameroon. It was argued that although two of the five Judges had to come from West Cameroon, the Judges from East Cameroon were still in the majority and could, if they were so minded to, always rule against a litigant from West Cameroon. The West Cameroon Bar Association proposed that the majority of judges sitting on any given case should always come from the same state as the citizen litigant involved in the case. This fear appears, in retrospect, to have been unjustified. Throughout its twelve years life-span, there was not a single recorded instance in which the Federal Court of Justice

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3. Cour Fédérale de Justice, arrêt no. 11 du 17 octobre 1968.

acted out of sectarian interests.

The Full Bench exercised original and appellate jurisdiction. It had original jurisdiction in matters of review of legislative and administrative measures, disputes between the component federated states, and dispute between the Federal Government and a state Government. Its appellate jurisdiction encompassed conflicts of jurisdiction between the three judiciaries and the interpretation of federal law.

2. The local benches

Although s. 15 of the 1961 Ordinance had provided for the setting up of two local benches of the Federal Court of Justice, each at the capital of each of the federated states, it was only in 1965 that this provision was given practical effect.[4] In fact it was only in December 1966 that the Buea Local Bench was installed. Local Benches of the Federal Court of Justice exercised only original jurisdiction. Appeals from the Local Benches lay to the Full Bench in Yaounde. Each Local Bench heard complaints against the Government of the state in which it sat, the Federal Government, local authorities and public corporations. The Yaounde Local Bench replaced the Tribunal d'Etat in East Cameroun. That court used to hear complaints against the East Cameroun Government. The Buea Bench took over the powers of the High Court to entertain suits against

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4. Law No. 65/LF/29 of 19th November 1965.

the West Cameroon Government. Indeed petitions of right were abolished and with them any need for the consent of the West Cameroon Government for it or any of its agents to be sued.[5]

Each Local Bench was composed of a Federal Judge who was assisted by two assessors chosen from among judicial officers or high-ranking civil servants of the federated state in which the court sat, a representative of the Procureur General's chambers, and a registrar. Of the two Local Benches, the more important in terms of the volume of matters it handled was the Yaounde Bench. However the work of this Bench was frequently hampered by the chronic absence of civil servants appointed assessors at court sessions. The main reason for this absenteeism was "the fear of sitting in judgment over cases in which the Administration was sometimes implicated and severely criticised".[6]

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5. It has in fact been argued that the Petition of Rights Ordinance (Cap. 149), which was then in force in West Cameroon, was inconsistent with the 1961 Constitution and therefore void. "If the idea of crown immunity is preserved in West Cameroon, then we will have the position in Cameroon where a person injured by an officer of the East Cameroun Government or by a Federal Officer (even in West Cameroon) will have an effective legal remedy while a person injured by a West Cameroon Officer might not ... The Petition of Rights Ordinance (Cap. 149) ... is in conflict with Article 2 of the Federal Constitution, which gives the Federation corporate personality and for this and other reasons, ... void. On similar grounds the whole common law principle of immunity is also void." See, H.N.A. Enonchong, 'The position of the Cameroon state in litigation', ABBIA, No. 11, November 1965, pp. 59-67, p. 64.

6. M. Nguini, 'La cour fédérale de justice', 3 R.C.D. 1973, p. 37.

b) Law administered

1. Procedure

The Full Bench followed the procedure laid down in the 1961 Ordinance, Decree No. 64/DF/218 of 19 June 1964 and Law No. 61/LF/1 of 14 June 1969. The Yaounde Local Bench applied the procedure laid down in these laws in so far as they related to original jurisdiction. The Buea Local Bench was governed by the ordinary civil procedure applied by the courts in West Cameroon.

2. Substantive law

Although there was no doubt that the Federal Court of Justice did not administer customary and religious laws, it remained for a long time undecided what general law the court was to apply. There were two alternatives: either the court selected any set of legal principles which would provide justice in a given case (applying something equivalent to 'natural justice, equity and good conscience') or apply the law prevailing in the federated state from which the case arose. No enactment provided an answer to this vexed question. The problem of specifying a single all-embracing set of principles which could govern judicial decisions in a mixed legal system was left in abeyance. Law No. 65/LF/29 of 19th November 1965 avoided this issue when it allowed the Court to apply, in any given case, the law prevailing in the federated state from which the case arose. This was only a partial solution, as it left unresolved the situation where a case arose from the Federal Government itself.

B. The Role of the Federal Court of Justice

a) Its non-contentious role

The non-contentious functions of the Federal Court of Justice consisted in taking cognizance of the vacancy of the Presidency of the Federal Republic, swearing in the Head-of-State-elect, administering the oath to barristers, ascertaining and proclaiming the results of national elections, and nomination of Judges to the Federal Council of Magistracy and the Permanent Disciplinary Commission. No litigation was involved in these cases and the Court's role here was merely ceremonial.

1. Vacancy of the presidency and vice-presidency

It was the function of the Federal Court of Justice to ascertain vacancy of the Presidency of the Republic as a result of death or permanent physical incapacity[7] and to certify, at the request of the President of the Republic, the vacancy of the Vice-Presidency of the Republic for whatever reason.[8] It was however not indicated what 'permanent physical incapacity' meant. Moreover, why only 'physical' and not mental incapacity as well?

2) Swearing-in of the President-elect

To say that the Federal Court of Justice swore in the President-elect is in fact an overstatement. The court merely participated in the swearing-in ceremony

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7. Art. 10(a) of the 1961 Constitution; art. 65 of Ord. No. 62/OF/33 of 31 March 1962; Law No. 69/LF/14 of 10 November 1969 to amend certain provisions of the 1961 Constitution.

8. Art. 68 of Ord. No. 62/OF/33 of 31 March 1962.

conducted during a solemn session of the National Assembly and chaired by the Speaker of that Assembly.[9] The President-elect recited the oath from a card held out to him. He did not, as happens in the United States of America for example, repeat the oath of office, phrase by phrase, after the President of the Court. Furthermore, after the new President of the Republic has subscribed his signature to the double originals of the record of the swearing-in ceremony, the only other person who appended his signature to that document was the Speaker of the Federal National Assembly. The President of the Federal Court of Justice did not. The presence of that Court at the swearing-in ceremony of the President-elect was therefore only for cosmetic purposes. This juxtaposition of the legislature and the judiciary at the swearing in of the President-elect was probably unnecessary. "The Federal Court of Justice, as guardian and interpreter of the Fundamental Law was ... better fitted to assume this formality alone, in the same manner as the United States Supreme Court, which exclusively receives the oath of the President of the Union."[10]

3) Administering the oath to barristers

The power to administer practitioners' oath to fresh barristers was conferred on the Federal Court of

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9. Art. 61 of Ord. No. 62/OF/33 of 31st March 1962.

10. Marcel Nguini, op.cit., at p. 38.

Justice in 1972 by the Bar Law - Law No. 72/LF/5 of 23rd May 1972. Hitherto, East Cameroon barristers took their oath before the East Cameroun Supreme Court[11] while West Cameroon barristers took theirs before the Supreme Court of West Cameroon.[12]

4) Ascertainment of national election results

Articles 54 to 60 of Ordinance No. 62/Of/33 of 31st March 1962 empowered the Federal Court of Justice to proceed, inter alia, to a general check of votes cast, to determine all complaints on questions concerning the conduct of elections or the count of votes, to check the electoral procedure of each polling station, and, in solemn session, to determine and proclaim the results of Presidential elections.

5) Nomination of judges

The Federal Court of Justice had the power to make certain limited judicial nominations.[13] At the beginning of each judicial year, the court nominated, for a period of one year, three members from the magistracy to complete the composition of the Permanent Disciplinary Commission in charge of pronouncing disciplinary sanctions on legal officers. The court also nominated, for a term of

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11. Art. 2 of Ord. no. 60/8 of 2nd February 1960.

12. Art. 4 of Law No. 63/LF/67 of 5th November 1963.

13. Art. 52(c) of Decree No. 70/DF/253 of 2nd June 1970 (Law governing the Magistracy).

five years, three Judges, one of them chosen from among the Judges in West Cameroon, to complete the composition of the Federal Council of Magistracy.[14]

b) Its contentious role

This was the principal role of the Federal Court of Justice. The court had jurisdiction to decide on the constitutionality of a law or bill referred to it, to interpret any federal law referred to it for interpretation, and to resolve administrative disputes.

1) Determination of the constitutionality of laws

Article 14 of the 1961 Constitution gave the President of the Republic the right to refer to the Federal Court of Justice, any federal law which he considered to be unconstitutional, or any law passed by a federated state which he regarded as violating the Constitution or a federal law. Although the Constitution did not say so, it seems reasonable to assume that the President could also refer to the Federal Court of Justice any federal law which encroached on state jurisdiction for such a law would be unconstitutional. Article 29(3) of the 1961 Constitution also empowered the President of the Republic or the Speaker of the Federal National Assembly to refer to the

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14. Art. 1 of Ordinance No. 61/OF/7 of 6th October 1961.

Federal Court of Justice, 'for decision', any doubt or dispute on the admissibility of a bill or amendment.

Under article 14 the Court was called upon to make a judicial pronouncement on the alleged unconstitutionality of the law referred to it. But under article 29(3) the court had to be resorted to merely for an advisory opinion. This was so notwithstanding the fact that article 29(3) used the word 'decision'. These two instances were cases in which the Court exercised original jurisdiction. Furthermore, when the Court sat to hear any of these matters, its membership had, in conformity with article 34 of the Constitution, to be double its normal size by personalities appointed as ad hoc judges for a period of one year, by reason of their expertise on the matters in issue. This was so even though under article 14 the court made a judicial determination and handed down a judgment.

Neither article 14 nor article 29(3) was ever called into play. One isolated case in which the constitutionality of a law was challenged did however come before the Federal Court of Justice in 1970. It was the case of Société des Grands Travaux de l'Est.[15] In that case the appellant was, under article 2696 of the 1965-66 Fiscal Roll, assessed to pay the sum of 10,577,985 francs cfa as

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15. Cour fédérale de justice, arrêt No. 4 du 28 oct. 1970, unreported.

income tax for the fiscal year ending June 20th 1966. The appellant, a business firm, alleged that it had been over-assessed and appealed for partial annulment of article 2696. The firm further contended (i) that the tax had been assessed in violation of the law and in particular of the terms of the old art. 43c of the General Tax Code, (ii) that in so far as it gave retroactive validity to the new art. 43c of the Tax Code, the Law of 30th June 1966 offended against the fundamental principle of the non-retrospection of laws - a principle found in the preamble to the 1960 Constitution, and (iii) that the tax assessment was illegal and should therefore be annulled because it was made under provisions which were themselves contrary to the Constitution. These arguments carried little weight with the Court which ruled that under the law of Cameroon there was no control of the constitutionality of laws by way of an objection in law. Such a control could only be made by way of direct action and then only by the President of the Republic.

2) Interpretation of federal law and resolution of jurisdictional conflicts

The Federal Court of Justice was empowered to resolve conflicts of jurisdiction[16] and to interpret federal laws.[17] Its powers to resolve conflicts of

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16. Law No. 69/LF/1 of 14 June 1969.

17. Ibid.

jurisdiction was a recognition of the legal realities of the country; the fact that there was (and there still is) an interplay of the common law and the civil law systems within a unitary administrative judicial system. This power of the Federal Court of Justice obviated the extra cost and inconvenience involved in hearing the same case in two different courts under separate legal systems in which the rules governing the doctrine of res judicata were not necessarily the same. However, no conflicts ever arose between a West and an East Cameroonian court.

Both the West Cameroon Court of Appeal and the East Cameroon Supreme Court had jurisdiction to interpret the Constitution and federal laws.[18] But the Procureur General and the Advocate General at the Federal Court of Justice could appeal 'on a point of law and in the interest of law' to that Court.[19] Thus in one case on the proper construction of 'embezzlement of public funds' the Federal Court of Justice held that fraudulent intention was distinct from motive and that it existed from the moment the accused appropriated for his personal ends monies from the state funds for which he was responsible, regard being had to public accountability under which a public servant must be able, at any time, to satisfy the Government Auditor that the funds allocated for his official purposes were

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18. Art. 11 of Ordinance No. 61/OF/6 of 4 October 1961.

19. Ibid.

intact.[20] In another case, 'murder with premeditation' was construed as requiring more than the intent to cause grievous bodily harm or the intention to kill formed in the heat of the moment but that it required over and above the intention to kill one or more persons, identified or not, at least a plan, made prior to the act, in a period of time, sufficient for reflection, which should have induced the accused to abandon his scheme.[21]

3) Resolution of administrative cases

The Federal Court of Justice decided disputes involving the Government, Government agencies, public utilities, corporations and local government bodies. It also had power to resolve disputes involving certain professional organisations such as the Bar Association[22] and the Medical Association.[23] It was however in the area of contentieux administratif (the law governing the judicial review of administrative decisions and actions) that the Federal Court of Justice was most active.

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20. Cour fédérale de justice, Arrêt No. 23 du 17 mars 1967, unreported.

21. Cour fédérale de justice, Arrêt No. 4 du 18 oct. 1969; Procureur-General of the Federal Court of Justice v. Aliyo Ndimisa, unreported.

22. Law No. 72/LF/5 of 23rd May 1972.

23. Law No. 66/LF/7 of 10 June 1966 regulating the practice and organisation of the medical, dental and midwifery professions; Dr Bernard Auteroche v. Cameroon National Medical Association, C.F.J., Arrêt No. 2 du 28 oct. 1970. The plaintiff however failed to proceed with this case.

Droit administratif (of which contentieux administratif is only a part) in Cameroon has been tremendously influenced by the corresponding law in France. In fact, one ventures to say that it has been borrowed almost in toto from French droit administratif. There are two main explanations for this. The concept of 'droit administratif' had been introduced in the French-speaking part of Cameroon by the French and since colonial days courts, inspired by the case-law of the French Conseil d'Etat, have had to deal with disputes involving the individual and the State or any of its agencies. In deciding such cases sets of rules different from those applicable in civil litigation between private individuals were applied. Secondly, during the twelve years of existence of the Federal Court of Justice the overwhelming majority of cases decided by the Court came from East Cameroun and came before the Yaounde Local Bench. The concept of 'droit administratif' was novel in West Cameroon.[24] The Government of that federated state was amenable to justice in the same way as natural and

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24. Thus in Robert Abunaw v. Francis Tommy Wilson & Director of Lands and Surveys, a case in which the Buea Local Bench purported to exercise jurisdiction, the Full Bench in Yaounde had no difficulty in ruling that the case was not an administrative dispute and that the ordinary courts and not the administrative court had jurisdiction over the matter. See, FCJ, Order No. 3/A of 28 October 1971. Again when the Buea Local Bench purported to exercise jurisdiction in the case of C.D.C. v. SOCOPAO, a case in which a private firm (SOCOPAO) was being sued for damages by a mixed economy corporation (the C.D.C.), the Full Bench ruled that the administrative court was incompetent to entertain the matter and that the case was one for the ordinary courts. See, FCJ, Order No. 6/A of 10 March 1972.

artificial persons at private law and was subject to the jurisdiction of the ordinary courts. As in England, control of the executive and of Government agencies and public corporations was by the common law and the doctrine of ultra vires.

The scope of administrative litigation was defined in article 14 of the Law of 19th November 1969. It provided:

> "The Federal Court of Justice takes cognizance of all the administrative litigation brought against the Federal Republic, the federated states, public bodies and corporations.
>
> Administrative litigation includes:
> a) appeals for annulment of ultra vires acts, and, in non-penal matters, appeals arising on points of law. In the sense of the present artilce 'ultra vires' is to be defined as: defective procedure; lack of jurisdiction; violation of the law; violation of any applicable legislation; abuse of authority
> b) actions for indemnity for wrongs caused by an administrative decision
> c) disputes relating to Government contracts (except those implicitly agreed to be under the aegis of the ordinary law) or concessions for public undertakings
> d) cases concerning state property
> e) matters which are expressly assigned to it by law.
>
> "The ordinary law courts take cognizance, in accordance with the general law, of all other actions or disputes, even if the artificial persons described in the first paragraph are involved. The liability of such an artificial [legal] person, with regard to third parties, fully replaces the responsibility at law of its agent who cause any loss or injury, even in the course of his employment. The ordinary courts furthermore have jurisdiction in all issues of administrative acts of violence, requiring all measures to be taken to terminate such acts, and similarly for cases of expropriation.
>
> "No court or tribunal may have jurisdiction over 'acts of state'."

Despite this provision, the actual frontiers of administrative litigation remained unclear. Moreover, the last but one paragraph of the above provision was in error when it said "The liability of such an artificial [legal] person, with regard to third parties, fully replaces the responsibility at law of its agent who cause any loss or injury, even in the course of his employment". Logically, the sentence just quoted means that the liability of the artificial person is ordinarily substituted for that of its agent when such an agent is not in the course of his employment (that is, when he is on a frolic of his own). This is absurd because in law, a master or a principal can only be held liable for the acts of his servant or agent when that servant or agent acted in the course of his employment.

II. State Courts

Each of the two component states of the Cameroon Federation had its own system of courts.

1. The Courts in West Cameroon

These were: the West Cameroon Supreme Court, the West Cameroon Court of Appeal, the High Court, the Magistrate's Courts, the Labour Courts, and the Customary Courts. These may be conveniently classified into courts with appellate and courts with original jurisdiction.

A. Courts with appellate jurisdiction

These were the Supreme Court, the Court of Appeal and the High Court (which also exercised original jurisdiction).

a) The West Cameroon Supreme Court

Set up on 16th October 1961 by Ordinance No. 61/OF/9, the Supreme Court of West Cameroon never sat as such. On the English model, it consisted of two courts, the old High court of the pre-independence period and the Court of Appeal. This meant that the Court was divided into a High Court and an Appeal Court Division. Judges appointed to the Court sat in both Divisions. The West Cameroon Supreme Court was composed of a Chief Justice and four Judges, all barristers of the English Bar and of many years' standing. Its jurisdiction was exclusively appellate. The procedure followed by the Court was that contained in the Nigerian Federal Supreme Court Ordinance 1960 and the Nigerian Federal Supreme Court Rules 1961. Appeal on a point of interpretation of federal law lay to the Federal Court of Justice in Yaounde. The Court applied locally enacted Cameroonian laws, the common law, the doctrines of equity and the statutes of general application in force in England as of 1st January 1900. It also applied customary and religious law in matters governed by those laws. However, no such appeal ever came before the Supreme Court.

b) The West Cameroon Court of Appeal

Established by the same law which set up the Supreme Court, the Court of Appeal heard appeals from the High Court and other inferior courts. The Court was composed of three Judges and was a division of the Supreme Court. Its jurisdiction and powers were contained in Ordinance No. 61/OF/9 of 16 October 1961, the Nigerian Federal Supreme Court Ordinance 1960, the Nigerian Federal Supreme Court Rules 1961 and the Southern Cameroons (Constitution) Order-in-Council 1960.

c) The High Court

The old Southern Cameroons High Court was absorbed in the West Cameroon Supreme Court which the Ordinance of 16th October 1961 created. But the Southern Cameroons High Court Law No. 7 of 1955 continued to be in force by virtue of section 11 of the Ordinance of 16th October 1961. The same Judges who constituted the Supreme Court also sat in the High Court. But the High Court was constituted by a Judge sitting alone. In practice the High Court had no permanent seat but went on assizes in Buea, Kumba, Mamfe and Bamenda.

The court exercised original jurisdiction in the more serious criminal matters (indictable offences) and in civil cases of a pecuniary value of over 350,000 francs cfa, save for matters coming within the province of the Federal Court of Justice, the Labour Court, the Military Tribunal and the Customary Court. By section 27 of the

the Southern Cameroons High Court Law 1955 the High Court had no jurisdiction over matters in which jurisdiction was vested in the Customary Courts. However, under s. 9 of that same law any case over which Customary Courts have jurisdiction may be transferred to the High Court. Furthermore s. 61 of that law empowered the High Court to transfer other cases to the appropriate Customary Court. Likewise, under s. 56(1) of the same law the High Court could transfer a case to the appropriate Magistrate's Court.

Criminal and civil appeals from the Magistrates' Courts whether under the general law or under customary law lay to the High Court which also heard appeals in certain matters from the Labour Court. The jurisdiction and powers of the High Court were contained in the Southern Cameroons High Court Law 1955, the Nigerian Supreme Court Rules (Cap. 211 of the 1948 Laws), the Southern Cameroons (Constitution) Order-in-Council 1960, and Ordinance No. 61/OF/9 of the 16th October 1961.

B. Courts with original jurisdiction

a) The Magistrate's Courts

Established by the Southern Cameroons Magistrate's Courts Law No. 6 of 1955, these courts dealt with the day-to-day criminal and civil cases. A Magistrate's Court was composed of a single Magistrate. He was always a legally qualified person, usually a barrister of the English or the Nigerian Bar. From 1969 however, most Magistrates were

barristers or University graduates in law or both, who had been trained and qualified for that purpose in the Judicial Division of the National School of Administration and Magistracy at Yaounde. Since he sat alone, a Magistrate decided the issues of both fact and law in his court. Appeals lay from the Magistrates' Courts to the High Court within thirty days.

In theory a Magistrate had territorial jurisdiction throughout West Cameroon for, the fiction was that the Magistrate's Court was a single court for the whole of West Cameroon with merely branches in the main towns. In reality, each Magistrate's Court was a separate entity set up by the Chief Justice under s. 7 of the Southern Cameroons Magistrate's Court Law 1955. Consequently, each Magistrate heard only cases arising within the area of the court to which the Chief Justice had allotted him. However, the Magistrate sat regularly in different courts on different days, and he could be sent by the Chief Justice to sit in another court for a particular case. The Chief Justice derived this power from s. 40 of the Southern Cameroons Magistrate's Court Law 1955.

The jurisdiction of Magistrates other than Chief Magistrates did not exceed two years' imprisonment or a fine of approximately 138,000 francs cfa or both in criminal cases. In civil matters their jurisdiction was limited to claims not exceeding 138,000 francs cfa. The jurisdiction of Chief Magistrates was increased by the

Minister of Justice on the advice of the Chief Justice of the Supreme Court of West Cameroon. In criminal matters they could sentence to a maximum of five years imprisonment or a fine of roughly 349,000 francs cfa or both; in civil cases other than those relating to customary matters, litigation concerning amounts not exceeding 349,000 francs cfa.

The Magistrate's Court was a court of summary jurisdiction and dealt with minor issues expeditiously. Magistrates held preliminary inquiries (P.I.) where they had no jurisdiction to try a criminal case or where the accused could and did elect trial in the High Court. This was normally the procedure in the case of indictable offences for, such offences were triable only in the High Court with a jury. If the evidence warranted it, the Magistrate's Court committed the accused for trial before the High Court. Provisions existed for the summoning of juries. But it was up to the Judge trying any particular case to decide whether to call a jury or not. Judges chose not to and in fact no jury was ever empannelled in the courts of West Cameroon. The Magistrate's Court applied the Nigerian Criminal Procedure Ordinance in criminal matters. The civil procedure it followed was outlined in the Southern Cameroons Magistrate's Court Law 1955. The court exercised appellate jurisdiction in certain matters from Customary Courts.

b) The Labour Court

The Labour Court in Buea was set up under Law No. 67/LF/6 of 12th June 1967. It was presided over by a Magistrate sitting with two assessors appointed by the Minister of Justice on the proposition of the Minister of Labour and Social Legislation. The Minister of Labour proposed the names from a list of names supplied by the leading Trade Unions and Employers' Federation in West Cameroon. The court had jurisdiction to hear and determine all labour disputes irrespective of the amount of money involved. It applied the procedure laid down in the Labour Code and, in default, common law procedure; in either case it was not required to pay due regard to technicalities.

Appeals from the Labour Court lay to the High Court and from there to the Court of Appeal. It was however held in SOCOPAO (Employers) v. SOCOPAO (Employees)[25] that an appeal from the High Court to the Court of Appeal in a labour matter could be made only where the pecuniary value of the suit exceeded 45,000 francs cfa. The Court of Appeal was the final court in labour cases. But where a case involved the interpretation of federal law the Procureur General of the Supreme Court of West Cameroon could bring the matter to the Full Bench of the Federal Court of Justice for a decision. In Procureur General at

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25. WCCA/9/1969, unreported; see also WCCA/13/8/1969, unreported.

the Supreme Court of West Cameroon v. Decision of the Court of Appeal for West Cameroon,[26] the President of the Court of Appeal appointed an expert to make an expert report on a civil matter pending before the Court. After the expert report had been made the Court authorised its President to sit alone and decide the case. The Procureur General appealed to the Full Bench of the Federal Court of Justice on the ground that the Court of Appeal had been improperly constituted, violating federal Ordinance No. 61/OF/9 of 16th October 1916. Held, that the appeal succeeded.

c) The Customary Courts

Customary Courts were governed by the Customary Courts Ordinance, Cap. 142. They were originally known as 'Native Courts'. But in 1964 the adjective 'native' was removed and 'customary' substituted therefore.[27] A peculiarity about Customary Courts was that barristers could not appear before them. Furthermore, art. 6(1)(d) of the 1961 Constitution excepted them from federal jurisdiction, save in respect of appeals from them to the ordinary courts. The Customary Courts in West Cameroon did not

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26. FCJ, Judgment No. 21 of 20 March 1968, 'Recueil Mboyoum 1962-1970, p. 133.

27. Adaptation of Existing Laws Order, 1964, West Cameroon Legal Notice No. 23 of 1964. The Southern Cameroons Customary Courts Law 1956 was never brought into force. Its content was however substantially the same as the provisions of the Customary Courts Ordinance. Cap. 142 'Customary Courts' included the Alkali Courts that exist for the peripatetic Fulani of the Bamenda area and all those who practised the Muslim religion.

therefore come under the Ministry of Justice in Yaounde but under the West Cameroon Ministry of Local Government. Customary Courts dealt with matters under traditional law: land disputes, marriage, divorce, claims for the refund of dowry, custody of children and inheritance. Neither the Magistrate's Courts nor the High Court had original jurisdiction in these matters. They could however exercise such jurisdiction where a matter was transferred to them by a District Officer in accordance with the Customary Courts Ordinance. Such a procedure was hardly ever resorted to. Customary Courts exercised limited criminal jurisdiction in petty offences.

There were two grades of Customary Courts, 'A' and 'B'. The jurisdiction of the grade 'A' courts was limited to suits whose monetary value did not exceed 138,000 francs cfa. The jurisdiction of grade 'B' courts did not go beyond suits with a pecuniary value of 69,200 francs cfa. Each court was set up by warrant issued by the West Cameroon Secretary of State for Local Government. The warrant defined the powers and jurisdiction of the court thus established. The courts had jurisdiction over causes and matters in which all the parties belong to a class of persons who have ordinarily been subject to the jurisdiction of Customary Courts and resided or were within the area of jurisdiction of the court. The Customary Courts Commission which was appointed annually by the Prime Minister of West Cameroon advised and assisted the Secretary of State for

the Interior on the establishment of warrants and the selection of judges and court members. This Commission was normally presided over by the Legal Adviser to the Prime Minister and consisted of chiefs and elders with experience in matters relating to customary law.

A Customary Court was composed of five judges, three of whom made a quorum. It administered the traditional law (Muslim law inclusive) prevailing in the area in which the court was located or binding between the parties, so far as it was 'not repugnant to natural justice, equity and good conscience'. Procedure in these courts was informal. In fact the West Cameroon Ministry of Local Government produced a monograph in English and in Pidgin-English known as 'Manual of Practice and Procedure for Court Clerks' to serve as an aid to customary court clerks.

A separate system of appeals existed for Customary Courts. Appeals lay from customary courts of first instance to customary courts of appeal. These latter courts were established by warrant under the Southern Cameroons Native Courts Amendment Ordinance No. 8 of 1961. Further appeals went to the District Officer and then to the Senior Divisional Officer of the Division in which the particular customary court sat. The number of appeals were often so many that Special Appeals Judges (they were not legally qualified persons but had had much experience of customary practices, having themselves been Senior Divisional

Officers) were appointed to hear and determine appeals that would normally have been heard by the Senior Divisional Officers. A further appeal from the Senior Divisional Officer's court lay to the Prime Minister. Cases hardly ever went beyond the Prime Minister's court and so it was generally assumed that the Prime Minister was the final appellate jurisdiction in customary law matters. In reality, this was not the legal position. Under s. 54 of the Southern Cameroons Constitution Order in Council 1960 all courts other than the Supreme Court, the High Court and a Court-Martial were subordinate courts. The Prime Minister's court was therefore a subordinate court and an appeal from it lay to a superior court.* Having regard to s. 54 therefore, a party who was not satisfied with the decision of the Prime Minister sitting as a customary court of appeal, had a right of appeal to the High Court. The District Officer, it is to be noted, had the power to transfer any case pending before a customary court, either to a Magistrate's Court or to a High Court with or without application or consent by either party. This was made easy by the fact that he supervised and inspected these courts and had at all times access to them, their records and proceedings.

2. <u>The Courts in East Cameroon</u>

The colonial courts system which existed in the French Cameroun was, on the eve of independence, reorganised

* Peter Ako v. Henry Ngafor, suit No. BCA/28M/74, Bamenda Court of Appeal.

by the Judicial Organisation Ordinance No. 59/86 of 17th December 1959. Before then, there was a multiplicity of courts in the territory and these courts were constituted into two parallel systems based on a daulity of personal status. However, independence did not change this situation. In East Cameroun, there were still many courts and the dual system persisted although this time it did not extend to the appellate level. The various courts which existed in East Cameroun consisted of courts with original jurisdiction, courts of first and last resort, and courts with appellate jurisdiction.

A. Courts with original jurisdiction

There were five types of courts of original jurisdiction: First Instance Tribunals, Labour Tribunals, 'Justices de Paix' Tribunals, Grade I Tribunals, and Customary Tribunals.[28] The first three types of courts were known in the literature as 'modern or written law courts' (juridictions de droit moderne ou écrit) and were exclusively for litigants of 'modern or written law status'. The last two types were known as 'traditional or local law courts' (juridictions de droit traditionnel ou local) and their jurisdiction was limited to 'persons of traditional law status'.[29]

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28. The French use 'tribunal' for inferior courts and 'cour' for appellate courts.

29. For details on this subject, see chapter 5, supra.

a) 'Written law courts'

Labour Tribunals dealt with labour matters only while criminal matters could be brought only before the First Instance Tribunals or the Justices de Paix Tribunals. These latter types of courts exercised, concurrently with 'traditional law tribunals', jurisdiction in civil and commercial matters: a litigant of modern law status was justiciable before the 'written law tribunals' while those of traditional law status were justiciable before the 'traditional law tribunals'. Article 2 of Decree No. 69/DF/544 of 19th December 1969 limited the powers of traditional law tribunals by providing that they could only deal with those civil and commercial matters which the laws then in force did not reserve for the modern law tribunals. Henceforth, traditional law tribunals could only deal with residual matters, that is, matters not reserved for the modern law tribunals. What this amounted to was that the court to which a person of traditional law status took a civil or commercial suit no longer depended on his personal status as such. If the civil or commercial action concerned a matter over which 'written law tribunals' have been given jurisdiction, then the litigant went to those courts and it made no difference that he was a person of traditional law status. On the other hand however, persons of modern law status were always justiciable before the written law tribunals.

1) First Instance Tribunals

These courts which numbered 27 as of June 1972 were established by the 1959 judicial organisation ordinance although as a matter of fact their ancestry may be traced back to a decree of 27th November 1947 by which they were still partly governed. With the exception of the Batouri, Douala, and Yaounde First Instance Tribunals which covered two Divisions each, there was a First Instance Tribunal for each Division. Each Tribunal was composed of a single judge save for the Douala and Yaounde Tribunals which sat as a bench of three magistrates in civil and commercial matters. The court had original jurisdiction in criminal and civil and commercial matters arising within its area. Its civil jurisdiction was limited to matters whose monetary value did not exceed 45,000 francs cfa. In criminal matters the court tried only misdemeanours and simple offences. Where a felony was committed, the court had to conduct a preliminary inquiry and then commit the accused for trial at the Court of Appeal. With the exception of the Yaounde and Douala ones which had a public prosecutor each, the other First Instance Tribunals had no public prosecutors; the presiding magistrate of each court was both judge and prosecutor. Appeal from the First Instance Tribunal lay to the Court of Appeal within whose area the tribunal sat.

2) Labour Tribunals

The 1959 ordinance established Labour Tribunals

(five of them in all: Douala, Edea, Garoua, Nkongsamba, Yaounde) with exclusive jurisdiction in labour matters where the claim involved did not exceed 45,000 francs cfa. A Labour Tribunal was presided over by a magistrate appointed by decree. The magistrate sat with two assessors (one employer and one employee) appointed by the Minister of Justice on the proposition of the Minister of Labour from a list of names submitted by trade union and employers organisations.

3) 'Justices de Paix' Tribunals

There were two types of Justices de Paix Tribunals; the justice de paix with ordinary competence, and the justice de paix with 'correctional' powers. A justice de paix à compétence ordinaire was located at district level and was constituted by a district officer (sous-prefet) sitting alone and acting both as prosecuro and judge in criminal cases.[30] Its criminal jurisdiction was limited to petty offences not punishable with imprisonment committed within the district where the court sat and referred to it by the magistrate-cum-prosecutor of the First Instance Tribunal of the area.[31] Appeals in such minor criminal matters lay to the local First Instance Tribunal.[32] The civil jurisdiction of a justice de paix with ordinary competence embraced

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30. Arrêté of 27th April 1948.

31. Decree No. 66/DF/512 of 15th October 1966.

32. Decree of 27th November 1947.

personal actions, commercial actions, and actions concerning movable property of a pecuniary value of up to 500 francs cfa (or of up to 3,000 francs cfa with the possibility of appeal) in each case.[33]

A justice de paix à compétence ordinaire invested with powers to try offences punishable with a 'peine correctionnelle' such as misdemeanours, was known as a justice de paix à attributions correctionnelles. There were four of such justices de paix located at Banyo, Tibati, Yoko, and Moloundou.

b) 'Traditional law courts'

The ratione materiae jurisdiction of these courts shrank over the years. They ceased to exercise criminal jurisdiction in 1946 and in 1969 their civil jurisdiction was limited to those matters not specifically reserved for the 'written law courts'. Abolished by omission from the list of courts in s. 5 of 1959 ordinance, they were re-established the following day by Decree No. 59/247 of the 18th December 1959, section 2 of which however specified that their existence was only temporary. The functioning of these courts was subsequently specified in Decree No. 69/DF/544 of 19th December 1969, itself amended by Decree No. 71/DF/607 of 3rd December 1971. There were two classes of courts administering customary law at first instance, each subject to appeal to the Court of Appeal: Customary

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33. Arrêté of 29th July 1948.

Tribunals and Grade I (or First Degree) Tribunals.

1) Customary Tribunals

The jurisdiction and seat of these courts were spelt out in their text of establishment. They were set up at the level of traditional units, often the tribe, clan, or village. But it was not everywhere that they were established. For example, although they were 230 in number, five Divisions of the Western Region had no Customary Tribunals. Each of these courts was presided over by a notable (appointed by the Minister of Justice) sitting with two assessors of the same tribe as the litigants. Civil jurisdiction was limited territorially by the court's area, and personally by the need for the defendant to be subject to the court. Ratione materiae jurisdiction embraced the great majority of all civil litigation at customary law: land matters, claims for the recovery of civil and commercial debts, claims in respect of material and bodily damage, and contracts.

2) Grade I Tribunals

They were situated at sub-district and at district level and numbered about 100 in all. Their jurisdiction was spelt out in the warrant of their establishment. If the court was located at sub-district level, it was presided over by an Assistant District Officer; if located at district level it was presided over by a District Officer. In either case, the presiding judge was assisted by two assessors of the same tribe as the litigant. These assessors were chosen from a list of six elders by the

Minister of Justice on the joint proposition of the local District Officer and the presiding magistrate of the Local First Instance Tribunal. Grade I Tribunals dealt with matters of personal status (marriage, divorce, custody, affiliation, succession) and land disputes, under customary law. Appeal from either the Customary Tribunal or the Grade I Tribunal lay to the Court of Appeal. Both courts were subject to inspection by the Procureur General at the Court of Appeal and by the Ministry of Justice. The Procureur General had access to all records of any court administering customary law, and could himself appeal against any decision.

B. Courts of first and last resort

These courts were special in that they dealt exclusively with criminal cases and their decisions were not subject to appeal. There were two of such courts: the Divisional Criminal Court and the Special Criminal Tribunal.

a) Divisional Criminal Courts

Article 29 of Ordinance No. 59/86 of 17th December 1959 established a Divisional Criminal Court at the headquarters of each Division to replace the Criminal Court of the colonial period. Each of these courts was composed of president, four jurors, a representative from the legal department and a registrar. The president was either an

Appeal Court Judge or a Magistrate of the First Instance Tribunal appointed by the president of the Court of Appeal. Jurors were chosen by lot, at the beginning of each session, from a list drawn up each year by a commission chaired by the presiding magistrate of the First Instance Tribunal and including the Prefect or his representative and three members from each of the municipal councils designated by these councils. The Divisional Criminal Court tried persons accused of felonies and misdemeanours on committal to it by the chambre de mise en accusation of the Court of Appeal. The chambre de mise en accusation in fact conducted a second preliminary inquiry for a first preliminary inquiry would already have been conducted by the juge d'instruction. If it was found that the accused had a prima facie case to answer, the chambre de mise en accusation committed him for trial at the Divisional Criminal Court.

b) The Special Criminal Tribunal

The Special Criminal Tribunal, established in Yaounde by Law No. 61/6 of the 4th April 1961 (later repealed and replaced with Law No. 62/LF/10 of 9th November 1962) with jurisdiction over the entire federated state of East Cameroun, dealt with cases of embezzlement of public funds. The creation of a special court to try offences of this nature was necessitated by the recrudescence, in alarming proportions, of cases of embezzlement of public funds in the federated state soon after independence on

1st January 1960. Law No. 67/Lf/1 of 12 June 1967 provided that offences of embezzlement committed in East Cameroun to the prejudice of the Federal State, a federated state, a collectivity or a public body, as well as related offences, were within the exclusive jurisdiction of the Special Criminal Tribunal. Presided over by the President of the East Cameroun Supreme Court who sat with two Judges from that court, the Special Criminal Tribunal held sessions in the Regional headquarters of the federated state. The Procureur General and Registrar of the Yaounde Court of Appeal were also Procureur General and Registrar at the Special Criminal Tribunal.

C. Courts with appellate jurisdiction

These were: the Courts of Appeal and the Supreme Court of East Cameroun.

a) The Courts of Appeal

Ordinance No. 59/86 of 17th December 1959 created a number of Courts of Appeal to replace the solo Appeal Court of the colonial period. A Court of Appeal was established at the headquarters of each Region (Douala, Bafoussam, Garousa, and Yaounde), except that the Yaounde Court of Appeal served the Eastern Region. Each Court of Appeal was composed of a President and Puisne Judges (in Douala and Yaounde three Judges constituted a bench, but elsewhere, due to lack of judicial personnel, the president sat alone), a Procureur General, and Advocate General (who

existed on at the Douala and Yaounde courts) and a registrar. The Court of Appeal had appellate jurisdiction in respect of criminal and civil cases from the First Instance Tribunal and traditional law courts within the area of the Court of Appeal. The applicable criminal procedure was that contained in the old French Code d'Instruction Criminelle. Civil procedure was governed by the High Commissioner's Order of 16 December 1954 which was basically the French Civil Procedure Code as of that date. Error (there was no appeal in the English sense) lay in the East Cameroun Supreme Court.

b) The East Cameroun Supreme Court

Created for the first time by the 1959 Ordinance, the East Cameroun Supreme Court sat in Yaounde and was composed of a first President (Chief Justice of East Cameroun), two bench presidents (presidents de chambre), four Councillors, one Procureur General, one Advocate General, and a Registrar. Three Judges constituted a quorum. It entertained appeals only on points of law. An 'appeal' (pourvoi en cassation) lay to the Supreme Court on any of the following grounds: incompetence, lack of motive, incorrect form, and violation of law. The court could, of its own volition, take cognisance of any of these grounds of appeal or any other ground not raised by the appellant. Furthermore, when a lower court gave a judgment per in curiam and the interested party failed to appeal within time, the Procureur General was bound to seise the court of the matter. The success of the Procureur

General's appeal did not however benefit the parties who continued to be bound by the previous erroneous judgment.

An appellant to the Supreme Court who lost his appeal could be required to pay damages over to the respondent. He could in addition be required to pay a civil fine of between 5,000 and 20,000 francs cfa.[34] If an appeal succeeded, the decision of the court below was quashed or annulled and the case sent back to a court of the same level as the one from which the appeal originated. This was known as renvoi. The court of renvoi was bound to adhere to the point of law decided by the Supreme Court. Parties appearing before the Supreme Court had to be represented by barristers. However, the Federal Government or the federated state of East Gameroun could be represented by a senior civil servant holding the licence en droit degree and designated by the competent authority.[35]

The Minister of Justice could require the Procureur General to refer to the Supreme Court any act by a judge done in excess of his powers. This was known as an 'appeal by order of the Keeper of the Seals'. The Procureur General of a Court of Appeal could appeal against any decision by the Court of Appeal on matters of customary law, even if the legal department was not a party to the proceedings. This was an extremely important instrument of control, by the Supreme Court, over the application of customary law.

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34. Law No. 65/LF/23 of 12 April 1965.

35. Law No. 67/LF/26 of 3 November 1967.

Indeed, in respect of cases originating from customary courts, the Supreme Court took the posture of a formative and a unifying influence. The nature of custom being to evolve, particular attention was paid to the desuetude of custom and to incompatibility with any written law, and the Constitution which, by reference, included the Universal Declaration of Human Rights. Procedure before the East Cameroun Supreme Court was governed by rules enacted immediately before and after independence.[36] Decisions of the Supreme Court were appellable to the Federal Court of Justice when the interpretation of federal law was in issue.[37]

36. Article 40-48, Ordinance No. 59/86 of 17 December 1959; Decree No. 60/33 of 22nd February 1960 as subsequently amended.

37. Art. 11 and 12 of Law No. 69/LF/1 of 14th June 1969.

CHAPTER EIGHT

JUDICIAL ORGANISATION SINCE AUGUST 1972

The first attempt at unifying the judicial systems of both East and West Cameroon was made in 1969. In that year the Federal Ministry of Justice placed before the Federal Government a reform project known as '*l'avant-avant-projet Comte-Quinn*'.[1] The proposal was for a three-tier court system: District Courts, an Appeal Court for each of the two federated states, and a Federal Supreme Court. Two suggestions were made to resolve the perennial problem of shortage of qualified judicial personnel. It was proposed that the proposed District Courts should move from place to place on circuit. It was furthermore suggested that a judge should sometimes sit in the lower court and on appeal. "It is by this means that the Court of Appeal of West Cameroon is at present staffed by a small group of Judges of a high calibre, that is, the Chief Justice and three Puisne Judges; these Judges sit alone in the High Court at first instance and they sit 'in bank' on appeal from the cases they do not try. This rotation of judicial personnel between courts of first instance and

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1. The draft project bore the names of the two expatriate legal officers who had been working on it: Mr Quinn (English) and Mr Comte (French), both of them at that time Technical Advisers at the Ministry of Justice. For the draft proposals see, Ministry of Justice (Legislative Affairs Division), File No. 3 DL 1304/DL, Circular No. 30 023 C/MJ, 30th December 1968.

Courts of Appeal ensures the possible employment of the available judicial personnel. One can, without difficulty, envisage a system less rigorous and could admit of a situation whereby a President of a District Court who sat as a juge d'instruction, on a purely procedural matter, could not necessarily be debarred from hearing the affair when he is hearing it as a judge in the normal course of events. In such matters, the English system is far more flexible: when a judge has sat at an early stage of the proceedings or on an application for bail by an accused person, he is not thereby debarred from sitting as a judge on the same matter when it comes before the court as a criminal case."[2] The proposed Federal Supreme Court was to replace the Supreme Courts of the federated states and the Federal Court of Justice. It was to sit in Yaounde and be made up of six Judges, two coming from West Cameroon. These proposals never saw the light of day. Their adoption would have required amending the Constitution, especially the provisions relating to the Federal Court of Justice.[3]

However, with the change over to a unitary system of Government, it became necessary to set up a unified and

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2. File No. 3 DL 1304/DL (Ministry of Justice), p. 9.

3. The problem was probably one of lack of political will rather than one of amending the Constitution. After all, by the end of 1970 the constitution had already been amended twice: on 10 November 1969 (President empowered to dismiss the state Premiers and Secretaries of state) and on 4 May 1970 (posts of Vice President and of President incompatible with any other elective or professional function).

less cumbrous and confusing system of courts for the entire country. Article 42 of the 1972 Constitution empowered the Head of State for a period of one year to set up the new institutions of the Republic by way of ordinances, organic laws or legislative measures. It was by virtue of this provision that Ordinance No. 72/4 of 26 August 1972 on judicial organisation was made. That Ordinance (together with its subsequent amendments shall hereinafter be referred to as the Judicial Organisation Ordinance) established four sets of courts, viz., Courts of First Instance, High Courts, Courts of Appeal and the Military Court. But to these courts must be added others provided for in the Constitution: the Supreme Court, the Court of Impeachment and the Higher Judicial Council which, stricto sensu is not a court (although it behaves like one in disciplinary proceedings against a judicial officer) but an advisory body. For ease and clarity of exposition these courts shall be classified into courts of ordinary jurisdiction (Section II) and courts with special jurisdiction (Section III). This chapter however opens with a section on the general principles on which the administration of justice in Cameroon in based (Section I) and closes with an examination of advisory bodies (Section IV).

I. General Principles

The administration of justice in Cameroon, as in all modern States, is governed by a number of general principles and concepts. These may conveniently be

examined under six principles: the principle of public justice (paragraph 1), of reasoned judgments (para. 2), of free justice (para. 3), of the enforceability of court decisions and orders throughout Cameroon (para. 4), of the unity of civil and criminal courts (para. 5), and of the decentralisation of the system of administering justice (para. 6).

1. Justice must be administered in public

The preamble to the 1972 Constitution provides that the "law ensures the right of everyone to a fair hearing before the courts". Consonant with this constitutional provision is art. 4 of the Judicial Organisation Ordinance, which provides that justice shall be administered in public and that all judgments shall be pronounced in open court. Any breach of this principle renders the whole proceedings null and void ab initio. In the case of In re Daniel Ekpombang v. Benji Gbaruko[4] the learned judge below had pronounced formal judgment in court but reserved his reasons for the judgment. The reasoned judgment was not reduced to writing and a copy available until one year afterwards. The then West Cameroon Court of Appeal had no difficulty in holding that in such a case, the judgment was a complete nullity. Per Gordon, C.J.

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4. WCSC/2C/1964 (1962-1964) W.C.L.R. 62.

(President), at page 62, delivering the unanimous decision of the court, "We have come to the conclusion that the judgment in this sense is a complete nullity, first for the formal reason that once judgment in the formal sense has been pronounced, the Judge is functus officio, and secondly on the wider plane because such a procedure puts a weapon into the hands of the successful party while denying the other party the countervailing shield constituted by his right of appeal. ... We prefer, therefore to decide as a general principle admitting of no exception that unless the reasoned judgment is ready when formal judgment is pronounced it may not be prepared at all."

The principle that justice must be rendered in public is aimed at ensuring that a person standing trial before the courts is given and seen to be given a fair hearing. Its purpose is also to instil confidence in the judicial machinery by obviating any suspicion of bias on the part of the judge. The principle is therefore another aspect of the broader principle of judicial neutrality, impartiality and independence. Justice must not only be done; it must also be seen to be done. The principle of multi-judge courts is a further attempt to ensure judicial impartiality. The principle of collegiality is generally considered as a guarantee that the decision will be impartial and delivered only after careful deliberation. This is why the superior courts are composed of several judges.

The principle of public justice does not however mean that a court may not hear a case in camera. As an exception to the general rule, a court may try a case in camera. Any court must, where it is so expressly provided by law or procedure, remove certain matters for hearing in chambers. Any court may also, of its own motion or on the application of any of the parties, order that all or any part of any case or matter be heard in camera on the grounds that a public hearing would be dangerous to the security of the State, public order or morality.

Notwithstanding the principle of public justice, press coverage (photographic , phonographic, or written) of judicial proceedings may, in certain circumstances, amount to an 'obstruction of public service' which is a criminal offence. It is a criminal offence punishable under s. 198(1)(a) and (b) of the Cameroonian Penal Code for anyone to publish "any record of any proceedings of a court or of the legal department in respect of a felony or misdemeanour before it has been read out in open court; or any account of proceedings in camera or in any juvenile court". Section 198(2) punishes anyone who "publishes any deliberation in chambers by any court"; and s. 198(4) punishes "whoever, in courtrooms or during court proceedings makes any sound recording, or takes any photograph whatever, by means of any camera, cinematographic or television process". The penalty in any of these cases is a

fine of up to three million francs cfa.

The principle of public justice entitles anyone, if he so wishes, to walk into the court and quietly follow its proceedings. It does not entitle a person to publish the proceedings of the court before judgment has been read out in open court. In the case of proceedings held à huis clos, the ban on publicising the proceedings of the court is absolute. Indeed, any such publication would be subversive of the very raison d'être for holding the proceedings behind closed doors.

2. Reasons must be given for judicial decisions

Article 5 of the Judicial Organisation Ordinance provides that all judgments must set out the reasons upon which they are based in fact and in law.[5] A judgment given in breach of this principle is invalid. So where the learned Judge in In re Daniel Ekpombang v. Benji Gbaruko merely pronounced formal judgment without stating his reasons for the decision, the judgment was, on appeal, properly held to be a total nullity. A judge must also date his judgments. However, whether failure to do so would render the judgment invalid or not would depend on whether

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5. It may be noted that for the Anglophone Judge schooled in the common law tradition (unlike his Francophone 'brother' trained in the civil law tradition) 'law' does not just mean statute law or droit positif but includes case-law and adjectival law.

the requirement for the dating of such a judgment was imperative or directory only and in the latter case, the judgment remains valid despite the failure of the learned Judge to date it at the time of the pronouncement.

One reason for the principle that reasons must be given for judicial decisions is to provide a safeguard against judicial arbitrariness. "Herein lies the whole difference between a judicial decision and an arbitrary one. A judicial decision is based on reason and is known to be so because it is supported by reasons. An arbitrary decision for ought that appears, may be based on personal feelings, or even on whims, caprice or prejudice."[7]

Judges are not entitled to make curt 'guilty' or 'not guilty', 'liable' or 'not liable' pronouncements and then proceed to sentence or discharge the accused or to find for or against the plaintiff. They must formulate a reasoned and written judgment. But provided it is reasoned and written, a judgment is not invalid simply because it is brief. In Joshua Nwana v. Commissioner of Police[8] the appellant was convicted on a charge of converting to his own use the sum of 50,542 francs cfa which came into his hands as deputy sheriff on the execution of a writ of fieri facias (writ of fifa) in a civil suit and sentenced to three years imprisonment with hard labour. On appeal

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7. Sir Alfred Denning, Freedom under the law, Stevens, London, 1949, p. 91.

8. WC/10 CA/1965 (1965-1967), W.C.L.R.15.

against conviction learned counsel for the appellant argued with force that his client had been sentenced without any finding of guilt or conviction and that there was no written judgment. Held, by the West Cameroon Court of Appeal, that the words "I believe that all prosecution witnesses are telling the truth, and that the defendant is lying. I find the case proved" constituted a written judgment although undoubtedly a brief one.

The principle of reasoned judgments also provides a means by which the superior courts are enabled to control decisions by inferior courts. Hence, in Sonde Ngue Marie c. Ministère Public,[9] the Supreme Court of Cameroon held that "tout arrêt doit contenir les motifs propres a justifier la reformation du judgement qu'il infirme. L'insuffisance de motifs ou la non-réponse aux conclusions regulièrement déposées, equivaut à l'absence de motifs et est sanctionnee par la cassation de l'arrêt contre lequel le pourvoi est dirigé." It is an universally acknowledged principle that the losing party has the right to appeal from the decision of the court to another court which has the power of quashing or amending the disputed decision.[10] This

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9. CSC, Pourvoi No. 130/P, Arrêt No. 6/P du 30 nov. 1972, unreported. See also, Ewane Epoh Samuel & Autres c. Eyongo Joseph & Autres, CSC, Arret No. 117 du 5 juillet 1973, Bulletin, No. 29, 1973, p. 4128; Tankoua Jean c. Dame Tankoua née Tchandjeu Hélène, CSC, Arrêt No. 113 du 5 juillet 1973, Bulletin, No. 29, 1973, p. 4122.

10. There are however exceptions. No appeal lies from certain decisions of the Military Tribunal. In trivial claims and prosecutions for simple offences, only a single hearing is allowed.

way of controlling the decisions of the lower courts by superior courts would be impossible if judges were not required to give reasons for their decisions. In England, it may be mentioned, courts do not, as a general principle of law, give reasons for decisions in criminal cases and Justices of the Peace do make curt 'guilty' or 'not guilty' pronouncements. This, it is submitted, is incredible and absurd.

The judge may not refuse to give the legal and factual reasons for his decisions. Nor may he decline to render judgment in a matter once he has been properly seised of it. By art. 147 of the Penal Code, it is a denial of justice for any person exercising judicial functions to decline, after having been duly moved in that behalf, to issue a decision.[11] Procrastination in deciding a case may amount to a denial of justice. Indeed, the Supreme Court has held that the adjournment of a case sine die is tantamount to a denial of justice.[12]

3. Justice to be rendered free of charge

It is statutorily provided that justice shall be administered 'free of charge, subject only to the fiscal provisions concerning stamp duty and registration'.[13]

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11. The penalty is imprisonment for from between three months to two years.

12. CSC, Arrêt No. 109/P du 17 janvier 1974, 6 R.C.D. 1974, p. 144.

13. Sec. 6(1) of the Judicial Organisation Ordinance.

It is unclear what 'free of charge' means in this context. It probably means no more than that litigants are not required to pay for the services provided by judges. If a person involved in a case requires the services of an advocate, he must pay the advocate's fees. Judges however are employed and remunerated by the State to perform a public service (that of administering justice) and are therefore not entitled to demand or receive payment for the services they render. A judge who receives such a payment may be guilty of corruption.[14]

Providing justice 'free of charge' does not however mean that litigants are exempted from paying costs, court fees, stamp duty and registration fees. Article 6(2) of the Judicial Organisation Ordinance provides that such fees and expenses shall be paid in the first place by the party who incurs them as shall all costs incurred in commencing an action and in execution of judgment. The sub-section goes on to provide that such fees and expenses shall be borne finally by the party who fails in the action, subject only to the reasoned decision of the court. This provision does no more than re-state the general practice whereby the party who fails in a case may be required by the court to pay costs over to the successful party in a civil suit. Similarly, where a party to a civil suit persistently refuses to appear in court after having been duly summoned or served, judgment may be given in default,

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14. S. 134 of the C.P.C. The giver too may be prosecuted under s. 161 for procuring influence.

that is, in his absence, and he may be ordered to pay costs. The court can always, by a reasoned judgment, exempt the party who has succumbed or defaulted from paying costs.

4. Judicial decisions and orders enforceable throughout Cameroon

The provision that judicial decisions and orders are enforceable throughout the territory of the Republic[15] may appear a truism not calling for comment. But the provision is important because there are two law districts in Cameroon and in its absence it may be doubted whether a judicial decision or order by a court in one sector is enforceable in the other. Before 1972 this issue had been put beyond any shadow of a doubt by art. 35 of the 1961 constitution which had provided that warrants and legal decisions issuing from whatever legal jurisdiction of one of the federated states were executory throughout the federal territory.

The executory formula of copies of judgments and judicial warrants, together with engrossements and copies of contracts and all documents capable of enforcement, is introduced as follows:

> "United Republic of Cameroon
> In the name of the people of Cameroon"

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15. S. 8(1) of the Judicial Organisation Ordinance.

and closed with the following words:

> "Wherefore the President of the United Republic of Cameroon commands and enjoins all bailiffs and process-servers to enforce this judgment (or order, etc.) the Procureurs General and the State Counsels to lend them support, and all commanders and officers of the Armed Forces and Police Forces to lend them assistance when so required by law.
>
> "In witness whereof the present judgment (or order, etc.) has been signed by the President and the Registrar or by the Judges in the majority and the Registrar." 16

5. The unity of criminal and civil courts

In some systems of law the courts are specialised. This specialisation, a sort of judicial division of labour, is made with the provision of the best possible justice in mind, and according to the nature and importance of the business to be dealt with. This however, desirable as it may be, is not a practical proposition in Cameroon where there is still a serious shortage of qualified judicial personnel. Here, civil and criminal cases are handled by the same courts.[17] Most courts devote four of the six

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16. S. 9(1) of the Judicial Organisation Ordinance. Cameroonian Judges may write dissenting judgments but such judgments may not be read in court. S. 9(2) of the Judicial Organisation Ordinance provides that "The Judge or Judges in the minority may express their opinion in writing and enter it in the file of the proceedings."

17. Of course there are exceptions. Customary courts no longer deal with criminal matters. The Court of Impeachment and the Military Court do not handle civil matters.

working days of the week to criminal matters and the remaining two to civil matters. The actual dates of court hearings are fixed by the Minister of Justice on the proposal of presidents of the various courts.[18]

Consistent with this principle of the unity of criminal and civil courts is the practice of non-specialisation. Cameroonian judges do not specialize in any particular branch or area of the law. In the Francophone courts one sometimes hears references to 'divisions': chambre sociale, chambre civile et commerciale, chambre criminelle, chambre coutumier, and so on. In a sense this is misleading. One is apt to think that groups of judges sit in separate divisions, each division handling only a given type of case; the criminal division handling criminal matters, the civil division handling civil matters, and so forth. In reality, no such divisions exist. An allusion to chambre criminelle, for example, means no more than that the court sat as a criminal court in the exercise of its criminal jurisdiction. Whether sitting as a civil or as a criminal court, the composition of the court is the same. There are no separate judges for civil matters, criminal matters, labour matters, commercial matters and customary law matters.

Not even in the Supreme Court is there any such specialisation. Under the civil law system, droit administratif

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18. S. 10 of the Judicial Organisation Ordinance.

is thought to be a special and technical branch of the civil law and in France judges who handle administrative litigation are specialists in droit administratif. But not so in Cameroon. Judges who sit on the Administrative Bench of the Supreme Court are not specialists in droit administratif. They are the same judges who sit in criminal and other civil matters.

6. Decentralisation of the system of administering justice

It may be that the judge can dispense justice only at the fixed seat of the court. In such a case one talks of permanent courts. Alternatively, he may move from one town to another dispensing justice. In this case one talks of itinerant judges. Both situations obtain in Cameroon.

The courts structure in Cameroon is highly decentralised. This decentralisation is said to have been prompted by the Government's desire "to bring justice nearer to the people".[19] This desire itself has evidently been motivated by the realisation that the courts, located as they were, in the urban areas, were physically inaccessible to the vast majority of the people in the rural areas. Even today, transport and communication difficulties,

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19. 'Justice goes nearer Bertoua and Mundemba populations', Cameroon Tribune, No. 72, 12 November 1975, p. 3.

poverty, illiteracy and ignorance mean inaccessibility of the courts to most people. This fact coupled with the chronic delays in the disposal of cases has led to a disinclination, on the part of most people, to litigate; nay to forgo their rights in most cases.

The decentralisation of the courts structure was also intended to bring about 'cheap and quick justice'.[20] "For, the nearer the institutions of justice are to an individual, the more he is secure in his person, honour, and property. He does not have to travel long distances to seek legal redress in the law courts. He does not have to pay high transport fares in order to arrive at the seat of a court."[21] The Judicial Organisation Ordinance makes provision for the setting up of one Court of First Instance for each sub-Division in the country, one High Court for each Division and one Court of Appeal for each Province. There are 7 Provinces, 39 Divisions, 133 sub-Divisions, and 37 Districts in Cameroon.[22] One would therefore expect to find 7 Courts of Appeal, 39 High Courts and 133 Courts of First Instance (i.e. Magistrate's Courts) in Cameroon. This is not the case. Although the 7 Courts of Appeal have

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20. 'Government policy is cheap and quick justice - Justice Wakai', Cameroon Outlook, Vol. 10, No. 10, March 17th 1978.

21. Speech by the Minister of Justice, Mr Charles Doumba, on the installation ceremony of Mr Justice Nyo' Wakai as President of the Court of Appeal for the North-West Province, Bamenda, 25th November 1977.

22. Minister of Territorial Administration, Order No. 63 of the 28th March 1973 to fix the call-signs of administrative units of the United Republic of Cameroon.

been established,[23] the number of High Courts in existence are not up to thirty and the number of Courts of First Instance only 40. Hence, periodically, judges from the permanent courts move out to dispense justice in those areas without a fixed court.

II. Courts of Ordinary Jurisdiction

Courts of ordinary jurisdiction are courts which have an all-embracing jurisdiction to hear and determine actions of every kind, whether civil or criminal. In Cameroon these courts are: Customary Courts, Justices de Paix à Attribution Correctionnelle, Courts of First Instance, High Courts, Courts of Appeal and the Supreme Court. In each case, the territorial jurisdiction of the court, save for the Supreme Court whose jurisdiction covers the entire national territory, is local. A convenient classification of these courts would be into courts with original jurisdiction and courts with appellate jurisdiction.

1. Courts with original jurisdiction

Customary Courts, Justices de Paix, Courts of First Instance, and High Courts all exercise original jurisdiction.

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23. The Appeal Court for the Eastern Province was established only as recently as November 1975. See, 'Justice goes nearer Beroua and Mundemba populations', Cameroon Tribune, No. 72, November 12th 1975, p. 3.

A. Customary Courts

The Customary Courts of former West Cameroon and the Customary Tribunals and Grade I Tribunals of the former East Cameroun were not abolished by the Judicial Organisation Ordinance. The courts continue to operate as they have always been. However, they have been given only a temporary lease of life and do not figure in the mainstream of the current courts system.

B. Justices de Paix à Attributions Correctionnelles

These courts, of which there are only four, exist only in the Francophone Provinces and still function as they were before the current judicial organisation, the only novelty being that appeals from here now lie direct to the Court of Appeal. Like the Customary Courts these courts have also been maintained 'for the time being'.[24]

C. Courts of First Instance

This rather confusing label[25] is the new name for what is known in the Anglophone Provinces as the Magistrate's Court. On paper there is a Court of First Instance for each

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24. S. 26 of the Judicial Organisation Ordinance.

25. A court of first instance is any court exercising original jurisdiction. The High Court for example is a court of first instance since it exercises only original jurisdiction.

sub-Division. In practice the area of jurisdiction of most Courts of First Instance comprise several sub-Divisions. There are currently only 40 Courts of First Instance as opposed to 133 sub-Divisions.

Section 12(1) of the Judicial Organisation Ordinance provides that a Court of First Instance shall be composed of a President, one or more 'Judges', a State Counsel, one or more deputy State Counsel, a Chief Registrar, and one or more Registrars.[26] This has remained largely theoretical. There is not enough personnel to staff all the courts as envisaged in the Judicial Organisation Ordinance. All existing Courts of First Instance have a President. But only a few have in addition a 'judge' and a State Counsel. The general practice is to attach State Counsels to the Procureur General's Chambers from where they could be sent by the Procureur General to go and prosecute in any court in the Province. In the Anglophone Provinces the shortage of prosecuting counsel is mitigated by the continuation of the old practice whereby police (and gendarme) officers as well as certain private persons (such as the health authorities of the local councils) prosecute.In Francophone Provinces police and gendarmes do not prosecute. The shortage of legal personnel is mitigated by having a magistrate-cum-prosecutor (président du tribunal

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26. There is no requirement that the President must be a judicial officer. Although in practice he always is, he may be a legal officer. 'Judge' here is not used in the sense of a judicial officer of the superior courts. The 'juge' in the Court of First Istance is hierarchically below the President of that court and is often a fresh graduate from the School of Magistracy at the beginning of his judicial career.

charge de l'action publique) in some courts.

Section 12(2) of the Judicial Organisation Ordinance is worthy of note. It provides: "All cases brought before the Court of First Instance shall be heard by a single judicial officer except in labour matters when the court shall be completed according to s. 143 of the Labour Code and shall apply the procedure provided for by the said Code." This provision would appear to contradict s. 12(1), which provides that the composition of the court includes, inter alia, a President and one or more judges. But the ambiguity is only apparent. The Court of First Instance is not a collegiate court.

The jurisdiction of a Court of First Instance is both civil and criminal. The court tries offences other than felonies. This means that its criminal jurisdiction (which includes matters of juvenile delinquency) is limited to misdemeanours and simple offences.[27] The court has jurisdiction in civil, commercial and labour matters where the amount of the action does not exceed 500,000 francs cfa and is competent to rule on matters concerning urgent orders

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27. The Cameroonian Penal Code operates a threefold classification of offences: felonies, misdemeanours, simple offences. This classification is based on the principal penalty provided for each offence. By s. 21 of the Code a felony is an offence 'punishable with death or with loss of liberty for a maximum of more than ten years'. A misdemeanour is defined as an offence punishable with loss of liberty or with fine, where the loss of liberty may be for more than ten days but not for more than ten years, and the fine more than 25,000 francs. A simple offence is defined as an offence punishable with imprisonment for up to ten days or with a fine of up to 25,000 francs.

and orders on an ex parte petition and to entertain actions for the recovery of commercial debts through simplified procedures. Decisions of the Court of First Instance are appellable to the Court of Appeal.

D. High Courts

In theory the chief town of each Division has a High Court, whose territorial jurisdiction covers the Division in which it is located. In practice, it has not been possible to establish a High Court in each Division. Often therefore, the jurisdiction of one High Court covers several Divisions. In the Anglophone Provinces for example, the Buea High Court hold High Court assizes in Meme, Manyu and Ndian Divisions while the Bamenda High Court hold sessions in all the Divisions of the North West Province. A similar situation obtains in the Francophone Provinces.

Each High Court is composed of a President (who must be a judicial officer and member of the Court of Appeal), one or more Judges (members of the Court of Appeal), a State Counsel, one or more deputy State Counsels, a chief Registrar and one or more registrars. Judges of the High Court are necessarily members of the Court of Appeal. The High Court therefore has no proper personnel of its own but draws its judicial personnel from the Court of Appeal. The court is not collegiate. Cases before the court are heard by a single Judge except in labour matters where the Judge sits with two assessors. The President of each High

Court is appointed from among judicial officers of the Court of Appeal by the President of the Court of Appeal with the agreement of the Minister of Justice.

All felonies are tried at first instance by the High Court. Any civil, commercial or labour suit, the pecuniary value of which is more than 500,000 francs cfa is tried at first instance by the High Court. The court is also competent to try actions and proceedings relating to the status of persons, civil status, marriage, divorce and affiliation, subject however, to the legal provisions relating to the ratione personae jurisdiction of customary courts. The High Court has jurisdiction to issue the prerogative orders of mandamus, prohibition, habeas corpus, and certiorari restraining excess and abuses of jurisdiction by inferior courts and public officials. By s. 16(1) of the Judicial Organisation Ordinance, the High Court has jurisdiction

> "c) To hear and determine all applications for immediate release made by or on behalf of persons imprisoned or detained which applications are based on the illegality of, or the absence of authority for, such deprivation of liberty;
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> "d) To hear and determine applications for the prohibition of all persons or authorities from doing or performing any acts which they are not entitled to do by law;
>
> "e) To hear and determine all applications for orders commanding all persons or authorities to do or perform any acts which they are required to do by law;
>
> "f) To order the transfer to the High Court of any proceedings pending before a lower court."

These powers of the High Court are familiar to Anglophone courts but novel to those in the Francophone Provinces where the writs of habeas corpus, mandamus, certiorari and the order of prohibition were unknown. On paper these writs have since 1972 been functioning in Francophone courts as well. In practice however Francophone judges are yet to become familiar with them. Anglophone advocates appearing before Francophone courts always complain that whenever they refer to any of the writs jusdges there look at them as though they were speaking Chinese.

2. Courts with appellate jurisdiction

Courts with appellate jurisdiction are the Courts of Appeal and the Supreme Court.

A. Courts of Appeal

There is an Appeal Court for each of the seven Provinces of the Republic. Each Appeal Court is composed of a President, one or more vice-Presidents, one or more Judges or alternate Judges, a Procureur General, an Advocate General, one or more deputies, one or more legal assistants at the Procureur General's Chambers, a chief registrar, and one or more registrars. As a collegiate court, decisions of the Court of Appeal are given by a bench of three Judges. However, any one Judge of the court is competent to give a ruling on behalf of the said court on

appeals against judgments referred to the court, except in the following cases: (i) in the case of judgments in respect of which a sentence of life imprisonment or the death penalty may be incurred, collegiality is compulsory; (ii) in the case of judgments from a Military Court, the Court of Appeal must be composed of two civil Judges and one military Judge or a military officer; a Court of Appeal otherwise composed is irregular;[28] (iii) in labour matters the court is completed by two assessors with a deliberative voice in conformity with art. 143 of the Labour Code. This means that the President of the Appeal Court sits with two assessors. An Appeal Court otherwise composed while sitting on a labour matter is illegally constituted. In Isaac Guh Forcho v. Royal Exchange Assurance[29] the appellant sued the respondent for wrongful dismissal. Three Judges of the Buea Court of Appeal decided the case on appeal and gave judgment for the respondent. The appellant appealed to the Supreme Court on the ground that the Court of Appeal had been improperly constituted. Held, by the Supreme Court, that the constitution of the Court for the purposes of deciding that labour dispute was illegal. A similar decision was reached in the analogous case of Joseph B. Nyambi v. C.D.C.[30] where the Supreme Court annulled the

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28. CSC, Pourvoi No. 292/P, Arrêt No. 209/P du 24 Avril 1975, unreported.

29. CSC, Pourvoi No. 27/74-75/S du 24 mai 1973, Arrêt No. 15/S du 17 mars 1977, unreported.

30. CSC, Pourvoi No. 19/73-74/S du 26 aout 1973, Arrêt No. 14/S du 17 mars 1977, unreported.

judgment of the Buea Court of Appeal and referred the case to the Bamenda Court of Appeal.

The Court of Appeal's jurisdiction is exclusively appellate. It hears appeals against judgments delivered by the lower courts including appeals against the ruling of the investigating magistrate as well as appeals on matters such as bail, rehabilitation and so on. As a general rule, decisions of the Military Court are appealable; an appeal lies to the Court of Appeal and then to the Supreme Court. However, no appeal lies from the decision of the Military Court in respect of an offence relating to subversion, the internal and external security of the State and firearms legislation.[31]

B. The Supreme Court

There is now one Supreme Court for the entire Republic with its seat in Yaounde, the capital city. It exercises the powers which hitherto were exercised by the defunct Federal Court of Justice and the two Supreme Courts of the former West and East Cameroon.

a) Composition of the Supreme Court

The Supreme Court is composed of a President, Bench Presidents, Substantive or Alternate Puisne Judges,

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31. S. 29(2) of Ordinance No. 72/5 of 26 August 1972 (Military Judicial Organisation).

a Procureur General, an Advocate General, Deputies to the Procureur General, a Chief Registrar and Registrars. Any case submitted to the Court is tried by three Judges, members of the Court. In administrative matters however, the composition of the Court is different. Up to 1976 the President of the Supreme Court (or a Judge delegated by him) could rule alone on matters concerning urgent orders and orders on an ex parte petition. This power was repealed by omission by Law No. 76/28 of 14th December 1976 which amended Ordinance No. 72/6 of 26th August 1972 fixing the organisation of the Supreme Court. The inescapable inference must be that matters concerning urgent orders and orders on an ex-parte petition must necessarily be heard by a panel of three Judges.

Whenever the Supreme Court sits as a body the presidency is entrusted to the most senior Judge of the Court in the highest scale. The number of Judges of the Supreme Court may be increased by five persons nominated for one year by the President of the Republic in view of their special knowledge or experience. This happens whenever the Supreme Court is called upon to give a ruling in the cases contemplated by articles 7 (vacancy of the Presidency of the Republic), 10 (reference by the Head of State of an unconstitutional law to the Supreme Court), and 27(4) (doubt or dispute as to the admissibility of a bill or amendment to be referred to the Supreme Court by either the Speaker or the Head of State) of the Constitution.

b) Competence of the Supreme Court

Technically the Cameroonian Supreme Court is not a final court of appeal.[32] It is primarily a court of cassation and only rarely does it decide a case on its merits. It hears applications alleging an error of law in a judgment of a court below. If the Court grants an application (pourvoi) it will give 'judgment in cassation': this sets out the error(s) of law in the contested judgment, and is accompanied by a cassation order, setting aside the earlier judgment, and an order of renvoi (ordonnance de renvoi), sending the case back to be retried (on facts and law) by a court of the same jurisdiction as the one whose judgment was set aside. If the Court dismisses the application, the previous judgment stands and there is no renvoi. The Supreme Court reviews the judgment not the case. It does not make an appreciation of facts which have been fully established by the judges at the lower level. It may reverse a judgment referred to it only for an error in law or for vice of form (i.e. where there is a defect in the form of the lower court's proceedings or a clear error on the face of the records). The main function of the Court is to ensure that the judgments of the lower courts are in

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32. A 'pourvoi' is not, technically speaking, an appeal. The nearest English equivalent is an appeal by case stated. A pourvoi or a recours en cassation is admissible against every decision of any court which is final (i.e. not subject to appeal). See, s. 5(1)(a), Ord. No. 72/6 of 26 August 1972 as amended by Ord. No. 76/28 of 14 December 1976 (Organisation of the Supreme Court).

accordance with the law, thereby seeing to the unity of case-law. The Court also exercises control over the interpretation of law and custom.

When a pourvoi is made to the Supreme Court, it may either confirm the decision under attack by dismissing the pourvoi (its judgment is then known in the literature as an 'arrêt de rejet') or disallow the decision under attack by quashing and nullifying it (arrêt de cassation). If the decision under attack is quashed, the case is then referred to a court of the same jurisdiction as the one whose judgment has been set aside. However, this judgment in cassation is not binding on the court to which the case is sent back for retrial. If the court of renvoi does not comply with the Supreme Court's judgment in cassation, it is probable that the previous applicant will take the case back to the Supreme Court. When this happens, it is known in the literature as le deuxième pourvoi. This time the Full Bench of the Supreme Court would have to sit and deal with this second application in one of three ways. First, it may reject the pourvoi; in effect admitting that it was wrong in having previously quashed the case and sent it back for retrial. Alternatively, it may again quash the decision under attack and not make an order of renvoi (arrêt de cassation sans renvoi). Here, the Full Bench will itself decide the case on its merits and give a judgment. This is the only situation where the Supreme Court has power to judge the merits of a case. Finally, the Full

Bench may quash the decision under attack and again refer the case to another court of the same level as the previous one for retrial. At this stage the ping-pong ends. The new court of renvoi is bound to comply with the position adopted by the Full Bench. This is the only circumstance in which there is something like the application of the doctrine of precedent in the Anglo-American sense. However, the Supreme Court is not bound by its own decisions. The procedure just outlined is typically French and is applied even to cases from courts in the English-speaking part of Cameroon.

Any judicial act which has become final and is contrary to law may be referred to the Supreme Court by the Procureur General at that Court either on his own initiative in the sole interest of the law or on the orders of the Minister of Justice. In the former case, the appeal is made solely in the interest of the law and the parties may claim no benefit under it. In the latter case, a party is entitled to take advantage of the appeal if it succeeds.

The Supreme Court is empowered to resolve cases of 'positive' and 'negative' conflicts. A postivie conflict arises where two authorities or courts of law assume jurisdiction in the same matter; and a negative conflict arises where two authorities or courts of law decline jurisdiction in the same case. In either of these two situations the parties may refer the matter to the Supreme

Court for it to decide as to which court should exercise jurisdiction in the matter. The same applies (i) whenever non-suits either in Appeal Courts or in courts not located in the area of one and the same Appeal Court reveal a conflict leading to a denial of justice; and (ii) where there is a request for a case to be transferred from one court or Appeal Court to another on grounds of public security and legitimate suspicion. In either of these cases the parties have two months, from the date of rendition of the court decision, within which to refer the matter to the Supreme Court.[33]

The Supreme Court also has jurisdiction to decide all administrative cases, that is, litigation involving the State, local authorities and public corporations. Administrative litigation includes, inter alia, petitions for cancellation of acts on the grounds of ultra vires, claims for damages for loss caused by an administrative measure, disputes concerning state lands, administrative trespass on private land and any arbitrary step by the administration against liberty and property.[34] For the purposes of the exercise of jurisdiction in administrative matters, the Supreme Court is divided into an Administrative Bench having original jurisdiction in administrative cases,

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33. Ss. 7 and 8 of Ord. 72/6 of 26 August 1972 (Supreme Court Organisation) as amended.

34. S. 9, ibid.

and a Full Bench exercising appellate jurisdiction in administrative cases as well as other matters. The Administrative Bench is constituted by a substantive or alternate Puisne Judge (president), two Judges of the Court, the Procureur General (or his deputy, or the Advocate General), and a Registrar. All administrative cases begin in the Administrative Bench of the Supreme Court. The Supreme Court therefore exercises original and appellate jurisdiction in administrative matters. Due to lack of personnel and the fact that only a comparatively small number of administrative disputes come before the court, it has neither been possible nor advisable to have, as in France, a separate set of 'administrative courts' to handle administrative litigation. An appeal from the Administrative Bench lies to the Full Bench which is constituted by five Judges (excluding any Judge who heard the case at first instance in the Administrative Bench), the Procureur General (his deputy or the Advocate General), and the Chief Registrar or Registrar, all of the Supreme Court.

Finally, the Supreme Court has jurisdiction in constitutional and institutional matters. Whenever it sits in the exercise of this jurisdiction it is enlarged by five personalities appointed for one year by the President of the Republic by reason of their special knowledge and experience. Article 7(b) of the Constitution empowers the Supreme Court to ascertain the death or permanent physical incapacity of the President of the Republic; article 10

entitles it to rule on the constitutionality of any alleged unconstitutional law referred to it by the Head of State; and art. 27(4) gives it power to decide on any doubt or dispute on the admissibility of a bill or an amendment referred to it by the Speaker of the National Assembly or by the President of the Republic. The Court also performs a number of minor and purely ceremonial functions: proclamation of the results of presidential elections and of referenda, participation in the swearing-in ceremony of the President-elect of the Republic, administering the oath to fresh advocates and judicial and legal officers, and nomination of some of the members who sit in the Higher Judicial Council.

c) Procedure in non-administrative cases in the Supreme Court

The Supreme Court holds a solemn re-opening ceremony each year[35] to mark the official beginning of the judicial year which runs from 1st October to 30th September of the following year and is divided into two parts: a period of regular sessions (1st October to 30th June) during which it holds one or more sessions per week,[36]

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35. The date and time of the reopening are fixed by the Head of State. The ceremony is presided over by the Head of State or the Minister of Justice and must be attended by all legal and judicial officers, advocates and auxiliary officers of justice present in Yaounde. See, s. 3, Law No. 75/16 of 8 December 1975 fixing the procedure and functions of the Supreme Court.

36. S. 2(1)(a), ibid. The dates and times of ordinary hearings are fixed by order of the Minister of Justice upon the joint recommendation of the President of the Supreme Court and of the Procureur General of that Court. However, upon the recommendation of the Procureur General, the President may order additional hearings to ensure prompt settlement of cases before the Court. See s. 4, ibid.

and a recess period (1st July to 30th September) during which it must hold at least one session each month devoted to urgent matters.[37] The Court is required to keep a central card index of all its decisions and to forward, every year, to the Minister of Justice, a report on the state of cases, the period taken to settle each case, and the difficulties encountered in the application of the law.[38] This central card index system could be used to assist the elaboration of consistent legal practice and the production of regular law reports in English and French. In this way, a harmonised integrated uniform legal doctrine may be evolved.

(1) Lodging of appeals

Appeals to the Supreme Court must be (i) made by written motion or petition lodged at the Registray of an Appeal Court, a High Court, or a Court of First Instance; (ii) lodged by appellant in person, or his counsel, or a representative of his holding special power of attorney; and (iii) lodged within ten clear days in criminal cases and thirty in all others.[39] However, the Supreme Court President may, on a reasoned application from the appellant, and after consultation with the Procureur General of the

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37. S. 2(1)(b), ibid. Urgent appeals are appeals brought against a judgment (i) in a criminal or labour case, or a case involving alimony, (ii) delivered in view of accelerated hearings. See also s. 2(2), ibid.

38. Ss. 4 and 5, ibid.

39. Ss. 6 and 8, ibid.

Supreme Court, order the normal period of appeal to be extended to fifteen days.[40] The appeal fee, even where the appellant has obtained legal aid, is 5,000 francs cfa payable to the Chief Registrar of the Supreme Court,[41] who must grant the appellant fifteen days within which to pay the fee.[42] The appeal is rejected if at the end of this period the fee has not been paid. An appeal will also be rejected if within thirty days following the Registrar's written notice to that effect the appellant fails to forward to the Chief Registrar of the Supreme Court the name of his counsel or his application for legal aid if he is eligible for it.[43] The registrar of the relevant court receiving the appeal must record it and send a copy of the record to the Chief Registrar of the relevant court which delivered the judgment appealed against.[44]

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40. S. 7(1), ibid.

41. Appeals by the legal department or the State as well as those against judgment in labour and criminal cases are exempted from fees. S. 8(3), ibid.

42. S. 13(1) (b), ibid.

43. S. 9(1), ibid. The application for legal aid will be rejected unless it is accompanied by a certificate of lack of means issued by the Mayor of the applicant's local council. An appellant may not appear before the Supreme Court without being assisted by counsel; for, by s. 1 of the Bar Law 1972 the assistance of counsel is obligatory before the Supreme Court. So, in Jean Montapam alias Jean Bekoe c. Dame Emma Ngo Bivick, CSC, arret du 28 Oct. 1974, Penant, No. 759, 1978, p. 139, the appellant was held to forfeit his right of appeal because he failed to engage counsel and did not apply to be granted legal aid.

44. S. 9(3) (4), ibid.

(2) Examination of the appeal

When he receives the notice of appeal, the registrar of the court which delivered the judgment appealed against has fifteen days within which to serve notice of the appeal on the opposing party.[45] The appeal file which has to be completed within sixty days and forwarded to the Chief Registrar of the Supreme Court must contain a copy of the judgment appealed against, copies of interlocutory rulings (if any), the grounds of appeal, pleadings, and arguments of the parties.[46]

Civil appeals must be duly registered; an appeal not registered within thirty days is rejected. When the appeal has been duly registered, notice is served on the appellant's counsel that he has thirty days, from such service, within which to put in his statement of claim setting out and amplifying the legal grounds for the appeal.[47] When the statement of claim is lodged, notice is served on the respondent to reply within thirty days.[48] Upon receipt of the respondent's reply, the Chief Registrar at the Supreme Court must again notify the appellant that he has fifteen

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45. S. 10(1), ibid. The usual mode of effecting service is either by registered letter or through a bailiff.

46. S. 10(2)(3), ibid.

47. S. 13(1)(2), ibid. Failure to observe this time limit entails forfeiture (the penalty of which is civil fine of 10,000 frs) without prejudice, as the case may be, to action for damages against the defaulting counsel, for professional negligence.

48. S. 14, ibid.

days to make a counter reply if he so desires.[49] The exchange of pleadings comes to an end at this stage.[50] The case file, already thick, is then forwarded to the presiding Judge who passes it over to the 'juge rapporteur' for his examination and report thereon. When he makes his report, the rapporteur sends it under confidential cover to the President of the Supreme Court who transmits a copy of it to the Procureur General of the Court. In addition to being empowered to 'make appropriate proposals for the settlement of the dispute', the Procureur General, like the rapporteur may, of his own motion, raise grounds of claim.[51] After writing his submissions, which he must do within thirty days, the Procureur General forwards them together with the rapporteur's report to the presiding Judge who communicates them to the other members of the Court. At the end of these 'behind the scenes' activities, the case is then entered on the cause-list and a date fixed for hearing. The parties are informed of the date of hearing by publication of the cause-list.[52]

For litigants and lawyers accustomed to the common law tradition, a striking feature of this procedure is the involved role of the Procureur General in the decision-making process of the Court irrespective of whether the

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49. S. 15, ibid.

50. S. 17, ibid.

51. Ss. 18 and 19, ibid.

52. S. 20, ibid.

decision under review is civil or criminal. It is as though the Procureur General belonged to the bench and not the legal department. It is clear beyond peradventure that this procedure has been adopted straight from France. On the face of it each judgment of the Court is the work of a collective examination by all the members of the Court. In practice, the report made by the juge rapporteur (it is always formulated like a judgment) is invariably adopted as the judgment of the Court. Although the report is circulated among members of the Court they (with the exception of the President and the Procureur General) seldom study it in detail.

(3) Judgment

The Supreme Court normally sits as a panel of three judges. However, it must sit as a Full Bench of at least five Judges in the case of a second appeal against a death sentence or in a case where the President of the Court, after consultation with the Procureur General, deems it necessary. Judgments of the Court sitting as a panel of at least five Judges are binding on lower courts (they do not bind the Court itself) on matters concerning points of law brought before it.

At the hearing, the rapporteur reads his report. This is followed by the oral arguments of counsels and the Procureur General in support of their pleadings and submissions.[53] Judgments of the Supreme Court are not required

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53. S. 24(1), ibid.

to contain arguments. They must only set out and examine the grounds of the claim, the grounds of the decision, and at the end state whether the appeal is allowed or disallowed.[54] There is no summing up by the Judge. The Judge does not, as do Judges in common law jurisdictions, review the whole case for and against the appellant. After the Procureur General and counsels have had their say, the Judge reads a cryptic judgment cast in the form of a decree. Another thing likely to raise eyebrows for anyone trained in the common law system is the provision that an appeal lodged by the legal department at an Appeal Court must be heard even when no grounds of appeal are stated.[55]

(4) Challenges to and suing of Judges

Section 30 of Law No. 75/16 of 8 December 1975 (Procedure and Functions of the Supreme Court) enables parties appearing before the Supreme Court to challenge any of the judges on panel with a view to having him replaced in regard to any particular appeal. But no challenge may be made against members of the legal department. Applications (the applicant need not be represented by counsel) to challenge Judges of the Supreme Court must contain reasons for the challenge and must be lodged at the Court's registry. The Court rules on the matter within thirty days.

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54. S. 26(1), ibid.

55. S. 26(2), ibid. In this case, the juge rapporteur and the Procureur General at the Supreme Court would have to fish for grounds of appeal in the case-file.

Proceedings are held in camera and if the challenge is upheld, the Judge who has been challenged is replaced.[56]

Perhaps the most startling aspect of the procedure of the Supreme Court, as far as common-law-trained Judges and lawyers are concerned, is the fact that Judges of the Supreme Court may be sued.[57] They may be sued in any of these circumstances: (i) where there is fraud, perversion of justice, undue demand or professional misconduct; (ii) where the law expressly provides therefor; (iii) where the law holds Judges liable to damages; and (iv) where there is denial of justice.[58] However, no Supreme Court Judge may be sued without prior authorization of the Supreme Court President who shall rule on the issue after consultation with the Procureur General at that Court. No appeal lies against the decision of the President. This is evidently intended to be a check on possible reckless and vexatious suits against Judges.

This is the first time ever that a uniform procedure has been worked out for a Supreme Court in Cameroon. This is a positive step; one step forward in the task to work out a unified legal system in the country. It has in

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56. S. 31, ibid.

57. Ss. 33-39, ibid.

58. There is a denial of justice when a Judge refuses to answer applications or fails to hear pending matters or matters ready for hearing. For example, the adjournment sine die of a case is a denial of justice: CSC, Arret No. 109/P du 17 janv. 1974, 6 R.C.D. 144 (1974).

fact been suggested that this new procedure of the Supreme Court makes the Court both in name and in substance a supreme court and that it will henceforth play its assigned judicial role as a tribunal at the apex of the hierarchy of courts.[59]

III. Courts with Special Jurisdiction

A court with special jurisdiction is one which deals either with specific matters formally provided for by statute or with a particular class of persons. In Cameroon, there are two courts with special jurisdiction: the Court of Impeachment and the Military Court.

1. The Court of Impeachment

This court which existed under the 1961 Constitution as the Federal High Court of Justice is provided for in article 34 of the 1972 Constitution.

> "Art. 34. There shall be a Court of Impeachment which shall be regulated as to organisation and taking of cognizance and in other respects by law.
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> "The Court of Impeachment shall have jurisdiction, in respect of acts performed in the exercise of their offices, to try the President of the Republic for high treason

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59. V.M. Ngoh, 'The new functions and procedure of the Supreme Court', Cameroon Tribune, No. 79, 31 December 1975, p. 9.

> and the Prime Minister, Ministers and Vice-Ministers for conspiracy against the security of the State."

The Court of Impeachment is governed by Ordinance No. 72/7 of 26th August 1972.

A. Composition of the Court of Impeachment

The Court of Impeachment sits in Yaounde, is composed of 9 Substantive and 6 Alternate Judges, and is assisted by an Investigation Commission. It operates on the budget of the National Assembly and its members and those of the Investigation Commission receive no payment for their services.

Judges of the Court are elected by the National Assembly within twenty days of the beginning of the first session of each legislative year. Six substantive and three alternative Judges are elected on an absolute majority by secret ballot from among Parliamentarians. The remaining three substantive and three alternate Judges are also elected by the National Assembly, this time from among non-Parliamentarians. After they have been elected the Judges of the Court elect their President and Vice-President from among the substantive Judges of the Court. The Procureur General, Advocate General and Chief Registrar of the Supreme Court also serve the Court of Impeachment in their various capacities. The Investigation Commission is made up of a President elected from among Parliamentarians by the National Assembly, and two Supreme Court Judges appointed

by the Full Bench of the Supreme Court. Within ten days of their election members of the Court and of the Investigation Commission are required to take the following oath:

> "I swear and undertake to discharge my functions well and faithfully, to keep religiously the secret of all deliberations and votes and to conduct myself in all ways as a worthy and loyal Judge."

A Parliamentarian elected Judge of the Court but who subsequently ceases being a Parliamentarian ceases ipso facto to be a member of the Court. The same goes for the President of the Investigation Commission. The functions of member of Government of the Republic are incompatible with the functions of Judge of the Court of Impeachment and of President of the Investigation Commission.

B. Jurisdiction of the Court of Impeachment

Its jurisdiction is spelt out in article 34(2) of the Constitution.

> "Art. 34(2). The Court of Impeachment shall have jurisdiction, in respect of acts performed in the exercise of their offices, to try the President of the Republic for high treason and the Prime Minister, Ministers and Vice-Ministers for conspiracy against the security of the State."

The Court of Impeachment therefore has jurisdiction over a limited category of persons: the Head of State and members of his Government; and is competent to try only cases of 'high treason' committed by the President of the Republic, and cases of 'conspiracy against the security of the State' committed by members of Government.

By conspiracy against state security within the meaning of art. 34 of the Constitution is meant any felony or misdemeanour against the internal or external security of the State as defined in the Cameroonian Penal Code. Such offences (ss. 102-117 of the Penal Code) include subversion, hostility against the fatherland, injury to the defence of the nation, failure to report any activity liable to injure the defence of the nation, espionage, contact with the enemy during wartime, secession, civil war, revolution, insurrection, and so on. A member of Government who conspires to commit any of these offences may be indicted before the Court of Impeach for conspiracy against the security of the State. It does not however seem that the Court of Impeachment has jurisdiction to try a member of Government who goes beyond the conspiracy stage and commits any substantive offence against State security. In such a case the member of Government involved would have to be tried by the Military Court.

No definition is given of the crime of 'high treason'. Ordinarily however, treason simply means treachery, betrayal of the Government or an attempt to overthrow it; and high treason is any offence against the State. A legalistic definition of treason, as may be inferred from sections 102 and 103 of the Penal Code, is that it is an offence against the external security of the State committed by a citizen and carrying the death penalty.

"S. 102. - Hostilities against the Fatherland.

Any citizen:
(a) Taking part in hostilities against the

Republic; or
(b) Assisting or offering to assist the said hostilities - shall be guilty of treason and punished with death."

"S. 103. - Other Felonies Punishable with Death

"Whoever -
(a) Instigates a foreign power to undertake hostilities against the Republic; or
(b) Surrenders or offers to surrender to a foreign power or to its agents any troops, territory, installations or equipment employed in the defence of the nation, or any defence secret, or who in whatever manner acquires such a secret with intent to surrender it to a foreign power; or
(c) With intent to injure the defence of the nation, damages any construction, installation or equipment, or commits any malpractice liable to prevent their normal working or to lead to an accident, -
shall, if a citizen, be guilty of treason and, if a foreigner be guilty of espionage, and shall in either case be punished with death."

C. Procedure by the Court of Impeachment

The President of the Republic may be committed for trial in the Court of Impeachment only upon an absolute majority vote, on secret ballot, by the National Assembly. If the House votes in favour of impeachment, it takes a resolution to that effect summarising the allegations against the President of the Republic. Parliamentarians who are Judges of the Court of Impeachment and President of the Investigation Commission must not take part in the debate and the vote on whether to commit for trial or not. When the resolution committing for trial is taken, it is communicated without delay to the Procureur General who immediately acknowledges receipt thereof and in turn notifies

it, within twenty four hours, to the President of the Court of Impeachment and the President of the Investigation Commission who must forthwith convene the Investigation Commission. A member of Government, together with co-offenders and his accomplices, charged with conspiring against State security are committed for trial in the Court of Impeachment by decree of the President of the Republic. The President's decree committing for trial must relate briefly the facts of the case against the accused and must also mention the legal provision under which the charge is being preferred. The said decree is communicated to the Procureur General who has to notify it without delay to the President of the Court of Impeachment and the President of the Investigation Commission.

Before the Investigation Commission meets, its President may undertake any inquiry necessary for the ascertainment of the truth. The Commission does likewise when it meets. Any investigation must however be conducted in accordance with the rules of criminal procedure, especially those relating to the rights of the defence. The Commission is entitled to order a commission rogatory and its decisions are not appealable.

If the accused is the President of the Republic the Investigation Commission must find out whether there is sufficient evidence to sustain the charge stated in the National Assembly's committal resolution. The Commission is however not entitled to alter the charge as contained in the resolution. If it discovers facts which disclose

an offence other than that originally charged, it must send the case-file to the National Assembly through the Procureur General. The Assembly has fifteen days within which to adopt a motion on additional charges. If it fails to do so, the Investigation Commission resumes its inquiry on the original charge. Where, on the other hand, the accused are members of the Government, the Commission conducts its inquiry only in respect of the persons named in the Presidential decree committing for trial. If the accussed committed other offences connected with that of conspiracy against State security, the Commission must conduct inquiries in respect of those offences as well. At the end of these inquiries, the Commission commits, if need be, for trial before the Court of Impeachment. The committal order must specify the criminal law provision under which the charges are made. The committal order is signified to the accused at least eight days before the scheduled date of the trial.

The date of the opening of the trial is fixed by the President of the Court on the motion of the Procureur General and members of the Court are convened at least eight days to the date of the trial. Any victim of an offence with which the accused is charged may constitute himself <u>partie civile</u> before the Court. A Judge of the Court may be refused on any of the following grounds: (i) that he is a parent or relative of the accused, (ii) that he has given evidence in the case or has been summoned as a witness in the case, and (iii) that there is serious reason

for enmity between him and the accused. A Judge knowing himself to be open to recusation must decline to sit in the case.

All proceedings of the Court must be held in open court. Exceptionally, proceedings or parts thereof may be held in camera. At the end of the proceedings the Court decides on the guilt of the defendant in chambers. If the verdict is one of guilty, the members of the Court then proceed to vote, by a simple majority, on the proper sentence to be imposed, taking into account, where necessary, mitigating circumstances. Sentence is read by the President in open court. An accused may be tried and sentenced in absentia. So far, the Court of Impeachment exists only on paper. There has never been any impeachment proceedings in Cameroon.

2. The Military Court

The Military Court is governed by Ordinance No. 72/5 of 26th August 1972 which consolidates previous legislation on the subject.

A. Organisation

In theory, there is only one Military Court for the entire country with its seat in Yaounde. But the Court may, on the decision of the Head of State or, by special delegation, the Minister of Armed Forces, hold

sessions in any locality in the country. Moreover, one or more Military Courts may, if there is such a need (in fact one exists in Buea), be established by decree. The decree determines the number of such Military Courts to be established, their location and their territorial jurisdiction.

B. Composition

The Military Tribunal comprises: (i) a president who may be either a civil Judge or a military Judge or an officer of the Armed Forces; in time of war or during a state of emergency both civil and military judges are replaced by senior officers of the Armed Forces; (ii) two titular and two deputy assessors with a deliberative voice; these assessors may be either civil judges or Non-Commissioned Officers of the Armed Forces; (iii) a commissaire du gouvernement and one or more deputies, military or civil judges or in default, officers of the Armed Forces, 'chargé de soutenir l'action publique'; (iv) one or more judges in charge of conducting an inquiry into those cases which require a preliminary investigation; and (v) one or more civil or military registrars. All members of the Military Court are appointed by decree. In any trial, the trial judges must be at least of the same rank as the accused.

C. Jurisdiction

The Military Court is alone competent to try all

persons of over 18 years in respect of the following offences: (i) offences of a purely military nature provided for in the Code de Justice Militaire; (ii) offences of all sorts committed by soldiers, with or without civilian co-offenders or accomplices, either inside a military establishment or in the course of service; (iii) felonies and misdemeanours against the security of the State; (iv) offences punishable under the law with detention;[60] (v) offences provided for in Ordinance No. 62/OF/18 of 12 March 1962 (Subversion Ordinance); (vi) offences relating to firearms legislation; (vii) offences of any nature in which a soldier is involved, committed in an area subject to a state of emergency; and (viii) offences related to those heretofore listed.

Offenders and accomplices of between 14 and 18 years of age may be tried only by the ordinary criminal courts. Offenders who are aliens are, subject to the law on diplomatic immunity and International Convention granting court privilege, fully justiciable before the Military Court. With the exception of offences against state security and firearms legislation, decisions of the Military Court are appealable to the Court of Appeal and ultimately

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60. S. 26 of the Penal Code defines 'detention' as "loss of liberty imposed for a political felony or misdemeanour, during which the offender shall not be obliged to work, and shall be confined in a special establishment, or failing such establishment separately from those convicted under the ordinary law." This means that an offence is political if the legislator prescribes detention as its punishment. The detention is always for an indeterminate duration.

to the Supreme Court.[61]

IV. Advisory Bodies

An advisory body may be said to be one which hands down an opinion on an issue on which its opinion was sought. Unlike a court of law seised of a contentious issue, an advisory body does not hand down a judgment having force of res judicata. An advisory body may or may not be a court. What makes it advisory (at least with regards to the issue on which its opinion is sought) is that when consulted on an issue it gives an opinion and not a judicial decision.

Generally, the requirement of a case or controversy as a condition for the exercise of judicial power precludes the court from giving an advisory opinion. But this does not mean that recourse may not be had to the court for its opinion on a particular issue. Thus in the United States for example, a person can sue in his capacity as citizen merely to have the law 'straightened out'. In such a case an advisory opinion situation arises. However, the device of advisory opinion is normally a procedure whereby the political departments or particular institutions thereof may consult and obtain the opinion of the court upon some pending measure or upon some question of law or fact

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61. The jurisdiction of the Military Court is exhaustively treated in chapter 16, infra.

without resort to conventional litigation.[62] But the body that may be thus consulted need not be a court of law. It may be some other body specifically set up for that purpose.

An advisory opinion is not a judicial decision because it is not concerned with a justiciable issue. Not being a judicial decision it is not enforceable. It is not a res judicata. The person who seeks such an opinion is not bound to accept it. He may act on it. He may ignore it. However, it is not to be expected that a Government which seeks and obtains such advice from the court or other body with such attributes would lightly disregard it or refuse to give effect to it where that is necessary.

In Cameroon, there are two bodies which have the prerogative of giving advisory opinions to the legislature and the executive. The two bodies are: the Supreme Court acting in an advisory capacity, and the Higher Judicial Council.

1. The Supreme Court acting in its advisory capacity

The principal function of the Supreme Court is to give final judgments on justiciable issues. But it may

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62. B.O. Nwabueze, Judicialism in commonwealth Africa - the role of the courts in government, Hurts & Co., London, 1977, p. 84.

also be consulted for an advisory opinion in respect of certain matters provided for in the Constitution. By art. 7 of the Constitution, the Court is empowered to ascertain the death or permanent physical incapacity of the President of the Republic. Under art. 10, the President of the Republic is required to refer to the Supreme Court any law which he considers to be contrary to the Constitution. Article 27(4) provides that any doubt or dispute on the admissibility of a bill or amendment shall be referred for decision by the President of the National Assembly or the President of the Republic to the Supreme Court. Article 33 of the Constitution says that in all these cases, "the Supreme Court is called upon to give an opinion". Moreover, when the Court sits to hear any of these matters, its membership is doubled by the addition of five persons nominated for one year by the President of the Republic by reason of their special knowledge and experience.

A. Temporary prevention of the President and vacancy of the Presidency

Both issues are governed by art. 7(1) of the Constitution and Law No. 73/10 of 7 December 1973 fixing the conditions for election to the Presidency of the Republic. Article 7(1)(a) enacts:

> "Art. 7(1)(a). In case of temporary prevention, the President of the Republic may instruct the Prime Minister or, in case of

> the latter's prevention, another member of the Government to exercise his duties within the framework of an express delegation of powers."

This provision is evidently intended to cater for the situation where the Head of State is temporarily absent. Such absence may be physical, as where he is on a trip abroad; or political, as where impeachment proceedings have been initiated against him. But what is 'temporary prevention'? Would the fact that the President of the Republic is lying in bed at home or in a hospital for health reasons or for medical check-up amount to 'temporary prevention'? How temporary must the prevention be? It would seem from a construction of the provision that it is the President of the Republic himself who decides these matters.

When however, the prevention ceases being temporary and becomes permanent either as a result of death or permanent physical incapacity, the Supreme Court must step in to 'ascertain' such death or incapacity. Article 7(1)(b) provides:

> "Art. 7(1)(b). In the event of vacancy of the Presidency as a result of death or permanent physical incapacity, duly ascertained by the Supreme Court, the powers of the President of the Republic shall without more devolve upon the President of the National Assembly and, if in turn is prevented from exercising these powers, upon the Prime Minister, until election of a new President."

There would be a vacancy of the Presidency if the incumbent's term of office prematurely comes to an end as a result of

death, resignation, or permanent physical incapacity.[63] When the President of the Republic resigns, he tenders his resignation to the President of the National Assembly or, if he is not available, to the President of the Supreme Court[64] and then informs the Nation by broadcast. The resignation however takes effect only as from the day on which the newly elected President takes the oath of office.[65]

It is odd that the only incapacity that would disqualify an incumbent from Presidential office is a physical one. A President of the Republic who is suffering from mental incapacity or senility may cling to office until he breathes his last.

The President's permanent physical incapacity or death has to be duly ascertained by the Supreme Court. Article 63 of Law No. 73/10 of 7 December 1973 provides that the Supreme Court shall be seised by the President of the

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63. Art. 7(1)(b)(c) of the Constitution; art. 61 to 63 of Law No. 73/10 of 7 December 1973. There is one situation to which the draftsman of the Constitution did not advert his mind. Supposing the President were to disappear without leaving any instructions as regards his office or were to be kidnapped and in either case there is compelling evidence or reason to believe that he is still alive. The country would be in an extremely awkward situation because legally no one would be able to take over the Presidency. The P.M. or other Government member cannot do so because art. 7(1)(a) envisages the case of 'temporary prevention' and says it is the President who has to 'instruct the Prime Minister or ... another member of the Government to exercise his duties within the framework of an express delegation of powers'. Nor can the National Assembly President nor the P.M. take over by virtue of art. 7(1)(b) because even though the Presidency is in fact vacant, it is not 'as a result of death or permanent physical incapacity'.

64. Art. 64 of Law No. 73/10 of the 7th December 1973.

65. Art. 7(1)(c) of the Constitution.

National Assembly on the advice of the Medical Council. This medical council is yet to be named. It is clear beyond peradventure that what the Supreme Court is invited to do is not to make a medical but a judicial ascertainment. In other words, the Court is merely called upon to take, as it were, judicial notice of the Head of State's permanent physical incapacity or death, the biological reality having already been certified by the competent medical experts. The importance of the ascertainment by the Court stems, it is submitted, from the fact that for legal purposes, the Presidency is deemed vacant only as from the time the ascertainment was made. If this is the position, as it is submitted it is, it is hard to see in what sense the Supreme Court is said to be giving an 'opinion' here.

B. An alleged unconstitutional law

An alleged unconstitutional law may be referred to the Supreme Court for a ruling as to its constitutionality. But only the President of the Republic is empowered to exercise this right. Article 10 of the Constitution stipulates:

> "Art. 10. The President of the Republic shall refer to the Supreme Court ... any law which he considers to be contrary to this Constitution."

This reference is made simply for the purpose of obtaining the Court's advisory opinion on the matter, although it seems

unlikely that such an opinion would be disregarded.

When the President refers the alleged unconstitutional law to the Supreme Court, he is in fact claiming that the law enacted by the legislature is in violation of the Constitution and therefore an injury to the community as a whole. Here, there is clearly an element of adverseness, a controversy with regards to the measure passed by the National Assembly. The President's locus standi to refer the alleged unconstitutional law to the Supreme Court stems from his position as the Head of the State, the personification of the State, symbol of the whole community. Moreover, the division of legislative power between the legislature and the executive,[66] an inheritance from Gaullist France, has made it necessary to give to the President of the Republic a right of recourse to the Supreme Court for an opinion on the constitutionality of laws.

In the case under discussion, recourse is had to the Supreme Court after a bill has been passed into law. But recourse may also be had to that Court even before a bill is passed into law.

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66. In Cameroon, as in France and in most Francophone African countries, Parliament is not omnipotent. The National Assembly can deal only with those matters specifically enumerated in the Constitution (art. 20) while the residue (unspecified) is made the subject of rule-making by the executive(art. 22). Moreover, the National Assembly may empower the Head of State to legislate, by way of ordinance, for a limited period and for limited purposes with regards to subjects listed in the legislative domain (art. 21). The reason for this delimitation of powers is probably to avoid incompetence and impotence.

C. Doubt or dispute over the admissibility of a bill

This is the situation contemplated by art. 27(4) of the Constitution which provides:

> "Art. 27(4). Any doubt or dispute on the admissibility of a bill or amendment shall be referred for decision by the President of the Assembly or by the President of the Republic to the Supreme Court."

It is doubtful whether in this case it is called upon to give a judicial decision. The ambiguity arises because art. 27(4) talks of a decision while art. 33 talks of an opinion. The position is probably this. Where there is merely a doubt as to the admissibility of a bill or an amendment the Supreme Court gives an opinion. But where there is a dispute on that issue, then there is adverseness, a ripened controversy, a clash between the legislature and the executive and the Supreme Court is called upon to give a decision.

There is clearly an advantage in referring a bill or an amendment over which there is doubt or dispute as to its admissibility to the court for a decision thereon. By means of this mechanism a would-be unconstitutional law is nipped in the bud; it is destroyed before it becomes law. This device also servies the need for certainty in the law. When a disputed bill is pronounced by the Supreme Court to be constitutional it may no longer be challenged for unconstitutionality when it subsequently becomes law.

This procedure, aptly termed preventive adjudication, should probably be among the concerns of a court of

law. A court of law, it has well been pointed out, should not only provide a machinery for the administration of law for, law may be administered by means other than its application to the determination of real disputes between adversary litigants.[67] One commentator has put the argument more cogently:

> "We have become accustomed to thinking of courts only as machinery for handling conflicts between opposing individuals or groups after they have already come into clash. Certainly, that is their chief function, as it is the chief function of the medical profession to deal with malignant disease. But the medical profession has long since abandoned the notion that its work is accomplished if it relieves suffering, and much of its energy is now devoted to preventive medicine. The legal profession has not similarly widened its sphere. It is true that most lawyers devote much of their time to precautions against future controversy. But we have made slow progress toward developing what might be called preventive adjudication, and the notion widely prevails that the judicial branch of the legal profession must necessarily confine itself to ripened conflicts." 68

No dispute as to the constitutionality of a law has yet come before the Supreme Court of Cameroon.

2. The Higher Judicial Council

Established by the Constitution, the Higher Judicial

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67. Cf. Nwabueze, op.cit., chapter IV, The advantages of preventive adjudication.

68. Manley Hudson, 'Advisory opinions of national and international courts', Harvard Law Review, 37 (1923), p. 971, cited by Nwabueze, op.cit., at p. 93.

Council is an advisory body and is governed by Ordinance No. 72/8 of 26 August 1972.

A. Composition

The Higher Judicial Council is presided over by the President of the Republic and comprises the following persons: (i) the Minister of Justice, or in default someone else appointed by the Head of State; the Minister of Justice is vice-chairman of the Council; (ii) three parliamentarians chosen by the National Assembly by secret ballot on a two-thirds majority of its members; (iii) one person chosen by reason of his knowledge by the President of the Republic. The person so chosen must belong neither to the National Assembly nor to the Judiciary; (iv) three Judges in active service chosen by the Full Bench of the Supreme Court. These are titular members of the Council. Each titular member has a substitute. A titular member who is unable to sit in the Council either as a result of death, resignation or otherwise, is automatically replaced by his substitute. Members of the Council are bound by oath taken before the President of the Republic to keep secret anything discussed in the Council.

B. Duties

The Higher Judicial Council is the institutional adviser to the President of the Republic on matters concerning

the judiciary: independence, appointments, discipline. It also advises the President of the Republic on the exercise of the prerogative of clemency.

a) Prerogative of mercy

By art. 9(5) of the Constitution, the President of the Republic shall 'exercise the prerogative of clemency after consultation with the Higher Judicial Council'. But the President need in fact not consult the Council before exercising this prerogative. Section 6 of Ordinance No. 72/8 of 26 August 1972 makes the prior consultation of the Council compulsory only in the case of a death sentence. For all other sentences, he need only get the opinion of the Minister of Justice. The Minister gives such an opinion in the name of the Council. But in fact the Council need not have met at all.

b) Independence of the judiciary

Article 7 of Ordinance No. 72/8 provides that the Higher Judicial Council 'may' be consulted by the Head of State on all matters relating to the independence of the judiciary. The use of the discretionary may and not the mandatory shall would seem to suggest that the President is not bound to consult the Council on this matter. In practice however, he always does. Bills or statutory rules and orders concerning the independence of the judiciary are first submitted to the Council for its opinion thereon.

c) Appointments and discipline

Article 31 of the Constitution enacts:

> "Art. 31. Justice shall be administered in the territory of the Rpublic in the name of the people of Cameroon.
>
> "The President of the Republic shall ensure the independence of the judiciary, and shall appoint to the Bench and to the legal service.
>
> "He shall be assisted in this task by the Higher Judicial Council, which shall give him its opinion on the proposed appointments to the Bench and on disciplinary sanctions concerning them."

This constitutional provision is reiterated in sections 8 and 9 of Ordinance No. 72/8. The Council gives its opinion on proposals for appointments, promotions, transfers, secondment and the award of honours to members of the Bench. It draws up the Promotion List for members of the bench and gives its opinion on disciplinary sanctions concerning any member of the judiciary.

C. Operation

Convened by the Head of State (the Council's chairman), the Higher Judicial Council holds its meetings in the Presidency. Six members constitute a quorum and the majority opinion on any point discussed prevails. The agenda for each meeting is drawn up by the Head of State and a copy attached to the convocation to members of the Council. The Council has a standing secretariat run by a Judge on service in Yaounde. He is appointed by the

President. Funds for the running of the Council are disbursed from the budget of the Presidency of the Republic.

Petitions for clemency are first examined by the Minister of Justice before being forwarded, together with his opinion thereon, to the Council's secretariat. When the Council has given its opinion on a petition for clemency, the President would then have to decide on the petition.

In the case of disciplinary measures, the action is begun by the Minister of Justice, acting as the accuser. He formally informs the Head of State of the allegation against the Judge concerned supporting his case with all useful evidence. The Head of State would then appoint a three-man disciplinary committee to conduct inquiries into the matter. At the end of the inquiries, the committee writes its report, a copy of which is given to the accused. The accused has access to all the files concerned with the case. Summoned at least ten days to the trial, the accused must appear in person save for cases of act of God duly ascertained. But he is entitled to have an advocate to conduct his defence. The entire proceedings are conducted in the manner of an ordinary court trial save for the fact that they take place in camera. At the end of the trial the accused may be found 'guilty' or 'not guilty'. If guilty, the Council gives its opinion on the sanction to be imposed. It is then pronounced by the President of the Republic and made public, where necessary, by decree.

CHAPTER NINE

THE CAMEROONIAN MAGISTRACY

A completely professional judiciary or one consisting of professional and lay judges - this is a debatable issue. But the debate is a futile one. The same arguments - many courts, a small number of available lawyers, the time and cost entailed in training a professional judge, the fact that many litigants are unrepresented by counsel, the need to administer the law properly, etc. - may be advanced for or against a wholly professional judiciary. At the end of the day therefore, the choice between a wholly professional and a professional-cum-lay judiciary is a matter of policy decision. In England for example, unlike in France where there is a preference for a wholly professionalised magistracy, the tradition has always been to have a judiciary consisting of professional and lay judges. In Cameroon too, the judiciary used to comprise professional and lay judges, the latter found mainly in the customary courts. Since 1972 however, government's policy has been to have a wholly professional judiciary. To achieve this goal, an increasing number of law graduates are being encouraged to enter the magistracy and the training of judges has been stepped up, customary courts have been removed from the mainstream of the courts system and are eventually to be abolished, some customary courts

are in fact now presided over by professional magistrates, and the lay judges who continue to preside over customary courts do not come within and are not treated as forming part of the magistracy. In Cameroon today therefore, the magistracy is completely professionalised and members recruited into it follow a career with prospects of advancement from the lower to the higher echelons of the profession. The policy of having a completely professional magistracy is probably desirable. A legal system cannot function efficiently without a highly skilled judiciary. This is the more so in developing countries where, as one commentator has rightly pointed out,[1] because of the small number of lawyers, a person is usually unrepresented, and therefore the judge or magistrate must take a more active role in the proceedings. However, the policy of having a fully professional magistracy and the corresponding rejection of lay magistrates has meant making do with an inadequate manpower strength for, in Cameroon, it takes at least six years of post-secondary school education to train a professional magistrate.

The Cameroonian magistracy is still numerically small. In 1976 it counted a mere 137 '<u>magistrats</u>' employed at the Ministry of Justice, the Supreme Court, seven Courts

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1. S.D. Ross, 'A comparative study of the legal profession in East Africa', [1973] J.A.L., 286.

of Appeal, thirty-nine High Courts and forty Courts of First Instance.[2] There was therefore just one magistrat to roughly 60,000 Cameroonians. In 1978 the number of magistrats had increased to 160, bringing the ratio by population down to approximately 1:46,000.[3] Of these 160 only 144 are engaged in actual court work while 13 work in various administrative capacities at the Ministry of Justice.[4] The 144 include 4 expatriates on contract and serving in various capacities[5] as well as 3 greffiers délégué aux fonctions de magistrat, two of whom are Cameroonian. According to the Judicial Organisation Ordinance[6] and the ordinance fixing the organisation of the Supreme Court,[7] there are supposed to be at least 4 magistrats at each Court

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2. 'Doumba spells out national role of justice', Cameroon Tribune, Wed. August 18, 1976, No. 112, p. 2.

3. The statistics used here were all obtained from the Ministry of Justice, Yaoundé.

4. These 160 do not include 17 who are détachés, that is to say, on secondment. Among these are Messrs Enoch Kwayeb, Tabi Egbe, Ayissi Mvondo, Philomon Yang - all of them Ministers; Mr Ngumba Eko, Secretary General at the Ministry of Labour & Social Insurance; Mr Mbella Mbappe, Chancellor of Yaoundé University; and Mr Mongo Soo, ambassador.

5. There is one Frenchman serving as greffier contractuel délégué à la fonction judiciare; one Ghanaian, Mrs Hagan, working at the Procureur Général's Chambers in Buea; and two West Indians who are judges, Mr Justice Oliver Inglis from St Lucia and Mr Justice Rupert Thomas from Guyana.

6. No. 72/4 of 26 August 1972, as amended by No. 72/21 of 19 October 1972.

7. No. 72/6 of 26 August 1972, as amended by Law No. 76/28 of 14 December 1976.

of First Instance, 4 at each High Court, 7 at each Court of Appeal and 10 at the Supreme Court. There is furthermore statutory provision for a Court of First Instance in each sub-Division, a High Court in each Division, a Court of Appeal for each Province and a single Supreme Court for the whole country. Now, there are in Cameroon, 7 Provinces, 39 Divisions and 133 sub-Divisions.[8] This works out at a minimum of 532 magistrats for all the Courts of First Instance, 156 for the High Courts, 47 for the Courts of Appeal and 10 for the Supreme Court. Consequently, in order to set up and fully staff all the courts previewed in the Judicial Organisation Ordinance of 1972, Cameroon would need at least 747 magistrats. But at the moment the country cannot boast of 200.

The Cameroonian magistracy is also a male-dominated profession. There are only 6 lady magistrats in Cameroon.[9] By the standards of the developed countries, the Cameroonian magistracy is also a youthful magistracy. Most of the magistrats fall within the 35-45 years age bracket. There are none who are sixty. The reason is that the retirement age for judges is 55.

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8. There are also 37 Districts. See, Minister of Territorial Administration, Ministerial Order No. 63 of 28 March 1973 to fix the call-signs of administrative units of the United Republic of Cameroon.

9. I have omitted Mrs Nchouta who has been placed en disponibilité, i.e. on reserve, and is considered therefore as no longer in the service. The six lady magistrats are Dame Justice Lucy Gwanmesia, Appeal Court Judge and Their Worships Miss F.R. Arrey, Mrs H.E. Ebai, Mrs H.M. Elad, Mrs C. Ntoko, Miss Ndemou M.

Even more important from the point of view of the administration of justice is the fact that the vast majority of these magistrats are monolingual and monojural. There are of course a handful (all of them graduates of the Law Faculty of the University of Yaoundé) who speak and understand English and French as well as being familiar with both the common law and the civil law systems. But these constitute only a small number. Moreover, they are to be found mainly in the Anglophone Provinces. Furthermore, most of them are professionally still young tyros at the bottom rung of the professional ladder.[10] Grosso modo therefore, judicial and legal officers in the Anglophone and Francophone Provinces live professionally cloistered lives with barely a nodding acquaintance with each other's legal system.[11] The magistrat in the Francophone Provinces still reasons and talks in terms of the Napoleonic codes, while his learned brother in the English-speaking Provinces still reasons and talks in terms of the common law.[12]

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10. Their Lordships, Deba, Mbuagbaw and Gwanmesia JJ., are the exceptions.

11. Judicial and legal officers in each sector have never officially set foot in courts operating in the other sector. No programme exists for such exchanges. The young legal probationer at the School of Magistracy gets his practical training and forensic experience in the Anglophone courts if he is Anglophone and in the Francophone courts if he is Francophone.

12. A Judge in the Anglophone Provinces is apt to see the Judge as one who 'should be an expert in the construction of statutes, should be properly versed with common law tenets and principles of equity and jurisdiction', see, 'Endeley spells responsibility of judges', Cameroon Tribune, Wednesday January 25, 1978, no. 187, p. 4. This is all Greek to a judge in the Francophone part of the country.

In Cameroon the French expression 'magistrat' is a generic term which refers to any member of the bench or legal department. A Supreme or an Appeal Court Judge is a magistrat (haut magistrat, he is sometimes called) and so too is a magistrate at the smallest Court of First Instance. Similarly, a State Prosecutor, whether at the appellate court or at the court below, is also known as a magistrat. All of them belong to one professional corps, la magistrature or magistracy, which is however functionally bifurcated: la magistrature assise (the bench) and la magistrature débout (also known as le Parquet or again le minstère public) - the legal department. The nomenclature 'magistrat' is pregnant with meaning. It underscores three significant facts. First, that organically, judge and state prosecutor belong to a single service, the Judicial and Legal Service. Section 1(1) of the Rules and Regulations governing the Judicial and Legal Service[13] enacts that the Judicial and Legal Service comprises "members of the bench and of the legal department in service in the courts of law, judicial and legal officers of the central administration of the Ministry of Justice, legal assistants and legal probationers". Secondly, that both have had basically the same training and so can serve in one or the other capacity whenever required to do so.

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13. Decree No. 75/596 of 25 August 1975 as amended by Decree No. 76/247 of 24 June 1976.

The Cameroonian magistrat is therefore polyvalent: at one time during his career he may be a judge, at another a prosecutor or even prosecuting and judging at the same time,[14] and at another time a bureaucrat doing administrative work at the Ministry of Judice. Thirdly, that members of the bench and of the legal department are recruited (but not removed) in the same way and are governed by the same rules and regulations.

I. Recruitment into the Magistracy

In order to ensure the good administration of justice every legal system has a double task; on the one hand to establish a system of guarantees that will ensure the independence of the judges, and, on the other hand to develop a system of rules governing the recruitment of judges that will ensure that the candidates selected have both the necessary technical (legal expertise, forensic and human experience, intelligence, and common sense) and moral qualities. Both are two sides of the same coin. The method of recruitment of judges is in itself an essential factor in the personal independence of the judge.

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14. This is the office of the président chargé de l'action publique, that is, the magistrate-cum-prosecutor. There is a close resemblance here with the Colonial Legal Service in colonial territories under Britain. In those territories there was a unified colonial Legal Service, like the French but unlike England, unifying judges and Crown counsel.

There are three main methods by which recruitment of judges may be made: nomination or appointment by the executive as in France, Germany, England and Wales; election by those subject to their jurisdiction as in Poland, U.S.A. and in the Soviet Union;[15] and selection by the judiciary itself (the system of co-option) as in Belgium.[16] In Cameroon the method of recruitment into the magistracy is by appointment by the executive, usually after the aspirant has successfully completed a period of training at the Judicial Section (hereinafter referred to as the School of Magistracy) of the Ecole Nationale d'Administration et de la Magistrature, E.N.A.M.

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15. In the Soviet Union all judges are elected. Judges for the lower courts are elected directly by those subject to their jurisdiction. Judges of the higher courts are elected by the various legislative assemblies. The law demands no legal qualifications from a candidate for judicial office: every enfranchised citizen of the Union over the age of 25 is eligible to be elected judge or peoples' assessor (art. 29, Principles of the Soviet Judicial System). In practice no one is proposed as a candidate who has not received some legal training or had some practical experience of the law. The nomination of candidates is made by the Party or by various collective organisations, which in the last resort are dependent on the Party. A Russian judge's term of office lasts only 2 to 5 years (art. 19, 20 of the Principles concerning judicial organisation) and may even be terminated earlier on a resolution of those whose right it is to elect him (art. 35).

16. In Belgium there is a fusion of the principle of nomination by the executive with that of co-option. The judges of the appeal courts are chosen by the King from two lists of names, one drawn up by the court in question, the other by the Provincial Councillors. Judges for the Cour de Cassation are chosen from similar lists, one from the Senate and the other from the Court itself. All courts elect their own presidents and vice-presidents.

1. Appointment to the Judicial and Legal Service

All appointments into the Judicial and Legal Service are made by the Head of State on the advice of the Higher Judicial Council.[17] Article 31 of the Cameroonian Constitution enacts:

> "The President of the Republic shall ensure the independence of the judiciary and shall appoint to the Bench and the legal service. He shall be assisted in this task by the Higher Judicial Council, which shall give him its opinion on the proposed appointments to the Bench and on disciplinary sanctions concerning them."

This arrangement is ostensibly aimed at ensuring freedom from politics in judicial appointments. But the Council is chaired not by the president of the Supreme Court but by the Head of State himself. Furthermore, judges are in the minority on the Council. So, apart from the question whether it is entirely desirable to remove political considerations completely from such appointments, it is interesting to speculate whether the Council can always perform its functions divorced from politics. Much would probably depend on the individual members, their weaknesses, hopes and ambitions and the incumbent Head of State.

The educational and moral qualifications demanded of aspirants to the Judicial and Legal Service are precisely laid down by law. This is in order both to ensure

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17. For the role of the Higher Judicial Council, see supra, chapter 8, Section IV.

a properly qualified magistracy and to prevent the government using arbitrary methods of selection. The required qualifications are based upon a double principle; namely, that judges are both servants of the state (they are said to be performing a public service) and of the law. Thus, no one may be appointed a member of the Judicial and Legal Service unless, (1) he fulfils the conditions prescribed by the Public Service Rules and Regulations,[18] (2) he holds the licence en droit of the University of Yaoundé,[19] and (3) he holds the Diploma of the National School of Administration and Magistracy (Judicial Section) or has completed a training period as legal assistant.[20] In Cameroon, as in France and Germany,

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18. By s. 51(1) of Decree No. 74/138 of the 18 February 1974 (General Rules and Regulations of the Public Service), "No person may be appointed to a post as a civil servant: (a) unless he is of Cameroonian nationality, (b) unless he is at least 17 and at most 35 years of age ..., (c) unless he is of good character, (d) unless he is found to be physically fit for the post in question by a health board and is free from any disease giving entitlement to special extended leave, (e) if he has been convicted ..." Indeed members of the magistracy are governed, where there is silence in the Service's Rules, by the general rules of the Public Service: ss. 1(2) and 68 of Decree No. 75/596 of 25 August 1975, and s. 3(2) of Decree No. 74/138 of 18 February 1974.

19. This degree may however be replaced by a foreign law degree (such as the LL.B.) recognised as equivalent by the Ministry of Education and approved by the Minister of Justice or dispensed with in the case of success in the Bar Final Examination at one of the Bars appearing on the list drawn up by decree upon the recommendation of the Promotion Board.

20. Decree No. 75/596 of 25 August 1975: Rules and Regulations governing the Judicial and Legal Service, s. 10(1).

but unlike in England, the magistracy is a creer. The young Cameroonian can therefore choose the profession of magistrat by obtaining his licence en droit from the University and the Diploma from the School of Magistracy. This is the usual road to judicial office, although there is statutory provision for direct appointment of law teachers and practitioners to the bench.

A. Appointment from among graduates of the School of Magistracy

In order to obtain the Diploma of the School of Magistracy the student must have successfully completed the prescribed course of study and training at the School. The course is intended to give the future judges the necessary technical qualities. Candidates for the School of Magistracy are recruited on the basis of their qualifications within the limits of the number of places fixed each year by a joint order of the Ministers of Justice and of Public Service.[21] If the number of candidates exceeds the number of available places, then selection into the School is effected by means of a concours or competitive examination.[22] Successful candidates who are admitted into the School are appointed auditeurs de justice (legal probationers) by joint order of the Ministers of

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21. Rules & Regulations of the Judicial & Legal Service, s. 11(2).

22. Ibid., s. 11(3).

Justice and of the Public Service[23] and are treated as probationer civil servants.[24]

The normal duration of the course at the School of Magistracy is two years,[25] at the end of which period the legal probationer sits for the Diploma Examination. If he succeeds[26] he is awarded the Diploma of the School and is absorbed into the Judicial and Legal Service.[27] But if he fails, his appointment as legal probationer is either terminated or converted into one of attaché de justice (legal assistant).[28] The legal assistant is then placed at the disposal of the Procureur General at an Appeal Court[29] for a training period of at least one year[30] before being absorbed into the Judicial and Legal Service.[31]

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23. Ibid., s. 12(1).

24. By s. 62 of the General Rules & Regulations of the Public Service, "Probation shall be the period of observation during which the public employee seeking to be confirmed in a grade of the Public Service must prove his professional ability, good character and physical fitness to perform the duties to which he aspires.

25. S. 13(1), Rules & Regulations of the Judicial & Legal Service. However, candidates who are docteurs en droit or who hold the Ph.D. degree in law may be admitted directly into the second year. S. 13 (2), ibid.

26. The pass mark is an average score of 12/20. S. 13(6),ibid.

27. S. 14(1), ibid. Before 1976, this absorption was automatic and as of right. This is no longer the case. See, Decree No. 76/247 of 24 June 1976.

28. This will depend upon the approval of the School's Managing Board and the availability of credits.

29. Rules & Regulations of the Judicial & Legal Service, s. 15(1)(2).

30. His appointment will be terminted if after 2 years he has not improved.

31. Rules & Regulations of the Judicial & Legal Service, s. 15(3)(4)(5).

In theory graduates from the School of Magistracy are all required to put in at least one year of effective service at the Chambers of the Procureur General at an Appeal Court before being appointed to specific posts on the bench or in the legal department.[32] But in practice this is not the case. It is not uncommon for fresh graduates of that School to be appointed straight away as magistrates or state prosecutors.[33] However, these appointments are made only to posts within the lowest scale of the profession. A fresh diplômé from the School of Magistracy cannot be appointed to the High or Appeal Court. He must start his career at the bottom, at the Court of First Instance, slowly climbing up the ladder by way of promotion through his own hard work, luck and the good relations he succeeds in maintaining with those responsible for his promotion.

B. Appointment from among advocates and law teachers

The School of Magistracy is not the exclusive gateway to a career in the Cameroonian magistracy. There is provision in the Rules and Regulations of the Judicial and Legal Service (Statut de la Magistrature) for direct appointment into the magistracy other than via the School of Magistracy, although such appointments are extremely

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32. Ibid., s. 16(1)(2)(3).

33. Fieldwork observation and interviews.

rare. Section 10(2)(b) of the Rules and Regulations of the Judicial and Legal Service provides:

> "(b) the requirement of a diploma from the National School of Administration and Magistracy may be replaced by adequate professional experience acquired in Cameroon, subsequent to the licence degree in law or equivalent qualification within the meaning of paragraph 2(a) above, of five years as advicate or barrister, 'aggrege' teacher of a law faculty or holder of the LL.D. (Doctor of Laws) degree, bailiff, notary or solicitor or as an established civil servant where the competence and professional activities of the candidate in legal or social matters qualify him for the exercise of judicial duties."

The poor draftsmanship here has obscured the meaning of this provision. What the provision would seem to be saying is that law teachers of high academic standing and certain auxiliary personnel of the law may be appointed straight to judicial office without having to pass through the School of Magistracy. However, before he can hope to be appointed to such office, the law teacher or the auxiliary of justice must have had at least five years of 'professional experience' which may or may not include forensic experience. This provision however remains a dead letter.

In the days of the federation it was normal practice in the former West Cameroon to have an experienced and brilliant barrister appointed to the Bench.[34] This

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34. Before his appointment to the Bench, His Lordship Mr Justice S.M.L. Endeley had had six years of brilliant practice at the bar. Mr A.T. Asonganyi was also a practising barrister before his appointment to the Bench.

was not surprising. The Bench enjoyed much prestige and independence and a judgeship was regarded as the climax of an advocate's career. Consequently, there was no unwillingness on the part of barristers to accept appointment to judicial office. Today however, few advocates in Cameroon would accept appointment to the bench, even though there is statutory provision[35] that they may be appointed straight to the High or Appeal Court. There are two main reasons for this unwillingness on the part of advocates to accept judicial appointment.[36] First, advocates enjoy their freedom and independence and are extremely reluctant to join a judiciary whose independence they regard as merely theoretical. Secondly, apart from the social prestige which he enjoys, the advocate makes far more money in private practice than his colleague in the magistracy. In fact people have tended to move from the magistracy to take up private practice[37] rather than the other way round.

There is provision for the appointment of University law teachers as Appeal Court Judges.[38] But as yet no such appointments have been made. The reasons are not hard to divine. First, the salary is unattractive and the

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35. S. 16(6), Rules & Regulations of the Judicial & Legal Service.

36. Fieldwork interviews.

37. E.G. Messrs Ben Muna, A.T. Asonganyi, Ngondo-Otou.

38. S. 16(6), Rules and Regulations of the Judicial & Legal Service.

bench dull and boring.[39] Secondly, the requirement of LL.D. or agrégation is unrealistic, irrational, preposterous and undefendable. There is clearly a lack of understanding on the part of the draftsman as to what the French agrégation and the English LL.D. are. In France, personal research is the essential element in obtaining a post in higher education. Access to these posts has as a prerequisite, depending upon the discipline, success in the agrégation à l'enseignement supérieur[40] or enrolment on a list of those qualified for appointment as maître de conférence. The agrégation de l'enseignement supérieur is a competitive examination open to persons who are, in the case of law, docteurs en droit, and which renders successful candidates eligible for a post as maître de conférence or professeur in higher education. The English LL.D. on the other hand is a totally different thing. The LL.D. may be awarded by an English University after a candidate (whether with an LL.B., LL.M., M.Phil., or Ph.D. or all of them), usually a senior University teacher (and you do not have to hold the LL.M. or M.Phil. or Ph.D. to be one),

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39. Fieldwork interviews.

40. In France, there are two types of agrégations just as there are two types of professeurs; the agrégation de l'enseignement secondaire and the agrégation de l'enseignement supérieur. Both are competitive examinations. The former agrégation is open to candidates who have first obtained a licence and then a maîtrise. Those who pass the concour are styled agrégés and may be allocated a teaching post in secondary education as professeurs agrégés.

has submitted for consideration a number of learned works, which have usually already been published. The LL.D., like the D. Litt. or D.Sc., is conferred in recognition of an outstanding contribution to scholarship in a particular field and is usually awarded to persons of high academic distinction and on the basis of previously published work. The LL.D. is therefore not a degree one studies for at the University any more than the agrégation is. Thirdly, the draftsman is grossly in error in emphasising on a high academic standard rather than insisting on practical and forensic experience. As things stand, a law teacher without the LL.D., be he a Professor with so many years of professional and forensic experience, does not qualify for a judgeship in Cameroon. This, it is submitted with force, is unrealistic and nonsensical. In America, professional teachers in the law faculties or equivalent training institutions may be appointed to the bench. This is largely because American law professors have usually had some practical, including forensic, experience and not because they hold the LL.D. Moreover, the tone of American University law teaching is highly professional. The case method and frequent use of moots and 'legal clinics' as teaching aids inject into these schools an atmosphere not unlike that of apprentice training.

Besides law teachers and advocates, an established civil servant whose competence and professional activities in legal and social matters qualify him for the exercise of judicial duties may be appointed straight

to judicial office. Thus it is normal practice in the Francophone Provinces for court clerks to be appointed to the bench. Again, a civil servant with a law degree but who has not exercised professional activities may be appointed to judicial office after he has undergone training as legal assistant.[41] Furthermore, there is provision for the 'delegation' of 'foreign jurists' to judicial and legal posts.[42] This provision therefore empowers the government to recruit expatriate legal personnel into the Judicial and Legal Service of the country.

Once appointed, the judicial or legal officer remains in the service until he either resigns, retires or is dismissed from office (as a disciplinary measure upon the commission of a professional offence or as a result of unfitness for the service). Retirement marks the normal end of the active employment of a civil servant and entitles him to either a long-service pension or a proportional pension.[43] A judge may voluntarily ask to be retired at 50; but the normal retiring age is 55.[44]

2. Discipline

Members of the bench and of the legal department

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41. Rules and Regulations of the Judicial and Legal Service, s. 1)(3).

42. Ibid., s. 74.

43. General Rules and Regulations of the Public Service, ss. 170, 172.

44. Fieldwork interviews.

are all subordinate to the Ministry of Justice. But the degree of subordination is not the same in both cases. Members of the bench are comparatively freer vis-a-vis the Ministry of Justice than those of the legal department. To give the former some measure of independence, it is statutorily provided that they are irremovable and may not, except in the case of disciplinary sanction or application of the interim rules, receive another posting, even as a promotion, without their express consent.[45] This provision which is intended to give judges security of tenure by ensuring against their arbitrary removal from office, does not apply to members of the legal department. Although the procedure for the application of disciplinary sanctions differs in either case, members of the bench and of the legal department are subject to the same professional discipline and disciplinary sanctions.

A. The sanctions applicable

There are nine[46] disciplinary measures applicable to judicial and legal officers.[47] They are, in ascending

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45. Judicial & Legal Service Rules, S. 3(2). But contra s. 73 which provides, "In the interests of the service ... a member of the bench may be transferred or promoted without his consent ..."

46. They used to be ten. But Decree No. 76/247 of 24 June 1976 repealed compulsory transfer as a disciplinary sanction.

47. Judicial & Legal Service Rules, s. 48(1).

order of gravity: reprimand, removal from post,[48] deferment of advancement in incremental position,[49] reduction in incremental position, interdiction for a period of three months,[50] striking off the promotion list, deferment of promotion,[51] reduction in group or in scale,[52] and dismissal with or without loss of pension rights. If an officer is charged at the same time with several disciplinary offences, only one of these penalties may be imposed.[53] Sanctions are pronounced by decree of the Head of State after the relevant procedures have been followed.[54]

Sanctions are imposed for any failure by a judicial or legal officer to fulfil the duties and obligations attaching to his rank, in particular any serious

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48. This consists in maintaining the member of the service on the bench or in the legal department of the same court in a post corresponding to his group or scale but subordinate to the one he previously occupied. Ibid., s. 49(1).

49. This may not be for less than one year nor may it exceed three years. Ibid., s. 49(2).

50. During this period the officer loses his salary but continues to receive the fringe benefits he is entitled to, such as children's allowance, house allowance, etc.

51. The deferment of promotion in scale or group or promotion to the super scale may not be for less than one year nor may it exceed four years. Ibid., s. 49(3).

52. This entails grading as from the day on which it takes effect, in the group or scale immediately below the incremental position within the said group or scale being fixed by the disciplinary authority as from the same date. Ibid., s. 49(4).

53. Ibid., s. 50.

54. Ibid., s. 48(2).

professional offence or impropriety, breach of honour of dignity.[55] In the case of a member of the legal department, the disciplinary offence is determined in the light of obligations resulting from his subordinate rank.[56] Prima facie, these sanctions may be imposed only for serious professional misconduct as such or conduct unbecoming a member of the Judicial and Legal Service. But there is no reason to suppose that it would not include, for example, concerted activity which may interfere with the administration of justice such as strike, collective resignation.[57] It may also include certain political activities, such as for example being highly critical of the one party system.

Apart from any disciplinary action that may be taken against any judicial or legal officer, the President of the Supreme Court, the Presidents of Appeal Courts, procureurs general, the secretary general at the Ministry of Justice as well as the directors in that Ministry, have authority to issue a warning to the judicial and legal officers whom they are empowered to report upon and propose for promotion. The Minister of Justice has the same right as regards the Secretary-General and Directors in his Ministry as well as the Presidents of courts and heads of legal departments. Such warning (avertissement),

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55. Ibid., s. 46(1).

56. Ibid., s. 46(2).

57. Cf. s. 124 of the Cameroonian Penal Code.

which must be consequent upon a request for a written explanation (demande d'explications écrites), are filed in the records of the judicial or legal officer concerned.[58] Moreover, a judicial or legal officer who proves to be unfit for the service or to be a notorious alcoholic may, after consultation with the Higher Judicial Council or the Permanent Disciplinary Board, as the case may be, be dismissed or compulsorily retired.[59] Furthermore, where the Minister of Justice receives a complaint or is informed of facts which appear to call for disciplinary action against a judicial or legal officer he may on his sole authority suspend the officer in question for up to six months.[60]

The imposition of a disciplinary sanction is without prejudice to any criminal sanction that may flow from the officer's act.[61] The Rules and Regulations of the Judicial and Legal Service do not say so expressly. But it would be absurd to hold that when a legal or judicial officer is guilty of conduct which amounts to

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58. Rules & Regulations of the Judicial & Legal Service, s. 47.

59. Ibid., s. 69(1).

60. Ibid., s. 51(1)(2).

61. Cf. s. 130 of the General Rules and Regulations of the Public Service: "Disciplinary sanctions shall be separate from penal sanctions or sanctions resulting from a financial decision. Provided that the disciplinary board may in the event of legal proceedings concomittant with disciplinary proceedings, defer its opinion until the final ruling of the court hearing the case."

both a disciplinary and a criminal offence, the imposition of a disciplinary sanction bars any subsequent criminal proceedings against him. That the rule against double jeopardy does not apply here can be inferred from s. 51(3) of the Rules and Regulations of the Judicial and Legal Service. It provides that any judicial or legal officer sentenced to a term of imprisonment shall, without more, be suspended, with effect from the day of his imprisonment until the day he has served his sentence, without prejudice to any disciplinary measure which may be taken against him.[62]

Disciplinary sanctions are not the only means by which the profession obligations of magistrats are enforced. Serious violations of professional duties may amount to criminal offences. Thus it is a criminal offence punishable with imprisonment for from three months to two years for any person exercising judicial functions to decline after having been duly moved in that behalf to issue a decision.[63] Moreover, in the Francophone Provinces,

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62. S. 51(4) enacts, "Where a warrant of arrest or a committal order is issued against a judicial or legal officer, the suspension shall take effect as from the day of his arrest." S. 51(3) and (4) ensure that a judicial or legal officer is stripped of his office before he is tried for or convicted of a criminal offence.

63. C.P.C., s. 147. See also s. 33(d) of Law No. 75/16 of 8 December 1975 fixing the procedure and functions of the Supreme Court. This refusal to decide a case ripe for decision is known as denial of justice (déni de justice). Other serious violations of professional duties which are criminal offences are: refusal to enforce any provision of law or usurping legislative or executive functions (ss. 125, 126 C.P.C.), corruption (s. 134 C.P.C.), undue demand (s. 142, C.P.C.), rendering a decision from ill-will or favour (s. 143 C.P.C.),

/Continued over

members of the bench, the legal department and la police judiciaire may be sued for damages on account of their official actions.[64] The procedure for bringing suits of this nature is known in the literature as la prise à partie, and it has intentionally been made cumbersome to avoid burdening the courts with numerous suits by disgruntled parties. A person desiring to sue say, a Judge of the Supreme Court, must first obtain leave from the President of that Court, who must consult with the Procureur General at that Court, before making a decision whether to grant leave or not. A suit can be brought against a Judge, legal officer, or member of the judicial police for fraud, perversion of justice, undue demand, professional misconduct, unreasonable delay in rendering a decision, and so on. This procedure, alien to the common law educated lawyers of Anglophone Cameroon, has however never been used probably because of the ignorance of litigants or because the occasion for its invocation has never arisen.

B. Procedure for the application of sanctions

Upon receipt of information or complaint of facts

Footnote 63 continued from page 400.

refusal of service (s. 148, C.P.C.), prosecuting or trying a member of government or Parliament in violation of immunity (s. 127, C.P.C.).

64. Law No. 75/16 of 8 December 1975, ss. 33-35; Codes d'Instruction Criminelle.

which appear to call for disciplinary action against a judicial or legal officer, the Minister of Justice brings the matter before the Permanent Disciplinary Board (if the matter concerns a member of the legal department), or the Higher Judicial Council (if the matter concerns a member of the bench). If the officer is a *président chargé de l'action publique* (magistrate-cum-prosecutor) the relevant disciplinary body will be determined according to whether the disciplinary offence was committed in the exercise of his duties relating to the bench or to the legal department.[65]

The Higher Judicial Council deals, inter alia, with the discipline of members of the bench. In disciplinary proceedings the Minister of Justice acts as the complaining party. The Council is convened by the Head of State at the Presidency and he is its chairman. The accused judge and his counsel (if he is so minded to have one) are entitled to examine the complete file of the case and to be heard. If the accused judge is found guilty one of the disciplinary sanctions is imposed on him. It is doubtful whether a decision of the Council may be reviewed by the court. Although the law does not say so, it seems the Council's decision is not subject to judicial review. But on principle, there is no persuasive reason

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65. Rules and Regulations of the Judicial and Legal Service, s. 72.

why a decision of the Council may not be challenged before the Administrative Bench of the Supreme Court.

While disciplinary sanctions against members of the bench are imposed on the advice of the Higher Judicial Council, those for members of the legal department are imposed on the advice of the Permanent Disciplinary Board,[66] a less prestigious body. The Board, established at the Ministry of Justice, consists of the President of the Supreme Court, chairman, the Procureur General at the Supreme Court, vice-chairman, the Secretary General at the Ministry of Justice, and four senior judicial or legal officers appointed for two years by the Supreme Court. When a case is brought before this seven-man Board, its chairman appoints a rapporteur from amongst the members of the Board and instructs him, if necessary, to undertake an inquiry into the matter. During the inquiry, the rapporteur hears the officer accused and causes him to be heard by a member of the service at least equal to him in rank. The complainant and witnesses are also heard, if need be. The rapporteur carries out all necessary investigations and then makes a written report. At the end of the inquiry (or if no inquiry is deemed necessary) the accused legal officer is summoned to appear before the Baord at least ten days to the day on which the Board is convened. The officer must appear in person. But he

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66. Ibid., ss. 52-60.

may be assisted and, in the case of certified illness or impediment, he may be represented by one of his colleagues or counsel. At least ten days before the hearing, the officer must be given access to his personal file, all the documents of the inquiry and the report drawn up by the rapporteur.

When the Board meets on the day scheduled for the hearing, the rapporteur reads his report and the accused officer is called upon to explain his conduct and defend himself. His counsel or representative may then plead on his behalf. Absent the case of force majeure, if the accused officer fails to put in appearance, the matter is not adjourned but proceeded with all the same. The Board always sits in camera. No resolution may be taken unless at least five of its members including either the chairman or the vice-chairman, are present. After its deliberations the Board submits to the Minister of Justice, at least two months after having taken cognizance of the case, its reasoned opinion concerning the penalty which the facts seem to warrant. The decision is then notified to the accused officer through the administrative channels. The penalty inflicted takes effect from the date of such notification. It is hard to know how often judicial and legal officers in Cameroon are disciplined and for what specific professional misconduct. The authorities are very reticent on this point. Furthermore, most of the sanctions (reprimand, deferment of advancement, reduction in incremental position, striking off the

promotion list, deferment of promotion, reduction in group or scale) are never made public and are in themselves not outwardly visible. This is however not the case with dismissals because here, the dismissal is in itself publicity of the sanction imposed. However, during the last decade at least ten judicial and legal officers appear to have been dismissed from the service mainly for such unbecoming conduct as bribery or corruption.[67]

II. The Myth of Judicial Independence and Neutrality

Independence of the judiciary is one of the oft-vaunted principles on which the administration of justice in Cameroon is founded. Article 31 of the Cameroonian Constitution provides that the "President of the Republic shall ensure the independence of the judiciary". This is of course a circuitous way of saying that the judiciary is independent and this independence shall be ensured by the Head of State. 'Independence' in this context is generally taken and understood to include impartiality and neutrality. The judiciary is therefore expected to be independent, impartial and neutral. But this principle, which rests on the traditional view that the only function of the judiciary is to decide disputes between litigants, is more theoretical than real.

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67. Fieldwork interviews.

1. The traditional view

For a long time the role of the judiciary has been seen as merely that of a neutral arbitral force. Several safeguards have therefore been devised throughout the ages to ensure that it is independent and protected from all situations which might imperil its objectivity.

A. The role of judges and the independence of the judiciary

The primary function of the judiciary is to render justice and to do so with impartiality.

> "The basic mission of justice in the nation lies in guaranteeing the rights that the law acknowledges to every citizen, in protecting his person, in settling disputes which may arise among citizens, in preventing crime, or failing that, in identifying delinquents so that they may be prosecuted and punished."[68]

It is of interest to note that the basic mission of the judiciary in Cameroon is defined as not only that of settling disputes (which evidently includes the safeguard of the person of the individual, his rights, property and honour vis-a-vis other individuals and, more importantly, vis-a-vis the state) but also that of crime prevention. This is a slight shift from the traditional role often assigned to

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68. Address by President Ahidjo while opening the 1975/76 Judicial Year, see, 'President defines role of judiciary', Cameroon Tribune, No. 70, 29 October 1975, p. 1; see also, E.T. Egbe, 'Some principles and characteristics of justice' ABBIA, No. 5, 1964, p. 93.

judges. This 'new' role does not mean that the judiciary would have to usurp the functions of the police and the gendarmerie. It is simply another way of saying that the judiciary should be as much conerned as the executive with the preservation of law and order in society. This vision of the role of the judiciary stems from the fact that the judiciary is one of the principal organs of a democratic society without whom government would be carried on only with great difficulty.

> "Democracy requires that some group of persons acts as an arbiter not only between individuals but also between Governmental power and the individual. In criminal matters this Governmental power will be exercised through the police to bring a wrongdoer before the court. It will ensure that the order of the court is enforced, that prisons are provided, that fines are paid. But there must be somebody other than the Government which hears the case, makes the decision, and decides the sentence. By this means the daily use, by the Government and its agencies, of force is legitimated and so made acceptable to society at large. Judges then, ... are an essential part of government but exist to operate as a part of democratic organisation." 69

It is in this way that the judiciary, like the executive, is concerned, in a rather passive but indispensible manner, with the maintenance of law and order in society.

> "In fact, it is not enough for the judicial officer to be independent vis-a-vis the Government. No one would dare reproach a

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69. J.A.G. Griffith, The politics of the judiciary, Fontana Books, Manchester University Press, 1977, p. 188.

> Government because, conscious of its great mission and respect of the law, responsible for public order and security, for stimulating progress, and for defending the legitimate interests of the State and Society, it uses its legal machinery to track down and take action against offenders of all sorts, upholds the prosecution, follows the course of justice, and ensures the proper application of the law while leaving to the members of the Bench the responsibility of passing judgment according to their conscience." 70

The role of the judiciary in crime prevention is cast not in terms of preventive adjudication but in passing deterrent sentences. The judiciary is often called upon to 'deal severely' with those guilty of offences such as corruption, armed robbery, smuggling and evasion of customs duties.[71] The apparent contradiction in the judiciary's position as both upholder of law and order and protector of the individual's rights, honour and property is explained in the American constitutional concept of 'checks and balances' or countervailing power.

The judge is expected to be independent, neutral and impartial. He must decide issues in accordance with the law. His personal bias and prejudices as well as his political and religious views must not be allowed to influence his decisions for, litigants expect a fair and full trial from him. The judge must be in every sense of the word an impartial arbiter of disputes. For,

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70. Address by President Ahidjo on the ceremonial reopening of the Supreme Court on 15 November 1977, see, 'Rentrée solonnelle de la cour supreme', Cameroon Tribune, No. 1024, jeudi, 17 Nov. 1977, p. 4.

71. Ibid., loc. cit.

> "... impartiality is the first essential in any judge. And that means not only that he must not appear to favour either party. It also means he must not take sides on political issues." 72

Impartiality is an essential attribute of judicial independence.

> "The material guarantee of the independence granted to the judicial corps must have as its spiritual counterpart an absolute neutrality and objectivity ... freely accepted by each of its members. There can be no impartiality in a judge without this neutrality in the independence of his functions." 73

Accordingly, the judge must decide cases fearlessly. He must ignore any personal consequences, adverse or otherwise, that might flow from his decision. He must, in the words of the Cameroonian judicial oath,

> "render justice impartially to all in accordance with the laws, regulations and customs of the Cameroonian people, without fear, favour or malice." 74

In carrying out his judicial functions the judge must be subject only to the law and his conscience.[75] In short, the judge is required to 'act like a political, economic and social eunuch, and have no interest in the world outside his court when he comes to judgment'.[76]

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72. Lord Reid, 'The judge as law maker', J.S.P.T., vol. 22, No. 1, 1972, p. 23.

73. Ahidjo address, 15 Nov. 1977, op.cit.

74. Rules and Regulations of the Judicial and Legal Service, s. 22(1).

75. Ibid., s. 3(1).

76. Griffith, op.cit., p. 187.

A judiciary that lacks these attributes, it is feared, would be regarded as merely an instrument of repression in the hands of the executive. Such a judiciary would give the ordinary man the distinct impression that the court is aiding and abetting oppression and corruption. The result in the public eye would be to bring the law and the court into disrepute. This can generate unrest and a return to the law of the jungle. Such a situation would evidently be indicative of the system and would amount to a subversion of the whole governmental set up. Hence, the requirement that the judiciary should be an independent, impartial and neutral arbiter of disputes stems from the overriding concern to promote the people's confidence in the system of justice set up by the government. This much was evident in the Minister of Justice's speech in Bamenda while installing the Hon. Mr Justice Nyo' Wakai as President of the North West Provincial Court of Appeal.

> "In your capacity as Magistrate of the Bench," the Minister reminded the learned Judge, "your main occupation is to deliver impartial judgments based on the law and your conscience. In the application of our laws, you must constantly maintain a high sense of professional ethics and objectivity combined with the highest degree of equity. The population should be able to confide in the judiciary and have the assurance that justice will be rendered to all manner of persons, irrespective of social status, tribal origin or any other discriminatory consideration. As you know, justice is supposed to punish, to correct and to protect equally the employer and the employee, the weak and the powerful,

the poor and the rich."[77]

Since the role of the judge is to render justice and with impartiality, he is expected to live a cloistered existence, uninterested in the world outside his court. Concomitant with this view is the attitude that the judiciary must be self-denying, exercise self-restraint and not show initiative. The judiciary, unlike the Government, is denied the power to legislate or initiate legislation. In fact it is a criminal offence punishable with up to five years' imprisonment for any judge to purport to do so.[78] Judges may not, stricto sensus, make 'law' for the Constitution confers on them no such powers. Their job is merely to apply the law and to show no creativity; even when construing an obscure statute they are not entitled 'to make any far-fetched interpretation of the law or of justice'.[79] Furthermore, the judge has no power, except in the case of contempt sedente curia, to initiate process (even of review of legislative and executive measures). If the law has been violated by the government or an individual, however flagrant, the court cannot intervene on its own initiative and commence proceedings against the wrongdoer. It must wait until it is

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77. Speech by Mr Charles Doumba, Minister of Justice, at the installation of Mr Justice Nyo' Wakai as Appeal Court President, 25 November 1977, mimeograph.

78. C.P.C., s. 125(a); cf. C.P.C., s. 126(b).

79. Ahidjo address, 15 November 1977, op.cit.

moved by someone. Judicial adventurism is frowned upon.

> "A meddlesome judiciary poses the danger of abuse, and of conflict with the government, and is well calculated to undermine, if not destroy, the court's popular image of an impartial, disinterested arbiter between contestants in a dispute. It is this posture of impartiality and disinterestedness that makes a decision invalidating a government act tolerable to the government ... It might well feel some disappointment or embarrassment, but not antagonism." 80

The fear is that judicial charisma, preserved for purely court purposes, may be frittered away if judges are turned into troublemakers for the other branches of government.

B. Safeguards aimed at ensuring the independence of the judiciary

The nature of the judge's activity demands that he be independent, in the sense that he be subject only to the law. In other words his judgments must be delivered without interference from other organs of the state. But such legal freedom from state interference is not enough in itself. It must be supplemented by personal independence, which may however be threatened by the state, by pressure groups or by parties. While it is true that such independence is primarily a question of the character and stature of individual judges, it remains nonetheless

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80. B.O. Nwabueze, Judicialism in Commonwealth Africa - the role of the courts in government, Hurst & Co., London, 1977, p. 49.

equally true that the institutions themselves can and must facilitate and encourage the judge's resistance to pressures, corrupt influences, threats and possible temptations. The guarantees aimed at ensuring the independence of judges in Cameroon stem from conventions and from statute.

Judicial officers are required to take the judicial cath before taking up their judicial functions. Standing before the full session of the Supreme Court in solemn occasion and in the presence of the Premier Magistrat of the country (that is, the Head of State), the newly appointed judicial officer, with his right hand raised, takes the following oath:

> "I, XYZ, swear before God and all men honestly to serve the people of the United Republic of Cameroon in my capacity as a member of the Judicial and Legal Service, to render justice impartially to all in accordance with the laws, regulations and customs of the Cameroonian people, without fear, favour or malice, and in all ways, in all places and at all times to bear myself as a worthy and faithful member of the service."

It is not expected that this oath would be taken lightly. Nor is it. From time immemorial the ritual of oath-taking has been used as an initiation, a deterrent and a means of ensuring conformity.

There are other conventions associated with the independence of the judiciary. It is expected that judges will be sober, orderly and discreet in their personal lives. A judge is expected to live

> "a life which always reflects the qualities of competence, independence, integrity,

> dignity and moderation ..., an exemplary life in every sense of the word ..., his official as well as his private life must be irreproachable." 81

He must keep himself a little bit aloof from the people and maintain a high standard of respectability and morality. He must avoid company or social situations which might be used to discredit the judiciary. What would be thought of a judge who is a gambler? a drunkard? or who is always running after women?

Some of the features of court-house architecture are directed to ensure protection of judges from close contact with the public and even practitioners, when entering or leaving the court. To some extent all this is designed to prevent imputations of bias against a judge due to his having contact with persons concerned in a particular case. Thus the court-room arrangement, whereby the judge alone sits on the dais, is intended to have a psychological effect on litigants. It is designed to reflect the judge's isolation and detachment from the heat and controversy of the conflict. Indeed, in and out of court, the judge is required to maintain 'a chill and distant height'. That judges are expected to live an irreproachable life is emphasised by the statutory provision that any 'impropriety, breach of honour or dignity' constitutes a disciplinary offence.[82] Moreover, a judge

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81. Doumba speech, 25 November 1977, op.cit.

82. Rules and Regulations of the Judicial and Legal Service, s. 46(1).

who 'proves to be unfit for the service or to be a notorious alcoholic' may be dismissed or compulsorily retired.[83]

Conventions, even if backed with the possibility of sanctions in the event of breach, are not enough to ensure a judge's neutrality and impartiality. There are stautory guarantees of the judge's independence. It is provided that judges shall in carrying out their judicial functions be subject only to the law and their own conscience.[84] The principle of the separation of powers shields them from orders from any organ of the executive. Moreover, it is a criminal offence punishable with up to five years' imprisonment for anyone who, being the representative of the executive authority, issues any order or prohibition to any court.[85] Thus a minister, prefect, governor who does so falls foul of the law and can be properly convicted and sentenced.

The principle of irremovability of judges stems from an attempt to ensure their personal independence. Section 3(2) of the Rules and Regulations of the Judicial and Legal Service provides that they shall be irremovable and may not, except in the case of disciplinary sanctions or application of the interim rules, receive another positing, even as a promotion, without their express consent. Thus, in theory, the Cameroonian judge can neither

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83. Ibid., s. 69(1).

84. Ibid., s. 3(1).

85. C.P.C., s. 126(a).

be transferred nor even be promoted without his consent.[86] Measures may be taken against judges for unprofessional conduct; but these are taken only as 'disciplinary sanctions'.

For the rest the legislator has taken the precaution of declaring certain activities to be incompatible with the holding of judicial office. These include the holding of any public office or of any other paid employment, commercial or otherwise.

> "The following shall be incompatible with the status of judicial or legal officers:
> (a) the exercise of any trade or industry or of any duty whatsoever in a commercial or industrial establishment.
> (b) the capacity of auxiliary officer of justice, in particular that of advocate, notary or bailiff. Provided that the Minister of Justice may authorise, by order, the registration or the maintenance of the registration, excluding the exercise of the profession, at a foreign bar." 87

The legislator has also laid down certain cases in which a judge is excluded from exercising jurisdiction, in particular where there is a close relationship of affinity

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86. This apparently originates from the view that judges should not after appointment to a particular position be promoted, because the possibility of promotion might tempt them to seek through their decisions the favour of the authority which could promote. But this is the very thing which the practice in Cameroon encourages - advancement of judges from court to court.

87. Rules and Regulations of the Judicial and Legal Service, s. 17. Before 1977 the prohibition in s. 17(a) was absolute. The exercise of any trade etc. was forbidden 'whether or not through an intermediary'. But the amending decree of June 1976 repealed the words in quotes. The practical effect of this is that a judge may, through an intermediary, engage in trade etc.

or consanguinity between the judge and the litigant.

> "Spouses, blood relations and relations by marriage up to and including the degree of uncle and nephew may not:
> (a) at the same time be members of the same court,
> (b) belong at the same time, one to the bench, the other to the legal department of the same court,
> (c) hear, in any capacity, appeals against a decision which has involved either their spouse, or a blood relation or relation within the prohibited degrees." 88

Besides, litigants are given the right to raise objection against a judex suspectus.[89]

In a further attempt to ensure that judges are independent and free from corrupt financial influences, attempts have been made recently to make conditions of judicial service more attractive. Judicial salaries have been increased. The judge now receives a basic monthly salary which is better than what he used to get before 1975 as well as a number of allowances by way of fringe benefits.[90] Salaries for all public employees in Cameroon are based on a system of index numbers. Under this system positions are assigned index numbers, the lowest paying position receiving the number 100. The index number indicates the

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88. Ibid., s. 18. This provision attempts to ensure that the judge is not placed in a situation in which he might be suspected of bias or collusion.

89. Cf. ss. 30-32 of Law No. 75/16 of 8th December 1975 (Procedure and Functions of the Supreme Court).

90. For example, upon leaving the School of Magistracy, the newly appointed officer is paid a basic monthly salary of roughly 98,000 frs cfa plus various allowances which bring his net monthly salary to at least 120,000 frs cfa.

salary for the position as a percentage of the lowest salary. Anything after the index number 1,150 is 'super scale' for, there is no index point after that. Index 100 corresponds to a monthly salary of roughly 20,000 francs cfa (450 frs cfa = £1 sterling).

The salary index scales of judicial and legal officers and legal assistants is set out as schedule B to the Rules and Regulations of the Judicial and Legal Service. Upon leaving the School of Magistracy a newly appointed magistrat enters the first scale, first incremental position which corresponds to index 530 and gives him a basic monthly salary of roughly 100,000 francs cfa. Increments within each scale accrue automatically every two years.[91] After four years of service in the first scale he may be promoted to the second scale, and he enters the first incremental position which corresponds to index 740 and gives a basic monthly salary of roughly 140,000 francs cfa. He gets the same periodic increases thereafter.

By and large however, the financial position of the Cameroonian magistrat is improved by a number of fringe benefits. He receives a family allowance calculated on the basis of number of children up to a maximum of five. He is housed or receives a house allowance in lieu, the

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91. Rules and Regulations of the Judicial and Legal Service, s. 9(2).

amount of which varies according to the magistrat's position. He is also paid an indemnité de fonctions which depends on the position held and the place where the magistrat lives. Thus judges serving in Douala and Yaoundé are paid higher duty allowances than their colleagues elsewhere. The purpose of this is apparently to adjust salaries to variations of the cost of living in these two towns and the rest of the country. Travelling, car and out-of-station allowances are also paid to judges. These allowances are also apparently intended to compensate for not otherwise reimbursable expenses occasioned by official duties. These various allowances increase the base salary of the magistrat by about 10 to 25 per cent.[92] A small deduction is made from the salaries of all judicial and legal officers, like all civil servants, for retirement benefits. Retired judges receive pension benefits the exact amount of which depends on the length of service of each judge.

Cameroonian judges are held in high esteem and enjoy a high and respected social position. They have never been publicly accused of partiality or of being politically motivated.

> "L'independance qui leur est assurée sure le plan des principes et par leur application donne à ce corps une place éminente dans l'Etat.

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92. Allowances paid to civil servants of comparable rank are in fact higher than those paid to judicial and legal officers. This has been a source of much discontent on the part of the latter.

> Jusqu'à ce jour, aucune critique de quelque ordre qu'elle soit, n'a été formulée par la presse, à l'encontre des magistrats qui, par ailleurs dans l'exercice de leurs fonctions, n'ont eu a faire face à aucune intervention d'aucune sorte obéissant à des préoccupations étrangères à la distribution d'une saine justice." 93

However, it is quite difficult for a Cameroonian judge to attain personal fame in his profession. In England and the United States of America as well as in most common law jurisdictions, it is almost impossible to appraise the role of the judiciary without reference to contribution by individual judges. Not so in Cameroon. There is no single judge who, as an individual, is famous nationally or in academic circles. The Cameroonian judiciary has no equivalent of such great judges as Holmes, Marshall, Atkinson, Denning and so on. The reasons for this are two-fold. First, there is an insistence, in the judiciary, on an esprit de corps. This engenders court solidarity rather than judicial individuality. Secondly, the principle that cases are decided by a panel without dissenting opinions and the tradition, in the Francophone courts, of making opinions brief and casting them in a standard style,[94] make it virtually impossible for an

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93. Victor Kanga, 'Le role du pouvoir judiciaire et du barreau dans la protection des droits de l'individu au sein de la société', Penant, vol. 71, 1961, p. 494. This statement is apparently still true today.

94. In the Anglophone courts, judgments are delivered in typical Anglo-American style; the judge may expatiate on what he is doing, why he is doing it and its consequences.

individual judge to put his personal stamp on his decisions. This principle is reinforced by the so-called 'secret de la deliberation' rule. Except for judgments delivered by single-judge courts, every court judgment in Cameroon is delivered per curiam, that is, as the unanimous decision of the court. In other words, each judgment is the product of a collective examination by all the judges concerned. A dissenting judgment may be written but it is filed and not read in open court - once more to ensure court solidarity. The desire seems to be to prevent personal ambition and aggrandisement on the part of judges. A judge who succeeds, through his judgments, in carving a niche for himself in the judiciary may become too popular and consequently begin to nurse political ambitions. Whatever the reasons for insisting on court solidarity, there is no doubt that the system kills personal initiative.

Cameroonian judges are entitled to civil and military honours.[95] But their low position in protocol has remained a matter of bitterness on the part of judicial and legal officers. At public ceremonies they come well after local administrators and party officials.

2. The reality of the situation

Montesquieu's theory of the separation of powers

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95. Rules and Regulations of the Judicial and Legal Service, s. 27.

has, although it has not escaped criticism,[96] come to stay as the foundation of governmental structure; at least in the Western Democracies.[97] Each arm of the government maintains its separateness but also acts as a counter-vailing force vis-a-vis the other. Any encroachment by one on the domain reserved for the other is unconstitutional. Thus the power of the executive or the legislature to make law for peace, order and good government does not entitle either of them to usurp the judicial power of the judicature. Any such legislative or executive usurpation is ultra vires and void.[98]

This constitutional law theory has however not

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96. "There are no legislative or executive organs. There is a Head of State or a President of the Republic, Assemblies, a Ministerial Cabinet, Ministers, a President of the Council. All these organs participate in the accomplishment of a single function, the governmental function. But they do so with varied powers and authority, by acts which, at times are only political and at other times have in addition a legal value." Georges Burdeau, Traité de science politique, tome V, p. 38, cited by F. Mbome in, 'Les empêchements du président de la république au Cameroun', R. Jur. Pol. Ind. Coop., t. 32, p. 905, Paris, Sept. 1978. The translation is mine.

97. In the Eastern Countries, Marxist-Leninist doctrine utterly rejects the principle of the separation of powers. It is regarded as a bourgeois principle the purpose of which is to restrict the sovereignty of the people. The foremost tasks of justice are seen as the defence of existing socialist order, the protection of socialist legality, and the education of the people towards socialism.

98. E.g., the vesting of strictly judicial power in persons or authorities other than the court, as was the case under the colonial system of administration, is a usurpation of judicial powers.

prevented the judiciary being subjected to the executive. Under the Cameroonian Constitution, legislation in respect of the judicial system and creation of new classes of courts falls within the legislative domain.[99] But Parliament may empower the President of the Republic to legislate, on these and other matters reserved for the legislature, by way of ordinance for a limited period and for given purposes.[100] It was therefore the executive which by ordinance, organised the judicial set up of the country. The Constitution furthermore provides that the President of the Republic shall make judicial appointments and pronounce disciplinary sanctions concerning judges. He is assisted by the Higher Judicial Council. The Head of State is also the guarantor of the independence of the judiciary.[101] Thus in the governmental troika, the judiciary, though indispensable, is in a subordinate position. Not only does the judiciary depend on the executive to ensure its independence, it also depends on the executive to enforce its decisions.

The judicature lacks an independent machinery for enforcing judgments. The machinery to enforce a decision

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99. Art. 20.

100. Art. 21.

101. The Constitution mentions this matter of independence only obliquely. Besides, nowhere is it said how the President is to ensure this independence, it being left, presumably, for the President himself to decide how to do so.

owes all its sanctions to the organised coercive force of the State; the police, prisons service and the army, all of which are arms of the executive, by whom their administration and operational use are controlled. The executory formula for copies of judgments and judicial warrants, together with engrossments and copies of contracts and all documents capable of enforcement, is a direction to any bailiff or process-server shown the document or judgment to levy execution according to its tenor. It reads:

> "Wherefore, the President of the United Republic of Cameroon commands and enjoins all bailiffs and process-servers to enforce this judgment (or order, etc.) the Procureurs General and the State Counsels to lend them support, and all commanders and officers of the Armed Forces and Police Forces to lend them assistance when so required by law.
>
> In witness whereof the present judgment (or order, etc.) has been signed by the president and the registrar (or the president, the assessors and the registrar)." 102

The point should not escape notice that it is the Head of State who, and not the court which 'commands and enjoins'. The reasons for this is not hard to see. It is no more than an acknowledgement of the reality of power in the governmental set up.

The court has no independent force of its own. The bailiff or process-server who levies execution upon the property of the defaulting judgment debtor does so

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102. Art. 9 of Ordinance No. 72/4 of 26 August 1972 (Judicial Organisation).

relying upon the organised forces of the State to step in in support of his authority should resistance be offered. The police and/or gendarmerie are present in court to watch over the judge, to deal with any show of violence by an angry or a dissatisfied defendant, to take custody of a convicted prisoner, and to have him delivered to the prisons authorities. The judiciary is indeed the weakest of the three departments of power. It has no influence over either the sword or the purse. In the rare extremity of a showdown, the executive may order or direct its agencies (police, ministries, etc.) not to execute or obey any court decree or judgment.[103] Such a showdown is however an extremely remote possibility, if only because no one wants anarchy. Besides the executive needs the judiciary not only to legitimize its actions but also to ensure good, orderly and peaceful government. In some cases the judiciary acts merely as a branch of Government service.

The Cameroonian judiciary, like the French, German and Japanese, is a branch of Government service and judges may be used for extra-judicial activities. Being a judge in Cameroon implies membership of the judicial civil service under the supervision of the Ministry of Justice.

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103. Cf. Nwabueze, op.cit., chap. IX, The limitation on judicial power in favour of legislative and executive power.

A. The judiciary is a branch of Government service

A tradition of independence and neutrality and impartiality is difficult to develop in circumstances where the judiciary is under the control and supervision of the Ministry of Justice, an arm of the Government. Furthermore, a system which admits of annual reports on and frequent transfers of judges cannot be seriously put forward as conducive to judicial independence.

a) Supervision by the Ministry of Justice

The constitutional provision which makes the executive the guarantor of the independence of the judiciary does not assure the Cameroonian judiciary of control over matters of judicial administration. Rather, the Ministry of Justice exercises considerable control over such matters. The judiciary, like the legal department, is administratively under the sole control of the Ministry of Justice.[104]

The Ministry closely supervises the functioning of the courts and collects pertinent data and reports concerning them. It fixes the calendar for the courts.[105] Presidents of courts and Procureurs must file various periodic and detailed reports concerning the status of the

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104. Rules and Regulations of the Judicial and Legal Service, s. 2.

105. No. 72/4 of 26 August 1972, as amended by Ord. No. 72/21 of 19 October 1972 (Judicial Organisation), s. 10.

court calendar, types of litigation handled, and similar matters as well as reports concerning court equipment, transport and the administrative staff doing clerical work at the court. These reports are forwarded to the Ministry either directly or through the Procureur General or the President of the appropriate Court of Appeal. In addition, the Presidents of the seven Courts of Appeal in Cameroon must annually inspect the courts within their respective Provinces and report their findings to the Minister of Justice. A similar inspection and report must be made by the Procureur General at the seat of each Court of Appeal in respect of the work of his subordinates. The Minister of Justice may also appoint high officials of the Ministry to inspect the courts generally or to investigate specific matters. Finally, at the beginning of each judicial year, around October to November, the Minister of Justice (or his representative, usually the Secretary General at the Ministry of Justice) undertakes a tour of the Provinces to install the Presidents and Procureurs General who have been appointed or transferred to the Courts of Appeal. On such occasions the Minister goes through the records of the Courts of Appeal and, as is the custom, makes a public address in which he spells out Government policy on the administration of justice and what the Government expects of judges.

The reports filed with the Ministry are important in connection with the Ministry's functions concerning the

transfer and promotion of judges. They may also induce the Minister to begin disciplinary proceedings or, in appropriate cases, to issue warnings to judges.

b) Classification and promotion of judges

There is much substance in the contention that the possibility of advancement might tempt judges to be pliable and to seek through their decisions or by other means the favour of the authority which could promote or influence promotion. In Cameroon however, as, for example, in France and in West Germany, classification of judges and their promotion from court to court - the very thing which is shunned in some jurisdictions (such as in England and the U.S.A.) as inconducive to judicial independence - is actually the norm.

For purposes of promotion and the payment of salaries, all positions opened to judicial and legal officers have been grouped in five classes. Judicial and legal officers are graded, in descending order of rank, into super-scale (which comprises two groups), fourth scale, third scale, second scale and first scale.[106] Those in the super scale are on at least index 1,150. Those in the fourth scale are either on index 1,000, 1,050, or 1,115 which correspond to the first, second and third incremental positions respectively. There are also three incremental

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106. Rules and Regulations of the Judicial and Legal Service, s. 6.

positions in the third scale, the first corresponding to index 855, the second to index 920 and the third to index 950. The second and first scales have four incremental positions each. The first, second, third and fourth incremental positions in the second scale correspond respectively to indices 740, 790, 855 and 920. Thus a magistrat in the second scale, third incremental position would earn the same basic salary as another magistrat on the third scale first incremental position. Similarly, a magistrat on the fourth incremental position in the second scale earns the same base salary as his brother on the second incremental position in the third scale.

The salary of judges does not, as in England, come from a special fund voted by Parliament. Judges in Cameroon, like all other civil servants in the country, receive their salaries and allowances from the Government Treasury through their various bank accounts. If a judge has any query about his salary and/or allowances, he must, like everyone else, make the pilgrimage to the Ministry of Finance in Yaounde and try to iron things out the best way he can.

All magistrats in active service are the substantive holders of judicial or legal posts corresponding to the group or scale to which they belong.[107] For example, a magistrat in the super scale will hold the post

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107. Rules and Regulations of the Judicial and Legal Service, s. 8(1) and Schedule A.

of either President, Substantive Puisne Judge, Procureur General, or Advocate General at the Supreme Court; or President of or Procureur General at an Appeal Court. Appointment to the first scale corresponds to the post of President, 'juge', State Counsel, or Deputy State Counsel at the Magistrate's or High Court. In the interest of the service however, a judicial or legal officer may be temporarily appointed to a post on a scale immediately above that to which he belongs.[108] But no judicial or legal officer may be the substantive holder of a post, either as President of a court or as head of the legal department, giving him a power of supervision or control over a judicial or legal officer senior to him in the promotion list.[109] As a general rule, no member of the service may be promoted to super scale or to a higher group or scale without a concomitant appointment to a post corresponding to the group or scale to which he is promoted.[110]

To be promoted, a judicial or legal officer must have previously been entered on a Promotion List.[111]

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108. Ibid., s. 73(b).

109. Ibid., s. 8(2).

110. Ibid., s. 29(1).

111. However, promotion to the super scale or promotion in a group within the super scale may be effected without previous entry on a promotion list after consultation with the Promotion Board or the Higher Judicial Council.

There are two Promotion Lists drawn up on the 1st July each year; one by the Promotion Board, for members of the legal department, and the other by the Higher Judicial Council, for members of the bench. But a member of the service may, at his request, be entered on both Promotion Lists.[112] This requires a certain amount of seniority in each scale, usually four years.[114] All authorities vested with the power of proposing personnel for promotion[115] must transmit before 15th March of each year, to each member of the service forming the subject of a report, the alphabetical list of the judicial and legal officers whom they have proposed for promotion.[116] The minutes or acknowledgement of such notification are forwarded to the Ministry of Justice. Any member of the service not included in the proposals may, before 15th April of each year, submit his personal request through his superior

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112. Rules and Regulations of the Judicial and Legal Service, s. 8(1).

113. Ibid., s. 31(2). There is however statutory provision for the appointment and University law professors to the second and third scales respectively. In practice, this provision remains a dead letter. In any case any such appointment is apt to be regarded with a somewhat jaundiced eye by many career judicial officers (Fieldwork interviews).

114. Ibid., s. 30.

115. They are, the Minister of Justice, the President of the Supreme Court, the Procureur General at the Supreme Court, the Procureurs General at the Courts of Appeal, the Directors at the Ministry of Justice and the Presidents of courts. See Judicial Service Rules, ss. 33-38.

116. Ibid., s. 39(2).

officers to the Ministry of Justice for entry on the Promotion List.[117] The proposals for promotion (together with the personal requests for entry on the promotion list) and the files of the members of the service concerned are forwarded by the Minister of Justice to the Secretary of the Higher Judicial Council (as regards members of the bench) and the Chairman of the Promotion Board (as regards members of the legal department).[118] The number of names entered for promotion to each scale is always limited to about three or four, depending on the availability of finance and having regard to foreseeable needs.[119] In discharging their functions here the Council and the Board are guided mainly by the annual reports and opinions of the authorities empowered to report on the officers.[120]

Judicial positions are classified together with positions in the legal department and in the Ministry of Justice, so that a person holding a judicial position may

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117. Ibid., s. 40.

118. Ibid., s. 41. The Promotion Board consists of the President of the Supreme Court (chairman), the Procureur General at the Supreme Court (vice chairman), the Secretary General at the Ministry of Justice, the Directors at the Ministry of Justice, and the Procureurs General at the Appeal Courts. The Secretary to the Board is a magistrat attached to the Department of General Administration at the Ministry of Justice. The Board cannot properly conduct business unless all its members were convened at least eight days before the scheduled date of the meeting and unless at least 8 of its members including the chairman (or his vice) are present. s. 42.

119. Ibid., s. 43(1).

120. Ss. 33-39. A magistrat entered on the Promotion List who has not been promoted before the expiry of the budgetary year must be entered as of right in the following year's list. Once entered on the List, the officer may not be struck off except as a disciplinary measure. Ibid., s. 44.

be transferred or promoted to a position in the legal department or Ministry of Justice and vice versa.[121]

c) Transfers and budgetary dependence

One of the measures intended to give judges security is the principle against arbitrary removal from office coupled with the statutory provision that they may not receive another posting, even as a promotion, without their express consent.[122] However, the provision against unsolicited postings is honoured more in breach than in its observance as members of the judicial and legal service are transferred and promoted without their consent.[123] Transfers are frequent and are seen as necessary in the interest of the service.

> "Life generally tends to become boring and uninteresting when it is static. For it to be interesting and meaningful, there must be provision for change. Then it becomes dynamic and fruitful. So it is with the Public Service. The element of dynamism is kindled and rejuvenated in public service when, through the machinery of transfers, public servants are called upon to move from one office to another. For, as it has been said, variety is the spice of life." 124

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121. E.g., the post of Supreme Court President which is reserved exclusively for magistrats in the super scale corresponds to the post of Procureur General at that Court and that of Director at the Ministry of Justice. In other words all three are in a coordinate position. Members of the service consider this system of classification to be noxious as the director at the Ministry tends to regard any judge who is not in a coordinate position with him as his subordinate who therefore owes him obedience.

122. Rules and Regulations of the Judicial and Legal Service, s. 3(2).

123. Ibid., s. 73(a).

124. Charles Doumba, speech in Bamenda on November 25, 1977, op.cit.

There are two types of transfers; one is functional and the other is geographical. A functional or vertical transfer occurs when a member of the bench is appointed to the legal department or vice versa. On the other hand, when a magistrat is moved from one geographical locality to another, a geographical or horizontal transfer takes place. Sometimes both transfers are concomitant. But they need not be.

The Cameroonian magistracy is founded on the concept of the le magistrat polyvalent. This means that any member of the magistracy, whether initially appointed to the bench or the legal department, may be transferred at any time in the course of his career to serve either on the bench, in the legal department or at the Ministry of Justice.[125] A magistrat must be able to judge, to prosecute and to administer. Indeed, he must even be able to prosecute and judge at the same time. This is the office of the président chargé de l'action publique.[126] He is both the accuser and the judge. This clearly does violence to the principle of judicial impartiality. The State Prosecutor

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125. There is a feeling among members of the magistracy that courageous judges are transferred to the Ministry to be cowed before being sent back to the courts. There is also the suspicion that such transfers are made as a disciplinary measure. Only the Supreme Court President and Procureur General appear to be immune from transfers. (Fieldwork interviews).

126. This officer exists only in the Francophone Provinces. There are however not many présidents chargé de l'action publique.

is a party in a criminal trial. "When, therefore, he again sits as a judge to decide the merits of the same case which he as prosecutor has framed against the accused, he will find it difficult if not impossible to give judgment against his own case. Even if in fact there is enough evidence to convict the accused and he is convicted, then although justice has in fact been done, the public does not see this as justice."[127] In fact what the <u>président chargé de l'action publique</u> does is conduct an inquisition.[128] This situation should not obtain. There is no compelling reason why police and gendarme officers who have been given some prosecutorial training may not, as happens in the Magistrate's Courts in the Anglophone Provinces, be allowed to prosecute in those same courts operating in the Francophone Provinces.[129]

Quite apart from the fact that functional transfers raise problems of adaptability and adjustment, they put into serious doubt the claim of judicial independence.

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127. Gorji-Dinka (President of the Cameroon Bar Council), 'Memorandum on aspects of administration of justice', submitted to the Minister of Justice on August 8th 1976.

128. This has undoubtedly contributed to the ingrained belief among many Cameroonians that in the Francophone courts the presumption of innocence has been supplanted with a presumption of guilt.

129. Cf. Gorji-Dinka Memorandum, op.cit. The judge-cum-prosecutor exists for reasons of expediency, the penury of legally qualified personnel. For much the same reason, in certain areas, also in the Francophone Provinces, the presiding judge at the Magistrate's Court acts too as State Prosecutor in the High Court.

The legal department is directly under and subordinate to the Ministry of Justice from which it receives orders. The judiciary, according to statute, is merely 'administratively' under that Ministry. A State Prosecutor who has for over the years been receiving his orders from the Minister of Justice cannot, by being appointed to the bench, suddenly become independent and fearless. He would tend to act more as an inquisitor than as an impartial judge.[130] Interestingly enough however, judicial and legal officers do not complain much about functional transfers although they are all agreed that service on the bench is better because comparatively more independent and legally more rewarding (the judge deals with civil and criminal matters whereas the State Prosecutor hardly ever deals with civil matters) than in the legal department.[131]

Rather, it is the geographical transfer which has come under bitter criticism.[132] It is not the transfers

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130. There seem to be more transfers from the legal department to the bench than vice versa. In the Anglophone Provinces a transfer from the legal department to the bench is regarded as an honour and, in a sense, as a promotion. The opposite attitude prevails in the Francophone Provinces where the post of Procureur is regarded as a strong and strategic one. This is because the State Prosecutor is identified more with the Government than the judge is. Moreover he has wider administrative powers, controls the court budget and the police judiciaire, exercises prosecutorial discretion, releases on bail, and suggests the sentence the court ought to pass on the accused. (Fieldwork interviews).

131. Fieldwork observations and interviews.

132. Fieldwork interviews.

per se which are criticised. It is the frequency with which they are made that is attacked. Save for the judges at the Supreme Court who enjoy some degree of permanence, the average length of time a Cameroonian judge serves in one court is three years. Often it is less. Cases have occurred when judges have been transferred twice in one year. There seem to be at least two reasons why these transfers are made so frequently. First, a judge may be transferred for necessity of service. Secondly, transfers, especially to remote parts of the country, are made as a disciplinary measure.

But frequent transfers are sometimes detrimental to the service. They kill incentive and the zeal to work. They encourage indolence and inefficiency. They are a contributory factor to delays in the disposal of cases. Moreover, they disrupt family life (each time there is a transfer of a judge, his wife too must be transferred if she is a civil servant too - often however, such transfers are not simultaneous; the children too must change schools; items of household property are either lost or damaged in the course of moving). It is strongly submitted that once a judge has been appointed to a specific court he should be kept there for at least six years unless he is promoted to a higher court or he asks to be transferred or is guilty of a gross professional misconduct.[133]

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133. In a country where tribal and sectarian allegiances are still very strong, the transfer of judges to serve in various parts of the country may be a way of fostering the quest for national unity. But the transfer

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Another factor which is prima facie incosistent with judicial independence is the budgetary dependence of the judiciary on the legal department. Any court needs furniture, stationery and various items of equipment, and transport facilities. For all these things and other ancillary needs in connection with his office, a judge needs a budget. Under the former West Cameroon funds for the Judicial Department were controlled by the Chief Justice through the chief registrar. Since 1972 however, the system in the Francophone Provinces whereby funds for the judicial department are controlled by the legal department, has been extended to the Anglophone Provinces. What this means is that whenever a judge needs money for anything in connection with his court or office he has to ask this of the Procureur. The argument advanced for this state of affairs is that judges should not be placed in a position where they would be likely to receive directives from the Ministry of Justice.

In reality however, this modus operandi is no guarantee that the Minister would not interfere with the

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Footnote 133 continued from page 437.

of judicial and legal officers have so far been confined to their juridico-linguistic sectors. No Francophone judge or prosecutor has been transferred to serve in courts in the Anglophone Provinces. Save for transfers to the Ministry of Justice and to the Supreme Court, no Anglophone judge or prosecutor has been transferred to serve in the Francophone courts. The fact that most of these officers are mono-jural and monolingual clearly means that such transfers are just not feasible yet.

judiciary if he were minded to do so. He can do so through the legal department. Since the Procureur controls the purse he is made to look stronger than and superior to the judge. True, he cannot go as far as giving him instructions. But he can make things nasty and difficult for the judge, for example, by deliberately delaying in meeting the judge's request for funds. Indeed, cases are not unknown of "unscrupulous Procureurs who have blackmailed judges into taking decisions to please the Procureur when financial claims due to the judge are still subject to approval of the Procureur".[134]

d) Reports on judges

A feature of the colonial judicial system which bears upon the independence of the judiciary was the practice whereby judges were reported upon by the Chief Justice to the authority responsible for promoting them. This was justified on the ground that this was unavoidable as the authority responsible for promoting them needed to be properly informed about their competence and general suitability. Independence has not altered this system. And the same argument, as of yesteryears, is still put forward to justify it. Judges (as well as members of the legal department) are reported upon. The reports emanate

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134. Fongum Gorji-Dinka, 'Memorandum on aspects of administration of justice', 8 August 1976, op.cit. It would seem that attempts are being made to give judges control over funds for their various courts.

from two sources: reports made by hierarchically superior judicial and legal officers, and those made by security officers (police and gendarmes).[135] Both reports are confidential and are sent to the Ministry of Justice under confidential cover.[136]

1) Reports by senior members of the service

These are of two types: a 'general report' and a 'confidential report'. Both are made annually. The general report, made by the competent authority, summarises before 1st March of each year, the activities and merits of each member of the bench (the President of the Supreme Court excepted) and of the legal department. It may contain proposals for promotion of any member of the service who possesses the requisite seniority for promotion.[137] The confidential report bears on more specific issues concerning the professional activity of the officer being reported upon. The authority making the report[138]

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135. Attempts to verify claims that local Party bosses make similar reports yielded no success.

136. These reports are crucial as they are used in determining whether to transfer, discipline, or promote an officer. By s. 70 of the General Rules and Regulations of the Public Service, "the advancement of a civil servant shall be subject to a favourable report".

137. Rules and Regulations of the Judicial and Legal Service, s. 28.

138. Confidential reports on the Procureur General at the Supreme Court, the Directors at the Ministry of Justice, the Procureurs General at the Courts of Appeal and officers on secondment or on study leave, are made by the Minister of Justice (s. 33). The President of the Supreme Court reports on the Puisne Judges of that Court as well as on the Presidents of the Courts of Appeal (s. 34(1)). The Procureur General at the Supreme Court reports on the Advocate General and

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must make a value-judgment on the officer being reported upon, state his considered opinion of him, and say whether or not he proposes him for promotion. The assessment which is made on a special form supplied for that purpose by the Ministry of Justice, is based on the following list of twenty items: carriage and appearance, physical condition (health), good sense and judgment, capacity to synthesise, general knowledge and intellectual curiosity, authority and force of character, good balance and sense of proportion, taste for responsibility, capacity for work, whether methodical (organising capacity), knowledge of the law, ability to apply the law, drafting ability, ability to preside in court, facility of speech, relations with superiors, relations with equals, relations with subordinates, relations with administrative authorities, and relations with the Bar and the Police.

Against each of these items, the reporting authority

Footnote 138 continued from page 440.

Deputy Procureurs General at the Supreme Court (s. 34 (2)). The Secretary General and Directors at the Ministry of Justice report on judicial and legal officers under them (s. 35). The President of each Court of Appeal makes a confidential report on members of the bench within his jurisdiction (s. 37). Finally, the Procureur General at each Court of Appeal does likewise to members of the legal department within his jurisdiction (s. 38). In practice however confidential dispatches of Procureurs General do sometimes contain reports on members of the bench and even recommendations for their transfer (Fieldwork interviews). This has at times resulted in strained relations between the bench and the legal department.

must indicate whether the judge (or prosecutor, as the case may be) is outstanding, very good, good, average, poor, or bad. Each confidential report must be signed, dated and stamped by the authority making the report and then forwarded to the Ministry of Justice where it is filed in the records of the officer concerned.[139]

Whatever the merits of this system of confidential reports, there is little doubt that it does induce in the mind of the officer being reported on some kind of fear and respect for the authority charged with the responsibility of reporting on him and also of proposing him for promotion. It is difficult to know the extent to which these reports are made with objectivity or favouritism or in bad faith.[140]

2) Reports by security officers

Reports by police and gendarmerie officers on judges (and on members of the legal department as well) are of a general nature. For example, in 1975, the police reported a heavy backlog of cases pending before the Bamenda Magistrate's Court and noted that this was cause for much

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139. Rules and Regulations of the Judicial and Legal Service, s. 39(1).

140. General Rules and Regulations of the Public Service, s. 73 provides, "The competent superior shall be bound to report objectively on the personnel placed under his direction and authority. It shall be a disciplinary offence for him (i) to abstain from the obligation to report on such personnel, and (ii) to report on them without due care or in bad faith".

complaint and discontent among litigants and persons awaiting trial in prison.[141] In 1974 the police reported that the people of Manyu Division were against the requirement that a non-conviction certificate must be produced by anyone seeking a public employment and added that 'les fonctionnaires de justice' were very slow in making this document available to those who requested it.[142] That same year the gendarmes at Kumbo despatched to Yaounde a report which reads in part: "The presiding magistrate of the court here is reproached with a certain lack of professional conscience because his court sessions always begin late and are, though begun with considerable lateness, shortened because the magistrate's wife has arrived and must go home in the company of her husband ... Sometimes also, the magistrate comes to court and simply adjourns the cases to another session ..." The report closed with a remark that although the population tend to think that gendarmes are responsible for the delays in dealing with cases this was not true, as the fault lay with the magistrates.[143]

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141. Bulletin de renseignements of September 1975, Ministry of Justice, Yaounde.

142. Bulletin de renseignements No. 3539/DGSN/DRG/SC1 of 13 September 1974, Ministry of Justice Yaounde.

143. Bulletin de renseignements, 28 September 1974, Ministry of Justice Yaounde.

These reports, which may be sent in at any time,[144] need not concern only the judge's professional activities. They may extend to his social life. A judge who is often seen in company or social situations which are deemed incompatible with his profession is sure to be the subject of a security report. In one case a magistrate was the subject of one such report simply because he had a friend who was an advocate practising in his court, the view being taken that in such circumstances the advocate in question could not lose a case in that particular court.[145]

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144. Police and gendarmes send their reports under confidential dispatches known as 'bulletins de renseignements'. These reports are not sent directly to the Ministry of Justice. The police send their reports to the Délégation Générale à la Sûreté Nationale, Direction de Renseignements Généraux. On receipt of a report, the General Delegate at the National Security forwards a copy of it 'a l'intention de Monsieur le Ministre de la Justice'. The gendarmes send their own reports first to the Delegate General at the Gendarmerie who also forwards a copy of the reports to the Minister of Justice.
In Cameroon all civil servants are the subject of confidential reports made by their immediate superior officers. These reports are made on special forms (known as bulletins de notes or mark sheet) supplied by the Ministry of Public Service for that purpose. Each report covers the functionary's professional qualities (there are five items - spelling, writing ability, assiduity, efficiency, and sense of duty - each of which has to be scored out of 20), his character, ability, conduct and suitability for a higher post. The system of making confidential reports on staff is governed by the following enactments: Decree No. 74/138 of 18 February 1974 (General Rules and Regulations of the Public Service), Decree No. 76/570 of 4 December 1976 to grant certain powers relating to personnel management to Governors of Provinces and Prefects, Order No. 3277/MFP/DP of 27 October 1977 to outline the procedure for making confidential reports on staff, and Circular No. 6327/MFP/DP of 11 November 1977 relating to confidential reports on public officers.

145. Fieldwork interviews. In this instance the conclusion seems to have been hasty and preposterous.

B. Pressures on the judiciary

Independence of the judiciary also means that when arriving at a decision in a matter which is sub judice, judges must 'be subject only to the law and their conscience' and must not be influenced by extra-legal considerations. A judiciary which is subject to pressures, be they governmental or otherwise, when coming to decisions in individual cases can lay no claim to impartiality. Impartiality is a great virtue of any judiciary worth its mettle. And it means that judges must not only be impartial but must also be seen to be so.

The question then is whether there are pressures on Cameroonian judges to act and speak in court in certain ways rather than in other ways and whether some of their decisions are influenced by purely extra-legal considerations (fear of offending the Government - which may mean for example running the risk of forfeiting promotion, political allegiance, social or class considerations, religious affinity etc.). Often, it is the Government that is indicted for threatening the independence of the judiciary by meddling with the administration of justice. This charge levelled at the Government has been categorically rebutted by the Head of State, who saw the blame as lying somewhere else.

> "In Cameroon under our administration, it is not the Government that is threatening the independence of the judiciary; rather it is the Government that is protecting it through the status given to the judicial officers,

> through the vigilance and discipline which my constitutional powers require that I exercise over the functioning of the judicial services.
>
> "What are threatening the independence of the judiciary are, in fact, the pressures exerted from other sources such as tribal or professional solidarity, social affinities, and complicity with certain interests, which tend to numb consciences and lead to partiality and injustice." 146

It is therefore common ground that the independence of the judiciary in Cameroon is being threatened. But by whom or what?

a) Tribal solidarity and social affinities

These do exist and may be decisive in influencing a decision one way or the other. A judge may be extremely reluctant to convict a person from his own village (and a fortiori, a relative) or a friend within his social circle. (In England, a judge would not, as a matter of judicial practice, try a case if the person involved is someone he is acquainted with.) How far the judge would be prepared to go out of his way to get the accused before him 'off the hook' or, in the case where conviction is unavoidable, to give him the minimum sentence, may depend on how strong the tribal, professional or social solidarity is.

Professional solidarity as a corrupt influence may take the form of connivance or collusion between judge

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146. President Ahidjo address at the ceremonial opening of the Supreme Court, 15th November 1977, op.cit.

and defence counsel to get a relative, friend or tribesman who is on trial (and who ought normally to be convicted) off the hook; or between judge and state prosecutor to drop the charge by entering a nolle prosequi; or between defence counsel and public prosecutor dressed up as plea bargaining. Generally, the quid pro quo is not money but only an understanding to render similar services if the other's friend, relative or tribesman happens to be in trouble as well. Tribal solidarity and social affinity may also be used negatively. For example, a judge or prosecutor who has a particular animosity toward a particular tribe will find little sympathy with litigants or accused from that tribe who happen to appear before his court. It has even been suggested that these factors are sometimes used as intruments of revenge. "Local, political and social pressures, personal and tribal vendettas, etc., sometimes lead some appeal court presidents to use their judicial offices as handy tools of revenge and policy."[147]

In civil cases also, tribal solidarity and social affinities may be crucial in determining whether to find for the plaintiff or for the defendant and also the quantum of damages, if any, to be made; excessive or niggardly. This is where 'complicity with certain interests' comes in. The 'certain interests' here are undoubtedly some

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147. V.M. Ngoh, 'The new function and procedure of the Supreme Court', Cameroon Tribune, No. 79, 31st December 1975, p. 9.

insurance companies and certain private companies and firms which offer bribes to judges to render judgment in their favour. What is less obvious however, is the extent to which these corrupt practices exist. They are probably fairly common. First of all the Head of State saw fit to allude to them in his speech. Secondly, a senior Judge has appealed to members of the public to refrain from corrupting any judicial officer, arguing that "if you do not offer to corrupt him, he will remain uncorrupted; if you do not subject him to tribal or social pressures, he will remain free to judge in obedience to his conscience; if you respect him he will be compelled to live a respectable and exemplary life". He however went on to regret that "all too often one came up against judicial officers who looked on their office as a means for self-aggrandisement ... There are judicial officers whose sense of justice and fair play was polluted by downright corruption, or by pressures arising from social, tribal or professional affinities, or by complicity with certain interests with mercenary motives".[148] These remarks, like those of the Head of State, are weighty remarks and a serious indictment of the judiciary.

b) Meddling by the administration

The treatment of the judiciary as a branch of

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148. 'Justice Endeley appeals to public to refrain from corrupting judicial officers', Cameroon Outlook, vol. 10, No. 14, 15th April 1978, p. 5.

Government service produces an identification of the judiciary with the bureaucracy in general and with the outlook of the Government of the day. But this identification is closest in the early years of judicial service and once a person begins regular service as a judge, especially at the Supreme Court (and sometimes also at the Court of Appeal) he acquires a substantial degree of independence which increases with age and with promotion in the service. However, until he reaches that stage, 'a court judge is just another state functionary and nothing more'.[149] Thus the temptation has sometimes been great on the part of the administration to meddle directly or indirectly with the course of justice.

The Minister of Justice may for example interfere with any criminal matter under judicial consideration. He cannot do so directly though. He may do so through his subordinate at the courts, the Procureur. He may at any time in the proceedings instruct the Procureur to discontinue the case. He may instruct him to prefer a charge or not to do so or again to withdraw one that has already been preferred. He need give no reason for his action. The Minister's power to act in this wise stems from his prosecutorial discretion which he exercises through the State Prosecutor. There is nothing inherently objectionable about this.

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149. Ngoh, op.cit.

What is objectionable however is the situation where the administration's conduct is, deliberately or not, aimed at undermining the authority of the courts. For example, where a dissatisfied accused or litigant, instead of going on appeal to have what he considers an erroneous decision vacated, petitions to the Minister of Justice, whoorders the case-file to be sent to him. Or again where the Minister (or Director at the Ministry) on his own initiative (perhaps because he has a vested interest in the case) or following a petition from a dissatisfied party in a case, requests of the judge who tried the case an explanation why he decided the matter as he did. This is a dangerous interference with and limitation on judicial authority. It is unacceptable even if it happens only rarely.

Equally unacceptable is the more common situation where some misguided local administrators attempt to exercise control over judges and to meddle with the working of the judicial process. There are many reasons for this impulse to interfere with the course of justice.[150] First, in terms of protocol the local administrator comes before the judge. Secondly, the Minister of Justice's insistence on collaboration between the courts and the local administration is invariably construed by administrators to mean

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150. Fieldwork interviews.

that judges must be subservient to him.[151] Thirdly, local administrators are empowered to make rules and regulations, enforceable by the police, gendarmerie and the courts, for their various administrative units.[152] These rules and regulations generally deal with such petty but vital matters as local council taxes, market fees, the movement of persons, the sale of foodstuff,[153] the plying of roads, sanitation, closure or re-opening of certain establishments (e.g. a nightclub, a bar), proscription of certain societies or organisations,[154] etc. As officiers de police judiciaire and in exercise of their

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151. This attitude is encouraged by the fact that the local administrator oversees all the Government services in his area. The Provincial Governor, for example, is the representative of the Head of State and of all the Ministers and supervises all Government services, with the exception of the Judicial and Legal Service, in his area. However, most administrators choose to ignore the fact that judges are excepted from such supervision.

152. Decree No. 72/437 of 1 September 1972 to organise the Ministry of Territorial Administration; Law No. 74/23 of 5 December 1974 to organise Councils; Decree No. 77/91 of 25 March 1977 determinant les pouvoirs de tutelle sur les communes; Arrete No. 7255 of 1 November 1959 (pouvoirs de police dans les communes).

153. E.g., in August and September 1977 the Prefects of Meme and Fako respectively banned foodstuff leaving their administrative areas, whether by 'air, sea or land', to other parts of the country.

154. E.g., the proscription by 'prefectorial order' of the Nso Ngiri Secret Society in 1973, a proscription held to be lawful in Fai Ndichangong & 3 Ors v. The People, Bamenda Court of Appeal, No. BCA/12.c/73, unreported.

pouvoirs de police, local administrators may order the arrest and detention of persons. Finally, Prefects and Governors do report, officiously it seems, on judges in their administrative areas. These reports consist of general observations and remarks on the work and conduct of the judge. Some Prefects use this medium as a means of settling private scores.[155] Because of all these factors, some Prefects, inflated with a sense of their own self-importance, imagine they have the right to issue orders or prohibitions to the courts. It is however an offence punishable with a minimum of six months' imprisonment and a maximum of five years' for 'whoever being the representative of the executive authority, issues any order or prohibition to any court'.[156] But a case of this nature has never come before the courts.

Direct interference, in an official capacity, with a matter which is sub judice is rare. A Prefect is more likely to meddle with the course of justice privately in his personal capacity and by way of a request and not an order.[157] How far the Prefect succeeds in achieving his purpose will depend on his personal relation with and the integrity of the judicial or legal officer concerned. Most interferences take place at the

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155. Fieldwork interviews.

156. Cameroonian Penal Code, s. 126(a).

157. Fieldwork interviews.

pre-trial stage of the criminal process (e.g. ordering a person lawfully detained or imprisoned to be released).[158] Invariably, when the Prefect acts in this manner, he is merely using his office to achieve his private goals.

There would also be an interference with the administration of justice where the administrator qua administrator criticises or attacks the ruling of a court in a particular case. An incident of this nature occurred some years ago at the time of the Nigerian civil war. At that time there were hundreds of Ibos resident in Bamenda and engaged in trading. Towards the end of the civil war, one of the Ibos declared for 'One Nigeria'. This angered his fellow tribesmen, who destroyed his shop and set fire to his car. A riot developed between the pro-Gowon and the pro-Ojukwu factions of the Nigerian community in the town. The police and the gendarmerie intervened and thirty-eight arrests were made. They were tried by Mr Justice Dervish, an expatriate judge (the case would normally have been tried by Mr Justice Keisero, the Bamenda resident Judge; but it was feared that since he was Yoruba the Ibos might not get a fair trial from him). Only three of them were convicted and sentenced. This apparently surprised Mr J.C. Ngoh, the then Federal Inspector of Administration for the federated State of West Cameroon, who, it is claimed, went on to allege that the court had not done its job

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158. Fieldwork interviews.

properly. At a working session in Bamenda with the then Minister of Justice and members of the Bench, he is said to have bitterly criticised the court's handling of the case. He allegedly wondered how it was that only 3 out of the 38 accused persons had been convicted. If this is what transpired at that meeting, then the criticism was uncalled for. It was the more inappropriate as the matter was still sub judice. The appeal made by the Legal Department in that case was still pending before the courts. Members of the Bench were understandably very indignant at Mr Ngoh's criticism. Mr Ngoh probably had two things at the back of his mind. He may have been trying to insinuate that the trial judge in that case had been bribed to decide the case as he did. This was therefore a slur on the judiciary. Secondly, since Mr Ngoh knew the matter was on appeal his remarks were probably intended to intimidate the appeal Judge into convicting most of the accused, irrespective of the merits of the case.[159]

Another incident occurred in Kumba some time between 1965-66. A certain Mr Black, a European, was the accused in a case before the Kumba Magistrate's Court presided over by Mr Mensah. When summoned to appear in court, he was counselled by Mr H.B. Sone, the local Prefect, to disregard the court summons. The learned Magistrate then issued a bench warrant against the Prefect.

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159. Cf. s. 169(1) of the Cameroonian Penal Code.

The incident, like the one just narrated, exacerbated the relations between the judiciary and the administration.

It is not easy to determine how widespread these interferences are. What is certain is that incidents do occur here and there. They are often petty and isolated; 'minor local frictions between some local administrators and some judges but nothing to cause a crisis'.[160]

C. The judiciary in politics

Only in recent years have legal scholars and political scientists begun to investigate what may be termed 'the role of the judiciary in politics' or simply, 'judicial politics'. Interest in this area has been kindled partly because of the political role the American courts, especially the Supreme Court, have played in a number of key issues such as racial integration, ghetto riots, Watergate, the use of secret wiretaps and military surveillance to control internal opposition, environmental protection, equal rights for women, civil rights and the legalization of abortions.[161] That interest in this area should only be recent is rather surprising as more than a century and a half ago, the French political scientist, Alexis de Tocqueville, was struck by "the immense political

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160. Fieldwork interview.

161. Petra T. Shattuck, 'Law as politics', Journal of Comparative Politics, October 1974, p. 127.

power which the Americans have entrusted to their courts of justice".[162] But there are a number of reasons for this benign neglect of the role of the judiciary in politics.

In the first place, the common belief that there is a rule of law which can be implemented through legal machinery implies that there is no need for an investigation of judicial politics. Regarded as a safeguard against tyranny, the rule of law is the philosophical idea that we should be ruled by laws and not by men and that power should not be exercised arbitrarily by rulers and their officials. Secondly, the great secrecy of judicial decision-making (le secret de la déliberation) and the impenetrability of the jury's reasoning process are frustrating barriers for the investigation of judicial politics. Thirdly, and more importantly, there is the tacitly held assumption that the judiciary is by nature apolitical. "Much of the legitimacy of the court's decisions rest upon the fiction that it is not a political institution but exclusively a legal one."[163] Underlying this mystique of the judicature is the time-honoured notion that politics, especially dirty politics, should play no role in the working of the judicial machinery. In accord

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162. Alexis de Tocqueville, Democracy in America, New York, 1945, p. 106, cited by Shattuck, op.cit., at p. 127.

163. Robert Dahl, 'Decision-making in a democracy: the Supreme Court as a national policy-maker', Journal of Public Law, VI (1958), 281, cited by Shattuck, op.cit., p. 130.

therefore with the desiderata of liberal constitutional theory, and contrary to Marxist-Leninist theory, the judiciary is supposed to be removed and insulated from political influence and personal or social prejudices. For judicial independence also means independence from political influence, whether exerted by the political organ of Government or by the public or brought in by the judges themselves through their involvement in politics. Judicial involvement in politics may take three forms: decisions biased in favour of a ruling party, judicial membership of a political party and the use of the judicature as an instrument for political purposes.

a) Decisions biased in favour of a party

The judge is a human being and like any member of the species homo sapiens he has his prejudices and weaknesses and holds personal political views. To what extent these factors influence his decision is difficult to say, for it is difficult to know what goes through a judge's mind whenever he sits in judgment.

In a multi-party system nothing is more calculated to undermine the image of a judge as an impartial arbiter than his membership of a political party. Such an open identification with the interests of one of the groups engaged in the struggle for power suggests that the judge can easily become an interested party in a case pending before him. In such circumstances the judge may be tempted to give a decision biased in favour of the party

whose political views he ascribes to, especially if that party be the party in power. However, bias by judges in their decisions is always very difficult to prove as most of the time it is a matter of impression. Bias is never obviously displayed. A judge who means to be biased can easily mask it by couching his judgment in fine, seemingly learned, arguments and rationalisations. The circumstances may leave a distinct impression that a judge in a case has been anything but unbiased. But that impression cannot, by itself, be any proof of bias. Accordingly, bias should not be lightly imputed to a judge. But although bias may be difficult to prove, suspicion of bias can undermine public confidence in the courts. Similarly, a judge may be known publicly to be of a particular political persuasion, but his formal membership of the party of his political colour will open to serious doubt, try as the judge may, his neutrality and objectivity. Hence political self-abnegation by judges is vital to a healthy administration of justice.

Previously a multi-party State, Cameroon became a de facto One-Party State (the sole political party in the country is known as the Cameroon National Union - C.N.U. - political party) as from September 1966. But neither before nor after that date has the judiciary shown any involvement in the political scene.[164] There are two

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164. Victor T. Le Vine, The Cameroon Federal Republic, in Gwendolen Carter (editor), Five African States- Responses to Diversity, Pall Mall, London, 1969, p. 342.

explanations for this. First, there is a strong tradition of judicial non-involvement in politics and a consensus that the judiciary should keep away from politics. Secondly, until lately, the judiciary was dominated by expatriate judges. Their very visibility imposed considerable restraint upon them and so they tended to perform the tasks required of them quietly and without publicity. That the presence of expatriate judges should produce a certain amount of judicial passivity is not surprising. An expatriate judge has no stake in the government of the country. He is therefore very reluctant to risk his tenure of office or expose himself to public criticism by making unpopular decisions, especially by ruling against the government. Of course, the indigenous judge too may, for fear of reprisals of some sort from the government, be reluctant to risk his tenure of office by handing down judgments which may be regarded by the authorities as anti-government.

For these reasons, the Cameroonian judiciary has never been charged by the press with bias in favour of the Government even though the courts have had occasion to decide volcanic political cases. This does not however mean that Cameroonian courts have never been used, deliberately or not, as instruments of partisan political conflict. In the multi-party days, politically flavoured cases were brought to the courts either as civil or criminal libel suits (this was the favourite technique employed in former

West Cameroon) or as sedition or subversion (this was the favourite technique in former East Cameroon).

In E.L. Woleta & M.N. Namata v. The Commissioner of Police,[165] the appellants, the owner and the editor respectively of newspaper, the Cameroon Champion, were convicted of knowingly and falsely published a defamatory article in their paper on 25th May 1962 and were each sentenced on 10th August 1962 to terms of three months' imprisonment at the Victoria Magistrate's Court. On appeal to the High Court of West Cameroon, conviction and sentence were both confirmed. Per Gordon, C.J., at page 4, "The totality of the evidence and the article itself prove every justification for the Magistrate's finding of fact that the article in question was false and scurrilous and that it was likely to injure the reputation of Mr.Vincent Nchami, the Senior District Officer to whom it unmistakably referred." On the face of it, this was simply a case of criminal libel. But it had political undertones. The appellants in the case were known members of the Opposition Party in West Cameroon, the C.P.N.C., and the newspaper they ran was in fact owned by the C.P.N.C. The party in power at that time in West Cameroon was the K.N.D.P. and Mr Nchami had been appointed Senior District Officer by the K.N.D.P. Government. In C.P.N.C. eyes

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165. WC/20 CA/1962, (1962-1964), W.C.L.R.3.

therefore, by authorising prosecution in this case the Attorney-General was furthering the interest of the K.N.D.P. This explains why in May 1962, following the arrest of the appellants, the Cameroon Champion attacked the Attorney-General and his Assistant (Messrs Cross and Smith respectively, both of them West Indians) and demanded their dismissal.

The case of E.M.L. Endeley v. D.M. Frambo & J. Talbot[166] also illustrates the use of libel suits for decisive confrontations between the party in power and the opposition; a way of forcing political antagonists to expose their activities to judicial (and therefore public) scrutiny. The circumstances out of which the proceedings in the case arose may be summarised as follows. The plaintiff/respondent, a member of the then Southern Cameroons House of Assembly, and leader of the C.P.N.C. which at the time had an equal number of elected seats in the House with the K.N.D.P., contrived to conclude an arrangement with the first defendant/appellant, a member of the K.N.D.P. in the House. The arrangement in effect was that for the payment of £2,000 (On 1st April 1962 the cfa franc was introduced into West Cameroon and the exchange rate was £1 = 692 frs cfa.) said to be due by the first defendant/appellant to his previous party, the first defendant/appellant undertook to resign from his then party in the House,

166. WC. SC/1A/1963, (1962-1964) W.C.L.R.19.

and to join the party of the plaintiff/respondent. After some negotiations matters were finalised on the night of 8th May 1960 at Tali in Mamfe Division, when the defendant/appellant signed eight copies of a document which purported to be his resignation from the K.N.D.P., and received from the plaintiff and Mr Mbile the sum of £2,000 in cash. On 9th May when the first defendant/appellant failed to travel to Buea in accordance with the arrangement, it was discovered that he had made a report to the police of the district to the effect that he had been forced at gun point by the plaintiff/respondent and Mbile to sign the document purporting to be his resignation from his party, but that he had no intention of doing so. He followed this report with a letter to the same to the Acting Commissioner of the Cameroons. The libel complained of was contained in the letter to the Acting Commissioner which, the plaintiff/respondent alleged, was not only published by the first defendant/appellant but also by the second defendant/appellant, the paid Secretary of the K.N.D.P. On 5th June the plaintiff/respondent filed his writ against the defendants/appellants, and some time later a commission fo enquiry was appointed by the Government to enquire into the circumstances of the transaction between the plaintiff/respondent and the defendants/appellants.

Held, that the court cannot agree with the contention implied in the argument by the learned defence counsel that a Commission of Enquiry appointed by the

Government to enquire into a specific circumstance an in any way arrest the rights of an individual if so minded to pursue an action brought by him in court, neither can the court agree that a Commission of Enquiry takes precedence over a court or that with the appointment of a Commission any matters before a court related to the subject of the enquiry should be stopped.

In W.N.O. Effiom v. Mpame Ashu[167] the libel complained of was alleged to have been made in a circular letter by the defendant as 'Secretary for the Ejagham Block Victoria' during the election campaigns for members to the West Cameroon House of Assembly in 1961. The defendant was said to have made allegations of corruption against the plaintiff (Minister of Natural Resources in the K.N.D.P. Government and running on the K.N.D.P. ticket) in furtherance of the campaign of one Mr J.O. Takim, a prospective rival candidate for the elections. The plaintiff won.

A further case in which political confrontation was shifted to the cockpit of the court was that of W.M. Wilson, P. Wule & Mesumbe Publications (appellants) v. Anthony Ngunjoh (respondent).[168] In that case, the respondent, a businessman, and Organising Secretary of the K.N.D.P., claimed damages against the appellants, the

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167. WC/3/1962, (1962-1964) W.C.L.R.21.

168. WC/39/65, (1965-1967) W.C.L.R.24.

Editor-in-Chief, Editor and Publishers respectively, for libel. The libel complained of was published in an issue of the newspaper The Citizen of 7th September 1965 and the article in question read:

> "BIG NEWS - HOT TIME FOR KNDP - NGUMJOH IN FOR FRAUD
>
> "Sources close to the Victoria Police say that Mr. Anthony T. Ngunjoh, Principal Organising Secretary of the KNDP has been reported to the police for alleged fraud by a French businessman Mr Penziat. Mr Ngunjoh also a businessman in Victoria and recently described by Vice President Foncha during a Decoration ceremony as an honest man, was said to have bought two tippers and two concrete mixers from Penziat but allegedly paid him with a false cheque to the tune of about two million francs cfa."

Held (Kesiro and Mitchell JJ, with Stewart C.J. dissenting), reversing the judgment of Gordon, C.J. in the High Court, that the words were not defamatory in their ordinary meaning and that the respondent had failed to prove the meaning alleged in the innuendo.

It is of interest to note that the parties in this case had opposing political affiliations and sympathies. The respondent was a member of the KNDP while the appellants were members of the C.U.C. political party. To members of the public at least the case was nothing but a skirmish between the KNDP and the CUC. The political antagonism between the two parties once more came to the fore and to public attention in the much talked-of case of Augustine N. Jua v. Fongum Gorji-Dinka, Hope Printing Press & Dynx Press.[169] It was also a libel suit. The plaintiff,

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169. WC/37/66, (1965-1967) W.C.L.R.22.

then the Prime Minister of West Cameroon and the vice-president of the KNDP party, successfully sued the defendants in the High Court and was awarded damages (which the court ordered to be paid within a week) of 2.7 million francs cfa. The first defendant, a practising barrister and owner of the Printing Press involved in the case, was at that time counsel and legal adviser to the CUC. This case made newspaper headlines and was the talk of every household, principally because it involved the Prime Minister. Moreover, people saw the case as another manifestation of political rivalry between the plaintiff and Mr S.T. Muna (the Federal Minister and leader of the CUC). This was the only case in former West Cameroon in which a judge, in the instant case Mr Justice Charles Stewart, was alleged to have been biased. The case against the defendants was apparently not watertight and it was alleged that the learned Judge was reluctant to rule against the Prime Minister for fear of losing his job. Moreover, a few hours before he came to deliver judgment in the case, the judge was seen having a tête-à-tête with the Prime Minister in his chambers. Furthermore, the Judge unwittingly mentioned that the first defendant had been motivated by 'political ambition', a statement which would seem to suggest he saw the case as a partisan struggle between the KNDP and the CUC. Finally, the award of 2.7 million frs cfa against the defendants was, by West Cameroon standards of award of damages by the courts, excessive and smacked of retribution.

The award of punitive damages betrayed the Judge's bias. The defendants however applied to the Bamenda High Court (Kesiro J. presiding) for a stay of execution of the judgment of Stewart J. and were successful. They then appealed against the Prime Minister. By the time the appeal came up for hearing, the various political parties in Cameroon had merged to form one party, the CNU. As a gesture of goodwill, appellants then withdrew their appeal against the Prime Minister in open court. This coup de théâtre only went to confirm the belief that the case was nothing more than a KNDP/CUC clash dressed up as a lawsuit.

Criminal proceedings may also be used to perform political functions; for example by treating certain political manifestations or activities as ordinary criminality (what American scholars call the 'criminalization of political opposition'). This is crucial because criminal sanctions can remove political opponents temporarily or permanently from the political arena. In Cameroon 'criminalization of political opposition' has been achieved principally through the laws of sedition[170] and subversion.[171]

Take the case of Walter Mesumbe Wilson (appellant) v. Commissioner of Police (respondent).[172] The appellant,

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170. Ss. 154, 235, 240 of the Cameroonian Penal Code.

171. Ordinance No. 63/OF/18 of 12 March 1962 as amended by Laws No. 63/30 of 10 October 1963 and No. 64/LF/12 of 26 June 1964.

172. WC/2/CA/65, (1965-1967) W.C.L.R.6.

publisher and printer, was the president of an organisation with a political bias known as Vikuma (an acronym of Victoria, Kumba and Mamfe Divisions). As spokesman of this organisation he published at Kumba on 28 November 1964, an article in pamphlet form which he distributed to members of the public and to members of the KNDP who were attending a session of the Annual Convention of the party. The article which was marked 'Open letter to the life President-General and Members of the KNDP' and copies of which were addressed to the Head of State, the Federal Inspector for West Cameroon and the Federal Security, read in part,

> "National unity cannot be achieved no matter how loudly it is preached, when one section of the community, on account of numbers, has to lord it over the rest, converting public property to their own private ends to the extent of even administering Government Departments as though they were family undertakings ... Vikuma is at the verge of asking the President of the Federal Republic to declare West Cameroon an emergency area, suspend the West Cameroon Government and appoint an administrator to take charge of affairs until matters are settled."

The appellant was convicted and sentenced to six months' imprisonment with hard labour for publishing a seditious article. Per Gordon, C.J. at page 9, "The only inference to be drawn from this, is that local conditions are so bad, due to maladministration in the ways he enumerated, that the only solution opened to the President of the Republic, to save West Cameroon from itself, its administrators and ultimate bankruptcy, is to withdraw its constitutional rights ... Whether construed piecemeal or as a whole, the

article is clearly calculated to stir up discontent, disaffection, ill-will and even hostility among different elements of the population, and further to bring the Government into hatred and contempt ... The article is unquestionably seditious in its content."

A case similar to this was that of Ministère Public c. Victor Kanga & Ors.[173] In August 1966 there was a federal cabinet reshuffle and Mr Victor Kanga was moved from the prestigious position of Federal Minister of Finance to the less prestigious Ministry of Information and Tourism. He was apparently not happy with this change in his fortunes. In November 1966 an anonymous pamphlet entitled 'A Victim of Duty' began to circulate in Yaounde and Douala. It claimed that Kanga had been removed from his post of Finance Minister because he had tried to expose misappropriation and other malpractices by certain Ministers in Ahidjo's cabinet and especially fraudulent acts in the Yaounde Central Pharmacy. On November 22, 1966 he was dismissed as Information Minister and a week later arrested on charges of 'publishing false news'.[174] There were talks of subversion and rumours of an attempted Bamileke coup d'état. There was no evidence

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173. Cameroon Times, November 12, 1966, p. 1; Africa Confidential, No. 4, February 17, 1967, p. 5; Enonchong, Cameroon constitutional law, op.cit., pp. 138-140; Victor T. Le Vine, The Cameroon Federal Republic, Cornell University Press, Ithaca & London, 1971, pp. 157-158.

174. This is the charge of sedition contained in art. 240 of the CPC.

of any such attempt although security was tight during Kanga's four hours trial. Kanga contended that he was being prosecuted because he had stumbled across damaging evidence of embezzlement and that those concerned were determined to be rid of him. The State argued that the pamphlet was intended to discredit the Government. Kanga was convicted and sentenced to five years' imprisonment plus a further period of five years during which he was disqualified from holding public office.[175]

The case concerning André Marie Mbida, Charles Okala, Bebey Eyidi and Mayi Matip[176] further illustrates how the courts may be used to deal with political recalcitrants and insurrectionaries. It arose from the activities of the opposition in the former East Cameroon. By late 1961 Ahidjo's Union Camerounaise political party was the majority in the East Cameroon Assembly, a majority further increased by the decision of Charles Assale's Mouvement d'Action Nationale Camerounaise (MANC) and Pierre Ninyim Kandem's Front pur l'unité et de la paix (FPUP) to join the UC. However, a number of opposition parties (Matip's legalised UPC, Mbida's Parti des Democrates Camerounais - PDC -, and Dr Eyidi's Parti Travailliste) still existed. On 23rd January 1962, the UPC party

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175. Eleven other persons were also convicted including two important civil servants, both of them Bamileke (Pierre Tchanke, Secretary General at the Ministry of Finance and Joseph Foalem Fotso, Assistant Director of Broadcasting).

176. Chronologie politique africaine, No. 3, p. 41, No. 4, p. 43, No. 6, p. 42, 1962; N. Rubin, Cameroon - an African federation, Pall Mall, London, 1971, p. 146.

was broken up by armed soldiers.[177] But this did not signal the end of the UPC or the demise of the other opposition parties.

Fearing that Ahidjo was determined to eliminate them politically, the opposition leaders (Mbida, Okala, Matip, and Eyidi) formed a Front National Unifié in April 1962 and in June published an open letter vigorously attacking Ahidjo and alleging that he was intent on creating a dictatorship through the establishment of a one-party state. This was followed a few days later by a minfesto, 'Des intellectuels prennent position', published in pamphlet form. It repeated the charges against Ahidjo and went on to reject specifically the concept of the parti unifié as advocated by Ahidjo's UC. The Front argued that the one party was no more than a disguised attempt to accomplish political uniformity in Cameroon and that it would be achieved by reducing "the other Cameroonians to the rank of slaves" and would lead to a "fascist-type dictatorship". The Front's manifesto said, inter alia, "Loin d'avoir mobilisé la nation entière à l'assaut de grands problèmes herités de l'époque coloniale, l'indépendance, pourtant si chèrement acquise, a avivé plutôt les divisions du passé ... La virulence des particularismes

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177. Earlier, on 18th January, Ahidjo had in a speech in Douala warned, "there were no half-measures and it is unacceptable that certain political figures should, by making learned speeches, condemn and excuse terrorism atthe same breath." Chronologie, op.cit. My translation.

ethniques est allée en s'emplifiant, remettant gravement en cause la notion même de nation."[178]

On June 29th, Mbida, Okala, Matip and Eyidi were arrested and their homes searched on the orders of the local Prefect acting 'au nom du gouvernement'. They were accused of subversion and brought before the Yaounde Tribunal Correctionnel to answer four charges, to wit, 'Inciting hatred against the Government, encouraging subversive enterprises, lack of due respect to authorities, and disseminating rumours or news prejudicial to public authorities'.[179] The defendants pleaded not guilty. They argued that they were being accused of a press offence, that they had parliamentary immunity and that the court had, in any case, no jurisdiction to try them. But the court had no difficulty in finding them guilty as charged. On July 11th, they were each sentenced to $2\frac{1}{2}$ years' imprisonment. They appealed to the Yaounde Court of Appeal against conviction and sentence. On December 3rd 1962, the Appeal Court not only confirmed the conviction but increased the sentence of each defendant to three years' imprisonment plus a fine of 250,000 frs. cfa and the loss of their political rights.

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178. Chronologie, op.cit.

179. See the Subversion Ordinance of 1962. There were also allegations that arms and ammunition had been found in their possession and that they were plotting against the Government. There was, however, little evidence of this.

b) The use of the courts to achieve certain political desiderata

In Cameroon the judiciary is not seen as merely a cloistered institution charged only with the resolution of disputes. "As members of the political elite, court authorities also have to fulfil another core political function of the state and preserve, à la Hobbes, public order, for the maintenance of order is viewed by the citizenry at large as the sine qua non of political responsibility."[180] The judiciary must therefore assist the Government in the maintenance of law and order and in the fight against crime.

> "At a time when the Government, the Parliament and the Party are doing all they can to preserve the country from these evils and more particularly from corruption, smuggling and evasion of customs duties which, if left unchecked, could undermine its credibility, its policy of social justice and moral, economic and social well-being of the nation, the judiciary at all levels must deal severely with them." 181

The judiciary is also seen as inextricably involved in the struggle for national development. In this fight the judiciary cannot sit on the fence but "must play a useful role in the process of the economic, social and cultural development of the nation through the judicious enforcement

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180. Shattuck, op.cit., at p. 147.

181. Ahidjo address at the Supreme Court on 11 November 1977, op.cit.

of laws".[182] Judges must therefore be forward looking; progressive and not conservative, although how progressive, is another question. Judges must always have the national interest at heart. But what 'national interest' is, is clearly a political question.

The Government may also enlist the services of the courts to propagate its political doctrines. Thus in Cameroon the courts are seen by the Government as instruments in the service of 'Cameroonian humanism'.

> "After almost 20 years during which I have observed and appraised the principles and functioning of justice in Cameroon, the courts still appear to me to be the most precious instruments in the service of our humanism, which is not only the core of our political doctrine but also a real and living force in this country." 183

Clearly then courts are seen as political institutions (which in fact is what they are) with a political role to play. This is particularly the case in a one-party state. And Cameroon is a de facto one-party state. The CNU, supposedly a mass party, is the only political party that exists in Cameroon. The concept of an apolitical judge in Cameroon must therefore be taken with a pinch of salt.

Judges may well not be required to be card-bearing members of the Party. But local party bosses do expect

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182. Address by the Hon. Mr Justice S.M.L. Endeley at the opening of the Mundemba Magistrate's Court. See, 'Justice goes nearer Bertoua and Mundemba populations', Cameroon Tribune, No. 72 of 12 November 1975, p. 3.

183. Ahidjo address, op.cit.

them to attend party rallies, and they invariably do, sometimes in party uniforms. There are possible reasons why a judge may engage in open political activity: either because he holds the same political convictions as those the CNU preaches, or because, seeing that the distinction between Party and Government is blurred, he feels he must be an active party member so as to keep his job and gain promotion. But how far party militancy does act as job security and helps in career advancement is hard to ascertain. However, there seems to be a general feeling that an uninterested attitude towards the Party may adversely affect one's career. It is perhaps significant that although not many judges are to be found openly militating in the Party, their wives are almost always actively involved in it and are card-bearing members.

In a country which is a one-party state and where the courts are seen as instruments in the service of political doctrines and are required to play an active role in the developmental process, there is nothing incongruous or inherently wrong with a judge being a card-bearing member of the Party and openly militating in it. That the concept of an apolitical judge needs rethinking in a one-party system has been put forcefully by Mr Justice Georges, former Chief Justice of Tanzania.

> "The concept of the judge as the neutral, belonging to no party in the multi-party democracy, can have no meaning here where there is one party. If he stands aloof, seeming to play the apolitical role which is supposed to be his, his motives will doubtlessly be suspect. A new way must be found ...

"In the case of the elected American judge or the English lawyer-politician appointed to the bench, whatever posture of impartiality may be adopted, it is difficult to believe that political convictions or prejudices acquired over a life-time and perhaps deeply encrusted can suddenly be jettisoned by the mere fact of appointment to the bench. What does happen is that the judicial officer's sense of professional integrity and his professional competence secure some objectivity in the handling of legal affairs, despite political commitment. It is my view that despite a political commitment to TANU, the judicial officer in Tanzania, once he is of the right calibre, can secure an equal degree of objectivity in his legal work ...

"Seen in that context it seems to me that the judicial officer should, if he wishes to, become a member of TANU, and that at this stage this is perhaps desirable. Although politics is much concerned with the struggle for power and position, it is not concerned solely with that. In Tanganyika a tremendous task of educating people still lies ahead and no one should be better fitted to instruct in the essential parts which the courts play in maintaining human rights and helping to secure for society that basis of order and respect for law without which economic advancement would be considerably hampered. This work can best be done from within the party which officers a platform largely respected because of its achievement in the struggle for independence.

"It is too much to expect the politicians to do that job for the judiciary. Largely we would have to do it ourselves so that public opinion will gradually be created, permeating throughout the party, that the courts must be preserved because of the indispensable role which they play. The leaders at the top realise it and often stress it. But the task demands more than the occasional pronouncement. For these reasons, I see no harm and much good in party membership by members of the judiciary and use of the opportunities which membership offers to show a positive interest in helping the process of rapid

> national development and to stress the importance of the courts in the achievement of that goal." 184

This thought-provoking statement is relevant in the Cameroonian context because, like Tanzania, Cameroon is a one-party state. However, the proposal has been criticised; first, because it would seem to ignore the interest of those who may be out of sympathy with the party; secondly, because it would raise strong doubts as to the judge's ability to be impartial.

> "Given a people's party, widely and popularly based throughout the country, membership of it by judges may perhaps be tolerated; even then the proposal seems careless of the interest of the small minority who for one reason or another may be out of sympathy with the party and what it stands for, and for whom the idea of a judge-cum-partyman presiding over their cases represents the very travesty of justice. The proposal would be even more reprehensible if the party were an elitist one, for, on such a case the non-sympathisers would not only be a small minority. Membership of even a one party remains a voluntary affair and indeed the majority of the people are not registered, card-bearing members, though they may support the aims and objectives of the party. When a person registers as a member, the presumption is that his commitment to the party is stronger than that of most people, and this at once raises a doubt as to his ability to maintain an unbiased position in a matter in which the vital interests of the party conflict with those of an individual or a private organisation. Most people, it may be assumed, would not feel confident about the impartiality of a judge who is so staunch in his support

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184. P.T. Georges, 'The court in the Tanzania one-party system', in Sawyerr (ed.), East African Law and Social Change, 1967, pp. 44-45.

> of the party as to take up a membership card. It is not enough that the judge may in fact be impartial; appearance is equally important. When the judge addresses a political meeting or rally on the theme of the court's vital role in development, he will do so as a party politician, and very soon he may be lumped together with the other party politicians and tarred with the same brush. Public support for independence of the judiciary should not be bought at such a cost." 185

That may in fact not be too high a price to pay. To ignore the wishes of a minority, especially a small minority, is democratic enough. The minority, according to democratic principles, must always bow to the wishes of the majority; and the majority must respect the right of minorities.

III. The Ministère Public, Adjunct of the Executive

The ministère public, in effect the legal department, is also known as le parquet.[186] Historically, its origin may be traced to the procureurs et avocats du Roi in France during the Ancien Régime. This group of attorneys who acted as counsel for the French King did not, like the judges, sit on the dais but in the well of the courtroom (parquet). Hence the reference to it as le

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185. Nwabueze, op.cit., p. 282.

186. Members of the ministère public are said to belong to la magistrature debout; so called because, unlike the judge, the State Prosecutor must stand each time he wishes to speak while the court is in session. During a criminal trial the ministère public is sometimes referred to as l'accusation, that is, the prosecution.

parquet. This appellation has stuck even though the Procureur has left the well of the court and has gone up to meet the judge on the dais.[187] Members of the ministère public are directly subordinate to the Minister of Justice, their ultimate boss, who closely supervises, controls and directs their work.[188]

1. Structure and role of the ministère public

The ministère public is hierarchically structured. It conducts public prosecutions and plays an important role in certain civil matters.

A. Hierarchical structure of the ministère public

The overall boss of the ministère public is the Minister of Justice himself. Under him are the Procureurs Généraux and their deputies and Procureurs de la République and their assistants, all of whom are in charge of conducting prosecutions[189] at the courts. There is a ministère

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187. This is to emphasize the equality between the two. Neither of them has powers of discipline and control over the other. The equality between judge and state prosecutor is also apparent from the similarity of their professional costumes.

188. Rules and Regulations of the Judicial and Legal Service, s. 4(1).

189. In ancient times the accuser in a criminal matter was either the victim himself or his close relative. If the prosecutor or prosecutrix failed to prosecute or if he withdrew his accusation no one else could prosecute and so the offence went unpunished.

/Continued over

public attached to every court in Cameroon. The ministère public attached at each court is known as le parquet. If the court is appellate the proper terminology is parquet général; but if the court is one of first instance, the correct designation is parquet d'instance - the Procureur General's Chambers and the State Counsel's Chambers respectively.

a) The parquet général

This is the name given to the department of public prosecutions attached to each appellate court (the Provincial Courts of Appeal and the Supreme Court). The parquet général at the Supreme Court is headed by the Procureur General.[190] His is a small staff made up of Advocates-General and Deputies to the Procureur General,

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Footnote 189 continued from pate 478.

As this was thought to be unfair, Greek and Roman laws required the accuser to swear to pursue the accusation until judgment was given. But then private prosecution entailed serious risks for the prosecutor. He had to take the initiative to prosecute. He had to bear all the expenses of the trial. If the trial ended in the acquittal of the accused, the prosecutor was visited with the penalties that would have been imposed on the accused had he been found guilty. This situation called for change. In France, as early as the 13th century, a class of agents known as procuratores (cf. the Russian prokuratura) acted in courts as attorneys for litigants. The King, Lords and Barons began to hire procureurs to defend their financial interests in the courts. By the middle of the 14th century the office of procureur du roi was firmly established in the French criminal process. His main duty was to initiate and conduct criminal proceedings in the name of society.

190. To distinguish him from the P.G. at the Court of Appeal, the Criminal Procedure Commission has proposed to style him Monsieur l'Attorney-Général (Interviews).

that is, of not more than five magistrats.[191] The parquet général at each Court of Appeal is headed by the Procureur Général près la cour d'appel.[192] His staff, larger than that of his counterpart at the Supreme Court, consists of an Advocate-General (who for the moment exists only on paper), one or more deputies, and one or more legal assistants.[193] In reality however, the numerical strength of the legal department at each Court of Appeal varies. At the Bertoua and Garoua Courts of Appeal for example, the legal department at each of those courts has a manpower strength of only two or three legal officers. In Yaounde, Douala and Bamenda, the staff strength in each case is not less than six legal officers. The prosecutorial corps at the Court of Appeal handles all prosecutions at that Court and all prosecutions in all courts within the Court of Appeal's ratione loci jurisdiction without a Procureur de la République attached to them.

The Procureur General at the Court of Appeal is the head of the prosecutorial corps at that court and also the hierarchical superior of all State Counsels at the courts of first instance within the territorial jurisdiction of the Appeal Court. After the Procureur General

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191. Ord. No. 72/6 of 26 August 1972, s. 2(1) as amended by Law No. 76/28 of 14 December 1976.

192. Ord. No. 72/4 of 26 August 1972, s. 25(2).

193. Ibid., s. 19.

comes the Advocate General, his senior Deputy. Next comes the substitut général, that is, the deputy to the Procureur General. As there are at the moment no Advocates General at the Courts of Appeal, the substitut général is the most senior state prosecutor next to the Procureur General. The so-called attachés au parquet général are legal assistants working in the Procureur General's Chambers. By rank, they are at the bottom of the prosecutorial corps. The Procureur General at the Supreme Court does not exercise supervisory rights over the Procureurs General at the Courts of Appeal. The Minister of Justice is their direct and immediate superior and it is he who makes confidential reports on and proposes them for promotion.

b) The parquet d'instance

The parquet d'instance is the department of public prosecutions attached to courts of first instance, namely, the Magistrate's and the High Courts.[194] The department is headed by a Procureur de la République (State Counsel) and comprises an assistant and a substitut du procureur de la république.[195] In practice however the parquet d'instance is often a one-man office made up of the Procureur de la République alone. In some cases he prosecutes both in the

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194. Ibid., s. 25(3)(4).

195. Ibid., ss. 15(1) and 12(1) as amended by Ord. No. 72/21 of 19 October 1972.

High and in the Magistrate Courts. Indeed, in some Francophone courts, the presiding judge at the Magistrate's Court also acts as Procureur de la République in the High Court.

A Procureur de la République may only prosecute in the specific court(s) to which he has been attached. He cannot however prosecute in the Court of Appeal. But a State Prosecutor attached to an Appeal Court may prosecute in both the Court of Appeal and any Magistrate or High Court in the area of the Appeal Court. This is why the legal department at the courts of first instance is called the parquet d'instance while that at the Courts of Appeal is known as the parquet général.

The Military Court and the Court of Impeachment are courts of particular jurisdiction and each of them has a ministère public attached to it. The prosecutorial corps at the former court is made up of the commissaire du gouvernement and one or more assistants,[196] while that at the latter court consists of the Procureur General and the Advocate General at the Supreme Court.[197]

B. Role of the ministère public

It ensures the enforcement of laws, regulations

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196. Ord. No. 72/5 of 26 August 1972, s. 3 (Military Judicial Organisation).

197. Ord. No. 72/7 of 26 August 1972, s. 5, to organise the Court of Impeachment.

and judgments and may, in the interests of the law, make any request it considers necessary to any court.[198] Its role is not limited to criminal proceedings but extends also to the civil process.

a) In criminal proceedings

The legal department is the Public Prosecutor in all criminal matters whether the offence committed is against private or state interest and whether it is a contravention, a misdemeanour or a felony. The department is, as it were, counsel for the community, acting on behalf of society.

State Prosecutors share with the Minister of Justice the discretion whether to prosecute or not. In theory, where the legal department fails or refuses to prosecute, it may be compelled to do so or to give its fiat for a private prosecution to be brought.[199] In practice this is seldom done.

The legal department's role in the criminal process is not only to institute and conduct prosecutions. Without prejudice to the civil party, who is always free to

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198. Ord. No. 72/4 of 26 August 1972, s. 24(1)(a) as amended by Ord. No. 72/21.

199. The victim of an offence may do this by petitioning the Minister of Justice praying him to order the legal department to prosecute or for it to give its fiat for a private prosecution to be brought. The victim may simply constitute himself partie civile thereby forcing the department to prosecute.

se constituer partie civile in the criminal case, the legal department also investigates and records offences, undertakes judicial inquiries and investigations, issues any imprisonment warrants, orders any measure of investigation, notably, searches, seizures, visits to the locus in quo, and expert appraisement.[200] Nor is that all. The department also exercises the functions of the old juge d'instruction. It is the legal department which, in felonious offences, conducts the preliminary inquiry before committal for trial at the High Court.[201] Again, the department may issue any warrant of imprisonment and may, of its own motion, release on bail.[202] Finally, State Prosecutors perform administrative functions in their department, including the supervision of advocates, officiers ministériels and la police judiciaire in their respective areas of jurisdiction.

b) In the civil process

Whereas in the Francophone Provinces it is and has always been normal practice (as in other civil law jurisdictions) for the legal department to intervene in certain types of civil matters, in the Anglophone Provinces (as in other common law jurisdictions) the legal

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200. Ord. No. 72/4 of 26 August 1972, s. 24(1)(b), as amended by Ord. No. 72/21.

201. Ibid., s. 24(4)-(7).

202. Ibid., s. 24(2).

department has always and continues to be seen as concerned only with the criminal process. However, the power of the legal department to intervene in the civil process stems from s. 24(1)(a) of Ordinance No. 72/21 of 19th October 1972 which provides, inter alia, that the legal department may "in the interests of the law, make any request it considers necessary to any court". Thus any request, provided it is in the interest of the law, may be made by the legal department to any court whether exercising criminal or civil jurisdiction.

The role of members of the legal department in civil matters is to be the watchdogs of the law. They are, as it were, 'institutionalised amici curiae'.[203] Although they are agents of the Government at the courts, they represent not the executive but the public interest; they represent the law. Their job here is to present the law to the court, to give an objective appraisal in the light of the previous jurisprudence (case-law), and to make a formulated proposal known as conclusions[204] for action.

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203. Otto Kahn-Freund, Claudine Levy and Bernard Rudden, A sourcebook on French Law, O.U.P., 1973, p. 258.

204. The conclusions in the Francophone Provinces resemble in their style a judgment by an Anglophone court, far more so than do the Francophone court judgments themselves. They are, like the submissions of defence or prosecuting counsel in the Anglophone courts, both personal and argumentative. The activity of the ministère public is quite often the channel through which academic doctrine influences the courts.

There are two ways in which the legal department may participate in civil actions, either as a joined party (partie jointe) or as a main party (partie principale). When it participates in litigation between other parties as representative of the public interest, it is said to be partie jointe and to be acting par voie de requisition. Here, the legal department intervenes in a case it never initiated to give the judge its considered legal opinion, as a kind of juris-consult or amicus curia on how the issue ought to be resolved. Generally, it is discretionary with the legal department whether to intervene in civil proceedings. However, it has an obligation to do so whenever the court requests its participation,[205] or, in certain cases, when a statute specifically so provides. Usually, the department intervenes mainly in the area of family law, often to safeguard the interests of the child. Hence the department may intervene in actions concerning personal status (divorce, annulment of marriages, guardianship, custody, adoption and legitimation), proceedings to obtain a declaration of presumed death, matters involving infants or incompetents, matters concerning charitable bequests, and so on. Although the department has no right of appeal when it intervenes merely as partie jointe, it may, in certain cases lodge a pourvoi en cassation in the

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205. French Code de Procedure Civile, art. 83(8). The code is still in force in the French-speaking part of Cameroon.

Supreme Court in the interest of the law. However, only the Procureur General at the Supreme Court may, either on his own initiative or on the orders of the Minister of Justice, lodge such an appeal.[206] The Procureurs General at the Courts of Appeal (and less still, the Procureurs de la République) have no competence to do so. Accordingly, it was held in Procureur Général pres la Cour d'Appel de Yaounde c. Dame Nguini Madeleine[207] that an appeal lodged by the Procureur General at the Yaounde Court of Appeal in the interest of the law cannot be entertained as he was not competent to make such an appeal. The Supreme Court reached the same conclusion in the analogous case of Procureur General at the Court of Appeal, Bamenda v. Mathias Tantoh Naseh.[208]

The legal department is a partie principale in a civil case where it initiates proceedings, pursuant to statutory authority, in its own name or as representative of a litigant (natural or artificial person). In this case the department is said to be acting par voie d'action. Here, the department is in fact the plaintiff and may appeal in the event of an adverse decision. However, it may never be ordered to pay costs although, ordinarily, as

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206. Ord. No. 72/6 of 26 August 1972, s. 6 (Organisation of the Supreme Court) as amended by Law No. 76/28 of 14 December 1976.

207. C.S.C., arret no. 306/p du 14 aout 1975, unreported.

208. C.S.C., arret no. 118/P du 05 mai 1977, unreported.

losing party, it ought to.[209] The instances in which the department may proceed in its own name include: actions for the annulment of a void marriage, adoption proceedings, proceedings concerning the custody of infants, actions to deprive a parent of his parental authority, actions to correct official birth, death and marriage records, proceedings to have an insane person adjudicated an incompetent, actions in certain cases involving testamentary dispositions in the nature of future interests and so on.[210]

2. Nature of the ministère public

Two main features characterise the legal department. It is the representative of the executive branch of government at the courts. It is also the necessary and the principal party in any criminal trial.

A. The representative of the executive at the courts

As representative of the executive, the legal department is independent of the court[211] but subordinate

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209. Cf. French Code de Procedure Civile, art. 156.

210. See articles 99, 184, 191, 353, 491 and 1057 of the French Code Civil. This code is still applied in the French-speaking part of Cameroon.

211. 'Court' in the narrow sense of a judge or judges sitting in judicial capacity. In the broad sense, a court consists of the judge, registrar and state prosecutor. See Ord. No. 72/4 of 26 August 1972 (Judicial Organisation).

to the Minister of Justice.

a) Hierarchical subordination

The fundamental trait of the organisation of the legal department is its hierarchical subordination. Members of the department are subordinate to the Minister of Justice. They receive directives and orders from their immediate superiors to whom they owe respect and obedience. At the top of the hierarchy is the Minister of Justice. He is not a member of the legal department and has no such status. But as head of that Government Department which deals with justice in general, the Minister of Justice is the overall boss of the legal department. As the embodiment of the executive in this area, he may issue orders to the Procureur General at the Supreme Court, Procureurs General at the Courts of Appeal, to the Procureurs de la République and in fact all legal officers.

The Procureur General at the Supreme Court may issue orders to his deputies. Procureurs General at the Courts of Appeal give orders to their deputies and assistants, to Procureurs de la République and the judicial police (including gendarmes who are officiers de police judiciaire) within their respective jurisdictional areas. Procureurs de la République also give orders to their assistants and judicial police and gendarme officers within their respective areas of work. Members of the legal department are bound to obey their immediate superiors.

It is extremely unwise not to do so. Firstly, legal officers are reported on and recommended for promotion by their immediate superiors.[212] Secondly, a disciplinary offence by a legal officer is determined in the light of the obligations resulting from his subordinate rank.[213]

However, to give legal officers some measure of protection from the whims and caprices of their superiors and from arbitrary dismissals, disciplinary sanction against an officer, it is statutorily provided, can only be taken by the Permanent Disciplinary Board.[214] Besides, there are two exceptions to the rule of hierarchical obedience. In the first place, Procureurs General and Procureurs de la République are invested with definite powers of theirs. They may prosecute or refrain from prosecuting without orders or even against the orders of their superiors. If they refuse to prosecute in defiance of orders from their superiors to do so, the latter cannot step into their shoes and prosecute in their place.[215] Secondly, the obligation of legal officers to obey the orders of their superiors relates only to the preparation and filing

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212. Judicial and Legal Service Rules and Regulations, ss. 33(1), 34(2), 35 and 38.

213. Ibid., s. 46(2).

214. Ibid., ss. 51 and 52.

215. Within a given parquet however, assistant and deputy prosecutors must obey instructions on prosecutions given to them by their boss, irrespective of their personal legal views of the matter concerned.

of written submissions. On oral argument they are free to take any position they choose.[216] This is often expressed in the French aphorism, la plume est serve, mais la parole est libre, which means, 'the pen is slave, but the word is free'. But it is very rare for a procureur to defy his superior's instructions. To begin with, if the procureur intends in his oral arguments to go against his superior's instructions, the law requires that he must "have previously and in due time, informed his direct superior of his intention of orally differing from the submissions or pleadings filed in accordance with the instructions received".[217] Furthermore, oral arguments seldom carry much weight in the Francophone courts. The written submissions or pleadings filed in the dossier are what the judge, for most of the time, considers before arriving at a decision in any given case.

b) Independence and homogeneity

As servants of the executive, legal officers are independent of the bench and are not bound by the views and attitude taken by the victim of an offence. A member of the bench, be he so high, can neither reprimand nor give orders to any legal officer, be he so low.

Generally, the judge cannot take cognizance of

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216. Rules and Regulations of the Judicial and Legal Service, s. 4(1). This however seldom happens.

217. Ibid., s. 4(1).

an offence and himself initiate criminal proceedings. He must wait until he has been seised of the matter by the legal department.[218] In deciding whether to prosecute or not the legal department is not bound to take into consideration the wishes of the victim of the offence. Supposing the department does not wish to prosecute. The victim of the offence may compel it to do so by simply constituting himself civil party. But the department may initiate proceedings and then refuse to proceed with the case by simply withdrawing the charge. It is not bound to give any reason for doing so. On the other hand, the victim's acquiescence, his withdrawal from the case or of the complaint (except where such a withdrawal would amount to prosecution being barred) would in no way prevent the legal department from going ahead with the prosecution of the case, asking for conviction and sentence or going on appeal in the event of an acquittal. Similarly, the victim's failure or refusal to lodge a complaint (except where the offence is one of those which requires the victim's complaint before the offender can be prosecuted) or his wish to forgive the criminal, would not prevent the legal department from prosecuting if it were so minded.

Each department of public prosecutions is legally

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218. In certain cases however, the court may itself take cognizance of an offence and proceed to try the offender. A classic example is the case of contempt of court. Ss. 152(1) and 154(a) of the Cameroonian Penal Code.

regarded as one homogeneous, indivisible entity. Although it is made up of several members, it is referred to and regarded as though it were one person. No member of the legal department acts in his own personal name. When he speaks in court, when he prosecutes, it is the legal department speaking, it is the legal department prosecuting. The members of the department are, as it were, anonymous entities with one common nomenclature - the Legal Department or the Prosecution. One important consequence of this is that in the course of a trial, members of the department may replace each other in prosecuting a single case. Thus, P1 may start the case, at some later stage in the trial P2 may take over, while P3 may take over at the closing stages. This is something which members of the bench are not permitted by law to do. If a judge sits in a case he must see it right through and pass judgment. He cannot be replaced by another judge in the course of that same case. If for some reason the judge cannot sit through to the end in a particular case, the new judge who takes over must start the case all over. Failure to do so will render the entire proceedings completely null and void.

This was indeed what happened in Andrew Nwacha v. Commissioner of Police.[219] The appellant, who was a customs clerk at Lobe, collected customs duty to the extent

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219. WC/22 CA/64, (1965-1967) W.C.L.R.10.

of 29,000 francs cfa from two traders, on goods brought into West Cameroon by them. He gave them official receipts for a total amount of only 5,750 francs cfa, thus accounting in his books for only this latter amount. He was arraigned before His Worship Mr Wyatt sitting at Kumba and pleaded not guilty after he had elected summary trial. Several adjournments followed and later, His Worship Mr Allahar who by then was presiding over the court began taking the evidence in the case. At the end of the trial, he convicted the appellant on two counts of making false entries with intent to defraud and sentenced him to thirty months' imprisonment with hard labour on each count, sentences to run concurrently. On appeal, held, per Gordon C.J., that there having been a number of adjournments in the case and the case coming finally before a Magistrate different from the Magistrate who commenced the case the appellant should have been put to his election and, if summary trial chosen, a plea taken afresh. The failure of that Magistrate to do so rendered the trial null and void ab initio.

B. <u>The necessary party in a criminal trial</u>

Because the legal department is the necessary and the principal party in any criminal trial, no challenges may be made, during a trial, against a legal officer and neither damages nor costs may be awarded against the department.

a) No challenges

Although they are representatives of the executive at the courts no challenges may, in the course of a trial, be made against members of the legal department.[220] This is because the legal department is the necessary party in a criminal trial. Judges, assessors, and jurymen may be challenged for various reasons.[221] Not so a member of the legal department. One party to a case cannot make challenges against the other.

b) Immunity

When the victim of an offence constitutes himself partie civile, he may, in the event of an acquittal, be ordered to pay damages to the person against whom he had constituted himself a civil party. He may, in addition be ordered to pay costs. Not so in the case of the legal department. If it has wrongfully or erroneously prosecuted someone who is eventually acquitted, the department can neither be ordered to pay damages nor costs. The department's immunity is however not absolute. If it is reckless in bringing charges against someone, if it is guilty of gross negligence or mistake, it can be sued civilly for damages using the special procedure (which also applies to judges) known as la prise à partie.[222]

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220. Law No. 75/16 of 18 December 1975, s. 30(4), fixing the procedure and functions of the Supreme Court.

221. Ibid., s. 30(1).

222. Cf. ibid., s. 33.

CHAPTER TEN

THE LEGAL PROFESSION

It is not known exactly when the legal profession began. It was probably evident in 4th century Attica among the orators and rhetoricians who wrote speeches for parties to deliver in court.[1] In ancient Rome there existed the institution known as advocatus. The advocati were friends of litigants whom they defended in their lawsuits. Among the advocati the most eloquent and best in the science of law were styled oratores. By the time of the Roman Empire the orator-friend, an amateur who rendered his services gratis, had become a paid professional orator.[2] The modern advocate is therefore more directly a successor to the orator than to the jurisconsult of Rome. In England in Norman times (about the 11th to the 13th century) it was common for a litigant to have assistance in the conduct of his case by a friend not by a professional expert. The friend's function was to

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1. Geoffrey Sawer, Law in society, O.U.P., 1965, pp. 110-113. Orators also existed in traditional African society (although there was no legal profession as such) and were often hired for their eloquence and glib tongue to defend parties in court.

2. Y.R., 'De la déontologie des avocats du barreau de Madagascar', Penant, No. 758, 1977, p. 441; Pierre Siré, 'The legal profession and the law: the bar in France', J.I.C.J., vol. 1, no. 2, 1958, p. 244.

recite the formal words necessary in the making of a claim of defence. The reason for having a friend was that if he made a mistake the party could disown the case with impunity whereas if one party were to make an error himself, it would be fatal to his case. More expert assistance arose when court procedure was developed by courts which enforced it became very complicated. As a consequence the friend of the party became a professional pleader or narrator who conducted oral pleadings and argued questions of law on behalf of his client. It is from the narrator that the barrister of present times is descended.[3]

Historically, and as part of the now extinct view that a profession suffers loss of prestige if its members depend on their professional activity for their livelihood, the services of the advocate were rendered without financial reward, though he could accept a voluntary remuneration spontaneously offered to him by his client. Such a reward was accepted merely as a present offered in acknowledgement of the work the advocate had put into the case. Advocates were therefore not only amici curiae but amici populi as well. Folk hostility against him and the diminution of his social prestige came about when the advocate began to receive fees for his

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3. William B. Boulton, 'The legal profession and the law: the bar in England and Wales', J.I.C.J., vol. 1, no. 1, 1957, p. 106.

work. The hostility and cynical attitude towards him have survived to this day. It represents a folk disapproval of the notion that a special class of persons should earn their living by the performance of the social functions associated with a 'legal profession'. This hostility stems from an ingrained belief among many laymen that lawyers foment social strife in order to earn their fees and that they have a vested interest in telling lies, in deceiving and in misrepresenting issues.

Little wonder that, throughout all ages and countries, literature treats lawyers badly. In France in the 15th century, a satirical play, Maître Patelin, described the characteristics of a lawyer of that name, a much less scrupulous advocate who boldly deceived his judge by suggesting a disreputable line of defence but who, himself, as a result of an identical strategem by his client, lost payment of the fee he had been demanding so ruthlessly. Napoleon Bonaparte had no love for lawyers. "They are seditionmongers," he said, "artisans of crime and treason. I wish it were possible to cut out the tongue of any barrister who uses it against the Government."[4] Similar scathing remarks against lawyers have come from England. Swift wrote in his Gulliver's Travels, "I said there was a society of men among us, bred up from their youth, in the art of proving, by words manipulated

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4. Pierre Siré, op.cit., p. 255.

for the purpose, that white is black, and black is white, according as they are paid. To this society, all the rest of the people are slaves." But while Swift was content grossly to misrepresent the legal profession, Shakespeare would rather have no lawyers at all. "The first thing we do," he wrote in Henry VI, Part II, Act 4, Scene 2, "Let's kill all the lawyers." This hostility however proves nothing.

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After giving a brief history of the legal profession in Cameroon (Section I) and an account of the situation of private practice in that country (Section II), this chapter goes on to analyse how entry is gained into the Cameroonian Bar (Section III), the functions, rights and duties of the Cameroonian advocate (Section IV), how an advocate may cease being a member of the legal profession (Section V), and the role of the Cameroonian Bar Association (Section VI). Section VII gives a run down of other auxiliary personnel of the law.

I. History of the Legal Profession in Cameroon

Although the legal profession is several centuries old in some countries, it is only recently that it began in Cameroon. Its development however, has not been the same in the French-speaking and in the English-speaking parts of Cameroon.

1. In Francophone Cameroon

The private practice of law in the French Cameroun was a drudgery; neither exciting nor rewarding. Often, it attracted no barristers from France (or from elsewhere for that matter) or, if it did, only mediocre ones who could not hold their own in the metropole. Up to 1930 there was not a single private practitioner in the French Cameroun. There was therefore no need to organise practice at the bar in the territory. In 1935 however there were three avocats-défenseurs et agents d'affaires, all French, in the territory. An arrêté of the 20th April 1936 created un corps d'avocats-défenseurs près les tribunaux francais du Cameroun, but did not set up any Bar as such, probably because the number of practitioners was still small. In 1947 the number of practitioners increased to four and then to twenty-one in 1952. None of them was a Cameroonian. And although these practitioners were styled avocats-défenseurs they combined the duties performed in France by the avocat, avoué, and notaire. Moreover, they included people who were not, strictly speaking, lawyers. Indeed law practice was not the monopoly of qualified lawyers. Here and there people received fees to give advice to others on legal matters or even appear in court. They paraded themselves under the name of agents d'affaires and also used the title, maitre.

Practitioners were attached to specific

court areas and only appeared before les tribunaux francais and sometimes before the chambre spéciale d'homologation, mainly in capital offences. A barrister listed in any Bar in the Metropole or some other French colony could practise law in the French Cameroun. To qualify for practice, the aspiring advocate had to satisfy the following conditions: be at least 25 years of age, be of good moral character, be a citizen of France or an assimilé, hold a licence en droit, possess an aptitude for the profession and pay the relevant fees.

This situation was unaffected by independence. There was still no organised Bar in the former East Cameroun. The corps d'avocats-défenseurs continued to exist. Although it was sometimes called a barreau, it was in fact not an autonomous and independent organisation. Barristers were enrolled and attached to particular court jurisdictions. Discipline within the corps was ensured by the Minister of Justice who could warn, reprimand or censure a defaulting advocate. If a lawyer committed a serious professional offence the Minister of Justice could propose to the Head of State that the advocate in question be suspended or barred from practising.[5]

2. In Anglophone Cameroon

Although the legal profession in the British

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5. Victor Kanga, 'Le role du pouvoir judiciaire et du barreau dans la protection des droits de l'individu au sein de la society', Penant, vol. 71, 1961, p. 489.

Cameroons was derived from England, it was slightly different from the English Legal profession in that it was a fused one and that the dichotomy between barristers and solicitors, and between equity lawyers and common lawyers, did not exist. For most of the colonial period, the British Cameroons did not attract practising lawyers. Although occasionally a lawyer coming all the way from Nigeria took up a case in the territory, it was not until the 1950s that a significant number of lawyers from Nigeria began to hold briefs for clients in the territory. As there was not a single resident barrister in the territory, it was very expensive hiring a lawyer all the way from Nigeria. Moreover, as communications were very poor in the territory, Nigerian lawyers were reluctant to travel there. Furthermore, most cases coming before the courts of the territory were minor ones: larceny and petty assaults. Again, it was only in 1955 that a High Court was set up in the Southern Cameroons.

There was therefore no Bar in the Southern Cameroons. There was instead the Nigerian Bar. Most legal personnel serving in the territory came from Nigeria. In the early years of British suzerainty over the territory this personnel consisted mainly of British lawyers serving in the colonial service in Nigeria. Later came Nigerian lawyers, either as law officers of the Nigerian Government, members of the judiciary or private practitioners.[6]

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6. Law Officers Ordinance No. 4 of 1910, No. 4 of 1936; the Nigerian Constitutional Order-in-Council, 1951. Law officers of the Government were known as officers of the Crown and represented the Crown in criminal matters and disputes in which the Crown was a party. Law officers of the Crown included the Attorney General, the Solicitor General, Crown Counsels and the Legal Secretary.

The basic qualification for barristers was the same as for legal and judicial officers. To practise law one had to be called to the Bar of one of the four Inns of Court[7] in London or be a member of either the Scottish or Irish Bar. Qualifications from other Commonwealth countries and other countries with recognised legal training were accepted.[8] A lawyer who qualified to practise was enrolled as 'a barrister and solicitor'[9] of the Supreme Court of Nigeria and became a member of the Nigerian Bar.

Up to 1960 there was no Southern Cameroonian engaged in the private practice of the law.[10] In 1960 Mr S.M.L. Endeley (now the Hon. Mr Justice Endeley) was the second Anglophone Cameroonian to qualify as barrister

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7. In early times in England, the education of all lawyers was placed in the hands of the judges who had authority to decide which of them might practice before the courts. Gradually, groups of junior practitioners and students (apprentices) gathered in the house of some great lawyer or judge under whom they studied. These groups in the course of time formed themselves into permanent societies each with its Inn or premises where its members lived a more or less communal life. Of these Inns, only four survive today: Lincoln's Inn, Gray's Inn, Inner Temple and the Middle Temple. They have changed little in their organisation during the 600 years or more since they were founded. See, Boulton, op.cit., p. 110.

8. Supreme Court Ordinance No. 4 of 1876 and Cap. 211 of the 1948 Laws; Legal Practitioners Ordinance, Cap. 110 of the 1948 Laws and Cap. 101 of the 1958 Laws.

9. Almost all practitioners were barristers because it was shorter, less expensive and less difficult to study for the bar qualifications than for that of solicitor.

10. The first Anglophone Cameroonian to qualify as barrister, Mr P.B. Engo, now a career diplomat, was called to the bar in 1958 but he joined the Legal Department.

but the first to get into private practice. After six years of brilliant practice at the bar, he was appointed in July 1966 to the Bench, again the first Cameroonian ever to be so appointed. Between 1961 and 1964 five more Cameroonians were called to the Bar.[11] It therefore became desirable to form an association of barristers. This desire led to the formation of the West Cameroon Bar Association (hereinafter abbreviated WCBA). The Nigerian Legal Practitioners Ordinance, which governed practice at the Bar before the courts of West Cameroon, was repealed in 1963 but substantially re-enacted as Federal Law No. 63/LF/37 of 15th November 1963. Lawyers appearing before the courts of West Cameroon had to be listed on the roll of members of the WCBA. They were enrolled as 'barristers and solicitors of the Supreme Court of West Cameroon'.

The first president of the WCBA was Mr S.M.L. Endeley, who provided a dynamic leadership. When he was appointed to the Bench in July 1966 the Association virtually entered a period of unrest as it moved from crisis to crisis and its existence was challenged by some of its members. For the most part, these crises were provoked by professional rivalry, mutual jealousies and bitterness among barristers. Things came to a head in 1970 when

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11. Messrs E.T. Egbe in 1961, A.J.T. Asonganyi in 1963, F. Gorji-Dinka in 1964 together with F.W. Atabong and P.D. Koti. By 1968 there were at least 10 Cameroonians and a further 10 Nigerians practising in West Caermoon.

some members of the Association[12] called for the dissolution of the WCBA and the creation of a national bar association covering both East and West Cameroon.

On this issue the WCBA was split into two camps. On the one hand were those who advocated the dissolution of the WCBA and the formation of a national bar association. Led by Mr Gorji-Dinka, this minority group included Messrs Asonganyi, Enonchong and Benjamin Matip, a Douala-based Francophone barrister. The other group was made up of all the remaining members of the Association. This latter group was not so much opposed to the formation of a national bar as the way its proponents had decided to go about it.

What had happened, as far as this writer was able to determine from interviews and the perusal of the files of the WCBA, was this. In June 1970 Mr Gorji-Dinka had taken the initiative to invite West Cameroonian barristers and members of the Bench to a meeting in the House of Assembly, Buea. The invitation was also extended to East Cameroonian barristers (probably to give the meeting a national outlook) and in fact three from Douala attended the meeting, which was duly held on June 28th 1970 under the chairmanship of Mr O.M. Inglis in his capacity as president of the WCBA. On the agenda was the question of

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12. At this time the president of the Association was Mr O.M. Inglis and the secretary Mr P.D. Koti.

the formation of a national bar. It is not clear what exactly was decided at this meeting. But it seems, as events later showed, that no consensus was ever reached on this issue. The minutes of the meeting do not say that a national bar was created or that there was agreement to form one in future. The meeting was perhaps only an exploratory one. Two weeks after the meeting however, an article appeared in the Cameroon Times which infuriated most members of the WCBA. The article in question was captioned 'National Bar Association Formed'[13] and reported that West and East Cameroonian barristers had agreed at the meeting held in Buea on June 28 to form a National Bar Association. What in effect the publication wanted its readers to believe was that the WCBA had committed suicide. As this was not true, the publication was properly construed by the WCBA as nothing but a manoeuvre by 'Dinka and his gang of three' to undermine the authority of the WCBA, a legally constituted body. The Association issued a statement denying that a body known as the National Bar Association had been formed and described the press story as a complete falsehood.

But, if the press story was a pack of lies, why did the Dinka faction cause it to be published?[14] Why

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13. Cameroon Times, vol. 10, no. 66 of 14th July 1970, p. 4.

14. As the press was not present at the meeting it must be reasonably assume that it got its story from the Dinka-led group. Besides, such a publication was clearly in the interest of the group.

did Mr Dinka and Mr Matip use papers headed 'Cameroon National Bar Association'? Was it out of their determination to scuttle the authority of the WCBA? If so, why? First, it would seem there was opposition to Mr P.D. Koti being secretary to the WCBA. This opposition was allegedly motivated by jealousy and envy. Mr Koti was apparently getting too many briefs. Secondly, it would seem that Messrs Enonchong and Dinka were eager to extend their practice to the East Cameroonian town of Douala, where they hoped to make more money as the town was a prosperous business centre. After all, Mr Enonchong had come into contact with the civil law system while working in Yaounde and while on study leave in France. Both he and Dinka had a working knowledge of French.

The belief by the leadership of the WCBA that Messrs Dinka, Enonchong, Asonganyi and Matip were out to undermine the authority of the Association found support in Mr Asonganyi's hostile attitude towards it. Dinka and Enonchong had never denied the legal existence of the WCBA. Asonganyi on the other hand was rather a hard-liner and an extremist. He had persistently argued that the WCBA had no legal existence; in fact that the body did not exist at all. On 14th July 1970 he had circulated a tract entitled, 'Does a body called the WCBA really exist?'. He harped on this same theme in an address to the West Cameroon Chief Justice in Buea on 19th September 1971. The address was captioned, 'The collapse

of the learned and honourable legal profession'. On 23rd March 1972 he circulated a letter among members of the WCBA in which he said, inter alia, "The West Cameroon Bar has never had a Bar Association. There were only proposals to form one. But it was never actually formed. Opportunists have been harping on the suggested name of these proposals and have been exploiting it immensely and in the most degenerating and unprofessional ways possible."[15]

Indeed the troubles of the WCBA were not yet over. During a meeting of the Association held in Buea on 23rd January 1971, Messrs Dinka, Enonchong and Asonganyi staged a walk-out upon a disagreement arising on the question of the formation of a national bar. In September that year the Association elected Messrs Ben Muna, Luke Sendze and Hans Ngalame respectively as its president, secretary and auditor. These officials were allegedly elected unanimously. But their election was vigorously opposed by Mr E.E. Ebai, although he was not present at the meeting during which those officials were elected. He argued that both Muna and Sendze were young in age and junior in practice and that Mr Ngalame could not be a member of the Bar Association since he was a state prosecutor in the legal department.[16] Mr Ebai's

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15. Letter BA/70/3 from A.T.J. Asonganyi, Telelen Chambers, Victoria.

16. 'Ebai challenges unanimity of Bar Association on Muna's election', Cameroon Outlook, vol. 3, No. 79, 17th September 1971, p. 1.

attack brought a counter-attack from Mr Nyo' Wakai (then Procureur General at the Supreme Court of West Cameroon) 'in his capacity as leader of the Bar'. He vouched for the propriety of the elections and noted that it was illogical and curious that Mr Ebai, who was absent at the meeting, should challenge the unanimity of the elections which were held; he added that length of time in private practice did not determine seniority at the Bar.[17]

Mr Ebai's attack may have been 'illogical and curious', but so was the wrangling within the WCBA. By the end of 1971 the Association existed more in name than in deed. Most of its members had either virtually deserted it or lost faith in it. Meetings were fewer and those that were called were uninteresting and had a poor attendance. The death-knell of the organisation was already tolling. The finishing-off blow to what had become a moribund organisation was delivered in May-June 1972 when a unitary system of government came into being in Cameroon. The Bar Law (Law No. 72/LF/5) of 23rd May 1972 effectively dissolved the WCBA. Section 51 of that Law enacts,

> "All provisions contrary to this law shall be repealed, in particular: the orders of 20 April 1936 and 21 December 1946 to set up a corps of 'avocats defenseurs' and 'secretaires d'avocats defenseurs' of the French courts in Cameroun, articles 49(2) and (3), 52 and 60(2) of Ordinance No. 59/86 of 17 December 1959 to set up the judicial

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17. 'The Bar Association wrangle: Wakai levels Ebai', Cameroon Outlook, vol. 3, No. 80, 22nd September 1971, p. 1.

> organisation of the state and Federal Law No. 63/LF/37 of 5 November 1963 to organise practice at the Bar of West Cameroon."

With the abolition of the East Cameroon corps d'avocats défenseurs and the dissolution of the WCBA, a National Bar Association was created. All that remained was the setting up of its various organs. This task was for the time being entrusted to the Minister of Justice. The incumbent at this time was Mr Simon Achidi Achu, who took over from Mr Felix Sabba Lecco, but up to the time of his dismissal from office in 1976 Mr Achu had not set up the organs of the Bar.[18] It was only in May 1976 that the various organs of the Cameroon Bar Association were set up.

II. The Bar in Cameroon

The Bar is a professional organisation of lawyers engaged in the private practice of the law. Lawyers engaged in private practice are said to be 'practising at the bar'.

1. The meaning of 'practice at the bar'

In Cameroon, 'practice at the Bar'[19] consists in

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18. Most advocates reminiscing over Mr Achu's term of office regard it as unsuccessful and they often claim that his failure for four years to set up the organs of the Bar was a contributory factor to his dismissal. Alleged to be insulting towards and contemptuous of private practitioners, most advocates literally celebrated when he fell from office (Fieldwork interviews).

19. It is governed by Law No. 72/LF/5 of 23rd May 1972 as amended by Decree No. 72/706 of 13 December 1972, Law

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exercising for a financial consideration the following duties.[20] First, assisting and representing parties in law, conducting suits, presenting pleadings, and giving legal advice. Secondly, drawing up any procedural document or documents to confer, transfer, limit or extinguish any right, title or interest in property, moveable or immoveable, real or personal. Thirdly, pursuing the enforcement of judicial decisions, in particular instituting and following up any extra-judicial procedures, receiving payments and giving discharge thereof. It follows that the duties of the advocate in Cameroon embrace those performed in England by the barrister and the solicitor[21] or again those performed in France by the avocat, the avoué and the notaire.[22]

Footnote 19 continued from page 510.

No. 74/11 of 16 July -974, Law No. 76/16 of 8 July 1976 and Law No. 77/13 of December 1977. For convenience this law of 23rd May 1972 together with its amendments shall be referred to as 'the Bar Law'. Practice at the Bar is also governed by the Internal Rules and Regulations of the Bar. These Regulations have not yet been made official.

20. The Bar Law, s. 1.

21. The solicitor in England is descended from the attorney who emerged during Edward I's reign (1272 - 1307). He was not a mere assistant in the conduct of litigation but a person who was competent to act in place of his client as his agent. A need for such a representative arose because some litigants, especially large landowners found it difficult or inconvenient to attend court or carry through their cases in person. See, Boulton, op.cit., p. 110.

22. There is a feeling among notaires that by allowing advocates to do work traditionally theirs (e.g. drawing of legal documents and deeds), the Government was trying to put them out of business. This fear is however unjustified. Seven years after the passing of the Bar Law, notaires are still well in business with no real threat to their position.

However, the conduct of a suit in the law courts is not the monopoly of the professional advocate. Representation by the professional advocate is compulsory only when a case goes to the Court of Appeal or to the Supreme Court.[23] Subject to this caveat, all natural persons are entitled, without being represented by advocate, to appear before any court for the purpose of conducting any suit and pleading, on their own behalf, or on behalf of their spouse, ascendants and descendants, privileged collateral or ward.[24] Such natural persons may also be assisted or represented by any other representative of their choice armed with a power of attorney. But it is not sufficient that the representative be armed with a power of attorney. His services must be gratuitous (otherwise he would be conducting himself as the professional advicate who gets paid for his job). Furthermore, there must be an insufficient number of professional advocates, in the jurisdiction of the court to which the case has been referred, to represent all the parties. Provided these conditions are satisfied any person involved in a case in the lower courts may duly mandate any person of his choice to conduct the suit for him.

Public administrations (such as a Government Department) need not be represented by a professional advocate before any court of law. A civil servant may be

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23. Bar Law, s. 2(1).

24. Idem.

nominated by the competent authority to act as agent for such bodies before any court.[25] This has always been the situation with respect to litigation in administrative matters. A civil servant is always appointed to conduct the case of the administrative body concerned in an administrative dispute. In this way the Government has cleverly avoided having to hire private lawyers, at high fees, to conduct or defend cases in which it is involved.

Private practice of the law may be undertaken individually or in a group. In either case the advocate(s) may only have one chambers on the territory of the United Republic of Cameroon. Where two or more advocates practise together they must do so in the form of a partnership constituted in accordance with the laws and regulations in force.[26] The partners must have their chambers only at their registered office.[27] An advocate may not belong to more than one professional partnership.[28] A partnership agreement is by its very nature intuitu personae. Therefore the right of the partners in the partnership is personal and may not be transferred without the consent of one or the other co-partners who, in any case, do not have to justify their decision.[29] Moreover a partner is free

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25. Bar Law, s. 2(3).

26. Ibid., s. 3(1).

27. Internal Rules and Regulations of the Bar (hereinafter referred to as the Bar Regulations), s. 33(9).

28. Bar Regulations, s. 33(2).

29. Ibid., s. 33(10).

to withdraw from the partnership at any time. Any partnership agreement must contain a proviso to the effect that each partner may at any time withdraw in conformity with the clauses and time provided for in the agreement.[30] Besides, if an advocate is unable to carry on his profession in accordance with the rules of the Bar he may not continue as a member of the partnership.[31] Furthermore, an advocate is entitled to renounce the partnership agreement if his partner has been punished by disciplinary sanction of more than two months suspension.[32]

An advocate is not bound to accept a brief simply because he is practising in partnership. Indeed, the partnership agreement cannot circumscribe each partner's freedom to refuse or accept a case or a client.[33] But one partner is not entitled to accept a case or a client if one of the partners refuses it or him.[34] Nor must the partners accept any brief whatsoever in favour of one party whose interests would be in conflict with those of the client of a member of the partnership.[35] Again, a

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30. Ibid., s. 33(111).

31. Ibid., s. 33(3).

32. Idem.

33. Ibid., s. 33(4).

34. Ibid., s. 33(5).

35. Ibid., s. 33(6).

partnership must not represent, accept any brief or give any advice to one party against whom one of the partners had previously been briefed in the same or related matter.[36] No act prohibited of an advocate by law and the Internal Rules and Regulations of the Bar or usages may be undertaken by the partners.[37] Whether they are in partnership or not, advocates must retain the same ideals and discipline.

This provision for practice of the law in the form of a partnership is a progressive step.[38] This technique of teamwork may be better adapted to modern economy and is certainly less expensive. However, most Cameroonian advocates have not yet availed themselves of this provision. The first reason is that the advocate here has been used to practising alone. He is an individualist who is not easily drawn to the idea of a partnership. Secondly, s. 3(2) of the Bar Law provides that advocates may not exercise their profession in the form of a partnership if the number of chambers (and not advocates) in the town in which the partnership is to be set up, are

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36. Ibid., s. 33(7); Bar Law, s. 27.

37. Bar Regulations, s. 33(8).

38. In the U.S.A. and in Nigeria for example, it is common practice for barristers to constitute law firms. In England, it is still prohibited for barristers to practise in partnership. It was only in the early 1950s that the practice of law in partnership was permitted in France. Such partnerships are still rare.

less than three.[39] Thirdly, past experience of law partnership has not been encouraging.[40] However, group practice need not take the form of a partnership. Advocates may practice in collaboration with each other. So, beyond the context of a professional partnership, an enrolled advocate may associated with an enrolled colleague or a partnership in consideration for a remuneration freely agreed to.[41]

2. The situation of private practice in Cameroon

The Cameroonian Bar is an infant Bar both in terms of age and size. It is small and untested. The Roll of advocates available at the Ministry of Justice shows that at the beginning of 1978 there were only 52 advocates (25 French-speaking and 27 English-speaking) in Cameroon. The recent census put Cameroon's population at $7\frac{1}{2}$ million inhabitants. This means a ratio of one advocate to approximately 150,000 inhabitants. There are 17 advocates-in-training (14 French-speaking and 3 English-speaking) who appear on the 1978 list of pupil

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39. The idea is probably to obviate the danger for litigants of advocates forming monopolies in the various towns. Given this provision a partnership can now be properly constituted only in Yaounde and Douala.

40. Dinka was eager to form one but he found no interested partner. Sendze and Koti formed one but it did not survive two years. The Ninine Alice Nkom Pokossi partnership also failed. The Viazz - Aubriet - Battu partnership however seems to be holding out rather well. (Fieldwork interviews).

41. It would seem that the Sendze - Njobarra and the Ntamark - Ndobedi practice are in the form of collaboration rather than partnership. (Fieldwork observations).

barristers. If this number is added to that of advocates, there would still be as many as 115,000 people to one advocate. What this means is that it is not always easy to have access to a practising lawyer in Cameroon. Only a small percentage of the population can easily contact an advocate. A private practitioner cannot always be found in the poorer areas. He tends to go where there is a prospect of more profitable business. As a result the private bar is concentrated in the large towns,[42] particularly in the economically prosperous and socially advanced parts of the country.[43]

This structure of the legal profession (small manpower and location in the big urban centres) affects the administration of justice in general. It partly contributes to the delays in the disposal of cases, as the court adjourns a case when counsel is not ready or is handling another case in another court. It is also partially responsible for the general tendency among litigants

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42. There are 16 advocates and 8 pupil advocates in Yaounde, 14 advocates and 6 pupil advocates in Douala, 4 advocates plus 2 pupil advocates in Bamenda, 3 advocates and 1 pupil advocate in Nkongsamba, 10 advocates in the three neighbourhood towns of Buea-Victoria-Tiko, 3 advocates in Kumba, and 1 advocate each in Mamfe and in Bafoussam. See, Roll of Advocates (1978) available at the Ministry of Justice, Yaounde. There are no advocates in the other towns of the country.

43. There is not a single advocate practising in either the Northern Province (2,233,257 inh.) or the Eastern Province (366,235 inh.). There is only one advocate located in the Western Province (1,035,597 inh.). Litigants here have to hire advocates, if they need one, all the way from Douala or Yaounde. See, 'We are 7,663,246', Cameroon Tribune, Wednesday, 5th September 1977, p. 1.

to settle their disputes out of court because they can hardly do otherwise. People in the rural areas hardly ever come in contact with advocates. Moreover advocates seldom appear before the courts located outside the big towns. They complain of low fees (a litigant in the rural area cannot afford the advocate's fees), the pettiness of the matters which often come before such courts, bad roads and constant adjournment of cases. Again the more successful advocates tend more and more to refuse briefs for the Magistrate's Courts, preferring instead the courts above which handle more serious matters and for which the advocate charges higher fees.

Many advocates lay great emphasis on money-making. As law is practised as a profession rather than as a vocation, commercial incentive tends to outweigh considerations of what is best in the interest of the advocate's client and, sometimes, even of the community among whom he works. Provided he is paid his fees, an advocate confessed to this writer with some cynicism, he would litigate, lose a case and advise on going on appeal without consideration for the cost to his client. It is this same commercial incentive that has pushed some advocates to specialize, usually, in handling insurance cases. By and large however, the Cameroonian advocate is a legal jack-of-all-trades and a specialist in none. He is both barrister and solicitor, a criminal lawyer and a civil lawyer. But he spends most of his time doing court-work and often fails to seek settlements. The chambers of a good many advocates

are poorly organised and equipped and lack an adequate library. There is need for creativity on the part of the Cameroonian advocate[44] and for a more involved role (an active not a passive or an indolent attitude) in the problems of law and its administration in a rapidly developing society.

It is intriguing, although by no means surprising, that the clientele of the Cameroonian advocate is divided along sectarian and ethnic lines.[45] English-speaking advocates, nine of whom have their chambers in the Francophone towns of Douala and Yaounde, have mainly English-speaking clients, while Francophone advocates attract mainly Francophone clients. Within each of these sectarian polarisations, there are smaller polarisations based on ethnic or tribal lines. A client from a given tribe tends to seek an advocate who comes from that tribe. This is an expression of tribal solidarity which, in this context, stems from the belief, not altogether unjustifiable, that one's own tribesman would not charge a high fee and yet still put a great deal more effort into the case. In any case, political, social and tribal connections are very crucial to an advocate who is a debutant because in private practice it takes a long time to acquire a clientele and

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44. Writing of articles of legal interest (or even writing in general) is something the Cameroonian advocate never indulges in. The Cameroonian Bar itself runs no legal periodical.

45. Fieldwork observations and interviews.

to make a name as a successful advocate, a fact which might tend to discourage many without independent means.

In the case of overseas companies and aliens involved in litigation the polarisation is based on cultural and linguistic considerations. Foreigners who are English-speaking tend to consult English-speaking advocates while those of them who are French-speaking tend to go to French-speaking advocates. French-owned companies invariably hire the French advocates (about a dozen of them) practising in Cameroon or Cameroonian French-speaking advocates. Advocates with political or social connections draw clients from nationalised and government-controlled corporations (important especially with regards to obtaining a retainership). A few advocates however draw clients from all sectors of the community. These are those who have established a reputation for themselves. But they constitute the exception rather than the rule.

The legal profession in Cameroon has not been politicised. Its members individually are active members of the country's single political party, the Cameroon National Union. But none is known to have any overt political leanings whether to the left, right or centre. Accordingly, clients do not go to advocates on the basis of political affiliation. Nor is the advocate's clientele divided along sex lines, although at first female litigants tended to seek female advocates. But the legal profession in Cameroon is still basically a man's profession.

Of the 52 advocates on the 1978 Roll of the Bar, only 5 were women,[46] even though women constitute 51% of Cameroon's population.[47] Again, social background has little or no influence whatsoever on the clients an advocate is likely to attract. Most advocates come from humble peasant homes. Moreover, the bourgeois class is too small and those within it seldom litigate.

III. Entry Into the Bar

To gain membership into the Cameroonian Bar, the candidate must have the requisite qualifications, do pupillage and be enrolled.

1. Conditions of admission

Any person wishing to practice at the Bar must satisfy a number of conditions.[48] First, he must be of Cameroonian nationality and enjoy his civic and political rights. Any person who has been deprived of his civic or political rights cannot be admitted into the Bar. An alien

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46. But an increasing number of women are now entering the profession. Of the 15 pupil advocates in 1978, 5 were women and should be practising by 1980.

47. 'We are 7,663,246', Cameroon Tribune, Wednesday, 5th September 1977, p. 1.

48. Bar Law, s. 4.

may also not be admitted. However, subject to the existence of reciprocal agreements, a member of a foreign Bar may be authorised by the President of the court seised of the matter to plead in a given case.[49] Moreover, within the framework of agreements, permission to practise may be granted to members of a foreign Bar by decree of the President of the Republic.[50]

The candidate wishing to practise at the Bar must also be at least 23 years of age. In reality however

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49. When so authorised, the member of the foreign Bar must then inform the President of the Bar Council, the counsel for the opposing party and the Public Prosecutor's Department of the fact within 24 hours and must also elect domicile in the chambers of any advocate established in Cameroon. See, s. 50 of the Bar Law.

50. Bar Law, s. 50. For example, Cameroon and France have signed reciprocity agreements on matters relating to justice. Under these agreements Cameroonian and French advocates may practise in each other's country. (As a matter of fact there are about a dozen French lawyers practising in Cameroon.) See, Accords de coopération franco-camerounais du 21 fevrier 1974, articles 32 and 33 of which provide:

> "Art. 32. Nationals of each of the two States may apply for enrolment at a bar of the other State, subject to satisfying the legal conditions required for such enrolment in the State where enrolment is sought. They shall have access to all posts of the Bar Council save for that of President.
> "Art. 33. Cameroonian advocates enrolled in Cameroon may assist or represent parties before all French courts. Reciprocally, French advocates enrolled in France may assist or represent parties before any Cameroonian court. An advocate duly briefed to assist or represent parties before the courts of the other State must first obtain the authorization of the President of the court seised of the matter and elect domicile with an advocate of the said State."

(My translation). For full texts of this and other Franco-Cameroon cooperation Agreements, see J.P. Guiffo-Mopo, Constitutions du Cameroun. Documents politiques et diplomatiques, Edition Stella, Yaounde, 1977.

it is rare for one to qualify as an advocate in Cameroon at the age of 23.[51] Thirdly, the candidate must hold the licence en droit degree or the Bar Final Examination or a legal qualification recognised as equivalent by the competent authority (undoubtedly the Ministry of Education since it is that Ministry which deals with the equivalence of certificates) and approved by the Minister of Justice.[52] Fourthly, he must be of good character. Fifthly, he must have undergone apprenticeship and obtained the certificate of apprenticeship or, alternatively, he must possess the Post Final Certificate of the Bar.[53] Sixthly, he must

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51. A child enters primary school in Cameroon at the age of 6, spends seven years there, seven in secondary school, four in the Law Faculty in Yaounde, and two doing pupillage. The minimum age at which he is called to the Bar is 26.

52. The equivalence established by the Ministry of Education does not bind the Minister of Justice who may refuse to approve any equivalence established. In this regard it may be noted that whereas the Bar Final marks the end of a three years' professional course the Yaounde licence en droit marks the end of a four years' academic course. However, whereas the licencié is required to acquire a professional qualification by doing pupillage for two years, there is no corresponding obligation on the holder of the Bar Final Certificate to make up for his lack of academic qualification by taking an academic degree in law. What should have been equated to the licence en droit here should have been the LL.B.

53. It is submitted that the Post Final Certificate of the Bar ought not to have been equated to the training certificate provided for under s. 9(1) of the Bar Law as they sanction the end of programmes of training which are not the same both in duration and content. In England, until three years ago, the educational level for admittance of overseas students to an Inn of Court was lower than that for Universities and anyone who got through the examinations returned to his own country as a 'barrister-at-law', apparently fully fledged, yet without any academic education or practical training or experience of courts. The post final programme of the Bar was devised to give overseas students some court experience. It is a three months crash programme which is not even properly organised.

be entered on the Roll of the Cameroonian Bar. Finally, he must have been authorised to practise by the President of the Republic. A candidate who satisfies the first six conditions would still be unable to practise until the President of the Republic grants him his commission to practise. The grant of this commission does not seem to be automatic and as of right when the other conditions have been satisfied. Sometimes applicants wait for months or years before they can get their commission. If the Head of State refuses to grant the commission, he is not bound to give reasons for his refusal. Nor does it seem an action may be brought against him to show cause why the applicant should not be granted the commission. Below is a sample of an advocate's commission granted by the Head of State:

United Republic of Cameroon Peace - Work - Fatherland

Decree No. .... of .....19...

Authorising Mr ..... to exercise the profession of advocate.

The President of the Republic,

Mindful of the Constitution of the 2nd June 1972

Mindful of Law No. 72/LF/5 of the 23rd May 1972 to organise practise at the Bar

Decrees

Article 1. Mr ..... is hereby authorised to exercise the profession of advocate.

Article 2. Mr ..... who shall be resident at ..... must, before starting to practise, prove to the Bar Council:

1- that he has taken out an insurance policy as provided by s. 14 of Law No. 72/LF/5 of the 23rd May 1972,

2- that he has a suitable chambers,

3- and that he has taken the prescribed oath before the Supreme Court.

Article 3. The Minister of Justice, Keeper of the Seals is charged with the execution of this decree which shall be registered and published in English and in French in the Official Gazette.

Made in Yaounde, this ..... day of ..... 19...

The President of the Republic

El Hadj Ahmadou Ahidjo

(Seal)

Persons who have directly or indirectly obtained a scholarship from the State may be allowed to practise at the Bar or be enrolled for apprenticeship only when they must have discharged their ten years' bond to serve in the public administration.[54] The Head of State may however waive this condition and authorise any beneficiary of a

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54. Bar Law, s. 5.

Government grant to practise or be enrolled for apprenticeship. Many have in fact already benefited from this waiver. All students entering the Faculty of Laws (and other Faculties) of the University of Yaounde on Government grant are required to sign a bond to work for the Government for ten years. This was originally deviced as a stop-valve of needed manpower trained at Government expense, from escaping to the private sector which is generally more lucrative. Students are however not opposed to bonding. In the first place, the bond is seldom invoked. Secondly (and this also explains why the bond is seldom invoked) the Government cannot offer jobs to all law graduates who have benefited from a Government grant. Most students therefore sign the bond without reading its provisions or giving it any thought. Thirdly, most students are poor and badly in need of a Government grant to be able to undertake their studies. Fourthly, as a result of the environmental setting, the fact that the teaching of Law in Yaounde University is not viewed as necessarily linked to professional practice, and the job security which work with the Government provides, law graduates from Yaounde University are reluctant to get into private practice although recently more and more of them have been taking up private practice.

2. Pupillage

Unless he falls within the class of persons

undergoing training, any candidate for the profession of advocate must do pupillage for two years.[55] The exemption from pupillage applies to four classes of persons.[56] The first class of persons so exempted are former judicial and legal officers possessing the licence en droit or the Bar Final or any other recognised and approved equivalent law certificate. Such former judicial and legal officers must have accomplished at least five years of service with the Judicial and Legal Service. Furthermore, they must not have been dismissed for breaches of propriety, probity or honour. The second group of persons exempted from pupillage are Professors or Lecturers of law at the Law Faculty of the University of Yaounde who have accomplished five years of effective service as professor or lecturer. Also exempted are advocates of Cameroonian nationality who are members of a foreign Bar (provided they have not been struck off the Roll of that foreign Bar) as well as advocates-in-training possessing the end of course certificate issued in a foreign country. The last group of persons dispensed with the need of doing pupillage are former civil servants possessing the licence en droit (or its recognised and approved equivalent) who have accomplished ten years of service in a public administration. They must not have been dismissed for breaches

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55. Ibid., s. 6(1).

56. Ibid., s. 10.

of propriety, probity or honour. The Bar Council may, through the Minister of Justice, be authorised to study their disciplinary file in order to determine the circumstances in which they left the Civil Service.[57] Furthermore, they may be required to undertake the deontological training of the profession. Until the establishment of a distinct method of teaching professional ethics, this training takes, for the time being, the form of a three months gratuitous pupillage in the chambers of a barrister on the Roll.[58]

Persons exempted from pupillage need only apply for their commission to practise. Those not exempted must submit to the President of the Bar Council their application for admission to training.[59] The application must be accompanied by the following documents: (i) a certificate of Cameroonian nationality, (ii) a birth certificate, (iii) the licence en droit degree or its recognised and approved equivalent, and (iv) the Proficiency Certificate for the Profession of Advocate (certificat d'aptitude à la profession d'avocat, CAPA). Section 6(2)(e) of the Bar Law provides that the conditions for the award of the Proficiency Certificate shall be laid down by joint order of the Minister of Justice and the Minister of National Education after consultation with the Bar Council.

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57. Bar Regulations, s. 15(2).

58. Ibid., s. 15(3).

59. Bar Law, s. 6(2).

But so far the conditions for the award of that certificate have not yet been fixed. The requirement of the Proficiency Certificate therefore remains ineffective. In Agbor Nkongho Mathias v. Minister of Justice, Keeper of the Seals[60] the plaintiff applied to be admitted to training as advocate-in-training but did not produce the Proficiency Certificate as required by s. 6(2)(e) of the Bar Law. The Minister of Justice (who at that time was performing the duties of the Bar Council since the various organs of the Bar had not yet been established) therefore rejected the application. The plaintiff availed himself of s. 7(2) ot the Bar Law and referred the matter to the Supreme Court for a decision thereon. Held, that since the modalities of obtaining the Proficiency Certificate have not yet been fixed, s. 6(2)(e) lacks legal substance; accordingly, the decision rejecting an application for admission as probational barrister only founded on the default of presentation of the said certificate is null and void.

When the application to do pupillage together with the relevant documents have been filed in, the Bar Council undertakes an inquiry into 'the moral conduct' of the candidate.[61] It also obtains evidence from him of the

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60. Supreme Court Judgment of 9th January 1975, Recueil des Grands Arrêts de la Jurisprudence Administrative de la Cour Fédérale de Justice, Tome II, 1970-1975, p. 144.

61. Bar Law, s. 6(3).

acceptance by a member of the Bar to patronise his training.[62] After which the Council gives its opinion on admission and forwards the candidate's file to the President of the Republic through the Ministry of Justice.[63] Non-transmission of the candidate's file to the President of the Republic for two months constitutes a negative opinion.[64] Section 7(1) of the Bar Law provides that admission for training shall be done by an order of the President of the Republic to do so.[65] Upon notification of the Head of State's order authorising him to be admitted to training, the applicant must then take the oath provided for in s. 14(2) of the Bar Law. The prescribed oath reads:

> "I swear never to say or publish anything as counsel for the defence or as counsel contrary to the laws and regulations, public morals, the security of the State and law and order and never to depart from the respect due to the courts, tribunals and public authorities."

The oath is taken before the Court of Appeal of the place where training is to be effected.[66] Admission for training takes effect from the date of swearing-in and,

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62. Bar Regulations, s. 14(2).

63. Idem.

64. Idem.

65. Ibid., s. 14(3).

66. Ibid., s. 14(4); s. 7(4) of the Bar Law. The oath is word for word that taken by avocats stagiaires in France.

at the suit of the President of the Bar Council, the fresh trainee is entered on the list of advocates-in-training according to the date of his swearing in.[67]

A candidate who has been accepted for pupillage and has been sworn in is entitled to use the title 'advocate-in-training'.[68] The nature of his training is three-fold.[69] First, it consists of regular attendance at training courses and lectures - the so-called Probationers' Conference (conférence du stage). These courses and lectures are organised according to the provisions of the Internal Rules and Regulations of the Bar. At these meetings the pupil barristers are supposed to plead in mock trials presided over by the Batonnier, who in addition teaches them the traditions of the Bar. Attendance at these courses is obligatory. Any indolence or unjustifiable absence is sanctioned by disciplinary measures.[70] When the conditions of obtaining the proficiency certificate would have been determined pupil advocates would be required to meet twice a year at the invitation of the President of the Bar Council or his representative. The object of such meetings would be to verify if the pupil advocates possess sufficient knowledge of the professional rules and conditions to exercise the profession

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67. Bar Regulations, ss. 14(4) and 16(1); Bar Law, s. 7(4).

68. Bar Regulations, s. 35(2); Bar Law, s. 8(2).

69. Bar Law, s. 8(1).

70. Bar Regulations, s. 16(3)(4).

of advocate.[71]

Secondly, the pupil advocate's training includes attendance at court hearings - an extremely vague obligation and not easy to check in view of the large number of hearings. However, the pupil advocate cannot, on his own, take up briefs. Only in two situations may he plead in cases: (1) Where he is appointed ex officio by the competent judge or the President of the Bar Council to represent any natural person before a court in accordance with the enactments in force.[72] (2) Where he is entrusted with a case by the President of the Bar Council or the advocate in whose chambers he is undergoing his training.[73] The President of the Bar Council seldom entrusts pupil advocates with cases. Briefs which pupil advocates handle in court[74] are, for the most part, entrusted to them by their trainers. A pupil advocate may not, however, represent, defend or advise a party who had previously been the client of his former trainer while he was in training under him in the same matter.[75]

The third aspect of the probationer advocate's

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71. Bar Regulations, s. 16(1)(2).

72. Bar Law, s. 25(4). Thus pupil advocates may be commissioned to defend defendants under the Legal Aid Scheme. This is the practice in France.

73. Bar Law, s. 8(3).

74. At the Douala Appeal Court this writer witnessed two pupil advocates (both of them at the fag end of their pupillage) handling cases admirably well.

75. Bar Regulations, s. 19(3).

training concerns office work in the chambers of advocate. The type of office work involved includes the drafting of legal documents such as motions, deeds, affidavits, statements of claim and of counter-claim, etc. He also learns the techniques of consultation.

If need be, the advocate in whose chambers the pupil advocate is to undergo his training may be designated by the President of the Bar Council. This situation would arise where a pupil advocate cannot furnish proof of the consent of a member of the Bar for training in his chambers. In such an eventuality the pupil advocate is handed over to a willing sponsor who must come from among the members of the Bar Council.[76] A pupil advocate owes to his trainer absolute devotion, deference and obedience of all instructions relating to his training received from him.[77] The relationship between advocate and his pupil advocate is one of a contract of apprenticeship. The pay which the pupil advocate receives throughout his training period is freely agreed on between the trainer-advocate and the trainee-advocate, outside the provisions of any collective agreements.[78] The trainee-advocate does not, as in England, pay his trainer for the training he receives. But the trainer does not, as in the U.S.A., pay the pupil

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76. Ibid., s. 18.

77. Ibid., s. 19(2).

78. Ibid., s. 18(4).

a salary. Both negotiate and agree on the remuneration (often an allowance) the trainer is to pay the pupil. Collective bargaining is not allowed although, clearly, the trainer-advocate is in a stronger bargaining position than the pupil.

Overall supervision of the pupil advocate's training is carried out by the President of the Bar Council or an appointee of his from the Bar Council.[79] If he is found guilty of a disciplinary offence, the pupil advocate may be visited with any, depending on the gravity of the offence, of the following sanctions: warning, call to order, extension of period of training, and removal from the list of advocates-in-training.[80] If a pupil advocate's contract is revoked he may not exercise any professional activities until he has obtained a new contract.[81]

The pupil advocate's period of training is normally two years.[82] The end of training is attested by a training certificate conferred by the President of the Bar Council after consultation with the Bar Council.[83] Although the normal period of training is two years, the Bar Council

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79. Bar Regulations, s. 17.

80. Ibid., s. 20(1); Bar Law, s. 40(2).

81. Bar Regulations, s. 18(5).

82. Bar Law, s. 6(1).

83. Ibid., s. 9(1).

may, after having heard the person concerned, allow a pupil advocate who has not fulfilled the obligations referred to in s. 8 of the Bar Law, to undergo a further training period of one year which may be renewed on one occasion only. At the end of the fourth year of training, the Bar Council may only refuse to award the training certificate purusant to a well-founded decision against which an appeal may be made to the Full Bench of the Supreme Court.[84] The Supreme Court must rule on the issue within one month. When they have completed their probationary period, pupil advocates come off the probationers' list and 'go up to the Roll', which means that henceforth their names will be entered on the Roll of the Bar.

3. Enrolment

Except he falls within the class of persons exempted under s. 10 of the Bar Law from doing pupillage, any candidate for enrolment as advocate, must produce a certificate showing that he has duly completed his pupillage.[85] The application for enrolment is made to the President of the Bar Council. The Bar Council has two months from the date of receipt of the application within which to decide whether to order enrolment or not.[86]

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84. Ibid., s. 9(2).

85. Ibid., s. 11(1).

86. Ibid., s. 11(2).

Should the Council decide not to order enrolment it is bound to notify the applicant who would then be entitled to refer the matter to the Full Bench of the Supreme Court.[87] If the Supreme Court invalidates the negative decision given by the Bar Council, it has to order the enrolment of the applicant.[88] The applicant is also entitled to refer the issue of enrolment to the Supreme Court if the Bar Council fails to issue a decision within two months of receipt of the application for enrolment.[89]

Enrolment is made in order of seniority[90] and persons so enrolled are entitled to use the title 'Advocate in the Cameroon Bar'.[91] By s. 12(2) of the Bar Law the Roll of the Bar must be reprinted at the beginning of each judicial year and then lodged with the registries of all courts, posted up at the entrance to law courts and published in the Official Gazette at the suit of the President of the Bar Council.[92] When making such reprints the following advocates are ipso facto omitted from the Roll:[93] an advocate who, subsequent to his enrolment, is

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87. Ibid., s. 11(3).

88. Ibid., s. 11(4).

89. Ibid., s. 11(3).

90. Ibid., s. 12(1). It is not clear whether this refers to seniority of age.

91. Bar Regulations, s. 35(1).

92. So far however, this requirement remains no more than a pious declaration, respected more in breach than in its observation.

93. Bar Law, s. 13.

disqualified under s. 28 of the Bar Law;[94] and an advocate who, within the time limits prescribed by the Internal Rules and Regulations of the Bar,[95] does not pay his contribution to the cost of the Association or cannot prove payment of the insurance premium provided for in s. 20 of the Bar Law.

The enrolment of a lawyer as 'advocate in the Cameroon Bar' marks his formal and legal entry into the profession of advocate. Once in it, the advocate acquires certain rights but is also shouldered with obligations.

IV. Functions, Rights and Duties of Advocate

An advocate is one whose profession is to assist by his advice or speech litigants who come to him. He places his legal know-how at the service of litigants and

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94. S. 28(1) provides that practice at the Bar shall be incompatible with: the function of member of the Government, all public or private salaried employment excepting that of professor or lecturer in the Faculties and Schools, the office of law official (officier public ou ministériel), the post of company director or manager or accountant, and all forms of trade or business even through an intermediary or spouse. S. 28(2) provides that an advocate who holds a parliamentary mandate may not perform any act of his profession in any affair concerning the State, a public authority or establishment. By s. 28(3), an advocate who holds a municipal mandate may not perform any act of his profession in any affair of the local council to which he is elected. And s. 28(4) enacts that practice at the Bar shall preclude any dependence on external interests.

95. By s. 32 of the Bar Regulations, subscriptions, the amount of which is fixed at the beginning of each judicial year, must be paid spontaneously within the month they become due.

other persons who may require it. He collaborates in the administration of justice in his capacity as auxiliary. He belongs to a profession (styled grandiloquently as 'learned') whose ancestry may be traced to the chevaliers es lois of the Middle Ages, a profession whose ideals and ethics bring back faint echoes of the days of knights and of a class structure which has long since disappeared.

1. The functions of advocate

The advocate's primary occupation is his practice at the Bar. Consequently he may not engage in any other occupation which could adversely affect the reputation of the Bar. His job is basically that of assisting and representing parties in law. He has practically an exclusive right of audience in all courts.[96] Section 2 of the Bar Law which gives a right of lay representation in the lower courts remains in practice nothing more than a well-meaning provision.

The advocate is a specialist in advocacy, that is, the oral presentation of a case before the judge. Oral evidence of witnesses and the oral presentation of legal argument play a large part in trials. Advocacy is therefore important in court. The advocate learns the skills of analysing and presenting issues of both law

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96. The only courts in which advocates may not appear are the customary courts.

and fact. He learns to sift evidence, to assess the weight of conflicting evidence, to elicit the facts of a case by examination and cross examination, and to marshall and present arguments. The advocate must ensure that his client's case is presented in the best possible way. At the same time however, he is duty bound to assist the court to get at the truth so that justice may be done according to the law. The vocation of advocates is to fight for truth. "The light of truth is their weapon; goodwill is their shield."[97]

It is also part of the advocate's job to draft and present pleadings. He also drafts other legal documents (affidavits, writs, memoranda, petitions, claims, motions, etc.) necessary in the judicial process. He draws up legal documents to confer, transfer, limit or extinguish any right, title or interest in property (moveable or immoveable, real or personal). He gives legal advice when consulted and advises on the evidence needed to support the client's case. He pursues the enforcement of judicial decisions; in particular, he institutes and follows up any extra-judicial procedures, receives payments and gives discharge therefore.

The practising advocate is one whose principal occupation is practice at the Bar. Some advocates however are 'employed' by commercial houses under a retainership

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97. Pierre Siré, op.cit., p. 244.

agreement. Others still, enter into salaried employment as legal advisers. Although practice at the Bar is not incompatible with being retained, generally, an advocate who has a salaried employment must relinquish his private practice. The exercise of the profession of advocate is subject to the incompatibility provided under sections 28 and 29 of the Bar Law and is, in general, incompatible with all activities in a manner likely to put in jeopardy the independence and dignity of the advocate. Practice at the Bar is incompatible with (i) the function of member of the Government, (ii) all public or private salaried employment excepting that of professor or lecturer of law, (iii) the office of law official, (iv) the post of director, manager or accountant, and (v) all forms of trade or business even through an intermediary or spouse.[98] In short, an advocate may not carry on any other profession or business or be an active partner in or a salaried official or servant in connection with any profession or business. The origin of this rule probably lies in the centuries-old conception that the engagement by a member of a gentlemanly calling in business was something to be regarded as derogatory. But today a perhaps more cogent reason which underlies the principle is the importance of maintaining the position of complete detachment and independence in

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98. Again this provision would appear to be honoured more in breach than in its observance. Some advocates in Cameroon do engage in forms of business or trade.

which an advocate is expected to hold himself. Were it possible for an advocate readily to practise also in another profession or to enter into business transactions, a danger would arise of his being subjected to external influences which might affect detrimentally his objectivity towards the client for whom he is retained to act in the course of his legal practice.[99] Practice at the Bar precludes any dependence on external interests. Moreover, any advocate subject to military service may not exercise any professional activity while serving with the colours.

The general rule is not without exceptions. An advocate may be professor of Law, Minister, member of Parliament, member of a local council, a village chief or chairman of a sporting, social or cultural organisation. However, an advocate who is a Parliamentarian may not perform any act of his profession in any affair concerning the State, a public authority or establishment. This in effect means that an advocate elected to Parliament cannot handle criminal cases as well as cases on administrative litigation. Also, an advocate who holds a municipal mandate may not perform any act of his profession in any affair of the local council to which he is elected.

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99. Cf. Boulton, op.cit., p. 117.

2. The rights and prerogatives of advocate

The advocate is entitled to wear the professional robe[100] and to use his professional title.[101] The title of advocate is not merely a title; it corresponds to a social function which the advocate must fulfil in accordance with the relevant regulations and with tradition, failing which he loses the title. As yet there is no common robe for advocates in Cameroon. Those trained in the common law tradition continue, as in the U.S.A. and in England, to wear their professional robe which consists of a wig, black stuff gown and white collars and bands. Those trained in the civil law system wear, as in France, a black gown with white bands but no wig. Section 39 of the Internal Rules and Regulations of the Bar provides that 'advocates shall have the right to wear the robes the description of which shall be according to the General Assembly of the Bar'. That Assembly has not yet reached agreement on this point although it has been suggested that it will adopt the robe worn by French barristers and the wig worn by English barristers.[102] If this is adopted, the Cameroonian advocate in his professional dress would look like a French advocate wearing the wig of an English barrister.

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100. The advocate's professional robe in France and in England has not changed for over 200 years.

101. Bar Law, s. 18(1); Bar Regulations, s. 39.

102. Fieldwork interviews.

Another prerogative which the advocate enjoys is that he is covered by immunity when conducting a case in court. An advocate is free to choose the means of defence he desires and the form in which he wishes to present them.[103] He may speak for as long as he wishes.[104] No words spoken or documents produced by him in the course of his pleadings may give rise to any action for defamation, abuse or contempt.[105] But he must be careful that his choice of the means and form of defence is not in conflict with his moral obligations and the laws in force.[106]

The chambers of an advocate are inviolable[107] and cannot be the object of a conveyance or attachment.[108] No search may be made in it except to seize documents bearing on <u>criminal</u> proceedings where the <u>advocate himself</u> is being prosecuted or where the documents in question are unrelated to the practice of his profession. In such a case the President of the Bar Council or his representative must then be present at the search.

The first rule of the Bar is independence, and as the advocate partakes in the judge's search for an

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103. Bar Law, s. 15(1); Bar Regulations, ss. 44(1) and 52(1).

104. Bar Regulations, s. 45(1).

105. Bar Law, s. 15(2).

106. Bar Regulations, s. 44(2).

107. Bar Law, s. 15(3).

108. Ibid., s. 49.

elusive truth, he must therefore have a free mind, a mind which precludes any form of subjection. So, apart from the exceptional case where a brief is imposed by the Bâtonnier or by the President of a court,[109] an advocate is free to accept or refuse a brief[110] or even to withdraw from a case when he is in disagreement with his client on the conception or progress of the procedure.[111] The Cameroonian advocate's right to accept or refuse a brief accords with the situation in France but contrasts with that in England. The English barrister likens himself to a taxi driver at the disposal of all passers-by. He is bound to accept briefs, a rule established in 1792 as a result of the trial of Tom Paine. Tom Paine had written a book called the Rights of Man which contained some offensive remarks about William III and George I. He was prosecuted for seditious libel. Thomas Erskine, a member of the English Bar, felt that it was his duty as a barrister to defend the accused to the best of his abilities. Despite pressures on him to refuse the brief, he accepted it and when he came to address the jury, he declared:

> "I will forever, at all hazards, assert the dignity, independence and integrity of the English Bar without which impartial justice, the most valuable part of the English Constitution can have no existence. From the

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109. Bar Law, s. 25(4)(5).

110. Ibid., s. 25(1).

> moment that any advocate can be permitted to say that he will or will not stand between the Crown and the subject arraigned in the court where he daily sits to practise - from that moment the liberties of England are at an end. If the advocate refuses to defend from what he may think of the charge or defence, he assumes the character of the judge; nay, he assumes it before the hour of judgment; and in proportion to his rank and reputation puts the heavy influence of perhaps a mistaken opinion into the scales against the accused in whose favour the benevolent principle of English law makes all presumption and which commends the very judge to be his counsel." 112

The advocate is entitled to emoluments and fees.[113] He may accept annual fees from a client for whom he is counsel as payment for advice given by him in his chambers.[114] The advocate's emoluments are fixed by decree and, where necessary, taxed by the President of the court empowered to hear the case.[115] The fees due to an advocate for pleadings and consultations are freely discussed between his client and himself[116] before the advocate takes up the brief.[117] Nevertheless, all incidental or evolutional proceedings in a matter which could not have been initially foreseen may entitle the advocate to agree

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112. Quoted by Boulton, op.cit., p. 119. In that case Tom Paine was found guilty and Erskine lost his post of Attorney General but later was appointed Chancellor.

113. Bar Law, s. 16.

114. Bar Regulations, s. 61.

115. Bar Law, s. 16(1).

116. Ibid., s. 16(2).

117. Bar Regulations, s. 58(1).

with his client for additional fees.[118] Moreover, to the extent that work has already been done the advocate is entitled to his fees even where the matter is withdrawn from him before judgment.[119] If any dispute arises concerning emoluments, consultation and fees, it must first be subject to attempted arbitration before the President of the Bar Council before being submitted to court.[120]

In ancient Rome there were both prejudices and rules against the giving of paid legal advice and until about the 18th century the old notion prevailed that the litigant merely recompensed the advocate by way of a gift. Indeed, by a curious blend of social snobbery and legal antiquarianism, the Roman rule was revived in 17th century England and attached to the English barrister who then became unable to sue either lay client or instructing solicitor for his fees. This theory is now exploded and in Cameroon it is commonly accepted that the advocate, who must earn his living, has a right to his fees and can therefore sue his clients for them.[121]

The law is silent as to the mode of payment of

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118. Ibid., s. 58(2).

119. Ibid., s. 58(3).

120. Ibid., s. 62; Bar Law, s. 16(3).

121. Cf. Dennis Okon v. O. Adesanya, (1962-1964) W.C.L.R.14. The situation is likewise in France.

an advocate's fees. However, as a matter of practice payment is made in cash or by cheque, most advocates preferring cash payment than payment by cheques. Generally, a litigant who wants to brief an advocate must pay the consultation fee to the advocate's clerk before he can be conducted to the advocate. The actual fee for conducting a case is discussed freely with the client. Advocates often require part payment of the agreed amount before initiating proceedings.

Finally, an advocate has the right to insert his name, first names, his designation as advocate in the Cameroonian Bar, address and telephone numbers, his University degrees, position (where applicable) as President of the Bar Council, member of the Bar Council, Secretary, former member of the Bar Council, secretary, President, etc., in their letter heads and business cards.[122] The advocate may also display a signboard, tablet, or plate of modest dimensions bearing his names and title as advocate.[123]

3. Duties which the profession of advocate entail

The advocate owes towards himself, his clients, his confreres, and the courts before which he practises, certain duties.

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122. Bar Regulations, s. 37(1).

123. Here and there however, one finds signboards which are far from being of 'modest dimensions'. Advocates tend to start off with large signboards, reducing them only when the location of their chambers becomes better known to the public. (Fieldwork observations).

A. Duties of the advocate towards himself

The advocate's dignity is a corollary of his independence. As an immediate participant in the administration of justice, he owes himself respect and must command respect. Before starting to practise, the advocate must swear the following oath before the Supreme Court:

> "I swear never to say or publish anything as counsel for the defence or as counsel contrary to the laws and regulations, public morals, the security of the State and law and order and never to depart from the respect due to the courts, tribunals and public authorities." 124

He must contribute towards the Bar Association's expenses by means of annual subscriptions.[125] He is bound scrupulously to observe the duties imposed on him by rules, tradition and professional usage in relation to judicial and legal officers, his professional colleagues and his friends. He must place above all else his obligations of loyalty and propriety, independence and honour.[126]

He must therefore refrain from all manner of personal publicity.[127] An advocate's professional dignity forbids him to seek clients either directly or indirectly. So, the external evidence of the existence of his

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124. Bar Law, s. 14(2). Under s. 4(3) of the Legal Practitioners Law 1963 the oath was simply: "I swear to show perfect respect to the courts and never to deceive any court; to conduct myself in a manner becoming my profession; and to respect the constitution and laws of Cameroon."

125. Bar Law, s. 19.

126. Ibid., s. 24(1).

127. Bar Regulations, s. 38.

chambers and his designation on his letter paper must be unobtrusive. An advocate may not normally describe or permit himself to be described as such, save in conjunction with articles written by him for a legal periodical. He may not give press interviews concerning any case or matter in which he is or has been engaged. He may not take steps to procure or permit the publication of his photograph as a member of the Bar in the press or any periodical. However, this rule against personal publicity is sometimes circumvented. Some advocates do publicise themselves indirectly through agents. Sometimes too an advocate may conduct himself in court in a manner which leaves little doubt that he is performing for the public gallery and the press. Furthermore, although it is patently impossible to prevent newspapers from reporting on legal matters especially on the more sensational or notorious criminal cases, it does happen sometimes that their accounts read like publicity in favour of this or that advocate. The boundary between straight reporting and publicity is not always easy to draw. An advocate's encouragement of, complicity in, or condonation of, the journalist's blatant indiscretion sometimes happens but often it is difficult to prove. In any event, the prohibition of any form of publicity remains a hard-and-fast rule, the principle of which is undisputed and which the disciplinary authorities endeavour in all honesty to uphold.

The advocate is expected above all to display

evidence of honesty, scrupulousness, dignity, moderation, moral integrity, delicacy, disinterestness, independence and honour which are prerequisites for the exercise of the profession. He must respect the rules, usages and traditions of the profession. In a nutshell, the advocate must comport himself with the dignity, fearlessness and uprightness becoming of a member of a profession that is learned and noble. Finally, but not the least, a good advocate must keep abreast with the times. He must read widely, be aware of current legal problems, and be up to date with his case law. The lawyer must know the society and the world in which he lives.

B. Duties of the advocate towards his clients

When he undertakes to defend the interests of his client, the advocate must act with complete independence, free from any subordination. Once briefed, the advocate is the sole judge of the choice and his mode of defence and the procedure to be followed.[128] The relationship between the advocate and his client varies according to the nature of the kind of professional activity the advocate is called upon to exercise. If the advocate accepts to defend the client, then a contractual relationship is created. However, this contract remains special

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128. Bar Regulations, s. 52(1).

in nature on account of the professional rules which prohibit advocates from being subjected to external influences and which require him to withdraw from the case if his conduct of it would lead to a violation of these rules. Besides, when conducting a case, the advocate collaborates in the discharge of a public service - that of the administration of justice. He therefore has to serve the superior interest of justice. This superior interest must precede the private interest of his client. If the two interests conflict, then that of justice must prevail and the advocate has to withdraw from the case. Quite apart from any criminal sanction with which he may be visited,[129] it is unprofessional and against justice for an advocate to assist his client to escape from the arms of the law. This means that if he is convinced of the guilt of his client (especially when the client has made a voluntary confession to him) he must not attempt to get him 'off the hook'. He must not accept a matter or defend a cause which he considers to be illegal, contrary to the truth or against his conscience.[130]

Generally, the legal relationship between advocate and client is in the nature of a contract of agency since the advocate represents and acts for and on behalf of his client. Because of its legal character no special

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129. Cameroonian Penal Code, s. 193(2).

130. Bar Regulations, s. 52(2).

power of attorney is required. But the advocate should be able to prove that he has been duly instructed. The Cameroonian advocate therefore, might not only act as consultant and plead in court; he is also his client's representative, his trustee, his agent. The agency ends when the matter is finally disposed of whether at first instance or on appeal for, unless otherwise expressly agreed, the briefing of an advocate implies authorisation to lodge an appeal.[131]

An advocate who accepts to defend the interests of his client is deemed regularly appointed[132] and choice of an advocate implies choice of domicile in his chambers.[133] But, as a general rule, the advocate is not bound to accept a brief.[134] He is guided by his conscience and has the right to accept, withdraw from, or refuse to accept a case or matter.[135] Personal interest should not be the main consideration to influence his decision. Thus he must

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131. Bar Law, s. 25(6). The agency may in fact continue well after, as when counsel pursues the enforcement of a court decision.

132. Ibid., s. 25(2).

133. Ibid., s. 25(3). This is important because the service of judicial documents on and correspondence with the client is effected through counsel's chambers. Few people in Cameroon have personal postal addresses.

134. Ibid., s. 25(1).

135. A client too may at any time revoke the engagement of counsel by notifying the counsel and the appropriate court. And besides, no advocate may release himself from his retainer unless the client has been notified by registered letter. See Bar Law, s. 26.

refuse a brief, no matter the amount of fees, if it cannot be defended in law or in fact. On the other hand he may not refuse a brief merely out of fear of offending the political establishment or of alienating public opinion. So an advocate may not refuse to defend a notorious criminal or a political offender simply because he is afraid the public or the regime of the day would think the worse of him. If he accepts a brief the advocate must fearlessly uphold the interests of his client (avoiding of course any deception of the court) without regard to any unpleasant consequences, social or political or otherwise, to himself or to any other person. He must work on the case conscienciously and devotedly.

During or after the performance of any work on behalf of a client, the advocate must not accept any brief or give any advice in the same matter or in a related affair to any person whose interests are wholly or partly incompatible with those of his client. This applies also to advocates forming a partnership.[136] It means that an advocate is forbidden from holding brief simultaneously or successively for two opposing parties. It also means that he may not contact an opposing party who has briefed another advocate.[137] Nevertheless, before he initiates any proceedings the advocate may contact the opposing

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136. Ibid., s. 27.

137. Bar Regulations, s. 64(1).

party to ask him if he has briefed an advocate. If the answer is in the negative the advocate may then discuss amicable settlement with him.[138] In this case the advocate must manifest evidence of the highest degree of prudence and circumspection.[139]

Although the advocate is free to accept or refuse a brief, he is duty bound to accept and discharge any brief in which he has been appointed ex officio[140] unless he can produce reasons recognised as valid by the competent member of the Bench or the President of the Bar Council.[141]

The advocate must have only one chambers[142] and must, save with justified exception, receive and consult only in his chambers.[143] An advocate's dignity requires him to meet his clients in his own chambers and nowhere else. This injunction is not always easy to enforce. Important clients do not easily agree to inconvenience themselves when they wish to see an advocate, who may often be younger than they or of an inferior social standing. Furthermore, an advocate may visit a bedridden client and consult with clients in detention at the place where they

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138. Ibid., s. 64(2).

139. Ibid., s. 64(3).

140. Bar Law, s. 25(4).

141. Ibid., s. 25(5).

142. Ibid., s. 3. By s. 14(1) the chambers must be 'suitable' and approved by the Bar Council. 'Suitable' chambers is a vague and imprecise notion.

143. Bar Regulations, s. 53(1).

are confined. Again it has been recognised that an advocate cannot oblige a whole Board to meet him in his chambers. Accordingly, an advocate of a body corporate may, if he is requested in the proper manner, and if he considers it useful and convenient, agree to go to its registered office for consultation on judicial matters during meetings of shareholders and general assemblies.[144]

Justice cannot be the subject of a contract. The advocate must therefore not (i) agree with his client for a fee to depend on the outcome of the case, in particular by stipulating that he shall receive a share of the award granted by way of emoluments or fees; (ii) offer to acquire any rights subject to ligitation or acquire any interest in matters entrusted to them; (iii) accept fees from parties whom he has been appointed ex officio to defend.[145] Although it is strictly forbidden to enter into quota litis agreements, some advocates continue to make it a practice of taking over the case of victims of motor-vehicle accidents against the party at fault, their fee being a percentage - usually a very high one - of the

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144. Ibid., s. 53(2).

145. Bar Law, s. 17; Bar Regulations, ss. 59 and 60. An advocate appointed ex officio to defend a client is paid by the State under the Legal Aid Scheme. There are offices for this purpose at every court, which establish whether or not a litigant is without means. See, chapter 19, infra. As for the advocate's fees, they are not fixed by any tariff. Their fees are traditionally reckoned on the basis of four factors: the amount of difficulty involved in the work, the importance of the case, the advocate's personal standing, and, sometimes, the extent of the client's financial distress. Advocates seldom take the fourth factor into consideration and few would claim a modest fee from a needy client.

damages that may be awarded. Practices of this nature are unethical for they are an exploitation both of distress and of justice. The rule against quota litis agreements also stems from the realisation that such agreements are likely to make the advocate lose his independence by associating him with the outcome of the case and thereby making him an interested party.

Advocates are strictly bound to observe professional secrecy.[146] The reason for this rule is not hard to see. Life is so organised in society that individuals sometimes have to confide their secrets to certain classes of specialists (doctors, priests, judges, advocates) whose services they seek. These intermediaries are confidants and depositories of information which they must keep secret if they must maintain their credibility and the trust and confidence the public has in them. Advocates are, because of the nature of their profession, invariably entrusted with secrets by those who come to them for assistance. They are morally and legally bound not to divulge those secrets.[147] The advocate must neither deliver nor release

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146. Bar Law, s. 24(2).

147. It is an offence, punishable with up to three years' imprisonment, for any person, without permission from the person interested in secrecy, to reveal any confidential fact which has come to his knowledge or which has been confided to him solely by reason of his profession or duties. See ss. 310 and 311 of the CPC.

information on documents in his possession, nor testify in proceedings whatsoever against his client, nor inform any person whatsoever of any matters that have come to his knowledge as a professional.[148] Furthermore, an advocate must not, either in court or in his written submissions, refer to attempts or drafts of settlements and agreements between parties, if those attempts or drafts occurred through the intermediary of briefed advocates.[149] The requirement of professional secrecy also covers professional correspondence between advocates. Such correspondence is strictly confidential. But when a particular correspondence crystallises into a final agreement between the parties, in matters wherein the advocate legally represents his client, it may be deposited in court proceedings.[150] Besides, an advocate personally charged (as distinct from being called upon to give evidence as witness in a case) before a legitimate authority (i.e., a legally constituted court or disciplinary committee or tribunal or a commission of inquiry) is no longer bound by professional secrets.[151]

It is a gross professional misconduct for an advocate to advertise or tout for business. Touting for clients directly or indirectly or through agents is

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148. Bar Regulations, s. 55(1).

149. Ibid., s. 55(2).

150. Ibid., s. 55(3).

151. Ibid., s. 55(4).

prohibited of an advocate. The advocate must discourage any proposition or suggestion likely to bring, in consideration for remuneration, a client in his chambers.[152] An advocate may not solicit, in any manner whatsoever, for clients. The practice of giving out visiting cards to persons especially around the court premises or prisons is clearly an indirect way of soliciting for clients. It is professional debauchery.

As a further duty towards his clients the advocate is required to keep a special bank account for his clients.[153] This account, known as Clients Account, is not liable to attachment and the advocate may not pay personal monies into it. Save with the formal consent of the client, he may not withdraw monies out of it. If the advocate does withdraw money from that account for his personal benefit, he must repay the sum withdrawn within a maximum period of three months. Once every year, the Procureur General at the relevant Court of Appeal must check the accounts and the deposits situation of the advocates within the jurisdiction of the Court.[154] This check is followed by an audit report which is sent to the Minister of Justice and a copy to the Bar Council. The President

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152. Ibid., s. 57(1). It is doubtful whether it is unprofessional, as happens frequently, for an advocate to allow visitors (potential clients) to make social calls on him in his chambers.

153. Bar Law, s. 22.

154. Ibid., s. 23.

of the Bar Council may at any time check the accounts of advocates.[155]

The advocate is also required to keep three types of books, a Journal, a Ledger, and a Register.[156] The Journal must show entries made by the advocate himself in chronological order and without leaving gaps, of all moneys received, paid and disbursed in such capacity. Counsel may not receive any sum without giving a detailed receipt for it, detached from a counterfoil book and bearing, with its serial number, the name and address of the payer, the amount of the sum paid and the date of payment. The Journal must further mention, day by day, the titles or certificates entrusted to the advocate and those received in the post, their nature and value. Each entry in the Journal, with its serial number must be stamped.

Counsel is required as well to open a debit-credit account in a Ledger in the name of each client and for each affair. The Ledger records in the debit and credit columns opposite the items entered therein the folio of the Journal from which they were reproduced. The 'debit column' includes all items of expenditure such as monies deposited at the Registry, the amount of sundry expenses paid to bailiffs and process-servers, costs of engrossments, etc. The 'credit column' records all items of revenue

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155. This provision is hardly ever enforced.

156. Bar Law, s. 21.

received in full or in part such as deposited monies that have been refunded. Should the balance of the account show that the advocate is in his client's debt he must reimburse him within three months following the settlement of the case.

The Register shows entries of all correspondence relating to counsel's duties as auxiliary officer of justice. All three books must be numbered and initialled by the Procureur General of the relevant Court of Appeal.

Quite apart from disciplinary (or even criminal sanctions in certain cases) the advocate may be held civilly liable to his client, in tort or on contract. He may be held liable for fraud, deceit, misrepresentation or gross negligence. But he cannot be held liable simply because he lost the case or did not do his homework properly or did not conduct the case to the client's satisfaction or that his advocacy left much to be desired. This however does not mean that the advocate is wholly immune. He runs professional risks and is required to insure against them. Within the first three years of practice the advocate must pay into the Government Treasury three million francs cfa and take out an insurance policy with an approved insurance company to cover his professional risks.[157]

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157. Bar Law, s. 20. Insurance companies operating in Cameroon are bound to insure advocates, upon request, against their professional risks. Quare, whether it would not be easier if the Bar Association took a collective insurance policy covering the professional risks of its members.

C. Duties of the advocate towards the courts

As the foremost auxiliary personnel of the law, the advocate must act with due courtesy to and respect for the courts and judicial officers. He must show to courts the respect and deference consistent with that institution.[158] He must never, in the words of his professional oath, 'depart from the respect due to the courts, tribunals and public authorities'. He must avoid deceiving or misleading the court. This respect must not only be shown in court but outside the court too and in legal writings. The advocate must wear his robe when presenting himself at the Bar.[159] Save where usage provides otherwise, the advocate is bound to appear in court robed.[160] This does not mean that he is permitted to put on or take off his robes in the court-room. It is a professional misconduct for an advocate to do so.[161] The advocate's robe is the symbol of dignity and of the principle of equality between advocates.[162] Counsel may not therefore hold a brief in court without his robes on.

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158. Bar Regulations, s. 42.

159. Bar Law, s. 18(1).

160. In the Francophone part of the country the advocate must be in his robe whenever he appears before any court. In the Anglophone part however, advocates need not appear in robes in the Magistrate's Court, but must do so in the other courts.

161. Bar Law, s. 41(1). But old habits die hard. Advocates do sometimes put on and take off their robes in court. (Fieldwork observation).

162. In olden days the robe distinguished the advocate from the rest of the crowd in court.

As a further mark of respect for the bench the advocate must, when he travels, and where possible, introduce himself to the judge presiding over the court in which he appears.[163] He must be punctual at all court appearances.[164] Punctuality is the soul of business. If the advocate is going to be absent for as long as three months and he has no partner to carry on with the case he is handling, he must notify the President of the Bar Council at least one month in advance, of his date of departure and of his return.[165] Should the length of absence extend beyond three months and there are no legitimate grounds to justify such a prolonged absence, an advocate who has no partner may be struck off the Roll on the proposal of the President of the Bar Council.[166]

Counsel must show respect for his client, his colleague and the court by asking for adjournments only when he is obliged to do so, especially in the interest of his client. When the case is enlisted he must be ready to go on with it the first time it is called up for hearing. Litigants often come from a far way off and legitimately expect fair but speedy justice without unnecessary financial burdens on them, so the advocate must not

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163. Bar Regulations, s. 46.

164. Bar Law, s. 18(1).

165. Ibid., s. 18(2).

166. Ibid., s. 18(3).

cause delays or paralyse the smooth running of proceedings by dilatory and unjustified adjournments.[167] It is this type of conduct which litigants often decry and which the Press has continually castigated.[168]

When conducting a case the advocate must do so with humility and courtesy. He must avoid any form of personal attack. He must not bully or try to browbeat the witness. He must act with restraint and not get into a temper and shout. He must not shirk in his respect for the Bench. Nor must he insult his colleague or the opposing party or a witness. Under no circumstances must he, save as amicus curiæ, intervene in a matter in which he has not been previously briefed or spontaneously associate himself with a party who had not briefed him. He is not to engage in any private demonstration or conversation likely to disturb proceedings.[169] His performance in court must be beyond reproach. He must address the presiding judicial officer in the traditional manner: Your Worship, Your Lordship or Your Honour, or Monsieur le Président, as the case may be.[170]

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167. Bar Regulations, s. 48(2).

168. See for example, 'Overhaul the judiciary', Cameroon Outlook, vol. 1, No. 45, 19th September 1969, p. 2.

169. Bar Regulations, s. 43.

170. In the Francophone courts the passepartout form of address for all judicial officers is Monsieur le Président. In the Anglophone courts the Magistrate is addressed 'Your Worship' and the Judge 'Your Lordship' or 'Your Honour'.

Although the advocate is free to choose his mode of defence and is covered by immunity for what he says in court, he must not have any private relationship with a Magistrate or Judge in a procedure in progress and in respect thereof.[171] He must avoid deception, all misrepresentation of apparent compromise, and refrain from all financial dealings with judicial, legal and prison officers. Some unscrupulous advocates do engage in financial dealings with judges or magistrates. This kind of practice speaks ill of the Bar and undermines the administration of justice. It is the bounden duty of the Bar Council to investigate alleged practices of this nature.

The advocate must also avoid being personally involved in incidents with magistrates or judges before whom he appears.[172] If the advocate considers it useful and necessary as much for the defence of the rights of his clients as for the respect for the robes he wears, he may initiate against a magistrate impeachment proceedings based on legitimate suspicions as provided for by law.[173] Occasionally, he may leave the courtroom, being careful to avoid aggravating the incident. He must then refer the matter to the President of the Bar Council or a member thereof who shall intervene at once to restore the serenity

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171. Bar Regulations. s. 44(2).

172. Ibid., s. 45(2).

173. Ibid.

of the proceedings.[174] It is not often that counsel get involved in incidents with magistrates. But two well known incidents may be cited; one involving Dr Enonchong and the other Mr Ngoh. By some strange coincidence the same magistrate was involved in both incidents which occurred at three years interval. The first incident occurred in September 1970 and concerned Dr H.N.A. Enonchong, a practising barrister. The incident which was carried as a lead story in the Cameroon Outlook[175] took place at the Tiko Magistrate's Court presided over by Magistrate J.P.C. Nganje. According to the newspaper report, the learned Magistrate "had passed judgment on a case in which Dr Enonchong's client was involved. His client ... had only been cautioned by the Magistrate and allowed to go. But Dr Enonchong ... was pressing further on more points of argument which, according to the learned Magistrate, were out of place. The Magistrate then issued an arrest order and charged Dr Enonchong with contempt of court." The learned counsel was however released on self-recognisance and the case against him scheduled to come up for hearing the following week. But it never did. Dr Enonchong seised the Chief Justice of the matter,[176] who

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174. Ibid., s. 45(3).

175. 'Dr Enonchong Arrested', Cameroon Outlook, vol. 2, No. 69, 11th September 1970, p. 1.

176. At this time, the West Cameroon Bar Association, torn by internal strife, had neither authority nor respect. Moreover, Dr Enonchong was one of the advocates for the dissolution of the WCBA and the formation of a national bar. These reasons explain why the Chief Justice and not the Bar was called to intervene.

then caused his chief registrar to issue an order of prohibition restraining Mr Nganje from proceeding with the matter against Mr Enonchong.[177]

Respect for the courts must not be one-sided. The bench must reciprocate the courtesy and respect accorded it by advocates. The court must also treat advocates with consideration and due respect. As a mark of mutual respect judges address advocates as 'learned counsel' (in the Anglophone courts) or maitre (in the Francophone courts). Although he may decide otherwise, a magistrate or judge is generally expected, when calling cases, to take into consideration the seniority of enrolment.[178] However, the President of the Bar Council has priority over his colleagues and after him, advocates who have come from exceptionally distant places. But an advocate who has priority may renounce it in favour of a colleague who has a reasonably legitimate cause to request them for it.[179] The general rule that the order of calling cases should take into account seniority of enrolment at the Bar is an attempt to cater for the sort of situation that gave rise to the case of Victor Mukwelle Ngoh v. The People.[180] In that

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177. 'Bench Warrant for Dr Enonchong', Cameroon Outlook, vol. 2, No. 70, 16th September 1970, p. 1.

178. Bar Regulations, s. 50(1).

179. Ibid., s. 50(2).

180. Criminal Appeal No. CASWP/17 c./73, Buea Court of Appeal, unreported.

case Mr Ngoh, a practising barrister, was on 27th August 1973, convicted by Magistrate J.P.C. Nganje at the Kumba Court of First Instance under s. 154 of the Penal Code of contempt of court and was sentenced to a fine of 300,000 francs cfa or in default of its payment, to serve one year's imprisonment. The facts of the case were as follows. The learned trial Magistrate began the day's session in his court by calling a junior barrister to indicate his interest in the cause list for the day. The appellant then stood up and told the Magistrate that as he was senior he ought to be given priority to indicate his interest in the cause list. The Magistrate refused, saying that he had a right to call any barrister of his choice to indicate his interest first. The appellant then said the Magistrate was talking nonsense, whereupon the Magistrate ordered him to leave the court, saying that if he did not leave he would have him arrested. The appellant refused to leave, saying that the Magistrate was talking nonsense and rubbish. The Magistrate then ordered his arrest and detention. He was subsequently charged, tried, convicted and sentenced as indicated above. On appeal to the Court of Appeal at Buea, the court went through the memoranda of submissions filed by both the Procureur General (Mr Nyo' Wakai) and the appellant's counsel (barristers Gorji-Dinka and Enonchong) and listened to arguments advanced orally in court to amplify the filed written submissions. Held, per Endeley, C.J.,

dismissing the appeal, that by English law, contempt sedente curia, that is, contempt committed in open court while the court was in session, is tried summarily and is not subject to appeal.[181]

It is a matter of regret that an incident of this nature should have occurred as the only purpose such incidents serve is to poison the relations between the Bar and the Bench. Judicial officers and advocates must be able to exercise self-control and restraint.[182] The same applies to State Prosecutors. Take this other incident which happened at the Yaoundé Tribunal de Grande Instance during the much publicised Procés de la Huitième Coupe[183] of 1973. At one stage during the trial, arguments between defence advocates and the State Prosecutor raised passions on both sides and quickly developed into an altercation. The audience, clearly in sympathy with defence counsel, made derisive noises (and at one stage even jeered) each time the State Prosecutor made a submission.

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181. On further appeal to the Supreme Court both conviction and sentence were quashed.

182. In the above case the Magistrate could have for example handled the matter tactfully by simply asking the court to rise for some minutes.

183. It was a sensational but scandalous case in which several people including Ministers, high Government officials and businessmen were accused of theft, fraud and of embezzling money for the 8th African Cup football competitions which took place in Cameroon that year. This writer was the court's official interpreter during the whole trial.

The presiding Judge had some difficulty trying to restore calm. In a furious mood, the State Prosecutor ordered the armed policemen in the court to clear the public gallery, which they promptly did. The Judge then asked the court to rise for a while, evidently to enable tempers to cool down and to restore calm and serenity in the court.

D. Duties of the advocate towards his colleagues

The relationship between advocates inter se is one which is voluntarily accepted and based on esteem, equality and mutual respect and courtesy. Professional rules and usages give this relationship its natural force. The equality between advocates is symbolised by the robe they wear[184] and excludes any pre-eminence based on political, diplomatic, traditional or other titles. For example, an advocate is not above his colleagues simply because he is a village chief, a member of Parliament or a former Minister.

Courtesy among advocates expresses itself in attitude and language not only in court but also out of court. In conducting a case the advocate must show respect towards his colleague, avoid personal attacks and

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184. The discrimination in England 'within the bar' between Queen's Counsel or 'silk' and 'juniors' does not exist in Cameroon. Nor is there any comparable form of discrimination within the Cameroonian Bar.

not share the animosity of his clients.[185] His language must be refined and his comportment urbane. He must not exchange words with his colleagues but must always address the court. If his colleague stands up to make a point he must stop talking and sit down. The advocate should give due respect to his seniors, former Presidents of the Bar Council as well as the incumbent President. The mutual respect and esteem among advocates is typified in the manner they address each other in court. The advocate always addresses his colleague as 'my learned friend' or mon confrère (as is the case in the Francophone courts); for the advocate's colleague is not only 'learned' but is also his 'friend'. The relationship between advocates must always be one of confraternity. The advocate must always behave like a thorough gentleman. If he has made promises to his fellow advocate, he must adhere to them.[186] A gentleman never breaks his word. The advocate must not behave like an opportunist. He must not therefore take advantage of the accidental absence of his colleague whom he knows has been briefed by the opposing party, so as to benefit by it, notwithstanding pressure from his client.[187]

Advocates should assist each other whenever

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185. Bar Regulations, s. 48(1).

186. Ibid., s. 48(2).

187. Idem.

necessary, must be honest, and must avoid rivalry and soliciting for clients. Thus, as a man of integrity, the advocate must transmit to his colleague, advocate of the opposing party, all the documents which he intends to deposit in the court's case-file.[188] This transmission must be complete, preliminary and spontaneous.[189] The advocate who receives these documents must not relinquish them but must return them to his colleague. In default of the spontaneous return of the documents before the hearing, the advocate who transmitted them shall deposit his written submissions with the court expecting the documents to be returned, and refer the matter to the President of the Bar Council for disciplinary measures.[190]

Furthermore, every advocate who receives an offer of a brief from a client or in a matter must ensure, before accepting that offer, that no colleague has been previously briefed in favour of the client whose defence is being proposed.[191] When he replaces a colleague, he must ensure that that colleague has been completely paid off.[192] In default of this, he is personally liable on the payment of expenses and fees due to the colleague previously briefed, subject to the arbitration of the President

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188. Ibid., s. 49(1).

189. Ibid., s. 49(2).

190. Ibid., s. 49(5).

191. Ibid., s. 51(1).

192. Idem.

of the Bar Council.[193] In matters of urgency, however, he may appear in court, but on condition that he has obtained prior authorisation from the President of the Bar Council. In any case, an advocate who is a former magistrate or civil servant may under no circumstances accept a brief in a matter which had come to his knowledge in his former office.[194]

Every violative practice on the part of an advocate must be brought to the attention of the President of the Bar Council.[195] No advocate may lodge a complaint against a magistrate, an advocate, or an auxiliary of justice without having first referred it to the President of the Bar Council.[196] One should not wash one's dirty linen in the streets. Quarrels among advocates should not be taken to the public place, whether through the press, tracts or even court suits. There is the overriding need to preserve, in the public eye, the image of a cohesive Bar. This image is vital because it sustains the profession and gives it its grandeur. Public confidence in advocates would be dangerously undermined as soon as brotherhood and harmony cease to exist in the profession. That is why internal quarrels among advocates must be viewed as a symptom of grave malady of the Bar which must therefore be cured as soon as possible.

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193. Idem.

194. Ibid., s. 56.

195. Ibid., s. 57(3).

196. Ibid., s. 47.

V. End of Practice at the Bar

There are three ways in which an advocate may cease to practise at the Bar: upon death, on being struck off the Roll and by resignation.

1. Upon death

Death puts an end to a person's physical existence and so to his activities, the advocate not excepted. So when the advocate dies his career at the Bar comes to an end. Similarly, an advocate who is seriously and irrevocably incapacitated, mentally or physically, would cease to practise at the Bar. In either of these cases (death and serious incapacity) the President of the Bar Council shall cause seals to be placed on the chambers occupied by the advocate and appoint a fellow member of the Bar who shall administer and wind up under the former's control, all current affairs.[197] The Bar Council shall then settle all disputes relative to the fees of the appointed advocate.[198]

The President of the Bar Council himself or a member of the Council appointed by him, shall make an inventory of all pending matters in the chambers of the deceased colleague and take all measures necessary to ensure the

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197. Bar Law, s. 48(1).

198. Ibid., 48(2).

progress of these matters unless the colleague had himself before his death arranged for the devolution of these matters and his archives.[199]

2. Resignation

The issue of resignation is referred to in the Bar Law and in the Internal Rules and Regulations of the Bar only tangentially. It is provided that an advocate who has enrolled for twenty years may voluntarily resign.[200] But there is no compelling reason why an advocate may not resign his membership of the profession, if he no longer wishes to practise at the Bar, even though he has not enrolled for twenty years. He should be able to resign at any time. The resignation may only be refused "if the advocate cannot justify that he has taken sufficient steps to ensure the devolution of matters pending in his chambers, his archives and his accounts".[201] The law is silent on the question of procedure and formalities to be followed when resigning (for example, whether notice must be given? to whom? the period of notice required, if any? when resignation becomes effective?). It would seem that all that is

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199. Bar Regulations, s. 65(1).

200. Bar Law, s. 47(1); Bar Regulations, s. 31(1). An advocate who resigns after twenty years of practice at the Bar may be conferred the title of honorary advocate; in which case he would remain subject to the disciplinary jurisdiction of the Bar Council. Bar Law, s. 47(2); Bar Regulations, s. 31(2-16).

201. Bar Regulations, s. 65(2).

necessary is for the advocate to write to the Bar Council informing it of his resignation. The Council would then have to accept or refuse the resignation.

The law gives no instances or situations when an advocate may be required to resign. Evidently, the reasons for resignation would be personal to the advocate concerned. Section 28(1) of the Bar Law spells out functions which are incompatible with practice at the Bar. But it does not require an advocate who wishes to exercise any of the functions therein listed to resign his membership of the Bar. An advocate who, subsequent to his enrolment, is disqualified under s. 28 of the Bar Law or who, within the prescribed time limit, fails to pay his contributions to the cost of running the Bar Association or who cannot prove that he has paid the insurance premiums provided for in s. 20 of the said Bar Law, is merely omitted from the Roll.[202] Omission here simply means that when reprinting the Roll of the Bar at the beginning of each judicial year the names of those advocates who have offended against sections 13, 20 and 28 of the Bar Law will, ipso facto, be left out. There is no requirement that an advocate whose name has been so omitted should resign. All that happens is that his right to practise is temporarily suspended. It remains in abeyance until the incompatibility no longer exists. When his name reappears on the Roll he is entitled to resume his practice.

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202. Bar Law, s. 13.

So, if subsequent to his enrolment an advocate is appointed a Government Minister or a legal adviser to a corporation or director of a firm, he is entitled to fall back on his practice at the Bar should his appointment come to an end.

3. Upon being struck off the Roll

An advocate who has been struck off the Roll of the Bar can no longer practise at the Bar. Striking off the Roll is however an extreme measure resorted to only when the other forms of disciplinary action have either been exhausted or are deemed inadequate in the circumstances. Every breach of discipline by an advocate is subject to sanctions. Would amount to a breach of discipline: any dereliction of duty by an advocate, particularly any serious professional offence; any breach of honour, propriety or dignity; and every violation of the Internal Rules and Regulations of the Bar.[203]

All breaches of discipline are taken cognizance of by the Bar Council sitting as the Disciplinary Court of the Bar.[204] In the case of the President of the Bar Council in office or a member of the Bar Council, disciplinary proceedings against them are, after consultation with the Council, brought before the Full Bench of the Supreme Court

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203. Bar Law, s. 39(1); Bar Regulations, s. 21.

204. Bar Law, s. 39(2); Bar Regulations, s. 22(1).

by the Procureur General at that Court acting either in an ex officio capacity or upon complaint laid before him.[205] Natural justice requires a person to be heard before he is condemned. Hence, disciplinary sanctions may not be pronounced against an advocate unless he has first been summoned and heard, together with his witnesses, if need be.[206] Any disciplinary sanction pronounced in disregard of this requirement is void and of no effect.

The decision of the Disciplinary Court must, within eight days of it being taken, be notified by registered letter to the advocate concerned who may lodge an appeal against it at the Full Bench of the Supreme Court.[207] Any disciplinary sanction pronounced by the Disciplinary Court is subject to appeal to the Supreme Court. If the Disciplinary Court fails to give a decision within three months, the Procureur General at the Supreme Court has to refer the matter to the said Court which must then summon the case and give its ruling in camera.[208]

No disciplinary action may be taken against an advocate if one year has elasped since the date on which

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205. Bar Law, s. 44.

206. Bar Law, s. 41; Bar Regulations, s. 26.

207. Bar Law, s. 42.

208. Ibid., s. 43.

the alleged infraction was committed.[209] However, if disciplinary action is taken within time, an advocate found guilty incurs one of the following sanctions (in ascending order of gravity): warning, call to order, suspension for a period not exceeding three years, and striking off the Roll.[210] Nothing is said about what offending conduct would attract either of these sanctions. But it seems reasonable to assume that much would depend on the nature of the breach, when and where and how it was committed, the frequency with which it has been committed, and the character and disciplinary record of the advocate involved. Most breaches would either attract a warning or a call to order. For example, any breach of the duties imposed on him by his oath, committed in court by an advocate may, either automatically or at the request of the Public Prosecutor's Department, be forthwith sanctioned by a call to order.[211] Suspension is a serious sanction and would certainly be resorted to only in grave cases. Striking off the Roll is obviously an extreme sanction and ought, on principle, to be resorted to only in equally extreme cases of breach of discipline or of professional misconduct. A series of minor breaches of discipline or professional ethics might however add up to a

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209. Ibid., s. 45(3).

210. Ibid., s. 40(1).

211. Bar Law, s. 45(4).

mighty act of professional misconduct justifying a decision to strike off the Roll. Take the case of an advocate who persistently touts for clients or who repeatedly engages in financial deals with judicial and legal officers or who always places mercenary considerations above those of the interest of his client or of justice in general. Striking off the Roll of the Bar would be perfectly in order on any of these circumstances.

Disciplinary sanctions against the advocate are, moreover, punishment for breach of the rules and ethics of the profession he exercises; so the taking of disciplinary action against an advocate in no way bars any proceedings which the legal department or private individuals may institute against him before the criminal courts in accordance with the ordinary law, nor does it bar any civil action for damages arising out of a misdemeanour or technical offence.[212]

VI. The Bar Association

Practising advocates in Cameroon belong to a professional organisation known as the Bar Association or Bar instituted at the courts of the Republic.[213] The organisation has legal status; it is a body corporate[214]

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212. Bar Law, s. 45(1).

213. Bar Law, s. 30(1); Bar Regulations, s. 2(1).

214. Bar Law, s. 30(2); Bar Regulations, s. 2(2).

with its headquarters in Yaounde.[215] Although an autonomous body it is expected to cooperate with the Ministry of Justice in matters relating to the administration of justice.

The Bar Association comprises a General Assembly and a Council[216] each headed by a President. The government of the organisation is therefore made up of four organs: the general assembly, the president of the general assembly, the bar council and the president of the bar council.[217]

1. The General Assembly of the Bar

The General Assembly of the Bar meets only to vote. It is made up of all advocates authorised to practise[218] and whose names appear on the Roll of the Bar.[219]

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215. Bar Law, s. 30(3); Bar Regulations, s. 2(4). After a heated debate as to whether Douala or Yaounde should be the headquarters of the Association the Association chose Douala but said that it could be moved to Yaounde upon the decision of the General Assembly. The Ministry of Justice however decided that the seat of the organisation shall be in Yaounde. For discussion on this issue, see, Minutes of the General Assembly of the Bar held at Akwa Palace Hotel, Douala, on the 3rd April 1976.

216. Bar Law, s. 31.

217. Bar Regulations, s. 3.

218. Bar Law, s. 32(1).

219. Bar Regulations, s. 4(1).

It meets in ordinary and extraordinary sessions. The ordinary session meets once a year when convened by its President by registered letter.[220] It meets in extra-ordinary session only when it is requested to do so either by the Bar Council or by an absolute majority of its members. Where the request is made by the Bar Council the General Assembly is convened by the President of the Bar Council and where the request is made by an absolute majority of members of the Bar, it is convened by the President of the General Assembly. When it meets, the Assembly considers all urgent matters relating to the exercise of the profession that have been submitted to it.[221]

The Assembly also draws up the internal rules of the bar which are subject to the approval of the Minister of Justice[222] and also votes the budget of the Bar upon the proposition of the President of the Bar Council. It elects its President (eligible for re-election) and members of the Bar Council for a term of two years.[223] Decisions of the Assembly are arrived at by secret ballot and by a two-thirds majority of the members present or represented.[224] Although pupil advocates may participate in General Assembly

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220. Bar Law, s. 32(2); Bar Regulations, s. 4(2).

221. Bar Regulations, s. 6(4).

222. Bar Law, ss. 33 and 34.

223. Bar Law, ss. 32(3), 33, 37; Bar Regulations, s. 8(1).

224. Bar Law, s. 36(1).

meetings and speak therein, they have no vote.[225] Advocates who have been suspended by virtue of a disciplinary sanction also have no vote.[226] Decisions of the General Assembly meeting constitute the minutes which are then signed by the members of the pro tem executive.[227]

2. The President of the General Assembly of the Bar

Elected for a renewable term of two years, the President of the General Assembly convenes and presides over Assembly meetings and supervises the election of members of the Bar Council.[228] He draws up the agenda for the ordinary general meeting,[229] which agenda must deal only with matters relating to the exercise of the profession.[230] The Minister of Justice, the President of the Bar Council and members of the Bar may refer to the President of the General Assembly, one month before the session,

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225. Bar Regulations, s. 4(4).

226. Bar Law, s. 36(2).

227. Bar Regulations, s. 7(1). During its first General Meeting in April 1976, the General Assembly elected Messrs Pierre Aubriet and Ade Moma respectively as its President and vice-President. Mr Tabetando and Mrs Batayene were elected Anglophone and Francophone pro tem secretaries, respectively.

228. Bar Regulations, s. 9(3)(6)(8).

229. Bar Law, s. 35(2); Bar Regulations, s. 6(1).

230. Bar Law, s. 35(1). The agenda may not, for example, include the discussion of political matters. But quare whether the Assembly may discuss a political issue which affects the Bar.

issues they wish included in the agenda.[231]

It is the duty of the President of the General Assembly to transmit the minutes of the General Assembly, within eight days of the meeting, to the President of the Bar Council for execution.[232] The duties of the President of the General Assembly are incompatible with those of President of the Bar Council[233] and they determine at the expiration of two years or upon death, resignation, striking off the Roll, suspension or upon dismissal by the General Assembly on serious grounds of special urgency.[234]

3. The Council of the Bar Association

The Council of the Bar is the administrative and disciplinary organ of the Bar Association[235] and is elected for two years by the General Assembly.[236] The size of the Council depends upon the number of enrolled advocates at each one time. It is composed of five members if the number of advocates is more than ten but less than twenty; of seven members if the number of advocates is between twenty

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231. Bar Law, s. 35(2).

232. Bar Regulations, s. 7(2).

233. Ibid., s. 8(3).

234. Ibid., s. 8(2).

235. Bar Law, s. 38(1).

236. Ibid., s. 37(1); Bar Regulations, s. 9(1).

and fifty; of nine members where the number is more than fifty but less than one hundred; and of fifteen members if the number of advocates in the country exceeds one hundred.[237] Election of members to the Bar Council must take into account the number of advocates practising in each Province of the country.[238]

With the exception of those suspended by virtue of a disciplinary sanction, any advocate is eligible for membership of the Bar Council.[239] Save for those suspended, any advocate who is dissatisfied with the elections may, by simple petition lodged at the registry of the Supreme Court within fifteen days of the announcement of the results, refer it to the Full Bench of the Supreme Court which shall rule on it in chambers within one month.[240]

The principal functions of the Bar Council are to maintain the standards, honour and independence of the Bar,

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237. Bar Law, s. 37(1). Since the Bar has less than one hundred members the Bar Council is made up of only seven members. The first Bar Council was made up of Messrs Sendze, Ebai, Dinka, Tokoto, Muna, Sende and Mrs Siwe.

238. Bar Regulations, s. 9(2). As there are no advocates regularly practising within the Garoua and the Bertoua Courts of Appeal areas, the current distribution is as follows: 1 from the Bamenda and Bafoussam Courts of Appeal areas (5 advocates practise within both areas), 2 from the Buea Appeal Court area (14 advocates practise within the area), 2 from the Douala Appeal Court area (17 advocates practise there) and 2 from the Yaounde Appeal Court area (16 advocates practise there).

239. Bar Law, s. 37(2).

240. Ibid., s. 37(4)(5).

to promote, preserve and improve the services of the Bar, and to represent and act for the Bar in its relations with others and in all matters affecting the administration of justice. Section 38(2) of the Bar Law enacts:

> "S. 38(2). The terms of reference of the Bar Council shall be as follows -
> 1- to ensure respect for the principle of integrity, impartiality, moderation and fellowship upon which the Bar Association and the exercise of the profession of advocate are based;
> 2- to pronounce on admission to training courses, inscription and re-inscription on the Roll and rank;
> 3- to administer the property of the Association and ensure strict compliance with the provisions of section 20;
> 4- to authorise the President of the Bar Council to go to law, to accept any donations and legacies made to the Association, to effect a compromise, to agree to any transfers or mortgages, and to contract any loan;
> 5- to deal, generally speaking, with all matters concerning the exercise of the profession of advocate and the smooth functioning of the Association."

The Bar Council meets within the week following the Annual General Assembly and thereafter every three months. But in the interest of the administration of the Bar the President of the Bar Council or a majority or a majority of its members may convene a meeting of the Council.[241] Decisions are taken in the Council by majority vote and executed by its President who has a casting vote in the event of a tie.[242] However, no decision of the Council is valid unless there were at least two-thirds of

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241. Bar Regulations, s. 10.

242. Ibid., s. 11(1)(2).

the members of the Council present at the meeting.[243] The Council elects its President, Secretary and Treasurer for two years from among its members.[244] The Secretary is responsible for the preparation and service of the meetings of the Bar and the Bar Council. He keeps the correspondence register.[245] The Treasurer controls, under the authority of the President of the Council, the funds and the property of the Bar. He recovers all subscriptions giving receipts therefor and keeps proper account of the Bar. The funds are deposited in an unattachable bank account entitled 'The Cameroon Bar'. All commitments or cheques are jointly signed by the President of the Council and the Treasurer. They may not give a power of attorney to each other or to someone else.[246]

The functions of the President of the Council, the Secretary and the Treasurer are honorary. But administrative expenses which touch and concern their functions are chargeable to the Bar.[247] The duties of a member of the Bar Council determine at the end of his elective period, upon death or resignation, or where he is too incapacitated to exercise his dutes.[248]

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243. Bar Regulations, s. 11(3).

244. Ibid., s. 12(1).

245. Ibid., s. 12(3).

246. Ibid., s. 12(4).

247. Ibid., s. 12(5).

248. Ibid., s. 10.

4. The President of the Council of the Bar Association

This is the most important office in the Bar Association. So, every member of the Bar is required to accord the President of the Bar Council all the respect and deference due to the leader of the Bar.[249] The President of the Bar Council is the executive organ of the Bar Association. He is elected by the Bar Council from among its members for a renewable period of two years by secret ballot on a two-thirds majority on the first ballot and on a relative majority on the second ballot.[250]

The president of the Bar Council is vested with four kinds of duties, viz., representative, administrative, consultative, and conciliatory.[251] He personifies the Bar and represents it in all civil acts and especially, in the judicial process, and vis-a-vis public authorities. But he may neither acquire, alienate, lease, nor mortgage immoveable property in the name of the Cameroon Bar nor contract loans without the prior consent of the General Assembly. However, he acts as plaintiff in all cases pertaining to or in the interest of the Bar. He represents the Bar at all ceremonies and leads the Council where the

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249. Ibid., s. 13(9).

250. Ibid., s. 13(1); Bar Law, s. 37(3). Mr Gorji-Dinka became the first President of the Bar Council when he was elected to that post in 1976. He was re-elected for another two-year term in 1978.

251. Bar Regulations, s. 13.

occasion arises. He conveys to the bereaved family of a deceased colleague all the condolences of the Bar and at the funeral makes a funeral oration. The president of the Bar Council is expected to give a dinner annually to the honour of the Minister of Justice, judicial authorities, his colleagues, and representatives of auxiliaries of justice.

The administrative duties of the President of the Council of the Bar are many and varied. He draws up the agenda for each meeting of the Bar Council. He appoints various commissions to look into matters of interest to the Bar. Thus for example, when a Douala-based advocate[252] withdrew from one law partnership[253] and joined another[254] under circumstances which were allegedly suspect, the President of the Bar Council temporarily halted all forms of legal practice by the advocate in question and appointed a two-man commission of inquiry[255] to look into the matter and report its findings and make recommendations.[256]

The President of the Bar Council appoints and exercises authority over the employees and salaried staff of the Bar. He supervises the training of probational

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252. Maitre Alice Nkom Pokossi.

253. The Ninine/Nkom Pokossi partnership.

254. The Viazzi/Aubriet/Battu law firm.

255. The Tokoto-Tabetando Commission of Inquiry.

256. See, President of the Bar Council's letter No. PCB. 002/1/68 of 22 November 1976.

advocates and may appoint a member of the Bar ex officio to handle a matter in court. In short he is in charge of all matters which touch and concern the Bar. He personifies the Bar, exerts an educational control over pupil advocates and a discreet but effective domination over his colleagues. The President's consultative duties consist in giving his opinion on issues referred to him and answering inquiries emanating from foreign Bars. He may consult the Bar Council where the matter is one of a delicate nature. Breaches of the Internal Regulations of the Bar are reported to the President of the Bar Council. Upon the receipt of a complaint against an advocate made by his colleague, a judicial or legal officer, or a client, the President of the Bar Council proceeds to hear the parties and attempts a reconciliation. He may refer the matter to the Bar Council or decide that the matter be closed. Complaints by advocates against people other than their colleagues are also referred to the President of the Bar Council who is vested here with unlimited powers to seek conciliation and to give protection where necessary. The authority of the President of the Bar Council who is also known as Bâtonnier[257] is expected to carry a lot of weight. But

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257. In France, "A Brotherhood, which was entirely religious, had established itself at the Law-Courts, in St. Nicholas's Chapel, as early as 1342. It included barristers and attorneys. The logical head of this Brotherhood was therefore a barrister. This barrister was called Bâtonnier, or staff-bearer, since, when there was a procession, it was his duty to carry the staff from which the Saint's banner hung. At first this office was held by the most senior barrister. By the end of the 16th century it became elective. The Bâtonnier's moral authority established itself more

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any member of the Bar may refer any act of the Bâtonnier to the Full Bench of the Supreme Court.[258]

VII. Other Auxiliary Personnel of the Law

The Francophone part of Cameroon has inherited from France the practice whereby any person, whether or not legally trained, may give legal advice. The general practice of law is, generally speaking, open to the public, except for those activities directly related to litigation. As in France, anyone, whether trained in law or not, may give legal advice, prepare legal documents and even appear on behalf of litigants before some courts.[259] They practise law under such names as conseiller juridique, agent d'affaires and so on. In addition, many business organisations and private as well as public corporations frequently have persons on their staff who, although legally trained, are not members of any of the legal professions. Thus, it is not uncommon for a licencié en droit to be recruited by a company as a conseiller juridique.

Footnote 257 continued from page 589.

> firmly in the period that followed. In addition, by the 18th Century a Committee of Elders already had real disciplinary powers: this is the origin of our modern Council of the Bar (Conseil de l'Ordre)." Pierre Siré, op.cit., p. 255.

258. Bar Law, s. 38(4).

259. Cf. Rene David & Henry P. de Vries, The French legal system, Oceana Publications, New York, 1958, p. 17.

However, the administration of justice is primarily the concern of judicial and legal officers. Other persons whose profession it is to assist in the accomplishment of this key task of the State are regarded as auxiliary personnel of the law. Barristers, solicitors, bailiffs, process servers, registrars or court clerks, and members of the judicial police are known as les auxiliaires de la justice,[260] that is, auxiliaries of justice because they fulfil an auxiliary role in the administration of justice.[261] The avocat or advocate is the foremost auxiliary of justice and has already been treated. This section shall deal with the other auxiliaries of justice who, for purposes of exposition, may conveniently be divided into two groups: the officiers ministériels and the officiers de police judiciaires, OPJ.

1. The Officiers de Police Judiciaire

Those members of the Gendarmerie and of the National Security (whether constables or officers of police) who are directly involved with the work of the

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260. The concept of auxiliaire de la justice is one which has been borrowed from France; evidently familiar to lawyers in the Francophone part of Cameroon, it is novel to the common law trained lawyers of Anglophone Cameroon.

261. It is significant that the title maitre is no longer the monopoly of the avocat. Notaires, huissiers and greffiers all use the title 'maitre'.

court are collectively known as officiers de police judiciaire. These officers have the right and duty to investigate every allegation of commission of a criminal offence. There exists at the National Security (that is, the Police Force) a Judicial Police Department which is responsible, inter alia, for coordinating techniques of criminal investigation and carrying out criminal and economic investigations.

The judicial police is concerned essentially with criminal investigation and the apprehension of offenders. Judicial police officers conduct searches, make arrests and bring offenders to court. Some police officers, particularly in the Anglophone Provinces, act as court ushers, maintaining order in and around the court house when the court is in session.[262] In fact police and gendarme officers prosecute in some Magistrate's Courts. In their capacity as auxiliaries of justice members of the judicial police come under the authority and control of the local Procureur. The importance of the judicial police as auxiliary personnel of the law cannot be overemphasised. The maintenance of law and order, the investigation of crime and the bringing of offenders to justice depend on the police judiciaire and on the police as a whole. Without their assistance the criminal process will grind to a standstill.

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262. In the Anglophone courts, it is a policeman who shouts 'C-O-U-R-T!' when the Magistrate or Judge enters or leaves the courtroom. It is he also who snaps 'ORDER!' when court proceedings are momentarily interrupted by laughter from the public gallery.

2. The Officiers Ministériels

These constitute a limited group appointed by the state and having monopoly in certain matters. An officier ministériel is a professional appointed by the Government on the application of the prior holder of an office, from whom he has purchased it together with the good will and the exclusive right to render specified services within a given locality.[263] If an officier ministériel dies before having sold his office, his heirs can sell it and 'present'[264] the purchaser to the Minister of Justice. The requirement that persons who want to become officiers ministériels must purchase the right to exercise their occupation goes back to pre-revolutionary France, when most public officers were subject to sale and purchase. But this is no longer the case in Cameroon. At least since independence. Anyone who satisfies the necessary conditions may apply to the Minister of Justice to be appointed officier ministériel.[265] Greffiers, avoués, huissiers, and notaires - these are all officiers ministériels.

A. The greffier

A greffier is a court clerk or registrar. He

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263. David & de Vries, op.cit., p. 24.

264. Read 'introduce'.

265. Cf. Order of 7th July 1955 (Agents d'Affaires); Decree No. 60/172 of 20th September 1960 (Rules and Regulations governing Notaries).

is an essential component in the composition of every court. Each court in Cameroon is defined as including not only the bench and the legal department but also the greffe (court registry).[266] The greffier must be present at all court sessions since he is a member of the court. A court sitting without its greffier cannot act legally. Even when the court moves to the locus in quo or goes to hear a witness too ill to be heard in court, the greffier must be present.

In the Francophone courts, the greffier sits with the presiding judge. He it is who is responsible for recording the minutes of the hearing from the beginning to the end.[267] This is quite the reverse of what happens in the Anglophone courts where it is the presiding judge or magistrate himself and not the court clerk who takes down the evidence. The registrar also keeps the official copies (minutes) of the judgments which he must countersign (the presiding judge must also sign each judgment) and prepares summaries of the court's proceedings for, in Cameroon, no facilities exist for an official stenographic transcript of court proceedings. Any judicial act not

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266. See, Ordinance No. 72/4 of 26 August 1972 (Judicial Organisation) as amended.

267. In the language of art. 91 of a French decree of 30th March 1808 dealing with the internal organisation of French courts, "The greffier shall hold the pen at the hearing from the beginning until they are terminated." Quoted by Peter Herzog, Civil Procedure in France, Martinus Nijhoff, The Hague, 1967, at p. 98.

performed or executed in the presence of the greffier and with his signature is void.[268] The records of the court are preserved by the greffier and it is he who prepares and issues certified copies upon proper request. He must also prepare the various required reports and statistics concerning the work of the court and transmit them to the appropriate authorities. The greffier, depending upon the volume of work handled by the court to which he is attached, sometimes has one or more assistants and a clerical staff under him.

As a civil servant, the greffier is paid a monthly salary by the Government. He also receives part of the fees (the percentage he receives is specified in an official fee schedule) payable by litigants for the various activities the greffier performs in the course of a lawsuit, such as enlisting the case (that is, putting the case on the calendar), preparing and filing the judgment and delivering certified copies thereof.

B. The avoué

The avoué (solicitor) is the client's formal representative in court, his agent. "During the 14th Century there appeared in France and in England, at the same time, lawyers whose task was not to plead but to

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268. See, ss. 9 and 10 of Ordinance No. 72/4 of 26 August 1972 as amended.

represent litigating parties. They were called 'attorneys' in England and 'procureurs' in France, and have become the 'solicitors' and 'avoués' of today."[269] The avoué is concerned with procedural details. He does not present oral arguments in court, the plaidoirie being the monopoly of the avocat. He takes out the writ, puts in appearances for the client, formulates the statement of claim or of defence, prepares the written pleadings, arranges for services of process and exchange of evidence, negotiates settlements, and handles clients' funds. However, the legal profession in Cameroon is a fused one and all the functions traditionally reserved to the avoué and the notaire may be performed by the advocate.[270] In fact there are no avoués as such in Cameroon, for every barrister is also a solicitor.

C. The huissier de justice

A huissier or bailiff is a court officer whose main function is the service of legal papers. Service of process may be by post. But often, it is the huissier who personally effects service. He also levies attachments and executions and may draw certain types of legal documents necessary for his activity. The executory formula of judgments in Cameroon directs the huissier

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269. Pierre Siré, op.cit., p. 254.

270. Bar Law, s. 1. In France also the legal profession has been fused. Indeed, it is tempting to say that the draftsman of the 1972 Bar Law in Cameroon took his cue from France.

to levy execution according to the tenor of the judgment.[271] In localities where there are no official auctioneers (commissaires priseurs), auction sales of personal property may be conducted by huissiers. Sometimes too, the huissier de justice acts as business agent (agent d'affaires), collecting debts and writing letters relating to a legal matter or a business transaction for private individuals.[272]

D. The notaire

The notaire, like the avocat, is a key figure in law administration. He is often a trained lawyer or someone who has some legal knowledge. Completely removed from the area of litigation, he performs numerous functions in law administration that far transcend the duties of Anglo-American notaries.[273] This is why the office of

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271. The executory formula reads: "Wherefore, the President of the United Republic of Cameroon commands and enjoins all bailiffs and process-servers to enforce this judgment, the Procureurs General and the State Counsels to lend them support, and all commanders and officers of the Armed Forces and Police Forces to lend them assistance when so required", s. 9, Ordinance No. 72/4.

272. The occupation of agent d'affaires is still governed by an arrêté of 7th July 1955. The Minister of Justice grants, and where necessary, withdraws authorisation to engage in that occupation. He would withdraw it for example, where a person engaged in that occupation is convicted of embezzlement of public funds and sentenced to 15 years' imprisonment: Akono Assam Ella Jean Lebon c. Republique Unie du Cameroun, C.S.C., Jugement No. 4/A du 8 nov. 1973.

273. See, The Notaries Public Ordinance, Cap. 161 of the 1948 Laws of Nigeria. This statute is still in force in the Anglophone Provinces of Cameroon.

notary in the Anglophone Provinces of Cameroon is not the same as that of notaire in the Francophone Provinces of the country. Promises of a unified notarial profession[274] have not yet been translated into practice.

Notaires were originally officers of the court. Their modern functions may be traced to their ancient duty of drawing up agreements acknowledged (like the English 'recognizance') before a magistrate. The notaire is often the confidential adviser of families and of business enterprises. He is empowered by law to impart the quality of 'acte authentique'[275] to certain writings which must be executed before and by a public officer. The legal significance of his office stems partly from the much stronger force (force probante) which notarial acts[276] have compared with private documents (les actes sous seign privé).[277]

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274. "Doumba spells out national role of justice" (press conference by the Minister of Justice), Cameroon Tribune, No. 112, 18th August 1976, p. 2.

275. Art. 1317 of the French civil code defines 'acte authentique' as "one which has been drawn up by public officers authorized by law to draw up documents at the place where the act was transcribed, and with the requisite formalities".

276. The 'acte notarié' is a species of a category which includes a wide variety of other acts such as writs, court records, registers of birth, death and marriages, the proces verbaux of police officers, etc. 'Actes notariés' are documents drawn up by notaires at the request of a private person.

277. See, art. 1319 and 1324 of the French code civil. See generally, M.S. Amos and F.P. Walton, Introduction to French Law, Oxford at the Clarendon Press, 1935, pp. 19-21; Freund, Levy & Rudden, A sourcebook on French law, 1973, p. 263; David & de Vries, op.cit., p. 23.

Instruments that must be prepared by a notaire include ante-nuptial agreements, notarial wills, mortgages, gifts inter vivos and contracts of sale of real estate. The notaire may be retained for the administration of property in deceaseds' estates and in the organisation of companies.[278] Since the passing of the Bar Law however, the notaire no longer enjoys a monopoly in the exercise of these functions.

By making it obligatory for certain types of instruments to be drawn by the notaire or avocat the law ensures that documents that are important or the subject of complex legal rules governing their form and substance are drawn by a competent person. In addition the use of the notaire prevents fraud and claims of fraud. Before preparing any instrument the notaire is under a strict obligation to ascertain the correct identity of the parties and to make sure that they have legal capacity to act.[279] Furthermore, notaires do not give the original instrument prepared by them (minute) to the parties; the original is kept permanently in the notaire's office and thus

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278. The French language edition of Cameroon Tribune frequently devotes a whole page to 'annonces légales' - legal notices by notaires dealing with the constitution or dissolution of companies.

279. Decree No. 60/172 of 20 September 1960. A notarial act commonly takes the form of a declaration, which is recorded as having been 'received' by the officiating notary: "Par devant maitre ... notaire ..., a comapru M. ... et M. ... demeurant a ..... etc. etc."

protected against alterations by the parties. Only certified copies (expéditions) of notarial documents may be issued to interested parties. Since the notaire is a quasi public officer, a notarial document offers the additional advantage of having 'authentic' force. Subject to the possibility of attacking the accuracy of the document in a special proceeding known as 'inscription de faux',[280] any statement made in the notarial document by the notary as to the matters he has performed or seen performed and as to the date on which the document was executed has conclusive force.[281] If a document purports to have been signed before a notary, and the signature is denied, he who denies it has the burden of proof.[282]

When the notaire apposes the executory formula on a copy of a notarial document, the document becomes what is known in the literature as a grosse and execution may be levied without court proceedings. In view of the probative and executory force attaching to notarial acts, and of the fact that notaires are not only specialists in conveyancing but occupy a place corresponding to

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280. It has for example been held that "la minute de la décision qui est un acte authentique fait fois jusqu'à inscription de faux": Ndjee Leonard c. Ministère Public & Etamane Emmanuel, C.S.C., arret no. 19 du 20 dec. 1973, Bull., No. 29, 1973, p. 4089.

281. Peter Herzog, Civil procedure in France, Nijhoff, The Hague, 1967, p. 103.

282. The opposite is true of a document sous seing privé.

that of 'family solicitor', many documents are in practice made in authentic form which, so far as the law is concerned, need not be so.

The profession of notaire in Cameroon is governed by Decree No. 60/172 of 20th September 1960. Before 1960 the functions of notary were performed by an official known as greffier-notaire who was and is still governed by article 5 of the Decree of 24th September 1938 portant statut des greffiers. A notaire is defined in the 1960 decree as an officier ministeriel who receives or draws up instruments to guarantee their authenticity.[283] Limited by a numerus clausus and authorised to practise only in certain defined localities, notaires are appointed by the Head of State.[284]

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283. "Notaires are public functionaries instituted for the purpose of making all acts and contracts which the parties are required by law, or desire, to invest with the character of authenticity attaching to the acts of a public authority, of establishing the date thereof, of having the custody of the originals, and of furnishing copies both common and executory." This has been lifted straight from the French law of 25 ventose, An XI (i.e. the 16th of March 1803).

284. Decree No. 73/767 of 18 December 1973 makes provision for the establishment of 44 additional offices of notaries in the Francophone part of Cameroon. Their territorial distribution is as follows: Douala 7, Yaounde 6, Garoua 4, Nkongsamba 3, Bafoussam 3, Bertoua 3, Edea 2, Maroua 2, Sangmelima 2, Ngaoundere 2, Mbalmayo 2, Abong-Mbang 1, Bafang 1, Eseka 1, Kribi 1, Ebolowa 1, Bafia 1, Monatele 1, and Foumban 1. This large number of notaires compensates for the small number of practising barristers in the country.

CHAPTER ELEVEN

THE MINISTRY OF JUSTICE

In most countries, unlike in Britain, one finds a ministry of justice. The policy of having such a ministry is certainly desirable and stems from the need to prevent the haphazard administration of justice and to ensure that government policy in this area is properly carried out. A ministry of justice fulfils a crucial role: centralises, directs, coordinates and supervises government policy with regards to the administration of justice, drafts various pieces of government legislation, oversees and administers the various personnel of the law. In Cameroon, the creation of a ministry of justice is a post-independent development. In neither the British Cameroons nor the French Cameroun was there 'a ministry of justice'. The supervision and control of judicial matters was ensured in the French Cameroun by le service des affaires judiciaires headed by the Procureur de la Republique (later, Procureur General) who was answerable to the Commissaire de la République (later, Haut Commissaire). Prosecutions were conducted by the Procureur (or more often by the président chargé de l'action publique) in the name of the ministère public. On attainment of independence on 1st January 1960, the French Cameroun became known as the Republic of Cameroon. A ministry of

justice was created to control and supervise all judicial matters in the new republic.

In the Southern Cameroons judicial matters came under the supervision of the Chief Justice, who was ultimately answerable to the Governor-General in Lagos. The Legal Department was headed by the Attorney-General and prosecutions were conducted mainly by the Police either in the name of the Crown or the Commissioner of Police. The Attorney-General also sat in the Executive Council, gave legal advice to the Government and drafted Government bills. The unification of the Southern Cameroons and the Cameroon Republic on 1st October 1961 and the creation of the Federal Ministry of Justice by Decree No. 60/DF/13 of 1961 did not immediately lead to the abolition of the post of Attorney-General.

Under the 1961 Constitution, Justice was a Federal concern. The West Cameroon Attorney-General was placed under the Federal Ministry of Justice and was paid from Federal Funds. He was both Attorney-General for West Cameroon and a federal legal officer. In other words he had a dual capacity; legal adviser to the Government of West Cameroon and a federal legal officer responsible to the Ministry of Justice.

With regards to his functions vis-à-vis the federated State of West Caermoon the Attorney-General's powers were not catalogued anywhere. However, articles 7 and 34(3) of the West Cameroon Constitution[1] provided that

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1. Law No. 61/LW of 26th October 1961.

the Attorney-General could attend meetings of the House of Assembly and the Executive Council and address either of them as though he were a member thereof but that he was not entitled to vote. Under article 24(5) he was responsible for 'legal matters' including the 'initiation, conduct and discontinuance of civil and criminal procedures'. Section 11 of the Prisons Ordinance made him a Prisons Visitor. By and large however, the state functions of the Attorney-General rested on practice and convention. He was head of the Legal Department which advised all Government Departments on legal matters and was responsible for the drafting of all state legislation. He chaired the Customary Courts Commission.

The Attorney-General's federal functions were set out in Ordinance No. 61/OF/9 of 16 October 1961 and related mainly to criminal matters. He was empowered to institute criminal proceedings, to take over and continue such proceedings instituted by any other person and to discontinue the same. Specific provision was made for these powers to be exercisable solely by the Attorney-General. In the exercise of his powers he was not supposed to be subject to the direction or control of any other person or authority. The Attorney-General was also the Advocate-General at the Federal Court of Justice and a member of the Criminal Law Reform Commission. But under Law No. 66/LF/3 of 10 June 1966, all functions of any kind belonging to the Attorney-General and to the Assistant Attorney-

General under any law passed before the 1966 law were transferred to the Procurator General at the Supreme Court of West Cameroon, save only those functions performed in his capacity as officer of the West Cameroon Government. The post of Procurator General at the Supreme Court of West Cameroon was one created by the above 1966 law. The Attorney-General was left with only those functions he performed as an officer of the federated State of West Cameroon. His status however did not change. The 1966 law made it clear that he was a federal officer delegated to the Government of West Cameroon. In 1967 however, the title 'Attorney-General' was changed to that of 'Legal Adviser' to the West Cameroon Government, and 'Procurator-General' became Procureur General'.[2] Both the Legal Adviser to the West Cameroon Government and the Procureur General at the Supreme Court of West Cameroon continued to be federal officers under the Federal Ministry of Justice.

With the institution of a unitary system of Government in the country in June 1972, the Federal Ministry of Justice became simply the Ministry of Justice.

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2. Law No. 67/LF/3 of 12 June 1967. This Law provided that the Procureur-General (he was termed in English as 'Director of Legal Proceedings') of the West Cameroon Supreme Court may appeal either on a point of law, or on a question of fact or on a question of mixed law and fact, against all decisions in any criminal matter either on first instance or on appeal, except decisions by military courts, within 30 days. The first holder of this post of Procureur General was an expatriate legal officer, Mr J.A.O. Quinn who had been appointed Assistant Attorney-General in 1964 and then Procurator-General in 1966.

It is headed by a Government Minister appointed by decree of the President of the Republic. The full title of the incumbent is 'Minister of Justice, Keeper of the Seals'. Often, though, he is referred to in French as simple le Garde des Sceaux.[3]

This chapter describes the organisation (Section I) and functions (Section II) of the Cameroonian Ministry of Justice.

I. Organisation of the Ministry of Justice

The organisation of the Ministry of Justice comprises two sets of services, the external services and the central services.

1. The external services

The external services of the Ministry of Justice consist of the courts. Section 1 of the Judicial Organisation Ordinance 1972 provides that justice shall be

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3. The Minister of Justice is styled 'Keeper of the Seals' because it is the Ministry of Justice which keeps and apposes the State Seal. Although persons who have read law have been appointed Minister of Justice (Messrs Victor Kanga, Emmanuel Tabi Egbe, and Simon Achidi Achu), a Minister of Justice need in fact not be someone who has read law (e.g. Messrs Sanda Oumarou, Felix Sabal Lecco and Joseph Charles Doumba). In fact, however technical may be the work of a Ministry, the Minister who heads it is usually appointed not because of expert knowledge; rather, political considerations and a person's general capacity weigh heavily in making such appointments.

administered by the following courts: Courts of First Instance, High Courts, Military Courts, Courts of Appeal, and the Supreme Court.[4] Situated at the apex of the courts system is the Supreme Court, which sits at the Palais de Justice, significantly located next door to the Palais Présidentiel in Yaounde. Below the Supreme Court are seven Courts of Appeal, one for each of the seven Provinces of the country. The Court of Appeal for each Province sits at the headquarters of that Province. Immediately below the Courts of Appeal are the High Courts, one of which is supposed to be at the chief town of each Division. It has in fact not been possible, due to shortage of judicial personnel, to set up a High Court in each of the 39 Divisions of the country. Judges do go on tours to Divisions without permanent High Courts and hold High Court sessions there. At the bottom of the ladder of the courts organisation are the Courts of First Instance (that is, Magistrates' Courts) situated at Sub-Divisional level.

All these courts fall under the Ministry of Justice and are treated as 'external services' of the Ministry.

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4. The conscious omission of Customary Courts from the mainstream of the courts system has led to legitimate speculations that these courts, although given a certain lease of life by s. 26 of the Judicial Organisation Ordinance, would eventually be abolished. Another peculiar feature of the Customary Courts is that whereas those in the French-speaking part of the country come under the Ministry of Justice, those in the English-speaking part come under the Ministry of Territorial Administration - a continuation of the old situation in former West Cameroon whereby customary courts came under the Ministry of Local Government. See, infra, chapter 12.

2. The central services

The central services of the Ministry of Justice are governed by Decree No. 78/188 of 2nd June 1978 (re-organisation of the Ministry of Justice). They comprise: two technical advisers, a private secretariat headed by a chief of service, a mails office (all these three come directly under the Minister of Justice personally), and a central administration. The central administration is made up of: the General Secretariat, the Department of General Administration, the Department of Judicial Affairs and the Seal, the Department of Legislation, and the Department of Control of Judicial Services.

At the head of the General Secretariat, under which are the Office of the Secretariat General and the Translation Office, is the Secretary General. He is the man next to the Minister and his principal collaborator. The Department of General Administration is headed by a Director who is assisted by a Deputy Director. The Department consists of three services(the Service of Judicial and Legal Officer Personnel, the Service of Non-Judicial and Non-Legal Officer Personnel, and the Service of Budget and Accounting) each of which is headed by a Chief of Service. The Service of Non-Judicial and Non-Legal Officer Personnel is divided into four bureaux, each of which is headed by a Chief of Bureau: the Bureau for Established Staff, the Bureau for Non-Established Staff,

the Card-Index Bureau, and the Coordination Bureau. The Service of Budget and Accounting on the other hand is divided into six bureaux, each headed also by a Chief of Bureau: the Budget Bureau, the Accounting Bureau, the Financial Management Bureau, the Maintenance of Property Bureau, the General Affairs Bureau, and the Bureau of Impression and Binding.

A Director, assisted by a Deputy, heads the Department of Judicial Affairs and the Seal which consists of four services (the Service of Civil Affairs and the Seal, the Service of Criminal Prosecutions, the Service of Penalty Enforcement, and the Service of Administrative Litigation) and three bureaux (the Card-Index Bureau, the Criminal and Civil Archives Bureau, and the Administrative Litigation and Archives Bureau). The Department of Legislation is made up of the Studies Service (consisting of a Library Bureau and a Studies Bureau), the Legislation and Codification Service (split into two bureaux: the Legislation Bureau and the Codification Bureau), and the Nationality Service (also divided into two bureaux: the Acquisition and Loss of Nationality Bureau and the Nationality Litigation Bureau).

Finally, there is the Department of Control of Judicial Services which is made up of three services, namely, the Judicial Control Service (divided into a Statutory Law Bureau and a Traditional Law Bureau), the Judicial Professions Service (which has two bureaux: the Lawyers

Bureau and the Ministerial Officers Bureau), and the Judicial Statistics Service (comprising two bureaux, one in charge of statistics from customary courts and the other in charge of statistics from non-customary courts). A 'department' is headed by a director, a 'service' by a chief of service, and a 'bureau' by a chief of bureau. Directors and chiefs of services have deputies. The designation of each department, service or bureau is self-explanatory as to the type of matters it is concerned with.

II. Functions of the Ministry of Justice

Staffed with a team of technocrats who are mostly lawyers, the Ministry of Justice is a highly technical ministry vested with specific functions. It recruits, manages, and disciplines judicial and legal officers. All Magistrates, Judges and State Prosecutors serving in courts in Cameroon are recruited, deployed and disciplined (where it is entitled to do so) by the Ministry of Justice. The Ministry also oversees civil matters tried in the courts. This is so because sometimes, the State, through the legal department, has to intervene in certain categories of civil suits. In such cases, it is the Ministry which directs the legal department as to the line of pleading it should adopt.

Another function of the Ministry of Justice is to examine and, in appropriate cases, approve applications

for change of names. This, in the eyes of anyone brought up under Anglo-American culture, may appear too petty a matter for a Ministry of Justice to occupy itself with. This is understandable because in England and in America not great prominence is given, as in France, to the law relating to names. This difference in attitude towards names is reflected in Anglophone and Francophone Cameroon. In former West Cameroon, it was sufficient for anyone who wanted to change his names to insert a notice in one or more of the local newspapers saying: "I, formerly known as ABC, now wish to be known and addressed as XYZ. All documents bearing my former names remain valid." This was in order and no other procedure was necessary. Not so in the former East Cameroun. There, all change of names had to be done through the court. Even today, there is still a difference in the order in which the Anglophone and the Francophone write their names. The Anglophone has been taught in school to write his names in this order: christian name, middle name, surname. For example, Peter Ntutu Kolwezi, or simply, P.N. Kolwezi. But the Francophone has been taught to write his names the other way round. For example, Peter Ntutu Kolwezi will be written, Kolwezi Peter Ntutu or Kolwezi Ntutu Peter. All this has caused and continues to cause confusion particularly when it comes to writing out cheques, postal orders, certificates and so on. No legislation has been passed dealing with the order in which people should write their names.

But over a decade ago, Law No. 68/LF/3 of 14th June 1968 was passed dealing with the use of names, forenames and assumed names. Prénoms are the so-called christian names or first names and nom patronymique (often confusingly written simply as 'nom') refers to a person's family name (what the English call 'surname') which in the ordinary case is that of his father. Furthermore, anyone wishing to change his names must seek the approval of the Minister of Justice. The Minister must make public any application for change of name. This is often done by inserting a notice of the proposed change of name in the local newspapers or by putting up such notice in front of the local town hall or court. Anyone with valid objections to the proposed change of names has six months within which to make them known to the Minister. The authorization to change names is given by decree of the President of the Republic.

It is also the function of the Ministry of Justice to control, direct and supervise the activities of the legal department and to monitor all sentences passed by the criminal courts. It examines applications for the remission of penalties, ensures the carrying out of measures of clemency, oversees procedures for rehabilitation, monitors matters pending before the Supreme Court, studies and prepares draft laws and subsidiary legislation submitted to it, compiles and keeps official enactments, disciplines advocates and other auxiliaries of justice, and examines all matters relating to the grant, acquisition, loss and forfeiture of Cameroonian nationality.

PART FOUR

THE ADMINISTRATION OF NON-REPRESSIVE JUSTICE

So far law reform in Cameroon has concentrated more on the criminal law area. In the civil law area, laws introduced by Britain and France during the colonial period are, for the most part, still in force. The received French Code Civil and Code de Procédure Civile et Commerciale are still applicable in the French-speaking part of the country. In the English-speaking part, civil matters (except those subject to customary law) are still governed by the common law of England, pre-1900 English statutes of general application (as well as the law 'for the time being' in force in England with regards to divorce and matrimonial causes), and a number of English-derived statutes from Nigeria. However, there are two subjects in the civil law area which are now governed entirely by locally enacted statutes, although those statutes have invariably had to borrow from English and/or French laws. The subjects in question are Labour Law and the Law on Administrative Litigation, that is, le Contentieux Administratif. This part of the thesis deals with these two subjects and also with Customary Law.

CHAPTER TWELVE

CUSTOMARY LAW

Customary law in Cameroon, as in most African countries south of the Sahara, is made up of two components: indigenous or traditional law (native to Cameroon) and localised extraneous systems of law and juristic ideas (partly Islamic and partly English or French derived). In other words Cameroonian customary law consists of an amalgam of a law that is autochthonous and one that is alien in origin.[1] This has come about because although traditional law continued to evolve under the influence of traditional factors, it has also been influenced in a decisive way by Muslim invaders and European colonisation. European legal systems were superimposed on the pre-existing law and legal institutions of the people. As a result, certain aspects of traditional law ceased, after a time, to

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1. However, the terms 'customary law', 'native law', 'traditional law', 'native law and custom' tend to be used interchangeably. This is probably a reflection of the failure to find a single suitable label denuded of any trappings of European ethnocentric prejudices which these terms had acquired in the colonial days. This semantic problem had been collectively faced by scholars on African Law at the London Conference on 'The future of law in Africa' held from 28 December 1959 to 8 January 1960. No consensus was reached on a satisfactory terminology although the Conference itself used the expressions 'native law' and 'customary law' interchangeably throughout the remainder of its proceedings. See, A.N. Allott (ed.), The future of law in Africa - record of proceedings of the London conference, Butterworth, London, 1960.

be indigenous. The pressure on traditional law did not end with the departure of the colonial powers. Economic and social factors as well as national enactments in the name of modernisation have continued to make serious inroads into various aspects of autochthonous law. Traditional law judicial process has been affected. The received law has come to stay as the ordinary law, claiming superiority over traditional law. This chapter therefore inquires into the fate of traditional law in Cameroon (I), examines the procedure followed in present-day 'customary courts' with a view to ascertain the extent of deviation from the procedure followed in native courts in pre-colonial days (II), and discussed how problems of internal conflicts of laws are resolved (III).

I. The Fate of Traditional Law

At first, colonial policy towards indigenous law was not rigidly established. Each colonising power came along with his own system of law. But the imported law applied only to Europeans and 'Europeanised' Cameroonians, while the indigenous populations were allowed to continue with their own system of law and legal institutions. However, as each colonial government consolidated its tenuous hold over the territory and contacts with traditional authorities increased, the hitherto laissez-faire policy

towards traditional law was abandoned and 'civilising' restrictions were imposed on it. A traditional-law rule became enforeceable by the courts only if it has passed a certain test. Such were the restrictions that by the end of the colonial period indigenous law and judicial institutions had been decisively affected. This process of 'acculturation judiciaire'[2] marked the beginning of the erosion of traditional law. This erosion was made the more easy by the projection of the imported law as a superior legal system to traditional law. Nor did the erosion stop with the attainment of political independence. It has continued, and at times the process is pursued with even greater vigour. The government is clearly moving in the direction of abolishing customary law. This it hopes to achieve after integrating aspects of customary law into the received law.

1. Judicial acculturation

The extent of this judicial acculturation varied, depending on the articulation of the colonial policy pursued (indirect rule by the British and assimilation mixed with variants of indirect rule by the French). Its nature was however the same. In both the British and the French

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2. E. Le Roy, 'Justice africaine et oralité juridique', I.F.A.N., Tome 36, No. 3, juillet 1974, p. 562.

Cameroons indigenous courts were (and still are) controlled and supervised by the government, traditional law was (and continues to be) cut down by legislative and judicial processes, and Islamic law was (and is still) treated as merely a variant of indigenous law.

A. Control over indigenous courts

When the colonial power just arrived it did not immediately proceed to exercise control over traditional courts. Rather, these courts were at first used as instruments through which the colonial government reached the local people. Gradually however, the colonial government began to exert influence and exercise control over them. This was done through district officers who were given wide powers of inspection, supervision and transfer of cases before their courts. The composition of traditional courts was altered as the colonial government arrogated to itself the right to designate and dismiss those who were to preside over them. No longer was a traditional court constituted, as of right, by the quarter head or the village chief and his council of elders. In the French Cameroun, local French administrators presided over some traditional courts and were assisted by two appointed natives acting as 'assesseurs avec voix déliberative'. Final appeals for native cases lay to the chambre spéciale d'homologation, a division of the Appeal Court presided over by a French judicial officer. In the British

Cameroons the district officer was introduced into the indigenous legal system as an appellate body with the powers of revision. Ultimate appeals lay to the High Commissioner.

Another aspect of control over traditional courts was the fact that instruments were made setting up the so-called 'native courts' (subsequently re-named 'customary courts') or 'tribunaux indigènes'. These statutory native courts were in principle and practice different from courts in pre-colonial days and their number and location were set forth in the instrument ('warrant' in the British Cameroons, and 'arrêté' in the French Cameroun) establishing them. These courts were often located at district level (whereas in the pre-colonial days each village had its own traditional court) and their composition was altered, often changing the persons traditionally qualified to sit as judges. The High Commissioner established such customary courts as he considered necessary and appointed thereto such persons as he thought fit; he also dismissed therefrom such persons as he thought unfit. In the British Cameroons five judges were usually appointed to a customary court, three forming a quorum. In the French Cameroun the rule was to have a Frenchman sitting with two native assessors. The courts were also graded: 'A', 'B' and 'C' in the British Cameroons and 'Premier degré' and 'second degré' in the French Cameroun. Subsequent legislation introduced the application of specific rules of procedure and evidence, for the most part alien to indigenous law procedures.

Since these courts were also a major source of government income, administrative and financial controls were also introduced. For all the innovation that was introduced however, these statutory native courts were never integrated into the mainstream of the judicial structure. They operated as a parallel system of courts with their own appeal hierarchy.

The control and supervision of customary courts have continued to this day. Customary courts established in the English-speaking part of Cameroon during the colonial days continue to function and are governed by the Customary Courts Ordinance, Cap. 142 of the 1948 edition of the laws. In the French-speaking part of the country the judicial organisation decrees of 17 and 18 December 1959 maintained the 'tribunaux indigènes' set up by decrees of 31 July 1927 and 26 July 1944.[3] District administrators still preside and exercise control over these courts. In fact customary courts in the English-speaking part of Cameroon still come under the Ministry of Territorial Administration and not under the Ministry of Justice like other courts. In the French-speaking part the government's policy of having only professional judges to man the courts has been extended to customary courts. The tribunaux de premier degré are now presided over by

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3. Decrees No. 69/DF/544 of 19 December 1969 and No. 71/DF/607 of 3 December 1971 did no more than change the labels of some of these courts.

professional magistrates. Each magistrate sits with two appointed assessors.

Today's customary courts are nothing but a pale shadow of the indigenous courts of pre-colonial times both in structure and in the manner in which they operate. They derive their authority not from indigenous law and custom as they previously did, but from the imported law for, although they still purport to be applying native law in the matters they handle, the rules of procedure and evidence they follow and the judgments they hand down bear all the stamp and hallmarks of the imported law. In fact the eventual abolition of these courts has already been foreshadowed. Section 1 of the Judicial Organisation Ordinance (No. 72/4 of 26 August 1972) as amended by Ordinance No. 72/21 of 19 October 1972 provides that justice shall be administered in Cameroon by the following sets of courts: Courts of First Instance (i.e. Magistrates' Courts), High Courts, Military Courts, Courts of Appeal, and the Supreme Court. Customary courts are not included in the list and have just been maintained 'for the time being'. It is however very unlikely that these courts will be abolished in the immediate future. They still perform a vital function to persons in the rural areas and far removed from the 'modern' courts. Besides, the abolition of customary courts would mean that more Courts of First Instance would have to be set up if the existing ones (already overworked) are not to be brought to a

standstill with a heavy load of cases. More courts means more judges, not easily available particularly as Cameroon insists on a completely professionalised magistracy. The existing courts are even severely under-staffed with judicial and legal officers. For all these reasons therefore, it may well be that customary courts still have a long lease of life ahead.

B. Legislative and judicial pruning of indigenous law

The basic law applicable in the colonial native courts was the indigenous law. But this law was subject to restrictions both in its content and application. Some limitation was initially placed on the criminal jurisdiction of native courts and the nature of the punishment which they could impose. Cases of treason, sedition, homicide, corruption, child stealing, trial by ordeal, slave dealing, rape, and forgery were removed from the jurisdiction of native courts which were then allowed to deal with only minor criminal matters.[4] Later however, even this limited criminal jurisdiction was taken away. In the French-speaking provinces the criminal jurisdiction of native courts was suppressed in 1946. In the English-speaking provinces however, customary courts continued to

4. Customary Courts Ordinance, 1948; decret du 31 juillet 1927.

exercise jurisdiction in petty criminal matters until 1977 although their attention was drawn in 1973 to the Judicial Organisation Ordinance of 1972, section 26 of which ousted the criminal jurisdiction exercised by customary courts in the English-speaking provinces.[5]

Indigenous law applied (and still applies) only to causes and matters concerning natives.[6] Besides, rules of native law were modified whenever deemed necessary. In the French Cameroun native law rules were pruned in the process of 'codifications spéciales'. In the British Cameroons native authorities were empowered to make rules declaring or embodying indigenous law and to modify them or adopt any enactment as part of customary law. The jurisdiction of customary courts was (and still is) limited to matters of personal status (marriage, succession, divorce, adoption) and land held by customary communities. The decree of 31 July 1927 gave customary courts in the French-speaking provinces jurisdiction in 'civil and commercial matters'. This was an ambitious provision. It is not in all civil matters that customary courts exercise jurisdiction. This is particularly true of commercial matters,

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5. See Letter No. LB.346/vol.1/69 of 3rd February 1973 from Mr Nyo Wakai, then Procureur General at the Appeal Court for the South-West Province, to the Senior Divisional Officers at Victoria, Kumba, Mamfe, and Mundemba. For judicial authority to the effect that customary courts in the English-speaking provinces never had, since 1st October 1961, any criminal jurisdiction, see the judgment of Inglis, J. in the Bamenda High Court case of Godfred Fogum v. Mankon Customary Court, Suit No. HC/82.M/72, unreported.

6. S. 14, Customary Courts Ordinance, 1948; Abomo Ondoua c. Belinga, C.S.C.O., 21 mars 1972, Penant, 1972, p. 398.

an area in which customary courts have hardly ever exercised jurisdiction.[7]

Indigenous law was (and is) administered only insofar as it has passed the 'repugnancy' or 'civilisation' test. Only rules of native law which were not 'repugnant to natural justice, equity and good conscience, nor incompatible with any legislation for the time being in force'[8] could be enforced by the courts. The equivalent of this 'repugnancy clause' in French-speaking Cameroon was (and still is) that a traditional law rule must not be 'contrary to public order, good morality, or incompatible with written law'. Any rule of indigenous law which was incompatible with notions of French civilisation, against 'l'ordre public ou bonnes moeurs', or 'manifestement contraire aux conceptes et principes modernes' was struck down.[9] Moreover, in case where no indigenous law rule

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7. For a notable exception, see the case decided by the then East Cameroun Supreme Court on 26 March 1968, Penant, No. 729, 1970 (with a note by Lampué), in which a Bamileke custom was successfully prayed in aid to rescind a contract of sale.

8. Southern Cameroons High Court Law, 1955, s. 27.

9. C.S.C.O., Arrêt No. 103/L du 25 mars 1969, et No. 135/L du 10 juin 1969; M. Nguini, 'Droit moderne et droit traditionnel', Penant, 1973, p. 9; S. Meloné, La parenté et la terre dans la stratégie du développement, Klincksieck, Paris, 1972, p. 75; S. Melone, 'Le code civil contre la coutume: la fin d'une suprematie', I.R.C.D. 12 (1972).

was applicable to any matter in controversy the courts had to fill the gap simply by referring to the written law (i.e., the Code Civil or some local legislation) or 'les principes généraux du droit'.[10] In English-speaking Cameroon the court had to fill the gap by drawing on the 'principles of justice, equity and good conscience'. The 'repugnancy clause' proved (and still proves) to be a powerful instrument in the hands of administrators and judges who used (and still use) it to strike down any rule of traditional law of which they disapproved, especially if it differed from their own ideas of justice, morality and civilisation.[11] Courts reject any rule of native law deemed by them to be pernicious.[12]

Ironically, Cameroonian parliamentarians and judges are less tolerant towards traditional institutions, customs and laws than colonial administrators and judicial officers. The ease with which they limit or proscribe, by legislative or judicial process, traditional institutions and rules of traditional law considered backward and obstacles to modernisation and national development, is

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10. Circulaire du Garde des Sceaux en date du 22 septembre 1961; C.S.C.O., Arrêts No. 14 du 14 janv. 1965, Bull., 1965, p. 212, and No. 129 du 23 mai 1967, Bull., 1967, p. 1695; C.S.C.O., Arrêt No. 37/L du 15 fevr. 1973, 6 R.C.D. 172 (1974).

11. A.N. Allott, Essays in African Law, Butterworths, London, 1960, p. 198; A.N. Allott, New Essays in African Law, Butterworths, London, 1970, pp. 162 et seq.

12. C.S.C.O., Arrêt No. 130/L du 25 mars 1969, unreported.

amazing. Thus for example, today's chiefs, already a pale shadow of the chiefs of old, are no longer chosen and anointed by their own people but appointed by the government. A law to this effect was passed in 1977. It is illegal to form any association or organisation with a tribal of sectarian leaning.[13] Such associations are forbidden on the ground that they may be used to undermine national unity. Certain traditional institutions, such as for example the Ngiri Secret Society of Oku,[14] have been proscribed and the practice of 'witchcraft' made a criminal offence.[15] Serious inroads have been made into such traditional institutions as polygyny, marriage consideration or bride price, and the native law on adoption, custody and affiliation.[16] The Civil Status Registration Law of 11 June 1968 has been judicially construed as requiring all marriages in Cameroon to be celebrated by a civil status registrar to be valid.[17]

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13. Law No. 67/LF/19 of 12 June 1967.

14. Prefectorial Order No. 3/1972 proscribing the Ngiri Secret Society of Oku; Fai Ndichangong & 3 Others v. The People, Bamenda Court of Appeal, No. BCA/12c/73.

15. Penal Code, s. 251; cf. West Cameroon Legal Notice No. 8 of 1961 banning witchcraft.

16. Law No. 66/COR/2 of 7 July 1966 on marriages in Francophone Cameroon; Law No. 68/LF/2 of 11 June 1968 on civil status registration. For an enlightened decision on adoption, see, Ministère Public c. Nouck André, C.S.C., Arrêt No. 17/L du 20 dec. 1973, 7 R.C.D. 66 (1975). In this case it was held, reversing an earlier decision of the Douala Appeal Court, that the respondent was entitled to adopt the illegitimate children of a female relative of his.

17. C.S.C., Arrêt No. 34/L du 15 fevr. 1973, 6 R/C.D. 175 (1974).

In a great deal of matters, courts have virtually dictated the direction in which traditional law is to move, particularly in matters of marriage, divorce, bride price, widowhood, succession, and custody. One commentator adequately summed up the attitude of the courts when he spoke of a process of 'civilisation by assimilation'.[18] Under traditional law it is the nearest male relative of the deceased, and not the deceased's widow, who has rights of custody over the deceased's infant children and of administration of the deceased's estate. This rule of traditional law has been declared repugnant by the courts on the ground that it is based on a concept of female inferiority. In Veuve Moukoko Mouelle[19] the defunct East Cameroun Supreme Court held that this traditional law rule was contrary to the principle of equality between the sexes proclaimed in the preamble to the constitution and went on to grant custody of the deceased's infant children to the deceased's widow. In Bollo c. Bollo[20] the same court advanced much the same reason in ruling in favour of equal partition of matrimonial property following the dissolution of a customary law marriage.[21]

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18. M.Y. Nkouendjin, 'Le rôle de la jurisprudence dans les nouveaux états d'afrique francophone', Penant, 1973, p. 11.

19. C.S.C.O., Arrêt No. 43/L du 16 janv. 1968.

20. C.S.C.O. Arrêt No. 86/CC du 15 mai 1971, 1 R.C.D. 64 (1972).

21. See also, Dayas c. Dayas, C.S.C.O., Arrêt No. 30/L du 12 janv. 1971, 1 R.C.D. 64 (1972); Eding c. Eding, C.S.C.O., Arrêt No. 138/L du 6 juin 1967, 1 R.C.D. 69 (1972); S. Meloné, 'Le code civil contre la coutume ...', op.cit.

In matters of paternity courts have consistently held that affiliation is based on blood relation between father and child and that payment or non-payment of bride price does not, as is the position under traditional law, affect the affiliation of a child. In Ngeh v. Ngome[22] the defendant and one Paulina Mekong were married under traditional law. They lived together for ten years without issue. Paulina then left the defendant and eventually went to live with the plaintiff (Ngeh) by whom she had twin sons. The defendant brought a suit in the Kumba Native Court against Paulina for a declaration that the twins were his. Under traditional law, if a woman deserts her husband, A, and goes to live with another man, B, by whom she has children then, until B has fully refunded the bride price paid by A on the woman, the children were deemed to be those of A who was therefore entitled to claim them. In the instant case the plaintiff had not refunded the defendant's bride price. So the Kumba Native Court had no difficulty in granting the declaration sought by the defendant. On appeal to the Special Appeals Officer (that is, the local District Officer) the decision of the Native Court was upheld. On further appeal to the then West Cameroon High Court, it was held that the traditional law rule upheld by the Native Court and the Special Appeals Officer was repugnant to natural justice, equity and good conscience.[23]

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22. WC/22/63 and WC/23/65, (1962-1964) W.C.L.R.32.

23. For another decision along the same lines, see C.S.C., Arrêt No. 10/L du 7 dec. 1972, 6 R.C.D.173 (1974).

C. Islamic law as part of indigenous law

Islamic (or Moslem or Muhammedan) law has, since the colonial period, been regarded and treated as part of traditional law. In reality however, Islamic law is not native to Cameroon at all. It was introduced into the northern part of Cameroon via Northern Nigeria in the early nineteenth century shortly before German colonisation. Intimately related to Islamic religion and politics, Islamic law is no less a product of colonisation (by conquest and otherwise) than English or French law in Cameroon. All of them are extraneous legal systems and have drastically affected, each in its own way, the socio-legal institutions of indigenous Cameroonian polities. Although Islamic influence in Africa dates back to the seventh century A.D.[24] it was only in the early 1800s that Islamic influence spilled over from Northern Nigeria into Northern Cameroon. At first Islamic influence pushed southwards across the Sahara Desert through trade which had been established with the peoples and polities in the Sudanic belt. But between the eleventh and the nineteenth century Muslim empires and emirates were established across West Africa (e.g. the empires of Songhai and Mali, the emirate of Sokoto) through politico-religious wars of conversion known as jihads. It was through one of these

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24. It was during this period that Arabs invaded Egypt and the north African Kingdoms hithero under Byzantium. The conquered kingdoms and polities were annexed and administered as provinces of Damascus by Arabic governors who carried with them Islamic legal system and habits of legal thought and imposed them as the fundamental legal culture of the provinces.

so-called holy wars that Islam was introduced into Northern Cameroon in the early 1800s. In fact, about the same time as European traders were busy establishing trading posts along the West African coast, Muslim invaders were also busy pushing southwards from the Sudanic belt. By the time German penetration into the Cameroon hinterland reached the north Islamic influence was already strong in various areas there.

Sharia and cognate courts were already exercising general jurisdiction over all the indigenous inhabitants, even though these included large non-Muslim elements who steadfastly held to their native institutions and religious beliefs. "Given the Muslim principle of non-accommodation, the colonial administration had to re-work itself to accommodate Islamic institutions in its colonial legal and judicial arrangements. This policy of accommodation varied in degree and extent depending upon, e.g., the presence or absence of Muslim political and judicial authority within the territory."[25] As a result of muddled thinking among colonial jurists and administrators, Islamic law was lumped together with indigenous law under the spurious umbrella of a so-called 'native law and custom'. In other words Islamic law was viewed and treated merely as a species of 'native law and custom'. It has even been claimed that

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25. A.K. Mensah-Brown, Introduction to law in contemporary Africa, Conch, New York, 1976, p. 49.

Islamic law is not really so different from 'native law and custom' for, the reasoning goes, the Sunna is partly founded on old pre-Islamic customs, artificially attached to the conduct and teachings of the Prophet.[26] It is submitted that this is an erroneous and misleading claim. Islamic law differs fundamentally from native law.

Islamic law is a body of rules which gives practical expression to the religious faith and aspiration of the Muslim.[27] The fundamental tenet of Islam is total and unqualified submission to the will of Allah which is defined by Islamic law in terms of a comprehensive code of behaviour covering all aspects of life. Islamic law derives from Muhammed's mission and its base is the Qur'an and the Sunna. Its object and limits are Islam, as both the Faith and the community of the faithful. In theory this law expresses God's religio or binding ordinance but in practice its sources are heterogeneous.[28]

There are four sources of Islamic law, the Qur'an, the Sunna, the Ijma', and the Qiyas.[29] The Qur'an is the sacred book of Islam just as the Bible is the holy book

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26. P.F. Gonidec, Les droits africains - évolution et sources, 2e ed., L.G.D.J., Paris, 1976, p. 8.

27. Cf. Coulson, Noel James, A history of Islamic Law, University Press, Edinburgh, 1964.

28. Hilda & Leo Kuper (eds.), African law: adaptation and development, University of California Press, Berkeley & Los Angeles, 1965, p. 43.

29. Mensah-Brown, op.cit., p. 42 et seq.

of Christianity. It is believed to be a collection of a series of revelations transmitted by Allah to Muslims through his messenger the Prophet Muhammed, founder of the first Muslim community in Medina in A.D.622. The Qur'an contains not only the basic formulation of the Islamic religious ethic but also many regulations of a more strictly legal tone although however, there is no attempt to deal with any one legal topic or relationship comprehensively. Nevertheless, the Qur'an contains a great number of moral precepts of a general nature (for example, just retribution, fairness in commercial dealings, and compassion for the weak) which are generally translated into any legal structure of rights and duties. Wine drinking and usury for example, are simply declared to be forbidden and polygyny is permitted;[30] there is no indication as to their precise legal significance. In theory therefore legal procedure and the substance of legal rules are well-defined; but in practice they are somewhat ambiguous in various spheres. Ambiguities are resolved not by the qadis or judge interpreting the Qur'an (a thing he is not allowed to do) but by the qadis consulting Islamic legal experts for an authoritative interpretation.

The Sunna refers to the practices of the Prophet Muhammad during his lifetime, when he used to solve legal

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30. A husband is allowed up to a maximum of four wives at any one time, provided he treats them impartially.

problems by interpreting the relevant Qur'anic revelations. These practices are found in the hadith or traditions of what the Prophet had said and done on particular occasions. This tradition has been handed down through a continuous chain of intermediaries. In the event of a lacuna in the Qur'an, the judge must find the Sunna from the hadith, rather than speculate on Allah's law. The ijma' on the other hand is said to be the unanimous doctrine of qualified legal scholars in a given generation, which is accepted as infallible. The ijma' is used to fill lacunae in the Qur'an and the Sunna. Qiyas is a deduction of solution from established rules by means of analogy. It is a supplementary source of law which is resorted to only where reference to the other three sources has failed to provide a solution.

There are four mutually orthodox schools of Islamic legal thought, each one named after the scholar upon whose teaching it is founded: the Hanafi after Abu Hanifa, the Maliki after Malik, the Shafii after Al Shafi'i, and the Hanbali after Ibn Hanbal. The literature classifies the followers of these schools as belonging to the sunni, meaning, orthodox Islam as distinguished from heretical sects such as the Shi'ite, the Wahhabi, and the Abadi or Hariqite. The school of Islamic legal thought in Cameroon is the Maliki school and so Maliki law predominates. Islamic law itself is administered through courts known as Shari'a or Alkali courts. As the concept of an independent

judiciary was unknown in classical Islamic jurisprudence Muslim judges were simply delegates of the political ruler who alone wielded supreme executive and judicial power. Islam, it has often been said, is not only a religion; it is a political system.

Theoretically, Islamic law is immutable, for Islam recognises no authority as having the power to modify it. However, in practice, Shari'a courts do deviate from the strict doctrine of the Shari'a texts either in response to changed socio-economic conditions, or where the strict doctrine is insupportable in practice. Moreover, over the years, there have been accretions to, modifications of, or derogations from Islamic law. Much of this development has been in response to the needs of changed conditions and have been accepted as such because the modifications that have been introduced by legislative process have not affected areas regulated in detail by Islam.

Since Islamic law is treated as simply a variant of indigenous law, its application is also limited. Such limitations that have been placed on the operation of indigenous law apply also to Islamic law. Thus for example, a rule of Islamic law is enforceable by the courts only if it has passed the repugnancy test and is not incompatible with any written law for the time being in force. Islamic courts have legally no criminal jurisdiction (in practice they still exercise jurisdiction in petty criminal matters) and their civil jurisdiction is limited to matters of

personal status (marriage, divorce, custody, affiliation, and inheritance) governed by Islamic law. In Anglophone Cameroon, Alkali courts still operate in parts of the North-West Province. In Francophone Cameroon no statutory Islamic courts were established by the French. All cases concerning Muslims, as those concerning other natives, were tried in the tribunaux indigènes (which later became tribunaux de premier degré, tribunaux de second degré, and tribunaux coutumier). Nowadays, they are tried in the tribunaux de premier degré presided over by a professional magistrate and assisted by two assessors, one drawn from the Muslim community (the Foulbé) and the other from the non-Muslim community (the Fali).[31]

In practice however a large proportion of cases are dealt with not by the tribunal de premier degré but by other agencies. Non-Muslim litigants may take their disputes either to the non-Muslim assessor of the tribunal de premier degré (if the issue involved is a minor one) or to the local sous-préfet. However, the decisions given by the assessor or the local district officer (sous-préfet) is not binding on the parties until it has been approved by

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31. In the Northern Province there are more tribes or communities than just the Fali and the Foulbé. The division is however not between tribes but between Muslims and non-Muslims. The Muslim community is constituted by the Foulbé (the predominant Muslim group), the Arab, the Hausa and the Bernoua. The non-Muslim community is constituted by the other tribal groups, such as the Fali, the Chari, and the Kirdi.

the parquet attached to the Garoua Appeal Court. Muslim litigants may, and do, refer their disputes to the Modibo, a personality said to be versed in Qur'anic studies. The Modibo's judgments are written in Arabic and these are translated into French every three months. Generally, complaints by Muslims and non-Muslims are made either to the district officer or the Lamido (the lamido heads a lamidat or chiefdom), each of whom may deal with the matter if it is sufficiently serious. As a matter of practice, the district officer adjudicates upon serious issues involving non-Muslims while the lamido deals with difficult cases involving Muslims. If a simple case is brought before the district officer or the lamido it is referred to the Djaourou (who, depending on whether the litigants are Muslims or non-Muslims, would apply either Muslim or non-Muslim law), or to the modibo (if the parties are Muslims), or to the non-Muslim assessor of the tribunal de premier degré (if the litigants are non-Muslims). In a case involving a Muslim and a non-Muslim and there are conflicting rules of law, an attempt is made to reconcile both; if this fails, the Islamic law rule prevails.

In the Northern Province, the tribunal coutumier is located at the level of the canton or lamidat and is invariably presided over by the lamido assisted by two assessors. Cases decided by the tribunal coutumier are subject to appeal to the tribunal du premier degré which, in many areas, is presided over by the local district

officer. In the North-West Province, disputes involving Fulani litigants (the fulani constitute a closed and secluded community) are taken to the fulani quarter head, the wahkili, or alternatively to the fulani chief, the ardo. If the case eventually reaches the village court, the ardo sits with the other members of the court as an assessor so that the fulani is tried in accordance with fulani customs.

It is noteworthy that of the $7\frac{1}{2}$ million people in Cameroon about one million of them profess to be Muslims. Islamic influence is however limited to the north and Foumban. Moreover, many people who claim to be Muslims are in reality only nominal Muslims; they embrace the Muslim way of life without embracing Islam and less still Islamic law. This is particularly true of the vast majority of aboriginees (particularly those around Yagoua) who continue to follow their own traditions and customs.

2. Elevation of the imported law

The conscious elevation of the received law above indigenous law was the overall effect of control by colonial governments of traditional institutions. The colonial government was convinced of the superiority of its own civilisation, its own laws, and its own judicial system. So, although it evinced an intention to maintain and respect indigenous laws and habits of legal thought, it regarded

them with a certain disfavour which translated itself in the use of restrictive provisions to cut back native law and also in the deliberate projection of its own law as superior to indigenous law. It is ironical that this attitude still persists even today. Indigenous law is still regarded and treated as an inferior law. This attitude manifests itself in many ways.

First, certain traditional legal institutions have been denuded of any legal significance. Bride price no longer has any legal consequence on marriage or affiliation. Communal tenure has been replaced (as yet only in the statute books) with individual tenure.[32] Customary law marriages are in a somewhat precarious and uncertain situation: under the civil status registration law all marriages must be celebrated by a civil status registrar and marriages not so celebrated are presumably void. In practice however, people in the villages continue to contract their marriages under customary law as though the civil status registration law (passed in 1968) did not exist.

Secondly, the received law is regarded and treated as the primary law while indigenous law is treated as something of an exceptional law, a foreign law that

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32. Ordinance No. 74/1 of 6 July 1974 (Rules governing land tenure); cf. Ordinance No. 74/2 of 6 July 1974 (Rules governing State lands).

must be specifically proved in court. Courts have consistently held that a rule of indigenous law must be specifically proved in court before it can be upheld[33] and the Supreme Court has always insisted that any court upholding a rule of indigenous law must enunciate that rule and indicate the tribe in which it prevails.[34] There is therefore no such thing as judicial notice of a rule of indigenous law. Judicial attitude seems to be that a rule of traditional law must become notorious by repeated proof and only then would it be taken judicial notice of as law. In fact courts have at times gone to extremes. On two separate occasions[35] the then East Cameroon Supreme Court took the untenable view that indigenous law was not 'law' as only custom reduced into writing was law, a view vigorously rejected (correctly, it is submitted) in another case decided a year later.[36]

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33. C.S.C.O., arrêt du 22 janv. 1963, Bull., No. 8, p. 573; C.S.C.O., arrêt du 27 nov. 1962, Bull., No. 7, p. 370; C.S.C.O., Arrêt No. 103/L du 25 mars 1969 (unreported); C.S.C.O., Arrêt No. 135/L du 10 juin 1969 (unreported).

34. C.S.C.O., arrêt du 21 oct. 1976, Penant, No. 760, 1978, p. 253; C.S.C.O., arrêt du 15 avril 1976, Penant, No. 761, 1978, p. 382. A mere indication of a custom or a simple reference to a customary law rule will not do. See M. Nguini, 'Le divorce en droit coutumier camerounais', Penant, No. 763, 1979, p. 5.

35. C.S.C.O., arrêt du 29 mai 1962, Bull., No. 6, p. 315; C.S.C.O., arrêt du 3 avril 1963, Penant, 1963, p. 230 (with a note by Lampué).

36. C.S.C.O., arrêt du 22 dec. 1964, Penant, 1965, p. 370 (with a note by Lampué).

Thirdly, the sphere of application of indigenous law is extremely limited. Customary law applies only in matters of personal status under customary law and land held under indigenous tenure. Even in these areas, customary law does not reign supreme. In matters of family law, a person can opt out of customary law by contracting a civil status marriage. In the case of succession he may oust customary law by making a valid will in conformity with the received law. Furthermore, land commissions have now been set up to deal with disputes which hitherto used to be dealt with in the customary courts. Indeed, the Land Ordinances of 6 July 1974 have radically affected the traditional system of land tenure (at least on paper) and the land commissions set up to deal with land cases have robbed customary courts (and the non-customary courts) of their jurisdiction over disputes concerning land held under customary law.[37]

Finally, another way in which the received law has been projected as a superior law can be seen from the rule according to which the received law must prevail whenever there is a conflict between customary law and the received law.[38]

The chief reason why indigenous law is still

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37. Land disputes which were pending before customary courts were to be transferred to the new land commissions for adjudication. In practice however courts continue to deal with land cases.

38. Southern Cameroons High Court Law 1955, s. 11; C.S.C.O., arrêt du 5 mars 1963, Bull., No. 8, p. 541.

regarded as an inferior law is the ingrained belief that it constitutes an impediment to progress and modernisation.

> "Depuis l'intervention directe des pays européens dans les affaires africaines, la seule possibilité qui semblait offerte aux populations autochtones de sortir de l'état de sous-développement dans lequel elles se trouvent enfermées était l'adoption, plus au moins totale, d'un cadre juridique de droit moderne, tant en matière de droit privé que de droit public. Les institutions traditionnelles, condamnées à terme par les progrés économiques et par la scolarisation, devaient cèder le pas à un droit nouveau. Quand il s'est agi d'en definir le contenu, la seule solution a paru résider dans une adaptation du droit européen."[39]

In the war between customary law and the received law, the former is already condemned to lose. "La coutume est appelée à disparaître car elle représente vraiment trop le contraire d'un facteur d'unité; pour l'instant elle résiste et la victoire d'un droit moderne ne sera longtemps qu'une apparence."[40] All the evidence points to the eventual abolition of customary law under the disguise of codification. Already a civil law commission has been set up to unify and standardize the plethora of civil laws (English, French, indigenous) in force in Cameroon. Certain rules of customary law will be integrated into the received law and once this process is completed there would be nothing like a separate body of customary law administered by separate courts.

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39. E. Le Roy, 'Droit et développement en afrique noire francophone après dix années d'indépendance politique', Revue Sénégalaise de Droit, mars 1971, No. 9, p. 54.

40. J. Pannier, 'Les sources du droit au Cameroun Oriental', Ann. Fac. de Droit du Cameroun, 1972, No. 3, p. 114.

II. Organisation of and Procedure in Indigenous Judicial Institutions

Officially there is in Cameroon only one set of indigenous courts, the statutory customary courts. These courts were established during the colonial period and have continued to operate ever since. However, each village in Cameroon has a village or traditional council which also exercises judicial powers; although one can find no official authority for them to do so (or not to do so).

1. Statutory customary courts

The official customary courts operating in Cameroon were set up by instrument during the colonial period. Two types of statutory customary courts operate in Francophone Cameroon, the tribunal de premier degré (presided over by a professional magistrate or a district officer and assisted by two assessors) and the tribunal coutumier (presided over by a chief, an elder or a professional magistrate and assisted by two assessors). Customary court assessors are not chosen ad hoc but are appointed yearly by the Minister of Justice. The position is different in Anglophone Cameroon. Customary court judges are appointed by warrant of the Minister of Territorial

Administration.[41] A customary court is made up of five lay judges and one or more court clerks or scribes. In addition, each customary court has at its disposal a number of 'court messengers' who help it in maintaining order in court and in serving process.

Of the five judges appointed to each customary court, four must be natives of the area in which the court is located. Before taking up their appointments customary court judges take the same judicial oath as that taken by professional judges. All five judges of the court do not sit at the same time. Three constitute a quorum and the presidency of the court rotates on a monthly basis. Judges do not hold office for a fixed term although the appointment of most of them is often terminated after two years. A customary court judgeship is not supposed to be a full-time job or a career and so judges are paid only a 'sitting allowance' which is roughly 5.000 francs cfa (about £12) per month. The president of the court receives about 12.000 francs cfa per month.

No special qualification is necessary to become a judge of the customary court. Any Cameroonian adult (male) of good character who is knowledgeable in customary law may be appointed judge. Illiteracy is apparently no

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41. In the days of the Federation, customary court judges were appointed by warrant of the Prime Minister of West Cameroon on the recommendation of the Customary Courts Commission. This Commission no longer exists and the Minister of Territorial Administration has inherited the Prime Minister's power to appoint customary court judges in Anglophone Cameroon.

barrier. But in practice only persons who can read and write now get appointed. Customary court judges attend periodical seminars organised for their benefit at the Local Government School in Buea. Most of those appointed as customary court judges are persons above forty years of age. A judge may be suspended or removed from office at any time if he is guilty of misconduct.[42]

The customary court clerk is the centre of the customary court machinery. Like the greffier in courts in Francophone Cameroon, it is he who does all the paper work of the court. He administers the oath (it is the same as that administered in the non-customary courts) to witnesses, he takes down the evidence in court, he summarises the arguments advanced by the litigants, he prepares statements of claim on behalf of plaintiffs, he issues court warrants and summonses, and he reduces the judgment of the court into writing. The customary court clerk is always a literate person and his job is a full-time employment.

Employed by the local council and placed at the service of customary courts are persons known as 'customary court messengers'. Their uniform is simple: a khaki

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42. The practice in former West Cameroon was to have every allegation of corruption against a judge investigated by the Customary Courts Commission. The Commission made its findings and recommendations to the Minister of Local Government, the competent authority to suspend or dismiss from office.

shirt worn over a pair of khaki trousers. Their black berets carry a copper insignia which still bears the inscription N.A., meaning Native Authority - which is the old name of the present day local councils. Customary court messengers play a vital role in the administration of customary justice. The role they play is analogous to that played by court ushers, process-servers and bailiffs. They keep order in court, execute writs, serve court processes, and arrest absconding defendants and tax defaulters.

In Francophone Cameroon the criminal jurisdiction of customary courts had been withdrawn as far back as 1946. But in Anglophone Cameroon these courts have until recently continued to exercise limited criminal jurisdiction; primarily in respect of petty criminal matters. It was only in 1977 that customary courts in Anglophone Cameroon ceased to exercise any form of criminal jurisdiction. These courts had continued to exercise criminal jurisdiction in defiance of statutory provision forbidding them from exercising such jurisdiction[43] and also in defiance of judicial authority to the effect that 'customary courts have not, and never had since October 1, 1961, any criminal jurisdiction'. That ruling was made in the case of Godfred Fogum v. Mankon Customary Court.[44] The facts of that case

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43. Ordinance No. 72/4 of 26 August 1972 (Judicial Organisation), s. 26.

44. Bamenda High Court, Suit No. HC/83.M/72, unreported.

are as follows. On 30 October 1972 the applicant, Godfred Fogum, was charged before the Mankon Customary Court for farming in a grazing area. He was tried, found not guilty and acquitted. But on 16 November he was again arrested and detained until 22 November when the said court sat and read out a letter of 22 November 1972 addressed to the said court by the district officer. The court then wrote in its record: 'Case revoked on the strength of the D.O.'s letter'. The court proceeded to convict the applicant without any trial. He was ordered to be imprisoned for three months without the option of a fine. The applicant then moved the Bamenda High Court for an order of certiorari to remove into that High Court and quash the proceedings in the Mankon Customary Court. Relief was sought on the ground, among others, that the penal jurisdiction of customary courts had been repealed by s. 26 of the Judicial Organisation Ordinance of 1972. The court held, per Inglis, J., that the order of certiorari will be granted, for 'customary courts have not, and never had since October 1, 1961, any criminal jurisdiction'. The learned Judge cogently argued that the Customary Court Ordinance, Cap. 142 of the 1948 laws and the Customary Courts (Jurisdiction in Miscellaneous Criminal Offences) Order-in-Council were in conflict with the Federal Constitution, 1961, to the extent of conferring criminal jurisdiction and powers to impose penalties on customary courts.

Proceedings in the statutory customary courts are substantially the same as those in the Courts of First Instance but with the difference that it is simplified and less formal. A case is begun by the plaintiff going to the appropriate customary court and informing the court clerk that he wishes to take out a summons against so and so. The clerk takes down the digest of the plaintiff's story and puts in a statement of claim. The plaintiff pays a fee of 1.100 francs cfa. The summons is then served on the defendant by one of the customary court messengers. The summons states the date, time and place of appearance to answer the summons. The statement of claim is often cryptic: 'debt', 'declaration of title to land', 'arrears of house rent', 'disturbance in business premises', 'return to matrimonial home', 'breach of marriage peace', 'refund of dowry', 'next of kin order', 'divorce of customary marriage', and so on. After the clerk has written out the summons, he then registers the case in the 'Civil Summons Booklet' and also in the 'Customary Court Cause Book'. On the day of the hearing the case is called up. The defendant and the plaintiff step forward. The defendant is asked a simple question by the court after the plaintiff's complaint has been read out to him: 'Are you liable or not liable?' If the defendant replies, 'I am liable', judgment is entered for the plaintiff. But if he contests liability, each party would then step into one of the two witness-boxes and give his evidence

from there.[45]

The plaintiff states his case and the clerk takes the essential points of his story. A party may ask his testimony to be read back to him. But this request is seldom made. At this stage of the proceedings the president of the court only interposes when he has not understood or heard anything said by the plaintiff. At the end of the plaintiff's story, the defendant is allowed to ask him questions and thereafter to give his own version of the story. He is also cross-examined by the plaintiff. At this stage, the court may ask the plaintiff and the defendant any question it thinks appropriate. At the end of it all, the judges retire into their chambers from whence they will emerge some minutes later to deliver their judgment. A dissatisfied party has thirty days within which to go on appeal. A party to a dispute in a customary court may be represented by a spouse or a relative. But most litigants prefer to conduct their own cases. To maintain the simple and uncomplicated procedure followed in customary courts, barristers have been barred from appearing before them. This does not however mean that a Cameroonian whose profession is that of barrister may not be sued in a customary court if he is involved in a dispute over which customary courts have jurisdiction.

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45. One of the boxes previously served as dock for the criminal defendant.

2. Village councils as traditional courts

Each village in Cameroon has what is known as a 'Village Council' or a 'Traditional Council'. Officially, as far as the central government is concerned, a village council performs only administrative functions. In practice, a village council also performs judicial functions. In fact the village council acting as a court is authentically more of an indigenous judicial institution than the statutory customary court. In the village, disputes are resolved by either the family head, the quarter head or elder, or by the village court over which presides the village chief, assisted by his council of elders. The village court is nothing other than the village council acting in a judicial capacity. Most cases in the village end at the level of the village council. But there is no prohibition on a dissatisfied party going on appeal to the statutory customary court and even beyond.

The jurisdiction of the village council as a court embraces both civil and criminal matters. In the civil area they deal with matters concerning customary marriages, divorce, inheritance, custody, bride price, land disputes, and debts contracted under customary law. In the criminal area they try cases of allegations of malevolent witchcraft or sorcery, murder by esoteric means, theft of livestock or farm produce, minor brawls or assaults, and violations of customs, injunctions or prohibitions. Secret societies such as the nqumba, kwifon, and obasinjom

still play a vital role in the judicial process. So too ordeals and divinations.

Trial by ordeal rests on religious beliefs, especially the belief that the deity can be summoned to intervene in the screening of the guilty from the innocent. The poison ordeal is still used by the Namchi.[46] The ordeal of immersing hands in a pot of boiling water still survives among the Massa and the Tupuri.[47] The Fali still have recourse to the poison ordeal known as laourou and the means of divination known as hadti.[48] Various other forms of ordeals, means of divinations, and oath rituals are practised in other parts of Cameroon. A person accused of psychic murder (for example, in places like the Eastern Province where allegations of witchcraft practices are commonplace) may be required to swear over the deceased's grave, a fetish, or venerated object inviting the spirit of the dead person to take its revenge on him if the murder had been committed by him. Furthermore, it is common practice to invite a diviner to come and help in detecting an offender who presumably cannot otherwise

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46. L. Salasc, 'Une ordalie en pays Namchi', Etudes Camerounaises, No. 3, juillet, 1943, p. 61.

47. J.J. Mouchet, 'Pratiques et divination Massa et Tupuri', Etudes Camerounaises, No. 4, nov., 1943, p. 63; Joanny Guillard, Goloupoui - analyse des conditions de modernisation d'un village du Nord Cameroun, Mouton, Paris, MCMLXV, p. 148.

48. J.G. Gauthier, Les Fali de Ngoutchoumi - montagnards du Nord Cameroun, Anthropological Publications, Oosterhput, The Netherlands, 1969; J.P. Lebeuf, L'habitation des Fali, montagnards du Cameroun septentrional, Hachette, Paris, 1961.

be detected. These practices are believed in and accepted by the ordinary man. No one complains to the police or gendarmes who, in any case believe and sometimes take part in them. Take these two incidents.

In Bota some years ago, a man mysteriously developed an extraordinarily large appetite and was always eating although his stomach never grew large. Conventional scientific analysis in the hospitals failed to provide a diagnosis and a therapy. It was alleged that the man had been bewitched. The matter was reported to the gendarmes who had the principal suspect and his alleged accomplices arrested and detained. They protested their innocence. There was no point taking the matter to court. The court would not believe the story and in any case an allegation of witchcraft practice cannot be proved in court. So a diviner was brought to the gendarmerie station and the suspects were brought out of their cells. Everyone stood watching while the diviner set himself to work and he was able to 'prove' that the suspects had indeed committed the evil act with which they were suspected of.[49]

In another incident, a public request was made for the Bamileke 'black dog' ordeal to be used in detecting persons who had collaborated with individuals seeking the overthrow of the government. The circumstances under which

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49. 'Soothsayer called to prove allegation of poisoning', Cameroon Outlook, vol. 2, No. 63, Friday, August 21, 1970, p. 1.

this call was made arose from the Ouandié/Ndogmo Affairs. On August 19, 1970, Ernest Ouandié, leader of the proscribed Union des Populations du Cameroun which had taken to guerrilla warfare against the French and then the national government, was arrested along with several of his lieutenants and charged with terrorist activities and armed insurrection. About a week later, on August 27, Bishop Ndongmo was also arrested and charged with accessory to terrorist activities and plotting to carry out a coup d'état and assassinate the Head of State. At the end of the month, a public demonstration in support of the government was held in Nkongsamba. Speaker after speaker mounted the rostrum and denounced the plot and the plotters. One of the speakers condemned terrorist activities and suggested that the 'black dog'ordeal be used to detect those aiding and abetting terrorist activities. Now, the black dog ordeal is a collective test used in judicial inquiries in some Cameroonian traditional societies, particularly the Bamileke. The suspect is made to go through a ritual which includes swearing on the eye of a black dog. A liar or guilty person, it is believed, would be killed by the black dog. In the instant case, persons suspected of aiding terrorists were to be made to swear on the eye of a black dog. The crucial factor in the black dog ordeal is the element of fear: it is believed that anyone who falsely swore would be killed by the black dog.[50]

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50. Chronologie politique africaine, Paris, No. 4, juillet-aout, 1970, p. 78.

III. Internal Conflict of Laws

An internal conflict of laws situation may arise in two ways. There may be a conflict between a rule of traditional law and a non-traditional law rule. A conflict situation may also arise between two conflicting systems of traditional law.

1. Conflict between traditional and non-traditional law

When this type of conflict arises, two questions must be answered. First, which law should govern the case, traditional law or non-traditional law? Secondly, if it be decided that traditional law should govern the case then the further question arises as to which traditional law.

As a general rule, cases between natives are governed by traditional law.[51] But there are three exceptions to this general rule. First, traditional law does not apply where the parties had agreed that the matter shall be governed by non-traditional law.[52] Secondly, traditional law does not apply where the matter in question is one which is unknown to traditional law[53] such as, for

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51. Southern Cameroons High Court Law, 1955, s. 27(2); Decret du 31 juillet 1927 (création des tribunaux indigènes).

52. Southern Cameroons High Court Law, 1955, s. 27(2).

53. Idem.

example, company shares, bank transactions, and so on. Thirdly, native law will not apply where the issue is one covered by legislation.[54] Moreover, a rule of customary law is not enforceable if, although it has passed the repugnancy test, it is nevertheless incompatible directly or by necessary implication with any written law in force.[55]

In general, in cases between natives and non-natives, non-customary law applies. But that law would be ousted in favour of customary law where it may appear to the court that substantial injustice would be done to either party by a strict adherence to non-traditional law.[56] Moreover, the Authorities may direct that some or all of the powers of customary courts should not be exercised over any natives or class of natives,[57] or, that persons or class of persons not normally subject to the jurisdiction of customary courts should be subject to a particular customary

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54. Cf. C.S.C.C., Arrêt No. 40 du 5 mars 1963, Bull., No. 8, p. 541. In this case the then East Cameroun Supreme Court laid down a principle which the courts have since then always followed. The Supreme Court declared: 'Dans les matières où il a été legiféré la loi l'emporte sur la coutume.'

55. Southern Cameroons High Court Law, 1955, s. 27(1); Customary Courts Ordinance, Cap. 142 of the 1948 laws, s. 18(1)(a).

56. Southern Cameroons High Court Law, 1955, s. 27(2).

57. Thus, customary courts have no jurisdiction over members of the Armed Forces, the Police and the Gendarmerie.

court or class of customary courts.[58]

Each customary court applies the customary law prevailing in the area over which it has territorial jurisdiction. Such jurisdiction is set out in the warrant establishing the court.

2. Conflict between different systems of customary law

This type of conflict has arisen as a result of population movements. As means of communication between villages and tribes have improved so too has mobility among the people. People have tended to move away from the rural to the urban areas in search of jobs and a new way of life.

> "In the days when virtually all the persons living in a particular area were members of the same tribe (and when hardly any members of that tribe lived elsewhere) all disputes arising in the area would inevitably be decided under the tribal law. Now, the situation has changed. Most of the inhabitants of a particular locality still do belong to one tribe, but in every area there is a minority whose origins lie in different communities. It is principally in relation to such minorities that the problem is presented. When a member of one of them becomes involved in a legal action arising in the area, assuming that [the received law] or local statute law do not apply, the issue is whether the case is to be decided in accordance with the local law or under what may be called the 'personal law' of the man involved." 59

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58. For example, one such direction was made in former West Cameroon extending the ratione personae jurisdiction of customary courts to Nigerians and all Africans living in Cameroon who, though not normally subject to the authority of customary courts, nevertheless agree to accept their jurisdiction.

59. A.E.W. Park, The sources of Nigerian law, Sweet and Maxwell, London, 1963, p. 136.

In Cameroon there are no laid down internal conflict rules. But the resolution of conflicts presents no problem. Each customary court applies its own law, conflicts being avoided by the rules for distribution of jurisdiction. The court of the site deals with land matters, the court of the deceased's tribe deals with his succession, and otherwise the defendant's court has jurisdiction. If a matter gets to the court it applies the relevant law which would have been applied by the appropriate court if its jurisdiction had stretched to the subject-matter. Thus in land matters the proper court and the applicable law is that of the place where the land is situated. In any dispute relating to marriage, bride price, child custody, and matrimonial property rights, the applicable customary law is that of the place where the marriage was celebrated. This is usually the home of the wife's parents because it is there that bride price (which is essential for the validity of a customary law marriage) has to be and is paid. This is why paragraph 15 of the Manual of Practice and Procedure for Court Clerks provides: "Cases involving marriage and dowry are always considered to have arisen at the home of the wife's parents. If the wife's parents live outside the area of jurisdiction of your court, you may not accept the case." In that eventuality the matter is referred to the appropriate court. But if the court does assume jurisdiction, as in practice it does, it must apply the law of the place where the

parents are domiciled - which it does after hearing the 'expert' testimony of persons from that area and conversant with the customary law which obtains there. In matters of inheritance the court applies the personal law of the deceased.

CHAPTER THIRTEEN

LABOUR LAW

Labour legislation is a late 19th century development. It was prompted by the liberal ideas and campaigns of European reformists scandalised by the appalling conditions under which men, women and children worked in the nascent industries of Europe. Legislation concerning industrial accidents and workers' right to form trade unions were precipitated by the social crisis which erupted all over Europe from the French Revolution to the 1850s. However, it was well over another half a century before there was any major industrial legislation. The 40-hour week, paid holidays, social insurance, and so forth, were all post-First World War developments.

During the German colonial period in Cameroon the problem of labour force was resolved by a system of requisitioning of persons to work in the plantations. This system was criticised by traders and missionaries who advocated a free system, the extension of medium-sized European enterprises and the practice whereby natives grew industrial products in family set-ups. Although the requisitioning of persons and the system of forced labour were never totally abandoned, there were, in the last few years of German colonial rule in the territory, some relaxations and changes in the methods of recruiting labour.

Soon after acquiring a mandate over that part of Cameroon which became known as the French Cameroun, France proceeded to regulate the issue of labour in the mandated territory. A decree of 4th August 1922 was passed to that effect. It was later amended by another decree of 9th July 1925. These two decrees provided that the recruitment of labour could be carried out freely and in any manner by factories or undertakings recruiting natives to be employed in their areas of origin. No contract of service was necessary. Moreover, female and child labour was only regulated in 1935 by a decree of September 4th. A decree of 1937 deals more specifically with native labour. In 1944 an arrêté was passed dealing with industrial accidents and in 1946 the much castigated system of forced labour known as l'indigénat was proscribed. A decree of 17th October 1947 instituted a common Code du Travail for all the territories (the French Cameroun inclusive) under the Ministry of Overseas France. This labour code was baptised 'Code Moutet', from the name of the French Minister who was instrumental to its institution. The code was in effect an adapted version of the metropolitan Code du Travail. The Code Moutet was tinkered with from time to time and in 1952 it re-emerged as 'Law No. 15/1322 of 15 December 1952 instituting a labour code in the territories and associated territories under the Ministry of Overseas France'. This is what became commonly known as the Code du Travail d'Outre-Mer. It

was this code which continued to govern labour relations between employers and employees in the private sector in the former East Cameroun (now the Francophone Provinces of Cameroon) until the passing of the 1967 Federal Labour Code. There were in addition before 1967 a number of subsidiary legislation dealing with labour matters.[1]

The situation in former West Cameroon was analogous to that in former East Cameroon notwithstanding the error of the handful of persons who have written on Cameroonian Labour Law[2] in giving the impression that no labour law existed there. Although Le Faou concedes that labour legislation existed in that part of the country he hastens to add that, "la règlementation du travail, faute d'avoir été vivifiée par des apports extérieurs, s'est cristallisée au niveau des textes de 1945 et sous cette forme y a régi les rapports de travail jusqu'à la mise en application de la legislation fédérale en 1967-68."[3]

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1. Arrêté No. 4297 of 23rd June 1956 instituting family allowances; arrêté No. 4298 of 23rd June 1956 setting up a family allowance fund; law No. 59-25 of 11th April 1959 on family allowances fund; a law of 1955 dealing with labour accidents.

2. Pierre Malet, Guide de législation et d'education sociale, 3rd ed. C.E.P.M.A.E., Yaounde, 1973; Roger Doublier, Manuel de droit du travail au Cameroun, L.G.D.J., Paris, 1973; R. Le Faou, Précis de droit du travail de la République Unie du Cameroun, Imprimerie OFFSET ENAM, Yaoundé, 1976.

3. Le Faou, op.cit., p. 11.

This does not however correspond with reality. In the former West Cameroon there were a number of statutes, just as fragmentary as in the former East Cameroon, governing labour matters. Even before the Labour Ordinance NO. 1 of 7th February 1929, the following statutes governed labour relations in the Southern Cameroons: the Master and Servant Ordinance, Cap. 70, the Native Labour (Foreign Service) Ordinance, Cap. 71, the Employment of Women Ordinance, Cap. 72. After the Second World War the following labour laws were applicable in that part of the country: the Trade Unions Ordinance, Cap. 200 of the 1958 revised edition of the Laws, the Workmen's Compensation Ordinance, Cap. 222 (an Ordinance to provide for the payment of compensation to workmen for injuries suffered in the course of their employment), the Labour Code Ordinance, Cap. 91 (an Ordinance to amend and consolidate the law relating to labour and to consolidate the Labour Code for Nigeria and the Southern Cameroons), the Factories Ordinance, Cap. 66 (an Ordinance to make provision for the health, safety and welfare of persons employed in factories and other places and for matters incidental thereto and connected therewith), the Wages Boards Ordinance, Cap. 211 (an Ordinance to provide for the establishment of Wages Boards and otherwise for the establishment of Wages Boards and otherwise for the regulation of remuneration and conditions of employment in certain circumstances), and the Trades Disputes (Arbitration and Inquiry) Ordinance, Cap. 202 (an Ordinance to

make Federal provision for the establishment of an Arbitration Tribunal and a Board of Inquiry in connection with trade disputes and for the purposes of inquiring into industrial conditions).

Thus, not only did labour legislation exist in the former West Cameroon, it was also up-to-date. The ignorance on labour legislation in former West Cameroon stems from two sources. First those who have so far written on the subject of labour law in Cameroon are not only monojural (in the French legal system) but also French monolingual. Secondly, labour legislation was not visible. There was for example, a lack of manufacturing industry in the territory and relatively few skilled and semi-skilled workers were in employment, which even in the 1950s was confined largely to government service, public works, mercantile firms and the railways and ports, together with the Cameroon Development Corporation plantations and an unknown amount of employment in peasant agriculture. The proportion of adult males who were engaged in wage-earning at any one time was very small, and the main centres of wage employment tended to be concentrated into the coastal areas. In the plantations the labour force was largely migrant in character, and in other industries such as public works rather short spells of work were general among locally employed labour, even where employment was not casual.[4] The Southern

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4. Cf. W.A. Warrington, A West African Trade Union. A case study of the C.D.C. Workers Union and its relations with the employers, O.U.P., London, 1960, p. 5.

Cameroons economy was essentially a plantation-based economy. The major employer was the C.D.C. and the first trade union in the territory was the C.D.C. Workers' Union which was formed in 1947. Because of lack of manufacturing industry and hardly any labour disputes reaching the courts the phenomenon of labour law was not much in evidence in the territory. Indeed, much of the law existed only in the statute books and never in practice.

A Federal Labour Code was instituted for the entire Federal Republic by Law No. 67-LF-6 of 12th June 1967. In 1972 a unitary form of Government was adopted and a unified workers Trade Union was created. It became necessary to amend and consolidate the 1967 Labour Code to bring it in line with the changed political situation of the country. Accordingly, a bill was tabled before Parliament for this purpose. The White Paper accompanying the bill said, inter alia,

> "Intervenant à un époque de transition comprise entre la Réunification et l'institution de la République Unie, le Code de Travail de 1967 était lui-même un instrument de transition et ce, sur le double plan de droit et des institutions ... La nécessité se faisait donc sentir, dans le cadre de la transposition en matière sociale de la Revolution pacifique du 20 mai 1972, d'une part d'adapter le Code de Travail aux nouvelles structures de la République Unie, d'autre part d'entériner l'évolution qui s'est produite dans les relations professionelles depuis 1967 et de prévoir les structures permettant a cette évolution de se poursuivre."[5]

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[5] Le Faou, op.cit., p. 21.

On 27th November 1947 the Bill was passed into law as Law No. 74-14 instituting the Labour Code. However, regulations made under the 1967 law remain in force as long as they have not been repealed and replaced by regulations issued under the current law. Furthermore, international labour conventions to which Cameroon is signatory, continue to be applicable.

The Cameroonian Labour Code has undoubtedly drawn a great deal from French law, particularly from the old French Code du Travail d'Outre-Mer. But French law has not been its only source. The Code also drew from relevant conventions of the International Labour Organisation and from the Nigerian Labour Code Ordinance, Cap. 91 and the Trade Unions Ordinance, Cap. 200 of the 1958 edition of the laws. The Code regulates in detail matters such as contracts of employment, working conditions, payment of wages, labour administration, and trade unions and employers' associations. However, the Code is conspicuously silent on the question of compensation to workers injured at work and does not deal with conditions of work in places such as mines.

Most workers are not acquainted with the provisions of the Code and are therefore ignorant of most of their rights as workers. Furthermore, the machinery for the effective enforcement of the provisions of the Code is still inadequate. For example, the number of labour inspectors and medical labour inspectors is still small.

Ignorance of the law coupled with an inadequate machinery for enforcement has meant that often the provisions of the Code are not actually being observed. A fair number of labour disputes do reach the courts. But these are often cases of wrongful dismissals.

Scope of the Labour Code

By s. 1(1) of the Labour Code, labour law is that branch of the civil law which governs 'labour relations between wage-earning workers and employers and also between apprentices under their authority'. The scope of the Labour Code is narrow. Provisions of the Code do not apply to: civil servants (they are governed by the General Rules and Regulations of the Public Service), auxiliary administrative employees (they are subject to special rules and regulations), members of the Armed Forces, the Police Force and the Customs, and persons subject to customary law and working within the framework of the family. The Code is concerned only with the labour relations between wage-earning workers and employers, and apprentices under the authority of employers. The term 'worker' is used in the Code to mean "any person, irrespective of sex or nationality, who has undertaken to place his gainful activity, in return for remuneration, under the direction and control of another person, whether an individual or a public or private corporation, who is

styled the 'employee'".[6] The legal position of employer or employee is irrelevant in determining whether a person is a worker or not. Moreover, the Code applies to all types of undertakings, large, medium-size, or small. It applies to an undertaking with hundreds of workers as well as to one with just a handful. Thus a shopkeeper with say two employees is governed by the Code. The Code also applies in a master and servant situation as for example where a person engages a houseboy, a cook or a gardener.

The preamble to the Cameroonian constitution proclaims that every Cameroonian has the right and duty to work. The Labour Code carries this right further by declaring work to be a 'sacred right' and a 'national duty incumbent on every able-bodied adult citizen'.[7] It does not however seem that it is the bounden duty of the State to provide citizens with employment. The State's duty here is apparently only to "make every effort to help citizens to find and to remain in employment".[8] Indeed, the question of unemployment has never been a key political issue in Cameroon.

Forced or compulsory labour[9] is absolutely

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6. Labour Code, s. 1(2).

7. Ibid., s. 2(1)(2).

8. Ibid.

9. This is defined in s. 2(3) of the Labour Code as any labour or service demanded of an individual under threat of penalty, being a labour or service which the individual has not freely offered to perform.

forbidden in Cameroon. The term does not however include (1) any work or service exacted in virtue of compulsory military service laws for work of a purely military character, (2) any work or service forming part of the civic obligations of citizens as defined by the laws in force, (3) any work or service exacted from any person as a consequence of a conviction in a court of law, (4) any work or service exacted in cases of force majeure,[10] (5) communal service in the general service.[11]

This chapter shall proceed to deal with employment (S. I), unions and other organisations (S. II), and the resolution of labour disputes (S. III).

I. Employment

Employment means the state of being employed, that is, having a regular occupation, trade or profession. The employee works for the employer under an oral or written contract of service which always stipulates, among other things, the wages to be paid for the work done and

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10. That is to say, in the event of war, rebellion against legal authority, or of a disaster or threatened disaster, such as fire, flood, famine, earthquake, volcanic eruption, violent epidemic or epizootic diseases, invasion by animals, insects or plant pests, and in general any circumstance that would endanger or threaten to endanger the existence or the well-being of the whole or part of the population. Labour Code, s. 2(4).

11. These are community works defined by administrative, municipal and village authorities and regarded as normal civic obligations.

the conditions of service.

1. Contracts of employment

A contract of employment is a contract of service. Every time an employer engages a new employee, he makes a contract of service. Writing has nothing to do with it. A contract of service is as binding if made orally as if every word were inscribed on precious parchment in letters of gold. As soon as there has been an unconditional offer by the employee to serve and an unconditional acceptance by the employer of that offer, the deal is concluded. The consideration (that quid pro quo required by English law) is the wage. So both sides are bound. Contracts of employment are of two types, individual and collective.

A. Individual contracts of employment

There is no restriction on the freedom to make contracts of employment. However, for economic or social reasons, and in particular in the interest of public health and hygiene, the Head of State may prohibit or limit certain types of labour recruitment in specified areas after consultation with the National Labour Council.[12] Moreover, it is a trite contract law principle that a contract must

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12. Labour Code, s. 28.

be neither illegal nor offend against public policy. The proper law of every contract of employment which is to be performed in Cameroon, is the Cameroonian Labour Code and any other Cameroonian law on the subject. In other words, the lex loci solutionis governs the contract of employment. The locus contractus and the residence or domicile of either party are irrelevant. Nor does it make any difference that the contract of employment was initially made under other legislation and is to be performed only partially in Cameroon.[13]

Although a contract of employment may be made orally, it may be recorded in writing (in which case it is exempt from stamp and registration fees). Any form of evidence is admissible to establish the existence of a contract of employment.[14] However, contracts of a specified period exceeding three months, or contracts of employment with employees of foreign nationality, must be in writing.[15] Furthermore, a contract of apprenticeship must, under pain of being declared null and void, be made in writing.[16]

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13. Labour Code, s. 29.

14. Ibid., s. 29(3)(4).

15. Ibid., ss. 31, 33.

16. Ibid., s. 51. A contract of apprenticeship is defined in s. 50 as 'a contract whereby the head of an industrial, commercial or agricultural establishment, a craftsman or a jobbing workman undertakes to give or cause to be given to another person complete and systematic training and whereby the latter undertakes in return to obey the instructions which he receives and to perform the tasks assigned to him for the purposes of his apprenticeship.'

a) Making and performance of contract

A contract of employment may be made for a specified or an unspecified period or task.[17] A contract of employment for a specified period is one which is made for a maximum duration of two years. If services continue after the expiry of two years, the contract automatically lapses into one of unspecified duration. This rule however applies only in respect of workers who are Cameroonians. Upon the expiry of two years the contract of a worker who is an alien may only be renewed upon the visa of the Minister of Labour.[18]

An employer may, by expressly saying so in writing, engage an employee for a trial period or for trial periods not exceeding six months in all, save in the case of supervisory and managerial staff for whom the trial period(s) may be for up to one year. If at the end of the trial period, no new contract is made and the worker continues to render his services, the parties would be deemed to have entered into a contract of unspecified duration taking effect from the day the employee began work on a trial basis.[19]

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17. Ibid., s. 30(1). A contract of employment is one of specified duration where its termination is fixed in advance by the will of the parties or subject to the occurrence, which does not depend exclusively on the will of the parties, of a future but certain event that is precisely indicated. On the other hand, a contract of employment is of an unspecified duration if it may be terminated at any time by the will of the worker or the employer upon notification of the other party as provided by law.

18. Ibid., ss. 30(2), 31.

19. Ibid., s. 32.

An employer may make internal regulations for his establishment provided that such regulations relate only to matters of technical organisation, work, discipline, safety, and hygiene and that they are necessary for the proper functioning of the establishment.[20] But he is not entitled to make any regulation touching on the private lives of the employees. In Eglise Presbytérienne Camerounaise & Hôpital de Donenkeng c. Engoute,[21] the respondent was an employee of a mission hospital owned by the Eglise Presbytérienne Camerounaise. He was also a shop steward. By Rule 9 of the Internal Regulations of that hospital only communicants of the church may be employed to work in that hospital. After working in that hospital for some time, the respondent who had all along been a monogamist became a polygamist. He was therefore barred from receiving communion on the ground that polygamy offended against Christian teachings. Being no longer a communicant, he was dismissed from his job. The respondent successfully obtained judgment against the appellants both at first instance and on appeal. On further appeal to the Supreme Court, held, (1) that Rule 9 of the hospital's Internal Regulations was manifestly contrary to s. 34 of

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20. Ibid., s. 34. The regulations thus made may only be brought into operation after they have been communicated to and approved by shop stewards and the Inspector of Labour. Regulations relating to matters other than those listed are null and void.

21. Cour Supreme du Cameroun, Arrêt No. 71/S du 6 juin 1973, 8 R.C.D. 177 (1975).

the Labour Code; (2) that the appellants' contention that it was the respondent who had terminated his contract of service by embracing polygamy was untenable as, in fact it was the appellants who had dismissed the respondent; and (3) that the respondent being a shop steward, the appellants were in breach of s. 137(1) of the Labour Code in having dismissed him without the prior authorisation of the local labour inspector as required by law.

An employer may make regulations in his industry relating to discipline. But it is unlawful for him to sanction with a fine any breach of such discipline by the employee.[22] The only disciplinary penalty involving loss of wages which an employer may legitimately impose on an employee is suspension from work for a maximum period of eight days from the time of the imposition of the penalty. He must notify the employee of the suspension. A verbal notification is not enough. The notification must be in writing clearly stating the reason(s) for the suspension.[23] Furthermore, a copy of the notice of suspension must be sent to the competent Labour Inspector within forty-eight hours.

Save as otherwise provided in the contract of employment, the employee must devote all his gainful

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22. Labour Code, s. 35.

23. If the suspension is challenged in court and the reasons advanced to justify the suspension are found to be insufficient the aggrieved worker is entitled to recover his lost wages and to be awarded damages if he can prove any.

activity to the industry. However, unless otherwise agreed, he may engage, outside his working hours, in any gainful activity which is not liable to compete with the industry or harm the due performance of the agreed services.[24]

b) Termination of contract

A worker talks about 'his job'. But who owns a man's job? At one time it used to be the employer for, although an employee talked of 'my job', it did not belong to him in any real sense. That has changed. A man has what amounts to a property in his job. That is why he is given job security. His protection is divided into two categories. If he does not receive his proper notice or pay in lieu, then he is wrongfully dismissed for, the employer is not entitled to dismiss the employee at will or just anyhow. If this happens the employee has a claim for damages in the civil courts. He may also claim compensation for unfair dismissal. Damages are designed to compensate the employee who has suffered as a result of the employer's breach of contract. The employee ipso facto suffers if he is wrongfully dismissed. The object of damages is to put the innocent and sacked employee in the same position, financially at least, as he would have been had the contract been honoured by the employer.

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24. Labour Code, s. 36(1).

This does not mean that a contract of service may not be terminated. A contract of employment of an unspecified duration may indeed be terminated at any time at the will of either party provided that written notice, not subject to any condition precedent or subsequent, is given setting out the reasons for the termination. The employer may not keep silent when dismissing, however golden silence may be said to be. Unless an employee has repudiated his contract, he is entitled to his notice or his equivalent payment in its place (pay in lieu). The duration of such notice is often one to three months. But much depends on the worker's length of service in the industry and the occupational group to which he belongs. The respective obligations of the employer and the employee do not cease during the period of notice. However, to enable the employee to seek alternative employment, the employer must allow him one day off (wages being fully paid) each week throughout the period of notice. The period of notice is unenforceable if the employer fails to do so. Moreover, the employee may claim damages if he was suffered any injury.

If a contract is terminated without notice being given or without the full period of notice being observed, the aggrieved party is entitled to compensation. The amount of compensation corresponds to the remuneration plus any bonuses and allowances which the employee would have received for the period of notice not being observed.

However, a contract may be terminated without notice in cases of serious misconduct duly ascertained by the competent court of law. If the employee for example, sets fire to the factory, steals from his employer, is guilty of persistent rudeness, negligence, lateness, absenteeism or the like, then it may well be that the employer is entitled to dismiss him.

Where the contract of employment is one of specified duration, it may not be terminated unilaterally by either party before its normal time of expiry. This is however not a hard and fast rule. Such a contract may in fact be terminated by either party or by mutual consent at any time if the contract so stipulates. Furthermore, the contract may be terminated at any time in the event of a serious offence. But as in the case of a contract of unspecified duration, it is the court and not the employer who has to determine the seriousness of the misconduct or offence.[25] This reverses the old law, exemplified by cases such as Lobe Francois c. Société P.Z.[26] and Tantoh Peter c. Agence Camerounaise de Presse,[27] under which it was the

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25. Ibid., ss. 39 and 40.

26. CSCO, Arrêt No. 64/S du 2 fev. 1971, 1 R.C.D. 57 (1972).

27. CSCO, Arrêt No. 105/S du 9 mars 1971, 1 R.C.D. 58 (1972). In this case the appellant had been dismissed from his job on the ground that he had occasioned a 'scandalous scene' in his director's office. The then East Cameroun Supreme Court dismissed the appeal, refusing to disturb the findings of fact by the court below.

    Generally, one act of temper, one insolent outburst, should not merit so severe a punishment as dismissal. Such an act may earn a dismissal only when it was the last straw or when the worker had previously behaved with dumb insolence.

employer who determined the seriousness of the misconduct or offence.

Every wrongful termination of a contract of employment gives rise to a claim for damages in the civil courts. There are many instances in which dismissal would be wrongful. A dismissal would be wrongful if effected because of the opinions of the employee, his trade union activity or his membership of a particular trade union. It is also wrongful if the employer fails, for no proper reasons, to renew a contract of service for a fixed term of two years or more, the contract being renewable yearly. To refuse an employee his proper salary or wage is a serious contractual breach. So if the boss decides to cut working week and pay drops along with it, the employer has broken his contract and this may amount to a wrongful dismissal. So too cutting of pay for no proper reasons. An employee would probably also be taken to have been wrongfully dismissed where, although his salary is kept at the same level, his status is reduced. Furthermore, an employee who 'resigns' may be deemed wrongfully dismissed where there has been a constructive dismissal. A constructive dismissal takes place where the employee has not left his employment voluntarily but as a result of being constrained by the employer to do so.

In all cases of wrongful dismissal the onus is on the employer to satisfy the court that he had reasons for dismissing and that the reasons were proper ones.

Once the employee has shown that he was dismissed (easy because it is required to be in writing) and that he did not leave voluntarily, then it is up to the employer to show the reason for the dismissal. In a good many cases, this is easy. Reasons include the employee's conduct; redundancy; lack of qualification or capability; absence of sufficient technical qualification; curtailment of activities; and so on. Once there is a dismissal and a reason shown for it, then the employer has to prove that he acted reasonably in treating the reason as sufficient in depriving the employee of his job.[28]

In assessing the quantum of damages due to the plaintiff regard is had to all factors indicating that prejudice has been suffered. For example, the nature of the employment, length of service, age, and accrued rights are relevant factors which are taken into account. The award made must include compensation for failure to give notice.

A dismissal on the grounds of curtailment of activities in the industry, internal reorganisation, or staff reduction is proper provided the employer determines the order of dismissals (taking into account length of service, professional proficiency, and family responsibilities

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28. Under the old law the onus was on the employee to show that the reason given by his boss was not sufficient to warrant his dismissal: Société SOCAPAR c. Manga Jacques, CSCO, Arrêt No. 93/S du 2 mars 1971, 1 R.C.D. 57 (1972).

of workers) and notifies the list of workers he proposes to dismiss to the shop stewards. An employer proposing to dismiss as redundant an employee must consult with the shop stewards and give notice to them and the Labour Inspector. He must disclose in writing not only the reason for his proposals and the numbers and description of employees whom it is proposed to dismiss as redundant, together with the total number of employees of any such description employed by him at the establishment in question but also (and more important) the proposed method of selecting the employees who may be dismissed and the proposed method of carrying out dismissals, with due regard to any agreed procedure, including the period over which the dismissals are to take effect. If the employer claims to have dismissed an employee on the grounds of 'staff reduction' as he is entitled under the law to do[29] it is for him to show that the dismissal was in fact for that purpose. The dismissal would be wrongful if it was in reality made for another undisclosed reason. In Mamadou Namadina c. Société des Grands Travaux de l'Est[30] the respondent purported to have dismissed the appellant for reasons of 'staff reduction' as provided under s. 43(6) of the Labour Code. It was found as a fact that the respondent had done so in order to deprive the appellant of his

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29. Labour Code, s. 43(6); CFAO c. Ndjeng Enock, CSCO, Arrêt No. 103/S du 9 mars 1971, CSCO, Arrêt No. 109/S du 23 mars 1971, 1 R.C.D. 58 (1972).

30. C.A. de Garoua, Arrêt No. 8/S du 10 jan. 1975, Le Monde du Travail, No. 4, 1977, p. 17.

seniority benefits. Held, by the Garoua Court of Appeal that this was a case of wrongful dismissal.[31]

An employee's contract of employment with the employer is unaffected by any subsequent change in the legal status of the employer. The contract remains fully effective and it makes no difference that the change in status has been brought about through succession, sale, amalgamation, financial reorganisation, or transformation into a partnership or company. Similarly, the closure of the establishment, except brought about by force majeure, does not absolve the employer from his obligation to adhere to the rules laid down by law. A closure brought about by bankruptcy or liquidation is not a closure as a result of force majeure. If an employee wrongfully terminates his contract of service and enters the service of another employer, he may be sued for damages. The new employer may also be joined in the action if he can be shown to have (i) enticed the employee away from his previous employment, (ii) engaged the employee knowing him to be already bound by a contract of employment, or (iii) kept the employee in his service after learning that he was still bound to another employer by contract of employment.

A contract of employment may be suspended.

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31. In Chambre de Commerce c. F. Philippe, CSCO, Arrêt No. 77/S du 6 juin 1972, 8 R.C.D. 178 (1975), a dismissal was held to be wrongful where the employee had dismissed a worker without verifying whether he had received a message ordering him to report back for work or be considered as having resigned.

Suspension is proper in the following circumstances: (i) where the employee or the employer is required for military service, (ii) where the worker is absent as a result of illness medically certified,[32] (iii) during the period of maternity leave, (iv) during any period of disciplinary suspension of the worker, (v) during any period of leave for worker's education, (vi) during the period of absence as a result of industrial accident or occupational disease, (vii) by mutual consent for the period of a parliamentary mandate or during the exercise of duties of member of Government, and (viii) during the period of preventive detention of an employee where such an employee is eventually given a nonsuit or a full discharge. Save as otherwise provided by law, the general contract law principle remains that a contract which is suspended produces no effect while it remains suspended. The situation where a contract of employment is suspended following the preventive detention of the employee, calls for particular comment. First, the determination whether the contract is suspended or not is made ex post facto: only when a full discharge or a non-suit has been given is one in a position to say the contract was in suspension during the period of the employee's detention; if there is

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32. In either of these two cases, the worker must be compensated by the employer where the contract is one of an unspecified duration. Labour Code, s.47. This is an exception to the general principle in contract law whereby a contract which has been suspended produces no effect whilst it remains suspended.

no non-suit or full discharge the contract is taken to have been terminated as from the first day the employee was thrown in detention. Secondly, although a non-suit or a full discharge revives the contract, it is in effect treated as though it were a fresh one. Take the case of Debalou Njila[33] where an employee of that name had been in preventive detention for three and a half years. After he had been given a full discharge he went back and resumed his previous job. On a claim to be entitled to promotion, seniority, and pay, it was held by the Supreme Court of Cameroon, (1) that he could claim neither pay, seniority, nor right to be promoted for the period he was in detention, (2) that a court sitting as a labour court has no jurisdiction to award damages for illegal detention. It makes no difference, it would seem, that the detention had come about as a result of a frivolous or malicious complaint made to the police by the employer against the employee.[34]

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33. CSCO, Arrêt No. 45/S du 12 juin 1975, Le Monde du Travail, No. 5, 1978, p. 21.

34. Cf. CSCO, Arrêt du 2 juin 1967, Bulletin, p. 1755, where an employee was detained for five months following a malicious complaint by his employer. See also, CSCO, Arrêt No. 110/S du 23 mars 1971, Arrêt No. 166/S du 29 juin 1971, and Trzonkawski c. Botto, CSCO, Arrêt No. 60/S du 19 jan. 1971, 1 R.C.D. 59 (1972). In these cases, decided under the old Labour Code, it was held that an employer is entitled to dismiss an employee who has been detained, particularly so if during the period of detention the employer had engaged another employee. The fact that the employee was eventually given a full discharge was held to be irrelevant. These decisions are no longer good law under the present Labour Code.

On the expiry of a contract of employment, whether by effluxion of time or termination (whatever the reason for it) the employer must deliver to the employee a certificate (exempted from stamp and registration fees) stating only the dates of his arrival at and departure from the establishment and the nature and dates of the various posts held by the employee.

c) Sub-contractors

A sub-contractor is defined in s. 54 of the Labour Code as a person who enters into an oral or written contract with a contractor to carry out specified work or furnish specified services for an agreed price and himself recruits the necessary workers. His legal position is one of an employee in certain respects and one of an employer in other respects. He is an employee vis-a-vis the head contractor but an employer vis-a-vis the workers he recruits. Ordinarily, obligations (pecuniary or otherwise) towards the workers are met by the sub-contractor. But in the event of the sub-contractor being insolvent the head contractor must shoulder all the obligations of the sub-contractor towards the workers. For example, he becomes liable to pay the workers' wages. Even absent the case of the sub-contractor's insolvency, an employee who has suffered loss has a right of direct action against the head contractor.[35] It is partly for this reason that the

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35. Labour Code, s. 55.

sub-contractor is required to put up permanent notices in all workshops or other business premises used indicating that he is a sub-contractor and giving the name and address of the head contractor.[36]

B. Collective agreements

By s. 58(1) of the Labour Code, a collective agreement is "an agreement intended to regulate labour relations between employers and workers either of an undertaking or group of undertakings or of one or more branches of activity. This agreement shall be concluded between: the representatives of one or more trade unions or a federation of trade unions on the one hand; the representative of one or more employers' association or any other group of employers or one or more employers acting individually on the other hand."

Any collective agreement may, subject to public policy considerations, contain terms which are more favourable to workers than those of the laws and regulations in force. In fact this is the primary objective of any collective agreement. Any collective agreement must define its scope of application (which may be local, inter-divisional or national). Employees and employers not involved in any collective agreement may nevertheless,

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36. Labour Code, s. 56.

through their unions, decide to contract in. This is effected by the trade unions requesting the Minister of Labour to extend the provisions of the collective agreement to and render compulsory for all employers and employees within the territorial and industrial scope of the agreement. They are also free to contract out if they so wish. If it appears that the agreement is no longer in keeping with the conditions of the branch of activity in the area concerned, its extension may be revoked.

Collective agreements must comply with certain conditions as to form and substance. These conditions are laid down in Decree No. 75/50 of 22 January 1975 (Rules as to form and substance governing collective agreements). Under this decree a collective agreement is concluded for an indeterminate period. The agreement must stipulate in what form and at what time in the course of its implementation it may be terminated or revised. It must specify in particular the period of notice of the termination. If no such specification is made, the period of notice shall be three months. Any collective agreement must contain provisions concerning such matters as the right to form trade unions and freedom of opinion, conditions of recruitment and termination of workers, duration of trial period and conditions and period of notice, compensation for termination of employment, wages applicable, special conditions concerning the grant of housing, special

working conditions, travelling allowances, leave, transportation, and so on. Each collective agreement must be deposited at the Registry of the Court of First Instance of the place where it has been concluded. The date of deposit is crucial because it serves as a starting point for the period of application of the agreement, of notification or revision, of termination, of contracting in or out. On the 2nd September 1976 a collective agreement governing agricultural undertakings and related activities was signed between The Union des Syndicats professionels agricoles et activités connexes du Cameroun (U.S.P.A.C.) and the Syndicat des Planteur de l'Est-Cameroun on the one hand, and the National Union of Cameroon Workers (N.U.C.W.) on the other hand. This Agreement was, by Decree No. 77/201 of 29 June 1977, extended to and rendered compulsory for all employers and workers included in its industrial scope throughout the territory. Similarly extended by Decree No. 77/202 of 29 June 1977 was the collective agreement governing undertakings in public works, building and related activities concluded on 16 June 1976 between the Union des Syndicats Professionnels du Cameroun (U.S.P.C.) and the National Union of Cameroon Workers (N.U.C.W.).

In order to adapt the provisions of collective agreements to the particular conditions in designated establishments (especially the conditions of award and rules for calculating payment by results, bonuses based on individual or group output, and productivity bonuses) agreements

relating to one or more specified establishments may be made between an employer or group of employers, on the one hand, and representatives of the trade unions which are most representative of the personnel of the establishment concerned, on the other hand. These agreements are known as company agreements and may include new provisions and clauses which are more favourable to the employees. If no collective agreement exists, a company agreement may deal only with wages and payments accessory to wages.

2. Wages

The term 'wages' as used in the Labour Code means "remuneration or earnings, capable of being evaluated in terms of money and fixed by mutual agreement or by the provisions of regulations or collective agreements, which are payable by virtue of a written or unwritten contract of employment by an employer to a worker for work done or to be done or for services rendered or to be rendered".[37]

A. Determination of wages

The law forbids any form of discrimination. So there must be no discrimination whatsoever in determining the wages payable to an employee. For the same type of

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37. Labour Code, s. 67(1).

work, qualifications and output, workers are entitled to the same remuneration, irrespective of their colour, origin, sex, age, status in society, or belief. Equal pay for like work. The rates of remuneration for task and piece work must be so calculated that they provide a worker of average capacity, working normally, with a wage at least equal to that of a worker engaged on similar work and paid by unit of time. The employer must put up in the pay office or other place where workers are paid, the minimum wage rates and the conditions of remuneration for task or piece work.

Housing and alimental facilities must be provided to the workers by the employer. The obligation to provide housing however arises where the employer has transferred the employee to perform a contract of employment necessitating the installation of the worker outside his normal place of residence. The accommodation provided must be adequate, correspond to the family status of the worker, and satisfy the conditions fixed by the Minister of Labour. If suitable accommodation cannot be provided, the employer must pay the employee a housing allowance, the minimum rate of which is fixed by the Minister of Labour.

The obligation to provide alimental facilities (furnishing a daily food ration) arises where the worker to whom the employer provides accommodation cannot, through his own efforts, obtain for himself and his family a regular supply of foodstuffs. The provision of this

facility is however not gratuitous. It is subject to payment. A similar but optional facility which the employer may provide is what is known as 'company stores'. This is an arrangement whereby an employer directly or indirectly sells or supplies goods to workers in his employment for their normal personal requirements. An employer may operate a company store provided the workers are free to obtain or not to obtain their supplies from there, alcohol and spirituous liquors are not offered for sale, and the accounts of the company store are kept separate and subject to inspection by a workers' committee.

Wage zones and rates of the guaranteed minimum industrial, commercial and agricultural wage; occupational categories and the minimum wages applicable to such categories; the minimum rates of remuneration for overtime, night work, work on Sundays and public holidays; the rates of compensation for termination; travelling allowances and attendance bonuses - these are all fixed by decree after consultation with the National Labour Council.

Where the remuneration of the services of an employee consists in whole or in part of commissions or of sundry bonuses and allowances or compensation in lieu of such allowances, such remuneration (insofar as it does not constitute a refund of expenses) must be taken into account in calculating remuneration during paid holidays, compensation in lieu of notice and damages.

B. Payment of wages

a) Mode of payment

Wages must be paid in legal tender, the Cameroonian CFA francs. Payment by any other currency or method is illegal. Nor may payment be made by cheque. How often wages should be paid depends on the nature of the trade or occupation. As a general rule however, wages are payable at regular intervals not exceeding fifteen days in the case of workers engaged by the hour, and one month in the case of monthly paid workers. Such monthly payments must be made not later than eight days following the end of the month of employment in respect of which the wages are payable. Wages are payable on working days only and at or near the work place. They may not be paid in licensed premises or in a shop or store except in the case of workers who are normally employed there.

Every payment of wages made is required to be evidenced by a document (which must be preserved and presented for inspection if required) made out or certified by the employer or his representative and initialled by each worker or by two witnesses if the worker is unable to sign. In addition, the employer must, at the time of payment, give the worker an individual pay slip or other document prepared by a modern accounting procedure, in the form prescribed by the Minister of Labour.

However, the fact that a worker has signed an entry of the words 'in full settlement' or any similar

expression either during the performance of his contract of employment or after its termination, whereby he purports to waive all or part of his rights under the contract of employment is inadmissible in court as evidence of satisfaction. Similarly, acceptance of the pay slip by the worker without protest or reservation does not amount to a waiver by him of payment of all or any part of any wages, allowances or supplementary payments which may be payable to him by virtue of laws, regulations or contractual provisions.

The employee is entitled to his wages whether the establishment runs at full tilt or is operating at half steam. While this is true of salaried staff, the situation is otherwise for daily paid workers and those who are paid by the unit. Unless they have opportunity to work they have no claim to payment and cannot be paid. The law also gives protection to the employee of an insolvent undertaking. So, up to the limit of the percentage of wages not liable to attachment wages debts are preferred debts having priority over all other general or special privileged debts. An employee may bring an action for the recovery of his wages. But the action is barred after three years. Time begins to run from the date on which wages fell due. It ceases to run in the case of either a written or an oral claim by the worker to the Labour Inspector concerning payment of the wage or making up of account, private acknowledgement of debt or unexpired summons.

b) Deductions from wages

Apart from compulsory levies, reimbursement of the value of any facilities provided and any deposits which may be stipulated in collective agreements or individual contracts, deductions from workers' wages are permissible only in the following cases: (i) where there is a court order of attachment, (ii) ordinary trade union contributions due from workers, (iii) voluntary assignment to which the worker has subscribed in person, (iv) where a friendly society providing for payment of contributions by workers has been instituted. Any contractual provision authorising any other deduction from the employee's wages is null and void. Furthermore, any sum withheld from a worker without proper justification bears interest payable to the worker at the statutory rate from the date on which it should have been paid and may be claimed by him at any time (unless the right to do so becomes statute barred).

In calculating any reductions regard must be had not only to the wages proper but also to all payments supplementary thereto. The following payments are however disregarded: allowances specified as unattachable by regulations in force, and sums payable by way of reimbursement of expenses incurred by the worker and any benefits due under the social insurance legislation and regulations issued thereunder.

3. Working conditions

Subject to exemptions made by decree, the working week in all public and private non-agricultural establishments in Cameroon may not exceed 48 hours. In agricultural or similar undertakings the hours of work are based on a total of 2400 hours per year within the maximum limits of 8 hours per day and 48 hours per week. Night work (i.e. from 10 p.m. to 6 a.m.) may be undertaken by adult male workers only. As a general rule admitting of only rare exceptions, the employment of women and children for night work in industry is prohibited. All employees must be granted a weekly rest (usually on Sundays) of at least 24 consecutive hours; this rest may under no circumstances be replaced by an allowance as compensation. Women and children employees are in addition entitled to at least 12 consecutive hours of rest every day.

A. Women and children

a) Women

Women, whether pregnant or not, may not be employed to do any job which is dangerous or insalubrious. Jobs of this nature are specified in a joint order of the Ministers of Labour and Health. A pregnant female employee has, in addition, a number of rights and privileges. She may terminate her contract of employment without notice. She is entitled to do so with impunity.

She may not be sued for damages for breach of contract. No action for compensation lies against her for failure to give notice.

She is entitled to paid maternity leave. This leave starts 4 weeks before the presumed date of confinement and ends 10 weeks after the last day of confinement. She has in effect a right to at least a total of $3\frac{1}{2}$ months maternity leave. This leave may, in any case, be extended by another $1\frac{1}{2}$ months in the event of a duly certified illness resulting from either the pregnancy or confinement. An employer may not terminate the contract of a female employee on maternity leave. While on such leave the female employee is entitled to the various benefits provided for by legislation in matters of social and family welfare. She is entitled to a daily allowance payable by the National Social Insurance Fund. This allowance is equal to the amount of the wages actually received at the time of suspension of the contract of employment. The female employee on maternity leave is also entitled to retain the right to benefits in kind.

Any female worker who has just had a baby is entitled to nursing breaks (not exceeding one hour per working day) for a period of fifteen months following the birth of the child. During this period, the mother also has the prerogative of terminating (if she so wishes) her contract of employment without giving notice. She may not be sued for damages or for compensation in consequence thereof.

b) Children

No child who has not attained the age of fourteen may be employed in an undertaking, even as an apprentice. However, taking into account local circumstances and the nature of the job the child may be required to do, the Minister of Labour may exceptionally authorise the employment of a child who is below fourteen years of age. Young persons (that is, children of between 14 and 18 years of age) may be employed on board ships in certain circumstances. But only a person of over 18 years of age may be employed on board ship as a trimmer or stoker.

The Labour Inspector may order women and children to be medically examined by an approved medical practitioner in order to ascertain that the job allotted to them is not beyond their strength. The Inspector must, on the request of the child or woman, give such an order. If a job is found to be beyond the strength of the woman or child, he or she must be transferred to a more suitable job. If this is not possible, the contract may be terminated without previous notice and without liability on either party.

B. Holiday and travel

Leave is granted to the worker so that he might rest and recuperate his energy. So, every employee is entitled to leave which, except otherwise stipulated in collective agreements or individual contracts, after a period of actual service of one year. Collective agreements

or individual contracts may stipulate otherwise; but a contractual proviso under which holiday accrues for any period longer than two years is null and void. The employee must claim his leave as soon as he can. Any leave not claimed after three years may no longer be claimed. If the contract of employment is terminated before the employee has claimed his leave, he is entitled to compensation in lieu thereof. This is the only situation in which compensation may be paid in lieu of leave. It is prohibited to make such payments in other cases. There are two types of holiday, paid and unpaid.

a) Paid holiday

Subject to more favourable contractual provisions, an employee is entitled to paid holiday (paid by the employer) at the rate of one and a half working days ($2\frac{1}{2}$ for children and 2 for women) each month of actual service.[38] He is also entitled to a maximum of ten days, per year, of paid special leave of absence (not deductible from annual holiday) on the occasion of family events directly concerning his home.

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38. Any period equivalent to 4 weeks' or 24 days work is deemed to be one month of effective service. In determining leave entitlement periods of unavailability by reason of industrial accident or occupational disease, absence due to illness for up to a limit of six months certified by a medical doctor, and absence on maternity leave are deemed to be periods of service.

b) Unpaid holiday

Unpaid holiday the duration of which may not be deducted from the annual paid leave, may be granted, at his request, to a worker or apprentice who wishes to attend a course exclusively devoted to workers' education or trade union training and arranged either by a centre attached to a workers' trade union organisation recognised as representative at national level or by an organisation, institution or agency specially approved to this effect by the Minister of Labour.

The duration of the holiday, which may be split up, is 12 working days if the course is held inside the national territory or 18 working days if it is held elsewhere. In either case the period of leave is deemed to be one of actual service for the purposes of calculating the employee's paid holiday, his entitlement to family allowances, and his total period of service in the establishment. For purposes other than these, the contract of employment is deemed to be suspended during this holiday period.

c) Travelling expenses

The employer is liable for the travelling expenses of the employee, his spouse and minor children normally residing with him and the cost of transportation of their luggage, where performance of the contract of employment requires or has required an employee to move from the place in which he usually resides. Costs of travel and transport are regarded as allowances in kind. They are therefore

paid only in case of actual travel by the worker and his family. An employee who has terminated his service is also entitled to transport, provided by the employer, to take him to his usual place of residence. Entitlement to travelling and transport expenses must be claimed within three years.

C. Hygiene, safety and medical facilities

Employees must not merely be protected from the vagaries of business disaster; against wrongful and unfair dismissal and redundancy; or against the contractual miseries of working life. They must also be protected against loss of limb and life.

a) Hygiene and safety

Industry produces each year deaths, accidents and diseases contracted at or resulting from work and causing disablement or death. The law has in various ways sought to see to it that industrial injuries are prevented. All work places are required by law to be hygienic and safe: adequate lighting and ventilation, proper toilet facilities, safety on floors, fencing of dangerous machinery, defective equipment not to be used, alarm system, incendiary precautions, safety exits, and so on. The minimum hygiene and safety conditions required of any place of work are laid down by orders of the Minister of Labour issued after consultation with the National Commission for Industrial

Hygiene and Safety. The orders take into account local conditions and contingencies. Generally, they aim at securing for the employees standards of hygiene and safety conforming with those recommended by the International Labour Organisation and other technical bodies internationally recognised.

It is the duty of the Medical Labour Inspector to see to it that the laid down standards are adhered to by the employer. Where working conditions endangering the safety or health of the employees but not covered by the Minister's orders are found to exist, the Labour or Medical Labour Inspector must request the employer to remedy the situation. If he objects, the dispute is referred to the National Commission for Industrial Hygiene and Safety for a ruling thereon. Flouting of safety rules is not to be countenanced. An employer may be held liable for defective equipment. One thing which the law should do is to give workers protection through compulsory insurance. Every employer should be required to insure and maintain insurance under one or more approved policies with an authorised insurer or insurers against liability for bodily injury or disease sustained by his employees and arising out of and in the course of their employment.

As a general rule, it is forbidden to bring and/or consume alcoholic beverages into any place of work during working hours. However, such beverages may, upon authorisation, be consumed within the establishment only during

normal break periods and exclusively within the canteens and dining rooms placed at the disposal of workers by the employer.

b) Medical services at places of employment

Every undertaking and establishment of any kind[39] must provide a medical and health service for its workers. It is the duty of such a service to supervise conditions in respect of hygiene in the establishment, the risk of contagion, the state of health of the workers (including that of their wives and children) and to take appropriate preventive measures including the provision of necessary medical care. The medical and health service may be organised in the form of a separate service within the establishment concerned, or in the form of a joint service for several establishments, or on the basis of a contract or agreement made with a public or private hospital.

Employees must undergo a medical examination within eight days of their employment. Thereafter they are subject to periodical medical supervision. It is the duty of the employer to provide free medical care to his employees (and their families, if housed by the employer), free board for every sick worker detained in the infirmary at his establishment, and to arrange for the removal to the

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39. Public or private, lay or religious, civilian or military, including those where persons are employed in connection with work in the professions and those belonging to trade unions or employers' associations.

nearest medical unit of any sick or injured person fit to be moved and who cannot be treated with the facilities at the employer's disposal.

II. Workers' and Employers' Organisations and Other Bodies

This section deals with trade unions and employers' associations (para. 1), labour administration (para. 2), and professional institutions (para. 3).

1. Trade unions and employers' associations

Employers' associations are to employers what trade unions are to employees; each seeks to protect and to defend the interests of its members.

A. Formation of trade unions and employers' associations

The law recognises the right of workers and employers, without distinction whatsoever, to establish freely and without prior authorisation organisations (trade unions and employers' associations) for the study, defence, promotion, and protection of their interests, particularly those of an economic, industrial, commercial or agricultural character, and for the social, economic, cultural and moral progress of the members. However, all political activity by such unions and associations which is not connected with the furtherance of these objectives are

prohibited.[40]

Any persons forming a trade union or an employers' association must register it in the proper manner with the registrar of trade unions and employers' associations[41] who would then issue a certificate of registration if satisfied that all the necessary conditions for registration have been fulfilled. Application for registration must be made within three months of the formation of the trade union or employers' association.[42] The union or association must also be dissolved within three months of the date on which the registrar notifies his refusal to effect the registration[43] or his cancellation of the certificate of registration.[44] Every application for registration must

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40. Labour Code, s. 3.

41. The registrar is a Government civil servant appointed by decree.

42. The trade union or employers' association legally comes into existence only on the day the certificate of registration is issued.

43. By s. 14 of the Labour Code, any person aggrieved by a decision of the registrar to refuse or to cancel registration of a trade union or an employers' association may, within thirty days of the notification of such decision, refer the matter to the competent court.

44. The registrar will cancel the registration if he is satisfied: (i) that the certificate of its registration was obtained by fraud or mistake, (ii) that its registration has become void on grounds of unlawful purpose, (iii) that there has been on the part of the organisation a wilful violation of the law, or (iv) that the registered organisation has ceased to exist. See Labour Code, s. 13.

be signed by at least twenty workers, in the case of a trade union, and at least five employers, in the case of an employers' association. The persons applying for registration and members responsible for the organisation's management and administration must possess their civil rights and must not have been convicted of any offence involving the forfeitures laid down in s. 30(1)(2)(6) of the Penal Code.

Trade unions and employers' associations have the right to draw up their own constitutions and rules, to elect their representatives freely and to organise their administration. However, the constitution of any trade union or employers' association must include, inter alia, the name of the union or association, its registered office to which all communications and notices may be sent, its objects, provision for keeping full and accurate accounts, provisions for appointment and removal of members, and dissolution.

An employer is free to join or not to join an employers' association. Similarly, every employee has the right to join or not to join a trade union. An employee cannot be dismissed from or made to relinquish or be refused a job on the sole ground of his membership or non-membership of a union. An employee wishing to join a trade union must be gainfully employed at the material time. His membership of the union does not however cease simply because he is out of work. If a worker never joined

a trade union while he was gainfully employed, he may not do so when he becomes unemployed.

Trade unionism began in Cameroon after the Second World War and by 1972 there were no less than five large recognised unions with a total membership of about 100,000 workers:[45] the Cameroon Federation of Unions (Fédération des Syndicats du Cameroun, FSC), the Union of Denominational Workers Organisations (Union des Syndicats Croyants du Cameroun, USCC), the National Teachers Union (Syndicat National des Enseignants du Cameroun, SNEC), the National Federation of Private Schools Teachers (Fédération Nationale des Enseignants prives du Cameroun, FNEPCAM), and the Cameroon Development Corporation Workers Union. In 1972 the various trade union organisations in the country merged together to form the National Union of Cameroonian Workers. Employers' associations include the Chamber of Commerce, the Chamber of Agriculture and associations of those engaged in industry and the import-export trade.

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45. In 1973/74 there were only 180,482 wage earners in Cameroon. They worked in agriculture, mining, manufacturing industry, chemical industries, public works, electrical industries, transport, commerce, public service and as contract workers and labourers. Of the 180,482 wage earners 169,394 were men and 11,088 were women. In 1975 2,985,000 persons out of an African population of 6,425,000, were estimated to be economically active. See, African South of the Sahara 1978-79, Europa Publication, London, 1978, p. 283.

B. Functioning of trade unions and employers' associations

Every trade union or employers' association must have a treasurer who must keep a true account of all monies received and paid by him since he last rendered a like account. Union accounts and those of employers' associations are subject to Government control. The treasurer of each union or association must transmit to the registrar of unions and associations, before September 1st of each year, a general statement of the receipts, funds, effects and expenditure in respect of the proceeding calendar year. The statement must show fully the assets and liabilities as at the end of the financial year and the receipt and expenditure in respect of the various objects of the union or association. In addition, the registrar may at any time call upon the treasurer or management committee of the union or association to render detailed accounts of its finances. If the registrar is of the opinion that the general statement of account is unsatisfactory or that the accounts are inaccurate, he may order all the account books, records and documents to be sent to him for examination or, alternatively, appoint an auditor to do so.

Registered trade unions and employers' associations may have legal status. They may sue and be sued in any court of law. They may acquire moveable and immoveable property by way of purchase, gift inter vivos, legacy or bequest and put them into any lawful use in the

interest of its members. They may also engage in any lawful activity that would benefit its members socially, educationally, culturally, financially or otherwise. Trade unions and employers' associations may also act in concert. In particular, they may form federations of any kind and under any name.

An employer may deduct from the wages earned by a worker under his control the ordinary trade union contribution due from the worker, provided that the employer immediately pays the contribution so deducted to the trade union specified by the worker. These deductions may be made only under the following situations: (i) where an agreement to that effect has been freely concluded between the employer concerned and the trade unions to which the contributions are to be paid, (ii) where the worker has signified his consent thereto in writing, by signing or affixing his finger prints to a form jointly accepted by the employer and the trade union; this consent may be withdrawn or renewed by tacit agreement, and (iii) where the trade union undertakes to devote a proportion of the income so acquired to social security services for its members.

2. Labour administration

The Labour and Social Insurance Administration comprises all services responsible for all matters relating

to the conditions of workers, labour relations, employment, manpower movements, vocational guidance and training, placement, the protection of workers' health, and social insurance problems. In labour administration, the Labour and Social Insurance Inspector (often referred to as the Labour Inspector) is a key figure. He has a wide range of duties and prerogatives. It is through him that control is exercised over the various industries and other establishments.

A. Duties of the Labour Inspector

A Labour Inspector is a civil servant placed at the head of a Labour and Social Insurance Inspectorate. His is a stable job and he is expected to have no interest whatsoever in the establishments under his supervision. Before assuming his dutes, the Labour Inspector swears before the relevant Court of Appeal to carry out his duties well and faithfully and not to reveal, even after leaving the service, any manufacturing secrets or other processes with which he has become acquainted in the course of his duties.

The inspector receives all complaints about defective installations and machinery as well as any flouting of safety rules or administrative regulations in the industry. He must keep the source of such complaints confidential. When he proceeds to inspect any factory or establishment he must not intimate that the inspection is

being carried out following a complaint. Labour Inspectors are required to go on inspection tours of and to make inquiries about undertakings to ensure that labour laws and regulations are not contravened.

A Labour Inspector with the proper credentials is empowered to inspect any establishment at any time (day or night) and without notice. Once there he may carry out any examination or test, interrogate employer and employees, inspect any books or registers, or remove any sample of materials for analysis. If any labour law or regulation has been flouted such infringements are recorded in an official report, having force of prima facie evidence in the event of prosecution of the employer.

B. Control of establishments

No establishment of any kind may be opened without a declaration having first been submitted to the Labour Inspector. Every employer, whether public or private, and irrespective of the nature of his activity, must supply to the Labour Inspector detailed information, in the form of a declaration, concerning the situation of the manpower employed by him. Every employer must also maintain at the work place and keep constantly up to date a register called the 'employers' register' which records such information as would enable the control services of the labour administration to exercise supervision.

3. Professional institutions

A. The National Labour Council

This Council has a twofold function. First, it studies problems relating to labour, employment, vocational guidance and training, placement, movements of labour, migration, improvement of material conditions of workers, and social insurance. Secondly, it gives advice and formulates proposals and resolutions concerning laws and regulations to be made in these matters.

The Council is presided over by the Minister of Labour and consists of two members from the National Assembly, two from the Economic and Social Council, two from the Supreme Court, an equal number of permanent and substitute representatives of workers and employers appointed by the Minister of Labour, and, where appropriate, experts and technicians sitting in an advisory capacity appointed by the Minister of Labour.

B. The National Joint Collective Agreements and Wages Board

Also presided over by the Minister of Labour, this Board consists of an equal number of employers' and workers' representatives designated by the most representative employers' and workers' organisations. The Board has the following terms of reference: (i) make any suggestions and recommendations in the matter of collective agreements,

(ii) make any recommendations to the employers' associations and union organisations concerning any provision deemed advisable to include in the collective agreement and the fixing of the general level of wages in the private sector and eventual wage increases, and (iii) come to any decision binding upon employers and workers of the private sector concerning the standard national classification of occupations, minimum wage rate and the rate and conditions of granting bonuses, allowances and social benefits.

C. The National Commission for Industrial Hygiene and Safety

This Commission comes under the Minister of Labour. Its principal function is to study all problems relating to industrial medicine and to the hygiene and safety of workers. It is made up of technicians or experts of 'unquestionable' competence in the fields of industrial medicine, and industrial hygiene and safety. Workers and employers are represented in equal numbers within the Commission.

D. Shop stewards

Shop stewards are elected by their fellow workers on secret ballot. They hold office for two years. The term of office is renewable. The number of shop stewards in a given shop depends on the total labour force in that

particular establishment. The actual numbers are fixed by order of the Minister of Labour but each undertaking must have at least two shop stewards. Any dispute concerning eligibility or the regularity of elections must be referred to the Court of First Instance having territorial jurisdiction. If the dispute concerns eligibility either to vote or to stand for election the matter must be referred to the court within three days of publication of the electoral list. But if the dispute relates to the manner in which the elections were conducted it has to be referred to the court within 15 days of the announcement of the results of the elections.

The duties of shop stewards are: (i) to refer to the employers any individual or collective demands which have not been directly acceded to, in respect of conditions of employment, workers' protection, the application of collective agreements, classification of occupations, and wage rates; (ii) to refer to the Inspectorate of Labour any complaint or representation in respect of the application of the laws and regulations which the said Inspectorate is responsible for enforcing; (iii) to ensure that the rules relating to hygiene and safety of workers and to social insurance are observed, and to recommend any necessary action in these matters; and (iv) to transmit to the employer any useful suggestions for improving the organisation and output of the undertaking. Although shop stewards serve as intermediaries between workers and

the employer, workers are not denied direct access to the employer. Each worker is entitled to submit his demands and suggestions personally to the employer.

The law gives shop stewards protection against the possible wrath of the employer. No shop steward may be transferred or fired without the prior authorisation of the Labour Inspector. Any purported dismissal without the requisite authorisation from the Labour Inspector is null and void and of no effect. So in Eglise Presbyterienne du Cameroun & Hopital de Donenkeng c. Engoute[46] the dismissal of a shop steward was held to be wrongful where, among other things, the prior authorisation of the Labour Inspector had not been obtained. A dismissal would however be in order if the necessary authorisation has been sought and obtained; and it makes no difference that the dismissal was effected before the expiration of the period of notice.[47] Moreover, if a shop steward is guilty of serious misconduct, the employer is entitled to suspend him while waiting for the Labour Inspector's authorisation to dismiss him.[48] A request for authorisation to dismiss a shop steward is deemed granted where the Labour Inspector fails to reply within three months of the request being made.[49]

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46. Footnote 21.

47. CSCO, Arrêt No. 40/S du 15 fevr. 1973, 6 R.C.D. 169 (1974).

48. Labour Code, s. 137(2).

49. Ibid., s. 137(3).

III. Resolution of Labour Disputes

A labour dispute between employee(s) and employer(s) may arise as a collective or an individual dispute. Each type is resolved in its own way.

1. Resolution of collective disputes

A collective dispute is one which is characterised by (i) the intervention of a group of wage-earning workers, whether or not the said workers are organised in a trade union; and (ii) the collective nature of the interests at stake. The resolution of collective disputes is done extra-judicially. Such disputes are settled administratively by conciliation or failing which, by arbitration.

A. Conciliation

Whenever a collective dispute arises, the parties to it must bring it to the notice of the competent Labour Inspector who would then proceed to convene them and attempt to bring about an amicable settlement. The parties need not attend the convened meeting personally. They may send their agents to represent them at the reconciliation talks. If a party fails to appear and sends no representative he may be sentenced to a fine of between 5,000 to 200,000 francs cfa. The Labour Inspector must

then convene another conciliation meeting within the next 48 hours.

At the end of the attempt at conciliation, the Inspector must make a report stating whether one of three results has been reached: (i) the parties have reached agreement, (ii) the parties are only partially in disagreement, (iii) the parties are totally in disagreement. The report is then signed by the parties, each of whom is given a copy. Any agreement reached by conciliation is binding and enforceable as if it were a court decision. If the attempt at conciliation fails the Labour Inspector is bound to refer the dispute for arbitration.

B. Arbitration

Arbitration is undertaken by an Arbitration Board. Each Appeal Court area has an Arbitration Board made up of a judicial officer of the Court of Appeal (chairman), an employer assessor, and a worker assessor. The two assessors are designated by the chairman of the Arbitration Board from among assessors appointed by the local High Court.

The Board may take an award only in respect of a matter set down in the statement of non-conciliation as well as in respect of a matter that has arisen out of events subsequent to the making of the statement of non-conciliation and are a direct consequence of the dispute. The Board may give its award in law and in equity.[50] It

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50. The Board gives its award in law in disputes regarding

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has unfettered powers to obtain information on the economic situation of the undertaking and on the situation of the workers concerned in the dispute. It may seek the assistance of experts and may make any investigations necessary.

When the Board has made its award, it must notify it to the parties. Any party wishing to apply for a stay of execution must do so within eight days by registered letter. If no application for stay of execution is made the arbitration award becomes mandatory and effective as from the date indicated in the award.[51] Conciliation and arbitration proceedings are free of charge.

No lock-out may be made or strike action taken in contravention of a conciliation agreement or an arbitration award. An employer who makes a lock-out would have to pay wages to the workers for the days lost. He may also be declared unfit for membership of a Chamber of Commerce. On the other hand, workers who take strike action in disregard of conciliation or arbitration award may be fired and fined up to 30,000 francs cfa. Again, any

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Footnote 50 continued from page 712.

> the interpretation and application of laws, regulations, collective agreements and companies agreements. It gives its award in equity in other disputes, particularly those relating to wages and conditions of employment. Labour Code, s. 170.

51. Labour Code s. 172; see also Law No. 75/18 of 8 December 1975 (Recognition of arbitration awards).

strike or lock-out before the conciliation and arbitration procedures have been exhausted is unlawful. The Government may requisition, individually or collectively, any workers involved in any strike undertaken in a vital sector of economic, social, or cultural activity.[52]

2. Resolution of individual labour disputes

An individual labour dispute (it usually arises out of contract of employment between an employee and an employer) may be resolved administratively through conciliation or judicially.

A. Jurisdiction and composition of court

A Court of First Instance is competent to hear and determine any individual labour dispute where the claim involved does not exceed 500,000 francs cfa. Jurisdiction is exercised by the High Court if the amount of the cliam involved is in excess of 500,000 francs cfa. These courts are also competent to deal with all counter-claims or applications for set-off which by their nature fall within their jurisdiction. If one of principal counter-claims or applications for set-off exceeds the powers of the court, it must declare its lack of jurisdiction in that respect.[53]

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52. Labour Code, s. 165(3).

53. Ibid., s. 161. Cf. the case of Debalou Njila, footnote 33, where it was held that a labour court has no jurisdiction to entertain a counter-claim for damages for preventive detention.

As a general rule, the competent court is that of the place of employment. An appeal from the Court of First Instance or from the High Court lies to the relevant Court of Appeal.

A court sitting to hear and determine a labour dispute must be composed of a presiding judge (a judicial officer) and two assessors (one representing employers and the other employees). The two assessors who are to sit in any particular case are designated by the president of the court before which the matter has been brought.[54] If the president of the court sits alone without assessors the court is illegally constituted and its purported judgment a nullity.[55]

B. Procedure

The procedure may be divided into three stages: first, attempt at conciliation, secondly, the court

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54. Assessors are appointed from a biennial list for a term of two years by the Minister of Justice on the proposal of the Minister of Labour. They must be literate Cameroonians and -ust not have been convicted. They swear to discharge their duties with zeal and integrity and to preserve the secrecy of the proceedings. The office of assessor is gratuitous.

55. Garoua Court of First Instance, Judgement No. 28/S of 8 June 1971 (court illegally constituted); CSC, Arrêt No. 34/S du 1 fevr. 1973, 6 R.C.D. 171 (1974). At the Appeal Court also the President must sit with two assessors. If the president sits alone, the court is illegally constituted: Isaac Forcho v. Royal Exchange Assurance, and Joseph Nyambi v. C.D.C., CSC, Nos. 14/S and 15/S of 17.03.1977, unreported.

hearing, and finally judgment. Proceedings are entirely free of charge. No fees whatsoever are paid. Decisions and documents produced are registered free of charge. Procedural costs are treated on the same footing as costs in criminal proceedings in respect of their payment, settlement and collection. The fact the proceedings in labour matters are free of all charges is of great significance. It is an attempt to ensure that the ordinary worker is not prevented from asserting his rights in the courts of law because of lack of means.

a) Attempt at conciliation

Any individual labour dispute must first be submitted to the local Labour Inspector or his representative for an attempt at an amicable settlement. The parties cannot go directly to court. Only when this attempt at conciliation has failed may the next step, which is that of going to court, be taken. If the parties go to court without first submitting the matter for an attempt at conciliation, the court must stay the action until the Labour Inspector has attempted an amicable settlement and failed. If the court does not stay the action for the attempt at conciliation to be made but proceeds to hear the matter, the judgment delivered in the case would be null and void. Similarly, if the court proceeds to hear and give judgment in the case without having first satisfied itself that the matter had in the first place been

submitted for conciliation, the judgment delivered is void and of no effect.[56] Equally null and void is a judgment based on a claim which had not previously been submitted to an attempt at conciliation.[57] This procedure, which gives administrative authorities a crucial role to play in the resolution of labour disputes, prevents the courts being flooded with cases; to ensure that frivolous and vexatious cases do not get to the courts and take up much of their valuable time. This precaution is necessary in view of the fact that proceedings are free.

An attempt at conciliation may succeed or fail. If it succeeds the terms on which settlement has been reached are embodied in a statement of conciliation made out by the Labour Inspector (or his representative) and signed by him and the parties to the dispute. The statement becomes binding when it has been endorsed by the president of the competent court and marked for enforcement. On the other hand if the attempt at an amicable settlement fails (whether totally or partially) the Labour Inspector has to make out a statement of non-conciliation. If the failure is partial only the Inspector has to mention the points on which agreement has been reached. The statement of non-conciliation must be signed by the Inspector

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56. M.. P.. c. Z.. M.., CSCO, Arrêt du 24 août 1971, Penant, 1971, p. 567, note Mbella Mbappe; CSCO, Arrêt No. 96 du 20 dec. 1960, Bulletin No. 2, p. 58.

57. CSCO, Arrêt No. 39/S du 8 fevr. 1972, unreported.

and the parties to the dispute. A copy of the statement is forwarded to the president of the competent court and other copies to the parties.

A copy of the statement of non-conciliation is sent to the court, it is submitted, solely to serve as evidence of the fact that an attempt at conciliation has been made. The statement sent to the president of the competent court does not ipso facto seise the court of the dispute. The parties still have to initiate court action if they wish to. Action is initiated by an oral or written declaration made to the chief registrar of the co-petent court. The declaration must be accompanied by a certified copy of the statement of non-conciliation.[58] Once received the declaration is entered in a register kept for that purpose and a certificate of the entry delivered to the party instituting the action. The declaration or petition is then forwarded by the registrar to the president of the court.

b) The court hearing

Within two days of receipt of the petition (Sundays and public holidays excepted) the President of the Court summonses the parties to appear before him within the next 12 days at an appointed court, date and hour. The summons which must state the name and occupation

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58. There appears to be a tendency among litigants to treat this statement as a statement of claim.

of the plaintiff is served by post or through a bailiff. Parties appearing before the court may be accompanied or represented by a worker or an employer engaged in the same branch of activity or by a representative of the trade union or employers' association to which the party belongs. An employee may, moreover, be represented by a manager or employee of the establishment. All representatives (save for counsels) must be armed with a power of attorney.

Plaintiff and defendant (or their duly mandated agents) must appear in court on the day fixed for the hearing. The case is struck off the cause-list if the plaintiff fails to put in appearance (especially after successive adjournments) and does not satisfy the court that he was prevented by act of God from appearing. The plaintiff is however allowed the opportunity to start the action afresh; right from the initial stage. In other words, he must start all over again from the conciliation stage. If he does not, the action will be void. If it is the defendant who fails to put in an appearance, the court examines the case and proceeds to give judgment in default, awarding plaintiff all or part of his claim. The defendant or his agent need not however appear in person. The defendant may stay away and submit his defence in a written memorandum. In such a case appearance would be deemed to have been entered and the judgment deemed to have been given after a hearing of both parties. It makes

no difference that throughout the entire trial the defendant has in fact appeared in court only once. Every judgment (whether delivered in default or after hearing both parties) must be notified to the other party who may apply for a stay of execution or lodge an appeal within 15 days of delivery of the judgment.

One aspect of interest in these proceedings is that a married woman is empowered to accept conciliation and to act as plaintiff or defendant in court without the permission of her husband. This is a departure from the usual principle according to which a party in a case must have a locus standi in it. This power may be put into effective use by the married woman in a situation where the plaintiff or the defendant is too ill to act or where he has died (although in this latter case it is arguable that if the plaintiff dies then his cause of action dies with him).

Before the start of oral proceedings in court any assessor of the court may be recused: (i) if he has a personal interest in the matter, (ii) if he is related by blood or marriage up to the sixth degree to one of the parties, (iii) if in the year preceding the recusation there had been litigation involving the assessor and one of the parties or his relatives, (iv) if he has expressed an opinion in writing or orally on the matter in dispute, and (v) if he is the employer or employee of one of the parties to the case. The President of the court must make

a ruling immediately on any objection to an assessor. If the objection is over-ruled, the trial proceeds; but if it is upheld, the case must be adjourned and the recused assessor replaced.

In examining the case, the court may decide on its own motion or at the request of the parties, to adjourn the matter for up to fifteen days. The court may also order (giving reasons for the order) an inquiry, an inspection of premises or any other procedure for procuring information. At the end of the hearing, the court retires and deliberates in chambers. Unless there is postponement for further deliberation (the postponement may not be for more than eight days) a reasoned judgment must be handed down immediately and the record of the judgment signed by the President and the registrar.

c) Execution of judgment and appeals

Orders and judgments must bear the usual executory formula directing process-servers and bailiffs to execute them according to their tenor. A worker is entitled as of right to the assistance of the court in the execution of an order or a judgment given in his favour. This assistance takes the form of the designation of a bailiff by the President of the court to levy execution on behalf of the judgment creditor. If execution of the judgment involves the distraining of property and a third party claims to be the owner of all or part of such property, the third party may, before the sale, submit his claim to

the President of the court either orally or in writing. Where the evidence produced and the arguments put forward so warrant, the President may suspend the sale of the articles and effects claimed and then summon the parties within eight days to appear before him. After hearing them he makes an order for or against the appropriation of the property distrained.

After judgment has been delivered in any labour matter, an appeal may be made against it. The appeal must be made within fifteen days[59] by an oral or written declaration made to the chief registrar of the court that decided the matter. In Epoupa Mool Mbella c. Etat du Cameroun,[60] the Supreme Court held, (1) that an appeal made after 15 days was a late appeal and could therefore not be entertained; and (2) that the date on which the declaration was entered on the special register provided for that purpose was conclusive evidence as to the date on which the appeal was made; and that the question as to the date of an appeal is a question of fact, the findings on which having been made by the court below may not be disturbed by the Supreme Court.

After the declaration has been made it must be transmitted, within eight days to the registrar of the

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59. This time limit may, however, be extended (but for not more than 30 days) in the interest of justice and at the request of one of the parties.

60. CSC, Arrêt No. 102 du 5 juillet 1973, Bulletin des arrêts de la Cour Supreme du Cameroun, No. 29, 1973, p. 4101.

competent Court of Appeal together with a copy of the judgment and any letters, memoranda and other documents that have been submitted by the parties or party. An appellant who has made an improper or dilatory appeal may be fined from between 10,000 to 50,000 francs cfa. Judgments of courts of first instance (save for those concerning the court's own jurisdiction) are final and without appeal if they relate to applications for delivery of certificates of employment or pay slips.

CHAPTER FOURTEEN

ADMINISTRATIVE LITIGATION

In Cameroon there is a separate body of law, borrowed almost in toto from France, which describes aspects of governmental administration and governs litigation involving State agencies (including public utility corporations and local government bodies) and private parties. This body of law is known as Droit Administratif and is classified and taught in the Law Faculty of the University of Yaounde as an autonomous branch of droit public.[1] Droit Administratif, it has been said, is the 'law' of public law as Droit Civil is the heart of private law.[2]

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1. In Francophone Cameroon, the most characteristic trait of the structure of substantive law is the dichotomy of private and public law. Even the law section of the Yaounde Faculty of Laws and Economics is divided into a 'private law' and a 'public law' department. Law students graduate from the Faculty as either 'publicistes' or 'privatistes' although during their four years at the Faculty their fields of inquiry occasionally overlap. This structure of the substantive law into a private and a public law matrix has also been borrowed from France where "the fundamental division, the summa divisio, is between private law and public law. The dividing lines may be unclear, the logical bases may be disputed, but the traditional dualism recognised in Roman Law remains the most significant division of French Law. In legal theory this dualism, unknown to the ancient Germanic law, rests on the Roman law reference of Ulpian in the Digest: 'Publicum jus est, quod ad statum rei Romanae spectat; privatum, quod ad singulorum utilitatem'. In theory, some rules of law concern the State - the rules of public law; others concern relations of private persons - the rules of private law." David & de Vries, The French legal system, Oceana, New York, 1958, p. 45.

2. David & de Vries, op.cit., p. 49.

That part of Droit Administratif which deals specifically with litigation involving state agencies and private parties is known as le contentieux administratif; in fact, the judicial process in administrative law.[3]

There are various means by which disputes between the citizen and some organ of the State may be resolved. The parties may decide to resolve the controversy themselves by bargaining or by resorting to arbitration. In some jurisdictions, a special public body deals with such controversies; for example, the Scandinavian Ombudsman, the Soviet Prokuratura. In other jurisdictions redress against administrative wrongs may be obtained only within the administrative hierarchy itself. This happens in certain instances in England. In France too, it is a condition precedent, in certain cases, that the aggrieved citizen must have, before seeking the aid of the court, unsuccessfully referred the dispute to the administration itself. This is known in the literature as recours gracieux préalable.[4] Most countries however

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3. The term 'contentieux administratif' has here been rendered in English as 'administrative litigation' in preference to 'judicial review', an expression familiar in Anglo-American jurisprudence. 'Judicial review' is however not a term of art. "It is sometimes used to mean judicial scrutiny and determination of the legal validity of instruments, acts, decisions and transactions." (S.A. de Smith, Judicial review of administrative action, 3rd ed., Stevens & Sons, London, 1973, p. 25.) Moreover, in Anglo-American law, judicial review concerns review of administrative acts by the ordinary courts whereas in France it is by special courts known as tribunaux administratifs.

4. Cf. recours hierarchique and recours de tutel.

entrust the resolution of administrative disputes to courts which may either be the ordinary civil courts (as for example, in England and in the United States) or specialised courts known as administrative courts (as for example in France).

> "In some countries, redress against administrative wrongs is normally obtainable only within the administrative hierarchy itself. But most legal systems demarcate sets of relationships between the governors and the governed, the areas of administrative activity, in which claims and controversies may be resolved and grievances redressed through the medium of courts. These courts are not necessarily the ordinary courts of law, they may be special administrative courts. If they are special administrative courts, they will almost certainly apply substantive and procedural rules distinct from the ordinary law of the land, rules which recognise the disparities between the administration and the citizen, between the situations that characteristically arise in public law and in private law." 5

As a result of Cameroon's chequered colonial history, the development of the law on administrative litigation has not been the same in the English- and the French-speaking parts of the country. Before reunification of the two Cameroons on 1st October 1961, Anglophone Cameroon was administered by Britain as an integral part of Nigeria which was then a dependent territory with its sovereignty vested in the Queen of Britain. The constitutional set up of the time made the Governor-General of

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5. S.A. de Smith, op.cit., p. 3.

Nigeria and Cameroons the direct representative of the Queen.[6] He therefore enjoyed the state immunity which he derived from the Queen. Later, when a Commissioner was appointed for the Southern Cameroons as the representative of the Queen there he also enjoyed these immunities.

> "The English doctrine of Crown immunity arose in a constitutional system where the whole national sovereignty was vested in the King and where the State (as distinct from the King) was not conceived as having as corporate status or personality capable of having rights and duties or of suing and being sued in a court of law. The courts were the King's courts and he was the fountain of all justice which was administered in his name. This doctrine by degrees crystallised into a common law principle of immunity of the Crown, the state departments or any crown agents under the British dominion, from legal process. The remedy against the Crown was by way of petition of right in the High Court, put on a statutory footing by the Petition of Rights Act, 1860. This availed not only against the sovereign in his public capacity, but also against the sovereign in his private capacity, the common law drawing no distinction between the two." 7

The principle that the King could not be impleaded in his own courts meant that proceedings against the Crown for breach of contract or restitution of property could only be taken after obtaining a fiat by the inconvenient procedure

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6. Nigeria Letters Patent, 1946; Nigeria (Protectorate and Cameroons) Order in Council, 1946; Martin Wight, British colonial constitutions, Oxford at the Clarendon Press, 1952, pp. 219 et seq.

7. H.N.A. Enonchong, 'The position of the Cameroon state in litigation', ABBIA, No. 11, November, 1965, p. 63.

of petition of right. The principle that the King could not be impleaded in his own courts coupled with the doctrine that the King could do no wrong also meant that the Crown could not be proceeded against at all in tort.

> "No action lay at common law against the Sovereign personally, whether for public or private acts. Also - contrary to the law of agency and of master and servant - no action lay against the Sovereign for breach of contract or torts committed by Ministers, other officers or departments acting as servants or agents of the Crown. In certain cases, however, a petition of right would lie. The maxim 'the King can do no wrong' meant not only that the King could not be made liable by action, but also that wrong could not be imputed to the King, and therefore he could not be said to have authorised another to commit a wrong. This ruled out the maxim qui facit per alium facit per se where the Crown was the employer. As there is no concept of the State in English law, and as government departments are merely groups of Crown servants this meant that the citizen could not claim satisfaction out of public funds for torts committed by the Crown." 8

The remedy against the Crown by way of a petition of right was based on the theory that as the King was the fountain of justice, he would cause justice to be done as soon as the matter was brought to his notice. The remedy was therefore obtainable as a matter of grace and not as a matter of right. Moreover, the remedy was unavailable in cases of torts unconnected with the wrongful taking of property such as negligence or trespass, contracts of

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8. O. Hood Phillips & Paul Jackson, Hood Phillips' constitutional and administrative law, 6th ed., Sweet & Maxwell, London, 1978, p. 637.

service with members of the armed forces, contracts that fetter future executive action, and contracts dependent on grant from Parliament.[9]

Now, the English doctrine of Crown immunity became applicable in Anglophone Cameroon by virtue of s. 11 of the Southern Cameroons High Court Law, 1955, which makes provision for the application in that part of Cameroon of the common law, the doctrines of equity, and the statutes of general application in force in England as of January 1, 1900. In Cameroon, the English Petition of Rights Act, 1860 was subsequently replaced by the Petition of Rights Ordinance, Cap. 149 of the 1958 laws, under which the fiat of the Governor General was necessary for any suit against the government. Hence, at the time of reunification of the two Cameroons, the position with regards to administrative liability in Anglophone Cameroon was substantially the same as it was in England before the passing of the 1947 Crown Proceedings Act.[10] Also available against administrative actions were the common law prerogative remedies - habeas corpus testificandum and ad

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9. Idem., p. 640.

10. The main objectives of the Crown Proceedings Act, 1947 were, as far as practicable, to make the Crown liable in tort in the same way as a private person, and to reform the rules of procedure governing civil litigation by and against the Crown, especially by allowing an action without a fiat where petition of right obviously lay. Being a post-1900 statute, the Crown Proceedings Act 1947 was however not applicable in Cameroon.

subjiciendum, mandamus, certiorari, prohibition and injunction.

Following reunification however, it became unclear whether the Petition of Rights Ordinance was still applicable in Anglophone Cameroon. This uncertainty arose from the doubt whether a carry-over of the previous Royal Prerogative could be said to be in keeping with the new status of Anglophone Cameroon as a constituent state of the Federal Republic of Cameroon. The then West Cameroon High Court was presented with an opportunity to pronounce on this issue in the consolidated cases of Eric Dikoko Quan v. Attorney-General of West Cameroon (for the Government of West Cameroon) and Peter Moki Efange v. Attorney-General of West Cameroon (for the West Cameroon Government).[11] The plaintiffs in these cases claimed they had been wrongfully dismissed by the then West Cameroon Government and so took action against the defendants. They made application to the then West Cameroon High Court for an order for pleadings in a writ. At the hearing of the application counsel for the defendants raised a preliminary objection that by virtue of s. 53(1) and (4) of the West Cameroon Constitutional Law, 1961, ss. 4 and 5 of the Petition of Rights Ordinance applied and that no suit against the Government could be filed without the fiat of the Prime

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11. Suits Nos. WC/12/64 and WC/13/64, (1962-1964) W.C.L.R.45.

Minister. The substance of defence counsel's contention was that since the issues before the court could not have been brought as of right but as a matter of grace dependent on the discretion of the Prime Minister the plaintiffs were technically wrong to have begun their case by the issue of a writ of summons. Counsel for the plaintiffs argued that his clients had rightly started off the action by writ of summons since the substance of his clients' claim was like any other one in which any person may apply to the court for the issue of a writ under Order II rule 1 (Supreme Court Civil Procedure Rules). He further urged that to follow the procedure as laid down in the Petition of Rights Ordinance would in effect deprive a citizen of certain of his fundamental rights which the constitution has specifically preserved. The court ruled that the Petition of Rights Ordinance, Cap. 149, applied and that the procedure laid down in s. 4 of that Ordinance should be followed. Per Gordon, C.J., at page 46, "The argument of counsel for the plaintiffs that to follow the procedure as laid down in Cap. 149 would in effect be depriving an individual of his rights, is somewhat previous, it presupposes that the Prime Minister's fiat would be refused, as of course. Until there has been an application for it and a refusal to grant it the question of the fundamental rights of the citizen cannot arise."

Despite this ruling, opinion continued to differ

as to whether the Petition of Rights Ordinance applied in West Cameroon.[12] The matter was however put beyond all doubt by the repeal of the Petition of Rights Ordinance by s. 7 of Law No. 65/LF/29 of 19 November 1965, which law set up separate Benches of the Federal Court of Justice in Yaounde and Buea, for the hearing and determination of administrative suits against the federal and state governments and government agencies.

The situation in Francophone Cameroun was altogether different. As early as 1920 the French had set up there an organ known as the conseil du contentieux administratif to review, to some extent, administrative actions and omissions.[13] This organ had a similar role to that of the tribunaux administratifs in France. However, it had jurisdiction only in respect of contentieux

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12. Enonchong, 'The position of the Cameroon state in litigation', ABBIA, No. 11, 1965, p. 59. Enonchong argues that the case just discussed was decided per incuriam as art. 2 and 46 of the Federal Constitution were not adverted to in construing art. 53(1) and (4) of the West Cameroon Constitution, 1961. "The Federal Constitution only permits the continuation of Federated State law 'in so far as it does not conflict with the provisions' of the Federal Constitution ... The Petition of Rights Ordinance (Cap. 149) ... is in conflict with article 2 of the Federal Constitution, which gives the federation corporate personality and for this and other reasons, already mentioned, void. On similar grounds the whole common law principle of immunity is also void."

13. Décret du 14 avril, 1920 portant création de conseil du contentieux administratif dans les territoires occupés de l'ancient Cameroun; Emile Mbarga, 'L'évolution de la juridiction du conseil d'Etat francais sur le Cameroun', Ann. Fac. de Droit du Cameroun, No. 7, 1974, p. 3.

local, as distinct from contentieux de l'Etat francais, and only then in recours de pleine juridiction: le recours pour excès de pouvoir du contentieux local and le contentieux de l'Etat francais were reserved to the Conseil d'Etat in Paris. The procedure before the conseil du contentieux administratif was laid down in an arrêté of 16 December 1921. In a sense, the conseil du contentieux administratif was nothing other than the conseil d'administration sitting in a judicial capacity. It was presided over by the Haut Commissaire sitting with two civil servants or magistrates annually appointed by himself. Although repeated attempts were made to divorce the conseil du contentieux from the conseil d'administration[14] it was not until 1952 that separation of the two organs was finally achieved.[15]

In 1959 Francophone Cameroun gained internal autonomy and the conseil du contentieux administratif became the Tribunal d'Etat but retaining the composition and organisation of the old conseil du contentieux.[16] However, the dichotomy between contentieux local and contentieux de l'Etat francais was abandoned. All categories of administrative disputes were simply contentieux

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14. Décret du 13 avril 1927; décret du 3 nov. 1928.

15. Décret du 8 juillet 1952. The president of the conseil du contentieux became an appeal court judge and no longer the Haut Commissaire.

16. Décrets du 4 et 9 juin 1959.

local, jurisdiction over which became exercisable by the Tribunal d'Etat.[17]

The Tribunal d'Etat was a court of first and last resort in administrative matters. Its decisions were not subject to appeal. The reason was that the authorities wished to preserve, as in France, the autonomy of juridiction administrative. However, it was distressing to litigants that there was no channel by which a party dissatisfied by a decision of that court, could have its erroneous decision vacated. Cries for 'double degré de juridiction' led to the passing of a law of June 20, 1961 empowering the East Cameroon Supreme Court to entertain appeals against decisions rendered by the Tribunal d'Etat. This law was given retrospective effect so as to enable previous judgments by the Tribunal d'Etat to be appealed against (if a dissatisfied litigant was so minded to do so). The East Cameroon Supreme Court was also empowered to resolve, as does the French Tribunal des Conflits, conflicts of jurisdiction between the ordinary courts and the administrative court.

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17. By s. 1 of the decree of 4 June 1959, contentieux administratif included: appeals for annulment of administrative acts on grounds of ultra vires; litigation concerning administrative contracts, concessions of public services, public property, the rights of civil servants; actions against local authorities, public establishments and public law bodies; plaints for interpretation of law and disputes concerning the legality of administrative acts. Section 2 of the same decree provided that an administrative decision could be challenged on any of the following grounds: 'vice de forme, incompétence, détournement de pouvoir, violation de la loi'.

On October 1, 1961, Anglophone and Francophone Cameroon unified under a federal constitution. Article 33 of that constitution set up the Federal Court of Justice, organised soon afterwards by an ordinance of 4 October 1961. This court was empowered to deal, inter alia, with administrative litigation concerning the federal government. Cases concerning the federated state of East Cameroun were tried at first instance by the Tribunal d'Etat and on appeal by the East Cameroun Supreme Court while those against the West Cameroon government were tried by the ordinary courts subject to the immunity from process, inherited from the British Crown, which that federated state enjoyed. This cumbersome, incoherent and unsymmetrical system of administrative litigation was swept away by Law No. 65/LF/29 of 19 November 1965, which established a uniform and simplified system of administrative litigation. This law was subsequently consolidated by a law of 14 June 1969 fixing the composition and procedure of the Federal Court of Justice.[18]

The unitary constitution of 1972 abolished the Federal Court of Justice and the Supreme Courts of the two federated states and vested their jurisdiction in a single Supreme Court of Cameroon, newly created.[19] No separate

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18. On the Federal Court of Justice, see for example, Emile Mbarga, La cour fédérale de justice, thèse, Paris, 1970; Marcel Nguini, 'La cour fédérale de justice du Cameroun', 3 R.C.D. 35 (1973).

19. See, supra, Chapter 8.

administrative courts now exist in Cameroon. Administrative cases are adjudicated by the Supreme Court; at first instance by the Administrative Bench of that Court, and on appeal by the Full Bench of the Court.

There is now a uniform law governing administrative litigation in both Anglophone and Francophone Cameroon. This chapter gives an outline of that law which, for clarity of exposition is treated under three headings: scope of administrative litigation (I), contentious proceedings before the administrative court (II), and procedure before the administrative court (III).

I. Scope of Administrative Litigation

It is not every case involving the State or any of its agencies that is justiciable before the administrative court. There are cases which appertain to the administrative jurisdiction and other which appertain to the civil order of courts. Moreover, borderline cases are bound to arise which give rise to difficulties. This problem calls for a determination or delimitation of the respective spheres of the administrative and civil order of courts.[20] Over what type of cases would the Administrative

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20. In France, in the years immediately following the Revolution, the principle of the separation of powers as between judiciary and executive was expressed in a Law of August 16-24, 1790, art. 13: 'Judicial functions are distinct and shall always remain separate from administrative functions. Judges may not, on pain of

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Bench of the Supreme Court exercise jurisdiction? If a case arises over which both the civil and the administrative order of courts are claiming or declining jurisdiction how is such a conflict to be resolved?

1. Delimitation of jurisdiction between the civil and administrative order of courts

The law has expressly reserved certain categories

Footnote 20 continued from page 736.

forfeiture, interfere in any manner with the operations of administrative bodies, or summon administrators to appear before them to account for the exercise of their functions.' This law was used to deprive the ordinary courts of jurisdiction in any matter connected even remotely with administrative activities. In the early 19th century a number of criteria were adopted to demarcate those disputes which fell within the respective competence of the two order of courts. The first criterion was that of the state as debtor (l'Etat débiteur) under which the Conseil d'Etat denied the ordinary courts competence to condemn the state to any money payment. The second was the criterion of 'the act of public authority' (acte de la puissance publique or acte d'autorité). This drew a distinction between those actions of the administration which involved their public authority and mere acts of management (actes de gestion) which did not: the former were outside the jurisdiction of the ordinary courts, the latter were within it. The third criterion was that of 'public administration' (gestion publique) as distinguished from 'private administration'; in the latter the administration used the same processes as the private citizen and came therefore within the scope of the ordinary courts. On the other hand disputes arising out of gestion publique belonged to the administrative courts. These early criteria were discarded in the well-known case of Blanco, T.C., 8 Feb., 1873, D. 1873. 3. 17 conl. David. In that case, a new principle, that of 'public service' was adopted. A little girl was injured by a wagon crossing the road between different parts of a state-owned tobacco factory. Held, that the injury arose out of the activities of a public service and that the administrative court had jurisdiction to entertain the claim for damages.

of controversies involving the administration[21] for resolution by the administrative court.[22] The scope of administrative litigation is set out in s. 9 of Ordinance No. 72/6 of 26 August 1972, as amended by Law No. 76/28 of 14 December 1976, which enacts as follows:

> "S. 9(1). The Supreme Court shall have jurisdiction over all administrative cases against the State, local authorities and public corporations.
> (2) Administrative matters shall include:
> (a) Petitions for cancellation of acts or of failure to act on the ground of ultra vires and, except in criminal proceedings, interlocutory challenges to the legality of such acts, an act or failure being ultra vires for the purpose of this section where:
> - it is bad in form,
> - it is made without jurisdiction,
> - it is contrary to statutory or administrative regulation,
> - its making is an abuse of authority.
> (b) Claims for damages for loss caused by an administrative measure.
> (c) Disputes on contracts (unless concluded expressly or by implication under

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21. In Cameroon, as in France, the term 'administration' is not limited to Government (in America the term is synonymous to Government) or the Civil Service (in England 'administration' has the narrow meaning of Civil Service). It is generally used to refer to the permanent framework of governmental activity carried on despite changes of government.

22. The French speak of compétence par détermination de la loi as opposed to système de la clause générale de compétence (i.e. the method of delineating competence whereby the legislator merely states a general principle from which it may be logically inferred the type of cases appertaining to the administrative courts and those cognisable by the ordinary courts). See, André de Laubadère, Traité de droit administratif, 6e ed., L.G.D.J., Paris, 1973, p. 405.

> the ordinary law) or on concessions to run public services.
> (d) Disputes concerning State land.
> (e) Any dispute expressly referred by law to the administrative courts.
> (3) The ordinary courts shall have jurisdiction over any other claim or dispute in accordance with the ordinary law, whether or not any juridical person described in subsection 1 be a party, the liability of the said juridical person replacing without more that of any agent who has caused loss, whether or not in the cause of his employment.
> (4) They shall further have jurisdiction over administrative trespass on private land and any arbitrary step by the administration against liberty and property, with power to make any order to bring it to an end. A ruling shall be given by the Full Bench of the Supreme Court on any interlocutory plea made in the case of an arbitrary step by the administration against liberty or property.
> (5) No court shall have jurisdiction over an act of State."

Section 9(2) would seem to suggest that the categories of matters that may be adjudicated by the administrative court is not closed. This is borne out by the clause, 'administrative matters shall include'. This formulation, it is submitted, leaves open-ended the categories of possible administrative matters that may be brought before the administrative court for adjudication. If this construction be correct, then the enumeration in s. 9(2) is only indicative not exhaustive. Support for this view is found in s. 9(2)(e) which provides that administrative matters shall include 'any dispute expressly referred by law to the administrative courts'. This in effect means that Parliament may still add other heads of administrative matters to the existing list. Thus, for

example, the administrative court has jurisdiction to entertain controversies relating to income tax and other forms of direct taxation since taxation is peculiarly an administrative activity and one conducted through the special processes and prerogatives of the fiscal authorities.[23] However, while le contentieux fiscal properly belongs to the administrative judge, indirect taxation (customs and excise duties, stamp duties, sales tax, and other forms of contributions indirectes) falls within the competence of the ordinary civil courts.

A. Matters over which the administrative court exercises jurisdiction

As the court which deals with administrative disputes, the Administrative Bench of the Supreme Court has jurisdiction over three types of administrative controversies: litigation concerning unilateral administrative acts, litigation concerning administrative contracts and concessions to run public services, and disputes concerning state land.

a) Disputes concerning unilateral administrative acts

The concept of 'unilateral administrative

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23. Cameroon General Tax Code, s. 240; Law of 10 November 1969 and Decree of 30 June 1969 (Financial liability of public accountants).

acts' is a familiar one in French administrative law.[24] It covers measures of general application (actes règlementaires) such as governmental decrees, ministerial regulations or local by-laws, as well as any decision which applies to a single individual (actes individuels) or to a group of individuals (actes collectifs). These actes administratifs are characterised as unilateraux because they are taken without the consent of those affected by them. They are commonly contrasted with administrative contracts which are said to be les actes administratifs bilateraux because they require the consent of the other contracting party. They are also distinguished from les mesures d'ordre intérieur administratives, that is, measures of purely internal organisation within the administration. These mesures d'ordre intérieur are, in general, regarded as matters within the complete discretion of the administration and are therefore not normally open to judicial review at all.[25]

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24. André de Laubadère, op.cit., pp. 217 et seq.; M. Waline, Droit administratif, 9e ed., Sirey, Paris, 1963, pp. 434 et seq.

25. Thus, one cannot challenge a departmental circular giving advice (as distinct from directives) on the interpretation of a statute; nor an instruction about school uniform or curricula: so in Chapou, C.E., 20 oct.1954, Rec. Lebon 1954, 541, the Conseil d'Etat refused to entertain proceedings to quash a headmistress's rule forbidding the wearing of ski-trousers. A similar attitude is taken towards disciplinary measures in the armed forces, an attitude not dissimilar to that adopted in the much criticised decision (on the ground that it cast doubt on the scope of natural justice) of the English Court of Appeal in Ex parte Fry, [1954] 2 All E.R. 118.

In Cameroon, the concept of 'unilateral administrative acts' was judicially enunciated for the first time by the then Federal Court of Justice in 1968. It was in the leading case of Ngongang Njanke Martin c. Etat du Cameroun.[26] In that case the court defined 'an administrative act' as 'a unilateral legal act conferring rights and imposing obligations on individuals and taken by an administrative authority in the exercise of an administrative power'.

(i) An administrative act is a 'legal act'

This limb of the definition means that decisions of the administration must have a legal basis and conform to law. It underscores the fundamental principle that the administration is subject to the Rule of Law. A legal act may be said to be one aimed at producing legal effects, at altering an existing legal situation. In law every person is, at any given point of time, the centre of a cluster of rights and obligations which constitute his legal situation at that given time. A legal act effects a change in that situation. For example, the appointment of a person as a civil servant is a legal act because it confers upon him certain rights, powers, duties, and obligations as a civil servant.

However, physical activities (opérations matérielles) carried out by the administration may also

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26. C.F.J., Arrêt No. 20 du 20 mars 1968, unreported.

produce legal consequences or effects. Thus, if in the course of undertaking a certain activity (e.g. constructing a road) the administration were to occasion loss to someone, it would be legally bound to repair the damage caused. But a distinction does exist between opérations matérielles (also known as les faits juridiques) and les actes juridiques:[27] in the former case the legal effect produced is incidental to the primary objective of the administration in engaging in the activity. Suppose for example that a regiment of the Cameroonian army, out on a shooting exercise, negligently injure somebody in the course of the shooting practice. Evidently, the regiment did not set out to injure anyone; but the administration would nonetheless be held liable. Furthermore, whereas, in principle, disputes arising from les actes juridiques are justiciable before the administrative court, those flowing from les faits juridiques are justiciable before the ordinary civil court.[28] In practice however, not all disputes flowing from les faits juridiques are justiciable before the ordinary civil courts. A distinction is made

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27. To tar or construct a stretch of road for example, is a mere physical act. The distinction between fait juridique and acte juridique may also be illustrated with the case of arrest. The arrest warrant is a legal act (acte juridique) while the apprehension or capture of the person against whom the arrest warrant was issued, is a mere physical act (fait juridique). Sometimes, however, it is not easy to draw the line between the two concepts.

28. C.F.J., Arrêt No. 9 du 15 oct. 1969: Bollo Joseph c. Etat du Cameroun, unreported.

in the literature between 'voluntary' and 'involuntary' faits juridiques. Disputes arising from involuntary faits juridiques (such as accident cases) are resolved by the ordinary court while those arising from voluntary faits juridiques (for example the demolition of houses) are adjudicated by the administrative court.[29] In Meka Charles c. Etat du Cameroun[30] the Customs Department seized and sold goods smuggled into the country. The Federal Court of Justice held that the action by the Customs Department amounted to une opération matérielle. Having done so the court should have claimed jurisdiction over the dispute on the basis that the action was clearly a voluntary one. Instead, the court, it is submitted, advanced a tenuous argument for claiming jurisdiction in the case. It characterised, doubtfully, it is further submitted, the action by the Customs Department as un acte juridique unilateral, arguing that the action taken presupposed that a decision (though neither published nor notified to the appellant) had earlier been taken by the Customs Department to seize and sell the goods.

(ii) An administrative act is a unilateral legal act 'conferring rights and imposing obligations on individuals'

This second limb of the definition of an administrative act distinguished an administrative act from such

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29. Georges Vedel, Droit administratif, 4 ed., Themis, P.U.F., 1968, p. 495.

30. C.F.J., Arrêt No. 1, 1968.

administrative measures as those concerned merely with internal administrative organisation (circulars, instructions, directives) and which therefore do not, in principle, directly affect individuals. Any petition for redress based on any of these measures is outside the province of the administrative court. Administrative circulars, instructions, and directives do not, strictly speaking, constitute a source of legality.[31] They cannot therefore be prayed in aid in any proceedings before the administrative court.[32]

The fact that an administrative act is characterised as 'a unilateral act' does not however mean that the administrative court may not take cognisance of disputes arising out of administrative contracts. It may. But its jurisdiction in this sphere is narrower than in the case of 'unilateral administrative acts'. This is because of the all-pervading contract law principle of

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31. Décret-loi, décret, ordonnance (all of these emanate from the President of the Republic), and arrêté (this emanates from a Minister) are all administrative instruments having force of law like loi (emanating from the National Assembly). Administrative circulars, directives and instruments whether emanating from heads of local councils, administrative units or parastatals, government ministers or the Head of State, have no force of law.

32. Procureur Général près la cour suprême c. Pauchet Claude et Etat du Cameroun, C.F.J. Arrêt No. 20 du 16 mars 1967, unreported; Onana Jean Pierre c. Etat du Cameroun, C.F.J., Arrêt No. 43 du 30 avril 1968, 'Recueil Mboyoum' 1962-1970, p. 29.

privity of contract: only a person who is a party to a contract can sue on it; and no person can have obligations imposed on him by a contract to which he is not a party.

As a general principle, a recours en annulation pour excès de pouvoir does not lie against an administrative contract (or any other contract for that matter). So a party to an administrative contract cannot petition the administrative court to have the contract annulled on the ground of ultra vires. Proceedings for the rescission of a contract may be instituted in the administrative court only at the instance of a party to the contract and then only by way of a recour juridictionnel. However, there is an exception to this general rule, an exception based on the theory of actes détachables. This theory rests on a distinction, sometimes too subtle, between the contract itself (which may not be attacked by third parties) and acts which are said to be detachable from the contract. The theory postulates that certain acts by the administration in the course of concluding a contract, or in carrying out the provisions of a contract, are separable from the contract itself.[33] For example, if the executive of a municipal council were to take a decision authorising the mayor to contract on behalf of the council, the decision authorising the mayor to contract is characterised as an

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33. Cf. the following French cases relating to the classification of council houses (the decisions relating to the classification of those houses were held to be actes détachables): Martin, C.E., 29 dec. 1905, R.D.P. 1906. 249, concl. Romieu, note Seze; Société Anonyme des Livraisons Industrielles et Commerciales, C.E., 24 avril 1964, D. 1964. 665, note Debbasch.

acte détachable and may be challenged by a third party to the contract on grounds of ultra vires. Where the action succeeds, it is the offending acte détachable and not the contract itself which is nullified, although should such an annulment affect the substratum of the contract any of the contracting parties is entitled to bring an action for rescission of the contract.

(iii) An administrative act is an act 'taken by an administrative authority in the exercise of an administrative power'

This limb of the definition eliminates acts of private bodies and acts of authorities which though public are in fact not administrative, from the category of 'administrative acts'.

Acts of private bodies. Nowadays, owing to the growth of State activity (the modern state has become the largest employer, contractor, occupier of property, and the owner of large enterprises) the administration often acts through intermediaries. This is particularly so in the area of public services. Not infrequently, private bodies are granted rights to run public services.[34] Anxious

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34. A public service is any activity of a public authority aimed at satisfying a public need. In Terrier, C.E., 6 fevr. 1903, S. 1903. 3. 25, concl. Romieu, note Hauriou, a local authority organised a viper-destruction service in the public interest and promised payment for every viper killed by a member of the public. Terrier was refused payment for his dead vipers. He sued the local council in the Conseil d'Etat which held it had jurisdiction to entertain the matter since a public service was involved. A similar view was taken by the Conseil d'Etat in Therond, C.E., 4 mars 1910, s. 1911.3.17, concl. Pichat, note Haurio, where the town engaged the complainant to catch stray dogs and collect dead ones.

to see that these services are properly run the State has found it necessary to vest in these private bodies the 'prerogatives of public authority' (prérogatives de puissance publique). For example, the right to take unilateral executory decisions. Thus in the leading French case of Montpeurt[35], the Conseil d'Etat held that unilateral decisions of general or individual application (les décisions unilaterales règlementaires ou individuelles) emanating from private bodies running public services and vested with the prerogatives of public authority may be challenged in the administrative court in the same way as though they had been decisions taken by an administrative authority.

In that case, the concept of service public was extended to a statutory 'professional committee' of manufacturers formed after the German occupation of France in 1940 to co-ordinate glass production in view of the acute shortage of materials.[36] But the court failed to specify the legal nature (public or private law body) of that 'professional committee'. It was in Magnier[37] that the

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35. C.E., 31 juillet 1942, D.1942, p. 138, concl. Ségalat.

36. In Caisse Primaire Aide et Protection, C.E., 13 mai 1938, D.1939.3.65, concl. Latournerie, the court held that although provident societies (caisses) were private and not public law bodies, they were engaged in providing a public service. Again, in Bouguen, C.E., 2 avril 1943, S.1944.3.1, concl. Lagrange, note Mestre, it was held that the governing body of the medical profession was participating in the functioning of a public service, although not itself a public institution.

37. C.E., 13 janv. 1961, Rec. Lebon, 1961, p. 33.

Conseil d'Etat specifically characterised the body as a private law one. In France therefore, decisions from private law bodies executing a public service and using public law prerogatives are considered, from the point of view of their litigation, as administrative acts.

The law is otherwise in Cameroon. Only acts which emanate from 'an administrative authority' are administrative acts. Acts from private law bodies are not administrative acts and it makes no difference that the private law body has been invested with the prerogatives of public authority. In Bernard Auteroche c. Ordre National des Medecins,[38] the court held decisions taken by the National Order of Doctors to be administrative acts. Although the court did not say whether it considered the body to be a private or a public law one, the decision would seem to suggest that the court regards professional bodies as public law bodies for, there is judicial authority to the effect that the jurisdiction of the administrative court is limited 'to the taking of cognizance of actions against decisions of public law bodies'.[39]

Acts of public but non-administrative authorities. In Cameroon laws passed by the National Assembly cannot be

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38. C.F.J., Arrêt No. 50 du 27 janv. 1968, unreported.

39. Obam Etame Joseph c. République Fédérale du Cameroun, C.F.J., Arrêt No. 98 du 27 janvier 1970, unreported.

the subject of judicial review by the administrative court.[40] Judicial review has also been ousted in the case of decisions taken by the various organs of the National Assembly (Bureau, Speaker, Parliamentary Commissions) when such decisions relate to the elaboration of laws. However, acts of the administrative services of the National Assembly may be proceeded against in the administrative court.[41] Decisions which, in terms of their content, may be likened to law, but which originate from the executive, are deemed to be administrative acts. For example, regulations on public administration made by the executive at the request of Parliament, in order to complete the provisions of a law; '_règlements autonomes_' made by the President of the Republic on subjects other than those reserved for Parliament under art. 20 of the Constitution. On the power of the Executive to legislate by way of

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40. _Société de Grand Travaux de l'Est_ c. _Etat du Cameroun Oriental_, C.F.J., Arrêt No. 4 du 28 oct. 1970, unreported; _Claude Halle_ c. _Etat du Cameroun Oriental_, C.F.J., Arrêt No. 105 du 8 dec. 1970, unreported. Articles 7 and 33 of the Cameroonian Constitution spell out a special procedure for judicial review of legislative actions before the Supreme Court sitting as a constitutional court. This review may be initiated only by the Head of State.

41. This is the position in France since the passing of an Ordinance of 17 November 1958. It was this special legislation in the form of a _loi organique_ that has made it possible in France for the State to be sued in the administrative courts for accidents caused by parlaimentary officials in the course of their duties. Hitherto, this could not be done: _Compagnie Générale d'Assurances_, D.1953.J.718, note Morange.

ordinances , art. 21 of the Constitution enacts as follows:

> "Art. 21 - Provided that with regard to the subjects listed in article 20, the National Assembly may empower the President of the Republic to legislate by way of Ordinance for a limited period and for given purposes.
> 2) Such Ordinances shall enter into force on the date of their publications. They shall be tabled before the National Assembly for purposes of ratification within the time limit fixed by the enabling law.
> 3) They shall remain in force as long as the Assembly has not refused to ratify them."

Such Ordinances clearly have the force of law even before they have been ratified by the National Assembly. This being the case, it has been suggested, rightly, it is submitted, that such Ordinances are not subject to judicial review by the administrative court.[42]

In France, no action may be brought before the Conseil d'Etat upon the decision of the government to introduce a bill into Parliament,[43] or of the Prime Minister to reshuffle his cabinet, or of the President of the Republic to submit a bill to referendum or to exercise the exceptional powers conferred upon him by article 16 of the French Constitution in the face of a national emergency.[44] In Cameroon, the law on this point is still obscure.

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42. Eric Boehler, 'Réflexion sur la nature juridique des ordonnances de l'article 21 de la constitution du 2 juin 1972', 5 R.C.D.8 (1974).

43. Mutuelle Nationale des Etudiants de France, C.E. 9 mai 1951, Rec. Lebon, 1951, p. 253.

44. Rubin de Servens, C.E. 2 mars 1962, J.C.P.1962.12613, concl. Henry.

However, one commentator has stated with confidence that in Cameroon, 'peuvent faire également partie de la catégorie des actes administratifs les décisions prises par le Président de la République dans le cadre de l'article 11 (état d'exception) lorsqu'elles portent sur le domaine règlementaire'.[45]

The administration of justice is a public service. It is one of the foremost areas in which public authority is exercised. By virtue of the principle of the separation of powers, the judiciary and not the executive administers justice. However, the organisation of the judicial service is the responsibility of the executive and not the judiciary. Thus any measure taken by the executive relating to the organisation of the judicial service is an administrative act and may be challenged in the administrative court.[46] Accordingly, decisions creating or suppressing courts as well as those concerning the career and discipline of judicial officers may be challenged in the administrative court.[47] The position is

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45. Henri Jacquot, 'Le contentieux administratif au Cameroun', 7 R.C.D.24 (1975).

46. Tagny Mathieu c. Etat du Cameroun, C.F.J., Arrêt No. 19 du 16 mars 1967, 'Recueil Mboyoum' 1962-1970, p. 73.

47. Cf. the French cases of Falco and Vidaillac (selection of judicial officers to sit in the Conseil Supérieur de la Magistrature): C.E. 17 avril 1953, J.C.P.1953.2. 7598, note Vedel; Ratzel (measures affecting the career prospects of a judge), C.E. 22 janv. 1954, Rec. Lebon, 1954, p. 46.

otherwise with regards to the functioning of the judicial service. All matters concerning the operation of courts are outside the purview of the administrative court. Thus for example, the administrative court may not take cognisance of suit based on a decisions to prosecute or not to prosecute, the grant or refusal of a pardon,[48] or on the activities of the police judiciaire. The police administrative are however subject to the jurisdiction of the administrative court.[49]

Act of State. Neither the administrative court nor any other court has jurisdiction over an act of State. This absolute prohibition is based on the theory that certain governmental acts are so important from the point of view of the preservation and defence of State that they must not be limited by legal considerations. An act of State (acte de gouvernement) is a measure which, though taken by the government, is completely immune from challenge in any court. This means there is a zone in governmental activity into which the judge has no access; a field within which the government has an unfettered

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48. Cf. French case of Gombert, C.E. 28 mars 1947, R.D.P. 1947.95, note Waline.

49. Cf. French cases of Lecomte and Daramy, C.E. 24 juin 1949, D.1950.75; Société Frampar (prefect's seizure of a newspaper as an act of police administrative), C.E. 24 juin 1960, R.D.P.1960.815, concl. Heumann.

prerogative of action.[50]

In France, in the early part of the nineteenth century, this 'free zone' of governmental activity used to be defined by the government itself. Any measure touching on la haute politique and prompted by a political motive (mobile politique) was said to be an act of State.[51] This in effect meant that any measure which the executive took could, so long as the government claims it was motivated by political considerations, be considered an act of State and therefore outside the reach of judicial control.[52] This 'political motive' criterion effectively gave the government a free hand to determine the extent to which it was prepared to be subject to the rule of law. It was a dangerous criterion and so was abandoned towards

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50. The term 'act of State' has no technical definition in British constitutional law. The expression is generally used for an act done by the Crown as a matter of policy in relation to another State, or in relation to an individual who is not within the allegiance of the Crown. Acts done under the authority of the Crown in relation to an alien outside British territory or to an enemy within Britain are characterised as act of State so as to prevent the aggrieved person from obtaining redress for damage done. Acts of state in relation to foreign states include the declaration of war and peace, the making of treaties, the annexation and cession of territory, the sending and receiving of diplomatic representatives, and the recognition of foreign states and governments. An act of State cannot be used as a foundation of an action because such acts cannot be questioned and are outside the jurisdiction of British courts. Acts of State are non-justiciable. See generally, O. Hood Phillips and Paul Jackson, op.cit., pp. 281 et seq.

51. Georges Vedel, op.cit., pp. 208 et seq.

52. Duc d'Aumale (book seized from the editor), C.E. 9 mai 1867, S.1867.2.124, concl. Aucoc, note Choppin.

the end of the nineteenth century.[53] The landmark in the evolution of the doctrine of act of State was the case of Prince Napoleon Bonaparte.[54] The annual Army List of 1873 omitted the name of Prince Napoleon who had been appointed general by the emperor in 1853. The Conseil d'Etat to whom the Prince appealed rejected the argument of the Minister of War that the plea of acte de gouvernement could be raised in any case of a political complexion such as this undoubtedly was. The importance of this case lies in the fact that it established the right of the Conseil d'Etat to determine for itself what matters fall within the doctrine of act of State. Since this case it is the court and no longer the government itself which determines the extent to which the government can be subjected to law. The modern trend of the case-law however, is to curtail this doctrine. Decisions after Prince Napoleon have progressively pared it down[55] so much so that today it extends only to the relations of the government, on the one hand, with Parliament,[56] and on the

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53. J.M. Auby & R. Drago, Traité de contentieux administratif, Tome I, 2 ed., L.G.D.J., Paris, 1975, p. 96.

54. C.E. 19 fevr. 1875, D.1875.3.18, concl. David; see also, Marquigny, T.C. 5 nov. 1880, D.1880.3.121; Duc d'Aumale et Prince Murat, C.E. 20 mai 1887, S.1889. 3.19.

55. Auby et Drago, op.cit., pp. 98-108.

56. For example, decree dissolving Parliament, the Head of State's decision to exercise the exceptional powers conferred upon him by the constitution in the face of a national emergency, a decree of the Head of State to submit a bill to a referendum, a decree by the Head of State passing a law ...

other, with foreign States or international organisations.[57] Both international relations and parliamentary proceedings are now recognised as areas of peculiar sensitivity not suitable for judicial review in the administrative courts.

The exclusion of judicial review in the above areas is usually explained by the fact that the action criticised is closely linked with bodies over which the Conseil d'Etat has no control, namely, Parliament or a foreign State. Even here, the doctrine of act of State is sometimes whittled down further by the theory of acte détachable. Under this theory, the administrative court regains competence to review if it can separate off some acte administratif from the act of State. For example,

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57. For example, acts relating to the conduct of war, acts relating to the negotiation and conclusion of international treaties and acts relating to the execution of treaties directed towards the international order (as opposed to those directed towards the internal order). The plea of act of State would therefore be upheld in a case of international complexion. An interesting example is afforded by the case of Radio-diffusion Francaise (also known as the Radio Andorra case), T.C. 2 fevr. 1950, S.1950.3.73, concl. Odent; J.C.P.1950, II, 5542, note Rivero. The principality of Andorra had a commercial radio station. It put out transmissions on wavelengths reserved by international conventions for other users. The latter complained to the French government. The government ordered the state-controlled French radio to jam Radio Andorra. A French company had the exclusive programme rights on Radio Andorra. It sought an injunction to stop the jamming. The injunction was sought in the ordinary civil court which accepted the argument that the jamming was a flagrant illegality (voie de fait) giving rise to civil liability. It granted the injunction. On appeal however, the Tribunal des Conflits accepted the contention that the jamming had the character of an act of State and so non-justiciable.

measures relating to the execution of an international treaty directed towards the internal order (as opposed to those directed towards the international order) are deemed to be detachable from the treaty itself and therefore fall within the competence of the administrative court. So, where a French consul expelled a French citizen from a foreign country as being undesirable, his decision to do so was detachable from his other diplomatic activity and held to be subject to judicial review.[58] In the matter of international relations the doctrine has been to some extent outflanked by extending the principle of liability without fault to the consequences of an international convention.[59]

In Cameroon, there is as yet no case-law on the theory of act of State and nowhere is that theory defined. It is doubtful whether the court would, when the occasion presents itself, follow French case law in taking a restrictive view of act of State. It has indeed been suggested that it would be unwise for the Cameroonian judge to adopt the position in France as this may lead to a violent clash between the judiciary and the political authorities.[60] It is however submitted that while Cameroon, as a developing country which therefore requires greater

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58. Colrat, C.E. 4 dec. 1925.

59. Compagnie Générale d'Energie Radioélectrique, C.E. 30 mars 1966, R.D.P. 1966.774, concl. Bernard.

60. Henri Jacquot, op.cit., p. 25.

freedom in governmental activity, must perhaps take a broader view of act of State, it should not go so far as to adopt the 'political complexion' criterion.

b) Disputes arising from administrative contracts and concessions to run public services

The law does not say what an 'administrative contract' is[61] and there are no Cameroonian decided cases to provide guidance on this point. So, once more one must fall back on French administrative law for guidance. Disputes arising from administrative contracts are justiciable in the administrative court while those arising from 'private contracts' are justiciable in the ordinary courts. There can be no administrative contract unless at least one of the parties is a public authority - a collectivité locale (such as a commune or a département), a public corporation or parastatal, a government department or other state agency. A contract between private persons or bodies cannot be an administrative contract. But

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61. The only category of contracts statutorily designated as administrative are public tenders (marchés publics): Decree No. 70/530 of 29 Oct. 1970, s. 33. Contracts for the recruitment of non-civil servant personnel of the administration are not administrative contracts although such persons are said to be contractuels: Labour Code, s. 1; Ekindi Joel c. Etat du Cameroun, C.F.J. Arrêt No. 31 du 15 nov. 1966, 'Recueil Mboyoum' 1962-1970, p. 81; Atangana Martin-Camille c. Etat du Cameroun, C.F.J. Arrêt No. 26 du 15 nov. 1966, unreported; C.S.C.O., Arrêt No. 16 du 29 dec. 1964. However, disputes concerning the non-renewal of such contracts are justiciable in the administrative court: Olinga Norbert c. R.F.C., C.F.J., Arrêt No. 46 du 30 avril 1968.

contracts of public works (marchés de travaux publics) concluded between entrepreneurs and mixed economy corporations (sociétés d'économie mixte) granted concessions to undertake public works are administrative contracts.[62] Sometimes, certain types of contracts are specifically designated by statute as administrative. Often however, this is not done and it becomes difficult to determine whether a given contract is administrative or not. To resolve this difficulty, the courts often apply one of two tests: the criterion of clause exorbitante de droit commun and that of participation à l'exécution du service.

Participation à l'éxecution du service. The administration may grant concessions to private persons or bodies to run public services. Contracts concluded for such purposes are administrative contracts and any dispute arising therefrom may properly be laid before the administrative court.[63] Thus, contracts with an administrative agency for the supply of goods are administrative in character if the supplier himself carries out the service for which the goods are needed. In one case, the contractor undertook under a verbal contract, subject to

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62. Entreprise Peyrot c. Société de l'Autoroute Estérel Côte d'Azur (construction of a motorway and collection of toll on the road), T.C. 8 juillet 1963, D.1963.534, concl. Lasry, note Josse; Société Francaise du Tunnel du Mont Blanc (construction of a tunnel through Mount Blanc), Cass. civile 2 dec. 1964, J.C.P.II.14357, note Auby.

63. Affortit et Vingtain, C.E. 4 juin 1954, Rec. Lebon, 1954, p. 432, concl. Chardeau; Lauthier, C.E. 20 mars 1959, D.1960.J.280, note A. de Laubadère.

payment of a fixed price per person per day, to provide catering facilities at a camp for repatriated French citizens. The Conseil d'Etat had no difficulty in holding the contract to be an administrative one.[64] Administrative contracts, under the criterion of participation à l'éxecution du service, include contracts for public works and contracts granting concessions for the running of public services, typically in the case of contracts to run public utilities such as the supply of gas, electricity, water, and the running of public transport.[65] On the face of it this criterion appears to be simple and straight forward. In fact however, it is not always easy to draw the line between mere collaboration and actual participation in carrying out the public service.[66] Thus for example, a contract with an independent contractor to supply a government department with furniture is not an administrative contract.

Clause exorbitante de droit commun. Sometimes a contract between the administration and a private person may contain what is known in the literature as a clause exorbitante. A contract containing such a clause is an administrative contract. Indeed the clause exorbitante

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64. Epoux Bertin, C.E. 20 avril 1956, D.1956.433, note A. de Laubadère.

65. Compagnie Générale des Eaux, C.E. 12 mai 1933; Compagnie Générale Francaise des Tramways, C.E. 21 mars 1910, S.1911.3.1, concl. Blum.

66. See for example, Dame Veuve Mazerand, T.C. 23 nov. 1963.

test is frequently used to distinguish administrative from private contracts. The test involves an examination of the terms of the particular contract rather than its object. Clauses in a contract are 'exorbitant' if they are different in their nature from those which could be included in a similar contract under the civil law[67] or where their object is to confer rights or impose obligations upon the parties quite unlike in their nature those which anyone would freely agree to in the context of civil or commercial law.[68] Generally speaking, it may be said that contractual terms which bear the mark 'administrative' are those motivated only by considerations of the general interest and cannot be found in private contracts. In principle, the presence of such 'exorbitant' clauses in a contract automatically makes it administrative.[69] Examples of such 'exorbitant' clauses

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67. Cf. Société des Combustibles et Carburants Nationaux, T.C. 19 juin 1952.

68. Stein, C.E. 20 Oct. 1950.

69. Except however, contracts made by industrial and commercial public enterprises with users. Such contracts are not administrative but private law contracts: Dame Bertrand, T.C. 17 dec. 1962, A.J.D.A.1963.105. The recognition of a new genre of public service, the service public a caractere industriel et commercial, came about as a result of the fact that after World War I the State began to engage increasingly in commercial and industrial activities as various parts of the economy were nationalised or brought under some degree of public control. The Tribunal des Conflits adopted the view that operating as they did under conditions comparable to private enterprise and with similar objectives, industrial and commercial public enterprises fell within the competence of the ordinary courts. In

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are clauses imposing a penalty upon the contractor, or giving the administration (but not the contractor) an

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Footnote 69 continued from page 761.

Bac d'Eloka (also known as Colonie de la Cote d'Ivoire) T.C. 22 janv. 1921, D.1921.3.1, note Matter, the government of the French colony of the Ivory Coast operated a ferry boat of this name across a coastal lagoon for the convenience of the public. One night it foundered and the owner of a motor car which it was carrying claimed damages from the colony in the local civil court. The colony challenged the competence of the court. The Tribunal des Conflits held that the civil court had jurisdiction since the colony was operating a transport service in the same conditions as an ordinary businessman. An extension of this principle occurred in Naliato, T.C. 22 janv. 1955, R.D.P. 1955.716, note Waline, where a boy of this name was injured while playing games at a holiday camp run by the government for the benefit of workers in certain state-owned factories and their families. The court classified this activity as a service public social no different from similar welfare services provided by private firms and therefore subject to the ordinary courts. The courts now appear to have shifted from this principle and have adopted a broader idea of public service subject to the jurisdiction of the administrative court: Effimief, T.C. 28 mars 1955, J.C.P. 1955.II.8786, note Blaevoet, - a syndicate of private firms employed by the administration to undertake schemes of redevelopment in slum areas held to be subject to the administrative court's jurisdiction; Compagnie Air France c. Epoux Barbier, T.C. 15 janv. 1968, where the court was of the opinion that although Air France was a private company operating under private law, a regulation requiring air hostesses to resign on marriage had 'an administrative character regulating the organisation of what was essentially a public service' and therefore that the validity of the regulation was a matter for the administrative court; Ruban c. Société de l'Autoroute Estérel-Côte d'Azur, T.C. 28 juin 1965 - Liability of a private firm towards a user of the motorway, where the firm had been granted the concession of constructing the motorway and then of collecting the toll payable by motorists.

option to rescind, or allowing the administration to vary the terms of the contract in the course of its performance. Many of these are standard form in contracts for public works, but their presence in other contracts will convert these too into administrative contracts. The doctrine of clauses exorbitantes leaves it open to the administration to choose, by the way it frames the terms of the contract, whether it wishes its contractual obligations to be subject to the administrative law or the ordinary civil law.[70]

c) Disputes concerning State land

In Cameroon, the concept of State land has also been borrowed from France. In Cameroon property which belongs to the administration falls under two separate categories: le domaine public des personnes publiques and le domaine privé des personnes publiques. The latter is governed, essentially, by the ordinary civil law while the former is subject to 'un régime dérogatoire au droit commun de la propriété'. This distinction is a familiar one in France and it dates back to the nineteenth century. Under the Ancien Regime crown property of the State was inalienable. The Revolution converted Crown lands into national lands

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70. L.N. Brown & J.F. Garner, French administrative law, 2nd ed., Butterworths, London, 1973, p. 72.

and repealed the inalienability rule. In the nineteenth century however, national lands were divided into two categories; one (known as the private domain of the State) was subject to alienation, and the other (known as the public domain of the State) was inalienable. Thus the distinction between the two categories of State property rested on the theory that public property of the State was inalienable while private property of the State was. But the inalienability criterion was soon abandoned in favour of that of affectation de bien à l'intérêt général. Under this new criterion, public property of the State was defined as property open to the use of the general public such as public ways, seashores, public parks and sports grounds, land or buildings specially adapted to public needs, and so on.[71] Public property of the State may however be closed to the public (desaffecté). When this happens the particular porperty thus closed to the public ceases to be 'public' and enters the category of private property of the State. Property of the State is regarded as 'private' where it is managed by the public authority in the manner of a private owner.

In Cameroon, the content of public property of

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71. Cf. Cass. civ. 7 nov. 1950, S.1952.I.173, note Tixier; Société Le Béton, C.E. 19 oct. 1956.

the State is defined in s. 2 of Ordinance No. 74/2 of 6 July 1974 (Rules governing State lands). It provides:

> "S. 2(1) Public property shall comprise all personal and real property which, by nature or intended purpose, is set apart either for the direct use of the public or for public services.
> (2) Public property shall be inalienable, imprescriptible and unattachable. Subject to the provisions of Article 5(3) below, it shall not be liable to private appropriation.
> (3) Public property shall be divided into natural and artificial public property."

This definition is not different from the concept of domaine public in French law: moveables such as paintings in Museums or objects of art come, as in France, within the meaning of public property and the definition is based, again as in France, on the theory of affectation à l'intérêt général.

Disputes concerning the demarcation or administration of public property are justiciable in the administrative court. So too controversies arising from public rights of way (la grande voirie) and public works.[72]

B. Matters excepted from the jurisdiction of the administrative court

Certain categories of matters have specifically

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72. Tchany Jean c. Etat fédéré du Cameroun Oriental, C.F.J., Arrêt No. 113 du 8 dec. 1970, 1 R.C.D. 47 (1972).

be placed by law within the exclusive jurisdiction of the civil courts. The most notable instances are questions of personal status, of the liberty of the individual, and of title to immovable property. Section 9(4) of Ordinance No. 72/6 of 26 August 1972 provides that the ordinary courts shall have jurisdiction over 'administrative trespass on private land and arbitrary step by the administration against liberty and property, with power to make any order to bring it to an end'. The subsection goes on to provide that 'a ruling shall be given by the Full Bench of the Supreme Court on any interlocutory plea made in the case of an arbitrary step by the administration against liberty or property'.

a) Administrative trespass on private land (l'emprise)

When land is expropriated by the administration the ordinary courts are alone competent to assess the quantum of compensation due to the dispossessed owner. This head of jurisdiction is not only limited to cases of expropriation. It extends to any act of dispossession, even if only temporary, on the part of the administration. A seizure of immovable in this way is known in the literature as emprise. An administrative trespass on private land (emprise) may be defined as any act of dispossession, whether temporary or permanent, by the administration of private immovable property. In Gaston Medou c. Etat Fédéré du Cameroun

Oriental[73] a regiment of the Cameroonian Army encamped on a piece of private land for eight months. It was held that this amounted to emprise and that a claim for damages on injury done to the land was not cognisable by the administrative court but by the ordinary court.

Two conditions are necessary for a trespass on land to qualify as emprise. First, there must be a trespass by the administration on immovable private property (that is, on private land). A seizure of movable property by the administration is not an emprise. Secondly, the trespass must take the form of an act of dispossession, be it temporary or permanent. An emprise is a permanent or temporary expropriation of land. For example, the administration commits an emprise if, in order to carry out certain works, it occupies a piece of land privately owned by leaving equipment on it.

Whenever there is an emprise (regular or irregular) the dispossessed property owner can look for compensation to the ordinary courts. Whether an emprise is irregular or not is a question for prior determination (question préjudicielle) by the administrative court. The ordinary court may not, on principle

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73. C.F.J., Arrêt No. 157 du 23 mars 1971, 1 R.C.D. 36 (1972), observation Jacquot.

determine the regular or irregular nature of the emprise; its function being only to assess the quantum of damages due to the complainant. The damages would normally extend to the whole of the plaintiff' loss. For example, damages for the irregular requisitioning of a hotel would extend to the whole of the owner's loss, including damage to furnishings and movables.

It is noteworthy that s. 9(4) of Ordinance No. 72/6 of 26 August 1972 simply provides that the ordinary courts have jurisdiction over administrative trespass on private land. The nature of the emprise, whether regular or irregular, is irrelevant. The ordinary court is therefore entitled to assess damages irrespective of whether the emprise is regular or irregular.[74] The reason for this seems to be to avoid confusion and unnecessary complications. Moreover, the ordinary court is competent not only to assess damages; it also has the power to make any order to bring the emprise to an end. It may for example issue an order of prohibition or eviction against the administration.[75]

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74. The law is otherwise in France. There, the assessment of damages in the case of emprise irregulière is done by the civil judge while that of emprise regulière is done by the administrative judge: Werquin, C.E. 15 fevr. 1961, R.D.P.1961.321, concl. Braibant.

75. This is impossible in France. The law there on this point is that the civil judge has no power to issue orders against the administration. In one case for example, it was held that the civil judge had no competence to order the eviction of the administration from premises it occupied: Société Rivoli-Sebastopol, T.C. 17 mars 1949.

b) Arbitrary step by the administration against liberty and property (voies de fait)

A voie de fait is a flagrant irregularity. It indicates "some irregularity on the part of the administration which is so flagrant and gross that it cannot be regarded as an administrative act at all but is treated as if it were the act of a private body, thereby losing the privilege of being adjudicated upon only by the administrative court and falling within the cognisance of the ordinary courts".[76] An illustration is afforded by the French case of Carlier.[77] A person of that name was a lover of arts who had persistently criticised the Administration des Beaux-Arts for having neglected or destroyed France's national monuments. One day, while taking photographs of the exterior of Chartres Cathedral, he was arrested, taken to the police station and had his pictures confiscated. Shortly afterwards, when he joined a queue of tourists about to visit the belfry of the cathedral, the guide, acting on superior orders, refused him admission. He brought an action for damages before the Conseil d'Etat, which held itself incompetent to adjudicate upon the arrest of Carlier and the seizure of his property; for these were voies de fait, being acts 'manifestly incapable of being connected with the exercise of a power belonging to the

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76. L.N. Brown & J.F. Garner, French administrative law, 2nd ed., Butterworth, London, 1973, p. 70.

77. C.E., 18 nov. 1949, J.C.P.1950.II.5535, note Vedel.

administration'. Carlier had, therefore, to seek his remedy for these flagrant irregularities in the ordinary courts. On the other hand, the Conseil d'Etat decided that it could entertain that part of the claim which related to his being refused entry to the belfry; this refusal was undoubtedly irregular in the circumstances but did not lose its quality of an administrative act in respect of which the court could award damages.

An act would be held to be a voie de fait only if it presents certain characteristics. First, there must be an arbitrary step taken by the administration which infringes some fundamental right of the individual - liberty of the person or sanctity of property. There must be an actual arbitrary step; in other words, the flagrant irregularity must consist of a physical act (opération matérielle). The mere existence of a decision, albeit flagrantly irregular, does not amount to a voie de fait. There would be a voie de fait in such a case only if the administration executes the decision or, at least, threatens to do so.

Secondly, the step taken by the administration must be manifestly illegal. The legal error must be so gross as to change the character of the operation and make it lose its quality of an administrative act. In Mve Ndongo et Procureur Général c. Ngaba Victor[78] a person

78. C.F.J., Arrêt No. 10 du 17 oct. 1968, 'Recueil Mboyoum', 1962-1970, p. 110.

named Mve Ndongo was prefect of Boumba Ngoko. He had the goods of Ngaba Victor, a tax defaulter, seized. No law authorised him to order the seizure of the property of tax defaulters. Only a special government department had the power to do so, and then only in accordance with certain procedures laid down by law. Ngaba Victor claimed that the prefect's action was illegal. Held, by the Federal Court of Justice, that prefects are not responsible for tax collection and that the prefect's action in this case was undoubtedly an arbitrary step taken against private property; an action manifestly incapable of being connected with the exercise of a power belonging to the administration. The court went on to hold that the ordinary court and not the administrative court had jurisdiction to entertain an action for damages arising from a voie de fait.[79]

Where a voie de fait has been committed, it is the ordinary court and not the administrative court which has jurisdiction to assess the quantum of damages due to the plaintiff and to make any order to bring the voie de fait to an end. This means that the ordinary court may award damages against the administration, issue an injunction to it, or order it to put an end to the act, make restitution or restoration.

A voie de fait may stem either from a flagrantly irregular decision (what is known in the literature as

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79. The same court had reached a similar decision in the earlier case of Etat Fédéral du Cameroun c. Max Keler Ndongo, C.F.J., Arrêt No. 8 du 16 oct. 1968, unreported.

la voie de fait par manque de droit, that is, an action or decision with no legal basis) or from the illegal execution of a decision even if such a decision was in the first place legal (this is known as la voie de fait par manque de procédure). In a state of emergency however, a voie de fait may become a simple illegality falling within the competence of the administrative court.[80]

The question whether an alleged arbitrary step by the administration amounts to a voie de fait or not is a question of law for the Full Bench of the Supreme Court to decide. So whenever this issue arises in proceedings before the ordinary court or the administrative court, the proceedings must be stayed and the issue referred to the Full Bench of the Supreme Court for a ruling on it.[81] The Full Bench of the Supreme Court acts here as a kind of consultant. It is unclear why only the Supreme Court may rule on this particular issue. There is no compelling reason why the trial court should not be able to take the point itself. It is submitted that this 'mini renvoi' unnecessarily prolongs the proceedings and befogs the procedure. One commentator has however suggested that the reason for this 'mini renvoi' stems from "the concern to shelter the judges below, and to prevent judges from getting into personal difficulties with the administration".[82]

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80. Cf. dicta in Mve Ndongo and in Max Keler Ndongo.

81. Ordinance No. 72/6 of 26 August 1972, s. 9(4).

82. Henri Jacquot, op.cit., p. 29.

This however pre-supposes that Judges of the Supreme Court have no fears about getting into personal difficulties with the government and that they can and are prepared to shelter their brethren in the lower courts from possible government reprisals in the face of any decision which the government may not take kindly to heart. That this is the case is extremely doubtful.

c) The appreciation and interpretation of administrative measures by the ordinary courts

Because of the dual system of law and of courts a preliminary question of law or of fact may on occasion arise in the course of proceedings properly brought before the administrative court, or the civil court, as the case may be, which falls for decision by the other order of court. This is a general issue of procedure and here, only one aspect of it shall be discussed; that is the right of the ordinary court either to interpret or to appreciate the legality of administrative measures. The issue may be illustrated with an example. Suppose a motorist is charged in the criminal court with having offended against a provision of the Road Traffic Regulations. In his defence he argues that the provision under which he is charged is illegal. A preliminary question then arises as to whether the provision is in fact illegal as the defendant contends. Clearly, the court cannot properly go into the merits of the case until a preliminary ruling on this point has been made.

If the criminal court itself is entitled to rule on the interlocutory challenge to the legality of the provision a question for prior decision (question préalable) is said to have arisen and the trial court (le juge de l'action) is said to be the juge de l'exception as well. But if the criminal court is not entitled to take the point itself but must stay proceedings so that the issue raised can first be determined by the administrative court, a 'prejudicial' issue (question prejudicielle) is then said to have arisen.

The first procedure whereby the trial court itself rules on the interlocutory challenge is shorter, expedient and more in the interest of litigants. This is probably why in Cameroon the criminal court is empowered, when the issue arises in the course of a criminal trial, to pronounce on interlocutory challenges to the legality of administrative measures.[83] Ordinarily, interlocutory challenges to the legality of administrative acts are cognisable by the administrative court. But where such interlocutory challenges are made in the course of a criminal trial, the criminal court is itself entitled to make a ruling on the issue. Section 9 of Ordinance No. 72/6 of 26 August 1972 is silent on the question of interpretation of administrative measures. This silence, it is

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83. Ordinance No. 72/6 of 26 August 1972, s. 9(2)(a).

submitted, must be resolved in favour of litigants. Without fear of contradiction it may be asserted that the criminal courts, unlike the civil courts, have jurisdiction to decide on the legality of administrative acts, whether such acts are of general or individual application.[84] The reason is that in criminal matters the liberty of the individual is at stake and so there must be no delay in rendering justice.

With regards to non-criminal justice the issue at stake is not always as crucial as in criminal matters. Therefore, in civil matters there is apparently no need for great urgency. For this reason, the ordinary civil courts have no competence to decide on the legality (as distinct from the interpretation) of administrative acts. So, where the issue of the legality of an administrative measure arises in the course of proceedings in any suit before an ordinary civil court, it must stay the proceedings and refer the matter to the administrative bench of the Supreme Court for a decision thereon. But if the issue before the civil court is simply one of interpreting the administrative act challenged, the court is entitled

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84. In the French case of Avranches et Desmarets, T.C., 5 juillet 1951, S.1952.3.1, note Auby, two persons were prosecuted for poaching on the land of a third. They argued that they did so under a clause in the standard agricultural tenancy for the département. The landowner challenged the legality of this clause. The criminal court declared the clause illegal and proceeded to convict the accuseds. The Tribunal des Conflits upheld the jurisdiction of the criminal court to determine the legality of the administrative act.

to proceed to do so itself. In the French case of Septfonds[85] a person of that name lost some bags of sugar consigned by train during the First World War. He claimed damages from the railway company. The company had been taken over by the government under war time regulations which prescribed various time-limits for making claims for lost consignments. The question arose in the civil court as to the meaning of these regulations. Held, by the Tribunal des Conflits, that the civil court was competent to interpret them.[86]

2. Resolution of conflicts of jurisdiction

A dual system of courts inevitably leads to conflicts of jurisdiction. Ideas for the resolution of such conflicts have never lacked. In England for example, the rivalry between common law and equity was resolved by the passing of the Judicature Acts 1873-75 which made provision for the administration of equity and the common law in the same courts and ordained that where equity and the common law conflict the rules of equity shall prevail. In France however, conflicts of jurisdiction have assumed greater importance than they did in England before 1873.

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85. T.C., 16 juin 1923, S.1923.3.49, concl. Matter, note Haurio.

86. See also, Barinstein, T.C., 30 oct. 1947, J.C.P.1947. II.3966, note Fréjaville.

The reason lies in the fact that the French approach is to segregate according to the nature of the factual issue rather than according to the nature of the relief sought. Before the creation of the Tribunal des Conflits in 1848 conflicts of jurisdiction in France were resolved by the head of State acting on the advice of the Conseil d'Etat. Although the Tribunal des Conflits was abolished after the coup d'état of 1851, it was re-established in 1872. The function of this court is to resolve conflicts of jurisdiction between the administrative and the ordinary courts.

In Cameroon resolution of conflicts of jurisdiction was at first entrusted to the highest court among the ordinary courts.[87] Now however, resolution of conflicts of jurisdiction between the ordinary court and the administrative court falls within the competence of the Full Bench of the Supreme Court.[88] The procedure laid down for the resolution of such conflicts is a simple one.[89] The first phase of the procedure takes place in the court before which the dispute has been brought (the ordinary court or the administrative bench of the Supreme Court). Here, any of the parties, including the legal department, may, on the basis of s. 9 of Ordinance No. 72/6 of 26 August 1972, challenge the court's jurisdiction to entertain

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87. Decree of 21 June 1961.

88. Ordinance No. 72/6 of 26 August 1972, s. 15, as amended by Law No. 76/28 of 14 December 1976.

89. Idem.

the dispute. Section 15(1) of the above Ordinance enacts, "Any non-criminal court, including the Administrative Bench of the Supreme Court, shall be bound to decide immediately and without reserving the point to final judgment any protest to its jurisdiction founded on section 9 thereof." Section 15(2) goes on to provide that "such court may raise of its own motion and decide in like manner the question of its own jurisdiction".

In either case the judge must immediately make an interlocutory ruling (décision avant dire droit) on the issue. However, if the court rules that it has jurisdiction to entertain the matter it cannot at once proceed to try the substantive issue. It must stay the proceedings for ten days. The reason for this delay is to give the parties and the legal department time to appeal (if they are so minded) to the Full Bench of the Supreme Court against the trial court's decision claiming jurisdiction to entertain the case.[90] Such an appeal may be validly lodged in the registry of the court against whose decision it is made.

When the appeal comes up for hearing, the court may do one of three things. It may confirm the trial court's decision claiming jurisdiction over the matter; in which case the trial court will resume the proceedings and adjudicate upon the substantive issue. The court may

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90. Ordinance No. 72/6, s. 15(3).

also confirm the trial court's decision declining jurisdiction to deal with the case. Alternatively, the court may rule that the trial court erroneously claimed or declined jurisdiction to deal with the case. When the Full Bench of the Supreme Court makes such a ruling it must also designate the court which should properly be seised of the matter. It is noteworthy that a decision by a court having no jurisdiction to deal with the case will not go unchallenged simply because the parties failed to avail themselves of the procedure heretofore described. If judgment has been given by an incompetent court, the parties and the Procureur General may, within two months of rendition of the judgment, appeal against it on grounds of lack of jurisdiction.[91]

II. Contentious Proceedings Before the Administrative Court

Contentious proceedings before the administrative court may be said to comprehend all the various actions available under the law to the individual to enable him to assert his rights in the administrative courts. These remedies are: recours en annulation pour excès de pouvoir, recours incident en appreciation de la légalité (which in Cameroon is part of le contentieux de la légalité),[92] and

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91. Ibid., s. 15(6).

92. In Cameroon no direct action lies in respect of interprétation de la légalité: Messomo Atenen c. République Fédérale du Cameroun, C.F.J., Arrêt No. 89 du 30 sept.

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recours de pleine juridiction (concerned with the contractual and the tortious liability of the administration). Of these courses of action, plaints for excess of power and plaints for indemnity are the more usual and consequently the more important plaints that come before the courts. Accordingly, only both types of plaints will be discussed here.

1. Plaints for excess of power

Plaints for excess of power or ultra vires proceedings lie against any illegal administrative act. A person adversely affected by such an act is entitled to invite the administrative court, by way of a plaint for excess of power, to nullify the act. This course of action has proved an effective means of protecting the individual citizen against administrative arbitrariness as well as serving as a good and handy tool for judicial control of

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Footnote 92 continued from page 779.

1969, unreported. In France, le contentieux de l'interprétation ou appréciation de la légalité exists where the administrative court is called upon to interpret some administrative act or decision in the sense of explaining its legal meaning or significance and also where, it is called upon to declare as to the validity of an administrative act or decision. The field of this recours is however narrow, for, the administrative judge is always loth to act as a consultant, believing that if the difficulty of understanding the act is sufficiently serious the interested party will be prepared to ask for it to be annulled or to claim damages in compensation.

administrative actions. But the administrative court would entertain a plaint for excess of power only if it is satisfied that the conditions necessary for the exercise of judicial review have been met. These conditions are known in the literature as les conditions de recévabilité du recours, that is, the conditions which must be present before the administrative court can take cognisance of a case and examine its merits. The first condition relates to the nature of the act complained of: the act must be a unilateral administrative act (that is, one emanating from some organ of the administration) for, only such acts may be the object of plaints for excess of power. The second condition relates to the plaintiff's locus standi. The plaintiff must have some personal interests in the proceedings and an interest in seeing the act annulled. The maxim is, pas d'intérêt, pas d'action. The plaintiff must also show that the act complained of is injurious to his interest and that he has the capacity to bring an action in court. Courts are reluctant to permit an actio popularis open to every citizen. This may open the floodgates to abuse of process and to frivolous and vexatious suits which would in turn hamper effective public administration. "Judicial review of administrative action is inevitably sporadic and peripheral. The administrative process is not, and cannot be, a succession of justiciable controversies. Public authorities are set up to govern and administer, and if their very act or decision were to be

reviewable on unrestricted grounds by an independent judicial body the business of administration could be brought to a standstill. The prospect of judicial relief cannot be held out to every person whose interests may be adversely affected by administrative action."[93] The third condition necessary for the invocation of judicial relief concerns time limits for commencing proceedings.[94]

The basic principle of judicial control of administrative actions is that the administration must be subject to the Rule of Law. All plaints for excess of power are ultimately founded on a violation of this principle. In any proceedings concerning an allegation of excess of power the judge's first task is to determine exhaustively the rules applying to the administrative act which is subject to attack. Any relevant enacted law must be examined. The administration must conform to the hierarchy of written rules (constitution, loi, décret-loi, décret, ordonnance-loi, ordonnance, arrêté) applying to different situations. For example, a prefectorial order will be illegal if it contravenes a ministerial regulation, in the same way as such a regulation will be illegal if it contravenes a statute.[95] Moreover, once an administrative

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93. S.A. de Smith, op.cit., p. 3.

94. These various conditions will be fully discussed below in the section on procedure before the administrative court.

95. Cf. the specialised application of the English doctrine of ultra vires to the by-laws and acts of local authorities or other government agencies: Blackpool Corporation v.

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agency has laid down rules for its own conduct, it will be in violation of the law if it subsequently breaks those rules: legem patere quam ipse fecisti.[96]

The principle of legality is not only concerned with enacted law. The administration is bound to respect individual rights created by its own previous decisions. This is so even if those decisions were illegal at the time but have since become immune from attack. The administration is also bound to respect the decisions of the courts, that is, autorité de la chose jugée.[97] The idea of legality includes certain unwritten general

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Footnote 95 continued from page 782.

Locker [1948] 1 All E.R. 85, where the town clerk's action in requisitioning a house containing furniture was held to be ultra vires in that it violated the 'law' contained in the Ministry circular giving him power to requisition only empty houses.

96. In France, it has been held that once an agency had decided that it would in future take certain measures only after consultation with a committee, the agency was acting illegally if subsequently it took those measures without that consultation: Société Michel Faure, C.E., 20 janv. 1950. In the English case of Yabbicom v. King [1899] 1 Q.B. 444, a local authority was held to be incapable of authorising a departure from its own by-laws.

97. Cf. the English plea of res judicata. In Francophone Cameroon, as in France, the autorité de la chose jugée binds only the parties; but where an administrative act is annulled by the administrative court and it is not challenged by way of appeal, it becomes valid erga omnes.

principles of law, les principes généraux du droit.[98] These have no constitutional validity but their operation can be excluded only by the clearest express statutory provision.

The principle of legality prescribes a line of conduct for the administration from which it cannot depart without committing an excès de pouvoir. Any violation of the principle of legality can be a ground for judicial review and will render the administrative act void. Section 9(2)(a) of Ordinance No. 72/6 of 26 August 1972 provides that administrative matters shall include 'petitions for cancellation of acts or of failure to act on the ground of ultra vires'. An act is ultra vires under

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98. That is, "unwritten rules of law, which have legislative validity and which consequently are binding upon the administration in its exercise of pouvoir reglementaire or administrative discretion, in so far as they have not been overruled by some express legislative provision ... They cannot, however, be described as forming a system of customary administrative law as they have, for the most part, only recently been recognised by the administrative courts. These principles are really a creation of the courts originating in equity and have been brought into being so as to assure the protection of the individual rights of citisens." (Bouffandeau, Les grands arrêts de la jurisprudence administrative, 5 ed., p. 346, cited by Brown & Garner, op.cit., p. 119.) These principes généraux du droit may be compared to the English principles of natural justice such as freedom from bias, and the principle that no one ought to be condemned unheard (audi alteram partem). Even God himself, it has been said, did not pass sentence upon Adam before he was called upon to make his defence. On the English principles of natural justice, see generally, O. Hood Phillips & Paul Jackson, op.cit., pp. 602-609; Paul Jackson, Natural justice, Sweet & Maxwell, London, 1973.

the provision where it is (i) bad in form, (ii) made without jurisdiction, (iii) contrary to a statutory or administrative regulation, and (iv) where its making is an abuse of authority. It is for the plaintiff himself to raise, through the legal arguments in his plaint, one or other of these grounds for judicial review. Exceptionally however, the administrative court may, once seised of the case, raise on its own initiative a moyen d'ordre public which would call for annulment of the administrative act complained of. A moyen d'ordre public may be raised by the court (or by a party) where the illegality is so gross that the court considers it should be raised in spite of all ordinary procedural rules. Such a moyen may even be raised outside the ordinary time limits.

A. Where an administrative act is made without authority (l'incompétence)

If an official acts completely without authority, his decision will be declared void for want of authority. The decision is illegal because the official had no power to act at all or no power to act the way he did, the power so to act being vested in another official. A decision made without authority can either amount to a usurpation of function or power, or a trespass on functions (empiètement de fonction). The distinction between the two is a fine

one. There would be a usurpation of function or power where an outsider meddles with the administration by purporting to take an administrative measure when he is not entitled to do so. For example, a person who is not a public official would be guilty of usurping administrative functions if he purports to exercise such functions. This type of situation is however rare. More common is impiètement de fonction. This happens when a public official acts outside the scope of his powers. The commonest cases arise when a public official purports to act in a domain which, by virtue of the principle of separation of powers, is reserved for either the judiciary or the legislature.

Both usurpation de fonction and empiètement de fonction are in fact cases of usurpation of functions. But the distinction between the two would appear to lie in the fact that in the former case a stranger to the administration purports to exercise a function which only a public official may; whereas in the latter case the usurpation is committed by a public official acting ultra vires his functions. So, if the administration takes a decision in a domain reserved for Parliament by the constitution the decision will be annulled on the ground of empietèment de fonction. Another example of empiètement de fonction is where a civil servant is dismissed by his immediate superior where the superior has not had delegated

authority from the Minister to take such action.[99]

There can be empiètement as between administrative authorities. The empiètement can be either ratione materiae, ratione loci, or ratione temporis. In the first situation one administrative authority trespasses on the sphere of authority reserved for another administrative authority: a mayor purports to take a decision in the place of a Minister, a superior purports to act in the place of his subordinate. In the second situation, an authority purports to take a decision applicable in the territorial jurisdiction of another authority: regulation made by a mayor purporting to apply outside his own local council, an order made by a district officer purporting to apply outside his district. The third situation occurs when the incumbent of a post in the administration takes a measure which ought only to have been taken by his successor.

The effect of an act made without authority is that the act is absolutely illegal, the illegality having un caractère d'ordre public. This means that even if the plaintiff does not raise this point in his plaint, the

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99. In the French case of Syndicat Régional des Quotidiens d'Algerie, C.E., 4 avril 1952, S.1952.3.49, concl. Devolvé; J.C.P.1952.II.7318, note Vedel, a caretaker government in Algeria was carrying on the administration until a new government had come into office. This government purported to extend to Algeria a requisitioning statute passed in Paris. It was held by the Conseil d'Etat that the caretaker government could only concern itself with 'current business' and therefore their decision was void.

court must itself take cognisance of it and annul the measure. If the administration usurps a legislative or judicial function the illegality is considered so gross that the administrative action is said to be void ab initio; that is, it is considered never to have existed at all. This is known in the literature as la théorie de l'inexistence. This theory is based on the notion that an administrative act may be simply non-existent for want of some essential element. In such a case there is no need to annul it because, ex hypothesis, there is nothing for the court to annul. The court has only to declare its non-existence.[100] Any effect the administrative act may have produced is retrospectively destroyed. Quod nullum est nullum producit effectum.

The argument that an act has no existence - is void ab initio - can be pleaded in any administrative proceedings by any person who has an interest so to plead and at any time, and the ordinary time limit of two months does not apply to the commencement of such proceedings.[101]

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100. In the French case of Rosan Girard, C.E. 31 mai 1957, Rec. Lebon 1957, p. 355, concl. Gazier, the mayor of a commune in Guadeloupe had declared the results of a communal election on the basis of the votes contained in three only of four ballot boxes. The prefect thereupon declared the election void and set the procedure in train for a new election without referring the case to the local administrative court as he should have done. Held, by the Conseil d'Etat that the prefect's decision purporting to avoid the original election was itself void and had no existence in law.

101. In English law administrative decisions arrived at by a tribunal or government agency in excess of jurisdiction are void. Those, for instance, which are impeachable on the ground of having been arrived at contrary to the principles of natural justice are voidable as they may be impeached only by the party

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Exceptionally however, the administrative court may hold to be valid, on the basis of the theory of fonctionnaires de fait, an administrative act done ultra vires. This theory postulates that in certain periods of crisis, such as during war or a state of emergency, the common man is sometimes called upon to take the place of absent public officials. These de facto civil servants are then said to be acting in the public interest and for reasons of urgent necessity. Acts performed by them in these circumstances, even if ultra vires, are held to be valid.[102]

B. Where an administrative act is bad in form (vice de forme)

In taking an administrative measure the administration is sometimes bound to follow a certain laid down procedure. The administration would have committed a

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Footnote 101 continued from page 788.

affected. But whether such an affected party must have been prejudiced as a consequence of the procedural flaw is still doubtful. In Annamunthodo v. Oilfield Workers Union [1961] 3 All E.R. 621, it was held that a trade union cannot expel a member without giving him adequate notice of the charges giving rise to the penalty of expulsion. In Malloch v. Aberdeen Corporation [1971] 2 All E.R. 1278, it was held that the dismissal of a school teacher without affording him the opportunity to be heard violated an elementary principle of natural justice.

102. Cf. the French case of Marion, C.E., 5 mars 1948, Rec. Lebon 1948, p. 113.

procedural ultra vires if it took the measure without following the prescribed procedure.[103] This is based on the fact that the taking of any administrative action is subject to a number of procedural rules, the non-respect of which will invalidate the action taken. The whole body of these procedural rules is known as la procédure administrative non-contentieuse and may, as in Cameroon, be uncodified. The sources of these rules are various: directives, regulations, principes généraux du droit, case law. The rules include: rules requiring the administration to consult an advisory commission, rules serving as safeguards to the governed such as the right to be heard in disciplinary matters, rules requiring the administration to communicate its decision to the individual concerned (by way of publication or notification) without which the decision is ineffective against him.

The illegal nature of procedural ultra vires is not characterised as d'ordre public. Consequently, the court cannot of its own motion take cognisance of the flaw. It is for the plaintiff himself to raise and argue the point. If he fails to do so it is not for the court to do so in his place. Moreover, a successful plea that

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103. Cf. the English case of Vine v. National Dock Labour Board [1956] 3 All E.R. 939. In that case a Board purported to delegate its disciplinary powers to a committee which then dismissed the plaintiff. Held, by the House of Lords, that the disciplinary powers of the Board were too important to be delegated without express power: delegatus non potest delegare. The dismissal was therefore held to be a nullity.

an administrative act is bad in form does not ipso facto warrant nullification of the act. In each case the court strives to reconcile two sets of conflicting interests. Generally speaking, administrative formalities present themselves either as guarantees to those being administered, or as safeguards to ensure good administration. The administrative court does not therefore insist on a rigid observance of all procedural formalities as such a strict requirement may produce a paralysis of administrative action. Courts distinguish between mandatory and directory procedural requirements. In the English case of Brayhead (Ascot), Ltd. v. Berkshire County Council & Another[104] permission was granted to the appellant for the erection of a factory on condition that it was for light industrial use. No reason was stated for the imposition of this condition. The appellant was in breach of this permission. Notice was served on him that he had contravened the condition and he appealed to the Minister alleging that the enforcement notice was invalid and should be quashed. The Minister dismissed the appeal. The appellant appealed to the court. Held, that the Minister's decision that the enforcement notice in the present case was not invalid was right for, although the requirement that the reasons for imposing a condition should be stated in writing was mandatory it did not follow that non-compliance rendered

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104. [1964] 1 All E.R. 149.

void the notice of the planning authority's decision or the decision that it notified.

A formality is directory where its violation would not alter the meaning of the decision taken. Failure to observe such a formality will not invalidate the administrative action. In Emini Tina Etienne c. Etat Fédéré du Cameroun Oriental,[105] failure by the administration to stamp its decision was held to be an infringement of a mere directory formality, a flaw without any effect on the validity of the act. In the French case of Commune d'Issy-Les-Moulineaux,[106] a slum clearance order had been posted in all the districts most concerned, but not (as was required by law) in every district of Paris within five kilometres of the building. It was held that this was an insubstantial error insufficient to invalidate the proceedings.

A procedural formality is mandatory when its violation is such as to change the meaning of the administrative action. Only a failure to observe a mandatory formality will lead to avoidance of the subsequent proceedings. In Sitamze Urbain c. Etat du Cameroun[107] it was held that failure by the administration to consult a disciplinary

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105. C.F.J., Arrêt No. 55 du 25 mars 1969, unreported.

106. C.E., 12 nov. 1909, Rec. Lebon 1909, p. 853.

107. C.F.J., Arrêt No. 121 du 8 dec. 1970, unreported.

commission before taking disciplinary action was failure to observe a mandatory procedural formality and therefore that the disciplinary action taken was null and of no effect. Similarly, in Obam Etame Joseph c. République Fédérale du Cameroun[108] where disciplinary action was taken against the plaintiff without an opportunity being afforded him to defend himself, it was held that this amounted to an infringement of the right of defence, a procedural flaw which rendered the action null and void. In the French case of Pétalas,[109] an order of extradition which was made without consultation with the appropriate government department was held void for want of compliance with a procedural rule of substance. In another case,[110] it was held that where the headmistress of a lycée had required the father of a pupil to remove her from school, she should first have stated the reasons for this requirement and given the father an opportunity of replying to those reasons. The headmistress's decision was therefore quashed for vice de forme. Again, failure to communicate to a civil servant the contents of his dossier before some disciplinary action is taken against him is very commonly held to be a procedural irregularity. The administrative courts would also hold a decision of a Minister taken on the recommendation

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108. C.F.J., Arrêt No. 98 du 27 janv. 1970, unreported.

109. C.E., 18 nov. 1955, G.P., 7 mars 1956.

110. Davin, C.E., 26 janv. 1966.

of an advisory to be void, if it could be shown that some essential matter had not been investigated by the commission. However, in Onana Jean Pierre c. Etat Fédéré du Cameroun Oriental,[111] a police constable was dismissed from his job and he claimed that the dismissal was improper and amounted to an abuse of power. The decision to dismiss him had been taken on the recommendation of an improperly constituted disciplinary commission before which the plaintiff had appeared without any reservation. It was held that there was no provision that disciplinary action be taken only on the advice of the disciplinary commission and that the dismissal was proper as the disciplinary commission, the court reasoned, must be presumed to have been properly constituted (since the plaintiff had appeared before it without any reservation).

C. Where an administrative act is contrary to statute or administrative regulation

This course of action has become the justification for most cases of review of administrative action by the administrative court. It sanctions all sorts of infringement by the administration, of rules binding on it irrespective of the nature of such rules. It sanctions the violation of written law, administrative regulations, and the principles of natural justice; in short, the

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111. C.F.J., Arrêt No. 3 du 23 oct. 1970, 'Recueil Mboyoum' 1962-1970, p. 29.

violation of the Rule of Law. Thus, it sanctions any violation of the constitution (including its preamble),[112] treaties duly ratified,[113] laws passed by Parliament, decrees and ordinances passed by the Executive, les principes généraux du droit,[114] and administrative regulations, themselves in a hierarchy, depending on the capacity of the person making the regulation and the complexity of the procedure for edicting it.

This head of classification goes beyond a consideration of the merely formal validity of the administrative act; a matter which comes within the province of imcompétence and vice de forme. Under this head the administrative court is called upon to examine the actual content of the administrative act itself in order to decide whether it conforms with the legal conditions set upon administrative action in the particular case. There would be a violation de la loi where the administration is guilty

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112. Eitel Mouellé Koula c. République Fédérale du Cameroun, C.F.J., Arrêt No. 178 du 28 mars 1972, 3 R.C.D. 54 (1973).

113. Compagnie des Chargeurs Réunis c. Etat Fédéré du Cameroun Oriental, C.F.J., Arrêt No. 163 du 8 juin 1971, unreported.

114. These principles may be disregarded by parliament but not the administration: Société de Grands Travaux de l'Est c. Etat du Cameroun Oriental, C.F.J., Arrêt No. 68 du 30 sept. 1969, unreported; administration bound by the principle against ex post facto legislation: Société F.I.D. c. Etat du Cameroun Oriental, C.F.J., Arrêt No. 84 du 30 sept. 1969, unreported; the principle of equality of all before the law: Foukoua André c. Commune de plein exercise de Mbalmayo, C.F.J., Arrêt No. 54 du 25 mars 1969, unreported; equality of all citizens in bearing public burdens: Mortant Théophile c. Commune de Douala, C.F.J., Arrêt No. 52 du 25 mars 1969, unreported.

either of a mistake of law (erreur de droit) or a mistake of fact (erreur de fait). If the administration acts in complete disregard of the rule of law or erroneously interprets the law, it would have committed a mistake of law. If, on the other hand, the administration has made a mistake as to the facts upon which its decision is based, it would have committed a mistake of fact. In this case the administrative court would verify the exactitude of the facts alleged by the administration. Thus if a civil servant is dismissed or brought before a disciplinary commission, the administrative court would have to enquire whether the facts upon which the administrative decision is based have been made out.[115]

The administrative court also reviews the legal characterisation of the facts alleged. Supposing disciplinary action may be taken against a civil servant only if he is at fault. If such action is taken, then the court has to enquire whether the facts alleged amount to fault so as to justify disciplinary action. In Balog Joseph-Emile c. Etat du Cameroun Oriental[116] a civil servant referred to his boss as a clown (farceur). It was held that that amounted to a fault deserving of disciplinary action. In one French case,[117] a senior civil servant was admonished for having signed an open letter attacking the government.

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115. Bida Théophile c. Etat du Cameroun Oriental, C.F.J., Arrêt No. 53 du 25 mars 1969, unreported.

116. C.F.J., Arrêt No. 62 du 25 mars 1969, unreported.

117. Teissier, C.E., 13 mars 1953.

He was held to be at fault on the ground that he had exceeded the limits of freedom of opinion which were permissible to an official in his position. The administrative court cannot however review the legal characterisation of the alleged facts in an area where the administration is by law given discretionary powers.[118] Moreover, the court has no power to enquire whether the fault committed by the civil servant should have carried a sanction different from that imposed by the administration because the choice of disciplinary sanctions is within the discretionary powers of the administration.[119]

The effect of an administrative act made in violation of the law is that the act is null and void. This illegality is d'ordre public and so the court may of its own motion take cognisance of it if the plaintiff fails to raise it.[120]

D. Where the making of an administrative act is a misuse or abuse of power

The administration commits a détournement de

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118. Essiane Aka'a Jean c. Etat du Cameroun Oriental, C.F.J., Arrêt No. 44 du 30 avril 1968, unreported. In France the administrative court is empowered to enquire whether in the exercise of its discretionary powers, the administration has not committed une erreur manifeste: Lagrange, C.E. 12 dec. 1961, A.J.D.A. 1961.228. This theory of erreur manifeste does not obtain in Cameroon.

119. Zoa Olinga Joseph c. Etat du Cameroun Oriental, C.F.J., Arrêt No. 72 du 30 sept. 1969, unreported.

120. Dame Makongo Agnès-Flore c. Etat Fédéral et Etat Fédéré du Cameroun Oriental, C.F.J., Arrêt No. 201 du 18 août 1972, 3 R.C.D. 76 (1973).

pouvoir where "l'act a été accompli par l'administration dans un but autre que celui en vue duquel les pouvoirs dont elle dispose lui ont été confiés."[121] In other words, there is a misuse or abuse of power if an administrative power or discretion has been exercised for some object other than that for which the power or discretion was conferred. This ground for nullifying the act of a public authority enables the administrative court, as in the case of violation de la loi, to control the actual content of the act of a public authority. But this control is essentially subjective, involving an enquiry into the motives which inspired the administrator so to act.[122] The court will look into the intention with which the act was done. An act will be held to be bad if it was done with a motive, or for an end other than that for which the power was conferred. The court will look at the act itself and hold it to be a misuse of power if it finds it to be cynical or maladroit.

It is the duty of the court to see that the powers of the administration are properly used, that is, used honestly and reasonably for the purposes authorised by law and not for any ulterior motive. So when power is

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121. Bilaé Jean c. Etat du Cameroun Oriental, C.F.J., Arrêt No. 120 du 8 dec. 1970.

122. In England, courts in dealing with similar issues tend to avoid the question of motive out of a desire not to usurp the discretion given to administrative authorities. If the purpose of the act is within the statute, courts invariably take the view that an enquiry into the motive is immaterial: Robins & Sons Ltd v. Minister of Health [1939] 1 K.B. 537.

granted to be used in the furtherance of the public interest it must not be used oppressively or unreasonably. Nor must the exercise of such power be prompted by considerations which are extraneous to the public interest. For example, the exercise of the power was prompted by personal interests,[123] the interest of an individual,[124] or political considerations.[125] Besides, if power was granted to be exercised in respect of a particular public interest it must only be exercised in that wise. An official of the administration commits a misuse of power if he exercises that power in respect of a public interest

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123. In the French case of Demoiselle Rault, C.E. 14 mars 1934, Rec. Lebon 1934, p. 337, regulations made by the mayor of a commune controlling the holding of dances was quashed when it appeared that they were made so as to encourage people to patronise his own inn.

124. In Demoiselle Soulier, C.E. 5 mars 1954, Rec. Lebon 1954, p. 139, a decision to start a school was quashed when, as it eventually appeared, the decision to open the school was taken in the sole interest of the person it was proposed to appoint as director. In England, it has been held that a local authority which has the power of compulsory acquisition of land for civic extensions or improvements would not be entitled to acquire compulsorily if its purpose were merely to reap the benefits of enhanced value (Municipal Council of Sydney v. Campbell [1925] A.C. 338); nor an education authority which has power to dismiss teachers on educational grounds dismiss them in order to effect economy (Hanson v. Radcliffe Urban District Council [1922] 2 Ch. 490).

125. Cf. Commission Départementale du Bas-Rhin, C.E., 12 avril 1935, where a subsidy was made to a free school not in the interest of education but as a protest against teaching of religion in the local state school.

other than the particular one for which the power was conferred.[126] The court will also intervene to prevent misuse of power if in exercising its power a public authority fails to take into account things which it ought to, or if it takes into account things it ought not to. For example, les pouvoirs de police are conferred on administrative authorities to enable them to maintain public order, security, salubrity and peace. If the exercise of these powers was prompted by financial considerations, there would be a misuse of power.

A public authority may commit what is known as 'abuse of procedure'. If the law requires a power to be exercised in a certain form, the neglect of that form renders the exercise of the power ultra vires.[127] Similarly if the administration is bound to follow a certain prescribed procedure and it chooses to follow a different

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126. In Beauge, C.E. 4 juillet 1924, Rec. Lebon 1924, p. 641, a mayor's order prohibiting dressing and undressing on the beach was quashed when it appeared that the purpose underlying the order was not public decency but to compel would-be bathers to use the municipal bathing establishment. In R. v. Paddington Rent Tribunal [1949] 1 K.B. 606 the court held that power had been abused where a local authority referred tenancies in bulk to a rent tribunal so as in effect to turn the tribunal into a general rent fixing agency. In Westminster Corporation v. L. & NW Ry [1905] A.C. 426 a local authority had power to construct underground public conveniences; the court considered whether this was the true purpose which the Corporation sought to effect in acquiring land compulsorily, or whether it was merely a colourable device to enable it to make a subway for pedestrians. See als, Grice v. Dudley Corporation [1958] Ch. 339.

127. Cf. Jackson Stansfield & Sons v. Butterworth [1948] 2 All E.R. 558.

one for its own convenience and ease, the neglect of that procedure also renders the exercise of the power invalid.[128]

When abuse of power is alleged, the court examines not only the precise terms of the statute but also infers an object from what is reported to have been said in the National Assembly or from any other relevant travaux préparatoires. In order to apply this ground for judicial relief the examining court must ascertain what the object behind the particular exercise of power was. Only when this object does not agree with or fall within the object of the statute would the court intervene on the basis of misuse of power. This problem is not always easy to solve. But here, the plaintiff in proceedings before the court will be assisted by 'the general principle of administrative morality'.[129] If he can point to unexplained behaviour on the part of the administration which on the face of it is not within the object of the statute, it will be for the administration to rebut these suspicions. Abuse of power is concerned not only with the abuse of statutory powers but with abuse of discretionary powers as well.[130]

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128. Cf. R. v. Minister of Health, ex parte Yaffe [1930] 2 K.B. 98.

129. Brown & Garner, op.cit., p. 131.

130. See the French case of Barel, C.E. 28 mai 1954, R.D.P. 1954, p. 509, concl. Letourneur, note Waline. In England, since administrative authorities invariably derive their powers from statute, courts investigating the validity of an administrative act scrutinise the precise terms of the statute to see if these have been contravened in any way. In Roberts v. Hopwood [1925]

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Where the plea of abuse or misuse of power succeeds, the administrative act in question would be nullified in part or in whole. If the plea fails the administrative act will continue to be effective. Indeed, an administrative measure continues, as a rule, to be effective and is not suspended simply because its validity is being challenged in court. So when the court dismisses the plaintiff's action, it in fact affirms the validity of the administrative act under attack and frees it from doubts of illegality; in effect the court impresses the impugned administrative act with the stamp of legitimacy. However, the effect of dismissing the case is only relative; that is, the same person cannot again challenge that same act on the same ground. But another aggrieved party may challenge the same act on the same or any other appropriate ground.

A decision declaring an administrative act null

Footnote 130 continued from page 801.

A.C. 578, the House of Lords was able to question the wages paid by a local authority, under a statutory power to pay such wages as they think fit, on the basis that the statute was to be construed as subject to a proviso that the authority must act reasonably. Again, in Hanks v. Minister of Housing and Local Government [1963] 1 All E.R. 47, the validity of a compulsory purchase order was scrutinised because the purposes for which the order could be made were specified in the statute. However, English courts do not intervene where a statute confers an unfettered discretion on an administrative agency: Westminster Bank v. Minister of Housing & Local Government [1970] 1 All E.R. 734.

and void has force of res judicata and is good as against the whole world. The offending administrative act becomes void ab initio - it is deemed never to have been made at all. However, there are two exceptions to this general principle. First, if the appointment of a civil servant is nullified, acts performed by him between the time he assumed office and the time the court's judgment was notified to him are considered to be valid. Secondly, the nullification of an administrative act does not affect any court decision which has become res judicata and which was arrived at on the basis of the act now nullified. For example, if an administrative regulation creating offences is subsequently nullified by the administrative court, convictions under the regulation before it was nullified would remain valid.

2. Plaints for indemnity

If the administration (or any administrative agency) is in breach of any contract it has entered into or if any of its agents or employees commits a tort in the course of his duties, it would be held liable and must indemnify the aggrieved party. This principle of administrative liability is necessary because the right of the citizen to seek annulment of any unlawful administrative act may be of little or no value where the citizen is faced with a fait accompli: the mayor fails to take precautions

against a riot with the result that the citizen's shop is looted, the post office loses or misdelivers the citizen's parcel, a munition dump blows up and destroys the citizen's house, and so on. In such cases, annulment is of little or no value either because there is no administrative act to annul, or because the decision taken by the administrative authority has spent its force and done its damage to the citizen.[131] The only mode of redress then open to the citizen is to obtain compensation for the damage.

But the rules governing administrative liability differ in important respects from those found in the ordinary civil law applied by the ordinary civil courts in suits between private individuals.[132] This means that there is a co-existence of two laws of tort and two laws of contract, the one private and the other public or administrative.[133] The liability which falls upon the administration for damage caused to individuals by the act of persons which it employs in the public service is not governed by the principles which are laid down in the ordinary civil law for relations between one individual and

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131. Brown & Garner, op.cit., p. 98.

132. Since the Crown Proceedings Act 1947, the British Crown may be sued for damages in tort or contract. As a general rule, the same law of tort or contract applies to public authorities as to private individuals.

133. Cf. the French case of Blanco, op.cit. English law by contrast has no theory of administrative or public contracts and no administrative law of tort.

another. Nor is this liability general or absolute. It has its own special rules which vary according to the needs of the service and the necessity to reconcile the rights of the administration with private rights.

A. Circumstances under which the administration would be held liable in tort

Under what conditions would the administration be held liable for its torts? - the word 'torts' being used here (unlike in English law where it is restricted to nominate heads of liability) to cover delictual and quasi-delictual liability, that is, deliberate harm and unintended harm arising from negligence or risk. It is a trite observation that as artificial persons, public bodies can only act through the intermediary of natural persons who are their agents. When an agent of the administration commits a tort in the course of his dutes, there are two possible ways of resolving the issue of compensation to the victim. The public official who committed the tort may be required to compensate the victim out of his own pocket. Alternatively, liability may be placed on the administrative agency for whom the official was working at the time the tort was committed. Until 1966 the law in Cameroon on the tortious liability of the administration was the same as in France. Since then however Cameroonian law has departed in important respects from the position in France.

a) The position before 1966

Up to 1966 the circumstances under which the administration in Cameroon could be held liable for its acts were the same as those in which the administration in France may be held liable for its acts. Until the Revolution the theory in France was the le Roi ne peut mal faire. The Revolution purported to have abolished this theory. But even after the Revolution it was still open to doubt whether the State could be made liable for its acts. It took the case of Blanco, decided nearly a century after the Revolution, to establish firmly the general principle of State liability. That case laid down three principles: that the State is liable for the faults of its servants, that administrative liability is governed by rules which are separate and distinct from those of the ordinary law, and that the question of liability of the administration falls within the jurisdiction of the administrative court. The administration may be held liable in tort either on the theory of risk or where there has been fault. However, the tortious liability of the administration is based, first and foremost, on fault, this consisting of some defect or failure in the operation of the public service in question.[134]

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134. In the French case of Feutry, T.C. 29 fevr. 1908, S.1908.3.97, note Hauriou, concl. Teissier, a lunatic escaped from an asylum maintained by the administration and set fire to someone's hayrick. The administration was held liable to indemnify on the basis of faute de service. Cf. the English case, Dorset Yacht Club Co. Ltd v. Home Office [1969] 2 W.L.R. 1008 where the administration was held liable for the acts of young delinquents who had escaped from a borstal maintained by the administration.

For almost a century after the Revolution in France a victim there could not sue a civil servant at fault in his personal capacity in the ordinary courts. This was not possible because of the existence of a constitutional guarantee protecting civil servants from personal suits, save by express leave of the Conseil d'Etat (seldom accorded unless the civil servant had acted wholly outside the scope of his duties). This guarantee, much criticised by liberals, disappeared in the 1870s, particularly after the classic distinction between faute personnelle and faute de service was laid down in 1873 by the Tribunal des Conflits in Pelletier.[135]

There is said to be faute personnelle where there is some personal fault on the part of the official, that is, a fault which is not linked to the public service but reveals the man 'with his weaknesses, his passions, his imprudence'.[136] Where such personal fault is present the official can be sued personally by the citizen in the ordinary court, and by the public authority under whose employment he is, in the administrative court.[137] On the other hand, where there is simply a faute de service

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135. T.C., 30 juillet 1873, D.1873.3.5, concl. David. In that case the publisher of a newspaper sued for damages a prefect and a general who had seized his paper.

136. Brown and Garner, op.cit., p. 101.

137. Laruelle, C.E., 28 juin 1951, S.1952.3.25, note Mathiot; Delville, 28 juillet, 1951, J.C.P.1952.II. 6734, note Eisenmann.

(that is, a fault which is linked to the public service), the official preserves his immunity by reason of the principle of separation of powers which prohibits the ordinary courts receiving actions against the administration or its officials. Instead, the injured party must sue the administration (and not the official himself) before the administrative court. The doctrine of faute de service covers not only misfeasance but also non-feasance and 'late-feasance' (that is, excessive slowness in functioning).

But not every illegal act nor every misdemeanour involving an official are held to be service-faults. A simple irregularity in form affecting the dismissal of a civil servant is an illegality but the court will refuse compensation if it believes the dismissal to have been in fact justified. The law governing administrative torts distinguishes between two degrees of fault, simple and serious. Which of these degrees of fault will suffice to render the administration liable will depend on the problem posed by the particular public service. Serious fault would be required to establish liability when the task of the public service is particularly difficult or delicate.

Where injury caused to someone is the product of the combination of a faute de service and a faute personnelle, the court will invoke the notion of cumul des responsabilités to hold the administration liable for the whole damages claimed. In Anguet[138] a visitor to a post

138. C.E., 5 fevr. 1911, S.1911.3.137, note Hauriou.

office was assaulted and his leg broken by two members of the post office staff because he left by the staff entrance, the entrance for the public having been prematurely closed. The court found that there were two distinct faults (a faute de service, constituted by the premature closing, and a faute personnelle constituted by the unwarranted violence) which combined to occasion the injury and held the administration liable for the whole damages claimed. This notion of cumul was pushed a step further in Lemonnier.[139] In that case a person was injured during a shooting competition organised by a country commune at its annual fete. Earlier on the day of the injury some other persons had complained to the mayor of being narrowly missed by bullets. It was held that the mayor's negligence in permitting the shooting to continue constituted at one and the same time a personal and a service fault.[140]

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139. C.E., 26 juillet 1918, S.1918-1919.3.41, concl. Leon Blum.

140. See, Mimeur, Defaux, and Besthelsemer, all decided on the same day: C.E., 18 nov. 1949, D.1950.J.667, note J.G. All three cases concerned motor vehicles belonging to the administration but being used by officials on private and unauthorised journeys. The negligent driving of the officials resulted in injury to the three complainants. Each official was clearly on a frolic of his own. But the Conseil d'Etat held there to be a cumul of personal fault and service fault, the accidents not being deprived of all connection with the service. In Bernard, C.E., 1 janv. 1954, Rec. Lebon 1954, p. 505, concl. Laurent, a policeman on duty outside a bar went in to have a drink. He became involved in an argument and injured a customer with his revolver. Held, that the service will be held responsible. In Dame Veuve Litzler, C.E., 23 juin 1954, Rec. Lebon 1954, p. 376, however, the fault was held not to be a service fault where a customs officer in uniform but off duty used his service revolver to commit a murder.

The cumul doctrine does not permit the victim to obtain damages twice over. It gives him a right to obtain judgment both in the ordinary courts against the official for his personal fault and in the administrative court against the administration for its service-faults. Whichever of the two judgment debtors then pays the damages awarded has a right of action against the other for a contribution or even a complete indemnity. The right of contribution or indemnity between the joint tortfeasors (that is, the official and the administration) has been gradually evolved by the Conseil d'Etat. In Lemonnier the court indicated that once the commune had paid the damages to the complainant, it could require to be subrogated to the latter's rights against the mayor for his personal fault. But this was recognised to be an imperfect and clumsy device. In cases of cumul most victims understandably sued only the administration having regard to its deeper pocket. Hence, the negligent official usually escaped liability. Fears were then expressed lest this immunity, in practice, of officials should encourage irresponsible and reckless behaviour in their dealings with the public. Prompted by such policy considerations, the Conseil d'Etat decided in Delville and in Laruelle that the administration should have a direct action for contribution or indemnity against the official.[141]

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141. In Delville a government lorry was involved in an accident partly because of the drunken state of the driver and partly because of the defective state of the brakes. The driver was held liable in the ordinary court and his claim for a 50% contribution

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This action will lie in the administrative court, and it would be for this court to apportion the ultimate share of responsibility between the official and the administration in cases of cumul. The official who is at fault can be made to contribute proportionately towards the damage done where only the administration has been sued by the victim. What is an appropriate contribution is determined according to the official's duties and responsibilities in the particular service in which he is employed rather than by reference simply to the actual part played by him in causing the damage. For example, if several soldiers are travelling together in an army vehicle which is involved in an accident through being driven negligently, the driver will not necessarily bear a heavier share of the consequences: each soldier's responsibility will be weighed by reference to his duties, and the sergeant may be held liable to a greater extent than the private.[142]

b) The position since 1966

Since 1966 the distinction between faute de

Footnote 141 continued from page 810.

from the administration on the grounds of the faulty brakes of the vehicle succeeded. In Laruelle a soldier knocked down a pedestrian while driving an army vehicle he had taken without authority on a private journey. Held that there was a service fault by reason of the inadequate supervision of the garage where the vehicle was kept; that upon payment of the damages the administration was entitled to require the soldier to reimburse the whole amount.

142. Jeannier, C.E., 22 mars 1957, D.1957.748, concl. Kahn, note Weil.

service and faute personnelle no longer obtains in Cameroonian administrative law.[143] Whenever an official under the employment of the State, a parastatal or any other State agency causes loss to anyone the juridical person under whose employment the official is becomes ipso facto liable in the place of the official. This liability is in fact vicarious.

(i) Vicarious liability

Section 9(3) of Ordinance No. 72/6 of 26 August 1972 enacts:

> "The ordinary courts shall have jurisdiction over any other claim or dispute in accordance with the ordinary law, whether or not any juridical person described in subsection 1 be a party, the liability of the said juridical person replacing without more that of any agent who has caused loss, whether or not in the course of his employment."

Exclusive jurisdiction is given to the ordinary courts to entertain the victim's action. The ordinary courts exercise this jurisdiction in accordance with the ordinary law. The liability of the administration replaces without more that of its servant who caused the loss, whether or not the servant was in the course of his employment. The scope of the vicarious liability of the administration is wider in Cameroon than it is in France. In France the administration is vicariously liable for injury caused by its servants only in respect of injury arising from road accidents. In Cameroon by contrast the

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143. Law of 19 November 1965, s. 14; Law of 14 June 1969, s. 14.

administration is vicariously liable for every loss or damage caused by its servants (save for damage or loss flowing from a judicial act) irrespective of the source of such loss or damage. The merit of the Cameroonian formulation is that it resolves in a very simple manner the issue of the servant's liability vis-a-vis the victim. Whenever the servant or official causes loss, whether in the course of his employment or while on a frolic of his own, to an individual the liability of the servant is replaced automatically with that of the body concerned.

This system has a triple advantage. In the first place it is advantageous to the victim because the administration has a deeper pocket. Since the State is, on principle, always solvent, that victim is certain that his claim, if it succeeds, will be fully met. Secondly, the system saves the court from the headache of having to distinguish, as in France, between personal fault and service-fault. If the servant caused the loss, the administration must step into the shoes of its servant and make good the loss suffered by the victim. The question whether the loss complained of was caused as a result of a personal fault or a service-fault is irrelevant. It may well be that state funds should not be used to bail out a functionary who has been guilty of gross negligence or mistake. But personal initiative on the part of officials should not be discouraged. This would be the inevitable effect of holding out to them the possibility

of having to compensate out of their own pockets persons to whom their actions may cause loss.

In deciding whether the administration should be held vicariously liable, the court need only be satisfied that the tortfeasor was at the time of commission of the tort, a servant of the administration. The concept of 'servant' is a wide one. It embraces civil servants and auxiliary staff of the administration. But it excludes les collaborateurs occasionnels. These are persons who have been compelled, on the basis of some particular legislation, to assist temporarily in the running of public services. For example, persons requisitioned to do community work. They also include persons who, though not requisitioned, have been invited or have spontaneously offered to assist in some public service. For example, a passer-by doctor called upon to give emergency treatment to road accident victims. These persons assisting in the public service in a voluntary or requisitioned capacity, do not come within the meaning of 'servant' of a public law juridical person and if they cause any loss they are personally liable. It makes no difference that they were acting in a benevolent capacity and assisting in a public service. The law is otherwise in France. If a collaborateur occasionnel causes loss, the administration would be liable in the same way as if the loss had been caused by a servant of the administration. If it is the collaborateur occasionnel himself who gets

injured while assisting in the public service, the administration is bound to compensate him.[144]

Clear policy considerations lie behind the favourable treatment of collaborateurs occasionnels in France: people should not be discouraged from voluntarily offering to assist in performing some public service where such assistance is required. In Cameroon however, collaborateurs occasionnels have no right of compensation if they get injured while acting as such. Moreover, if they injure anyone, they must compensate that person out of their own pockets. Anyone acting as a collaborateur occasionnel does so, as it were, at his own risk. He is treated more or less like a busybody. It is strongly submitted that this is unjust. The administration ought to

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144. In Charat, C.E., 5 mars 1943, Rec. Lebon 1943, p. 62, the administration was held liable where an individual was injured when he went to help fight bring a fire under control. In Commune de Saint-Priest-la-Plaine, C.E., 22 nov. 1946, Rec. Lebon 1946, p. 275, a commune was held liable where the victim was injured by the premature explosion of a firework when he was helping to set off fireworks at a village carnival. In Gaillard, C.E. 9 oct. 1970, Rec. Lebon 1970, p. 565, concl. Rougevin-Baville, an elderly lady fell into a ditch on property belonging to the local commune. Her cries for help attracted Gaillard to the spot. He in turn fell into the ditch and suffered injuries. It was held that he could recover from the commune because he was, in attempting to rescue the old lady, undertaking a 'service public communal'. Again, in Pinguet, C.E. 17 avril 1953, D.1959.J.7, note Morange, a passer-by recovered damages when he went in pursuit of a thief and was stabbed. In England, a similar result would be achieved by the ex gratia procedure of the Criminal Injuries Compensation Board set up under the Prerogative in 1964.

be held liable to compensate an injured collaborateur occasionnel or any person injured by him. The law should not discriminate against those who have offered or who have been requisitioned to assist in performing some public service. Such persons should, for the purpose of compensation, be placed on the same footing as servants or officials of the administration. This need not be done by legislation. All the court need to do is to so construe 'servant of a public law juridical person' as to include not only civil servants and auxiliary staff of the administration but also persons assisting voluntarily in some public service. The Good Samaritan should not be discouraged. Moreover, where the administration has requisitioned a person to render services for the public good it is extremely foul and vexatious of the administration to refuse to compensate him for any injury he may personally suffer or to accept responsibility where injury is caused to someone.

If a servant of the administration causes loss to anyone, the administration becomes vicariously liable for the loss caused and it makes no difference that the servant committed the tort in the course of his employment or while on a frolic of his own. The locus classicus on this point is Litty Hermann c. M'Beleck.[145] The respondent, M'Beleck was injured in a road accident through the reckless

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145. C.S.C.O., arrêt du 18 juillet 1967, unreported.

driving of the appellant. The appellant was under the employment of the administration and he was driving a vehicle belonging to the administration. He was convicted of unintentional wounding. At the criminal trial the respondent constituted himself partie civile and claimed compensation from the administration. The Douala Court of Appeal confirmed the appellant's conviction but refused to hold the administration liable to compensate the respondent. The court reasoned that although the appellant was under the employment of the administration and was driving a vehicle belonging to the administration at the time of the accident, he was then on a frolic of his own. The court characterised the fault committed by the appellant as 'detachable du service'. This reasoning of the Douala Appeal Court was rejected, on appeal, by the Supreme Court. The Supreme Court said that the Appeal Court should have determined, in accordance with private law rules and not with those of administrative law as it erroneously did, whether the administration was liable as a result of the negligence of its servant and, in the affirmative to hold the victim entitled to compensation by the administration. The Supreme Court admonished the Appeal Court for surreptitiously attempting to introduce into Cameroonian administrative law, the distinction which obtains in France between personal fault and service fault.

In an action for compensation for a tort committed

by a servant of the administration, the victim need not sue the servant and the administration jointly. He need only sue the servant. If it is shown that the servant was at fault and therefore liable the administration would be required to pay the compensation awarded the plaintiff. The task of the trial court is to determine in accordance with the rules of the ordinary law whether the servant (and not the administration itself) is at fault and therefore liable to the plaintiff. Once the servant has been held liable the administration would be required, without more, to pay the amount of compensation awarded the plaintiff. In law therefore, it is not the administration but the servant who is liable; the administration acting merely as a sort of insurer. In theory, in deciding whether the defendant is liable to the plaintiff or not, the trial court must turn a blind eye to the fact that he (the defendant) is a servant of the administration. In other words, the court in determining the issue of liability should not let itself be influenced by the fact that the defendant is a servant of the administration. This is probably intended to obviate the danger of judges becoming too disposed to holding the servant liable in circumstances in which they would probably not if they did not know that behind the servant stands the administration with a deeper pocket. In practice however, the court does know that behind the servant stands the administration and in a close case would hold the servant liable

(and therefore making the administration pay) instead of seeing a person who has clearly suffered injuries go uncompensated on perhaps a mere technicality.

(ii) Liability of the servant towards the administration

When the servant is held liable and the administration is required to pay out the compensation awarded the victim, has it any right of contribution as against the servant? On what basis may the administration require the servant to reimburse it in part or in full? There is a lacuna in the law on this point.[146]

It is submitted that the administration should, after paying out to the victim, have a right of indemnity as against a servant guilty of gross negligence. Complete immunity from liability may prove to be a charter for negligence and carelessness on the part of State functionaries. In a developing country such as Cameroon is, the State has a central role to play in development and must therefore prove itself efficient. Experience has shown that civil servants here do not always have a sense of public duty. They are often inclined to act in their personal interest rather than in that of the State. Under these circumstances, complete immunity for the offending servant may have disastrous consequences for the administration. It is desirable that state functionaries should be inculcated with a sense of duty and responsibility. It is not sufficient that the civil servant be disciplined when he offends against the civil service regulations.

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146. Under a financial law of 14 June 1961, s. 21, a servant of the administration would be liable to it where he causes loss to the administration by damaging, destroying or losing any state property.

If the servant causes loss to the administration he should be held liable to make good the loss. If a person is injured or if he suffers loss as a result of the servant's gross negligence, the administration should, after indemnifying the victim have a right of indemnity as against the grossly negligent servant.

The competent court for the administration's action against its servant would be the administrative court. In Mbédey Norbert c. République Fédérale du Cameroun[147] a car owned by the administration was put at the disposal of the appellant and it was stolen from him. The Minister of Finance issued against him an ordre de recette for 518,000 francs, representing the value of the loss suffered by the State. The appellant challenged the Minister's order in the administrative court. He prayed the court to nullify it on the ground that he was not liable for the loss. Held, that the Minister's order was an administrative act, that the administrative court has jurisdiction to entertain the action, and that the appellant was liable to the administration.

B. Scope of the tortious liability of the administration

The administration may be held liable on the basis of fault or of liability without fault. The scope of this

147. C.F.J., 29 mars 1972, 3 R.C.D.64 (1973), observations Henri Jacquot.

liability is narrower in Cameroon than in France.

a) Fault liability

The administration cannot be held liable on the basis of fault until three conditions have been satisfied. There must be (i) prejudice or loss suffered, (ii) fault on the part of the administration, and (iii) a nexus between the fault alleged and the loss suffered. Actual loss must have been suffered. Potential or threatened loss will not suffice. But provided such a loss is one flowing from the infringement of a situation recognised under the law, it may be a physical, pecuniary or moral loss. Thus in Amougou Philippe et Dame Nkoa Martine c. Etat du Cameroun[148] a lady was held to be entitled to compensation for mental anguish when her child was run over by a vehicle belonging to the administration and being negligently driven.

The administration is liable for any fault on

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148. C.F.J., Arrêt No. 13 du 16 mars 1967, unreported. In France the court has shown a parsimonious attitude in relation both to the categories of damage or prejudice for which it will allow compensation, and also in the actual amounts awarded. Thus, until Letisserand, C.E., 24 nov. 1961, D.1962.34, concl. Heumann, the Conseil d'Etat refused to indemnify for mental anguish. In that case, the court departed from its previous jurisprudence and awarded the father a pretium doloris of 1000 French francs when his son was killed in a collision with an administrative vehicle which was being negligently driven. The sum awarded, however, was still niggardly compared with what a civil court might have awarded in the circumstances.

its part irrespective of the actual agency which caused the loss.[149] No distinction, as in France, is made, on the basis of the difficulty of carrying out the service, between simple and serious fault. Although the administrative court does not say so, it does seem that it does apply the tort rules contained in ss. 1384 et seq. of the Code Civil. Thus, in certain cases the administration is, on the basis of contributory negligence on the part of the victim, held to be only partly liable.[150] In other cases, the administration is held not liable on the ground that there has been a novus actus interveniens such as force majeure or act of God, the victim's own fault, or the fault of a third party. The administration would escape liability under this head only where the intervening act was completely alien to the administrative activity or where it was unforeseeable and irresistible.

b) Liability without fault

In certain special circumstances the administration may find itself liable even when it is guilty of no fault. One of such special circumstances relates to

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149. A contrary position obtains in France. There, the principle remains that laid down in Blanco according to which the liability of the State 'is neither general nor absolute' and varies 'according to the needs of the service'.

150. Tchany Jean c. Etat Fédéré du Cameroun Oriental, op.cit.; Ngijol Pierre c. Etat Fédéré du Cameroun Oriental, C.F.J., Arrêt No. 145 du 23 mars 1971, unreported.

public works. A duty is placed on the administration to compensate anyone injured as a consequence of the carrying out of public works.

In droit administratif, the liability without fault is based on two theories, the theory of risk and the principle (originally contained in the French Declaration of the Rights of Man but now also inscribed in the preamble to the Cameroonian constitution) of the equality of all citizens in bearing public charges.

(i) Equality in bearing public charges

> "The activity of the State is carried on in the interest of the entire community; the burdens that it entails should not weigh more heavily on some than on others. If then State action results in individual damage to particular citizens, the State should make redress, whether or not there be a fault committed by the public officers concerned. The State is, in some ways, an insurer of what is often called social risk." 151

Thus if the administration in the course of carrying out a certain activity were to cause damage to someone, it shall not lie in its mouth to disclaim liability on the ground that the activity was lawful and carried out in the public interest. What is done in the general interest, even if done lawfully, may still give rise to a right to compensation when the burden falls on one particular

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151. Duguit, Traite de droit constitutionnel, 3e ed., p. 469, cited by Brown & Garner, op.cit., p. 105.

person.[152] In Dame Ngué Andrée c. Commune de Mbalmayo[153] the court held, (1) that a prejudice suffered by an individual as a result of the carrying out of works of public interest can only give rise to compensation if it is exceptional, and (2) that there was in the instant case an infringement of the principle of equality in bearing public charges, an infringement sufficient to entail the liability of the public authority irrespective of any question of fault.

For the administration to be liable under this head the prejudice must be so grave that it imposes on the victim 'a sacrifice exceeding his normal participation in bearing public charges'.[154] The plaintiff must also establish a direct relationship between the prejudice suffered and the administrative activity complained of.

(ii) The risk theory

In Cameroon the administration has not been held

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152. Cf. the French case of Couitéas, C.E. 30 nov. 1923, S.1923.3.57, note Bauriou, where a landowner was refused the assistance of the administration to evict squatters from his land. Held, that by refusing to assist the landowner, he was called upon to bear an abnormal burden in the public interest and to protect the principle of equality in bearing public charges he must be compensated in damages for his special sacrifice.

153. C.F.J., Arrêt No. 5 du 25 mars 1969, unreported.

154. Ngomha Salomon c. Commune de Douala, C.F.J., Arrêt No. 59 du 25 mars 1969, unreported; Mortant Theophile c. Commune de Douala, op.cit.

liable on the theory of risk. But there is no compelling reason, whether jurisprudential or out of policy considerations, why the administration here may not be held liable on this theory. After all, the principle of equality of all citizens in bearing public charges is only a variant of the risk theory, based on the theory of 'social risk'. In France liability without fault is based either on the theory of risk or the principle of equality of all citizens in bearing public charges. The jurisprudential basis is however that of the risk theory - risque professionnel[155] or risque anormal du voisinage (that is, risk arising from dangerous operations).[156]

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155. For example, as in the case of Cames, C.E. 21 juin 1895, S.1897.3.33, note Hauriou, where the Conseil d'Etat allowed a claim for damages against the State by a workman in a State arsenal who had his hand shattered in an accident at work for which no blame could be attached to anyone.

156. In Regnault-Desrozier, C.E. 28 mars 1919, S.1919.3.25, note Hauriou, military authorities installed a large dump for grenades in a residential neighbourhood. It blew up with considerable loss of life and damage to property. Held that the State was liable on the ground of risk and it was therefore unnecessary for the victims to establish any fault. In England a similar result would be achieved under the rules in Rylands v. Fletcher (1868), L.R.3 H.L.330 and Read v. Lyons & Co. Ltd [1947] A.C. 156. In Daramy the complainant's wife was shot dead when a policeman was pursuing the assailant of a taxi-driver; and in Lecomte the properitor of a bar whilst sitting at the street door, was killed by shots fired by the police at a motorist apprently evading a road block. In both cases the State was held liable. In Thouzellier, C.E. 3 fevr. 1956, J.C.P.1956.II.9608, note D. Levy, it was held that advance liberal methods for re-educating young delinquents in an institution create an abnormal risk for the neighbours. Contra Dorset Yacht Club v. Home Office, op.cit., where in similar circumstances negligence had to be established to enable the court to find the administration liable in damages.

III. Procedure in the Administrative Court

Procedure in the administrative court is governed by chapter 4 of Ordinance No. 72/6 of 26 August 1972 (Organisation of the Supreme Court) as amended by Law No. 76/28 of 14 December 1976. This procedure is substantially the same as that which was applicable in the then Federal Court of Justice.[157] The procedure is both inquisitorial and adversary and relies heavily on written submissions. It is inquisitorial in that the court takes upon itself the task of finding out the facts, not being content to decide the case on the facts as established by the parties. The court pursues an independent investigation, not being constrained to rely upon the investigations and arguments of counsels. However, the procedure is also contradictoire, that is, adversary. This means that each side is given an opportunity of contradicting what the other party has said. But by and large, much greater use is made of written procedures and there is almost complete absence of oral arguments by counsel; hence, the importance of the dossier before the court. In the dossier would be found the plaintiff's requête containing his side of the story, his arguments, and authorities in support thereof. The sinews of litigations in the administrative court are papers.

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157. Law No. 64/DF/218 of 19 June 1964 (Procedure before the Full Bench of the F.C.J.).

1. Initiation of proceedings

A. The rule of prior complaint to the administration

A plaintiff may not commence proceedings in the administrative court until he has made a prior complaint to the administration itself and has obtained no redress of his grievance. This is known as la règle du recours gracieux préalable.[158] Section 12(1) of Ordinance No. 72/6 of 26 August 1972 provides that "no complaint may be made to the Supreme Court until after rejection of a complaint made to the competent Minister or

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158. The rule originated from France. There, a law of 16-24 August 1790 forbade the civil courts from concerning themselves with the operation of the administration, thereby closing the door to redress in the ordinary courts. But then some outlet had to be provided for the aggrieved citizen. The solution adopted in 1799 was that the citizen had first to lodge his complaint with the appropriate Minister. If still unappeased the citizen had a right of appeal from the Minister to the Conseil d'Etat. The former process was known as the doctrine of ministre-juge and the latter as the theory of justice retenue. These twin concepts were soon discarded. A law of 24 May 1872 conferred on the Conseil d'Etat the proper jurisdiction of a court with power to render justice not in the name of the head of State but au nom du peuple francais. This represented a shift from la justice retenue to that of la justice déléguée. In Cadot, C.E. 13 dec. 1889, S.1892.3.17, concl. Jagerschmidt, note Hauriou, the C.E. cast off the outworn practice that there had first to be a complaint by the aggrieved citizen to the Minister. Henceforth cases could be taken directly before the C.E. which became le juge de droit commun des actes administratifs. But a survival of the old rule is to be found in the rule known as la règle de la décision préalable. See generally, Brown & Garner, op.cit., pp. 19-21.

authority empowered by the regulating instrument to represent a local authority or a public corporation". The rule of prior complaint (analogous to the French règle de la décision préalable) seeks to fulfil a three-fold objective. First, to encourage the parties to resolve their differences amicably and to prevent idle and vexatious suits. Secondly, to ensure that before the administration is taken to court it has taken a stand on the issue. Thirdly, to facilitate the task of the court for the court can only entertain a complaint if it is directed against a decision already taken by the administration.

a) Scope of the rule of prior complaint

The rule is of general application. The plaintiff must first complain to the administration irrespective of the nature of the issue involved. The administrative court would only entertain a plaint brought before it if it is satisfied that a prior complaint had been made by the plaintiff to and rejected by the administration. The court will not go into the merits of the case if this condition precedent for the invocation of judicial relief has not been satisfied. However, there is judicial authority to the effect that the rule is not d'ordre public and therefore that if the administration does not raise the point the court is entitled to assume that it has been respected.[159]

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159. Tagny Mathieu c. Etat du Cameroun, C.F.J., Arrêt No. 19 du 16 mars 1967, 'Recueil Mboyoum' 1962-1970, p. 73.

The rule of prior complaint requires that the complaint must have been made "to the competent Minister or authority empowered by the regulating instrument to represent a local authority or a public corporation". This means that the complainant must make his complaint to the Minister in charge of the service that made the impugned act or decision. In the case of a local authority or a public corporation the complaint must be made to the Minister or authority empowered by regulating instrument to represent it. Thus if the complaint is against a decision taken by a commune or local council the complaint must be made to the Minister of Territorial Administration since all local councils come under the authority of that Minister. If the act complained of was made by, say, the Ports Authority, or Cameroons Airlines, or the Railway Corporation, the relevant authority to whom the complaint should be made is the Minister of Transport. The law is silent as to whom the complaint should be addressed where the offending decision was made by the Head of State or any of the services of the Presidency. But there is no reason why such a complaint should not be addressed to the Head of State himself.

Any prior complaint must be made within the required time-limits. These time-limits are contained in s. 12(3) of Ordinance No. 72/6 and depend on the nature of the complaint. The right of complaint to the relevant authority is barred (i) by the lapse of two months from

publication or service of any decision complained of, (ii) by the lapse of six months from the loss or knowledge of the loss in respect of which damages are claimed, (iii) by the lapse of four years from the date on which an authority legally bound to act was first in default. These time limits are calculated on a monthly and yearly basis. Time begins to run from the day of the realisation of the offending act or notification of the offending decision. Time is then said to begin running from the dies a quo, that is, from the initial day. The day on which the time limit runs out is also taken into account in the computation of time. This is expressed by saying that time runs out on the dies ad quem, that is, on the last or final day of the time limit.[160] There is no provision for the extension of time and the administrative court has always refused to do so. In Njoh Isaac c. Etat Fédéral du Cameroun[161] the plaintiff who was challenging the validity of the results of a competitive public examination erroneously addressed his complaint to the wrong quarters. Held, that the plaintiff would not

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160. Alai Belobo Nestor c. Etat du Cameroun Oriental, C.F.J., Arrêt No. 137 du 26 janv. 1971, 1 R.C.D.44 (1972) - held that a two months time-limit running as from 28 April 1969 expires on the 28 June 1969; Nkillia Abessolo Martin c. Etat du Cameroun, C.F.J., Arrêt No. 144 du 23 mars 1971, unreported - held that a four years time-limit commencing on 19 October 1966 expires on 19 October 1970.

161. C.F.J., Arrêt No. 136 du 26 janv. 1971, 1 R.C.D.44 (1972).

be granted an extension of time to enable him to address his complaint to the relevant authority. A similar decision was reached in Moutackié Joseph c. Etat du Cameroun Oriental[162] where the plaintiff who was attacking a decision revoking his licence to sell alcoholic drinks had addressed his complaint to the wrong authority; and in Tameze Joseph c. Etat du Cameroun Oriental[163] where a nurse aggrieved by a decision retiring him, complained also to the wrong authority.

If a prior complaint is made to the appropriate quarters and relief is granted, the matter ends there. If no redress is given or if the complainant is not satisfied with that given, he is entitled to seek judicial relief. He is also entitled to do so where his complaint is rejected. A complaint may be rejected expressly or impliedly. A complaint would be deemed to have been impliedly rejected where there is "failure for three months by the said authority to reply to a claim or complaint addressed to it".[164] Provided however, that "where the claim relates to damages the authority in question shall have a further three months after admitting liability, in which to propose the amount of damages".[165]

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162. C.F.J., Arrêt No. 108 du 8 dec. 1970, 1 R.C.D. 42 (1972).

163. C.F.J., Arrêt No. 123 du 8 dec. 1970, 1 R.C.D. 43 (1972).

164. Ordinance No. 72/6 of 26 August 1972, s. 12(2).

165. Idem.

b) Effect of the rule of prior complaint

In principle, and subject only to any counter-claims that may subsequently be made, the relief sought by the complainant in his recours gracieux sets the limit of his action. If the matter then goes to court the plaintiff is not entitled to seek additional remedies. To allow the plaintiff such leeway would be to defeat the very raison d'etre of the rule of prior complaint. By section 14(7) of Ordinance No. 72/6 "no new claim emanating from either party may be made before the Full Bench even if such a claim is a direct consequence of the original claim and seeks the same remedy". A claim is new and will consequently not be entertained if it is one which had not been made in the original suit. The fact that the subsequent claim seeks the same remedy as the original one or that it is merely a limb, variant or direct consequence of the original one is immaterial.[166] It is submitted that since the prohibition is only on new claims being made 'before the Full Bench' there is no reason why a claim which is not stricto sensu new (in the sense that it seeks the same remedy although supported by different legal arguments) should not be made before the Administrative Bench of the Supreme Court.

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166. Etat Fédéré du Cameroun Oriental c. Baba Youssoufa, C.F.J., Arrêt No. 5 du 31 mars 1971, 1 R.C.D. 41 (1972).

B. Presentation of the suit

As a general rule the plaintiff may bring a civil action only if he has a right (droit), an interest (intérêt), capacity (capacité) and is a proper party (qualité). The action must also be brought within the prescribed time limits. Capacité d'ester en justice is the capacity to sue or be sued and certain categories of persons such as lunatics and infants have no such capacity. A person has an interest if he stands to derive some financial or moral benefit in the outcome of the action. The interest must be a present, actual, and lawful one. 'Present and actual' means in substance that the action may not be brought prematurely. A person without interest cannot bring an action in court. Courts are extremely reluctant to allow an actio popularis available to all and sundry. Such an action may lead to abuses and a clogging of effective public administration.

In plaints for indemnity the plaintiff's interest in the action must be exclusively personal but in plaints for excess of power the plaintiff's interest need not be exclusively personal. Thus in Eitel Mouellé Koula c. République Fédérale du Cameroun, the plaintiff, an adherent of the Jehovah's Witnesses religious sect, was held to have an interest in challenging a government decision proscribing that sect on the basis that the ban deprived him of his freedom of practising a religion. In France the local tax-payer has an interest to challenge

any measure which will have repercussions on the finances of the local authority. So in Casanova[167] a tax-payer was held to be entitled to attack a decision of the prefect who had refused to annul the resolution of a municipal council to establish a clinic at public expense. Similarly, in Syndicat des Propriétaires et Contribuables du Quartier Croix-de-Seguey-Tivoli[168] the suppression of a tramway service to one district of Bordeaux was challenged by a 'users association' and the court accepted that any user of a public service had sufficient interest to act.

The interest may also be professional, as in Lot et Molinier[169] where a graduate whose degree was the required professional qualification for archivists objected to the appointment of a non-graduate by the National Archives; collective, as in Association des Anciens Eleves de l'Ecole Polytechnique[170] where an old boys' association took proceedings out of concern for the reputation of their former school; private or public, as in Maire de Néris-les-Bains[171] where it was held that a local authority

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167. C.E. 29 mars 1901, S.1901.3.75, note Hauriou.

168. C.E., 21 dec. 1906, S.1907.3.33, concl. Romieu, note Hauriou.

169. C.E., 11 dec. 1903, S.1904.3.113.

170. C.E., 13 juillet 1948, S.1949.3.36; see also, Syndicat des Patrons Coiffeurs de Limoges, C.E., 28 dec. 1906, where an association of traders challenged a Sunday-closing by-law, in defence of their collective interest.

171. C.E., 7 juin 1902.

was entitled to challenge the decision taken by its administering authority and which was injurious to its interests; material; or even moral, as in Abbé Deliard[172] where a regular worshipper was held to be entitled to object to the closing of a church, and as in Dol et Laurent[173] where the immorality of their profession did not prevent some prostitutes from obtaining review of certain administrative decisions restricting their activities, as an infringement of personal liberty.

A person whose rights have been violated or who has suffered injury always has locus standi to bring an action in court. Interest and locus standi are not necessarily synonymous. A person may have an interest in a case and yet have no locus standi to maintain an action.[174] It is not sufficient that the person bringing the action has interest, capacity and is a proper party. He must bring his action within the prescribed time limit which is two months following the implied or express rejection of the prior complaint. The action is instituted in the form of a declaration. The declaration need not be formulated in any particular manner. It may be made orally or in writing by the plaintiff himself, his advocate

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172. C.E., 8 fevr. 1908, S.1908.3.49, concl. Chardenet, note Hauriou.

173. C.E., 28 fevr. 1919, S.1918-19.3.33, note Hauriou.

174. Wambo Telesphore c. Etat Fédéré du Cameroun Oriental, C.F.J., Arrêt No. 188 du 28 mars 1972, 3 R.C.D.59 (1973).

or someone else duly mandated by him. The declaration is lodged with the registrar of the Administrative Bench of the Supreme Court.

When the registrar receives the declaration he must make a note of the date of the declaration, the registry before which it is made, the name of the registrar who recorded the declaration, the name and address of the plaintiff or his advocate, and the reference of the administrative decision against which the complaint is being made. After recording the declaration the registrar immediately sends a copy to the plaintiff who is then given 45 days within which to file in a signed mémoire ampliatif and to brief an advocate. The mémoire ampliatif usually consists of a short statement of facts, the legal grounds on which the case is based, and the conclusion or the actual remedy which is being sought.

2. Court proceedings

A. Examination of the suit

After the suit has been filed in the case would then undergo what is known as instruction, that is, preparing the case for eventual judgment. This process involves a piecing together of the elements of facts and law on which judgment would be based. This phase of the procedure may take weeks or months, depending on the

complexity of the case and whether there is stalling or dilatoriness by the administration or the plaintiff's advocate. The instruction is conducted by the judge acting as inquisitor. The task may be undertaken by the President of the Administrative Bench himself or a juge rapporteur to whom the case has been allocated. The instruction is initiated by the registrar of the court handing the dossier to the président who would then designate a rapporteur to study the case.

The first thing the rapporteur does is to verify whether the plaintiff has satisfied all the conditions required for the initiation of proceedings in court. If he has only partially satisfied those conditions the rapporteur would instruct the registrar to notify the plaintiff of this fact, allowing him fifteen days from the date of receipt of the notification to fulfil the remaining conditions. If the plaintiff fails to do so within the fifteen days his case will be thrown out. The rapporteur may request the plaintiff to produce any document he believes will be useful in finding a solution to the problem. He decides what measures of instructions are called for; he sees that those measures are carried out; and at the end of the instruction he must draft his report.

When the case-file is en état the President of the court would then order the mémoire ampliatif (together with annexed documents) to be sent to the defendant (that

is, the administration). The registrar must do this within three days of the president's order. This is known as la mise en cause de défendeur. In effect, the defendant is being formally summoned. He is expected to put in a defence and the exchange of pleadings (échange des mémoires) will then begin and will be conducted through the intermedium of the court's registrar. The administration files its mémoire en defense at the court registry and it is notified to the plaintiff by the registrar. The plaintiff may then put in a mémoire en réponse to which the defendant may reply with a mémoire en réplique and so on until the legal arguments have been exhausted. Usually, if the mémoire en réponse sets up no new moyen attacking the administrative decision the exchanges end there. But if it does the administration may rejoin with further observations, giving a further right of reply by the plaintiff. Each party has thirty days within which to reply to the other's submissions or pleadings. A failure to reply allows the court to draw the conclusion that the party in default has no case to make in answer to that put to it. However, the time limit may be extended by the registrar on a reasoned request by the party seeking the extension. But it may also be shortened by the President, on the advice of the Procureur General, in matters requiring celerity. In practice, the time limit is often ignored as no consequence is attached to its non-observance.[175]

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175. Fouda Mballa Maurice c. Etat Fédéré du Cameroun Oriental, C.F.J., Arrêt No. 160A du 8 juin 1971, 1 R.C.D.40 (1972); Ekwalla Edoubé Eyango Stéphane c. Etat Fédéré du Cameroun Oriental, C.F.J., Arrêt No. 42 du 30 avril 1968, unreported.

In the course of his correspondence with the government departments, the rapporteur cannot, in theory, be met with any plea corresponding to the English claim of 'Crown privilege'. In practice however, it is hard to see what the court can do if the court's request to see any document is met with the plea of 'State secret'.[176]

At the end of exchange of pleadings, the dossier, now a fat document, is forwarded to the rapporteur who may call for further evidence if he believes this to be necessary. When the issues of fact and law have been sufficiently ventilated and the rapporteur believes the case to be en état d'être juge, he proceeds to draft his rapport and a projet d'arrêt. The rapport sets out the facts, summarises the views of both parties, and states the rapporteur's view of the law relevant to the case. The projet d'arrêt is a draft order formulated in the form in which the rapporteur believes the court should issue its judgment. Having made his report and draft order the rapporteur will then forward the dossier to the Procureur General's office to enable the Procureur General to draft his conclusions and propositions. The role of the Procureur General here is the same as that of the commissaire du gouvernement in France. When the Procureur

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176. In France and as in England since Conway v. Rimmer [1968] A.C. 910, the court can be trusted to decide for itself whether any question of state secrecy is involved and in that case the document would not be disclosed to the plaintiff. If the administration refuses to answer a specific question the court is entitled to draw its own conclusions from it. In an exceptional case the court may not be permitted to see secret documents, but he will still expect an answer to the plaintiff's allegations. Cf. the French case of Coulon, C.E. 11 mars 1955, R.D.P.1955.995, concl. Grevisse, and the English case of Duncan v. Cammel Laird & Co Ltd [1942] 1 All E.R. 587.

General is through with the dossier he sends it back to the registrar who would then proceed to enlist the case on the cause-list.

B. Urgent procedures

There are two of such procedures, stay of execution (le sursis à exécution) and special interlocutory procedure in a case of urgency (le référé administratif).

a) Stay of execution

Judicial review of administrative actions can only be a posteriori, never a priori. Moreover there exists the rule, designed to ensure that administrative action is not paralysed, that the enforcement of an administrative act is not suspended simply because the act is being challenged in court. The operation of this rule may however produce hardship in certain cases because the implementation of an administrative act which is being impugned in court may cause loss or damage which cannot adequately be repaired by judicial decision. For example, the administration goes ahead to demolish the plaintiff's house even though the decision to do so is being challenged in court. Stay of execution is therefore an interim measure designed to temper the operation of the above rule. A person affected may apply to the administrative court for an order directed against the administration requiring it to refrain from implementing

a particular decision, the validity of which is impugned in proceedings before the administrative court. The court has power to make an order of stay of execution where the implementation of an impugned administrative decision is likely to do irreparable harm to the complainant.

b) Special interlocutory procedure in cases of urgency

This is a special procedure whereby the President of the administrative court may, on the application of the plaintiff in proceedings before the court, take without going into the merits of the case, measures to safeguard the plaintiff's interest. For example, he may make an order appointing an expert to determine disputed facts in the case. The order would however be unavailable in matters concerning public order, security and tranquillity. Moreover, the procedure is available only in a case of urgency for, as it is said, urgency is the soul of interlocutory procedure. A case of urgency would arise for example in a dispute involving perishable goods or the demolition of a building. In Nkwenkam Molhié Luc c. Commune de Yaounde[177] it was held that since the Yaounde Urban Council could 'at one moment or another' proceed to demolish the plaintiff's property he was entitled to apply to the court to appoint a valuer to assess the property. However, the administrative court would grant an

177. C.F.J., 6 janv. 1970, 1 R.C.D.37 (1972).

application for an interlocutory order only where it has jurisdiction to deal with the principal suit. Accordingly, it was held in Nliba Nguimbous c. Etat Fédéré du Cameroun Oriental[178] that the administrative court was incompetent to entertain an application for référé in a matter which it had no jurisdiction to adjudicate upon.

C. Taking of proof

As in the case of all civil matters before the ordinary courts, the burden or onus of proof is on the plaintiff. He must make out his case. The onus is not discharged where the plaintiff is content merely to make denials of facts without proving or even offering to prove his allegation of abuse of power committed by the administration.[179] But the onus is discharged where the plaintiff has made out what amounts to a prima facie case against the administration. In such a case the court would order the administration to make available to it the facts and documents on which the decision it took was based. Should the administration refuse to comply, the court is entitled to draw its own inferences from such a refusal.[180]

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178. C.F.J., 13 mai 1971, Arrêt No. 159, unreported.

179. Bilae Jean c. Etat du Cameroun Oriental, C.F.J., Arrêt No. 120 du 8 dec. 1970, unreported.

180. Diwouta Loth Pierre c. Etat du Cameroun Oriental, C.F.J., Arrêt No. 18 du 4 nov. 1966, unreported; Emini Tina Etienne c. Etat du Cameroun Oriental, C.F.J., Arrêt No. 55 du 25 mars 1969, unreported.

Witnesses may be subpoenaed by the court itself or at the request of any of the parties. The parties are in fact required to submit to the court before the opening of the trial, a list of all the witnesses they would like the court to get evidence from. If a witness is out of the court's territorial jurisdiction evidence may be got from him by means of rigatory commission. In principle, anyone with a direct personal knowledge of the matter in dispute may be heard as a witness except perhaps infants and relatives. Where the authenticity of a hand-written document is in dispute the court may appoint an expert to examine the handwriting. In disputes concerning say land, the court may descend to the locus in quo and inspect the property about which the dispute is concerned.[181] The court may also order an inquiry into the facts of the matter. In any case requiring more formal investigations, the court may order an expertise, that is, a report to be made by an expert either on the whole or on some particular facet of the case. For example, a medical report may be called for to establish the extent of the injuries sustained by the plaintiff who is bringing an action for damages. The expert is required to make his report on oath. An expert commissioned to make an expert report may decline to accept the commission. Moreover, any expert so commissioned may be recused.

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181. Dame Ngué Andrée c. Commune de Mbalmayo; Baccino Jules c. Etat du Cameroun Oriental, C.F.J., Arrêt No. 88 du 30 sept. 1969, unreported.

D. Rendition of judgment

When the report of the rapportuer and the conclusions of the Procureur General are ready, the case is then en état d'être juge and is listed for the séance de jugement which consists of two stages, the audience publique and the audience privée or le déliberé. The cause list for each session is fixed by the President of the court on the advice of the Procureur General at least thirty days before the session. At least fifteen days to the opening of the trial the registrar of the court must notify the parties and their advocates of the scheduled date and time of the case. As a general rule, the trial takes place in open court; but a trial may be held in camera if a public trial will affect public order and decency.

The trial session opens with the clerk of court calling up the case. The rapporteur would then read the summary he would have prepared of the submissions put in by the lawyers for both sides. The parties or their lawyers may, if they wish, make oral pleadings. Oral pleadings are however of negligible importance in administrative litigation. So advocates seldom plead. If the advocate does decide to plead (and he may do so if he knows by prior inquiry that the Procureur General is proposing to make conclusions unfavourable to his client) he is permitted only to expand and comment on the points made in his written submissions. After advocates have

made their oral pleadings (if any) the President of the court will invite the Procureur General to read his conclusions which are required to be an impartial exposition of what, in the Procureur's considered opinion, the law is with regards to the matter in controversy. After the Procureur's address the case is then remitted for deliberation in chambers and the next case will be called with virtually no break in time. The procedure will be repeated. When the cause list for the day has been concluded to this extent, the audience publique comes to an end and the judges retire in chambers for deliberation. There, the conclusions of the Procureur General are discussed (the Procureur himself does not take part in the deliberation) before a decision is arrived at. The decision of the court takes the form of a concise judgment or arrêt, drafted by the rapporteur with the approval of the other members of the court (or at least a majority of them). When the judgment has been written, a date is fixed for another audience publique during which the judgment is delivered. The most important part of the judgment is the dispositif, the decretal paragraph in which the court awards relief or otherwise disposes of the case. Each judgment must also contain motifs, that is, an opinion indicating the court's reasoning. The opinion must deal with each claim made by the parties in their conclusions, but need not refer to all arguments advanced. Cases are cited infrequently.

A decision that has become res judicata is binding on the parties and has executory force. Execution of the court's decision as against an individual poses no problems. But then only in rare circumstances would the administrative court have to give judgment against an individual since it has jurisdiction only to entertain actions against juridical persons. A problem arises where the administration refuses to execute a decision of the court. By s. 126(b) of the Cameroonian Penal Code it is a criminal offence for 'whoever being a legal or judicial officer, issues any order or prohibition to any executive or administrative authority'. There is therefore no judicial remedy (as opposed to an attempt at persuasion by the Procureur General) where the administration defaults in executing a court decision. There is no available machinery for ensuring that on a plaint for indemnity the administration will actually pay the damages that the court may award, or even that remedial action will be taken if an administrative decision is nullified on a plaint for excess of power. Thus, a decision stating that a civil servant has been wrongfully dismissed does not automatically secure his re-instatement, nor is there any means whereby the court may compel the administration to re-instate him.[182]

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182. Cf. the French case of Rodière, C.E. 26 dec. 1925, Rec. Lebon 1925, p. 1066.

Fortunately however, in most cases the appropriate Minister always implements the decision of the court. But this does not mean that the administration does not in certain cases refuse to bow to the court's decision. The administration may default in giving effect to the decision of the administrative court if it thinks it will be complex putting the decision into effect. Much of the difficulty arises in connection with ultra vires proceedings because a court decision nullifying an administrative measure on grounds of excess of power has a retrospective effect. In certain cases, if an administrative measure is nullified, the administration may find itself in a legal vacuum. This will happen for example where an administrative order setting up a body is subsequently nullified after the body has started functioning. It will also happen where an administrative decision dismissing a civil servant is subsequently declared null and void, the administration being faced here with the problem of recreating the civil servant's career.

Sometimes, the administration may, out of bad faith, refuse to give effect to the decision of the court. An example is afforded by the case of Ekwalla Edoubé Eyango c. Etat Fédéré du Cameroun Oriental. The plaintiff in that case obtained judgment against the administration. The tenor of the court's judgment was that the plaintiff was entitled to and should be integrated 'dans le cadre de

l'agriculture'. The administration however obstinately refused to integrate him. The administration may, as in the above case, refuse to give effect to the court's decision by just remaining inert. It may also do so by not authorising payment of an award made by the court.[183] Again, the administration may frustrate the effect of a court decision by using a technique known as validation législative. The administration in effect appeals, as it were, against the court's judgment to parliament by requesting it to validate by legislative process the administrative decision declared invalid by the court. If parliament does put its stamp of approval on the invalidated decision, it becomes valid and may no longer be challenged or questioned. Still again the administration may refuse to give effect to a court decision by taking another decision with the primary objective of thwarting the court's ruling. A classic example is afforded by the French case of Bréart de Boisanger.[184] A person of that name had been appointed administrateur of La Comédie Francaise for a period of six years by a decree. Ten months later he was dismissed from his post on the ground that he had committed a disciplinary fault. The decree dismissing him was subsequently nullified by the Conseil

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183. Cf. the French case of Caucheteux et Desmonts, C.E. 21 janv. 1944, S.1945.s.13, note, A.B.

184. C.E. 13 juillet 1962, D.1962.664, conclu. Henry.

d'Etat. Instead of bowing to the court's ruling, the administration amended the rules governing administrators of La Comédie Francaise. The amendment allowed the government to dismiss these administrators at will even when they have committed no fault. This amended text was used to dismiss the plaintiff a second time.

E. Appeals

An appeal[185] lies from the judgment of the administrative bench of the Supreme Court to the Full Bench of that court, provided such a judgment has not become res judicata. No appeal lies against an interlocutory order save together with an appeal against the final judgment. The right to make such an appeal is not lost by reason of the order having been enforced conditionally. The right of appeal is open to both parties to the case including the Procureur General (though not a party to the case) and is barred after two months from service of the judgment. In principle, an appeal suspends enforcement of the judgment; the Full Bench of the Supreme Court may decide otherwise. There is no special procedure applicable in the case of an appeal to the Full Bench as it proceeds by way of re-hearing.

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185. If the appeal is made to the same judge who delivered the judgment it is known as voie de rétraction. The appeal is made by the device known as voie de réformation where it is made to a higher court.

An appeal is therefore lodged in the same way as a case coming before the Administrative Bench.

No right of appeal exists from a decision of the Full Bench. Exceptionally however, the Administrative or Full Bench, as the case may be, may be asked by a dissatisfied plaintiff to reconsider its decision in any of four cases. (1) Where the judgment has been entered in default of reply, the party who was in default may ask, within a time limit of fifteen days, for the matter to be re-opened by a process known as opposition. However, to avoid dilatory tactics, the remedy of opposition has been curtailed: opposition sur opposition ne vaut. (2) Where a third party with an interest in the proceedings was not joined in them and the court's decision causes him prejudice he may attack the decision using the procedural device known as tierce opposition.[186] The need for this device is doubtful in view of the fact that judgments generally have no res judicata effect against persons who were not parties to the action. (3) The court may be ready to reconsider the case if the party raising the case can prove there is a case for révision. This is rigidly confined to cases where there is, inter alia, a very serious defect in procedure, or where judgment has been obtained in reliance on a forged document or through

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186. Dame Larni Absatou bi Mohaman c. Fournial et Etat du Cameroun, C.F.J., Arrêt No. 112 du 8 dec. 1970, unreported.

the other side wilfully withholding a document essential for the appellant's case. The time limit for making this kind of appeal is two months from notification of the judgment. (4) Finally, a party to a judgment may apply for a recours en rectification d'erreur matérielle, within two months of notification of the judgment, where he can show that there was a material error of fact which would have had an effect on the judgment.

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Having come to the end of this chapter one conclusion becomes inescapable: the law on administrative litigation in Cameroon has been borrowed almost entirely from France. French cases and textbooks on the subject continue to be cited as authorities in Cameroon. Indeed, one may venture to assert, without fear of any contradiction, that most of 'Cameroonian' law on this subject is basically a re-statement of French law. The law contains nothing that has been borrowed from Anglophone Cameroon. This is partly because there was no separate body of law governing administrative disputes in Anglophone Cameroon, government agencies there being amenable under the ordinary law like private individuals and partly because Cameroon has adopted the French system of administration.

The extension of administrative law on the French pattern to Anglophone Cameroon, a common law jurisdiction, is not without some fascination and the difficulties the common-law trained Anglophone judge finds when dealing with

this branch of the law are the same difficulties an English judge would likely find were French administrative law to be made applicable in England. The difficulties faced by the common-law trained Anglophone judge in dealing with contentieux administratif may be compared to the difficulties faced by the civil-law trained Francophone judge in dealing with the order of prohibition and the writs of mandamus, certiorari, and habeas corpus provided in the 1972 Judicial Organisation Ordinance.

PART V

THE ADMINISTRATION OF 'REPRESSIVE' JUSTICE

The expression 'repressive justice', more current in France than in England, denotes that part of legal administration concerned with punishing individuals for offences committed against the ordinary criminal law or against military law. The commission of a criminal offence gives rise to a criminal action against the offender. The purpose of such an action is to punish the offender for his anti-social conduct. Criminal proceedings end, upon conviction, with the infliction on the offender of an appropriate penalty and/or measure prescribed by law. In the administration of 'repressive' justice a distinction is always made between civilians and the military. Civilians are normally subject to the ordinary criminal law of the land (Chapter 15). But soldiers, in addition to being subject to the ordinary criminal law of the land, are subject to military law (Chapter 16).

CHAPTER FIFTEEN

CRIMINAL JUSTICE

Since 1967 there has been a common Penal Code in force in both Anglophone and Francophone Cameroon. The Code is bilingual and bi-jural[1] and deals with the general principles of criminal law in Book I and with particular offences in Book II. However, although there has been a common criminal law for both parts of the country for over a decade now, there are still in operation two systems of criminal procedure, one based on the adversary and the other on the non-adversary system. For over half a decade now a Commission has been at work trying to produce a common criminal procedure code for the entire country.[2] It may not be long before the fruits of the Commission's labours are laid before the public. But until then, the existing two systems of criminal procedure shall continue to operate.

However, as will become apparent from the discussion that will follow in this chapter, there is already

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1. Parant, Gilg et Clarence, 'Le code pénal camerounais: code africain et franco-anglais', Revue de Science Criminelle et de Droit Pénal Comparé, 1967, p. 339; J.A. Clarence Smith, 'The Cameroon penal code: practical comparative law', International and Comparative Law Quarterly, vol. 17, 1968, p. 651; J.B. Herzog, 'Le projet du code pénal fédéral du Cameroun', Revue de Science Criminelle et de Droit Pénal Comparé, 1965, p. 212; E. Langoul, 'Projet du code pénal fédéral du Cameroun', Revue Juridique et Politique, vol. 20, 1966, p. 189.

2. See infra, chapter 20.

a great deal of uniformity in law and in practice on several key areas of the criminal process. Without delving into a fruitless analysis of minutiae, it would be shown that pre-trial proceedings, prosecutorial practice, sentencing and the penal system are practically the same in both parts of the country. This situation has been brought about largely because of the existence of a common police force, prosecutorial corps, penal system and sentencing principles. Of course, attitudinal differences still exist. This is patently borne out in the trial phase of the criminal process, where there are still major legal differences particularly with regards to the law of evidence. Even here however, the two systems have tended to move closer in certain matters[3] - a situation undoubtedly aided and abetted by the existence of a single Bar, advocates of which practise in courts in both halves of the country; and also by the fact that an increasing number of Cameroonian magistrats are now receiving an almost identical form of professional training in one institution - the School of Magistracy in Yaounde.[4] The procedure that has emerged from all this is what may be described as a mixed system of criminal procedure.

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3. For example, Francophone courts now tend to allow cross-examination by defence counsel. Anglophone courts allow 'constitution de partie civile' in certain cases and judges there sometimes take an active role in questioning the accused.

4. See infra, chapter 18.

In this respect, the opinion is ventured that the would-be Criminal Procedure Code will, in several areas, do no more than confirm and clothe in legislative form practices which are already commonplace in the courts of both sides of the country.

This chapter, divided into four sections, describes and discusses the various aspects of the administration of criminal justice in Cameroon.

I. Pre-trial Procedures

When an offence is committed the criminal process is at once set in motion. The police intervene. Investigations are carried out. Arrests are made and suspects are detained. When the investigations are over charges are preferred and the accused are brought to trial before a competent court of law.

1. The police and the gendarmerie

Cameroonian law gives the right and duty to investigate every allegation of commission of a criminal offence not only to the police force (also known as the National Security) but also to the gendarmerie which is a part of the armed forces. How are these forces organised? What role do they play in the criminal process? And what is the public attitude towards them?

A. Organisation

a) The Gendarmerie

The Cameroonian National Gendarmerie was created in 1960, after the departure of the French Gendarmerie from Cameroon, as a military force.[5] In 1966 the Gendarmerie regiment was transformed into a 'Délégation Générale'.[6] Since then the Gendarmerie has been headed by a Delegate-General for the Gendarmerie. Paradoxically, he has always been a civilian and not a soldier. The Gendarmerie is a single national force with some measure of autonomy but under the direct authority of the Minister of Armed Forces. There is some measure of decentralisation in its organisation. At national level is the 'état-major' (or supreme command), which is located in Yaounde. At provincial level there is a Gendarmerie Regiment (known as 'Légion') stationed at the chief town of each Province.[7] Each Gendarmerie 'Légion' is headed by a 'legion commander'. At Divisional and District level are to be found Gendarmerie Brigades, each headed by a Brigade Commander. Mobile units from these Brigades Patrol roads, the countryside and villages.

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5. Ordinance No. 60/20 of 22 February 1960 (organisation of the Gendarmerie), Decree No. 60/280 of 31st December 1960 (Gendarmerie Service).

6. Decree No. 66/DF/54 of 7 February 1966 (Creation of the General Delegation of the Gendarmerie).

7. Except for the two English-speaking Provinces, which have a single Gendarmerie Regiment stationed in Bamenda.

There is a Gendarmerie School in Yaounde which trains the lower cadres of the Gendarmerie. The educational qualification for recruitment as an ordinary gendarme is a primary school pass. But standards are getting higher. Some form of secondary school education is now necessary. This is reflected in the competitive examination which is always set for admission into the school. Fresh recruits undergo a six-months' training at the Gendarmerie School. This consists of lectures (in such topics as the role of the Gendarmerie, general knowledge, Cameroonian institutions, etc.) and military training (warfare, the use of firearms, etc.). After his six months' training, the recruit undergoes an eighteen-months' programme of practical training working as a gendarme-in-training. A gendarme who, at the expiry of the eighteen months, shows particular aptitude is given another twelve months' training to become an officier de police judiciaire. The officer corps of the gendarmerie are recruited from persons who hold at least the Baccalaureat or G.C.E. 'A' Level. They undergo a four-year course of training at the Inter-Force Military Academy (EMIAC) in Yaounde. The training is the same as that for other officers of the Armed Forces.

The Gendarmerie is a peculiar force because of the wide range of its duties. The 1960 Ordinance creating the Gendarmerie defines it as 'a military force set up to oversee public security and to ensure the maintenance of

order and the execution of laws'. The Gendarmerie is a military force and so takes part in all military activities and exercises and, in the event of war, fights alongside the other elements of the armed forces in the defence of the nation.[8] But the Gendarmerie also acts as a police force, as la police judiciaire, administrative et militaire.[9] The Gendarmerie ordinarily comes under the Minister of Armed Forces and it remains subject to the Ministry of Armed Forces when it acts as a military police. However when it acts as an administrative police (i.e. maintaining order and undertaking general surveillance - population control, control of public salubrity, patrol of highways) the Gendarmerie comes under the Minister of Territorial Administration and when it acts as a judicial police it comes under the Minister of Justice.

b) The Police

The Police Force, also known as the Sûreté Nationale or the National Security, is a civil force placed under the authority of the President of the Republic. Its action, both preventive and repressive, is exercised throughout the entire country.[10] The powers of appointment,

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8. Law No. 67/LF/9 of 12 June 1967 (National Defence Organisation).

9. Decree No. 60/280 of 31 December 1960 as amended by Decree No. 63/DF/3 of 8 January 1963; Decree No. 70/DF/264 of 4 June 1970 (Internal Security of the State).

10. Decree No. 73/458 of 16 August 1973 (Organisation of the National Security).

administrative management and employment of officials belonging to the various cadres of the National Security is exercised by the Head of State who may delegate part of such powers to the Minister Secretary General of the Presidency or the Delegate General to the National Security. Powers of administrative management of officials belonging to the various cadres of the National Security have in fact been delegated to the Minister Secretary General of the Presidency. It is therefore he who approves all acts concerning recruitment, advancement, training, probation and transfer of police personnel.

There are two police schools in Cameroon, the Police Training Centre in Mutengene for the training of police officers and the National Police School in Yaounde for the training of officers of police. The educational level of ordinary policemen is primary school pass. Only a few have had some form of secondary school education. However, to be recruited as an officer of police a candidate must have at least a secondary school education. Nevertheless, once a person has been recruited into the force, he can advance through the ranks by sitting and passing the periodic promotion examinations that are set for members of that force. Recently, there has been an attempt at creating a special 'officer class' by recruiting university graduates to a higher level in the force. This is regarded with a somewhat jaundiced view

by officers of police who have risen through the ranks. In any case, so far there is only a trickle of university graduates who enter police service. The need for increasing educational standards has stimulated the adoption of a system in which men who are already in the force are offered refresher courses, opportunities for higher education at the Yaounde Police School or at police schools in France, and the possibility of reading for and obtaining a university degree in Yaounde. The training programme of both the uniformed and the plain-clothes branch of members of the National Security covers what may be regarded as a purely police training as well as military training. The Cameroonian policeman, whether in civvies or in uniform, is, like the American or French policeman, armed.

The National Security is headed by a Delegate General to National Security who is answerable to the President of the Republic. The force is organised into two sets of services, central services and external services. The central services of the force operate at national level and are located in the capital, Yaounde. They include the Department of General Administration, the Judicial Police Department, the Department of Public Security, the Department of General Information, and the Central Service of Territorial Surveillance. Each of these departments is headed by a director and is divided into Services which have distinct responsibilities. The

Central Service of Territorial Surveillance is ordinarily in charge of general intelligence and counter-insurgency espionage. Members of this Service form part of the secret police and are always in mufti.

The Department of General Administration deals with general matters of administration and is responsible for the training and management of both the uniformed and the plain-clothes personnel of the force. The Department of Public Security comprises three services and is responsible for (i) supervising the general maintenance of law and order and public security and health in built-up town areas and on railway property, (ii) supervising and processing the administrative and judicial activities of the public security police stations and posts, the special railway stations and ports, the Urban Police Forces and the Mobile Wings, (iii) taking part in the exercise of judicial police duties, (iv) applying, in liaison with the sub-Department of Personnel, measures concerning National Defence and supervising the military training of uniformed and plain-clothes officials and reservists posted to police units.

The Department of General Information is responsible for (i) the collection, processing, and dissemination of all information affecting the internal and external security of the State, (ii) following up and processing information of a political, economic and social nature, (iii) circulating to the government authorities, both civil

and military, any information and syntheses concerning their respective fields, (iv) ensuring the application of statutory and administrative measures concerning emigration, immigration and the conditions of entry and residence on the national territory of aliens. The Department is constituted by four Services: the Central Information Service, the Central Civil Inquiries Service, the Central Emigration and Immigration Service, and the Operational, Cross-Checking and Processing Brigade. The Central Information Service has a twofold duty: (i) the collection and processing of information of a political, economic or social nature necessary to the governmental or administrative authorities, and (ii) the prevention of anti-national intrigues and keeping watch over the suspect activities of nationals and aliens on the national territory. The Central Emigration and Immigration Service studies matters concerning emigration, immigration and the residence of aliens and ensures that the enactments pertaining thereto are applied.

Of direct relevance to the administration of criminal justice is the Judicial Police Department. The police forces in Britain have no such department but the Sûreté nationale in France has. It co-ordinates techniques of criminal investigations; directs, guides and processes the activities of the provincial brigades of the judicial police; diffuses and ensures the execution of directives from the head of the Police Force and the

judicial authorities; carries out criminal and economic investigations at national level; and supervises the activities of the National Interpol Bureau. The Department consists of three Services - the Criminal Studies, Coordination and Investigation Service, the Economic and Financial Investigation Brigade, and the Judicial Identification Service.

The 'external' services of the National Security consist of services located at provincial and divisional levels. Located in the chief town of each Province are the provincial services of National Security, the provincial controls of the Urban Police Forces and Mobile Wings, the provincial Police Brigades and the Mobile Wings. At divisional level are to be found police stations: Public Security Police Stations and Posts, Special Police Stations, Special Railway Police Stations and Posts, Emigration Police Stations at sea, river and airports, and Frontier Posts of the National Security.

B. Role

The role of both the Police and the Gendarmerie in the administration of criminal justice is basically the prevention and detection of crime, the apprehension of offenders, the preservation of law and order, the protection of property and the due enforcement of all laws and regulations with which they are directly charged.

Decree No. 73/458 of 16 August 1973 on the organisation of the National Security enacts:

> "Section 2. General mission: The basic mission of the National Security shall be to ensure the respect and protection of institutions, liberties, persons and property. It shall help in administrative and judicial policing and ensure the enforcement of laws and regulations. It shall participate in defence and shall thereby form part of the regular forces.
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> "Section 3. Special missions: The National Security shall more particularly be responsible:
> - for maintaining the internal and external security of the United Republic of Cameroon;
> - for detecting and repressing criminal offences;
> - for maintaining public order, security and health, more particularly in built-up urban areas;
> - within the framework of defence, for protecting or intervention missions involving contacts with the population."

The action of the Police and the Gendarmerie in relation to the administration of justice may be characterised as 'preventive' and 'repressive'. The distinction between these two actions corresponds to the distinction between police administrative and police judiciaire - the term 'police' being used in this context to include the gendarmerie. This distinction stems from the concept of separation of powers between the executive and the judiciary. The 'administrative police' is concerned with crime prevention and comes under the authority of the executive when so acting. The judicial police on the other hand works hand in hand with the courts. It is concerned with the investigation of crime, the apprehension of

criminals and bringing them to justice. When so acting the judicial police comes under the authority and control of the judicial authorities. In practice however, the distinction between administrative police and judicial police is functional not organic. The two are not separate police units or services. The 'preventive' and 'repressive' activities of the police are exercisable by the same police officers.

The duty of the 'administrative police' is to prevent crime by maintaining law and order. The policeman or gendarme walking his beat or cruising around in his patrol car is a powerful deterrent to crime. The whole object of crime prevention is to reduce the incidence of crime by deterring would-be offenders. Every policeman or gendarme may therefore interpose for the purpose of preventing, and must to the best of his ability prevent, the commission of any offence. A policeman or gendarme who receives information of a design to commit any offence is duty bound to take necessary steps to prevent the commission of such crime. So if a policeman or a gendarme knows of a design to commit an offence he may arrest, without warrant, the person so designing, if it appears to such officer that the commission of the offence cannot be otherwise prevented.

When a riot or disturbance does occur it is the duty of the administrative police to restore and maintain law and order. Heads of the various administrative units

(governors, prefects, sub-prefects, mayors) are invested with powers to cause the police, gendarmerie, and even the army to restore and maintain law and order in their various administrative localities. They may issue orders, enforceable by the police and gendarmerie and the courts, restricting the movements of persons and goods, prohibiting meetings (or gatherings or associations or organisations) and publications deemed likely to disturb the peace, ordering searches and seizures by day or by night, directing the detention of persons for an indefinite period, requisitioning persons and goods, and so on.

In point of time, the judicial police comes into the picture only when, despite the preventive efforts of the administrative police, an offence has actually been committed. In other words, the role of the judicial police begins where that of the administrative police ends. The judicial police detects crime, carries out criminal investigations, gathers evidence, makes arrests, and brings suspects to court for trial. Members of the judicial police belong to the uniformed branch of the Police Force and the Gendarmerie and are styled <u>officiers de police judiciaires</u>, that is, judicial police officers. The judicial police is directly concerned with the working of the courts in the administration of justice and judicial police officers are, like barristers, solicitors, bailiffs, process-servers and court clerks, also known as 'auxiliary personnel of the law'.

The judicial police is constituted by various groups of persons - members belonging to the senior hierarchy of the Police and the Gendarmerie, various groups of junior members of the Police and the Gendarmerie, and a variety of civilian functionaries (mayors, deputy mayors, prefects, state prosecutors).[11] Judicial police officers receive accusations (from persons other than the victims) and complaints (from victims) of alleged commission of criminal offences by known or unknown persons. They make inquiries and searches, collect evidence and may detain suspects. Under s. 10 of the Code d'Instruction Criminelle a prefect "may personally undertake, or request judicial police officers, each one as it concerns him, to undertake all acts necessary for the detection of felonies, misdemeanours and contraventions, and to bring the authors of such offences to the courts charged with punishing them".

C. The citizen's role in crime detection and public attitude towards policemen and gendarmes

It serves the public interest that every commission of an offence should be reported to the forces of law and order giving, in good faith and without malice, information

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11. Code d'Instruction Criminelle (hereinafter abbreviated to C.I.C.), chapters 2 and 5; Codes et Lois du Cameroun, vol. II, pp. 957, 959.

that may lead to the identification of the perpetrator of the crime. That is part of every citizen's civic responsibility. The forces of law and order cannot be everywhere at the same time. So the citizen, at least the good citizen, must lend them assistance in crime detection.

> "The detection and prevention of crime, the administration of justice, and the resultant smooth and orderly functioning of our society are not, and cannot be, the exclusive jobs of the legal experts alone. It is the bounden duty of each and every one of us as responsible citizens to ensure that law and order reigns supreme in our country as a necessary condition for the nation's continuous march to progress. ... Personnel of the Gendarmerie as well as those of the Police, let alone personnel of the legal and judicial services, cannot be present everywhere at every given time. ... Therefore, it is a concomitant responsibility of each and every one of us to report, without delay, to competent authorities, those who threaten or have actually committed a breach of the peace so that the machinery of justice can be set in motion for 'the greatest good of the greatest number' of our citizens." 12

The obligation of citizens to report the commission of any offence and to denounce criminals to the competent authorities is a civic obligation not a positive duty and in no way means that each citizen should spy and inform on his neighbour. If it were so, life would be intolerable and 1984 would be here already. The citizen's duty to

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12. Address by Charles Doumba, Cameroon's Minister of Justice, at the installation ceremony of Mr Justice Nyo' Wakai as President of the Court of Appeal for the North West Province, October 1977.

assist in crime detection is not a legal but a social one springing from the civic concept of a 'good citizen' or a 'responsible citizen'. There is generally speaking, no legal duty on the citizenry as a whole (as distinguished from public servants in certain cases) to assist in crime detection. The conduct of a person who fails to report a crime or to denounce someone he saw commit an offence may be morally reprehensible to the moralist and it may well be that he is a 'bad and irresponsible' citizen. But he has not offended against the criminal law of the land. There is no such offence in the Cameroonian Penal Code as 'failure to report a crime', 'failure to denounce a criminal' or 'failure to assist the police in crime detection'.[13] The old English offence of 'misprision of felony', under which it was a common law offence for any citizen to fail to report to the authorities any felony which came to his knowledge or notice has no counterpart

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13. Sections 171 to 176 of the Penal Code deal with 'refusal to assist justice'. None of these sections however deals with the issue under discussion. Sections 173-176 deal respectively with defaulting witness, defaulting expert, defaulting juror or assessor, and false excuse. Section 172 punishes anyone who 'refrains from communicating to the judicial or police authorities evidence of the innocence of any person in custody awaiting trial'. Section 171 punishes 'whoever being able so to do by his own immediate action and without risk to himself or to any other person, refrains from preventing the commission of any felony or of any misdemeanour against the bodily integrity of any person'. Section 283 deals with failure to assist a person in danger of death or grievous harm; it does not deal with failure to assist the police in crime detection.

in Cameroonian criminal law. Nor does the offence of 'concealment of treason' in the Nigerian Criminal Code. To impose a general legal duty on citizens to report any alleged commission of an offence would be intolerable and totally unacceptable. Life would become unbearable for blackmail and false and malicious reports would multiply.[14]

Since the citizen's duty to help in crime detection is merely a socio-moral one, the extent to which citizens cooperate with the police/gendarmerie in crime detection obviously depends on the relationship between the two. Where that relationship is excellent people spontaneously offer to help. Thus it is the boast of the English that their police are not only respected but liked by the average citizen. Sporadic scandals do occur. But on the whole the relations between the English police and the public are excellent. The police always receive a strong vote of public confidence and are always eager to keep the image of the 'Bobby' as a kindly father figure and a friend to all.

This contrasts enviably with the poor relations between the public and the police/gendarmerie in Cameroon. There is a general attitude of suspicion of a police force which is quasi-military in organisation and training. As in the army, the police force also has ranks such as

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14. Cf. Ss. 303 and 304 of the Penal Code which punish blackmail and false report.

'brigadier', 'lieutenant', 'sergeant', 'corporal', 'captain' and so on. Like soldiers, policemen also carry firearms.[15] This is rather anomalous because the criminal population in Cameroon is not armed.[16] The armed policeman, like the armed gendarme, intimidates the ordinary citizen instead of winning his confidence and support and sympathy. This is why the police and gendarmerie get such little cooperation from the public in their fight against crime. It also explains why assault on a policeman or gendarme attracts little or no public sympathy at all. Besides there have been public outcries against the uncouth behaviour of policemen and gendarmes, their corruption and brutality. Brutality is nearly always contagious. In a conflict it engenders counter-brutality. Cruelty is a contagious disease that leads to a degradation of human standards.

There is clearly a pressing need for the cultivation of better relations between the public and the police/gendarmerie. What is needed are officers who are not only better trained but better mannered and less likely to indulge in corrupt and cruel practices. Public relations programmes should be created. Psychological

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15. Cf. Note de Service No. 0182/DGSN/DSP of 20 February 1976 (Arming of personnel of the National Security).

16. The American policeman is always armed. But this seems unavoidable because the criminal population in that country is largely armed.

tests should be used on recruits to weed out those likely to abuse or misuse police powers. Complaints against misuse of power by policemen and gendarmes should be investigated by an independent review body. Internal discipline works only in obvious cases of illegality. It is ineffective in cases where there is a direct conflict of evidence and it is only the complainant's word against that of the policeman or gendarme. Moreover, where an offending policeman or gendarme is visited with a disciplinary penalty that is not sufficiently severe, the public is apt to feel strongly that justice has not been done. It is suggested that the judiciary should also be bold enough to condemn and criticise in strong terms police and gendarmerie malpractices, the use of the 'third degree', and the obtaining of evidence by illegal means.

A policeman or gendarme who is guilty of assault or of false arrest may be prosecuted. A civil action for damages also lies against him. But the chances of success of such a civil action are very slender: the complainant may not be the most persausive witness as there may be only his word as against that of the policeman or gendarme; the complainant may have a criminal record which may be used to impeach his evidence; the complainant may be a poor man unable to bear the expenses of litigation unless he is eligible for and is able to secure legal aid; even if the complainant succeeds in his action the assets

of the policeman or gendarme may be too small to satisfy the judgment. It is submitted that a complainant against excesses committed by a policeman or gendarme should be eligible for legal aid and that such an action should not be against the individual policeman or gendarme concerned but against the Force which could, after paying out, take appropriate action against the offending officer.

2. Arrest, detention, and bail

A. Arrest

To arrest somebody is to restrain him. It means depriving him momentarily of his freedom to come and go. Policemen and gendarmes (as well as the ordinary citizen in certain cases) are empowered by law to make arrests when an offence has been committed or is about to be committed. Arrest puts in jeopardy the basic human right to freedom in movement and conduct. But, on the other hand, unbounded liberty jeopardises security of life, property and society. The solution has always been to prescribe restrictions which will provide an acceptable degree of security without unduly infringing upon individual freedom.

The law has, in an effort to prevent arbitrariness, spelt out clearly cases in which an arrest may lawfully be made, the manner in which it is to be carried out, and those who are competent to do so. Any arrest

made by persons not legally authorised to do so or which does not fall within the law is clearly a false arrest offending against s. 291 of the Penal Code which provides,

> "S. 291 - False arrest
> (1) Whoever in any manner deprives another of his liberty shall be punished with imprisonment for from five to ten years and with fine of from twenty thousand to one million francs.
> (2) The punishment shall be imprisonment for from ten to twenty years in any of the following cases:
> a) where the deprivation of liberty lasts for more than one month; or
> b) where it is accompanied with physical or mental torture; or
> c) where the arrest is effected with the aid of a forged order from a public authority or of a uniform unlawfully worn, or pretending an appointment not held."

In Cameroon the right to arrest flows from two sources. First there is a legal right to arrest found in the Criminal Procedure Code. Secondly, there is an administrative right to arrest justified by the need to maintain public order and security. An administrative right to arrest flows either from a formal text or from mere police practice. For example, the power to arrest any person found in a drunken state is to be found in s. 15 of the Law of 1st October 1917 dealing with drunkenness in public. Other enactments empower the police to arrest lunatics, persons ordered to be placed under house arrest, persons served with an expulsion order, persons suspected of endangering the security of the State, and so on. Moreover, there are certain police practices

which are not regulated by any enactment. Such practices are often dictated by the practical necessity to preserve public order and security and are generally limited in time. For example, during a cordon and search procedure anyone may be arrested for the purposes of ascertaining his identity or carrying out other forms of control. Arrest may also be made where there is a gathering or an unauthorised procession on the public highway in order to search for concealed arms, to prevent the holding of an illegal meeting, or to restore order. Provided these powers of arrest are not used oppressively, they are not censured by the courts.

Since the Criminal Procedure Ordinance (hereinafter abbreviated C.P.O.) applies in Anglophone Cameroon and the C.I.C. in Francophone Cameroon one would ordinarily expect that policemen and gendarmes on service in the English-speaking part of the country would follow the law of arrest as contained in the C.P.O. But this is not the case. Gendarmes on duty in Anglophone Cameroon apply the provisions of the C.I.C. as they are more familiar with that code. The same is true of the younger generation of English-speaking policemen and gendarmes, for the training programme of gendarmes and policemen in Cameroon is French-orientated. This however does not make much difference because although the law of arrest in the C.I.C. is less explicit and less detailed than the law on the same subject in the C.P.O., the two laws are

in substance the same. In both the C.P.O. and the C.I.C. an arrest may be made with or without warrnat; an arrest with a warrant being the general rule and arrest without a warrant the exception.

a) Arrest with a warrant

As a general rule, arrest in respect of most offences may be made only upon a warrant from a magistrate ordering the arrest of the person named in it. The warrant is obtained by presenting written 'information' to a magistrate to the effect that the person named has committed an offence or is 'reasonably suspected' of having committed one. This procedure is regarded as a check on police power. In certain cases a warrant of arrest may be obtained from the State Prosecutor. Administrative authorities may order arrest but they have no power to issue warrants of arrest. In practice, arrest warrants are obtained only in a small percentage of cases. Sometimes warrants are obtained after arrests have been made and often the police do not bother to obtain a warrant at all.

Under the C.I.C. the police may legally carry out police inquiries on their own authority only in respect of 'flagrant offences'. All other offences must be the subject of a judicial investigation carried out by or

under the direction of the juge d'instruction.[17] In practice police do conduct police inquiries in respect of offences other than flagrant ones. A blind eye has been turned to these unofficial police inquiries for two main reasons: to relieve the juge d'instruction of some of his work load and to make up for the shortage of examining magistrates. However, whenever the police do carry out these unofficial inquiries they may not, at the end of such inquiries, make any arrest without a warrant issued by a magistrate. But the police bend the rules. They argue that it would be paradoxical to arrest only on warrant (or release) someone against whom they have overwhelming evidence. Informal arrests therefore take place daily. The police claim that those so arrested do not question the legality of such arrests and willingly submit because they know they are guilty. There is another case where the police may legally (though not in practice) arrest only if they have a warrant. If the police receive rogatory commission to carry out certain inquiries they may not, at the end of such inquiries, proceed to arrest without a warrant to that effect. In practice a rogatory commission to conduct inquiries always includes an order to arrest, if an arrest is warranted.

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17. The juge d'instruction was abolished in 1972. All judicial inquiries and investigations (compulsory in the case of offences characterised as felonies) are now conducted by the State Prosecutor. See, Judicial Organisation Ordinance 1972, s. 24.

Even if there is no such order the police do make arrests. In Cameroon, as in France, the device of a rogatory commission is often used when evidence is required of a witness or suspect outside the court's jurisdiction.

b) Arrest without warrant

Under the C.P.O. any officer may, without an order from a magistrate, arrest (i) any person whom he suspects upon reasonable grounds of having committed an indictable offence, (ii) any person who commits an offence in his presence, (iii) any person who obstructs a police officer while in the execution of his duty, or who has escaped or attempts to escape from lawful custody, (iv) any person in whose possession anything is found which may reasonably be suspected of having committed an offence with reference to such thing, (v) any person who has no ostensible means of subsistence and who cannot give a satisfactory account of himself.[18]

The power to arrest without warrant is not the monopoly of police officers and gendarmes. Citizen arrest without warrant is also possible in certain circumstances. Any private person may arrest any person who in his view commits or whom he reasonably suspects of having committed an offence which is a felony or having committed by night an offence which is a misdemeanour.[19] Likewise, an owner of property (or his servant or persons authorised by him) may arrest without a warrant any person found

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18. C.P.O., s. 10(1). See also, Police Ordinance, Cap. 154 of the 1958 laws, s. 20(1).

19. Ibid., s. 12.

committing an offence involving injury to his property. However, any person arrested without warrant must be taken without delay to a police officer or to the nearest police station. Any citizen who erroneously makes an arrest may find himself liable for damages at the suit of the victim of such an arrest.

A magistrate or judge also has the power to arrest personally or order any person to arrest an offender. This power is exercisable where an offence has been committed in the presence of the magistrate or judge.[20] Thus, if a person commits a contempt of court the judge or magistrate may order him to be arrested and committed to custody pending trial.

Under the C.I.C. an arrest without warrant may be made in the case of a flagrant délit, that is, where a person is caught in flagrante delicto. An offence in respect of which a person was caught red-handed, an offence that has just been committed, and an offence deemed to be flagrant are all characterised as flagrant délits. An offence is deemed to be flagrant where a suspect is being pursued by the public (this is often accompanied by a hue and cry), where a suspect is found to be in possession of incriminating evidence, or where there are indicia that a suspect took part in the commission of an offence that

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20. Ibid., ss. 15 and 16.

has just been committed. Anyone who disobeys an order from the State Prosecutor forbidding persons to leave the area where an offence has been committed may be arrested and taken into custody.[21] The arrest may be made by the State Prosecutor himself, any of his subordinates, or any judicial police officer.[22] An arrest may also be made where there is compelling evidence that a flagrant délit is likely to lead to a conviction for felony.[23] The State Prosecutor may moreover issue a mandat d'amener against an escaped suspect for such a person to be arrested and brought before him for an on-the-spot interrogation.

A citizen may arrest anyone caught red-handed committing a felony. "Any depository of the civil force as well as any other person shall be bound to arrest a suspect caught in flagrante delicto or pursued, either by public clamour, or in the cases assimilated to flagrant delict, and to bring him before the State Prosecutor without the necessity of a writ of attachment, if the felony or misdemeanour carries a corporal and degrading punishment".[24] The citizen's right of arrest is not limited to cases of felonies. A citizen may arrest anyone

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21. C.I.C., s. 34.

22. Ibid., s. 49.

23. Ibid., s. 40.

24. Ibid., s. 106.

committing an offence in his presence and take him straight away to the State Prosecutor. If the arrest is made by the police, it is generally accepted by the courts that the suspect may properly be detained at the police station for a few hours to enable the police to write out their report. Delays caused by distance from the nearest police station or State Prosecutor's office are not taken into account. Thus, although the law requires the period of detention at the police station not to exceed twenty-four hours, it often does. Generally, where there is power to arrest a person without warrant, a warrant for his arrest may be issued.

c) How arrest is effected

The C.P.O. requires any police officer or other person making an arrest actually to touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.[25] As a general rule a person arrested must not be handcuffed, otherwise bound, or be subject to unnecessary restraint. However, as an exception to the rule, a person arrested may be handcuffed under any of the following circumstances: (i) by order of the court or magistrate, (ii) where there is reasonable apprehension of violence, (iii) where there is an attempt to escape, (iv) where the restraint is necessary for the safety of the person arrested.[26] In

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25. C.P.O., s. 3.

26. Ibid., s. 4.

practice most arrested persons are handcuffed because the police fear that they may try to escape or use violence on them.

The law further requires any person making an arrest without a warrant to inform the person being arrested of the reasons for his arrest.[27] In other words, the arrested person must be told of the substance of the charge against him. However, the officer making the arrest need not do so if the person being arrested is (i) in the actual course of the commission of an offence (in which case the charge against him will be self-evident), (ii) pursued immediately after the commission of the crime, (iii) pursued immediately after escape from lawful custody, and (iv) if the person arrested makes it practically impossible for him to be informed of the charge against him, as by attacking the policeman or gendarme or by running away. In theory, an arrested person who is not given the reasons for his arrest at the time of the arrest has an action for damages for false imprisonment. However, since police practice does not ordinarily include telling the arrested person of the reasons for his arrest at the time the arrest is made (they prefer to do so only at the police station), courts take the view that an otherwise lawful arrest is not invalid simply because the police officer or gendarme did not inform at the time of the

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27. C.P.O., s. 5.

arrest. Indeed, s. 9 of the C.P.O. enacts: "Any person who is arrested, whether with or without a wrrant, shall be taken with all reasonable dispatch to a police station, or other place for the reception of arrested persons, and shall without delay be informed of the charge against him. Any such person while in custody shall be given reasonable facilities for obtaining legal advice, taking steps to furnish bail, and otherwise making arrangements for his defence or release."

Furthermore, courts appear to take the view that if an arrest turns out to be justifiable on some other ground, it is not unlawful merely because it cannot be justified on the ground claimed for it at the time the arrest was made. In England however, an arrest in such circumstances would be unlawful: Christie v. Leachinsky [1947] A.C. 573. The police and gendarmerie are impatient to make arrests when they have the slightest evidence or pretext for doing so. They do not delay making an arrest until they have built up a case against the suspect. They arrest at an earlier stage when they are not yet in a strong position to justify a charge. They then complete their inquiries after arrest, often on the basis of admissions made by the suspect. If no case is made out, the suspect is released. No action for unlawful detention lies in such a case.

If a person is arrested in execution of a warrant, the warrant for his arrest must be shown to him at the time the arrest is being made. However, provided a warrant to

that effect exists, it is not necessary that the person making the arrest be in possession of it at the time of the arrest. But the warrant must, on the demand of the person apprehended, be shown to him as soon as practicable after his arrest.[28] A policeman or gendarme making an arrest may search the person being arrested using such force as is reasonably necessary for such purpose. He may also demand the person residing or in charge of a place into which a suspected offender has taken refuge, to allow him free ingress thereto to search therin for the person sought to be arrested. If ingress to such a place is refused, the officer may break into the place to search for the person to be arrested.[29] Once he has lawfully entered for the purpose of making an arrest and he is detained therein, the officer has the right to break out of such a place for the purpose of liberating himself.[30]

Under the C.I.C. an arrest is effected in a manner similar to the one just described. Besides, police and gendarmerie practices are the same in both parts of the country. An officer making an arrest may or may not touch the person being arrested. The code requires him to inform the person being arrested of the reasons for his arrest. But this is practically done only at the

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28. C.P.O., s. 29.

29. Ibid., s. 7.

30. Ibid., s. 8.

police station or gendarmerie post. If a warrant of arrest exists but the arresting officer has not got it on him at the time of effecting the arrest, he must show it to the arrested person on demand as soon as practicable. The use of handcuffs when an arrest has been made is the exception rather than the rule. In practice, much depends on the discretion, personal judgment and estimation of the arresting officer. Offenders caught in flagrante delicto are invariably handcuffed. The risk involved (le risque du métier), the appearance of the offender, the nature and gravity of the offence committed all weigh in the officer's mind in deciding whether to use handcuffs or not.

Reasonable but not excessive force may be used in making an arrest. It is for example unwarranted for a policeman or gendarme to use his gun in effecting a simple arrest presenting no danger whatsoever. As soon as a person has been arrested he must be taken at once to the nearest police or gendarmerie station. The police must show due courtesy when arresting a person in his home. However, if ingress into the home is refused, the arresting officer may break in for the purpose of effecting the arrest. The magical incantations of arrest are, 'I arrest you in the name of the law' or some other words to that effect. An arrested person may be searched.

The police and the gendarmerie make a distinction between conduit and arrêt, that is, between taking a suspect

to the station for questioning and arresting him. In strict legal theory policemen and gendarmes have no power to detain anyone for the purpose of questioning unless they arrest him. If a policeman or gendarme wishes to detain and question anyone he must arrest that person. A person cannot be detained without being arrested. In law, any detention is an arrest. Police officers are free to ask questions of anyone. They are free to request whatever cooperation they need. But whenever they take a person into custody or restrict his full liberty of movement their action constitutes one of two things: it is either a lawful arrest (justifiable on their power to arrest without warrant) or a false imprisonment.

In practice however the police make a subtle distinction between conduit and arrêt, that is, between taking a person to the station for questioning and arresting him. Conduit includes the power to make an on-the-street detention. Thus policemen and gendarmes may, without technically speaking making an arrest, compel a person to stand still and listen to, if not answer, questions. They may also ask a suspect to follow them to the station for questioning. In neither of these two cases are the officers prepared to take the definite step of arrest; at the same time their suspicions may have been so aroused by the general appearance and actions of the suspect that they would like to ask him a few questions

and cross-check his answers while technically speaking not making an arrest. A common example is the power of the police and gendarmes to stop the driver of a motor vehicle (in England the power of the police to do so is a statutory one) for the purposes of examining his particulars, and the powers of the police and the gendarmes to require inter-town travellers by motor vehicle to produce their national identity cards or tax receipts for inspection.

If a policeman or gendarme requests a suspect to go along with him to the station and he refuses to do so, he may then be arrested. However, most people do, out of fear and ignorance, accompany such officers to the station. Arrest proper takes place only at the station after the suspect has been questioned and the police are of the opinion that he should be arrested. He is formally arrested, charged and asked to make a statement (if he wishes to do so). In Anglophone courts, this emerges, after the arraignment, in the familiar police refrain: 'The defendant was then arrested, charged and cautioned and he volunteered a statement.'

A police officer may arrest another officer. But he has no power to arrest a gendarme, a soldier, or important personalities such as ministers of the government, senior government officials, senior party officials, and members of the National Assembly. Only gendarmes who are officiers de police judiciaires (among which are

officers within the senior hierarchy of the gendarmerie) are empowered to do so. The reason for this is obscure. It may well be one of those things blindly copied from France.

A suspect can be arrested in his home only on warrant. A mandat d'amener must be obtained from the State Prosecutor or magistrate in order to effect an arrest under those circumstances. A mandat d'amener is technically speaking different from a mandat d'arrêt. The former is simply an order from the court or State Prosecutor directing that the person therein named be brought before the person issuing the order at such and such a place and time. When the person named in the warrant accompanies the officer to the place indicated in it, this is said to be conduit and not arrêt. If the person refuses to go along with the officer, he may then be formally arrested. A mandat d'arrêt (which may be obtained before or after the arrest) is necessary to effect this arrest.

B. Detention

A person is detained if he is confined in a place or on a spot against his wish and desire. The duration of the detention may be minutes, hours, days, weeks, months or years. Detention constitutes a serious infringement on the liberty of the individual. It is therefore an exceptional measure which ought not to be

resorted to lightly. The preamble to the Cameroonian constitution provides that no one shall be arrested and detained except in accordance with the law. An accused person ought, on principle, to be granted bail and only deprived of his liberty when he has been convicted by a competent court of law. However, for reasons of expediency, public security, and the better administration of justice, it often happens that an accused person is detained and so deprived of his liberty even before his guilt has been established.

When a person is detained he is said to be in custody. There are two types of custody, custody for questioning (also known as police custody or detention for questioning) and custody awaiting trial (sometimes known as preventive detention or protective custody). Custody awaiting trial is however not the same thing as preventive confinement which, under s. 37 of the Penal Code, is a preventive measure pronounced against a convicted habitual criminal.

a) Custody for questioning (la garde à vue)

The police and the gendarmerie do hold suspects in investigative detention. This is known in Anglophone Cameroon as 'police custody' and in Francophone Cameroon as la garde à vue. Under the C.P.O. the police are empowered to take any person, arrested without warrant, into custody.[31] Such a person must however be brought

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31. Ss. 17 and 18.

before a magistrate within twenty-four hours from the time he was taken into custody. If this cannot be done the police officer must inquire into the case and, unless the offence appears to be of a serious nature, discharge the person upon his entering into a recognizance with or without sureties for a reasonable amount to appear before a court at the time and place named in the recognizance to answer the charge against him. But if the inquiry into the case cannot be completed forthwith, the police officer may discharge the suspect on his entering into a recognizance, with or without sureties for a reasonable amount, to appear at the police station and at such times as are named in the recognizance. If the suspect's attendance is not required, it is the duty of the officer of police in charge of that police station to give him written notice to that effect. An officer in charge of a police station is empowered under s. 19 of the C.P.O. to discharge a person in custody for want of evidence if at the end of the inquiry he is satisfied that there is not sufficient reason to believe that the person has committed any offence.

The C.I.C. is conspicuously silent on the question of la garde à vue. So, in Francophone Cameroon the law on this subject is governed by sections 63 and 64 of the French Code de Procédure Pénale. La garde à vue, like detention for questioning, is the right to detain suspects and material witnesses for twenty-four hours (in theory)

for interrogation. Much of the law on police custody is honoured more in breach than in its observance. In most instances of custody for questioning, it is uncertain whether a suspect voluntarily complied with a police or gendarme request or involuntarily yielded to police or gendarme pressures.

Under the law a person in custody for questioning must not be physically or morally maltreated and must not be deprived of food, water, rest or medical attention. But dark police and gendarmerie cells and cases of ill-treatment are not unknown. The initial period for which a person may be detained is twenty-four hours, excluding road time. This period may be renewed by the State Prosecutor, or if there is no State Prosecutor around, by the local Prefect (District Officer). Legally, a suspect may be detained without being formally charged to court for a maximum period of five days. In practice, suspects are sometimes detained in police and gendarmerie cells for weeks without charges being brought against them. One reason for this state of affairs is that sometimes the police and gendarmes are too hasty in making arrests; that is, they make arrests even when they lack grounds sufficient to justify their doing so on a specific charge. Having made such an arrest the suspect is then held for a prolonged period while investigations and questioning are going on to determine whether a specific charge against him can be supported.

There is another technique which the police employ in order to hold suspects in investigative detention for long periods, even months. At the end of the five days time limit during which suspects may be lawfully held in police custody, the police may find that they have not yet completed their investigations. In such a case they send the suspect's case-file to the State Prosecutor informing him that investigations into the matter are not yet complete and that more time would be needed to do so. This in effect means that the State Prosecutor cannot as yet prefer a charge formally and go ahead and prosecute. So, he finds that he has to grant the police the extra time they need. He orders the suspects to be removed from the police cells to the prison to be held in custody awaiting trial. At the same time he grants the police an extraction order authorising them to get the suspects out of prison and take them to the police station whenever they are needed for questioning. What happens in practice is that the suspects are never in fact removed from the police cell to the prison. The police simply take the State Prosecutor's remand order to the prison governor who signs that the suspects have been brought to the prison and at the same time he also signs the extraction order to the effect that the suspects have been taken out to the police station for questioning. Thus by technically (though not in practice) converting police custody into custody awaiting trial the police are able

to hold suspects in their cells for as long as the police inquiries may take. The police evidently favour this technique as it gives them more time to conduct their inquiries and shields them, in the event of an unlawful detention, from an action for damages. In Cameroon a person who has been unlawfully held in custody awaiting trial has no action for damages against those who so detained him.

b) Custody awaiting trial

During the course of a trial it may become necessary to adjourn the case from time to time. In that event the court may either admit the defendant to bail if he is in custody or remand him to prison to await trial.[32] The warrant remanding him into custody issued by the remitting magistrate is sufficient authority to any person to whom it is directed to receive and detain the person therein named, and to carry him and deliver him up to the court to which the person charged is remitted for trial.[33]

Under the C.I.C. a magistrate or State Prosecutor may also remand a defendant into custody by issuing a mandat de dépot. A mandat de dépot (in effect a remand warrant) is a warrant from a magistrate or State Prosecutor

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32. Under s. 236 of the C.P.O. the period of such remand is eight days or for such longer periods as the court may consider advisable.

33. Cf. C.P.O., s. 67.

directed to the police and all process servers to take the defendant therein named to a prison or similar place of detention where he must be received and detained by the prison governor. The period of custody is indeterminate.

In deciding whether to remand into custody or grant bail several factors are taken into account: whether the defendant is an adult or a juvenile, the nature and gravity of the offence and its social repercussions, and the likelihood of committing other crimes or tampering with evidence or witnesses if left at liberty. Juvenile delinquents are invariably released to their families on recognizance and seldom remanded into custody. In the case of adults, remand into custody is always made where the offender is charged with a felony or a serious misdemeanour, where the offender is of no fixed abode, where the offender is likely to tamper with evidence or suborn witnesses, where the offender is likely to escape the arm of the law, or where the offender cannot provide any sureties to bail him. Sometimes an offender is remanded in protective custody on the ground that the protection is as much for the better administration of justice as for the interest of the defendant himself (for example, protection from public anger or against retaliation by the victim of the offence).

The law on preventive detention in Cameroon leaves much to be desired. Detention is a serious trespass

on individual liberty and ought not to be resorted to lightly. But the large proportion of persons held on preventive detention in Cameroon's prisons raises the legitimate question whether remand into custody has not become the rule rather than the exception. Besides, it is common practice to hold persons in custody awaiting trial indefinitely. One often hears of persons held for months and years. This is obnoxious and contrary to a humane system of the administration of justice. This is the more so as there is no compensation for an innocent person acquitted after having been held in custody for months or even years.

Under s. 53 of the Penal Code, where a person has been in custody awaiting trial and is eventually convicted and sentenced to a term of imprisonment, the duration of the custody is deducted from that sentence. This provision is useful only where the sentence of loss of liberty passed by the court exceeds the time spent in custody. It is of no assistance where the sentence passed is less than the time spent in detention or where the maximum penalty provided for the offence is below the time spent in custody. Some courts attempt to make an a priori justification of the detention by passing a sentence of imprisonment of equal duration to the time spent in detention in cases where the accused ought either to have been acquitted or where a suspended sentence or a probation order would have been the proper penalty.

Detention, particularly for long periods, gives accused persons and the general public the distinct impression that the detainees are already presumed guilty. In the long run the court may itself come to have that same impression and the effect would be to tilt the scales against the accused. It is submitted that courts should be empowered when remanding into custody to indicate in the remand warrant the duration of such custody. Custody for questioning by the police and custody awaiting trial should be subject to stringent judicial control.

C. Bail

When an accused person is brought before the court or when a convicted person goes on appeal the case may not be proceeded with forthwith. The prosecution or the defence may require more time to prepare. The court may be overloaded, as happens very often, with cases. Similarly, when the State Prosecutor conducts a preliminary inquiry there may be an adjournment. Also, when the police detain a person for questioning they may not be able to complete their inquiries within the legally permissible time during which they may hold a person in custody. In all of these situations there is always a choice between custody and bail. The police may continue to hold in custody (by applying to the State Prosecutor for an extention of the detention period) or grant police bail (usually in trivial cases). The State Prosecutor

may remand in custody or grant bail and the court may do likewise. The grant or refusal of bail by either the police, the legal department, or the court is entirely discretionary.

Bail is sureties, taken by a person duly authorised, for the appearance of an accused person at a certain day and place, to answer and be justified by law.[34] Bail is inherent in the presumption of pre-trial innocence and the guarantee of individual liberty under the law. An accused person should not, without due cause, be detained before his guilt has been established before a competent court of law. Bail is granted to a defendant on his own recognizance with or without sureties for a reasonable amount. This means that the defendant undertakes to appear for trial or else forfeit the stated sum of money.[35] No deposit of cash or pledge of property (as sometimes happens in some American states) is required at the time the recognizance is entered into. Where the recognizance is entered into with sureties, the sureties sign a surety bond in which they undertake to forfeit the stated sum of money if they fail to produce the accused when and where required. The sum of money fixed generally depends on the gravity of the alleged offence.

If the defendant jumps bail, the sureties must

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34. Archbold, paragraph 290; C.I.C., ss. 113 and 114.

35. C.P.O., s. 120; cf. C.I.C., ss. 114 and 120.

then pay the amount of money stated in the recognizance. Bail-jumping in Cameroon is of minor proportions and when it does occur and the defendant is re-arrested he is remanded in custody. The sum of money stated in the recognizance is fixed by the court or the legal department, as the case may be, at its discretion. In fixing such sum however, due regard is often had to the circumstances of the case. The fixing of excessive or an impossible bail in a deliberate attempt to deny bail and so to give the defendant an immediate taste of jail, is rare. Whenever the court or the legal department has been inclined to grant bail, they have almost always done so by fixing a reasonable bail within the reach of the accused.

The fact that no cash deposit is required at the time the recognisance is entered into is of tremendous importance, especially to accused persons who are truly indigent. If a cash deposit were so required, defendants who are poor (and the vast majority of criminal defendants in Cameroon are indigent) would always be remanded in custody because they would be unable to make the required cash deposit. In such a system bail would be available only to defendants who were rich.

Bail may be granted by the police or gendarmes (not on their own initiative but on the instructions or with the approval of the State Prosecutor), the legal department, and the court. After an arrest without warrant has been made, a police officer may, where he cannot bring

the accused before a magistrate within twenty-four hours, release on bail after he has inquired into the case and decided that a charge shall be brought.[36] If the inquiry into the case cannot be completed forthwith, the officer may release the detainee on his entering into a recognizance with or without sureties for a reasonable amount to appear at the police station.[37] In practice, whenever the police have released a suspect on bail (which they seldom do on their own authority), they have always done so on the authority of the State Prosecutor. When this happens, bail is often set with the concurrence of the police. In trivial cases however the police and the gendarmes do release on bail on their own initiative.

Section 24(2) of the 1972 Judicial Organisation Ordinance empowers the legal department to release on bail. It may order the judicial police to release on bail anyone held in police custody. It may also release on bail anyone it is holding in custody for preliminary inquiries if such inquiries would take more than five days. However, where an accused person has been committed for trial by the legal department after its preliminary inquiries, the department becomes functus officio and cannot grant bail. Only the court to which the accused has been committed for trial may grant bail in this case.

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36. C.P.O., s. 17.

37. Ibid., s. 18.

The power of the legal department to grant bail is a novelty in Anglophone Cameroon. In Francophone Cameroon however, the juge d'instruction and the parquet always have been empowered to grant la liberté provisoire.[38] In 1972 the juge d'instruction was abolished and his powers and functions transferred to the legal department. The legal department tends to lean in favour of bail where an accused is legally presumed to be less dangerous and it appears that he would not jump bail. Thus the legal department always makes a bail order (ordonnance de mise en liberté provisoire) where the accused is of fixed abode, has no criminal record, and the offence for which he is charged carries a maximum sentence of imprisonment not exceeding six months. Bail is always revoked and the accused remanded in custody on fresh evidence of grave circumstances or where the accused has attempted to jump bail.

It has always been one of the court's traditional functions to grant bail either on the request of the defendant or of its own motion. Application for bail is made to the High Court (Tribunal de Grande Instance) by way of motion on notice. The court admits to bail if it thinks fit. It will admit to bail any person charged with an offence unless it sees good reasons to the contrary.[39]

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38. C.I.C., ss. 113-126.

39. Idem; C.P.O., s. 118.

The legal department may oppose the grant of bail or even go on appeal if it is granted. But it seldom does so. (It may be noted that in England no appeal lies against the grant of bail). A person admitted to bail enters a recognizance to appear before the court whenever required.[40] A convicted person who goes on appeal may apply to the appropriate Appeal Court for bail until the determination of his appeal. But such persons seldom apply for bail (mainly due to ignorance), and the courts are not generally disposed to grant bail in such circumstances. Therefore when a convicted person goes on appeal, he remains in jail until the determination of his appeal. If the appeal succeeds, he is then released. A Court of Appeal may vary the bail fixed by a lower court, grant continuous bail, reconsider the amount of bail, or revoke or require higher bail.[41] An accused person admitted to bail may be required to produce such surety or sureties as, in the opinion of the court admitting him to bail, will be sufficient to ensure his appearance as and when required and must with the surety or sureties enter into a recognisance accordingly.[42]

In deciding whether to grant or refuse bail a number of factors are taken into consideration: the

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40. A recognizance may be entered into to keep the peace or be of good behaviour, to appear at a police station, to appear before a court to answer an accusation, etc.

41. C.P.O., ss. 124-132.

42. Ibid., s. 122; C.I.C., ss. 114 and 120.

nature and gravity of the alleged offence (as a matter of practice bail is always refused in capital offences and offences against state security), the severity of the penalty which the offence carries, the character of the available evidence, the criminal antecedents of the accused, the likelihood of other offences being committed, the likelihood of escape from the jurisdiction or absconding from the country, and the likelihood of interference with witnesses, evidence and the investigation. Indeed, in deciding whether to grant or refuse bail a Cameroonian court is guided by the same principles as an English court would. Dismissing an application for bail in Richard T. Jumbo v. The People,[43] His Lordship Mr Justice Endeley, President of the Appeal Court for the South West Province said,

> "In considering application for bail submitted by convicted persons we are guided by the principles laid down in Edgar Gordon's application reported in 7 Cr. App. R. 182. These principles have on several occasions been adopted by the ex-West Cameroon Court of Appeal. They have therefore become binding on this court. We can find nothing in either the affidavit supporting this application or in counsel's arguments which brings out the exceptional circumstances on which the applicant's prayer can properly be granted. The application is accordingly dismissed." 44

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43. Buea Appeal Court, Motion No. CASWP/11. M/73, unreported.

44. See also, Ekabe Nadikowe v. The People, Motion No. CASWP/12.M/1973, unreported, in which the Buea Court of Appeal also dismissed application for bail.

D. Legal control of wrongful arrests and detentions

Often the law has to walk a tight-rope between upholding individual liberty and freedom on the one hand, and ensuring the security of society on the other hand. The law-abiding members of society must be protected from criminals. At the same time, citizens of the country legitimately require that they should be free from constant molestation and harassment by the police and gendarmes. The law strikes a balance between these conflicting interests. It does so by confining within specific and known limits the power of the police and the gendarmes to arrest, detain, search and interrogate. The law also makes policemen and gendarmes accountable for their actions. Any abuse by police officers or gendarmes with regards to arrest and detention may be dealt with through the criminal law, the civil law, or disciplinary action.

Any gendarme or policeman who deprives a person of his liberty commits an offence under s. 291 of the Penal Code[45] in any of the following circumstances: (i) where deprivation of liberty lasts for more than a month,

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45. The ordinary penalty for this offence is imprisonment for from five to ten years and with fine of from twenty thousand to one million francs. But the penalty is doubled in the case where the offence is committed by a policeman or gendarme because the fact of being a public servant aggravates criminal responsibility and entails a doubling of the maximum penalty provided for the offence: Penal Code, ss. 89 and 132(2).

(ii) where deprivation of liberty is accompanied with physical or mental torture, (iii) where an arrest is effected with the aid of a forged order or of a uniform unlawfully worn or pretending an appointment not held. The essence of the s. 291 offence is the unwarranted deprivation of someone of his liberty. So long as it is wrongful, the manner in which the deprivation of liberty is effected is immaterial. It may be an arrest or detention effected by trick or by force. Whether an arrest or detention by a policeman or a gendarme is false or wrongful depends on the circumstances of the case. An arrest or a detention will be false if it was manifestly unwarranted. An arrest will be false if it was effected with the aid of a false warrant of arrest or a uniform unlawfully worn (as for example where a policeman puts on the uniform of a gendarme or vice versa).

It is however doubtful whether an arrest is false where the officer who made the arrest told a lie that he had a warrant to do so when in truth he had no such warrant. Moreover, an arrest or detention is not necessarily false simply because the officer who effected it was prompted by hatred or a feeling of animosity against the arrested person if such arrest or detention was prima facie warranted or otherwise lawful. Furthermore, it is lawful for any person lawfully making an arrest to use such force as may be reasonably necessary to make the arrest or to overcome any force used in resisting such arrest. No

action or omission in execution of the law or authorised by law, and performed in accordance with the conditions prescribed by law, constitutes an offence.[46] So, a policeman or gendarme who arrests, or detains, or uses force in effecting an arrest in execution of the law and in a manner authorized by law does not commit an offence. However, the degree of force which is justified is only that which is reasonably necessary in the circumstances. If the force used was, in the circumstances, excessive the officer who used such force would be criminally responsible for any excess, according to the nature and quality of the act which constitutes the excess. Under s. 132 of the Penal Code any public servant (the definition of which in s. 131 includes the police and the gendarmes) who uses force to any person is punishable with imprisonment for from six months to five years. It is submitted that s. 132 does not prohibit a policeman or a gendarme from using reasonable force in the execution of the law. The proper construction to be placed on that provision is that an officer would be guilty under it only when the force used was either illegal or, although legal, was unreasonable or excessive in the circumstances.

The law on arbitrary detention is explicitly dealt with in the Code d'Instruction Criminelle. Anyone who knows a person to be detained in a place other than a

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46. Penal Code, s. 76.

prison or similar lawful place of detention is under a legal duty to make such information available to the State Prosecutor[47] who would then proceed forthwith to release the person so detained if the detention is unlawful. If the detention is lawful the State Prosecutor must cause the detainee to be taken forthwith before a magistrate. A State Prosecutor who fails to act in this wise may be prosecuted as an accessory to arbitrary detention.[48] But these provisions only cater for the situation where a person is detained in a place other than a prison or similar lawful place of detention such as police cells. It does not take care of the situation where a person is detained (whether in a lawful place of detention or not) when he should not have been detained in the first place; nor does it take care of the situation where a detention is made without legal authority to do so. Moreover, it is doubtful whether, as ss. 615 and 616 of the C.I.C. would seem to imply, a detention becomes arbitrary merely because the place of detention is not an official place for detaining people.

It is an offence to use any force, other than that permitted by law, in effecting an arrest or detaining someone.[49] It is an offence, punishable as arbitrary

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47. C.I.C., s. 615.

48. Ibid., s. 616.

49. French constitution of 22 Frimaire, An III, s. 82. Sections 77-82 of this constitution are still in force in Francophone Cameroon by virtue of s. 615 of the C.I.C.

detention, for anyone to order the arrest or detention of any person when not empowered by law to issue such an order.[50] Under the law, a warrant ordering the arrest of any person must (i) emanate from a person duly empowered by law to issue such a warrant, (ii) formally state the reason for the arrest and the law by virtue of which the arrest is being ordered, and (iii) be signified to the person arrested and a copy of the same left with him.[51] Breach of any of these requirements constitutes an offence characterised as arbitrary detention.[52]

It is clear on general principles that an arrest, effected by means of a 'warrant' issued by a person not empowered by law to do so, is illegal. But it is extremely doubtful whether an arrest is arbitrary and therefore illegal simply because an otherwise proper arrest warrant has failed to state the reason for the arrest and the law by virtue of which the arrest is being made. Even more problematic is the implied suggestion[53] that an arrest is arbitrary merely because in effecting an arrest the person being arrested was not told the reason for his arrest and a copy of the arrest warrant given to him.

Prosecutions for wrongful arrests or detentions are rare in Cameroon. This does not mean that policemen and gendarmes never abuse their powers of arrest and

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50. French Constitution of 22 Frimaire, An III, s. 80.

51. Ibid., s. 77.

52. Ibid., s. 80.

53. Idem.

detention. They certainly do. But what happens is that most complaints of this nature are dealt with at departmental level by disciplinary action. A victim of arbitrary arrest or unlawful detention may file a complaint with the local boss of the police or gendarmerie, as the case may be. Some people petition straight to the head of the Police Force (the Delegate-General to the National Security) or even to the Head of State. An inquiry into the allegation may be opened and evidence taken from the complainant, the accused and their witnesses. At the end of the investigation the file on the matter is laid before the disciplinary committee of the police force which decides, where necessary, on the appropriate disciplinary action to be taken against the accused officer. Depending on the gravity of the offence committed, the officer may be visited with any of these sanctions: reprimand, warning, withholding of promotion, reduction of rank, prosecution, dismissal from the service.

One method which has to some extent proved effective in controlling detentions by the police and the gendarmes is the requirement that all police stations and gendarme posts must keep a lock-up register (livre de garde à vue) showing each day the number of detainees held and their conditions. This register is inspected every morning by the officer of police in charge of the station and the State Prosecutor. The register shows the date on which each suspect was taken into custody, any extension of the period of custody and for how long the extension was

granted, the date on which any suspect held in custody was released, and the objects in the possession of the suspect at the time he was taken into custody.

The forcible detention of anyone is both criminal and tortious. So the victim of an unlawful arrest and detention can sue for damages.[54] Furthermore, whenever a person is unlawfully detained, he or anyone on his behalf is entitled to make an ex parte application supported by affidavit to the High Court to determine whether his detention is lawful or not. The court will then, by issuing the writ of habeas corpus, command whoever is detaining the applicant, to bring him before the court, and, unless the detention is shown to be lawful, the court will at once set him free. Section 16(c) of the 1972 Judicial Organisation Ordinance empowers the High Court "to hear and determine all applications for immediate release made by or on behalf of persons imprisoned or detained which applications are based on the illegality of, or the absence of authority for, such deprivation of liberty". The High Court is here empowered to grant the writ of habeas corpus. This relief is not new to Anglophone courts but it is a complete novelty in Francophone Cameroon. The introduction of habeas corpus into the

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54. So in John Nformi v. Stephen Forkum & Another, Suit No. KM/92/1975, unreported, the plaintiff successfully claimed 500,000 francs general and special damages against the defendants (2 policemen) for unlawful arrest and detention.

corpus of Cameroonian law is one of the major contributions of Anglophone Cameroon to the Rule of Law in Cameroon. The writ of habeas corpus ad subjiciendum originated in England in the seventeenth century and is today a writ of right which is available not only where the original detention is unlawful, but also when a man, who has been lawfully arrested on a criminal charge, is kept in prison without trial.[55] In Anglo-American law the writ is a bulwark of personal freedom.

3. The investigation of alleged crime

When the police and gendarmes take cognizance of allegation of commission of a criminal offence (for example, a complaint or accusation is made, or the police themselves arrest an offender in flagrante delicto) they are duty bound to investigate the matter.[56] Such investigations are necessary because evidence must be gathered which would lead to the arrest of the offender and his eventual prosecution. Enough evidence must be gathered to sustain a charge and secure conviction. The police and gendarmes have several methods of conducting their

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55. For a scholarly study of habeas corpus in common law jurisdictions, see F.N. Kisob, Habeas corpus protection in common law jurisdictions, Ph.D. Thesis, University of London, 1970. See also, P.B. Engo, 'An aspect of personal freedom - leading star: habeas corpus', ABBIA, No. 5, 1964, p. 57.

56. C.P.O., ss. 59-63; C.I.C., ss. 8, 46, 64.

investigations - interrogations, identification, search and seizure, eavesdropping, and the conduct of preliminary inquiries.

A. Interrogations

In conducting their investigations the police and gendarmes often hold people (witnesses, suspects, potential witnesses) for questioning. Questions asked to persons so held may serve to clear them. They may also serve, directly or indirectly, to lead the police to suspects other than the persons being questioned. They may moreover become the means by which the persons questioned are themselves made to furnish proof which will eventually send them to jail or the gallows. Such questioning, whatever its outcome, is often indispensable to crime detection. Its compelling necessity has been judicially recognised as its sufficient justification.

This does not however mean that the police and gendarmes are given unbridled powers in the way they conduct their interrogations. The law frowns on oppressive methods of police interrogations. In other words, oppression must not be used for the sake of getting people to confess their guilt or to implicate others; torture must not be used to extract confessions which could be used at the trial; nor may torture be used to induce the disclosure of confederates.

If a suspect being questioned has to make a confession or disclose his associates then such a confession or disclosure has to be voluntary and not induced.

That the police and the gendarmes do sometimes resort to highly questionable methods in order to make 'uncooperative' suspects speak or to extort confessions cannot be seriously challenged. What is however less certain is the extent to which these coercive methods are resorted to. The police and the gendarmes of course strenuously deny that they use torture to make suspects speak or confess. They point out that it is not uncommon for suspects to refuse to speak when being interrogated or to sign a police report presented to them. But the public is not convinced. This public scepticism about police assurances has been fed and reinforced by tales of various forms of police and gendarme torture ranging from denial of food, water, rest and sleep, to other oppressive techniques, allegedly commonly employed by the dreaded Brigade Mobile Mixte (B.M.M.), such as the use of electric shocks, suspension of the body upside down, exposure to very bright light for days and nights, and the use of various forms of mental aggression. These claims are however difficult to verify because alleged brutality and torture of this kind happen almost always in a closed environment. So most of what is circulated around is hearsay and may not be entirely accurate. But, as the

saying goes, there is no smoke without a fire. The Brigade Mobile Mixte does exist and certainly uses 'tough' methods in dealing with suspects.[57] The B.M.M. is now euphemistically styled Poste de Recherche and is regarded as an extension of the sinister Centre National de Documentation (which is the new label for what was at first known as the Service de Documentation, SEDOC and later called the Direction de Documentation, DIRDOC). The police and gendarmes insist that only hard-core political offenders, subversive elements, and offenders against state security are ever taken to the B.M.M.

Judicial attitude towards police interrogations has always been to put a check on abuse by those conducting the interrogations. One form of check is the rule of evidence which precludes the use at trial of involuntary statements. This rule indirectly acts as a check on oppressive police practices by frustrating their efforts when they resort to methods that produce what will be held to be an involuntary statement. The statement of an accused person need not be spontaneous and it is not inadmissible merely by reason of its having been obtained through police interrogations. But such a statement must not have been induced by force, threat of force, a promise of leniency from a person in authority, or a promise of pardon for, if it has been so obtained it is involuntary

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57. Evidence Act, Cap. 45 of the 1958 edition of the laws, s. 27.

and consequently inadmissible in evidence. To be admissible in evidence in an Anglophone court, a confession must be voluntary. A confession is an admission made at any time by a person charged with a crime, stating or suggesting the inference that he committed that crime. Voluntary confessions are deemed to be relevant facts as against the persons who make them.[57] But confessions caused by inducement, threat or promise are irrelevant in criminal proceedings if the inducement, threat or promise proceeded from a person in authority and were sufficient to give the accused grounds which appeared to him reasonable for supposing that by making it he was going to gain some advantage or avoid any evil of a temporal nature.[58]

The practice in Francophone courts is markedly different. Confessions and admissions are received in evidence without regard to whether they are voluntary or not. The argument advanced is that the trial judge can be trusted to decide what weight to attach to the confession. Furthermore, whereas Anglophone courts are extremely reluctant to convict on the evidence of a confession alone, uncorroborated by some other extrinsic evidence, the same is not true of Francophone courts. Besides, whereas Anglophone courts adhere to the English Judges' Rules, no comparable rules exist in the criminal process in Francophone

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57. Evidence Act, Cap. 45 of the 1958 edition of the laws, s. 27.

58. Ibid., s. 28.

Cameroon. The Judges' Rules contain a concise and authoritative statement of some of the essentials of police conduct. They regulate police interrogation by outlining the circumstances in which suspects must be cautioned as to their rights before being questioned, and those in which they may not be questioned at all. Whenever a police officer has made up his mind to charge a person with a crime, he must, before asking any questions, caution the suspect in these words: "Do you wish to say anything in answer to the charge? You are not obliged to say anything unless you wish to do so, but whatever you say will be taken down in writing and may be given in evidence." Questioning without a proper caution renders a resulting statement improper. But the court has the discretion to admit or reject the statement in evidence.[59]

The police and gendarmes do sometimes exceed the bounds of legality when they interrogate suspects. It is therefore highly desirable that limitations should be placed on such interrogations otherwise a criminal trial would become nothing more than a formal ratification of a result effectively reached earlier at the level of the police or gendarmes.

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59. The English Judges' Rules were first promulgated in 1912 when conflicting judicial decisions led the police to ask the Queen's Bench judges to agree on proper methods of interrogation which would insure the admission into evidence of confessions legitimately obtained. The Rules were added to in 1918, reviewed in 1930 and again in 1964.

B. Identifications

Sometimes, when an offence has been committed the police and gendarmes arrest several suspects among whom may be the actual offender. If the police have no clues as to who, among the persons arrested, the real offender is, they would need anyone who may have seen the offender committing the offence or escaping from the scene of the crime to come forward and assist in identifying the criminal. Identification can easily be done by using photographs or by the method of identification parades. Identification by means of toe or finger prints, and hair, blood or other bodily samples requires the services of forensic pathologists.

In the case of identification by means of photographs the witness is presented with the photographs of all the suspects for him to identify the criminal among them. In carrying out this exercise no photograph must bear any mark or sign or be placed in such a way as to suggest to the witness who the police think the criminal might be. Obtaining the photographs of suspects presents no problem. Section 26 of the Police Ordinance, Cap. 154 of the 1958 edition of the laws empowers the police to photograph persons who are in lawful custody and to make their finger prints.

> "Section 26(1). It shall be lawful for any police officer to take and record for the purposes of identification the measurements, photographs and finger-print impressions of

> all persons who may from time to time be in lawful custody:
> Provided that if such measurements, photographs and finger print impressions are taken of a person who has not previously been convicted of any criminal offence, and such person is discharged or acquitted by a court, all records relating to such measurements, photographs, and fingerprint impressions shall be forthwith destroyed or handed over to such person.
> (2) Any person who shall refuse to submit to the taking and recording of his measurements, photographs or fingerprint impressions shall be taken before a magistrate who, being satisfied that such person is in lawful custody, shall make such order as he thinks fit authorising a police officer to take the measurements, photographs and fingerprint impressions of such person."

Often however, the police would not need to photograph, measure or make fingerprint impressions of a suspect held in lawful custody. All they need to do is to ask the person so detained to produce his National Identity Card. In Cameroon, every citizen is required by law to possess and to keep in his possession whenever he goes out of his house, a National Identity Card.[60] It is a criminal offence not to have a National Identity Card or to fail to produce it whenever requested by any policeman or gendarme. The National Identity Card bears a passport-size photograph of the bearer and contains the following bits of information: the number of the card; the date and place of issue; the name and signature of the issuing authority; the names of the bearer and his

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60. Law No. 64/LF/22 of 13 November 1964 (National Identity Card).

parents; the bearer's place and date of birth, his occupation, residence, height, signature, special marks on his body and the fingerprint impression of his right hand thumb. Each National Identity Card is established in triplicate by the police; one copy is given to the bearer while the police keep two copies. The National Identity Card is useful not only for criminal identification but also for identification in the case of serious accident or death in circumstances in which the identity of the deceased or person seriously injured may not be immediately apparent.

One other method of identification for criminal purposes is the use of identification parades. A practice borrowed from England, these parades were at one time fairly common in Anglophone Cameroon but the practice is now virtually obsolete largely because the police can now attain the same objective with the aid of National Identity Cards. The object of an identification parade is to make sure that the ability of the witness to recognise the suspect has been fairly and adequately tested. Identification parades must not only be fair but must be seen to be fair. The witness' attention should not be directed specially to the person the police already strongly suspect to be the criminal, for example, by being shown the suspect, his photograph or a description of him before the parade. The suspect must be placed among several persons who are as far as possible of the same age, height, general

appearance, dress and position in life. The whole parade must be supervised by an officer of police not directly concerned with the inquiry.[61]

C. Search and seizure

Search by the police and gendarmes whether of the person, of premises or place of work is an unpleasant thing (especially when carried out in the night) because the exercise of that power involves questions of civic rights. The C.P.O. and the C.I.C. contain similar provisions on police powers of search and seizure[62] and on the admissibility in evidence of the fruits of an unlawful search. The fruits of an unlawful search are admissible in evidence in nearly every instance. Provided the conduct of the police or gendarmes was not demonstrably oppressive, articles seized during an unlawful search may be used in evidence.[63] The law appears to be that an

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61. In England the police still make frequent use of identification parades. Across the Channel, in France where every Frenchman is required, as in Cameroon but unlike in Britain, to possess a National Identity Card, the police and gendarmes make use of identity cards and seldom resort to identification parades. Cf. Bloch-Degeorge, 'Sur l'identification des citoyens francais', Gaz. Pal. 1951. II. 60.

62. C.P.O., Part 13; C.I.C., Chapters IV and V.

63. This accords with English law on the subject. American law on this point is however sharply different. The American Supreme Court has sought to prevent unlawful searches by prohibiting the production of articles so seized as evidence in court. So in America evidence obtained directly by an unconstitutional search and evidence obtained through leads supplied by such activity are inadmissible in evidence. Any such evidence is barred from use in court as 'the fruit of a poisoned tree'. See, Wong Sun v. United States, 371 U.S. 471 (1963).

unlawful search does not render inadmissible in any subsequent proceedings any incriminating evidence that may have been seized during the unlawful search. A search warrant may specify the objects to look for but the police and gendarmes are entitled to seize any other incriminating evidence found in the course of their search. When conducting their searches the police and gendarmes behave as though they have been licensed to turn the house or premises inside out and to seize any object suspected of having a criminal connection. The police or gendarmes would seize any article if they suspect that the article in question is either the fruit of an offence (for example, stolen property) or the instrument by which an offence was committed (for example, a murder weapon, a false key) or material evidence to prove the commission or intended commission of an offence (for example, a letter, plan, or map setting out the plan of a robbery).

The police and gendarmes however have no power under the law to enter houses and premises to conduct searches except under a search warrant or where the search is incidental to an arrest made on premises. To search a person's home or premises the police and gendarmes must obtain a search warrant authorising them to do so. If they are not armed with a search warrant they may nevertheless still enter and search; but then only if the occupier of the house has voluntarily and in writing

authorised them to do so.[64] "The home", proclaims the preamble to the Cameroonian Constitution, "is inviolate. No search may take place except by virtue of the law." In practice the police and gendarmes do sometimes conduct searches of homes without a warrant and without proper authorisation from the person whose home or premises is being searched. Sometimes a search warrant is obtained when in fact the search had already been conducted. However, there is no reason why a policeman or gendarme who enters a person's house without a warrant or an authorisation by the occupier to do so may not, on the complaint of the aggrieved person, be prosecuted for invasion of residence under s. 299 of the Penal Code. Moreover, any forcible entry into premises without warrant is an actionable trespass.

A search warrant may be issued and a search conducted at any time and on any day - day or night, Sunday or public holiday or any other day of the week. For example, where an offence against state security has been committed, searches may be conducted in respect of that offence at any time and on any day. Moreover, a

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64. In England, the legal position on this subject was epitomised long ago by William Pitt in these fine poetic words: "The poorest man may in his cottage bid defiance to all the forces of the Crown. It may be frail - its roof may shake - the wind may blow through it - the storm may enter - the rain may enter - but the King of England cannot enter - all his forces dare not cross the threshold of the ruined tenement." See, Ghani v. Jones [1969] 3 All E.R. 1700.

search begun in the day may continue into the night. Furthermore, searches in places other than in private homes (public buildings, offices, vehicles, ships, carriages, receptacle or other place not used as a private home) may be conducted at any time, place, and on any date, with or without a warrant or authorisation from the owner, occupier or user. Whenever a private home is to be searched, its occupier must be notified and he must be present to give his consent to entry. If he is not available someone else in loco parentis or other person mandated by him may give the requisite consent in writing although in practice a verbal consent suffices. If a policeman or gendarme is armed with a search warrant, the requirement of the occupier's consent in writing to enter and search the house is a mere formality, because if the occupier withholds his consent, or if ingress cannot be gained peacefully, the house may be broken into; and once inside, the policeman or gendarme may break out to free himself.

The law ordains that at the completion of a search an inventory must be made of all the objects seized and must be signed by the occupier of the premises and the police. Should the occupier of the house refuse to sign the police must make a note of the refusal. The seized objects must then be taken away and carefully preserved until conclusion of the trial. Perishable articles or things of noxious character may however be disposed of

forthwith. In practice seized objects are seldom properly preserved.[65] Any police officer or gendarme about to conduct a search must himself be searched before and after the search to ensure that the officer does not plant any incriminating evidence. In practice occupiers of premises never search officers who conduct searches in their premises or homes. This is partly because of fear and partly because of ignorance.

A suspect's person may also be searched. Police and gendarmes call this kind of search la palpation. It is normally carried out by two officers, one facing the suspect and searching him while his colleague stands by ready to intervene if necessary. The officer doing the search feels the suspect's pockets, his back, legs, body, etc. Sometimes the suspect is made to stand facing a wall with his hands held up while the search goes on. This is a familiar scene to anyone who has watched a police film. The suspect's luggage (suitcase, brief-case, bag, etc.) may also be opened and searched. The suspect may even be required to undress. He may even be compulsorily subjected to an operation or anaesthesia. Samples of saliva, blood, and a piece of skin or hair may also be taken. Much would depend on the State Prosecutor and the medical advice given by the doctor. A State Prosecutor will not

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65. Cf. s. 190 of the Penal Code which makes it an offence to misappropriate, destroy or damage any attached or garnished property.

insist on an operation or anaesthesia if a medical doctor advises against it on physiological grounds.

There is a special form of search known as la rafle, that is, a cordon and search operation.[66] It is a system of nocturnal police raids carried out in any town or part thereof in which the police hope to find criminals or stolen property. Sometimes the operation is carried out by a combined force of the police, gendarmes and the army. The time when the operation is usually carried out is the early hours of the morning when everyone is in bed and after the area of the search has been cordoned off. The forces of law and order knock on each door and order the occupants of the house out at gun point. Everyone is marched into an open space, usually a football field, and ordered to sit on the wet grass or ground. If anyone tries to ask any questions or tries to linger he receives the butt of the gun or a good beating. Each individual may be ordered to produce papers such as laissez-passer (now abolished), fiche d'impot, carte nationale d'identité, carte du parti, and facture (i.e. receipt for any allegedly suspicious property found in your house). If he fails to do so, he is taken to the police station and locked up. Brutality is often rife during

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66. This procedure is a survival of a technique frequently used by the army in former East Cameroun in fighting against 'terrorism'. Much the same technique is still employed by the police and the army in Rhodesia and South Africa.

the conduct of these raids,[67] even though each operation is supposed to be carried out in accordance with certain police guidelines which prohibit the use of brutality.

D. Eavesdropping

One method of criminal investigation which the police, especially the plain clothes branch, have always resorted to is the use of espionage systems to give them surveillance over probable sources of criminal activity. The agent provocateur, the detective in disguise, the paid informer, wire-tapping and other means of electronic surveillance all represent methods of eavesdropping.[68] This practice constitutes a dangerous inroad into privacy and the extent to which the police in Cameroon resort to it is not altogether clear. It does not seem that the police have developed techniques of electronic surveillance such as telephone interception, telephone tapping, and the use of microphones, recorders and shortwave transmitters. They probably rely heavily on the use of paid informers, the detective in mufti and, to a lesser degree, on agents

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67. This operation has been condemned in Anglophone Cameroon as revolting and horrifying. It is one of those things that has contributed to the Anglophone prejudice against gendarmes. In their eyes, the ubiquitous, armed and red-bereted gendarme is a symbol of cruelty and brute force.

68. George Dobry, 'Wire-tapping and eavesdropping: a comparative study', J.I.C.J., vol. I, No. 2, 1958, p. 319.

provocateurs. These practices are evidently viewed as a variant of search and seizure procedures which the police are by law authorised to carry out. However, one method of eavesdropping which has caused a great deal of concern is police interference with private communications - letters, telephone conversations, telegraphic messages - although in Cameroon such interference is probably of limited scale.

In Cameroon it is by no means clear whether the police have any powers under the law to tamper with private communications. The right to privacy and secrecy of correspondence is guaranteed under the Constitution. But this guarantee is not absolute. The preamble to the Constitution enacts:

> "The privacy of all correspondence is inviolate. No interference shall be allowed except by virtue of decisions emanating from the judicial authorities."

The import of this provision is that, although the privacy of all correspondence is said to be inviolate, it may in fact be interfered with. However, such interference may only be done under court orders. Thus, provided the police have a court order to that effect they can always interfere with any correspondence.[69] In fact the powers

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69. Section 300 of the Penal Code makes tampering with correspondence a criminal offence by punishing with a maximum sentence of one year's imprisonment and a fine of one hundred thousand frances 'whoever without permission from the addressee destroys, conceals or opens another's correspondence'. However, this provision does not apply as between spouses, to parents in respect of their children under 21 years of age and unemancipated, or to guardians or persons responsible by custom in respect of their wards. Furthermore, clearly a policeman who tampers with any correspondence after having been authorised by the court to do so, commits no offence.

of search and seizure given to the police judiciaire, the Procureur de la République, and the juge d'instruction under the Code d'Instruction Criminelle[70] are generally considered to extend to the postal, telephone and telegraphic services.

The invention of the telegraph in 1844 and the telephone in 1876 put into the hands of the police the world over an important means of crime investigation. The police argue that this form of criminal investigation is considerably effective in the detection of major crimes, especially offences against the security of the state. Odious, invidious and obnoxious as the practice of opening letters is, it is justified by the need to protect the State against the misuse of postal facilities by subversive elements, ill-disposed persons and other criminals. But desirable as this form of criminal investigation may be, it should be subject to strict procedural safeguards. To ensure that there is no threat in it to the liberty of the individual, it should be carefully restricted to special and well-defined circumstances and purposes, and hedged about with clearly formulated rules and subject to very special safeguards. The police should be specifically prohibited from intercepting any communication without a High Court order or authorisation,[71] except in an

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70. C.I.C., ss. 8-10, 35, 87-89.

71. The magistrates who staff the Courts of First Instance are young and untested in the profession and it would not be safe to entrust this responsibility to them.

obvious case of urgency, upon an ex parte application. The application must be supported by affidavit stating that reasonable grounds exist to believe that evidence of crime may be thus obtained; identifying, in the case of wiretapping, the telephone line; and describing the person or persons whose communications are to be intercepted and the purpose of the interception. The law should make a court warrant to intercept communication available only in cases of treason, espionage, armed revolt, customs fraud, and offences against the security of the state. Interference of communication in these cases is justifiable on the basis that those offences threaten the very existence of the nation. All unauthorised tampering with communication and other scientific and technological devices for electronic surveillance should be made a criminal offence. Furthermore, evidence obtained illegally by interference with communication should be made inadmissible in court.

E. The preliminary inquiry

There are certain offences which, because of their complexity and gravity, are required by law to be the subject of a preliminary examination by a judicial officer before actual trial (if the evidence warrants such a trial). In former East Cameroun such offences were 'felonies' and serious 'misdemeanours' and the inquiry was conducted, in accordance with the relevant

provisions of the Code d'Instruction Criminelle,[72] by a special magistrate, le juge d'instruction, appointed from among substantive judges.[73] In former West Cameroon every 'indictable offence' was the subject of a preliminary inquiry (sometimes called a 'committal proceeding' or a 'preliminary investigation') conducted by a Magistrate in accordance with the relevant provisions of the Criminal Procedure Ordinance.[74] Under both codes the preliminary inquiry is designed to act as a filtering process to safeguard innocent persons from being sent for trial on insufficient evidence. The task of the investigating officer is not to decide whether the accused is guilty, for that would amount to a usurpation of the function of the trial judge. His task is simply to decide whether the evidence is sufficient to send the accused to stand trial.

In August 1972 the juge d'instruction was abolished and the powers to conduct preliminary inquiries was taken away from the bench and vested in the legal department.[75] Section 24(1)(b) of the 1972 Judicial Organisation Ordinance provides that the legal department

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72. C.I.C., Book I, Chapters 6-9.

73. Ibid., s. 56.

74. C.P.O., Part 36.

75. Ordinance No. 72/4 of 26 August 1972 (Judicial Organisation) as amended by Ordinance No. 72/21 of 19 October 1972, ss. 24-29.

"shall, in criminal matters and without prejudice to the rights of the civil party, investigate and record offences, undertake judicial inquiries and investigations ..." The abolition of the juge d'instruction and the vesting of his powers and functions in the legal department was presumably designed to remedy the rather awkward situation whereby the juge d'instruction came under the supervision of the Procureur General when conducting a judicial investigation. Under the C.I.C. the independence of the juge d'instruction was more theoretical than real. The inquiry he conducted was seen as nothing more than the exercise of judicial police functions. So, in his capacity as judicial police officer the juge d'instruction came under the control and supervision of the Procureur General.[76] Furthermore, where there were more than one juges d'instruction attached to a particular court, it was the Procureur General who distributed the case-files among them at his discretion. He decided which case-file went to which juge d'instruction and he could withdraw a case-file from a juge d'instruction he thought was incompetent. Besides, the Procureur General easily dominated young magistrates appointed juges d'instruction.

Old habits die hard and so vestiges of this situation are still to be found in Francophone Cameroon. Section 27(1) of the Judicial Organisation Ordinance

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76. C.I.C., ss. 57, 279.

provides that as a temporary measure (how 'temporary' is another matter) "the functions of State Counsel, particularly as regards the judicial investigations and proceedings in first instance, may be assumed, under the control and direction of the Procureur General of the Court of Appeal, by the President of the Court of First Instance, or by a judicial officer delegated for this purpose". This means that the presiding magistrate of a Court of First Instance may also act as investigating magistrate and as State Prosecutor. In other words, he conducts the preliminary inquiry, prefers the charge, prosecutes and sits in judgment. An analogous situation obtains under the Indian and the Northern Nigerian Codes of Criminal Procedure, and in Sudanese Criminal Law.[76bis]

The Judicial Organisation Ordinance spells out certain common provisions relating to the conduct of preliminary inquiries whether in Anglophone or Francophone Cameroon. A preliminary inquiry or judicial investigation is conducted in camera (exceptionally in public) by the State Prosecutor assisted by a court registrar.[77] It is compulsory in the case of felonies and optional in the case of misdemeanours and simple offences.[78] However,

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76bis. Abdullahi Ahmed el-Naiem, 'The many hats of the Sudanese magistrate: role conflict in Sudanese criminal law', J.A.L., vol. 22, No. 1, 1978, p. 50.

77. Judicial Organisation Ordinance 1972, s. 24(4).

78. Cameroonian criminal law divides all breaches of the law into three - felonies, misdemeanours, and simple offences. Any offence carrying the death penalty or a penalty of over ten years' loss of liberty, is a

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there are certain offences (both felonies and misdemeanours) in respect of which no judicial investigation may be undertaken at all. The offences in question are listed in Ordinance No. 72/17 of 28 September 1972 on the repression of acts of lawlessness. They are: vagrancy, cheque without cover, immoral earnings, simple theft, aggravated theft, aggravated misappropriation and false pretences, receiving, prostitution, corruption of youth, indecency to children under sixteen, indecency to minor between sixteen and twenty-one, and homosexuality.[79] In any of these offences the suspect is obligatorily referred to the competent court for summary trial without any preliminary inquiry whatsoever. These offences carry heavy penalties (some, like aggravated theft carrying the death penalty, and others, like rape of a child under the age of sixteen carry a penalty of between fifteen and twenty five years' imprisonment) and it is amazing that the law should ordain that they be tried summarily and without any preliminary inquiry having been held. The government however justifies this piece of legislation on

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Footnote 78 continued from page 932.

felony; any offence punishable with loss of liberty for from ten days to ten years and/or with a fine of more than 25,000 francs, is a misdemeanour; a simple offence is an offence punishable with imprisonment for up to ten days or with fine of up to 25,000 francs. See s. 21 of the Penal Code. Simple offences are themselves divided into a first, second, third and fourth class. See s. 362 of the Penal Code.

79. Penal Code, ss. 247, 253, 294, 318, 320, 321, 324, 343, 344, 346, 347 and 347bis respectively.

the ground that the incidence of these crimes has in recent years increased to alarming proportions. Summary trial is expeditious with few defence guarantees and the accused does not in fact get a 'proper' trial; besides, the trial proceeds as though the accused were already presumed guilty.

Section 29(1) of the Judicial Organisation Ordinance provides that preliminary inquiries shall continue to be governed, in the Anglophone Provinces, by the Criminal Procedure Code, and in the Francophone Provinces, by the Code d'Instruction Criminelle, in all their provisions that are not contrary to the provisions of the Judicial Organisation Ordinance. Under the C.P.O. a preliminary inquiry is conducted like a normal trial before a court. It takes place in public (sometimes in camera if the magistrate deems it proper) and the procedure is adversary. The suspect is present with his witnesses and counsel (if any). A preliminary inquiry cannot, under the C.P.O., be held in respect of an unknown person. The accused must be known and he must be available to defend himself if he chooses to. Proceedings begin with a short address by the prosecution explaining the nature of the evidence against the accused and how this evidence indicates the offence charged. The prosecutor submits to the magistrate all the evidence then available to him which he thinks it is likely he will call on trial. The prosecution is required to adduce enough evidence to make

out a prima facie case, that is, evidence sufficient, without anything said by the accused or his witnesses, to support a conviction by the trial court. The defence may or may not cross-examine prosecution witnesses to extract material useful at the trial.

At the conclusion of the prosecution evidence, the defence may make a no case submission; that is, a submission that the evidence produced by the prosecution is not of sufficient weight to warrant committing the accused for trial. Such a submission would be appropriate where the prosecution have failed to produce any evidence to establish an essential element of the offence and where the prosecution evidence is so weak or has been so discredited by cross-examination that no reasonable trial court could convict the accused. If at the close of the prosecution case the magistrate is of the opinion that a prima facie case has been made out against the accused, he makes a ruling to that effect and addresses him in these words: "Do you wish to say anything in answer to the charge? You are not obliged to say anything unless you desire to do so, but whatever you say will be taken down in writing and may be given in evidence upon your trial".

The defence may then make a statement and call in defence witnesses who may in turn be cross-examined by the prosecution. Accused persons who are unrepresented often put in a defence. Where there is a defence counsel

he may consider it wasted effort and tactically unwise to offer a defence at this stage unless he believes such a defence to be so strong as to compel the accused's discharge. If the magistrate is of the opinion that the evidence against the accused is not sufficient to put him on his trial, the accused is discharged as to the particular charge under inquiry. But such a discharge is not a bar to any subsequent charge in respect of the same facts. On the other hand if the magistrate considers the evidence sufficient to put the accused on his trial, he commits him for trial at the High Court.

The mechanics of conducting preliminary inquiries is that the evidence of each witness is reduced to the form of a deposition. It is taken down verbatim in long hand by the magistrate, and then read over to the witness by the magistrate. At the conclusion of the testimony the deposition is signed by the witness. Depositions provide the material on which the indictment is based; they enable the trial judge to have a preview of the case before the trial starts (serving in this respect the same purpose as the dossier in the non-adversary system of criminal procedure); they reduce the chances of witnesses altering their testimony; they are useful to the defence because they reveal the prosecution's case; they may be used to impeach a witness by showing prior inconsistent statements; and they are useful in a case where a witness dies or becomes otherwise unavailable for trial.

After the preliminary inquiries are concluded the prosecution drafts and files a formal accusation called an information or indictment, containing the charges against the accused who is then 'tried on information'. The information may contain more than one charge and charge more than one person with the same or different offences. Each offence charged in the information is set out in a separate paragraph and is known as a 'count'. A count must contain (i) a statement of the offence alleged, with a reference to the section of the written law against which the offence is alleged to have been committed, (ii) a statement of the time and place of commission of the offence and any person or thing in relation to whom or which the offence is alleged to have been committed, and (iii) such other particulars as are necessary to give the accused sufficient notice of the matter with which he is charged.

The basic function of the preliminary inquiry under the C.P.O. is to provide an early and independent check on the initial decision of the police to prosecute, thus ensuring that an innocent person is not sent for trial on spurious and insufficient evidence. Historically however, the original purpose of the preliminary inquiry in England was rather different. In England, before there was an efficient police force, the justices of the peace took it upon themselves to investigate serious offences and interrogate suspects. The preliminary

inquiry was in fact an investigative tool by which justices of the peace might examine a suspect to see what evidence they could extract from and against him and to preserve it for trial. In a sense they acted like the French juge d'instruction. The grant of a statutory right to accused persons to remain silent before the courts and the establishment of a modern police force trained in the investigation of crime destroyed the inquisitorial functions of the justices of the peace and made it unnecessary for them to supervise criminal investigations. With the differentiation of the functions of the justices of the peace from those of the police, the preliminary inquiry became a device for protecting an accused against unfounded accusations.

Now, under the Code d'Instruction Criminelle, the preliminary inquiry is inquisitorial in nature and must be held in camera. The accused need not be present. A preliminary inquiry under the C.I.C. may be opened against an unknown person and it would be the duty of the juge d'instruction in such a case to establish, from the evidence available to him, the identity of the offender. When the juge d'instruction conducts a preliminary inquiry he is said be seised in rem and in personam. The procedure before the investigating magistrate is essentially written. The State Prosecutor (or his assistant) may pop in, deposit his memorandum and then withdraw.[80]

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80. C.I.C., ss. 223-224.

Neither the accused nor the civil party is heard personally; they may only present written memoranda.[81] The preliminary inquiry is conceived as a device for criminal investigation.

The juge d'instruction constituted what was known as a juridiction d'instruction du premier degré, while the chambre de mise en accusation was a juridiction d'instruction du second degré (it re-examined the matter already investigated by the juge d'instruction and decided whether the accused should be put on trial). In the event of sufficient evidence, the chambre de mise en accusation committed the accused for trial at the cour d'assise by issuing an arrêt de mise en accusation.[82] The chambre de mise en accusation and the cour d'assise no longer exist. When the State Prosecutor closes a preliminary inquiry, he may, by virtue of s. 24(7) of the Judicial Organisation Ordinance, make one of three orders - refer the case to the Court of First Instance (if the evidence discloses that the alleged offence is a misdemeanour), or refer the case to the High Court (if the evidence discloses that the alleged offence is a felony), or direct that there is no ground for prosecution (if there is no evidence or the evidence is insufficient to sustain a charge).

In a sense, when the State Prosecutor is conducting a preliminary inquiry, he is acting both as judge

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81. Ibid., s. 217.

82. Ibid., ss. 217-219.

and prosecutor. Although he does not convict (he has no power to do so) he does decide whether there is enough evidence to warrant a prosecution or not. Since the State Prosecutor has absolute discretion whether to prosecute in any matter or not his having to conduct a preliminary inquiry would seem an unnecessary procedure. Preliminary inquiry or not the State Prosecutor has to decide in every case whether to prosecute or not. Besides, it is extremely odd that the crucial task of determining whether the accused should be committed for trial or not should be entrusted in the hands of one of the parties to the case (i.e. the State Prosecutor). Furthermore, what the State Prosecutor does under the disguise of a preliminary inquiry is in fact conduct an inquisition. In fact the philosophy behind the present preliminary inquiry is that it is a mechanism for investigating crime and not as a safeguard to ensure that the citizen is not subjected to the ordeal of a criminal trial except on evidence of sufficient weight to satisfy a magistrate that there is a case to answer.

II. Prosecutorial Discretion

The philosophy underlying prosecution is that anti-social conduct must be punished. Since anti-social conduct threatens the very fabric of society, the repression of such conduct is a matter of public interest for

society as a whole. So the right to exact punishment or to refrain from doing so is the sole prerogative of society or the state. But since society or the state can only act through natural persons, the power to prosecute any anti-social conduct is delegated by the State to certain qualified persons in the community. Such persons are styled 'public prosecutors' or 'state prosecutors' for their job is to prosecute all breaches of the criminal law on behalf of the public at large.[83] Having stepped into the shoes of the community, the public prosecutor exercises discretion whether or not to prosecute in any given case. In Cameroon, there is no rule of compulsory prosecution.[84] All proseuctions are governed by the opportunité des poursuites principle,[85] that is, the

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83. In some jurisdictions there are no state prosecutors, prosecutions being conducted either by the police or private individuals. One such jurisdiction is England. There private prosecution (by citizens, local government authorities, central government departments, public and private corporations), especially in the areas of theft, fraud, assault and damage to property, apparently still remains the order of the day. In practice there is a widespread reliance upon the police, who are regarded as the natural and proper prosecutors of crime with the primary responsibility of law enforcement, to prosecute these offences. An overwhelming bulk of prosecutions is therefore conducted by the police although some like sexual offences, require the fiat of the Director of Public Prosecutions.

84. Germany has a rule of compulsory prosecution, the Legalitätsprinzip. Under this principle the public prosecutor is required to take action against all judicially punishable acts, to the extent that there is a sufficient factual basis (s. 152(2), German Code of Criminal Procedure).

85. The same principle obtains in France, Italy and Holland.

principle of expediency or advisability. This rule is the opposite of another one, la legalité des poursuites (literally, the legality of prosecutions; better, the rule of compulsory prosecution). Under the principle of expediency the State Prosecutor has the power to pass on the sufficiency of the evidence, to determine the adequacy of incriminating evidence and to decide whether to prosecute any given matter or not.

This principle evidently stems from the conviction that no society will tolerate a rule of compulsory prosecution which is absolute and so relentless that the State Prosecutor were required to institute criminal proceedings in every case, no matter how weak the incriminating evidence. The State Prosecutor must therefore have the power to evaluate the evidence in advance of instituting a prosecution. If he is convinced that a suspect's conduct did not violate the criminal law or that the evidence cannot persuade the court of the suspect's guilt, he serves the social interest by not wasting resources on a futile and frivolous criminal trial and by not subjecting the defendant to its many discomforts. The State Prosecutor is mortal and may err in his exercise of his power of non-prosecution. He may misinterpret the law. He may misevaluate the cogency of the evidence. But this is a routine hazard of decision-making. It does not call into doubt the wisdom of allowing the prosecutor to decide.

As a general rule, the Cameroonian State

Prosecutor monopolises the institution and conduct of prosecutions.[86] But he does not monopolise the discretion whether to prosecute or not. He shares that discretion with the Minister of Justice, his boss. Each exercises this discretion in a given area: prosecutorial discretion in matters relating to State security and in matters involving high government officials, senior civil servants or other 'important' members of the community is exercised by the Minister of Justice; prosecutorial discretion in all other cases is exercised by the State Prosecutor.

1. Prosecutorial discretion exercised by the Justice Minister

In common everyday cases the State Prosecutor himself decides whether to prosecute or not but in other cases such a decision is taken by the Minister of Justice. Whenever the Minister of Justice decides that there must be a prosecution in respect of a certain matter, the State

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86. Police and gendarme officers continue to prosecute in some Courts of First Instance in Anglophone Cameroon. But this is only a temporary measure pending the availability of more State Prosecutors. Section 27 of the Judicial Organisation Ordinance 1972 provides, "In certain parts of the national territory, the competent Procureur General may, when there are not sufficient Legal Officers, designate certain judicial police officers who, under his direction and control, shall conduct preliminary investigations and prosecute offences before the Courts of First Instance".

Prosecutor must abide by the Minister's decision and institute criminal proceedings irrespective of his own views on the case. Conversely, where the Minister decides against prosecution the State Prosecutor must drop the matter, his own views notwithstanding. The Minister's discretion to decide in favour of or against prosecution is absoulte and is exercised whether there be compelling evidence to warrant prosecution or not. The Minister need not give any reasons for having decided one way or the other. No law however empowers the Minister of Justice to exercise prosecutorial discretion. His power to do so apparently arises from his position as the overall head of all the State Prosecutors in the country and is traceable to Circular No. 11 of 16 April 1962 from the Minister of Justice to all State Prosecutors in the country. This Circular, the subject matter of which is 'Hierarchical authority of the Minister of Justice - obligation to inform', reads in full:

> "In the interest of a better coordination of the Public Prosecution and in order to enable me give you all the necessary instructions as to the submissions that I would like you to develop in courts, I would like you, in the future, to inform me of all the matters which would appear to you to be of a certain importance, namely:
> (a) Matters relating to the security of the State and to the repression of subversive activities
> (b) All matters involving -
> (i) parliamentarians, ex-parliamentarians, mayors, and traditional chiefs
> (ii) senior district officers, district officers, and all high ranking civil servants as a whole

(iii) law officers as a whole and those with the status of law officers

(c) Matters which, though falling under common law jurisdiction, present an exceptional character of gravity (i.e., mutiny among different ethnic groups.

The reports concerning such matters must be sent to me by the Procureurs Généraux, either by letter or by telegram, depending on the urgency of the matter, or even verbally or by telephone. Later on, even without a special order, they will have to send periodical and detailed reports to me on the evolution of those matters reported by themselves or by the Minister.

The Procureurs de la République and the presiding judges/magistrates in charge of public prosecution will themselves have to inform their Procureur Général in the same way as above.

In case of matters of a very exceptional urgency and gravity, the examining magistrates are authorized to submit such matters directly to the Minister provided they inform their Procureur General in the same time.

I would like the prescriptions of this letter, the receipt of which I would like you to acknowledge, to be strictly respected."

Some years later, the Acting Procureur General for the then West Cameroon explained the tenor of the above circular to all 'Federal Counsels' in West Cameroon as follows:

"It follows that as soon as you have been assigned a case file which deals with any of the classes of persons mentioned in the Circular and you come to the conclusion that a prosecution should be instituted, you should immediately draw my attention to that fact so that the approval of the Minister can be sought. Of course if there is no evidence to warrant a prosecution, an opinion to that effect will be given outright to the police and that

will be the end of the matter."[87]

The Minister exercises his prosecutorial discretion in matters involving persons in the higher strata of Cameroonian society and in practice he seldom decides that the persons involved should be prosecuted. This explains why generally the people who appear in courts in Cameroon to stand criminal charges are almost always those in the lower rung of society. This does not mean that persons in the upper class never commit offences. They certainly do. What happens is that they are, generally speaking, hardly ever prosecuted.[88] In one road accident case involving a legal practitioner, permission was sought by the State Prosecutor from the Minister to charge and prosecute the offender for reckless and dangerous driving under s. 228(2)(d) of the Penal Code. The Minister refused to give his fiat. "J'ai pris connaissance de votre rapport de reference," the Minister minuted, 'et estime inopportunes des poursuites d'office ..."[89] In another case, a representative of the now defunct West

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87. See, Letter dated 28 December 1970 from Mr Nyo Wakai, Acting Procureur General for West Cameroon, to 'All Federal Counsels in West Cameroon'.

88. There are always exceptions however as may be seen from the 1973 Affaire de la Huitième Coupe. The case kindled a great deal of local interest primarily because most of the defendants were members in the higher strata of society - Ministers, Bank Directors, higher civil servants, big businessmen, and so on.

89. LB.CON. 41/3 of 10 March 1971, Atabong Fidelis v. Klett Charles, Ministry of Justice, Dos. No. 102.530/DAJS/MJ.

Cameroon Legislative Assembly caused a fatal accident at Banga. Permission was sought to charge and prosecute under sections 289(1) and 228(2)(d) of the Penal Code as well as under Regulation 36(2)(1) of the Road Traffic Regulations 1948 as amended by the Road Traffice (Amendment No. 2) Regulations, 1962. Taking into account, no doubt, the privilege which the Representative enjoyed from prosecution without the authority of the Legislative Assembly[90] the Minister declined to authorise any prosecution. "J'estime pour ma part," he wrote, "qu'il n'y a pas lieu d'engager d'office les poursuites dans cette affaire et, d'en laisser l'initiative eventuelle à ceux qui s'estimeraient lesés."[91] The Minister gave a similar direction in a road accident case involving a district officer[92] and also in another case in which a local chief in Kumba, accompanied by his traditional council, went to farms owned by farmers of the Bamiléké tribe and destroyed valuable economic crops on the ostensible ground that permission to farm on the land had not been sought from the

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90. By virtue of s. 2 of Ordinance No. 62/OF/15 of 12 March 1962 as amended by Ordinance No. 62/OF/2 of 31 March 1962 as further amended by s. 1 of Ordinance No. 62/OF/23 of 31 March 1962.

91. LB.CON.41/8 of 19 August 1971, Hon. Etame George, Ministry of Justice, Dos. No. 102.993/CF/DAJS/MJ.

92. LB.CON.41/27 of 2 October 1974, David Nde Fosah, Ministry of Justice, Letter of 29 April 1974.

traditional council.[93]

Sometimes however, the Minister instructs the State Prosecutor to take appropriate measures in a given case, subject to giving him (the Minister) a subsequent account of the progress of the case and its outcome.[94] Where criminal proceedings have already been instituted the State Prosecutor may still be instructed to discontinue the same. On 16 December 1975 a fatal accident was caused along the Likomba Hill through the reckless driving of a Provincial Inspector of Labour. He was charged in the Tiko Court of First Instance under s. 289(1) of the Penal Code. The Secretary General at the Ministry of Justice instructed the Procureur General, "Vous voudrez bein prescrire à votre substitut de Tiko, de ne requerir qu'une peine de principe à l'audience". The Minister's instructions followed afterwards: "You are requested by virtue of s. 10(1)(b)(new) of Law No. 66/LF/3 of the 10 June 1966, to discontinue the criminal proceedings ... You are further requested to make a report to me accordingly." Whereupon the Procureur General entered a nolle prosequi in respect of the case.[95]

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93. LB.CON.41/26 of 29 May 1974, The People v. Chief Victor Mukete & 13 Ors, Ministry of Justice, Letter of 27 April 1976.

94. LB.CON.41/14 of 10 October 1972, The People v. Chief J.B. Mokambe & 3 Ors, Ministry of Justice, Dos. No. 104.090/DAJS/MJ. Defendants were charged with corruption but discharged and acquitted by the Kumba Magistrate's Court: Ref. LBK.1/SCT/171.

95. LB.CON.43/37 of 3 April 1975, The People v. Effoudou Lombe Henri Gustave, Ministry of Justice, Dos. No. 107/366/DAJS/MJ.

In a case of embezzlement, the Minister would often direct that the offender should be ordered to repay the moneys embezzled. In one case, the branch manager of a local bank was alleged to have misappropriated the sum of 400,880 francs cfa. The Minister gave the following instruction to the Procureur General: "You are requested to call on the offender to settle, within a period of two months, running from the date of your request, the sum of 400,880 francs which he misappropriated failing which he would be prosecuted".[96] But sometimes the Minister does instruct the State Prosecutor to prosecute. So in one case involving an assistant district officer (a case of forgery sparked off by the publication of an article in the Cameroon Outlook of 14 July 1976 and captioned 'Big Government Officer in Certificate Forgery with Sexy Girl'), the offenders were eventually prosecuted and convicted.[97] In another case, a Frenchman on technical assistance attached to the Police Training Centre, Mutengene, drove recklessly along the Mutengene-Tiko road and killed two pedestrians. The Minister gave the green light for him to be prosecuted under ss. 225(2)(d) and 289(1) of the Penal Code.[98]

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96. LB.CON.41/51 of 6 September 1976, The People v. Lucas Away Nyambi.

97. LB.CON.41/57 of 1 December 1976, The People v. Wotany Sally Mojoko, Diyen Isidore, Case File No. CID.158/76.

98. LB.CON.41/65 of 17 May 1977, The People v. Claudel Martial, Tiko Police, case No. RRA.47/76.

2. Prosecutorial discretion exercised by the State Prosecutor

The State Prosecutor exercises absolute prosecutorial discretion in all matters other than those listed in the 1962 Circular. He decides whether to prosecute or not. It makes no difference that the evidence before him is sufficient or insufficient to warrant prosecution or no prosecution. No law requires the State Prosecutor to prosecute all charges for which there is sufficient evidence to justify a conviction. In theory therefore, the State Prosecutor may decline to prosecute even in a case of provable criminal liability. No one else may make good his refusal to prosecute. In practice however, State Prosecutors generally prosecute where there is enough evidence to sustain a prosecution.

The State Prosecutor is free to select, and does in fact select, among cases those he shall press and those not. He in fact picks and chooses which laws he will enforce and against which violators. Much depends on the degree of the social harm done. It may be small or insignificant. For example, cases of vulgar abuse (s. 307, s.R.367(9)), petty thefts, petty family squabbles, urinating in public (cf. s. 263), abuse in respect of bride price (s. 357), prostitution (s. 343), encumbering the highway (s.R.367(5)), begging (s. 245), and wagering (s. 249) are hardly ever prosecuted. As a general rule,

the State Prosecutor alone prepares the charge, initiates criminal proceedings and conducts the prosecution. When he decides not to prosecute and closes the case-file, he is not obliged by any law to state the reasons for his action although in practice he generally writes down his reasons for closing a file. When a case has gone to court, the State Prosecutor in Anglophone Cameroon may compromise (for example, by way of plea bargaining), discontinue proceedings (for example, by entering a nolle prosequi), or insist on a full trial irrespective of the trial judge's view of the case. However, the Cameroonian State Prosecutor exercises his prosecutorial discretion judiciously.

A. Extent of prosecutorial discretion in Anglophone and Francophone Cameroon

In Francophone Cameroon, the opportunité des poursuites principle comes into play before the trial when the State Prosecutor has to decide whether to prosecute or not. When the decision to prosecute has been taken and a charge has been preferred in court, the principle becomes inapplicable. The State Prosecutor cannot, for reasons of expediency, ask the court to discharge and acquit or throw out the case. Once the matter has gone to court, it must take its normal course, and it is for the trial judge to determine the issue of guilt or non-guilt, whether the accused should be convicted or acquitted,

although the Prosecutor has a right to indicate what he thinks the sentence of the court should be.

In Anglophone Cameroon, by contrast, prosecutorial discretion may be exercised even when a matter has already gone to court. The Prosecutor may plea-bargain or enter a nolle prosequi. The power to enter a nolle prosequi is derived from ss. 73-75 of the Criminal Procedure Ordinance which deals with the power of the Prosecutor to enter a nolle prosequi in criminal cases at any stage of the proceedings before judgment. A nolle prosequi is entered if the Prosecutor states in court or informs the court in writing that the state intends that the proceedings shall not continue. The effect of a nolle prosequi is that the accused is at once discharged in respect of the charge or information for which the nolle prosequi is entered. If the accused has been committed to prison, he is released. If he is on bail the recognizances are discharged. However, where an accused person has been so discharged, the discharge does not operate as a bar to any subsequent proceedings against him on account of the same facts. The State Prosecutor may also enter a nolle prosequi in committal cases. But the entry of a nolle prosequi in respect of an information filed after committal for trial is no bar for the filing later of a fresh information based on the same order of committal for trial.

Section 75(1) of the Criminal Procedure Ordinance empowers the State Prosecutor, in any trial or inquiry before a Magistrate's Court, to withdraw, at any time

before judgment is pronounced and with the consent of the court, from the prosecution of any person. The effect of such a withdrawal is that the accused is discharged in respect of the offence. But such a discharge does not operate as a bar to subsequent proceedings against the accused on account of the same facts. A complainant too may, with the court's permission, at any time before a final order is made, withdraw his complaint under s. 284 of the Criminal Procedure Ordinance. The complainant must however satisfy the court that there are sufficient grounds for permitting him to withdraw the complaint. The effect of such a withdrawal is that the accused is acquitted.

B. Declining to prosecute even in the face of sufficient evidence

There are a number of possible compelling reasons why, even in the face of sufficient evidence to justify a prosecution, the State Prosecutor may still decline to prosecute. The case may involve an 'important' personality and the Minister has instructed the Prosecutor not to prosecute. Take cases of members who constitute the three branches of government. A member of the magistracy cannot be arrested and prosecuted without the fiat of the Minister of Justice. There exists a political guarantee in favour of members of the legislature. Members of the National Assembly enjoy what has traditionally been known

as 'parliamentary immunity'.[99] No member of the National Assembly may be prosecuted, investigated, arrested, detained or tried because of opinions or votes by him in the exercise of his functions.[100] Furthermore, a member of the National Assembly cannot be prosecuted for an offence, whether during the parliamentary session or not, without the authorisation of the National Assembly (when the House is in session) or the National Assembly Bureau (when the House is not sitting).[101] This immunity however ceases to be effective in cases concerning the internal or external security of the State as defined in ss. 102-117 of the Penal Code, or where the parliamentarian is caught in flagrante delicto. The immunity also does not cover arrests and searches. If a member of the National Assembly commits an offence he may be arrested, searched and detained without the prior authorisation of the National Assembly. It is only when the State Prosecutor has decided to prosecute that he must seek the authorisation of the National Assembly to do so. If the Assembly refuses

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99. Cf. s. 18 of the 1972 Constitution. The term is in fact a misnomer because it is not really a case of immunity but inviolability.

100. Ordinance No. 72/12 of 26 August 1972 (Regime of immunity for parliamentarians of the National Assembly), s. 1.

101. Ibid., s. 2.

to lift the parliamentary immunity the Prosecutor cannot go ahead and prosecute. If the immunity is lifted, prosecution can only be in respect of the facts, and none others, contained in the resolution adopted by the Assembly.

In theory, the President of the Republic and his Ministers may be prosecuted for criminal offences like any ordinary citizen. Section 1 of the Penal Code provides that 'all persons shall be subject to the criminal law'. It is however extremely unlikely that the President of the Republic or any of his Ministers would be prosecuted while still in office. The situation is however different where the offence committed by the President or any of his Ministers is in respect of acts performed in the exercise of their offices. By s. 34(2) of the Constitution, "The Court of Impeachment shall have jurisdiction, in respect of acts performed in the exercise of their offices, to try the President of the Republic for high treason and the Prime Minister, Ministers and Vice-Ministers for conspiracy against the security of the State". The President can only be indicted following an absolute majority vote by secret ballot of the National Assembly.[102] The Assembly's decision to charge the President is communicated to the Procureur General at the Supreme Court, who would then notify it to the president of the Court of Impeachment and the president of the

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102. Ordinance No. 72/7 of 26 August 1972 (Court of Impeachment), s. 14.

Investigation Commission.[103] After the necessary inquiries have been made the Investigation Commission decides, on the evidence before it, whether or not the Head of State should be committed for trial before the Court of Impeachment.[104] The initiative to commence criminal proceedings against the Head of State is taken by the National Aseembly, but the final decision whether there should be a prosecution or not rests with the Investigation Commission. The Prime Minister, Ministers and vice-Ministers charged with conspiracy against the security of the State are committed for trial by decree of the Head of State.[105]

Another situation in which the State Prosecutor may refuse to prosecute even where there is sufficient evidence to warrant such a prosecution is where the infraction is too trivial. Petty infractions (such as violations considered mala prohibita in American law) do not, by definition involve a high degree of moral guilt and the social harm done is generally slight. In such a case the State Prosecutor serves the public interest in not wasting time and state money prosecuting. However, public interest requires the prosecution of petty infractions if they are committed with exceptional frequency or if the accused

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103. Ibid., ss. 16, 17.

104. Ibid., ss. 20-25.

105. Ibid., s. 18.

charged with a petty infraction is a regular customer of the court.

The State Prosecutor would also refuse to prosecute a case which falls within those classes of case which require the prior complaint of the victim, if such a complaint has not been made or if it is made by someone else other than the victim of the offence. Under the Penal Code, the State Prosecutor cannot prosecute in the following cases without the prior complaint of the persons therein named: persistent neglect by a civil servant (s. 151), invasion of residence (s. 299), defamation (s. 305), abuse (s. 307), patents (s. 328), trade-designs-patternsn (s. 329), incest (s. 360 - except where the incest is accompanied by notorious concubinage or marriage), adultery (s. 361), and desertion (s. 358). The reason why these offences may not be prosecuted without the prior complaint of a victim is not because of their triviality (which they are not) but because of the predominantly personal character of the interests involved (moral and family considerations) as well as the risk of discredit to and embarrassment for the victim. However, once the complaint has been made, the State Prosecutor may, in the exercise of his discretion, decide whether to prosecute or not.

In certain cases, the State Prosecutor will not prosecute, either because the offender is immune from prosecution, such as in the case of theft between relatives (s. 323), or because the offence has been amnestied, as in

the case of a subsequent marriage between a rapist and his victim (ss. 295-297, 73), or again because prosecution has been barred by lapse of time, as in the case of contempt (s. 152) and defamation (s. 305). The Prosecutor will probably also not prosecute where the offender had acted out of a particularly laudable motive, although as a general rule motive does not affect criminal responsibility. If the commission of an offence was prompted by compassion (for example, mercy-killing) or praiseworthy motives (for example, promotion of the social interest such as helping to avert an imminent danger to the country), the State Prosecutor may think it expedient not to prosecute at all.

The State Prosecutor may also not prosecute where a prosecution would lead to public indignation and riot, as may for example happen if a lamido or fon (i.e. chief) were to be prosecuted in his chiefdom. Political and diplomatic considerations also weigh in the State Prosecutor's mind when deciding whether to prosecute or not. More harm than good may be done to the public in proceeding in certain cases and circumstances.

As a general rule, the foundation of criminal jurisdiction in Cameroon is territoriality.[106] In other words the criminal law of Cameroon applies to any act or omission (whether by a foreigner or a Cameroonian) resident

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106. Penal Code, ss. 7-9.

within Cameroon.[107] However, Cameroonian courts have jurisdiction over offences committed by Cameroonians outside Cameroon and foreigners resident in Cameroon but who committed the offence outside; subject to the proviso that the offences are also punishable at the place of commission.[108] Cameroonians and foreigners (if arrested in Cameroon or extradited to it) are subject to the criminal law of Cameroon in respect of any offence against the security of the State or of counterfeiting the Great Seal or the currency of the State wherever committed.[109] Now, for a variety of possible reasons the prosecution of offences committed outside Cameroon or by foreigners might not be required by the public interest even though there may be sufficient evidence to warrant such a prosecution: the offence may already have been punished in a foreign country, prosecution might jeopardise foreign relations, prosecution might imperil international comity, and so on. Even a serious offence such as treason or espionage may not be prosecuted at all if the Minister of Justice believes prosecution would be politically disadvantageous to the country or that important public interests would present an obstacle to prosecution. For example, if prosecution would require devulging State secrets or

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107. The tourist, passing traveller, and the man on a business trip do not count as residents.

108. Penal Code, s. 10.

109. Ibid., s. 8(b).

would endanger national security, it would be foolhardy to prosecute.

C. Control of prosecutorial discretion

Theoretically, the State Prosecutor may be compelled to prosecute where in the face of sufficient evidence, he declines to do so. The victim may himself bring a private prosecution. In Francophone Cameroon, the victim can compel the State Prosecutor to prosecute by suing civilly in the criminal court. When he does this the Prosecutor is bound to take over the case and prosecute. However, the victim is entitled to bring a civil action in the criminal court only where the offence caused a personal and direct injury to him susceptible of giving rise to a constitution de partie civile. If the offence is one of those in which there is no victim in the usual sense (that is, in 'victimless' crimes such as gambling, narcotics and sex offences where the criminal law is used to control conduct engaged in consensually), the 'victim' cannot bring a private prosecution. In order to bring a private prosecution in Anglophone Cameroon the fiat of the State Prosecutor is necessary. But this fiat may be refused and there is no judicial review of such a refusal. One drawback about bringing a private prosecution in Cameroon is that, if the citizen prosecutor loses, he pays costs to the accused. This effectively

discourages the institution of private prosecutions. Furthermore, once the Minister of Justice has instructed the State Prosecutor not to prosecute, no private prosecution may be brought unless the Minister says it may be. Again, where a private prosecution has been brought, it may be terminated by the Prosecutor entering a nolle prosequi. The citizen's right to bring a private prosecution where the State Prosecutor has refused to prosecute is therefore more illusory than real.

A form of control over the Prosecutor's discretion is the citizen's right to file a formal complaint or petition to the Minister of Justice where the State Prosecutor has failed to prosecute in the face of sufficient evidence. The object of such a complaint is to get the Minister to order the State Prosecutor to prosecute. In practice, however, the Minister hardly ever interferes with the State Prosecutor's discretion. When the complaint is therefore rejected there is nothing else the complainant can do. In Cameroon, unlike in some countries,[110] there is no judicial review of the exercise of prosecutorial discretion. The citizen cannot bring a mandamus action for a judicial order to require the State Prosecutor

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110. For example, in Germany. See, Joachin Hermann, 'The rule of compulsory prosecution and the scope of prosecutorial discretion in Germany', 41 U.C.L.R. (1974), p. 468; John H. Langbein, 'Controlling prosecutorial discretion in Germany', 41 U.C.L.R. (1974), p. 439.

to prosecute. Even if the State Prosecutor were to be compelled to prosecute, there is no safeguard against a possible attempt by him to sabotage at the trial a case he has been ordered against his will to conduct.

The only effective control over the State Prosecutor's prosecutorial discretion is exercised through the close supervision by the Ministry of Justice. Every month State Prosecutors make reports on their work to that Ministry. From these reports the Ministry is able to exercise a certain measure of control over the work of all State Prosecutors.

III. Trial Procedures

That the system of criminal procedure in Anglophone Cameroon is adversary (or accusatorial) and that in Francophone Cameroon non-adversary (or inquisitorial) is now probably a misleading cliché. Although there are still major conceptual and attitudinal differences in the two procedural systems as they operate in Cameroon, there is little doubt that for roughly a decade now there has been a perceptible evolution towards a mixed system. The net result of this process has been a narrowing of the spectrum of differences in the two procedural systems. Only those who never deviate into practicality and owe little allegiance to reality would ignore the fact that the two systems have been borrowing (perhaps unwittingly) from each other and that the difference between the two is

not as wide as might at first glimpse be thought.

1. Commencement of trial

A. Preferring the charge

In Cameroon all criminal charges are preferred by the State Prosecutor acting on behalf of the general public. In discharging this duty the State Prosecutor must act fairly and not use his official position for his own personal advantage. In The People v. Gorji Dinka[111] the respondent was charged with making a false report contrary to s. 304(1) of the Penal Code. The particulars of the charge were that the respondent, at Buea on October 10, 1968, made to Mr Rupert Thomas, a person in authority a false report by submitting a memorandum dated 7 October 1968, accusing Mr Frederick Eko, Procureur General of West Cameroon, of partiality, bias, tribalism and corruption before, during and after the Commission of Inquiry into the West Cameroon Electricity Corporation which was liable to lead to the prosecution of or disciplinary proceedings against the said Mr Eko. The memorandum was held by Dervish J. at the court below to be absolutely privileged and incapable of being produced in evidence in the proceedings. The respondent was accordingly discharged. On appeal by the appellant, the Court of Appeal

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111. West Cameroon Court of Appeal, Criminal Appeal No. WCCA/3 c./69, unreported.

upheld the ruling by Dervish J. that the document was privileged and inadmissible in evidence. Cotran, C.J. remarked, obiter.

> "The indictment, as all indictments are, is laid by the Procureur General of West Cameroon, on behalf of the people. The allegations are that Mr Dinka, a leading barrister has accused Mr Eko, none other than the Procureur General himself, of tribalism etc. In those circumstances, it is quite evident that Mr Eko had a personal interest in the matter. Having such a person interest we cannot see how he can properly discharge his official functions as Procureur General on behalf of the people, impartially and fairly.
>
> "The prosecution then decided to appeal to this court, and the appeal is conducted for the prosecution by Mr Eko himself. Again he chooses to act officially on behalf of the people, in a case where his own personal interest looms very largely.
>
> "It has repeatedly been said in the court, and we would like to take the opportunity in this case, to repeat, that the function of the prosecution acting on behalf of the people in criminal cases is to act fairly and impartially in the interests of justice. It is not the duty of the prosecution to secure convictions, and especially not to use their official positions for their own personal advantage."

When the police or gendarmes make an arrest and have completed their investigations they may keep the suspect in police custody or, on the advice of the State Prosecutor, release him on police bail pending the date of the trial. They would then compile a case-file. This file consists of statements of witnesses and the suspect, other pieces of evidence, the police investigator's report (the procès-verbal or 'P.V.'). The case-file is

then sent to the State Prosecutor's Chambers. If these chambers are attached to a court of first instance, there would most likely be only one State Prosecutor there and he would have to decide, on the available evidence, whether to prefer a charge or not. At the Court of Appeal level the Prosecutor's Chambers usually has more than one State Prosecutor, headed by the Procureur General. As local head of the prosecutorial corps, the Procureur General distributes the case-files among his subordinates. Each Prosecutor studies the file allotted to him, states his legal opinion on the matter and returns the file to the Procureur General for control. If there is a conflict of legal opinion on any particular case between the Procureur General and a junior Prosecutor, the views of the Procureur General must prevail.[112]

If the State Prosecutor decides not to prefer any charge, he closes the case-file (classement sans suite). He is not required by law to give any reasons for closing the case-file should be choose to do so although in practice he generally does. The decision to close a case-file, like the decision to prefer charges, is an administrative and not a judicial decision and no appeal to a court lies against it. Furthermore, when a case-file

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112. This is merely a way of maintaining discipline and ensuring respect for seniority within the prosecutorial corps. Evidently, there is no reason to suppose that the Procureur General's legal opinion on any given matter is necessarily better than that of the junior Prosecutor.

is closed the issue is not finally laid to rest but merely kept in abeyance. Therefore, provided the action is not time-barred, the State Prosecutor may re-open it at any time and need not give reasons for doing so, although in most cases he would re-open a case-file if he comes by fresh evidence which throws more light on the case.

Where the evidence discloses an offence characterised as a felony, the State Prosecutor must conduct a preliminary inquiry before preferring a charge. If at the end of the inquiry the State Prosecutor decides to prosecute he draws an information and commits the accused to trial on information in the High Court. The information must give sufficient particulars to indicate the place, date and nature of the offence. A preliminary inquiry is not necessary in the case of an offence characterised as a misdemeanour. A person who commits a simple offence or a misdemeanour is charged directly to court without the holding of a preliminary inquiry. Similarly, a person caught red-handed committing an offence is taken straight away to the State Prosecutor who prefers a charge and forthwith sends him to court to be tried summarily.[113] If the court is not sitting on the day the offence is committed the accused is remanded into custody and taken

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113. Ordinance No. 72/17 of 28 September 1972 to simplify criminal procedure in respect of acts of lawlessness.

to court at its next sitting.

On the question of preferring a charge there are two points on which practice in Anglophone and Francophone Cameroon differs. In Francophone Cameroon once the State Prosecutor has committed the accused for trial he cannot subsequently withdraw the case or plea bargain. In Anglophone Cameroon the State Prosecutor may plea bargain or enter a nolle prosequi at any stage of the trial. There also, the way a charge is drafted is strictly regulated by law.[114] Every charge or count on an information must contain (i) a statement of the offence alleged, with a reference of the section of the written law against which the offence is alleged to have been committed; (ii) a statement of the time and place of the offence and any person or thing in relation to whom or which the offence is alleged to have been committed; and (iii) such other particulars as are necessary to give the accused sufficient notice of the matter with which he is charged. The court would throw out a charge if it is defective (for example, a charge which fails to state the particulars of the offence) or bad for duplicity (for example, several acts of theft are made the subject of a single charge). The position is otherwise in Francophone Cameroon. The manner of drafting a charge is not so well regulated. The State Prosecutor may, in one document, charge several

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114. Criminal Procedure Ordinance, Part 18.

separate people with having respectively committed or taken part singly, severally or jointly, on one or more of several separate crimes.

B. Modes of trial

The court in which an accused person is tried depends on the nature of the charge preferred by the State Prosecutor. If the offence charged is a simple offence or a misdemeanour, the accused must be sent for trial in the Court of First Instance which exercises original jurisdiction in cases of misdemeanours and simple offences.[115] If the offence is a felony the accused must be sent for trial at the High Court for that court exercises original jurisdiction in cases which are felonies.[116] Thus, offences of different gravity (in terms of penalties authorised) have been entrusted to courts of differing original jurisdiction. In these courts somewhat different procedural and evidentiary rules apply. In the case of felonies, a preliminary inquiry must be conducted and the eventual trial at the High Court follows a more elaborate procedure than that in the Court of First Instance. Trial in the Court of First Instance is by summary procedure. Matters are disposed of with rapidity. The atmosphere is

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115. Judicial Organisation Ordinance, 1972, s. 13(1)(a).

116. Ibid., s. 16(1)(a).

informal. Not much regard is paid to technicalities. For most of the time the court deals with matters of fact rather than law. However, in both the Court of First Instance and the High Court, the usual rules apply just as in the superior courts.

In Cameroon the defendant does not decide which type of procedure will be followed in his case. The nature of the offence involved is decisive. If it is a felony it is tried in the High Court where a more elaborate procedure is followed; if it is a misdemeanour or a simple offence it is tried in the Court of First Instance following a summary procedure.[117] Simplified procedural patterns are utilized as a deterrent device in respect of certain serious crimes of alarmingly high incidence such as aggravated theft which carries the death penalty, bad cheques,[118] misappropriation of public funds, and so on.[119] More usually however, simplified procedural patterns

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117. In common law jurisdictions by contrast, it is the defendant who determines the type of proceeding in which his case will be processed, by using the pleading mechanism and exercising waiver. In England for example, an accused person may either demand or waive trial by jury. In the United States, a defendant can cause a relatively minor case to be tried in the most elaborate, costly and time consuming manner by simply refusing to plead guilty and to waive the jury trial.

118. For a study on the law of bad cheques in France, which law is the same as in Cameroon, see, Carlson Anyangwe, 'Dealing with the problem of bad cheques in France', C.L.R. 1978.

119. Ordinance No. 72/17 of 28 September 1972 to simplify criminal procedure in respect of acts of lawlessness. This Ordinance also applies in Anglophone Cameroon even though s. 304(1) of the Criminal Procedure Ordinance excludes capital offences from indictable offences which might be tried summarily.

are used to dispose of less serious offences. The defendant cannot compel the court to dispose of the case either in a more or less elaborate manner than prescribed for the type of offence in question.

C. Courtroom layout and court etiquette

A striking contrast is found in courtroom layout in Anglophone and in Francophone courts. In the Anglophone Provinces, there is nothing about the architecture of a court house or building which singles it out from other buildings in the locality. There is no plaque or insignia to indicate that it is a law court. Each court house is oblong in shape, small in size, simple in architecture, and unimposing. Inside the court, there are no decorations, no ornaments, no carpets, no tapestries. You would search in vain in and outside the court for the Scales. All you would find inside the court is the official photograph of the Cameroonian Head of State hanging high up on the wall behind the judge's desk.

Each courtroom has two oblong-shaped boxes, one, the dock, for the defendant, and the other, the witness box, for the witness. The defendant traditionally sits in the dock in the centre of the courtroom with a policeman, gendarme or warder nearby but outside the dock. He is isolated from his counsel and others on the courtroom by the walls of the enclosure. But the upper part of

the defendant's body is in full view of the court. The institution of the dock seems at odds with the presumption of innocence. Why should the defendant be 'caged' if he is presumed innocent?[120]

A witness gives his evidence from the witness-box, standing and not sitting as happens in American courts. The court may however, at its discretion, allow a witness to testify sitting. There are always three objects resting on the witness-box: a Bible, a Qu'ran and a dane-gun - the paraphernalia for the oath-swearing ritual.

Each courtroom provides for a higher, throne-like setting of the judicial bench so that the judge dominates the scene. The judge's bench is generally a table or desk (with fat law books neatly arranged on it) placed on a dais. Behind the judicial table are two side doors, one leading to the registrar's office and the other to the judge's chambers - the judge enters and leaves the court by this door. Below the judicial bench, in front of and parallel to it, stands a long table about a yard away from the judicial bench. This table is for defence and prosecuting counsel as well as for the court clerk; counsel sit facing the judge while the clerk sits backing

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120. It may be noted that in America the dock has disappeared and the accused sits at the counsel table with his lawyer. He comes and goes from the courtroom (if out on bail) like any other free person. Throughout the trial he is treated like an ordinary innocent citizen - which he is in the eyes of the law.

him. When he wishes to speak, counsel rises at the table and stays there in one position, rocking himself to and fro, turning towards witness as occasion arises, but leaving the table only for some practical necessity such as pointing out a passage in a document to a witness. Court officials (clerks and police officers) are circumspect, unobtrusive, and disciplined in their bearing, as befits their role. No attention is paid in Cameroon to courtroom acoustics. But in Anglophone courts the situation is mitigated by two factors: (i) judges always remind counsel and witnesses that they have to speak aloud to the hearing of the entire court; (ii) the public is closer to the judicial bench, the bar table, the dock and the witness-box. The judicial bench in Anglophone courts is in fact much closer to the public seats than is the case in Francophone courts where the horizontal and vertical distance between the judicial bench and the public seats is quite wide. This in effect means that the aloofness from the public of the judge in Francophone Cameroon is both vertical and horizontal while that of the Anglophone judge is vertical only.

Courts in Francophone Cameroon are also not decorative, but they are bigger and more elaborate in architectural design. Each court building proclaims boldly by the following inscription: PALAIS DE JUSTICE,[121] that

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121. Cf. also, gens du palais (i.e., lawyers, the legal profession or fraternity), style de palais (i.e., legal jargon), and terme de palais (i.e., forensic or law term).

it is a law court or court of justice. The judge, State Prosecutor, and registrar (greffier) all enter and leave the court (in that order) through the same door. All of them sit up there on the rostrum,[122] the judge and the registrar sharing one table (the registrar sits on the right hand side of the judge) while the State Prosecutor sits at a separate table about two yards away from the judicial bench, on the right. When addressing the court the State Prosecutor stands up, perambulates, gesticulates with his hands, and may even go close to the judge.

The bench reserved for advocates is at a corner at the foot of the rostrum. There is a great deal of sprawling space for defence advocates. They frequently leave their desk and approach close to the witness and the judicial bench. In the course of his perambulations an advocate may gesticulate with his hands, roll the sleeves of his robe over his shoulder, and may even turn his back on the bench - exactly like an American attorney.

There is neither dock nor witness-box in a Francophone court. All there is is a little crescent-shaped cross-bar (la barre, it is called) erected in the well of the court about four yards away from the judicial bench. The defendant sits on the front row bench in the public gallery and is flanked either by armed gendarmes, policemen, or prison warders who are always very conspicuous.

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122. This underscores the French conception of a court which is defined as comprising the Judge, the State Prosecutor, and the Registrar.

The defendant gives his evidence standing at the cross bar. Since no attention is paid to courtroom acoustics, and since judges seldom insist on people speaking loud enough for the entire court to hear, spectators often find it difficult to follow what is being said, especially when, as often happens, defence counsel or State Prosecutor approaches close to the judge and engages more or less in a muttered discussion - a practice which detracts from the meaningfulness of a public trial. Court acoustics have a bearing upon the right to a public trial and attention ought to be paid to it, for example, by installing microphones and loudspeakers in the larger courts.

Another contrast between an Anglophone and a Francophone court relates to court etiquette. In Anglophone courts barristers, State Prosecutors and judges are all robed and wigged, except in Magistrates' Courts where they appear in ordinary suits. There is punctilious attention to decorum: the judge is addressed as 'My Lord' (a magistrate is addressed 'Your Worship' or 'Your Honour') and anyone entering or leaving the courtroom bows to him. When the judge is about to enter the court he knocks three times on the door and the court clerk shouts, 'C-O-U-R-T!'. Everyone rises to their feet. The judge enters the court, goes to his seat, bows and sits down. Everyone else then sits down and the day's business begins, often with the overnights. Everyone

again rises to their feet when the judge also leaves the court. These entry and exit ceremonies last only a few seconds. When the court is in session anyone who falls asleep in court or makes any noise in the court or within the court precincts may be charged with contempt of court.

When the judge makes a ruling the clerks, prosecution and defence all intone benignly:'as the court pleases'. The judge himself speaks in the third person: 'the court decides ...', 'the court rules ...', 'the court over-rules ...', 'the court upholds ...', 'the court finds ...', 'the decision of the court is ...', et cetera. Although aware that the court is the cockpit of a legal battle, the common law trained lawyers practising in Anglophone courts have not let the combative nature of the adversary system blur their sense of decorum. They address each other in court as 'my learned friend' and make their submissions 'with due respect'. When conducting his cross-examination defence advocate 'suggests' or 'puts it' to the witness that he is so-and-so or that he did this-and-that.

The picture is different in Francophone courts. The judge's entry into the court is announced by the ringing of a door bell. The judge, prosecutor, and registrar all enter the court at the same time and through the same door. Everyone stands when the judge enters the court and sits after the judge has sat down. The judge then says, 'l'audience est prêt'. He reaches for the first <u>dossier</u>

on the heap in front of him, opens it, and calls the case ... The day's business has begun.

Judge, State Prosecutor, defence counsels and the court clerk are all robed - the judge and state prosecutor in toga, counsel and registrar in billowing black. The robe is compulsory in all courts. The judge, whether of a lower or superior court, is addressed as Monsieur le Président, defence counsel la défense, and the prosecution l'accusation, le parquet or le ministère public. Counsel address each other as mon confrère, never mon emminent confrère nor mon savant confrère. When the court is in session advocates may come and go, lean over a colleague, shake hands, whisper, tiptoe in and out of court. Not much attention is paid to decorum as in Anglophone courts. One need not bow to the judge when entering or leaving the court and counsel may prowl around when speaking.

On the whole however, standards of discipline and dignity appear to have fallen considerably in Cameroonian courts. Altercations and the exchange of discourteous language between the bench and the prosecution or the defence, or between the prosecution and the defence, or again between one defence advocate and another take place time and again.[123] This state of affairs has been sternly

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123. Judicial and legal officers in the English-speaking part of the country claim, not without foundation, that conduct of this nature is alien to courts in Anglophone Cameroon and that it is something one comes across quite often in Francophone courts. In fact however, in Buea this writer witnessed a case in which counsel for the plaintiff and counsel for the defendant

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deplored by the Minister of Justice as may be seen from this telling circular from the Minister to all judges and State Prosecutors in the country.

"Ministère de la Justice
Yaoundé, le 18 nov. 1976

Direction des Affaires
Judiciaires et du Sceau

Courrier No. 9051/DAJS
Objet: Tenue des Audiences

à Messieurs les Présidents des Cours d'Appel
Messieurs les Procureurs Généraux pres les Cours d'Appel
Messieurs les Présidents des Tribunaux de Grande et de Première Instance
Messieurs les Procureurs de la République

"Mon attention a été appelée sur le fait que certaines audiences ne se déroulent pas dans l'ordre, la discipline et la dignité exigé tant par la nature des affaires qui y sont débattues que par le cadre dans lequel elles se déroulent et que certaines d'entre elles, il faut le dire, sont des veritables 'foires'.

Ainsi, il m'est revenue que, si dans l'ensemble le public observe le calme nécessaire pendant l'audience par contre ce même public assiste a des véritables altercations, en des termes pour le moins discourtois, soit entre le Président de la juridiction et le magistrat représentant le Ministère Public, soit entre ces mêmes magistrats et les avocats, soit entre les avocats eux-mêmes, ces confrontations ne s'inscrivant évidemment pas dans le cadre des interventions nécessitées par les débats.

Certains magistrats iraient même, semble-t-il, jusqu'à interdire aux avocats de plaider, ce qui est manifestement illegal, ou les interpelleraient en termes mettant en

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Footnote 123 continued from previous page.

were constantly getting at each other angrily (or so it seemed) as though they were engaged in a private duel of theirs. This writer also witnessed something of a similar nature between defence counsel and State Prosecutor in a Magistrate's Court in Bamenda.

cause leur honneur ou leur competénce, ce qui est inadmissible.

Par ailleur, il m'a été donner d'observer que malgré les heures fixées pour les audiences, celles-ci ne commencent dans certaines juridictions qu'avec des retards considérables dûs souvent à l'absence du Président de la juridiction qui parfois même ne vient pas du tout et se borne à faire renvoyer, par un greffier, les affaires enrôlées.

Enfin, s'il est vrai que nos locaux actuels ne présentent pas toujours un cadre fonctionnel permettant à chacun (magistrats, avocats, prevenus, témoins) d'occuper une place convenable amenagée dans le prétoire, il serait souhaitable toutefois de reserver notamment aux avocats, un emplacement précis.

En outre, en ce qui les concerne, il y a lieu même en l'absence d'un vestiaire destiné à cet effet de reserve à leur intention, un local où ils puissent mettre et enlever leur robe, hors la vue du public.

J'attacherai le plus grand prix à ce que tous les chefs de juridictions donnent par écrit toutes instructions nécessaire aux magistrats placés sous leur autorité, ainsi qu'aux auxiliaires de Justice de leur ressort pour qu'il soit mis fin aux errements constatés et que desormais les audiences se deroulent dans l'ordre, le calme, la serenité, voire la solennité, que me parait devoir imposer l'exercice de la fonction judiciaire.

Je vous serais obligé de vouloir bien m'accuser réception de la présente circulaire dont je vous demande d'assurer la diffusion la plus large dans vos ressorts respectifs, ainsi que l'execution et me rendre compte des mesures prises et des resultats obtenus.

Le Ministre de la Justice, Garde des Sceaux

Joseph-Charles Doumba.

2. Conduct of the trial

A. The arraignment

In Anglophone courts the trial begins by the court clerk calling the case - The People v. XYZ. The defendant

steps into the dock. The clerk invites all witnesses in the case to leave the courtroom and hang around at a little distance away from the court building until called. He then reads the charge to the defendant and asks him whether he pleads guilty or not guilty to the charge as read. The defendant may take any one of the following course: stand silent, plead guilty to the offence charged, plead not guilty, make an objection on legal grounds to the trial proceedings.[124] Legal objections are however rare. Also, apart from the rare case where a defendant stands mute by visitation of God, defendants never stand silent. Defendants always plead guilty or not guilty. Some defendants do plead 'guilty with reasons'. The courts take this as a not guilty plea. If the defendant pleads guilty, the court does not at once enter a guilty plea and then proceed to convict the defendant. It would ask the prosecution to give the facts of the case and if it appears to the court that the defendant pleaded guilty out of ignorance, it would enter a plea of not guilty and proceed to try the case in the usual manner. If the facts

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124. It is possible at this stage for the defendant to 'plead to the jurisdiction' or to demur to the charge. By a demurrer the defendant admits the facts alleged by the prosecution but says that in law they do not amount to the offence with which he is charged. The defendant may also plead that he has already been tried for the same or substantially the same offence. This plea is known as autrefois acquit (or convict) and is based on the principle against double jeopardy, that is, a man should not be put in peril twice for the same offence.

as stated disclose no offence in law the court would discharge the accused. If the defendant pleads not guilty, the court enters the plea and the prosecution will then give an outline of the proof about to come and then proceed to call the prosecution witnesses.

In Francophone courts the trial judge picks up a dossier from the pile in front of him and calls the case - Ministere Public c. XYZ. The defendant steps out and moves forward to the crescent-shaped cross-bar. All witnesses in the case are asked to leave the courtroom. The trial judge then reads out the charge to the defendant and asks him whether he pleads guilty or not guilty. Apart from cases where the defendant was caught in flagrante delicto and where guilt is beyond doubt, guilty pleas are rare. If a defendant pleads guilty, the court accepts his plea and then asks him why he committed the offence with which he is charged. After listening to the defendant's explanation (if any) and the State Prosecutor's proposal as to sentence, the court proceeds to pass sentence. The trial judge does not ask the State Prosecutor to give the facts of the case because he is already acquainted with them, having had time to study the dossier at home. The explanation given by the defendant as to why he committed the offence with which he is charged might, in appropriate cases, be taken as a mitigating factor. Where the defendant pleads not guilty, the trial judge will then turn to the State Prosecutor and say, 'la parole au

Ministère Public'. The State Prosecutor will then get up, narrate the facts of the case and indicate how he intends to prove the defendant's guilt.

B. The accused and the presumption of innocence

To say that an accused person is presumed innocent until proved guilty does not mean that he is in fact innocent. If that were the case, he would not be charged in the first place. On the other hand, until an accused person has been properly tried and found guilty by a competent court of law, he must not be pre-judged guilty. The presumption of innocence strikes a balance between these two positions by treating the accused as though he were innocent. This in effect means that in any criminal trial the burden of proving the alleged offence lies on the accuser and not on the accused. The person who charges another with crime cannot rely on his assertion alone to shift to the accused the obligation to prove his innocence. It is for the accuser to prove the accused's guilt as alleged by him and not for the accused to vindicate his innocence. Actori incumbit probatio, onus probandi incumbit ei qui dicit.

Although there is no explicit provision in the Cameroonian Penal Code dealing with the presumption of innocence,[125] that presumption is itself an axiom of

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125. Cf. however, Penal Code, s. 74(2).

Cameroonian criminal justice. In both Anglophone and Francophone courts, the accused is treated, until found guilty, as if he were innocent and he need not lend any aid to those who would convict him. The burden of proof is always on the State Prosecutor (save for example, in the case of insanity where the burden of proving insanity is on the accused). A corollary of the presumption of innocence is that the accused's guilt must be proved 'beyond all reasonable doubts'.[126] The trial judge cannot properly convict the accused if he entertains any doubt whatsoever as to his guilt. If at the end of the case there is a lurking doubt about the case then the benefit of that factual doubt must be resolved in the accused's favour. The maxim is, in dubio pro reo. However, while there is no doubt that the presumption of innocence forms part of Cameroonian criminal law, certain practices in Francophone courts have tended to give the impression that the accused is presumed guilty and has to prove his innocence. First of all, the judge often appears to be moving relentlessly towards a pre-determined result of conviction. Secondly, persuasive use is made of preventive

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126. Francophone courts speak of l'intime conviction du juge. This expression means that the judge freely appreciates the value to be attached to the evidence before him. He decides, as it is said, according to his conscience. And he convicts or acquits depending on whether he is convinced of the accused's innocence or guilt, not being bound by any particular rules of evidence. He is moreover not bound to justify the probative value he attaches to the evidence he retains.

detention before trial. Thirdly, judges are very much disposed to believing evidence from police officers and gendarmes without any scrutiny.

Before a matter comes to open court, the trial judge in a Francophone court would have gone through the dossier and formed at least a provisional opinion (one way or another) in respect of the case. In most cases, the judge is more likely to form an opinion that the accused is guilty. In the first place, in courts where the trial judge is also the State Prosecutor, he would in fact be conducting an inquisition. Secondly, the attitude is often taken that, since the accused has already passed through the scrutiny of the police and the State Prosecutor (in cases where a preliminary inquiry has been conducted), the chances are that he is guilty otherwise the State Prosecutor would have dropped the charge against him. Once the judge has formed this initial though provisional impression of the accused's guilt the accused must strive as much as he can to change this impression. This is definitely an uphill task.

The fact that the accused is questioned closely by both the judge and the State Prosecutor (as though they were conducting an inquisition) also gives the distinct impression of a prima facie presumption of guilt on the part of the court, an impression again given by the readiness with which courts always tend to accord unquestioning credibility to evidence given by the police and gendarmes.

Police and gendarmes' reports (procès-verbaux) are always admitted in evidence without caution or scrutiny. There is no opportunity given to the defendant to try and discredit or cast doubts on these reports. In fact police and gendarmes never appear in court to give oral evidence and be cross-examined by the defendant. They merely send their reports to the court without themselves putting in an appearance. Presiding judges have been known to ask defendants: "What reasons have the police to lie against you?" This would seem to suggest that the police and gendarmes are presumed to be honest and that they may have no motive for framing someone. But it is common knowledge that police are sometimes biased, that they may in fact have a vested interest in a particular case, and that a police officer may in fact have motives for telling lies.

The operation of the remand or <u>la détention provisoire</u> also gives the impression that the accused is presumed guilty. During the preliminary inquiry the suspect is usually held in provisional detention. Bail is seldom granted. Remand in custody before trial constitutes a serious inroad into the presumption of innocence because the suspect is imprisoned when in fact he has neither been tried nor convicted. Now, when the accused is eventually brought to trial the judge tends to convict and pass a custodial sentence of the same duration as the time spent in custody, in cases where in fact he would normally have been acquitted or given only a non-custodial

sentence. Moreover, most persons remanded into custody and then eventually brought for trial and given an acquittal or a non-custodial sentence are those who have spent long months or years in custody, their jobs lost and their homes broken. Given all these factors, the accused in a Francophone court often tends to feel that the whole judicial apparatus has been ranged against him. Consequently, he often adopts an attitude of despair and resignation.

C. Presentation of proof

All trial mechanisms are geared towards achieving two desires, to convict the guilty and acquit the innocent. The object of trial procedures in both Anglophone and Francophone courts is the same search for the truth within the permissible legal framework. However, the techniques or mechanisms used for finding the truth in both courts differ. This difference comes out vividly during the proof presentation phase of the trial.

In Anglophone courts it is the trial judge himself who takes down the evidence. This he does in long hand in the form of direct speech. He does not take down verbatim all that is said; he condenses the evidence, eliminating irrelevancies. In Francophone courts by contrast, it is the court registrar and not the presiding judge who takes down the evidence. The greffier condenses into narrative form the substance of the evidence given. The trial judge may from time to time draw the registrar's

attention to an important piece of testimony or any particular point he wants him to make a special note of. Since the Cameronian greffier, unlike the English court registrar, is not a legally trained person, the danger is that he may omit or distort vital points made by counsel or witnesses. Sometimes there are material discrepancies between the clerk's transcript and the notes which the trial judge may have himself jotted down in the dossier. In such a case it seems the judge's notes would prevail. There is no means by which defence counsel can ensure that his submissions and the testimony of his client and defence witnesses have been taken down accurately. Counsel may ask to inspect the clerk's transcript or insist that note be taken of a particular point. But it is in the discretion of the clerk whether to accede to such a request or not. This partly explains why there is such a heavy reliance on paperwork. Advocates always take care to hand over to the trial judge their submissions and final addresses as well as any objections they may have raised in the course of the proceedings.

In Anglophone courts the trial judge begins the trial without any prior knowledge of the case. He operates initially in a factual vacuum. During the first hearing of a case he gets to hear of the facts for the first time like any spectator in the court. This means that he cannot dispose of a case as quickly as he would if he were already familiar with the facts of the case by the time the

trial comes up. In Francophone courts by contrast, the judge is familiarized in advance of the trial with summarised records of all evidence taken during police inquiries or a purportedly non-partisan judicial investigation by the State Prosecutor.[127] Important consequences flow from this. On the negative side, the dossier undoubtedly leaves at least some imprint upon the mind of the trial judge. The dossier may contain documents on or references to the accused's prior criminal record. The judge's advance knowledge of this fact may tip the scales against the accused in some close cases where a defendant in an Anglophone court would be acquitted. On the positive side, it may be said that without familiarity with the documents contained in the dossier the trial judge could hardly be efficient in closely examining the accused as he always does. Furthermore, prior acquaintance with the dossier enables the trial judge to despatch cases with speed and goes to explain in part the rather casual and cavalier manner in which the trial opens. The judge picks up the first case-file from the heap lying in front of him, calls the case, and the accused steps forward. The charge is read out by the judge who, especially in Courts of First Instance, simply proceeds to ask the defendant: 'Est-ce que vous reconnaissez les faits qui vous sont reprochés?' or

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127. In Anglophone Cameroon reports of the police and the State Prosecutor's preliminary inquiry are not made available to the trial judge before the trial. Such reports have to be tendered in court, like any other piece of evidence, according to the rules of evidence.

'Qu'avez vous à repondre aux faits qui vous sont reprochés?' or again 'Expliquez-moi comment vous avez procedé'. The accused would then ramble on with his version of the story, often going off at a tangent. He may of course be interrupted by the trial judge who is free to put any question deemed appropriate to him. The State Prosecutor may do likewise. Now and again, the judge would read from the dossier, turn pages, select and read on: statements and counter-statements made to the police or gendarmes or the State Prosecutor containing admissions, confessions, or retractions. One gets the impression that the trial is nothing more than a recapitulation of the written material in the dossier. Within a short while the case is over. The State Prosecutor stands up and makes his closing address. He invites the court to find the accused guilty and to pass 'an exemplary sentence'. The judge pronounces his verdict and sentences or acquits the accused, shuts the dossier, puts it away, picks up another case-file and calls the next case. At the end of the working day, about twenty to thirty cases would have been disposed of.

The rapidity with which criminal cases are disposed of in Francophone courts of First Instance is comparable only to the manner in which traffic cases are desptached in Magistrates' Courts in Anglophone Cameroon:

> Clerk: Case No. ... The People v. XYZ. That you ... on the ... day of ... at about ... hours at ... in ... Division in the Magisterial District of the ... Province of the United Republic of Cameroon being the driver of taxi No. ... drove same on the public highway and carried ... passengers instead of ... as authorised by the licensing

authority and thereby contravened Regulation ... and punishable under the Road Traffic Regulation. Guilty or not guilty

Defendant: Guilty (or guilty with reasons), Your Worship.

Magistrate: Facts.

Police (or gendarme) Officer: Facts as per charged, Your Worship.

Magistrate: What is your explanation?

Defendant: I was driving ... I was stopped by the police (or gendarmes) ... etc.

Magistrate: I accept your plea and find you guilty.

Clerk, Police, Gendarmes: As the court pleases.

Clerk: You have been found guilty. What have you to say before the court passes sentence on you?

Defendant: I pray the court to show mercy on me.

Magistrate: Anything known?

Police: Nothing known, Your Worship (or, he was convicted in case number ...).

Magistrate: 5,000 francs or one week.

Five minutes and a traffic case is over.

It is often said that the fundamental matrix of the adversary system of criminal procedure is based upon the view that proceedings should be structured as a dispute between two sides in a position of theoretical equality before a court which must decide on the outcome of the contest.[128] The role of the trial judge becomes that of

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128. Mirjan Damaska, 'Evidentiary barriers to conviction and two models of criminal procedure', 121 University of Pennsylvania Uaw Review 506 (1973); Abraham S. Goldstein, 'Reflections on two models: inquisitorial themes in American criminal procedure', 26 Stanford Law Review 1009 (1974).

a passive umpire who sees that the protagonists conduct their contest according to the rules. This is the general judicial attitude in Anglophone Cameroon. But in reality many judges do take an active part in the examination of the defendant and witnesses. Theoretically, these questions are posed only where necessary to clear obscure points and to ensure completeness. But such interrogations do go further than is traditionally accepted of common-law trained judges. This is undoubtedly a shift (perhaps not a conscious one) towards the Francophone system where the judge is an active participant in the criminal trial, taking the initiative to amass evidence. Proceedings are conceived of not as a dispute as such but are considered an official and thorough inquiry, triggered by the initial probability that a crime has been committed. The procedural aim is therefore simply to establish whether this is in fact the case, and whether the imposition of criminal sanction is justified. Few rules of evidence inhibit the judge's power to question the defendant. Since the task of the trial judge is seen as consisting in the search for the objective truth, he is given complete leeway to ask the defendant any question he thinks will help in elucidating the truth. The Francophone judge is however in a psychologically difficult position: he is supposed to convict the defendant (if found guilty) and yet to maintain the presumption of innocence and to weigh disinterestedly the results of the interrogations,

even though he is familiar with the facts of the case beforehand.

A few other significant contrasts are worthy of mention. In Anglophone courts the taking of proof or manner of adducing evidence is split into examination-in-chief, cross-examination, and re-examination. Each party presents his case, calls his witnesses and examines them. The witnesses may then be cross-examined by the other party.[129] The Francophone judge interrogates the defendant, the lay and expert witnesses and bears the responsibility for the completeness and correctness of the evidence. There is no cross-examination, although some courts do occasionally permit some form of cross-examination (mainly as a concession to Anglophone lawyers practising in these courts). If defence counsel wishes to ask any question to the witness, he must do so through the intermediary of the judge who, in any case, has the discretion whether to put such a question to the witness or not. If the judge refuses to put to the witness a question which counsel has asked him to, counsel may request the greffier to make a special note of the refusal.

Since there is now a uniform and cohesive prosecuting agency in Cameroon one would expect the philosophy

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129. A common criticism of cross-examination is the unpleasant aggressiveness of the interrogation and the obviously common coaching of witnesses.

of prosecution to be the same in both parts of the country. In reality however, the Anglophone State Prosecutor (unlike his Francophone colleague) is inhibited by tradition from vigorously seeking a conviction and suggesting to the trial judge what sentence should be passed in any given case. In Francophone courts the State Prosecutor may invite the court to pass an examplary sentence and he always indicates the severity of the sentence he would like to see the court pass. This is never done in Anglophone courts. There the philosophy is that the people are as much concerned to see an innocent man go free as to see a guilty man convicted and therefore the people can neither win nor lose a criminal case.

The scope of discovery is very limited in Anglophone courts. On the face of it, defence counsel has the advantage of surprise. He decides what line of defence to pursue, what witnesses to call, what evidence to adduce, what strategy to follow and what arguments to advance. In fact however, there is no explicit discovery rule in Anglophone courts which requires the State Prosecutor to disclose the prosecution's evidence to the defence before the trial. The State Prosecutor too decides what strategy and arguments to follow, what witnesses to call and what arguments to advance. Since defence counsel are deprived of pre-trial discovery and are ignorant of the prosecution's evidence, some of them tend to object to evidence produced by the State Prosecutor out of a sheer

fear of the unknown. Whenever this happens, the trial judge has to rule on the admissibility of the evidence. Sometimes objections lead to considerable arguments. In Francophone courts on the other hand, the State Prosecutor makes the dossier available to the defence counsel, who may even take it home and study it. The defence counsel, however, need not disclose his case to the State Prosecutor. The Francophone State Prosecutor is therefore debarred from the advantage of surprise.

Traditionally, the role of the Anglophone judge (and to a lesser extent, magistrate) in court is that of a relatively neutral participant who ensures that the rules of evidence are satisfied. His role is analogous to that of an umpire in a contest between two sides. He may ask witnesses questions; but only sparingly and only to clear obscurities. The reason for this is to avoid giving the impression of taking sides. As a matter of practice however, the Anglophone judge (and much more so, magistrate) has moved closer to the Francophone judge. He is the central and dominant figure in court. He has wide discretionary powers not only over the conduct of proceedings but also over the admission of evidence and in summarising and commenting upon the evidence. His role now far transcends that of a neutral participant or an umpire. He actively takes part in the interrogation of the defendant and witnesses and may even summon other witnesses if he thinks it appropriate or necessary in

order to elucidate the truth. It is true that so far the bulk of questioning does not, as in Francophone courts, come typically from the bench and it is not, as it is again the case in Francophone courts, the trial judge who begins the examination of witnesses. But, as in Francophone Cameroon, the criminal trial is beginning to be conceived of as somewhat in the nature of an official inquiry for the ascertainment of the full truth presided over by the judge.

The procedure in Francophone courts is sometimes characterised as contradictoire. In fact however, partisan presentation of evidence and partisan zeal does not exist in those courts. It is thought that the taking of evidence is best safeguarded if left in the hands of the presiding judge, who must accordingly be thoroughly familiar with the contents of the files so as to be able to carry out the examination and to discharge his duty to clarify the facts. The influence of the parties upon the manner in which evidence is adduced at trial is therefore limited. So accustomed is defence counsel to the taking of evidence by the trial judge that he relies completely upon him and often fails to direct the taking of evidence in the manner favourable to his client's case. The Francophone defence counsel is limited to posing a few additional questions and making his plaidoirie before the close of the trial. There is however a gradual change of role taking place at the moment.

Francophone counsel are now taking a much more active role in the presentation of evidence and the shaping of legal issues. Their methods of defence are increasingly taking an aggressive leaning. All this is undoubtedly due to the influence of Anglophone counsels practising in Francophone courts.

One further significant contrast between Anglophone and Francophone courts concerns the position of the accused as a witness. In Anglophone courts the examination of the defendant comes last after all the prosecution witnesses have been heard. In fact, the defendant cannot take the witness box, even if he wishes to, before the prosecution has established a prima facie case. Besides, it is up to the defendant whether to take the witness box or not. In other words, the accused has the freedom from being questioned: he cannot be asked or compelled by the prosecution to take the witness box and questions cannot be addressed to him in the dock. The court must and does inform him of his right. The privilege against self-incrimination (that is, to refuse to answer an incriminating question) is recognised. A man may not condemn himself out of his own mouth without at least a warning. However, there is certainly some pressure on the defendant to testify from the witness box. If the defendant testifies from the dock, the evidence is not given on oath and little weight is attached to it. When he gives his evidence from the dock, the defendant

is not cross-examined. But the court may draw adverse inferences from his refusal to take the witness stand. However, when the defendant takes the witness box to testify in his own behalf, he cannot by reason of that alone be cross-examined as to previous convictions. Evidence of previous convictions becomes admissible only if such evidence is necessary to prove the crime charged, or if the defence offers evidence of the defendant's good character, or if the defence attacks the character of a prosecution witness or that of a joint defendant. In such cases evidence of prior criminal record may be used to impeach the defendant's credibility or to rebut evidence of good character.

In Francophone courts, the defendant is used as the primary source of evidence, both during the preliminary investigation and at the trial. He is ordinarily called as the first witness and is questioned closely by the presiding judge about his knowledge of the crime. Examining the defendant first probably has a number of advantages. It enables the defence to test the prosecution's charges. It enables the court to see how much the accused admits. It gives the defendant the chance to make the first impression on the court.[130] However, the

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130. Glanville Williams, The proof of guilt, a study of the English criminal trial, 3rd ed., Stevens & Sons, London, 1963 (2nd impression 1977), p. 81.

defendant in a Francophone court is not free to decide whether to take the witness box (which, incidentally, does not exist) and submit to the questioning process. Questions can always be asked of him. He has no right or freedom not to be questioned. He only has the right not to answer questions at all (that is, being mute of malice as sometimes happens in political trials) and not to respond to particular questions. Since the court may comment on and draw adverse inferences from such refusal to answer at all or to respond to specific questions, this acts as a psychological pressure to speak and respond to questions.

The law of evidence applicable in Francophone courts (what is known as la preuve) is not as technical and as highly developed as the law of evidence which obtains in Anglophone courts. Evidence is any material which a party wishes to bring before a court of law in the hope that it will impel the court to arrive at a desired conclusion on some matter of fact. Evidence may be oral, documentary or real. The law of evidence in Anglophone Cameroon as in all common law jurisdictions, has a five-fold function.[131] Firstly, it determines the competence and compellability to give evidence of prospective witnesses, and regulates the procedure to be followed when evidence is

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131. St. J. Langan, Civil procedure and evidence, Sweet & Maxwell, London, 1970, pp. 165-167.

adduced; for example, the rules relating to the examination and cross-examination of witnesses. Secondly, it determines the relevance and admissibility of material tendered as evidence. This is largely an exclusionary function: evidence proferred is rejected either because its factual connection with the issues in the case is non-existent or too slight, or because, although relevant, its admission would for some other reason be unsafe or prejudicial.[132] Thus certain evidence is, according to circumstances, excluded altogether or admitted only if certain conditions are satisfied: matters of hearsay, evidence of opinion, evidence in respect of privileged matters where there is a desideratum higher than that of the disclosure to the court of all the relevant facts, and matters affecting the character of parties and witnesses. Thirdly, the law of evidence prescribes how certain facts (for example, birth, age, legitimacy, marriage) have to be proved.[133] Fourthly, in certain circumstances the law of evidence dispenses with the necessity for proof altogether, as where facts are formally admitted; or holds that a

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132. Rules exist for the admission or rejection of evidence on the ground that without them the admission or rejection of evidence would depend upon the individual caprice of an individual judge. Quot judices tot sententiae. In Francophone courts however, the admission or rejection of evidence largely depends on the trial judge.

133. This may be contrasted with the principle of la preuve par tous moyens which prevails in Francophone courts.

party is estopped or precluded from proving particular facts; or provides that certain inferences shall be drawn as a matter of course from the proof of particular facts. Finally, the law of evidence deals with the rules requiring corroboration: evidence has to be evaluated as it may be unsafe to accept a single item as constituting proof of a certain fact.

Rules of evidence of this nature do not exist in Francophone Cameroon. Few rules of evidence inhibit the judge and the methods of adducing evidence or proving particular facts in court. There is no requirement for the prosecution to make out a prima facie case. Since the ultimate responsibility for ascertaining the truth is placed on the trial judge, whatever evidence he decides to examine becomes the court's evidence. So, there is, strictly speaking, no 'prosecution's case' and there are no 'witnesses for the prosecution' although in court one sometimes hears of 'temoins à charge et à décharge'. There are also no evidentiary rules requiring that a certain proposition of fact necessary for ascertainment of guilt be proved by more than one piece of evidence. For example, in Anglophone courts a confession must be corroborated by other extrinsic evidence before the court can convict. Rules as to corroboration of evidence do not exist in Francophone courts, although in practice at least a modicum of corroboration is always found.

A criminal trial in a Francophone court is not

hedged about by complex rules of evidence as found in Anglophone courts. Whereas Anglophone courts are concerned with the issue of admissibility, Francophone courts admit and 'freely evaluate' (that is, the court decides what value to attach to any evidence adduced in court) all evidence that is logically relevant. In Anglophone courts not all evidence which has passed the test of logical relevance and has been found suitable for rational inference is necessarily admissible under the Evidence Act.[134] Some rules of evidence exclude certain classes of logically relevant evidence largely on the theory that its impact on the fact-finder may be stronger than its actual probative weight. Such is the case with the rule against hearsay evidence, and the general rule against informing the court before the defendant has been found guilty of his bad character or criminal record.

In Francophone courts the trial judge hears all the evidence, freely decides on what weight to attach to which piece of evidence, and is trusted to be capable of disregarding the influence of relevant but untrustworthy evidence and of excluding it from the calculus of decision. So not all evidence that is relevant is ipso facto admissible. For one thing, some form of hearsay evidence is excluded by Francophone courts as violative of the principle

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134. Cap. 43 of the 1958 Laws.

of immediacy. This principle is nothing more than an extension, to all types of evidence, of the 'best evidence rule' familiar to common law lawyers. The theory is that original evidence is more probative than evidence filtered through intermediary sources. Furthermore, a Francophone judge may refuse to examine evidence (although the power to do so is nowhere defined in the Code d'Instruction Criminelle) even though it appears logically relevant. For example, the court may refuse to hear a witness if his evidence would add nothing new to what the court already knows. Again, just as an Anglophone judge would admit evidence of the defendant's prior criminal record if the purpose of such evidence is to prove 'a system', so too a Francophone judge would admit evidence of previous convictions as proof of modus operandi.

Another contrast between Anglophone and Francophone courts relates to the victim of a criminal offence. In Anglophone Cameroon the victim of a criminal offence cannot claim damages in the criminal court. He must bring a separate civil action against the accused in the civil court. (In England however, such a victim can now be awarded 'compensation' by the criminal court.) In Francophone Cameroon by contrast, the victim of a criminal offence may join in the State Prosecutor's criminal action against the accused and claim compensation for injury suffered. This is known as constitution de partie civile[135] and may be made at any

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135. C.I.C., ss. 1 and 63.

stage of the criminal trial.[136] The principal advantage of this procedure relates to evidence. By joining as a civil party in the State Prosecutor's criminal action against the accused, the complainant need not himself adduce any evidence concerning the defendant's criminal (and hence, civil) liability as this is done by the State Prosecutor. Where the complainant brings a separate civil action against the accused, the action will be stayed until the determination of the criminal action. The principle is, le criminel tient le civil en état. The advantage of this procedure to the complainant lies in the fact that should the accused be convicted evidence of this conviction is enough to enable the civil court to hold him civilly liable.

Two matters, common to both Anglophone and Francophone courts, are worthy of mention. These are, the language problem in the courts and the taking of oath by witnesses. The official language in Anglophone and Francophone courts is respectively English and French. But most accused persons appearing before Courts of First Instance are either illiterate or only semi-literate. This creates a problem of oral communication between defendant or witness and the court. In Anglophone Cameroon and in the large towns in Francophone Cameroon (e.g., towns such as Douala, Yaounde, Bafoussam) the problem is resolved by resorting to pidgin, a variant of broken English

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136. C.I.C., s. 67.

which has virtually succeeded in establishing itself as a de facto lingua franca in Cameroon. When illiterate persons appear in courts therefore they testify in pidgin and are examined and cross-examined in pidgin. If an accused person or a witness can only express himself in his vernacular tongue or in English (if he is appearing before a Francophone court) or in French (if he is appearing before an Anglophone court), then the office of an interpreter is always sought. The interpreter need not be an expert or a professional interpreter. Anyone with a working knowledge of the language or the dialect concerned may, after swearing to interpret faithfully, be allowed to act as interpreter. The interpreter is paid out of public funds at the rate of roughly 350 francs cfa per attendance.

Every witness giving evidence in court must either swear or affirm that he will tell the truth. In Francophone courts the witness swears to speak the whole truth and nothing but the truth[137] by simply raising his right hand and saying, 'Je jure'. Children under 15 cannot testify on oath but may give evidence in the form of a declaration.[138] In Anglophone courts any witness who professes the Christian faith swears holding the Bible in his uplifted right hand. A Muslim swears on the Qu'ran and so-called pagans swear holding a gun in both hands.

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137. Ibid., s. 75.

138. Ibid., s. 79.

The oath words are: 'I swear by the Almighty God that the evidence I shall give in this case shall be the truth, the whole truth, and nothing but the truth'. The unsworn evidence of a child is admissible when the judge is satisfied that he does not understand the nature of the oath but is possessed of sufficient intelligence to understand the duty of speaking the truth. Child testimony must be corroborated; the unsworn evidence of another child does not amount to corroboration.

The requirement of the oath is undoubtedly intended to be a pressure on the witness to speak the truth or else suffer punishment for perjuring by lying. The requirement is probably unnecessary and undesirable. The oath does not prevent the guilty defendant or the witness from perjuring himself. It is impossible to estimate how much deliberate lying goes on in Cameroonian courts. There are no lie-detectors. There is little doubt however that there are only few prosecutions for false testimony. This does not mean that witnesses do not tell lies. The probalem is that the nature of the offence of perjury (which, incidentally, carries a heavy penalty) makes prosecution difficult. Perjury is punished under s. 164 of the Penal Code with anything up to life imprisonment, and the offence is committed by 'whoever in any proceeding gives on oath or affirmation false evidence capable of influencing the decision'. This threat of a criminal sanction has not however prevented deliberate lying by witnesses. If a witness has a direct interest in the outcome

of a case, the chances are that his testimony will be shaded somewhat in favour of the side on which he testifies. He would lie.

But not all witnesses deliberately lie. Sometimes the witness is unconsciously suffering from partisanship or taking sides. Sometimes, although the witness had the opportunity to observe the facts he speaks of, he had not the intelligence to observe these facts correctly. It is common knowledge that two people may witness the same occurrence and yet take away with them an entirely different impression of it; but each when called into the witness-box is willing to swear to that impression as a fact. An adult, for example, sees an infinite variety of things which are meaningless to a child. Furthermore, one may have the opportunity of observation and even the intelligence to observe correctly; but it is still another thing to be able to retain accurately, for any length of time, what one has once heard or seen and be able to describe it intelligently. Many witnesses have seen one part of a transaction and heard about another part, and later on become confused in their own minds, or perhaps only in their modes of expression, as to what they have seen themselves and what they have heard from others. All witnesses are prone to exaggerate, to minimise or enlarge the facts to which they take oath. Many witnesses, at least in some part of their story, mix facts with their own beliefs, impressions and inferences.

3. Conclusion of the trial

On the face of it another contrast between Anglophone and Francophone courts concerns the closing stage of the criminal trial. The difference is however superficial and more apparent than real. In Anglophone courts when the prosecution rests and again at the conclusion of all the evidence, defence counsel may make a 'no case to answer' submission inviting the court to discharge and acquit the defendant. The court would grant such a motion if the evidence is such that the court cannot reasonably and safely convict on it. In Francophone courts, substantially the same effect is achieved upon a demande by the avocat-defenseur for a relaxe purement et simplement. In both courts the closing stage of the trial is punctuated by three concluding speeches: that of the prosecution, the defence and the trial judge - in that order. In both courts also defence counsel always has the right to the last word - The reason for this rule is to lend greater weight or force to the presumption of innocence and the requirement of proof beyond a reasonable doubt.

A. Addresses by the prosecution and the defence

When the State Prosecutor makes his concluding address (known in Francophone courts as le requisitoire) he always strives to give a clear picture of the prosecution's

case. He repeats everything that had been heard, hammering it into a sober and coherent pattern, inevitably linking all the pieces of evidence together. "My Lord, the accused did this and that ... he said so and so ... The court would recall the evidence of ... The court would also recall the accused's statement to the police ... Were these not the words, the actions and the attitude of a guilty man? etc. etc." In the course of his address the State Prosecutor also attempts to neutralise evidence adduced by the defence. "My Lord, the defence would want this court to believe that ... But ... Allegations of extorted confessions have also been made in this court. There may have been some irregularities. But that is probably a professional exigence. The police does not spend its time manufacturing confessions ..." And the prosecution would go on to unfold an elaborate and perhaps rather dialectical refutation of the idea of police irregularities and other allegations that may have been made by the defence. At the end of his address the State Prosecutor always urges the court to find the accused guilty.

In Francophone courts, unlike in Anglophone courts, it is the rule for the State Prosecutor not only to call for a conviction but actually to suggest to the court the sentence it should pass. "Je ne veux pas la tête de l'inculpé; je demande seulement une condamnation à vingt ans d'emprisonnement ferme ..." "Monsieur le Président, vu la gravité du crime commis par l'inculpé, je demande à ce qu'une peine exemplaire lui soit infligé ...". The

State Prosecutor may also urge acquittal if he thinks the evidence is insufficient to warrant a conviction. The underlying philosophy behind this is that it is the duty of the prosecution to present the true facts of a case rather than press for a conviction per se. However, straight-forward requests by the prosecution for acquittal are extremely rare partly because where there is insufficient evidence the State Prosecutor would not prosecute in the first place. Furthermore, motions for acquittal by the State Prosecutor are never made directly. He simply says, 'Je m'en remets au tribunal'. To what extent judges conform/or deviate from the State Prosecutor's recommendation as to sentence is hard to determine. One thing however, is very certain. The trial judge is not bound by the State Prosecutor's submission as to sentence. His hands are not fettered and he may convict or acquit or pass sentence as he deems appropriate. However, if the prosecution does urge an acquittal, the court must do so; it cannot convict. This is so because the prosecution in this instance is in effect withdrawing the case against the accused and is offering no evidence on which the court may properly convict.

In Anglophone courts the State Prosecutor never calls for an acquittal. This is so because where there is insufficient evidence to proceed with the case the prosecution will not wait until the conclusion of the trial to ask for the accused to be set free. He will simply

withdraw the charge by entering a nolle prosequi or asking the case to be withdrawn, or offer no evidence. Far more vigorous speeches, demanding convictions and heavy sentences are made in Francophone courts than in Anglophone courts because of the differing policies in prosecution.

After the prosecution's speech it is the turn of the defence to address the court. Defence counsel will bring out a sequence of facts, pursue a line of argument and make a rebuttal of the arguments earlier advanced by the Prosecution. "My Lord, the prosecution's case rests on nothing but conjectures, fabrications, conjectures pure and simple. ... Memory is fallible, behaviour unaccountable, actions not always what they appear to be. ... My Lord, the prosecution has woefully failed to make out its case; to prove it beyond reasonable doubt. The accused's innocence has amply been shown in this court. ... I urge the court to accept the evidence of ... and to dismiss that of ... as a pack of lies ...". And finally a plea for acquittal so that the accused may walk out of the court the free man he was before he entered it.

There is some difference in style between an address by an Anglophone counsel and that of a Francophone counsel. The address by an Anglophone counsel is likely to be analytical and intellectual rather than fervent emtoional appeals, which is what plaidoiries in Francophone courts are. When it comes to advocacy, the Francophone counsel surpasses his Anglophone colleague. "Messieurs

de la cour ..." The avocat-defenseur at once takes to the wings of rhetoric, sprawling around the well of the court, flapping the sleeves of his black gown and occasionally gesticulating with his hands. "The true accused, Messieurs de la cour; the true accused does not stand before you today, the true accused has escaped the long arm of temporal justice ... He is dead ..." A quotation from one of the French classics, and then crescendo upon crescendo. "The case of the accused is the tragedy of an honest man ... a victim of duty ... If you convict him you will be ringing the death knell to honesty, decency and devotion to duty ...". And then other oratorical subjunctives, further quotations from the classics, Latin expressions, and then a dramatic finish. "You judge in the name of the people. If you convict this man you convict yourselves and the people. Monsieur le Président, I have absolute confidence in your sagacity." And the advocate walks back to his seat. His client may be asked whether he has anything to add to what his counsel has already said. Often the reply is that he trusts in his counsel. Then comes the judge's speech.

B. Judgment

After the conclusion of the trial the judge often requires a day or more to write out his judgment. When the judge begins to speak the whole court becomes as silent as a grave. The moment of truth has come. Will the

accused be convicted or will he be acquitted? In Francophone courts the judge only reads his judgment which is often laconic and generally not very informative. In Anglophone courts, however, the judge reviews the entire case; that is, he goes over both the case for the prosecution and that for the defence. He delivers a creaking train of marshalled fact and dictum, now from the prosecution's angle, now from the defence's angle, now tilted a fraction towards the middle. As he speaks every fact and word is given a new order. "The prosecution's case is this ... But ... The defence contends that ... But ...". And then a synthesis of the entire case. In the end the court must reach one of two conclusions; a verdict of guilty or a verdict of not guilty. "I therefore find the accused not guilty. He is accordingly discharged and acquitted". "I therefore find the accused guilty as charged". If a guilty verdict is returned the court does not proceed to pass sentence at once. The prisoner is asked: "You stand convicted of ... Do you know of any reason why this court may not pass sentence upon you?" At this stage defence counsel normally gets up and pleads, often in a sober and subdued manner, for mercy. He may also plead mitigating circumstances, if any. This is the poignant moment of any criminal trial. Defence counsel's combativeness is gone and he speaks now in a plaintive voice. "My Lord, the quality of mercy is not strained, It droppeth as the gentle rain from heaven upon the place

beneath ... My Lord, this man has done meritorious service to his country ... He is a first offender ... My Lord, he is married and has many children and dependants. A term of imprisonment would do more harm than good both to him and society as there would be no one to look after his wife, children and dependants ...". The judge listens through, records the plea and then passes sentence. The prisoner is taken straight away to prison if the sentence is a custodial one.

IV. The Penal System

Section 17 of the Cameroonian Penal Code expresses a fundamental principle in Cameroonian criminal law. It provides:

> "S. 17. No penalty or measure may be imposed unless provided by law, and except in respect of an offence lawfully defined."

This is the principle of legality which is often expressed in the maxim, nulla poena sine lege; which means, no man shall be made to suffer except for a distinct breach of the criminal law, which law shall be laid down beforehand in precise and definite terms. The retrosepctive imposition of criminality,[139] the extension by analogy of a

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139. Section 3 of the Penal Code provides: "No criminal law shall apply to acts or omissions committed before its coming into force or in respect of which judgment has not been delivered before its repeal or expiry." The preamble to the Constitution also provides that the law may not have retrospective effect.

criminal rule to cover a case not obviously falling within it, and the formulation of criminal laws in excessively wide and vague terms are therefore inconsistent with the principle of legality.

1. Sentencing

The wages of crime is punishment, the nature and range of which is wide. When a court convicts it must pass sentence. Sentencing is largely a matter of policy and at this stage in the proceedings the judge turns administrator. In passing sentence the trial judge must first advert his mind to certain sentencing principles. He has first of all to decide on the object to be achieved by imposing sentence. Is it retribution? deterrence? public protection? or reformation? After this first decision the trial judge then has to decide on the appropriate punishment to mete out. The punishment may either be a penalty or a measure.

A. Selection of sentence

In selecting sentence the Cameroonian judge must address his mind to s. 93 of the Penal Code, which provides,

> "S. 93. Sentence of penalty or measure shall vary, within such limits as may be prescribed or authorised by law, according to the circumstances of the offence and to the public danger which it may represent, to the circumstances of the offender and to the likelihood of his reformation, and to the practical means of carrying it out."

This means that the sentence must (i) be within the limits prescribed by law, (ii) fit the crime committed, and (iii) fit the criminal.

> "The criminal law assumes, in the absence of evidence to the contrary, that people have it in their power to choose whether to do criminal acts or not, and that he who chooses to do such an act is responsible for the resulting evil. The law further assumes that the evil which might result from particular crimes can be nicely measured and graded, so that we have an elaborate scale of permissible punishments, varying from [the death sentence] to a mere fine." 140

In some jurisdictions such as in England for example, the law prescribes only the maximum punishment for each offence leaving it to the discretion of the trial court to fix a sentence varying from an absolute discharge to the statutory maximum. In Cameroon however, both the minimum and maximum punishment for each offence are fixed by law. Within these two poles the trial court has a free hand to impose any sentence taking into account the moral wickedness of the offence, its danger to society, the circumstances of the offender, the particular degree of iniquity and dangerousness evinced by the offender, and the practical means of carrying out the sentence.

The severity of the sentence that may be passed would therefore depend on the nature of the offence (circumstances of the particular offence and the harm done) and

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140. Smith and Hogan, Criminal Law, 3rd edition, Butterworths, London, 1973, p. 5.

on the circumstances of the offender (financial, family, personal character, and possibility of reform). Sometimes the courts adopt a retributive attitude towards punishment and inflict a sentence that reflects the degree of revulsion felt by the law-abiding citizens of the community for the particular criminal act in question. In this way is gratified the public's desire for vengeance or retaliation against a wrongdoer. So when for example, the incidence of robbery increased dramatically in the urban centres in 1972 and public outcry was loud, the government reacted by prescribing a mandatory death sentence for robbery.[141] The courts accordingly did not hesitate to pass death sentences on those found guilty of robbery. Many robbers were publicly executed to serve as a deterrent and to convice the public that the government was indeed going tough with robbers. Again, when sexual offences (prostitution and kindred offences, corruption of persons under 21, and indecency to minors) and offences against property (fraud, misappropriation of public funds) became rampant, the legislator reacted by prescribing severe penalties (in some cases sentence could

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141. Ordinance No. 72/17 of 28 September 1972 to simplify criminal procedure in respect of acts of lawlessness. Robbery is characterised in the Cameroonian Penal Code as 'aggravated theft' and is dealt with in s. 320 (new). That section provides: "S. 320(1). Whoever commits a theft by day or by night: (a) with force, or (b) bearing weapons, or (c) by breaking in, by climbing in, or by use of a false key, or (d) with a motor vehicle - shall be punished with death."

be as long as 20 years or a life sentence) in respect of those offences and the courts did pass those heavy sentences. The notion of 'exemplary sentence' is one to which courts often make reference. Courts believe in the value of punishment both as a deterrent to the person sentenced and to others. So they take the view that exemplary sentences are justified - they serve retributive and deterrent purposes.

Sometimes the courts inflict punishment which they consider to be appropriate to the harm done and not to the offender's moral guilt. This is however at variance with the spirit of the theory of punishment as enunciated in the Penal Code. The Code would seem to require that punishment be proportionate to the offender's moral guilt. This is illustrated by the attitude of the Code towards inchoate offences. An attempt (s. 94) or a conspiracy (s. 95) to commit a felony or a misdemeanour is treated as the commission of the substantive offence and punished in like manner. Similarly, secondary parties to crime (accomplices or accessores - s. 98) are punished in the same way as a sole or principal offender. Thus it is theoretically possible to punish with death anyone who attempts to murder, a person who conspires to murder, or an accomplice to murder. Courts are not required to punish an attempt or a conspiracy to commit a crime less severely (except on a finding of mitigating circumstances) than if the attempt or conspiracy were successful. Evidently, the

position of the Code is based on the premise that the moral guilt of him who attempts or conspires and fails is just as great as that of him who attempts and succeeds - he is no less dangerous and may have been merely unlucky in not succeeding. There is some evidence however that despite this legislative attitude, judicial attitude tends to regard failure as something of a mitigating factor. Attempts are in practice never punished as severely as the completed offence. Judicial attitude would seem to be that the harm done in the case of an attempt is not the same as in the case of the completed offence and so does not merit the same punishment. In such a case it seems the punishment is being proportioned to the harm done.

In certain cases however, courts apply the 'deterrence by deprivation of fruits' theory. This they do particularly in economic and financial offences where the offender has committed the offence after deliberately discounting the risks he runs. If he considers that the profit which he has derived from the offence outweighs the disadvantages of the punishment which he foresaw, and which is then inflicted, he will find the game worth the candle and be ready to start again. Courts are often not blind to this psychological consideration. Accordingly, in order to deny the offender the opportunity to gain his liberty in the near future and enjoy his ill-gotten gains, they pass long prison sentences by steering closer to the maximum allowed under the law. Sentences in these cases

invariably include a court order under s. 35 of the Penal Code for the 'confiscation of any property, moveable or immoveable, belonging to the offender and attached, which was used as an instrument of ... commission [of the offence], or is the proceeds of the offence'.

In estimating the severity of the sentence to be inflicted for a particular crime, courts invariably take into account the circumstances of the particular offence and the public danger which it may represent. They endeavour to pass a sentence which fits the crime and the circumstances of the offender.

> "Thus, it is wrong to increase the sentence because the accused has insisted on pleading not guilty or conducted his defence in a particular way; but the sentence may be reduced on the ground that he pleaded guilty. The sentence may be reduced because D informed against his co-prisoner; it should not be increased because D did not inform. D's good record may be a ground for mitigating the sentence; but his bad record may not be allowed to aggravate it. A fine may be diminished because of D's poverty; but it may not be increased because of his wealth."[142]

The circumstances of the offender and the offence may afford good reasons for suspending the enforcement of the sentence passed or for passing a heavier or lighter sentence. Accordingly, a first offender who has committed an offence carrying a penalty of not more than five years' imprisonment may be given a suspended sentence.

> "S. 54(1). Subject to any contrary provision of law, upon conviction for felony

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142. Smith and Hogan, op.cit., p. 10.

> or misdemeanour of an offender not previously sentenced to imprisonment, or where after such sentence his conviction has been expunged, the court may, for reasons to be recorded in the judgment, suspend for a period of from three to five years the enforcement of any sentence of imprisonment for five years or less, or of fine not imposed under section 92(2) of this Code.
>
> "(2) Such suspension shall not affect any accessory penalty or preventive measure resulting from the conviction.
>
> "(3) Where within the period so fixed, calculated from the date when the judgment becomes final, the offender commits a further felony or misdemeanour for which he is sentenced to imprisonment, and where such sentence is not suspended on probation, both sentences shall be served consecutively, that which has been suspended under this section being served first."

It is noteworthy that it is not the passing of the sentence that is suspended. Suspended sentence means a sentence suspended when passed; that is, the court passes sentence and then suspends its enforcement. The purpose of a suspended sentence is to administer a warning to the offender so that he may address his mind to the consequences of a new breach of the law. It is both a threat and a promise: a threat that in case of relapse within the time fixed by the court both sentences will be serve consecutively, and a promise that otherwise the conviction will be expunged (that is, at the expiry of this period not only does the suspension of the sentence become irrevocable but the conviction itself disappears as in the case of rehabilitation under s. 69).

Where a sentence of six months or more of imprisonment may be suspended, suspension may be combined with

probation.[143] When combined with probation suspension may also be granted to an offender with a previous sentence of imprisonment for less than six months not suspended. Probation means the subjection of the offender to general and, in a fit case, to added special obligations of supervision and assistance.[144] Superintendence of compliance with these obligations is entrusted to a magistrate who is assisted by salaried or honorary probation officers.[145] If during the period of probation the offender commits a breach of these obligations the court which suspended the sentence may order its enforcement.[146]

Certain circumstances either relating to the offence or to the offender may operate as aggravating or mitigating factors. Under s. 88 of the Penal Code previous convictions are aggravating factors and under s.89 the fact of being a public servant is also an aggravating factor for any public servant who commits an offence against which it is his duty to guard or take action (for example, the police or gendarme officer who steals, the

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143. Penal Code, s. 55.

144. Ibid., s. 56. The general and special obligations of an offender on probation are contained in ss. 41 and 42 of the Penal Code.

145. The duties of a probation officer are outlined in s. 59 of the Penal Code.

146. Penal Code, s. 60.

customs officer who indulges in smuggling, the prison warder who abets a punishable escape). Any increase of sentence incurred by reason of previous conviction or by the fact of being a public servant is in addition to any increase for reasons other than these two factors. Whenever sentence is aggravated under ss. 88 and 89 the maximum penalty provided for the offence is doubled.

In passing sentence the court may also take mitigating factors into account.[147] Mitigating circumstances, unlike aggravating factors, are not catalogued and are in the discretion of the court. However, whenever the court grants the benefit of mitigating circumstance, it must state in its judgment the precise circumstance it has taken into account as mitigating factor. It is the almost invariable practice of courts to take the offender's good character, his large family responsibilities, and sometimes his poverty and wretchedness as mitigating factors. Mitigating facts operate to reduce the sentence that would otherwise have been passed.[148]

B. Concurrent and consecutive sentences

Section 51 of the Penal Code expresses the rule against consecutive sentences.

> "S. 51 (1). Where any person is convicted on several charges of felony or misdemeanour

147. Penal Code, s. 90.

148. Ibid., ss. 91-92.

> tried jointly, or of simple offence tried with either, only one sentence may be passed, not exceeding the maximum prescribed for the most severely punished offence.
>
> "(2) Where any person is convicted on several such charges tried separately, any sentence later passed may be ordered to run concurrently with, or in the case of fines to be merged in, any earlier sentence; and where it is not so ordered, the aggregate of the sentences may not exceed the maximum prescribed for the most severely punished offence.
>
> "(3) In the calculation of such aggregate an earlier sentence reduced by remission shall be counted at its reduced and not at its original length.
>
> "(4) No sentence may be ordered to run concurrently with, or to be merged in, a sentence which had already become final before the act or omission in respect of which the second sentence is passed.
>
> "(5) In respect of simple offences sentences shall not be concurrent or merged unless the court shall so order.
>
> "(6) Subject to any contrary order of the court, several sentences other than to principal penalties shall be consecutive as between themselves."

The rule against consecutive sentences is applicable only to principal penalties (death sentence, custodial sentence, fine). It does not, except otherwise ordered by the court, apply to accessory penalties (forfeiture, publication of the judgment, closure of establishment, confiscation) or to preventive measures (ban on occupation, preventive confinement, post-penal supervision and assistance, confinement in a special health institution, confiscation). Nor does it apply to simple offences

unless otherwise decided by the court or unless the simple offence forms part of the same transaction as a felony or misdemeanour.

The rule against consecutive sentences operates in a slightly different manner according as the charges have been tried jointly or separately. In practice the rule seldom applies in the case of separate prosecutions. The law provides that if the second offence is committed after the conviction for the first has become final the sentences must run consecutively. The rule would however apply in the case of a second offence committed in the course of the first prosecution or an offence committed earlier but not discovered until after the first prosecution has been commenced. Ordinarily, where charges are tried jointly only one sentence must be passed. The single sentence passed must not however exceed the maximum prescribed for the most severely punished offence. As between a term of imprisonment and a term of detention of equal duration, imprisonment is regarded as a more severe sentence than detention. Similarly, as between a custodial sentence and a sentence of fine, however heavy the fine, the custodial sentence is always treated as more severe.

Where any person is convicted on several charges tried separately, it is up to the discretion of the court whether to order the later sentence passed to run concurrently with, or in the case of fines to be merged in, any

earlier sentence. If the court orders the sentences to run concurrently the aggregate of the sentences may not exceed the maximum prescribed for the most severely punished offence.

Section 52 of the Penal Code deals with the order in which consecutive sentences are to be served.

> "S. 52(1). Sentences to loss of liberty shall be enforced in the chronological order in which the imprisonment warrants are notified to the offender.
>
> "(2) Accessory penalties and confinement under section 43 of this Code shall run from the date when the sentence becomes final, while other preventive measures shall commence from the expiry or suspension of the principal sentence.
>
> "(3) Several consecutive preventive measures shall be enforced in the following order:
> (a) Confinement in a health institution;
> (b) Preventive confinement;
> (c) Post-penal supervision and assistance.
>
> "(4) Where during the currency of any such measure, the offender is sentenced to loss of liberty for another felony or misdemeanour, the preventive measure shall be suspended until the new sentence shall have been served out."

Subsection (1) would appear to suggest that where sentences of loss of liberty are consecutive the later term of imprisonment may not begin to be served until expiry of the earlier one. Unlike preventive measures which always follow on the expiry or suspension of the principal penalty, accessory penalties run together with the principal penalty. It is most unlikely that confinement in a health institution, preventive confinement and post-penal supervision and assistance would be imposed in

one judgment. However, they may be imposed in several judgments and ordered to run consecutively. For example, an offender may be sentenced by one judgment to preventive confinement and by a later judgment to confinement in a health institution as a drug addict. In such a case, the sentence of preventive confinement is suspended and the sentence of confinement in a health institution commenced immediately; when the latter expires the earlier resumes. Where a penalty is imposed in the course of service of a measure, the latter is suspended until the former has been served out; at the expiry of the principal penalty, service of the measure would then resume.

In the calculation of sentence of loss of liberty expressed in either days, months or years, a day means 24 hours, a month means 30 days and a year is reckoned by calendar date.[149] Where a new sentence is passed concurrently with one already passed, service of the new sentence is deemed to have begun from the day when the first sentence began.[150] If a prisoner escapes, the period during which he was unlawfully at liberty does not count in the duration of the sentence that was passed on him.[151] Besides, any sentence that may be passed for the offence of escaping from jail is always consecutive on that which

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149. Ibid., s. 28(1)-(3).

150. Ibid., s. 28(4)(b).

151. Ibid., s. 28(5).

the prisoner was trying to avoid by escaping.[152] In computing the duration of any custodial sentence, the day on which the offender was taken into custody under that sentence must be included.[153] Thus any time passed in custody awaiting trial is always counted towards the sentence. Section 53(1) provides that "where the offender has been in custody awaiting trial, the duration of such custody shall be wholly deducted from the computation of a sentence of loss of liberty".

What happens is that the trial court passes sentence without reference to any period spent in custody awaiting trial and then automatically deducts such period from the sentence passed. Where the period spent in custody awaiting trial exceeds the duration of the sentence passed the offender is released at once. But neither in this case nor in the case of an acquittal does the question of compensation for the custody arise. Thus if a person is kept in custody for months awaiting trial (as it frequently happens) and is then eventually acquitted by the court he cannot sue for compensation for such detention. A limited form of compensation however exists under s. 53(2) in respect of an offender who, after having been in custody awaiting trial, is sentenced to a fine only. In such a case the trial court may relieve him wholly or in part of

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152. Ibid., s. 51(4).

153. Ibid., s. 28(4)(a).

the said fine. This is however a discretionary step which the courts, in practice, take only when of the opinion that the time spent in custody is already sufficient punishment.

Section 27 of the Penal Code makes provision with regards to the commencement of sentence. Subsection (1) provides that where the offender "has not been in custody pending trial, and where no warrant of arrest or remand is issued against him at the time of judgment ..., no sentence of loss of liberty may be enforced until it has become final". This in effect means that a custodial sentence does not, as a general rule, immediately deprive the offender of his liberty. In this regard there is a theoretical difference as to the position in Anglophone and Francophone Cameroon. In Anglophone Cameroon as soon as an offender is sentenced by the court he is taken straight away from the courtroom to the prison and it makes no difference that he has given the court notice of his intention to go on appeal. If he does go on appeal, he may however obtain bail from the appellate court until the final determination of the appeal. In practice bail in such circumstances is rarely granted and is therefore seldom applied for. In Francophone Cameroon, the trial court may, when passing sentence and subject to certain exceptions, sign a warrant of arrest or remand. If it does not do so the offender is not deprived of his liberty until the final determination of the appeal that

may have been taken out against the judgment. In practice however Francophone courts seldom fail to sign an order of arrest or remand when they pass sentence. In concrete terms therefore the position is the same in both halves of the country: as soon as an offender is given a custodial sentence he is taken from the courtroom straight to the prison and it matters not that he goes on appeal.

If a woman given a custodial sentence is pregnant or has just had a baby, she may not begin to serve her sentence until six weeks after delivery.[154] If such a woman was already in custody pending trial she continues, until expiry of the said period, to be in custody as if awaiting trial.[155] So, a pregnant woman in custody awaiting trial or a woman who gives birth when in custody pending trial continues to have the advantage of this less vigorous regime of custody for six weeks after, despite her conviction and sentence. Since custody awaiting trial is compulsorily counted towards the duration of the sentence, her ultimate release is not postponed by reason of her starting to serve her sentence later.

It is submitted that the situation should be the same where a person, taken ill while in custody and removed to hospital, is given a custodial sentence while still in hospital and where a person already serving a prison sentence becomes ill and is removed to hospital.

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154. Ibid., s. 27(2).

155. Ibid., s. 27(3).

In either of these cases the prisoner continues to remain in hospital until cured and the time spent in hospital is taken into account in the computation of the duration of the sentence passed.

It may well happen that a husband and wife are sentenced for the same or different offences to imprisonment. In that event the sentence on one spouse may be suspended until expiry of the sentence on the other if the following conditions are satisfied: (i) the imprisonment is for less than a year, (ii) both spouses were not in custody at the time the sentence was passed, and (iii) the spouses have a fixed common residence and a child under the age of eighteen supported by them and in their charge.[156]

C. Expungement of conviction

The effect of expungement of conviction is, theoretically speaking, to put the offender back in the position which he would have occupied if he had never been convicted. His criminal record is wiped clean and he is restored to the status quo ante. The conviction recorded in the offender's criminal record is struck off; it no longer counts as a previous conviction, nor towards preventive confinement, nor as a qualification for suspended sentence. Expungement may come about by expiry of the

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156. Ibid., s. 54(4).

term fixed for suspension of sentence,[157] by rehabilitation,[158] or by amnesty.[159]

Rehabilitation may be by lapse of time or by judicial order. In either case rehabilitation expunges a conviction for a felony or a misdemeanour and puts an end to any accessory penalty and preventive measure, save only confinement in a health institution and closure of an establishment. If a person is the subject of more than one conviction he may not be rehabilitated only in respect of a single conviction; if he must be rehabilitated then the rehabilitation must be in respect of all the convictions.

To qualify for rehabilitation whether by lapse of time or by order of the court the offender must have served any principal penalty of loss of liberty and paid all fines, subject to any remissions and to prescription. Rehabilitation is possible only where all principal penalties have been served out, time-barred or remitted by pardon. It is also necessary that in every case costs due to the Treasury in respect of the proceedings resulting in conviction should have been discharged and all sums under any civil judgment given the criminal proceedings paid.

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157. Ibid., s. 54(4).

158. Ibid., ss. 69-72.

159. Ibid., s. 73.

There are a number of restrictions on the effects of rehabilitation. Rehabilitation does not affect the right of the Treasury to any sums already collected in satisfaction of civil judgment, expenses, fines or confiscations; it does not of itself restore any decoration or to any order forfeited; it does not of itself restore to any public service, employment or office, and gives no right to restoration to the position in a public service which, but for the conviction, would have been attained. The rehabilitation of a convicted person is no bar to any application for revision of conviction he may make with a view to establish innocence in fact.

An offender is automatically rehabilitated by lapse of time if, during the time prescribed[160] he does not suffer any further sentence of imprisonment or detention for felony or misdemeanour. In the case of a single sentence of more than five years or several sentences totalling more than two years, rehabilitation by lapse of time is no longer available. It may only be granted by order of the court. An offender may apply to the court for rehabilitation from a conviction after five years or from a conviction for a misdemeanour after three years.[161]

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160. Five years in the case of a sentence of fine, ten years in the case of a custodial sentence of up to six months, fifteen years in the case of a single sentence of up to two years, and twenty years in the case of a single sentence of up to five years. For this purpose, sentences ordered to run concurrently are counted as a single sentence.

161. The said period is computed from the date of release from loss of liberty, and of payment in the case of fine.

Even after the death of the offender his spouse, ascendant or descendant may revive or present an application for his rehabilitation within one year of the death.

Amnesty also expunges a conviction and also bars the commencement or continuation of any prosecution. "Within prejudice to any civil right", enacts s. 73 of the Penal Code, "an amnesty shall expunge a conviction and shall put an end to the enforcement of all penalties, whether principal or accessory, and of all preventive measures pronounced in consequence of the conviction, save confinement in a health institution and closure of an establishment."

The law draws a fundamental distinction between amnesty and pardon. An amnesty expunges a conviction, a pardon applies only to the sentence and does not affect the conviction. An amnesty without expungement of the conviction is in fact not an amnesty at all. It is only a pardon. Amnesty also differs from rehabilitation in important respects. Rehabilitation is possible only where all principal penalties have been served out, time-barred or remitted by pardon. An amnesty may, on the contrary, take effect at any time, even before conviction. Rehabilitation always requires the effluxion of a certain time. An amnesty is granted by law and operates expungement from the moment of its promulgation. Rehabilitation can only be directed against the person of the offender (that is why a person who has several convictions cannot be

rehabilitated only in respect of some of those convictions but must be rehabilitated, if he must, in respect of all those convictions). An amnesty may operate in favour of the offender personally, the offence which he has committed, or both the offence and the offender.

D. Remission of sentence

Sentence may be remitted either by release on licence[162] or by the grant of a pardon.[163] Furthermore, prescription[164] and death[165] operate to prevent the enforcement of a penalty. Release on licence means the premature release of a person sentenced to loss of liberty, whether as a penalty or as a preventive measure.

The governor of any prison may of his own motion recommend the release on licence of any prisoner not debarred by law and whose efforts to reform himself, whose work, and whose behaviour in custody have all been entirely satisfactory. Such governor is bound to forward to the executive through the Minister of Justice, any application by a prisoner not debarred by law from release on licence. Release on licence only suspends the enforcement of the

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162. Penal Code, s. 61.

163. Ibid., s. 66.

164. Ibid., s. 67.

165. Ibid., s. 68.

sentence;[166] it does not expunge the conviction. Furthermore, it is granted only when sentence has been partly served - half the sentence in the case of a principal penalty, two thirds of the sentence where sentence is aggravated by the fact of being a public servant, and fiveyears of the sentence in the case of preventive detention.[167] The grant of release on licence is made by the executive which may also revoke it. It is revoked on conviction for felony or misdemeanour later committed or for breach of any of the general or special conditions of the licence.[168] When release on licence is revoked the offender is taken back to prison where he continues to serve his full sentence, the period during which he was at liberty being disregarded in the calculation of the duration of his term. For example, if an offender is released while he still has three years of his sentence to serve and his release is revoked after two years, he will then have to serve the whole three years; if he had behaved himself for one more year the release would have become irrevocable.

The court and not the executive, as in the case of release on licence, may, by recording its reasons for doing so, suspend or revoke any post-penal measure.[169]

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166. Ibid., s. 62.

167. Ibid., s. 63.

168. Ibid., s. 64.

169. Ibid., s. 65.

The prerogative of pardon is entrusted by the Constitution to the Head of State and in exercising that prerogative he is subject to no rules. Pardon is defined in s. 66 of the Penal Code as "the commutation or remission, in whole or in part and with or without conditions, of a penalty or preventive measure or of the obligations of a probation order". Thus a pardon may apply equally to penalties, to measures and to the analogous obligations of probation.

A pardon may take the form of a commutation (that is, the substitution of one penalty for another) or of remission (that is, the reduction of the term of a penalty without varying its nature). However, it applies only to the sentence and in no way affects the conviction. Remission of a penalty may be partial or total, and both remission and commutation may be subject to conditions of which the Head of State, as grantor or pardons, is the sole judge. In the event of breach of such conditions the grant of pardon automatically lapses.

A sentence for a felony, misdemeanour, or simple offence becomes unenforceable by prescription after twenty, five, and two years respectively. The running of time of however suspended while enforcement of the sentence is prevented by any consideration of law or of fact apart from the offender's will (for example, during the paralysis of the administration by enemy occupation of part of the country). An offender's death only prevents the enforcement

of any custodial sentence that may have been passed on him; it does not prevent the enforcement of pecuniary sentences against his estate, confiscation, or closure of establishment. However, the representatives of the deceased are only bound to the extent of the value of the property which the deceased has left with them.

2. Penalties

When it proceeds to select the appropriate sentence to pass on a convicted person, the trial court has at its disposal a whole range of penalties from which to select. There are three categories of penalties under Cameroonian criminal law, namely, principal penalties,[170] accessory penalties [171] and preventive measures.[172] There is a conceptual difference between a 'penalty' and a 'measure'. A penalty is a punitive weapon; a measure is a defensive one. Penalties punish offences already committed; measures look to the reduction of the risk of relapse or repetition, or sometimes of the risk of an offence merely threatened. Penalties are invariably imposed when the object that is desired to be achieved by sentencing is either retribution, public protection or

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170. Ibid., ss. 22-26.

171. Ibid., ss. 30-35.

172. Ibid., ss. 36-50.

deterrence; measures are imposed when the object in view is re-education, reformation, treatability.

The wide range of penalties and measures at the disposal of Cameroonian courts is designed to enable courts to make the punishment fit not only the offence but also the offender, taking account of his chances of reformation, to avoid, in appropriate cases, short prison sentences which may do more harm than good, to hold out to the offender the chances of redeeming himself by work and good behaviour (in society and not only in prison), and so to avoid so far as at all possible the risks of contamination, relapse and repetition producing persistent offenders who can be dealt with only by preventive confinement.

A. Principal penalties

Section 18 of the Penal Code enumerates three types of penalties which are all characterised as 'principal penalties', death, loss of liberty (whether by imprisonment or by detention) and fine.[173] A fine means a monetary fine. A court cannot sentence an offender to

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173. Before the introduction of a common penal code for Cameroon in 1967, an offender in Francophone Cameroon could be sentenced to forced labour, reclusion, deportation or banishment. Banishment has disappeared as a penalty but not the others. Forced labour and relcusion have simply been converted into imprisonment for a term or for life; deportation has been converted into detention for life.

pay a fine in kind (for example a fine of so many heads of cattle). When an offender is sentenced to loss of liberty (that is, he is given a custodial sentence), this takes the form of either detention or a term of imprisonment.

The distinction between 'imprisonment' and 'detention' is crucial in the Cameroonian penal system. Imprisonment is defined in s. 24 of the Penal Code as "loss of liberty during which the offender shall be obliged to work, subject to any contrary order of the court for reasons to be recorded in the judgment". Detention on the other hand is defined in s. 26 as "loss of liberty imposed for a political felony or misdemeanour, during which the offender shall not be obliged to work, and shall be confined in a special establishment separately from those convicted under the ordinary law". What therefore emerges is this. (1) There is a physical distinction between imprisonment and detention. This distinction consists in the segregation of 'ordinary law prisoners' and 'political detainess'. Persons sentenced to detention are confined in a special establishment or failing such establishment in a separate wing of the ordinary prison. (2) Ordinarily, a person sentenced to a term of imprisonment is obliged to work. A person sentenced to detention on the other hand is not obliged to work; this sounds attractive enough. But nothing can be more boring and agonising than to be locked up in prison for years just

idling around the confines of the prison without going out to do some form of work. Furthermore, since the political prisoner does no work there can be no proceeds of work, and therefore no prisoner's fund for him. Section 25 of the Penal Code deals with prisoners' fund and provides that "the proceeds of every prisoner's work shall be applied in part to the payment of any fine and expenses to which he is liable, in part to the discharge of any damages awarded against him in the criminal proceedings, in part to his family, in part to the furnishing of amenities at his request and if he has deserved it, in part to the building up of a reserve fund payable to him on release, and the balance to the Treasury".

(3) Imprisonment is a punishment of loss of liberty for a person convicted under the ordinary law. Detention on the other hand is a penalty of loss of liberty inflicted on a person convicted of a 'political offence'. The penalty is often of an indeterminate duration. What a 'political offence' is in Cameroon is anyone's guess. Section 26 merely defines 'political offence' in terms of the prescribed punishment: any offence for which the punishment is detention is political. An offence is political if and only if the legislator prescribes detention as its punishment.

Capital punishment has raised and continues to provoke a great deal of controversy. The central argument for or against the death penalty is simply whether or

not it serves as a deterrent to others. This has not and cannot be tested empirically. Nor are the arguments for and against the death penalty conclusive. At the end of the day therefore it would appear that the decision by any given country whether or not to have the death penalty in the armoury of its criminal sanctions is a political one rather than one based on criminological or moral grounds.

In Cameroon the death penalty has not been abolished and there are no calls for its abolition. The death sentence may be passed in cases of murder, robbery, and in respect of certain offences against state security. However, no sentence of death may be carried out until it has been submitted to the Head of State for commutation and he has signified his decision not to commute. Furthermore, a pregnant woman sentenced to death may only be executed after she has had her baby. No execution of a person sentenced to death may take place on Sunday or on a public holiday - for religious reasons, no doubt.

When the trial court passes sentence of death it must specify the manner in which execution is to be carried out. There are two lawful methods of carrying out the death penalty, by shooting or by hanging (in prison or in public). The court must always specify by which of these methods the death sentence it has passed is to be carried out. It is a grave moment indeed when the court pronounces the death sentence: "That you XYZ be taken

from this place to a lawful prison and then to a place of execution and that you be executed by shooting (or hanging); and might the Lord have mercy on your soul". The decision not to commute may direct that hanging or shooting be in public. As a matter of general practice most death sentences are carried out by hanging in gallows inside the prison. There have been in the last decade a number of public executions by firing squad, designed mainly to serve as a deterrent.

B. Accessory penalties

There are four types of accessory penalties - forfeiture, publication of the judgment, closure of establishment, and confiscation.[174] Section 30 of the Penal Code gives a list of forfeitures (e.g. removal and exclusion from any public service, office or employment; incapacity to be juror or guardian, etc.) and s. 31 prescribes the circumstances under which the forfeitures may be imposed. A death sentence commuted into life or a life sentence automatically carries with it all the forfeitures listed in s. 30. As a general rule, any sentence for felony carries with it all the forfeitures enumerated in s. 30 for the duration of the sentence and for ten years after liberation. But the court may, by a reasoned decision

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174. Penal Code, s. 19.

reduce this period. Where a sentence for felony is passed on the accused in absentia, any forfeiture takes effect from the date of publication of the notices prescribed by the Criminal Procedure Code. A sentence for a misdemeanour generally involves none of the forfeitures listed in s. 30. But where the law so authorises, the court may, by a reasoned decision, impose all or some of those forfeitures for not more than five years.

Where the section creating any particular offence so authorises, the court may, on conviction order publication of its judgment[175] for a certain length of time[176] or the closure of a business or industrial establishment, or of any premises devoted to a gainful activity, which was used for the commission of the offence.[177] On conviction for a felony or misdemeanour the court may, at its discretion, order confiscation of any property, moveable or immoveable, belonging to the offender and attached, which was used as an instrument of its commission, or is the proceeds of the offence.[178]

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175. This is done by posting the judgment on a notice board at the entrance of the court or at other places deemed necessary by the court, including the door to the offender's house.

176. Two months in the case of felony or misdemeanour, fifteen days in the case of a simple offence. Penal Code, s. 33.

177. Penal Code, s. 34.

178. Ibid., s. 35. Confiscation here is different from confiscation under s. 45.

C. Preventive measures

As in the case of principal and accessory penalties, preventive measures are imposed only upon conviction of the accused.[179] However, although preventive measures are pronounced at the same time as penalties, they do not take effect until after the principal penalty has been served out or suspended. The various types of preventive measures are: ban on occupation, preventive confinement, post-penal supervision and assistance, confinement in a special health institution, confiscation[180] and recognizance,[181] a preventive measure which is sui generis.

If there is serious apprehension that an ex-convict if allowed to continue to exercise his occupation may repeat the same crime for which he was convicted, he may be banned from exercising his occupation for from between one anf five years after having served out the principal sentence. Section 36 provides, "Upon conviction for a felony or misdemeanour under the ordinary law, the court may, for reasons to be recorded in the judgment, forbid the offender to continue to follow any occupation found to

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179. Even in the case of a person of unsound mind, the court must, notwithstanding the provisions of s. 43, be satisfied that the lunatic in fact committed the acts he is accused of.

180. Penal Code, s. 20.

181. Ibid., ss. 46-50.

stand in a direct relation to the offence, and his continuation in which would give grave reason to apprehend a repetition". On subsequent conviction the ban may be extended for life.

Whereas banned occupation appears as a preventive measure devised in the interest of the offender, preventive confinement is seen as an answer to the need to protect the public from the depredation of confirmed criminals even if the offence has not in itself deserved a long prison term. Preventive detention is defined in s. 37 as "confinement for from five to twenty years under a programme of work and social reformation, during which the offender shall, in default of a separate establishment, be confined separately from convicts serving a sentence of imprisonment". In practice preventive confinement is executed in like manner to imprisonment on the ordinary prisons. In theory the need to protect the public must be reconciled with the other desiderata of reformation of the offender and his eventual integration in society. In practice, scant regard is paid to the interest of the offender. Any person who, within the space of ten years, has been convicted for felony or misdemeanour for a number of times and under certain conditions specified in s. 39, may be sentenced to preventive confinement. However, such a sentence may not be passed on a person who would be aged less than 25 or more than 60 years at the expiry of his principal sentence.[182]

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182. Ibid., s. 38.

Every offender sentenced to loss of liberty for more than a year may, on conviction (where the circumstances warrant and for reasons to be recorded in the judgment), be subjected by the court for up to five years to post penal supervision and assistance, consisting of general obligations and, in a fit case, of added special obligations.[183] The general obligations include residing in a particular place, giving the supervisor information on his means of support, informing the supervisor in advance of any change of employment or absence of over two weeks.[184] The special obligations are many and include obligations to take up residence in one or more specified places, to remain in employment or follow a course of instruction, to submit to measures of control or treatment, not to wager, not to drive any class of vehicle, to avoid the company of specified offenders, to abstain from undue consumption of alochol, and so on.[185]

An order of confinement in a health institution may be made in respect of an insane person, a person who is partially insane or a drug or alcohol addict acquitted of a criminal charge on grounds of unsoundness of mind.

Confiscation under s. 45 is compulsory where anything whose manufacture, custody sale or use is unlawful;

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183. Ibid., s. 40.

184. Ibid., s. 41.

185. Ibid., s. 42.

it is immaterial that the thing does not belong to the offender or that the prosecution does not result in conviction.

The purpose of recognizance is the same as the other preventive measures. But unlike others, recognizance is applicable (except in the case of young offenders) where no offence has yet been committed. However, for this measure to apply the behaviour of the person should have exhibited an unambiguous intention to commit an offence. By s. 46(1), "any person who by his conduct or by his utterances shall have exhibited an unambiguous intention to commit an offence which may disturb the public peace may be required by the President of the district court to enter into a recognizance with or without solvent sureties in such sum as may be therein fixed to refrain from commission of any offence of the like nature for the duration of the period therein specified". The sum is fixed having regard to the resources of the person bound over.

The essence of a recognizance is an undertaking to pay a defined sum (which is not however deposited) in the event of any offence envisaged being committed within a defined time. Ordinarily, the time bound over may not exceed one year. But in the case of a habitual offender, the time may be extended to three years. The recognizance may or may not be supported by solvent sureties. The conditions of the recognizance are fixed by the presiding

magistrate. As a matter of practice care is always taken not to impose conditions which the person to be bound over cannot fulfil. Where a person required to enter into a recognizance does not do so, or fails to find the sureties required, he may be immediately imprisoned until he complies, though the term of imprisonment may not exceed that of the recognizance. Under s. 48 of the Penal Code, parents or other persons responsible for persons under 18 years of age may be bound over for one year where the minor under their care has committed an offence: such parents or guardians must take all reasonable steps to see that the minor does not commit an offence.

3. Prisons

A prison is 'a public building or other place for the confinement or safe custody of persons, whether as punishment imposed by the law or otherwise in the course of the administration of justice'.[186] It is a world apart, a community of its own, the temporary or permanent home of society's non-conformists - the flotsam and jetsam of society. It is a highly regimented environment in which the law breaker leads a humdrum existence with his fundamental freedoms forfeited. In a prison obedience to

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186. Black's Law Dictionary, 4th ed., 1968, p. 1358. The term 'prison' is sometimes used as a synonym for penitentiary or jail, although originally a jail was a place for confinement not for punishment.

orders and instructions is compulsory and automatic, hopes and ambitions are ruined and all the inmates are reduced to one common denominator - that of prisoner. Anyone, be he so high or so low, who has fallen foul of the law may be admitted into prison. The method of recruitment rests with the police and the courts. The police do the arrest. The court conducts the trial and considers the appropriate sentence to be passed, taking into account the nature of the offence, aggravating and mitigating circumstances (if any) and the information available to it about the offender.

When the 'free' society turns its back to criminals the prisons authorities embrace them. There are about sixty-four prisons in Cameroon, each of which is calssified as either a central prison, a production prison, a prison-school, or a relegation centre.[187] The total inmate number of all these prisons runs in the

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187. A central prison is a prison of orientation and selection. All prisoners sentenced to a term of over one year's imprisonment are initially placed under observation in a central prison (there is one of such prisons at the chief town of each Province) for an indefinite period before being transferred (if necessary) to an appropriate prison. A production prison is one in which the inmates are enabled, through their labour, to participate in the nation's developmental efforts. A school-prison is a reformatory school or re-education centre where minors or adult convicts are given a practical or theoretical training. A relegation centre is a prison for persons who have been sentenced to relegation under a regime of labour and social reform and for persons who are hardened criminals. See, Decree No. 73/774 of 11 December 1973 (Prisons administration), ss. 2-6.

thousands. The exact figure is still shrouded in mystery. The authorities are reticent about releasing figures; particularly so in the case of political prisoners. So there has been a great deal of guesswork by investigators on this point. The foreign press has at various times put the number of political prisoners alone at 30,000.[188] If this is an accurate figure it would mean that the total number of both political and non-political prisoners is something over 60,000 as there are always more non-political than political prisoners. The figure is however a gross exaggeration. There are neither prison facilities nor the resources to cope with such a large number of prisoners. A senior official at the Ministry of Territorial Administration (prisons come under this ministry) puts the figure for both political detainees and ordinary prisoners at twelve thousand.[189] This would seem a reasonable figure although perhaps a little bit on the conservative side.[190]

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188. Africa Confidential, vol. 18, no. 19, April 29, 1977, p. 2; 'Ahidjo holds tight the rein', Africa, No. 77, January 1978, p. 52; 'Ahidjo's seventeen years of iron rule in Cameroon', New African, vol. 11, no. 10, October 1977, p. 991.

189. Fieldwork interview.

190. The lock-up figures for the Kumba, Maroua, Garoua, Buea, Bamenda, Douala, and Yaounde prisons (the biggest prisons in Cameroon) are, respectively, always around 600, 700, 550, 530, 350, 2000, 2000 - a total of 6,730. The lock-up figure for each prison is made up of four categories of prisoners: ordinary criminals, political offenders, persons in custody awaiting trial, and persons under a regime of administrative internment. See, Prisons Administration Decree, 1973, s. 1.

One difficulty about obtaining exact prison statistics is that prisoners are frequently moved from one prison to another in order to alleviate overcrowding. Furthermore, there are two sets of political prisoners. First, there are those political offenders who are arrested and detained without trial by the political police. Their place of detention is officially unknown to the prisons administration and the general public.[191] Secondly, there are those political detainees who have been charged before and sentenced by a court of law. These are detained in a special wing of the ordinary prison.

Each prison in Cameroon is run by a staff consisting of warders, wardresses, the chief warder, and the prison governor or superintendent. The prison governor is responsible for all matters concerning the administration of the prison[192] and the maintenance of order and discipline among prisoners.[193] Any Cameroonian adult male or female who has successfully completed at least primary school may be recruited as a warder. A minimum qualification of at least secondary school education is required for recruitment

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191. It would in fact appear that they are detained in administrative internment camps in Tchollire, Lomie, Yoko, Tiguere, and Mantoum (now converted into a production prison). Fieldwork interviews.

192. Prisons Administration Decree 1973, ss. 10, 19, 20, 23-29.

193. Cf. Minister of Territorial Administration, Decision No. 500/D/MINAT (Disciplinary regulations for prison warders). The governor is assisted by a chief warder. See, Prisons Administration Decree, 1973, ss. 21-22.

into and promotion to the post of chief warder or governor. Upon recruitment, the warder must undergo a period of three months' training (which includes physical drills, mob or riot control, hand to hand combat, and the use of fire-arms) at the National Centre for Training and Re-training of Prisons Staff, Buea.[194]

It is provided in the Prisons Administration Decree that before a prisoner is incarcerated he must be medically examined,[195] his person searched and his personal effects taken and kept until the day of his release,[196] a description of him recorded in a card-index, and his name entered in the lock-up register. Section 15 of the Decree provides that persons remanded into custody should be separated from convicted persons, women from men, condemned and dangerous prisoners from the other prisoners, minors from adult prisoners, political prisoners from non-political prisoners, and convicted members of the armed forces from the other prisoners. But this segregation is only partially practised. Most prisons for example, have no separate wings for minors. Furthermore, the general tendency seems to be to lump everyone together and to segregate inmates only according to sex. The conditions of persons remanded into custody are no better than those of convicted persons.

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194. The Centre was set up by Decree No. 73/307 of 21st June 1973.

195. Prisons Administration Decree 1973, s. 33.

196. Ibid., ss. 12-13.

The waiting period varies. Waiting for as long as one year is normal; sometimes the period of waiting could be for as long as two years or even more.[197]

Failure to segregate first offenders from recidivists and minor offenders from adult ones produces negative results. The prison becomes a school where the art of crime is carefully learnt and rehearsed. Thus one often finds that delinquent and first time offenders graduate from prison as hardened criminals. Other prisoners make terrible progress in crime on discharge than when they entered prison. Prisons authorities argue that the prison intake has doubled in most prisons without a corresponding expansion of accommodation facilities. They are quick to point out that the prisons are already breaking at the seams and that given the enormous overcrowding there is just nothing they can do by way of segregating the inmates. It is submitted that the provision of more accommodation is not the only way of dealing with the problem of overcrowding. The courts could change their sentencing policy in favour of non-custodial methods of dealing with offenders, especially those not convicted of serious crimes of violence. Those convicted of serious crimes would have to be imprisoned because of the need to protect the public. One may also advocate a reduction by the courts of the length of prison sentences they intend

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197. Annual Report for the Douala Central Prison, 1975, Ministry of Territorial Administration, Yaoundé.

to impose. There is nothing to lose but in fact something to gain in reducing sentences. There is no positive evidence that imprisonment has any special reformatory effect on offenders or that its deterrent effect is proportional to its length. Short prison sentences would bring about a saving of public money and will ensure that while they are in prison offenders serve their sentences in the more humane conditions which a reduction in overcrowding would bring about.

Not all the prisoners in any given prison are necessarily persons sentenced by the courts of the area where the prison is located. Prisoners are frequently moved from one prison to another. Such transfers are used as a disciplinary measure (transfer of indisciplined prisoners to tough prisons) and as a means of alleviating congestion in overcrowded prisons. Furthermore, all the inmates of a given prison are not necessarily persons who have already been convicted and sentenced by the courts. Some are persons remanded into custody by the courts or legal department and others are persons under administrative internment.

Prison discipline is rigid in some prisons and lax in others. Generally, it is a disciplinary offence for a prisoner to assault a warder, to be lazy, to be negligent, to damage property, to mutiny, to sabotage any work, to mutilate himself or to try to escape.[198] Discipline

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198. Prisons Administration Decree, 1973, s. 44.

is maintained by subjecting any prisoner guilty of breach of discipline to hard labour, confinement in an isolation cell for a number of days, imprisonment in chains, or suspension or withdrawal of privileges (for example, the privilege to receive visitors).[199] But this has not deterred prisoners from attempting to escape from prison. Many of them do in fact succeed in escaping. Escape rates are highest in Douala, Maroua and Garoua. Most escapes take place when prisoners are taken out to work, sometimes with the connivance of warders.

Any prisoner sentenced to more than three months' imprisonment and who has discharged two-thirds of his term and has throughout that period been of good behaviour may be released on licence.[200] Most prisoners in the jails are persons who have been convicted either of theft (about 80%) or assault occasioning bodily harm (about 14%).[201] The overwhelming majority of prisoners are male. Female criminality is very low. For example, in Garoua prison only 6 of the 525 inmates are female, in Maroua only 10 out of 711, in Buea only 10 out of 600, in Bamenda 15 out of 285, and in Douala 50 out of 2000. Most female prisoners are serving sentences for petty assault (about 70%), petty theft (about 20%), unlawful abortion, and desertion

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199. Ibid., ss. 45-50.

200. Ibid., s. 11; Penal Code, ss. 61-64.

201. Fieldwork interviews.

of matrimonial home.[202] There is also quite a large number of alien convicts (mainly from neighbouring countries) in jails in Cameroon. Most of them have been convicted either of fraud offences, smuggling or illegal entry into the country.

Official policy towards prisoners oscillates between punishment and treatment. But deterrence remains the corner-stone of Cameroon's penal system. The authorities do occasionally talk of reformation and rehabilitation. But that is nothing more than lip service because those matters are not approached with interest and conviction. Occupational skills (such as carpentry, bricklaying, weaving, carving, tailoring, and farming) are taught in only a few prisons (mainly in those in Anglophone Cameroon where such a tradition is long), and then only in a haphazard manner due to lack of finance. As most prisoners are illiterate, provision exists for each prison to run adult education classes for its inmates. But educational facilities are nonexistent in most prisons, and where they exist classes are poorly run and organised. Very little or no assistance at all is given to ex-convicts to enable them to re-integrate into society.

Section 30(1) of the Prisons Administration Decree 1973 provides that the daily ration of prisoners' meals shall be balanced and sufficient to prevent prisoners from

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202. Fieldwork interviews and observation. The statistics were obtained from various prison governors.

suffering from undernourishment and to provide them with the energy they need to maintain health and carry out the work they are compelled to do.[203] In reality however, prisoners are undernourished. Quantitatively and qualitatively the food is poor and monotonous. Each time prisoners are taken to do work outside the prison establishment they seize the opportunity to steal food wherever they can, or beg or search rubbish bins for crumbs of food. Each prisoner gets only about 30 francs cfa (roughly 10 pence) worth of food per day; in terms of weight, about 14 oz. Meat or fish is definitely a luxury, a treat prisoners seldom get. Generally, prisoners get only one meal a day. Ostensibly, the idea is to make prison conditions poor and unattractive to potential criminals and recidivists. Some officials maintain that,since imprisonment is a penalty for crime, prisoners must suffer. The reasoning behind this view is that if prison conditions are poor, disgusting, unattractive and irksome, potential criminals and recidivists would be deterred. If on the other hand, the argument goes, prison conditions are made attractive, recidivism would increase and poor, homeless and miserable persons might wish to make the prison their home. However, there is no conclusive evidence that uncomfortable and repulsive prison conditions necessarily serve as a

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203. Prisoners must work and their labour is available for hire by anyone who may need it.

a deterrent to would-be offenders. The number of offenders in Cameroon's prisons has not diminished, even though prison conditions are so poor. In any case, prisoners are human beings and ought not to be treated like animals. Besides, they must be allowed basic mental and bodily salubrity.

Out of compassion for the conditions of prisoners, prison governors do allow relatives and friends to bring food to inmates. Prisoners are also allowed to cook their own personal meals (if they have the necessary utensils and foodstuffs) over open fires. The provision relating to the supply of uniforms, bed and bedding to each prisoner[204] is honoured more in the breach than in its observance. Prisoners are no longer supplied with those necessaries; they bring their personal effects along with them; they wear their personal items of clothing and use their personal bedding. It is just too bad if an inmate cannot provide himself with these things. In fact most of them are destitute, lean, hungry-looking, half-naked, and sleep on rags or mats on the bare floor. So revolting and pathetic are the conditions of prisoners that there has been a public outcry for reforms.

> "On January 24-26, the 20th Synod of the Presbyterian Church, which represented about 970 congregations in South-West and North-West provinces, voiced strong concern at the maltreatment of prisoners. ... On March 4, World Prayer Day, Presbyterian congregations throughout the two provinces collected food and funds

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204. Prisons Administration Decree 1973, s. 31.

> to assist prisoners, who, the church claimed in a statement released on March 9, were fed on only 10 U.S. cents a day. 'In some prison houses,' the statement protested, 'it is said that inmates resort to garbage dumps in search of banana peelings for food.' Prisoners working in road-construction gangs, it said, 'can now be seen roaming the streets begging for food, money and sometimes shoes' - apparently, we understand, with the assent of warders who sympathise with their inmates' plight." 205

It is something of a miracle that for all the overcrowding, the stench and parasites (lice, bedbugs, ticks) in the prison cells there are not many recorded deaths and outbreaks of diseases. Most inmates who complain of illnesses suffer either from diarrhoea, stomach ache or malaria. But these are common enough diseases in the country. It must be said that the prison authorities do the best they can with the limited funds and facilities they have to keep prison sanitation good. That they do not always succeed is not due to lack of will or good intentions. Nurses and doctors pay weekly visits to prisons and prisoners who are too ill to be kept in prison are removed to the hospital. A few prisons have first aid facilities.

Prisoners may be visited weekly by friends and relatives and may write and receive letters. Such correspondence is however censored. Limited recreational facilities exist in some prisons. Each prison allows religious

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205. Africa Confidential, vol. 18, No. 10, May 13, 1977, pp. 4-5.

organisations to visit prisoners and conduct religious services inside the prison.

4. Juvenile delinquency

In the criminal law of Cameroon any person aged between ten and eighteen years who commits a criminal offence is a juvenile delinquent.[206] A juvenile delinquent may be charged with and tried for an offence either as principal or secondary party. There are no comprehensive statistics on juvenile delinquency in Cameroon. But it is common knowledge that most juvenile delinquents are convicted either of assault, vagrancy or stealing; all of these are usually of a minor nature. There are a few cases of gambling and counterfeiting and isolated cases of infanticide and abortion.

The age distribution of juveniles who are delinquents reveals an interesting pattern. There are no recorded cases of offences by persons aged between ten and twelve years and only isolated cases of offences committed by persons aged between 13 and 15 years. About 95% of juvenile delinquents come within the 16 to 18 years age bracket. This may be explained on the theory that at this stage of life the juvenile is going through a period of

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206. Penal Code, s. 80. There is an irrebutable presumption of criminal irresponsibility of a child who is below ten years of age. See, Penal Code, s. 80(1).

psychological, physiological and social stresses. This stage is the age of adolescence, a transitional period between infancy and adulthood. The adolescent tries to adjust himself to be independent and responsible in a society that is beginning to look upon and treat him as an adult. The adolescent becomes increasingly aware of himself as an individual and of the milieu in which he lives. His needs become many but his resources remain limited for he is still economically weak. Lack of means to satisfy his increased needs and the urge to assert his independence are crucial factors that have pushed many juveniles on the road to crime, particularly economic crime.

It would be futile trying to catalogue the causes of juvenile delinquency. To begin with a complete theory of the causes of delinquency does not exist. Furthermore, every delinquent act has its own motivation and the internal disturbances which an individual juvenile may be experiencing are apt to be differently interpreted or analysed. The opinion may nevertheless be ventured that certain negative factors stemming from the family (for example, unstable or broken homes, aggressive parents) and certain environmental factors contribute to delinquent behaviour. Juveniles who have been deprived of parental care, love and protection, material assistance and moral upbringing are likely to become delinquents. Social changes, new ways of life and alien cultures in the urban centres drive many juveniles (their impulsive drives are exceptionally strong),

in their search for adjustment, to crime. This adequately explains why the problem of juvenile delinquency in Cameroon is essentially an urban problem.[207] In the rural areas, life is still unsophisticated and needs are few (no cinemas, no night-clubs, no bars, no discotheques, no need for sophisticated items of clothing and shoes). Parent-child relationships are face-to-face as opposed to the uncontrolled relationships in urban areas. Control and interaction are intense and involve many people (the extended family), who act on the child directly. Discipline is firm and standards of morality high.

A. Policy on the problem of juvenile delinquency

Official policy on the issue of juvenile delinquency may be characterised as prevention on the one hand, and treatability of juvenile offenders on the other hand. The prevention of juvenile delinquency is seen in a wider context involving not only the State but parents, schools, churches and social welfare agencies. Family control of and responsibility over children is vital and parents must not shirk in this responsibility. During the holidays parents can exert control by assigning their children to profitable activities. When schools are open

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207. The main towns where juvenile delinquency is rife are Douala, Yaounde, Nkongsamba, Bafoussam (in that order) and, to a lesser degree, Garoua, Buea-Muyuka, Kumba and Bamenda.

parents should be prepared to co-operate with school staff in order to understand the child's ways and ambitions. In this regard parent-teacher associations must be encouraged and promoted. The churches on their part can reinforce the moral lessons learnt in the family and also discourage immoral attitudes that contribute to delinquency. Rural exodus has also been blamed as a contributory factor to juvenile delinquency. So the government has embarked on schemes to make rural areas attractive - the provision of good roads, more schools, and social amenities. This ploy, it is hoped, would stem the tide of rural exodus. In fact it was the phenomenon of rural exodus (coupled with the very high rate of youth unemployment in the cities) that prompted the government to establish the National Civic Service for Participation in Development in July 1973 under a law (No. 73/4) making a two years' period of national service obligatory for all Cameroonian youths.

The criminal law punishes juvenile delinquents. But it also protects juveniles by punishing severely anyone who commits an offence against an infant: abortion, assault on woman with child, infanticide, slavery and giving in security, corruption of youth, moral danger, indecency to children under sixteen, indecency to minor between sixteen and twenty-one, advantage of weakness, assault on children, kidnapping, kidnapping by force or fraud, aggravated kidnapping, and failure to return a child.[208] Moreover,

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208. Penal Code, ss. 337, 338, 340, 342, 344, 345, 346, 347, 349, 350, 352, 353, 354, and 355 respectively.

s. 48 of the Penal Code enables the parents or other persons responsible for persons under 18 to be bound over. It is not the minor who is bound over but his parents or others responsible for him. And if in spite of the steps they have taken a minor still repeats his activities they are not necessarily to be blamed for, they are responsible for taking steps not for succeeding. They do however have to prove that the steps they took were all that could be reasonably considered necessary to the end in view.

In dealing with adult offenders the emphasis is on punishment. In the case of juvenile offenders however there is a clear shift of emphasis from punishment to treatment (that is, reformation and re-education). The concept of treatment conjures up the picture of 'illness'. When a person is ill he goes to the hospital for treatment; if he does something wrong he may be punished for it. The notion has now gained ground that a juvenile delinquent should be 'treated' and not punished because he has not got the same motivations as an adult; he is a misdirected and misguided person who needs aid, encouragement and assistance.

In dealing with cases of juvenile delinquency Anglophone courts apply the unrepealed provisions of the Children and Young Persons Ordinance, Cap. 32 of the 1948 laws and the relevant provisions of the Penal Code, while Francophone courts apply the unrepealed provisions of the Juvenile Delinquency Decree of 30 November 1928, the Simplified Procedure Law of 1958 and the relevant provisions

of the Penal Code. In substance the law on juvenile delinquency is the same in both Anglophone and Francophone Cameroon, a factor which undoubtedly facilitated the work of the Criminal Procedure Commission when it came to deal with this part of the law.[209]

B. The criminal responsibility of children and young persons

For the purpose of criminal responsibility the criminal law distinguishes between three categories of infants: those of less than ten years of age, those aged between ten and fourteen years, and those aged between fourteen and eighteen years.[210] An infant under ten is conclusively presumed to be totally irresponsible and may not even be tried for what he does; he is doli incapax.[211] He may be the subject of special measures of care and protection, but not of punishment nor of the preventive measures applicable to older children. An infant of between ten and fourteen years of age may, as a general rule, be tried but his responsibility is only partial.[212] There is

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209. Draft Criminal Procedure Code, ss. 772-829; Gabriel-Louis Djeudjang, 'L'enfant devant la justice au Cameroun', Revue Juridique et Politique Indépendance et Coopération, No. 2, 1977, p. 233.

210. Penal Code, s. 80. The relevant age is determined at the date of commission of the offence and not at the date of trial or conviction.

211. Ibid., s. 80(1). However, provided he is intelligent enough, an infant of less than ten years of age may be a competent witness in criminal proceedings.

212. Ibid., s. 80(2).

an irrebutable presumption of law that a child below the age of twelve is incapable of having carnal knowledge. Consequently, infants under the age of twelve have no criminal responsibility in respect of sexual offences involving carnal knowledge. Other offences committed by infants of between ten and fourteen years of age attract only such measures as may by law be provided on juvenile delinquency. The juvenile offender who falls within this age bracket may not be sentenced to a penalty nor to a preventive measure provided by the criminal law for adults. He may only be dealt with in the manner provided by law on young offenders. Thus he may be placed on probation, committed to a borstal institute, cautioned and discharged, or released to his parents or guardians or persons responsible under customary law who may be required to enter into recognizance (with or without solvent sureties) in such sum as may therein be fixed by the court. This sum is forfeited if the juvenile offender commits any similar act within a period of one year, unless the obligor can prove that he took all reasonable steps to ensure that the minor did not commit the offence.

A person aged over fourteen and under eighteen years is criminally responsible and may be sentenced even to a penalty. However, for an offence committed by any such person, responsibility is diminished.[213] The effect of diminished responsibility is that the penalty provided

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213. Ibid., s. 80(3).

for the offence is reduced.[214] Penalty is reduced as follows: (a) the penalty of death or loss of liberty for life is reduced to loss of liberty for from two years to ten years, (b) any other penalty for felony is reduced to a loss of liberty for from one year to five years, (c) the maximum penalty for misdemeanour is reduced by half and minimum to five days' loss of liberty or one franc fine.[215]

When a juvenile offender is apprehended he is taken to the police station where he is arrested and a cuationary statement recorded from him. The current law does not require that the juvenile offender's parents or guardians or other person in loco parentis be present at the police station before he is charged or a statement recorded from him. This is a serious lacuna in the law as juveniles are apt to be easily frightened of the police (and more especially the gendarmes) and may easily confess to acts which they in fact did not commit.

After recording the statement from the juvenile offender, the police or gendarmes may, where practicable, and depending on the nature, circumstances of the offence, and the offender's antecedents, release him on police bail to his parents, guardians or any fit and proper person. It is the responsibility of such parent, guardian or fit and proper person to produce the juvenile offender before the

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214. Ibid., s. 87.

215. Ibid., ss. 87(1) and 92(1).

court on a date fixed by the police or gendarmes. If there is no one to bail the offender, the offenders or gendarmes keep him in their cell and must produce him in court within twenty-four hours. Here however, practice is at variance with theory. Juvenile offenders without sureties are detained in police or prison cells. The period of such detention varies from days to months. The effect on the infant is of course traumatic. It is submitted that police and court bail should be automatic and as of right with respect to juvenile offenders. If no one comes forward to bail the juvenile he should be taken to a children's boarding home set up for the purpose and run by the Department of Social Welfare. In this regard one must advocate for a close and on-going collaboration between the police and social workers. At the moment such a collaboration is practically nonexistent. Many police and gendarme officers have not fully appreciated the role of social workers and such collaboration that sometimes exists between the two is generally low-keyed and ephemeral.

The arraignment and trial of the juvenile offender takes place in chambers or in the courtroom provided it is cleared. In Cameroon there are as yet neither specialised juvenile courts nor specialised juvenile court judges. If the juvenile is charged with a felony he is tried in camera in the High Court; if the offence is a misdemeanour or a simple offence the juvenile is tried in

the Court of First Instance. Appeal from the decisions of both courts lies to the Court of Appeal and then to the Supreme Court. The trial of a juvenile delinquent takes place in camera but the procedure remains the same as that in any ordinary trial. A practice has grown whereby the courts require the offender's parents and the social welfare officer who made out the juvenile's social enquiry report to be present during the trial.[216]

In Anglophone courts when the juvenile is arraigned, the charge is read and explained to him. He may plead guilty or not guilty. If he pleads guilty the court records the facts of the case as stated by the prosecution. If the facts disclose an offence as defined in law and the court is satisfied that the juvenile intended honestly to plead guilty, the court would accept his plea of guilty and convict him on it. If on the other hand the defendant pleads not guilty and it is possible to proceed with the trial, the prosecution calls in witnesses whom the defendant or, if represented, his lawyer may cross-examine after examination in chief. At the close of the prosecution case the defendant may have no case to answer if the facts disclose no offence under the law. In this case he is discharged on the merits. If he is found to have a case to answer, he is informed of his rights under the law and

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216. Scott Anyangwe, 'The young offender in Cameroon', paper presented at the Seminar on 'Understanding the child and adolescent' held in London from 27th September to 16th October 1976, unpublished.

then put to his defence. If at the end of the trial he is found to be guilty of the offence with which he is charged, he is convicted. In Francophone courts the judge adopts a more involved role in questioning the juvenile.

After conviction the court normally calls for the juvenile's social enquiry report and his previous convictions (if any). These are necessary to enable the court to determine the appropriate measure or sentence to pass. Thus, where the offence is a serious one or the circumstances of the offence are aggravating or where the juvenile has had previous convictions, the court would normally commit him to the Borstal Institute. First offenders are generally placed on probation, cautioned and discharged, released to their parents who may be required to enter into a recognizance, or given a suspended sentence.[217] In exceptional cases, where the juvenile has been a habitual criminal and other means of dealing with him have failed, the court may, having regard to the circumstances of the offence and the public danger which the offender may represent, actually sentence him to a term of imprisonment or fine him. However, courts sentence to terms of imprisonment only in extreme cases.

In most cases the court makes orders for the reformation and re-education of the juvenile delinquent. There

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217. Idem.

are three centres in Cameroon which cater for delinquent children, maladjusted and abandoned boys. The three centres are the Institute of Child Welfare at Betamba, the Borstal Institute at Buea and the Observation Centre at Douala. There are plans to build other observation centres at Garoua, Bamenda and Bafoussam.

These centres admit only male juvenile delinquents. No institute exists for female juvenile delinquents because they are few and amenable within the extended family system. The borstal institute admits delinquent boys entrusted to it for rehabilitation by school and professional training and by any other means likely to develop their character, abilities and sense of personal responsibility. Such minor boys must be between 12 and 18 years of age. They are placed in the institute for not less than one and not more than two years. Exceptionally, and with the agreement of the management of the institute, a minor may spend up to three years at the institute. The file concerning any juvenile delinquent admitted into the institute must comprise an extract of the court's decision, the social enquiry report, a copy of his birth certificate, and a medical certificate. At the moment, parents do not participate financially in the rehabilitation of their delinquent children. It is probable that parents would soon be required to do so.

On discharge from the borstal or prison most ex-juvenile delinquents are not provided with any form of

assistance to enable them to start off. With the exception of the few lucky ex-juvenile delinquents from the Betemba Child Welfare Institute who are given some form of employment in certain industries, most juveniles leave the prison or borstal only to be confronted again with problems of accommodation, feeding, unemployment, re-integration into society and public acceptance. There is no effective scheme of post-penal supervision and assistance of ex-juvenile delinquents and most of them quickly encounter frustration and a good many find their way back into prison. This is a problem with the authorities must address their minds to seriously.

CHAPTER SIXTEEN

MILITARY LAW

Military law, broadly speaking, is that system of law by which the military establishment of a State is partly or wholly governed; a code of laws and regulations for the raising,maintenance, administration and conduct of the armed forces. The object of military law is twofold: (i) to provide for the maintenance of good order and discipline among members of the army and in certain circumstances among others who live and work in a military environment; and (ii) to regulate certain aspects of army administration, mainly in those fields which affect individual rights. In practice however, the term military law is used with regards to its disciplinary provisions rather than to its administrative ones. In its narrow and usual sense therefore, military law means the system of law which governs the armed forces of a State, enabling discipline to be maintained and subjecting military personnel to trial and punishment by military courts. The term should not be confused with 'martial law' which is the military enforcement of order upon a civil population either in occupied territory in time of disorder.

Discipline is the backbone of the army. So, historically, military law developed out of the desire to ensure that the will of the commander was put into effect.

Military law therefore traces its origin to the prerogative power of commanders. In Rome, just as a sector of civil law developed from the imperium of the magistrates, so did military law derive from the imperium of those same magistrates in their capacity as commanders of the military forces.

Military justice in the 1st century A.D. was somewhat rough-and-ready and heavy-handed and varying much with the individual commander. But it became more formalized and received treatment 400 years later in the Digest and Codex of the Emperor Justinian. With the rise of the kingdoms of the Middle Ages, the maintenance of discipline was enforced by ordinances or articles of war issued by the sovereign or by a commander authorised by him at the beginning of each campaign. With mercenary armies drawn from many nations in the wars of the 16th and 17th centuries, each national contingent tended to apply the articles of the supreme commander according to its own rules of procedure. The articles of war of Maurice of Nassau, Prince of Orange, and Gustavus Adolphus of Sweden are said to have had a considerable influence on the national commanders who served under them, when they came to command elsewhere.

In England, the articles of war of the Prince of Orange formed the basis of Prince Rupert's code of 1672. In 1689 a standing army was introduced in England and was governed by mutiny acts passed yearly, to which the articles

of war were subordinate. These article of war were replaced in 1881 by an annually renewed Army Act which has since been reformed by the Army Act 1955 and the Armed Forces Act 1971.

On the continent of Europe, the articles of Gustavus Adolphus continued to be followed until they were supplanted by the codification of the 19th century, which established throughout those countries a generally similar system that, with revision and amendments, continues to this day. In France the most important codification on military law was the Code de Justice Militaire of 1928. It has since been amended, particularly by the Code de Justice Militaire (pour l'armée de terre) of 1950 and the Code de Justice Militaire of 1964.[1]

Although rules (unwritten) for the conduct of war and for the sanctioning of indiscipline among the fighting men existed in pre-colonial traditional societies (but there were no standing armies), the organisation of a modern system of military justice and the establishment of a standing army in Cameroon dates only as recently as 1960.

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This chapter gives a brief historical account of the genesis of military law in Cameroon (Section I),

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1. For this historical development of military law, see generally, The new Encyclopaedia Britannica, vol. 12, 1977, p. 194.

discusses the jurisdiction of military courts (Section II), and analyses the procedure in those courts (Section III).

I. The Genesis of Military Law in Cameroon

The existence of military law came about with the creation of the Cameroonian Army (Para. 1) and the setting up of military courts in the country (Para. 2).

1. The creation of the Cameroonian Army

Cameroonian professional soldiers existed before 1959, although the Cameroonian Army was created only in 1959 by an Ordinance of 11th November.

A. The situation before 1960

There were no standing armies in traditional society. In times of war every able-bodied male was required to take up arms against the enemy. Most villages however had 'war lodges' which consisted of notable warriors, men who had distinguished themselves in previous raids or battles. There were also 'war medicine lodges' which provided war magicians. When the Germans set about conquering the territory which later became known as Cameroon they fought various wars with tribal armies and it took them several years to bring the 'Schutzgebiet von Kamerun' under their effective control. Given the importance of Kamerun which constituted the Mittel-Afrika which

the Germans wanted to create and link with their East African colony, a contingent of 1,550 soldiers (the Schutztruppe) and 1,285 policemen (in reality a military-cum-police force, the Polizeisoldat) were raised in Cameroon and placed under the orders of the Governor. In 1914, when the First World War was also being fought in Cameroon, the Germans were able to put 2,500 men (1,800 Germans and 700 natives) in the field against the combined forces (13,000 men) of the British, French and Belgians.[2] The remnants of the German native army were disbanded following the defeat of Germany in the War and the partition of Cameroon by the British and the French.

The Mandates Agreements for both the British and the French Cameroons provided that

> "The Mandatory shall not establish in the territory any military or naval bases, nor erect any fortifications, nor organise any native army force except for local police purposes and for the defence of the territory."

Accordingly, Britain maintained no naval base and no military force, posts or garrisons in the British Cameroons. If military force was required, as it happened during World War II, it was drawn from the Nigeria Regiment of the West African Frontier Force whose permanent stations were confined to Nigeria. There was no recruiting of natives of the mandated territory for military service within or

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2. Ndam Njoya, Le Cameroun dans les relations internationales, L.G.D.J., Paris, 1977, p. 78.

without the territory. But a tiny police force existed. This situation changed slightly after World War II. A provision of the Trusteeship Agreements for the two Cameroons was to the effect that the Administering Authority

> "shall be entitled to establish naval, military and air bases, to erect fortifications, to station and employ its own forces in the territory and to take all such other measures as are in its opinion necessary for the defence of the territory and for ensuring that it plays its part in the maintenance of international peace and security. To this end the Administering Authority may make use of volunteer forces, facilities and assistance from the Territory in carrying out the obligations towards the Security Council undertaken in this regard by the Administering Authority, as well as for local defence and for the maintenance of law and order within the Territory."

Britain made no undertaking to the Security Council with regards to the British Cameroons. However, the strength of the local police force was increased and its training programme given a military slant. Moreover, Cameroonians became eligible for recruitment into the Nigerian Army.

In French Cameroun, a militia force existed before World War II and was quickly transformed during that War into a bataillon de tirailleurs du Cameroun. It was placed under the command of a colonial infantry colonel, military commander of the territory. At the end of the War the security services in the territory were reorganised.[3] There was the Gendarmerie and there was also the Garde

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3. Arrêté of 1st June 1946.

camerounaise. The gendarmerie was commanded by a squadron chief and was split up into three sections, one each in Douala, Yaounde and Garoua. The Garde camerounaise was an auxiliary force trained by personnel of the gendarmerie and commanded by a captain directly answerable to the Haut Commissaire. Apart from Camerounians in the gendarmerie and the garde camerounaise, there were others who enlisted in and saw service with the French Army. The manpower strength of the French Army in Cameroun increased dramatically after 1955 when the U.P.C. took to guerilla warfare to achieve its political objectives.

B. The position since 1960

The Armée Camerounaise was created by an Ordinance of 11 November 1959 to take over from the French Army scheduled to leave Cameroun upon the attainment of independence on 1 January 1960.[4] The nucleus of the Army was formed by men drawn from the Garde camerounaise and Camerounians in the French Army. These men were organised into two companies and on 1 January 1960 during the independence day celebrations a Cameroonian Army was seen for the first time. The Army was very prominent during the

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4. It was however only in 1965 that a Cameroonian took over command of the Cameroonian Army. Under military cooperation agreements between Cameroon and France, French soldiers continue to serve in Cameroon in various capacities; mainly as advisers. The number of these French soldiers in Cameroon has been steadily decreasing over the years.

march past. Following reunification on 1 October 1961 Southern Cameroonians serving in the Nigerian Army returned home and were integrated in the Armée Camerounaise. Since then, the Cameroonian Army has grown and continues to grow in size.

Today, the Cameroonian Armed Forces consist of an Army organised into four infantry battalions, an Air Force, the Gendarmerie, a Navy and reservists (that is, people who have done their required two years' military service - préparation militaire - and may be called up at any time). The Air Force and the Navy are still very small in size and equipment. But they are gradually being developed with the return of Cameroonians who have completed their training in France and other European countries. Apart from guaranteeing national territorial integrity, the Army aids the police in the maintenance of law and order and is actively involved in the construction of roads and bridges (a task undertaken by the génie militaire, the engineering corps). The Navy is responsible for guarding the coasts, maritime communications, maintaining law and order in regions that are accessible to its units, and preventing illegal entry and smuggling.

The Cameroonian gendarme differs from his French counterpart in that he is a soldier first and a military policeman second.[5] As a police force, the mission of the

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5. Military police is the name given to soldiers who exercise police or other functions in armies. From the very beginning of military history armies have had men to perform military police duties. The military policeman

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gendarmerie includes highway security and traffic control, counter-insurgency, special assignment to judicial duties, law enforcement in rural areas, and investigation and surveillance of suspects. But the gendarmerie, by a law of February 1960, forms an integral part of the Armed Forces, a situation which came about because "la gendarmerie (dont les effectifs sont equivalents à ceux de l'armée) avait toujours été un puissant auxiliaire du commandement pour la lutte contre la rebellion et les enquêtes contre les individus subversifs."[6] As part of the Armed Forces, the mission of the gendarmerie is also to defend the territorial integrity of the nation. The gendarmerie, administratively headed by the 'délégue général à la gendarmerie', is placed under the direct and exclusive authority of the Minister of the Armed Forces. In fact the gendarme undergoes the same military training as any other soldier.

The Armed Forces come under the Ministry of Armed Forces headed by a Minister of Armed Forces. There is no overall operational 'commander-in-chief' of the Armed Forces. The armée de terre, de l'air, la gendarmerie and

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Footnote 5 continued from page 1079.

is a soldier first and a policeman second. The position is however different with the armies of France. There the gendarmerie are most closely concerned with security. In Britain or America most of the work done by the gendarmes in France would largely be carried out by the civilian police.

6. Francis M. Clair, 'La justice militaire dans la république fédérale du Cameroun', Revue de Droit Pénal Militaire et de Droit de la Guerre, vol. 1, 1962, p. 194.

la marine each have their autonomous commanding officers. There is of course an état major which coordinates the actions of all three and an Inspector-General of the Armed Forces. But there is no overall commanding officer. The constitutional supreme commander of all the forces is of course the President of the Republic.

The military training and tradition in the Cameroonian Armed Forces is French. The official language of command and instruction is also French. This means that any Anglophone seeking to get into any of the Armed Forces must know French. Recruits into the Armed Forces receive their training at Koutaba and at Ngaoundéré. Officers are initially trained at the Ecole Militaire Interarme du Cameroun (EMIAC) - the Inter-Force Military Academy created in 1960 - and then at specailised schools (such as the artillery school at Chalon-sur-Marne) in France.

2. The establishment of military tribunals

In some countries, particularly in Britain and in America, a military court (also known as a military tribunal or a court-martial) is an ad hoc body convened by a commanding officer and having no fixed seat. Not so in Cameroon. A military court here is a permanent court with a fixed seat and of mixed composition (civilians and soldiers). Military courts were first established in Cameroon

under an Ordinance of 31 December 1959 dealing with the creation, composition and competence of military tribunals. "Création de l'armée, existence d'une subversion armée, avait ... conduit le gouvernement de la République du Cameroun à mettre sur pied une justice militaire."[7] The military tribunals that were set up were subsequently placed under the control and supervision of the 'service de la justice militaire' attached to the Ministry of Justice.

A. Military tribunals before 1972

The 1959 Ordinance set up five military tribunals in the Cameroun Republic. Each of these tribunals was presided over by a civilian magistrate who was assisted by two military officers. Civilian magistrates also discharged the functions of juge d'instruction and of commissaire du gouvernement. A military tribunal applied the provisions of the Code d'Instruction Criminelle. The extensive powers given to these tribunals appear to have been dictated by the existence of an armed subversion in the country. Offences against the internal security of the State committed by U.P.C. guerrillas were at first tried by the ordinary criminal courts. But they soon became overcrowded because of the high incidence of such offences.

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7. Ibid., p. 178.

In order to relieve these courts of the heavy load of cases they had to deal with, a special criminal court (cour criminelle speciale) was created in May 1959 and empowered to deal summarily with offences against the internal security of the state and, generally, with offences committed with violence or using arms. However, the smooth running of the cour criminelle speciale (it was composed of a president and two assessors) was hampered by the persistent failure of assessors to take part in the proceedings of the court. Intimidated by guerillas, these assessors were afraid of reprisals from them and so always pretended to be ill on the day scheduled for any trial. Shortly after the creation of the Army in November 1959 it began to be felt that the trial of U.P.C. insurgents could best be undertaken by the Army. Unable to fulfil the need for which it was established, the cour criminelle speciale was abolished by an Ordinance of the 7th May 1960 and its jurisdiction transferred to the five military tribunals which had been set up on 31st December 1959. Over 3000 cases that had been pending before the special criminal court were transferred to the military tribunals.

Reunification of the 'two Cameroons' on 1st October 1961 introduced another dimension into the problem of military justice. Military courts did not exist in the Southern Cameroons. The territory had no army and it was peaceful. The small number of Southern Cameroonians serving in the Nigerian Army were answerable before Nigerian

Courts-Martial. Besides, although U.P.C. insurgents from the other side of the River Mungo took refuge in the territory, they made it a point not to commit any exactions there.

By article 5 of the 1961 Constitution, the Army, and consequently military courts, came within federal powers. The question whether the territorial jurisdiction of the military tribunals already in operation in East Cameroon should simply be extended to West Cameroon was answered in the negative. As many as 90% of the matters coming before the military tribunals were allegations of subversion involving civilians and not soldiers. It was felt that it would be a political and a psychological blunder to have Anglophones involved in such cases tried in a language (French) and under a legal system (civil law) which were alien to them. Cameroon was (and still is) a bilingual country with two legal systems, but, since there were no bilingual bi-jural legal personnel, it was decided that a federal system should be evolved which would take account of the need of generalising the principles of military justice while respecting the tradition of each of the federated states. Accordingly, Ordinance No. 61/OF/4 of 4 October 1961 was passed dealing with military judicial organisation in the Federal Republic. This Ordinance provided that the composition, taking of cognizance, and the initiation of action in and the powers of military tribunals shall be the same in either federated state.

However, the procedure in those tribunals was the criminal procedure in force in each of the federated states. Four military tribunals were established, three in East Cameroun (one each in Yaounde, Douala, and Dschang) and one in West Cameroon (in Buea). The Yaounde and Buea military tribunals were said to be 'permanent Military Tribunals' while the others were Temporary tribunals.

Each military tribunal was presided over by a civil judge who was, in East Cameroun, a magistrate of the local First Instance Tribunal, and, in West Cameroon, a Chief Magistrate. The presiding judge was assisted by two army officers who had to be above or of equal rank with the accused soldier (whenever a soldier was on trial). These officers were members of the court and deliberated together with the presiding judge on the question of culpability and sentence. Prosecutions were conducted by a 'commissioner for Government' who was either an army officer or a civil legal officer. In East Cameroon the incoherence of having a civilian legal officer prosecuting in a military court was resolved by sending officers who left the Ecole Militaire Interarmes du Cameroun, to do a crash course on civil and military criminal law and procedure. The course lasted six months and the officers were awarded a certificat d'aptitude aux fonctions de magistrat militaire. In West Cameroon, the office of commissaire du gouvernement was at first assumed by a federal counsel in the Attorney-General's Chambers. Later, the office passed over to a military officer.

There were three types of military tribunals: permanent military tribunals, temporary military tribunals, and tribunaux aux armées. There was a permanent military tribunal in Yaoundé and another in Buea. The Yaoundé Permanent Military Tribunal was created by Ordinance No. 61/OF/4 of 4 October 1961. Its territorial jurisdiction extended over the whole country and it could sit in the following towns: Garoua, Maroua, Ngaoundéré, Bertoua, Yokadouma, Moloundou and Douala.[8] The Buea Permanent Military Tribunal was created by decree No. 61/DF/73 of 28 December 1961. Its territorial jurisdiction was limited to the federated state of West Cameroon. It could on the orders of the Armed Forces Minister or his delegate, sit in any Divisional headquarters of the federated state. By a curious turn of events this Buea Permanent Military Tribunal came to be competent to try only civilians. This came about as a result of the creation in September 1962 of the tribunal aux armées in Buea. This tribunal robbed the Buea Permanent Military Tribunal of its competence to try soldiers. It retained the power to try only civilians accused of subversion, offences against state security, and fire-arms legislation.

Provision existed for the establishment of temporary military tribunals. One such tribunal was set up

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8. Decree No. 67/DF/636 of 15 December 1967 fixing the localities in which the Yaounde Permanent Military Tribunal may sit; Decree No. 69/DF/50 of 13 February 1969 suppressing the Douala Temporary Military Tribunal.

in Dschang. It was suppressed in 1964 and another one set up in Bafoussam.[9] There was also a temporary military tribunal in Douala but it was suppressed in 1969.[10] Temporary military tribunals could, on the orders of the Armed Forces Minister sit in the chief towns of their areas of jurisdiction. Provision also existed for the establishment of 'tribunaux militaires aux armées'. These were in the nature of Anglo-American courts-martial. In times of war, a tribunal aux armées could be set up in any theatre of war on the proposition of the Armed Forces Minister. In such a case it would be convened at the headquarters of the field commander. A tribunal militaire aux armées was empowered to try only soldiers and people treated as such and it applied exclusively the criminal procedure in force in the federated state of East Cameroun. Only one tribunal aux armées was ever set up in Cameroon; and this was in Buea.[11] The reason for the setting up of this court in Buea was to ensure that soldiers serving in that part of the country were tried not according to the criminal procedure of West Cameroon but, like their brothers of the gun serving in East Cameroun, according to the criminal procedure of East Cameroun.

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9. Decree No. 64/DF/496 of 23 December 1964 setting up the Bafoussam temporary military tribunal and suppressing the one in Dschang.

10. Decree No. 69/DF/50 of 13th February 1969.

11. Decree No. 62/DF/349 of 21 September 1962 setting up the Buea tribunal militaire aux armées.

B. The Directorate of Army Legal Service

The Directorate of Army Legal Service (le service de justice militaire), something of a miniature ministry of justice, was created by and its attributes spelt out in Decree No. 65/DF/427 of 9 October 1965.[12] The head of the Directorate could be a civilian or a military officer appointed by decree of the President of the Republic. At the moment however, it is headed by a civilian judicial officer. He has been conferred the status, rights and prerogatives of military officer. The Directorate consists of a number of military officers (some with a law degree, others taking part-time law courses at the University of Yaounde), registrars, and secretaries. It is divided into bureaux, each headed by a chief of bureau.[13]

The Directorate has a wide range of duties. It controls and supervises all military courts and drafts all decisions of the Armed Forces Minister relating to prosecutions. Military courts must make monthly returns of court decisions and general reports of their work to the Directorate which may request clarification on or an explanation of any point or matter in the reports and returns. Personnel of the Directorate may moreover inspect any military court. The Directorate goes through the copies of

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12. A decree to organise the Ministry of the Armed Forces.

13. The important Bureau of Prosecutions and Clemency (Bureau d'Action Publique et Grâce) is at present headed by a Captain who holds the licence en droit degree.

the various orders and judgments sent to it and may advise the Minister to order that an appeal be made against a particular judgment or to order a retrial by another court.

All reports (procès-verbaux) concerning offences over which military courts have jurisdiction as of right as well as all those concerning offences over which military courts may claim jurisdiction must be sent to the Directorate. After studying the reports a decision is drafted, for the Minister, on whether to prosecute or not to. In a difficult case the Directorate would forward the matter, together with its considered opinion on it, to the Minister who decides on what action should be taken. Decisions taken by the Minister in matters of military justice are communicated to the military command and to the interested Ministries by the Directorate. The Directorate also deals with all applications for clemency and bail and controls la police judiciaire (Sûreté Nationale, DIRDOC, Gendarmerie) when acting within the framework of military justice. It also prepares draft legislation concerning offences triable (and the penalties applicable) and procedure in military courts. It examines the legality of texts submitted for the Minister's approval. It participates, in liaison with the bodies concerned, in drafting decrees, orders, and ministerial decisions that may be the object of 'recours contentieux'.

The administrative role of the Directorate consists

in satisfying, within the budgetary limits, the needs of the various military courts, providing its personnel with the necessary professional training, awarding them marks, and participating in working sessions concerning the promotion of its personnel. The Directorate also acts as liaison between the Ministry of the Armed Forces and the different Ministires concerned with military justice, particularly the Ministry of Territorial Administration and the Ministry of Justice. For example, Provincial Governors and Divisional Officers have been delegated the power to initiate prosecution against civilians in military courts. All directives and comments from the Ministry of the Armed Forces to these administrative officers are forwarded by the Directorate not to them directly but through the Ministry of Territorial Administration. The Directorate also deals with this Ministry in matters relating to prisons administration. It supervises military prisons and its head may inspect any prison in the country.

The Directorate maintains a close relationship with the Ministry of Justice. It works together with that Ministry in resolving all matters concerning civilian judicial and legal officers on secondment to military courts. It sees to it that decisions of the Supreme Court are known to and followed by military courts. Appeals for clemency are forwarded by the Directorate to the Minister of Justice for onward transmission to the

President of the Republic. If the President refuses to exercise his prerogative of mercy the Directorate must, in the case of a death penalty, see to it that the sentence is carried out within 48 hours.

II. Jurisdiction of Military Courts

Since September 1972 the system by which military justice is administered in Cameroon has become a part of the country's judicial system and consequently subject to the same general principles concerning the administration of justice in the State. Hitherto, military courts had existed in a sort of constitutional vacuum. The jurisdiction of military courts is spelt out in the Military Judicial Organisation Ordinance (No. 72/5) of 26 August 1972. The Ordinance indicates the territorial jurisdiction of military courts, the persons justiciable before them, and the law applied there - what is known in the literature as the ratione loci, ratione personae, and ratione materiae jurisdiction respectively.

1. Jurisdiction ratione loci and ratione personae of military courts

Under the old law the powers of military courts were sometimes wide and sometimes limited, depending upon circumstances - whether it was a time of peace or of war or other exceptional circumstance. This is no longer

the case. The ratione loci and ratione personae jurisdiction of military courts is the same whether in times of peace or war. Besides, the Yaoundé Military Court may, whenever necessary, sit in any locality in the country and provisions exist for the setting up of subordinate military courts when and where needed.

A. Territorial jurisdiction of military courts

The Military Judicial Organisation Ordinance of 1972 established in Yaoundé a Military Court whose jurisdiction covers the entire national territory. This Court may, on the decision of the Head of State, or, by special delegation, of the Minister of the Armed Forces, sit in any other locality of the country. However, the Ordinance makes provision for the establishment, by decree, and as needed, of one or more subordinate military courts. Two of such courts (one in Buea and the other in Bafoussam) were set up just around the same time as the Yaoundé Court was. The Yaoundé Military Court however remains a 'centralizing' Court.[14]

The new Buea and Bafoussam Military Courts have retained the personnel and territorial jurisdiction of the old military tribunals they have replaced. The territorial

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14. Minister of the Armed Forces, Circular No. 2230/MINFA/600/359 of 30 November 1972.

jurisdiction of the Buea Military Court is limited to the North West and the South West Provinces while that of the Bafoussam Court is confined to the Western Province.[15] This in practice limits ipso facto the territorial jurisdiction of the Yaoundé Military Court for, it only deals with matters from the other Provinces, viz., the Centre South, Eastern, Littoral, and Northern. However, since its jurisdiction is national, the Yaoundé Military Court may sit in any part of the country or try an offence committed anywhere in the country.

A military court is composed of (i) a presiding judge who may be a civil or a military judicial officer or simply a military officer, (ii) two assessors (civil judicial officers or military officers) one of whom must be a member of the Armed Forces, (iii) a commissaire du gouvernement (with one or more deputies), a civil or military legal officer or an officer in the Armed Forces, in charge of conducting prosecutions, (iv) one or more judges in charge of conducting preliminary inquiries whenever necessary, and (v) one or more registrars, civilians or soldiers. Nothing is said as to whether the examining judges must be members of the Armed Forces only or whether they may be civilian judicial officers. In practice the

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15. The old tribunal militaire aux armées in Buea has been suppressed and matters pending before it were transferred to the Yaoundé Military Court.

juge d'instruction at the military courts is always a military officer. It is noteworthy that the presiding judge and one of the assessors may both be either civil judicial officers, military judicial officers, or simply military officers. It has been suggested that this is a flexible approach which allows for variation in the composition of the court as events and the importance of the case warrant.[16] However, because military tradition requires that a soldier be tried only by his peers, the Military Judicial Organisation Ordinance provides that one of the assessors must always be a member of the Armed Forces, that military judges must be of at least equal rank as the accused soldier, and that where the presiding judge is unavailable, he is replaced by a civil judicial officer or the most senior military officer of the court in the highest rank. So organised, a military court can properly sit in judgment over any senior military officer or any high personality in the country.[17] In times of war or other exceptional circumstances, the civilian members of the court are replaced with military officers.

B. Persons justiciable before military courts

The Military Judicial Organisation Ordinance specifically designates all those who may be indicted

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16. Circular No. 2230/MINFA/600/359.

17. Ibid.

before military courts. All persons of at least 18 years of age, whether male or female, civilian or military, alien or national, in peace times or at times of war or other exceptional circumstances, are justiciable before military courts. The test is whether the person has committed any of the offences over which military courts have subject-matter jurisdiction. For example, subversion, political offences, and offences against fire-arms legislation are tried by military courts. Any person above 18 years who commits any of those offences is tried before a military court and it makes no difference whether he is a civilian or an alien. Moreover, prisoners of war are also justiciable before military courts. Under the Geneva Prisoners of War Convention of 12 August 1949, prisoners of war must be tried by a military court, except where the law of the belligerent expressly allows a member of the belligerent's Armed Forces to be tried by the ordinary criminal courts for the same offences. Prisoners of war may not be sentenced to any penalties other than those which might be inflicted on members of the forces of the detaining power for the same act.

Only persons of less than 18 years of age may not be tried by a military court. If the person charged, whether as principal or accessory, is a child aged between 14 and 18, he must be tried by the ordinary criminal courts. The criminal responsibility of such persons is diminished.[18]

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18. S. 80(3) of the Cameroonian Penal Code.

It is a principle of the criminal law of Cameroon that no criminal responsibility arises from the act or omission of a person aged less than 10 years.[19] So a child of less than ten years of age cannot be tried for an offence. A child over 10 and under 14 may be tried; but he may neither be sentenced to a penalty nor to a preventive measure provided by the criminal law for adults. He may be the subject only of such measures as are specially provided by the laws on juvenile delinquency.

Subject to International Convention on privilege of jurisdiction and to the rules on diplomatic immunity, any foreigner charged with any of the offences triable by military courts, is justiciable before military courts. This has always been the rule. Thus in Ministère Public c. Gbodogbe Paulin & Essembe Prosper[20] the Douala Temporary Military Tribunal found the first defendant, a Dahomian,[21] together with the second defendant, guilty of conspiracy against the Government and sentenced both of them.

2. The content of the law applied in military courts

The term 'military court' is misleading and a misnomer in the Cameroonian context. Contrary to what may

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19. Ibid., s. 80(1).

20. Douala Temporary Military Tribunal, Judgment No. 25 of 24th May 1967, unreported.

21. The Republic of Dahomey is now known as the Republic of Benin.

at first have been thought, the Cameroonian military court does not try only soldiers and does not try only offences of a military nature. Rather, its jurisdiction extends to civilians and over non-military offences. So while it enjoys exclusive jurisdiction over military offences it shares with the ordinary criminal courts jurisdiction over soldiers, civilians and non-military offences. Section 5 of the Military Judicial Organisation Ordinance enumerates offences which may be tried by a military court. They are: (i) offences of a purely military nature provided for in the Code de Justice Militaire; (ii) offences of whatever nature committed by soldiers, with or without civilian co-offenders or accessories, either in barracks or on duty; (iii) felonies and misdemeanours against the security of the State; (iv) offences punishable by law with detention; (v) offences previewed in Ordinance No. 62/OF/18 of 12 March 1962 on the repression of subversion; (vi) offences against fire-arms legislation; (vii) offences of whatever nature, involving a soldier or likened person (assimilé), committed in an area subject to a state of emergency or other exceptional circumstance; and (vii) all other offences related to the ones hereabove enumerated. Some of these offences are found in the Cameroonian Penal Code, others in subsidiary penal legislation, and others still in the Code de Justice Militaire.

A. The Cameroonian Penal Code

The Cameroonian Penal Code constitutes the ordinary criminal law of the land and is applicable, except otherwise provided, in all its entirety to any member of the Cameroonian Armed Forces who offends against it. It makes no difference whether such a person is charged before a military court or an ordinary criminal court. The general position is that where a civilian or a soldier is tried for a crime other than a military offence, he is charged with the appropriate criminal law of the State.

A man who joins the army, whether as an officer or as ordinary soldier, does not cease to be a citizen. A Cameroonian, by taking upon himself the additional character of a soldier, does not put off any of the rights or duties of a Cameroonian. Military men do not cease to have rights as citizens and as human beings. All systems of military law the world over aim to ensure that the soldier is in no way enabled to escape the obligations of his country's ordinary law or of international law as recognized in various conventions. Thus, with a few exceptions, the soldier's position under the ordinary law of the land remains unaffected. If he commits an offence against the ordinary criminal law he can be tried and punished for it by the criminal courts.[22] In other words,

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22. In respect of civil rights, duties and liabilities the ordinary law in general also applies to him although a few privileges are granted to him and certain restrictions are imposed upon him for the purposes of enabling

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should a soldier commit an offence which is of a non-military nature, he may be tried by a civil court ('civil' used here in contradistinction to 'military'), since the soldier remains a citizen with all attendant rights and duties, although he has other special duties and is subject to criminal sanctions provided by military law.

In normal times and save as otherwise provided, military courts are, like the civil courts, governed by the general principles of the criminal law found in Book I of the Cameroonian Penal Code. Law No. 67/LF/1 of 12th June 1967 provides that Book I of the Penal Code "shall govern all other criminal law". So, ordinarily, military courts are bound by the principle of non-retrospection of laws and penalties as the civil courts are. A military court cannot impose any penalty or measure not provided for in the Code. For example, it would be illegal for a military court to sentence to deportation, flogging,

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Footnote 22 continued from page 1098.

him the better to fulfil his military duties. In democratic countries soldiers retain the right to vote, if necessary by postal ballot, and to support the political party of their choice. Fear of 'politicising' the army cannot be used as an excuse to deprive soldiers of their civil rights. However, political activity within the army service cannot be reconciled with the maintenance of discipline, while the circulation of propaganda or organisation on behalf of political parties whose tenets support a hostile power or are subversive to military discipline must clearly amount to a disciplinary offence as well as a threat to security.

imprisonment in stocks or in chains, banishment, etc. Military courts are also governed by the same sentencing principles governing the civil courts. The presumption of inncoence should, save as otherwise provided, apply also to persons charged before a military court. Such a person must be presumed innocent until proved guilty. The onus of proof must lie squarely on the Prosecution, which must prove its case beyond all reasonable doubt. Any doubt, even if it is only a shadow, must be resolved in favour of the defendant.

Not even a military court may convict a person who is not criminally responsible within the meaning of s. 74 of the Penal Code. It is a core principle of Cameroonian criminal law that criminal responsibility lies only on him who intentionally commits each of the ingredient acts or omissions of an offence with the intention of causing the result which completes it. The accused must not only have committed the physical act (actus reus); he must also have had the intention to do so (mens rea). Moreover, the accused may avail himself of any of the partial or complete defences provided in the Penal Code. Irresistible physical compulsion, insantiy, involuntary intoxication, threats, lawful defence, necessity, provocation and so on are as much defences in the military courts as in the civil ones. Of particular importance in the military context is the defence of obedience to lawful authority.[23] A member of the forces is bound to obey

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23. Cameroonian Penal Code, s. 83.

the orders of his superiors. But this only relates to lawful commands. The question then arises. When is a command lawful and when is it not? Generally a lawful command is one which is not contrary to the law of the State or international law and is justified by military law. If the command is manifestly illegal, the person to whom it was given would be justified in questioning and even refusing to execute it. Under s. 83(2) of the Penal Code the plea of obedience to lawful authority will fail if the order was 'manifestly unlawful'. This means that the plea will succeed even when the order was unlawful provided it was not manifestly so. But what is manifest to one person may not be to another. So, the court must always take into account the nature of the act and the personality of the accused.

The question of how far a soldier may avail himself of obedience to lawful authority as a defence to a charge of unlawful action is a topic that has been and continues to be of the greatest importance in relation to war crimes or crimes committed during a state of siege. The issue has also been raised in relation to soldiers off duty. Are orders from an officer to his subordinate lawful when they affect the subordinate's private life or when he is off duty, particularly as there is a tendency nowadays to allow the soldier off duty much greater freedom from discipline than in the past?[24] The prevailing attitude

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24. The German Military Code, for example, places greater stress on the soldier's retention of his fundamental rights under the Basic Law, and, generally, the soldier's rights as a citizen are preserved as far as is compatible with the maintenance of discipline and efficiency.

seems to be that the military commander must retain sufficient control over the private lives of his subordinates to ensure that discipline and good order do not suffer. Hence, any orders reasonably calculated to maintain this objective are regarded as lawful, even when they curtail the private actions of the soldier.[25] But the commander has no right whatsoever to take advantage of his military rank to give a command which does not relate to military duty or usage or which has for its sole object the attainment of some private end. For example, an order that a soldier should run his officer's private errands or take part in private theatricals may be legitimately disobeyed.

Book II of the Cameroonian Penal Code deals with particular crimes and is also applicable in the military courts when a soldier or a civilian appearing before it is charged with any offence provided in the code.

Section 5(2) of the Military Judicial Organisation Ordinance provides that military courts have jurisdiction to try '<u>offences of whatever nature</u>' committed by soldiers, with or without civilian co-offenders or accessories, either <u>in barracks or on duty</u>. The offence committed need not be a military offence. It may be any offence provided in

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25. Thus, whether in private or not, drug-taking, homosexuality, lesbianism, drunkenness and so on are not allowed in the Armed Forces as they impair efficiency and subvert discipline. The prohibition is absolute and it makes no difference that the civil legislation of the land is more tolerant and liberal on these matters.

the Penal Code - theft, murder, assault, rape, et cetera. In such a case, the soldier and the civilian co-offender or accessory are charged with the relevant provisions of the Penal Code but tried in the military court having territorial jurisdiction. On the other hand, if a soldier while off duty or while out of barracks commits an offence provided in the Penal Code, he is, as a general rule, triable in the ordinary criminal courts. The position is however otherwise in areas subject to a state of emergency or other exceptional circumstances. In these areas, military courts have exclusive jurisdiction over whatever offence by a soldier or likened person (to the exclusion of civilians), committed whether on or off duty or in barracks or out of barracks. If the offence committed is one previewed in the Penal Code, the military court would have to apply the Penal Code.

Military courts are given exclusive jurisdiction over offences punishable by law with detention and also over felonies and misdemeanours against the security of the State whether such offences are committed by soldiers or civilians. Offences punishable under Cameroonian law with detention are in fact political offences. By s. 26 of the Cameroonian Penal Code,

> "Detention shall mean loss of liberty imposed for a political felony or misdemeanour, during which the offender shall not be obliged to work, and shall be confined to a special establishment, or failing such establishment separately from those convicted under the ordinary law."

But what is a political offence? In Cameroon, it is defined by the punishment prescribed for it. Any offence for which the prescribed punishment is detention is political. Most of these political offences are found in the Penal Code and detention is often for an indeterminate period. The offences are those which are injurious to (i) the internal security of the State: secession (s. 111), revolution (s. 114), forming armed bands for the purposes of secession, civil war or revolution (s. 115), and insurrection (s. 116); or (ii) the Constitution: electoral malpractices (ss. 122 and 123), and violation of the principle of the separation of powers (ss. 124 - 127); or (iii) public authority: contempt of President and other dignitaries (s. 153), and resistance of a political nature to the lawful performance of duties (ss. 157 - 159); or (iv) public peace: any unlawful assembly or riot with a political flavour (ss. 231 - 234). Offences against the internal security of the State are political offences. But not all political offences are offences against the internal security of the State.

> "The explanation for the special rules for political offences is less in the nature of the acts in question than in the fact that those committing such acts are not anti-social but merely anti-government. They are not base criminals, enemies of society, but intelligent men, progressive men, who seek the happiness of their fellow citizens and are sometimes forced to use illegal and even violent methods to achieve political, economic or social reform. In this way, the behaviour of the political criminal is essentially different from the behaviour of the

> ordinary criminal. Hence the need for different punishments for such offences, punishments which do not carry the stigma of ordinary punishments, are not as severe and could easily be pardoned." 26

Offences against the external security of the State[27] are also found in the Penal Code and are triable only by military courts. It is the government's responsibility to ensure the internal and the external security of the State. Indeed, any Government, whatever it is, whatever its political form, however it came to power, must maintain order, ensure justice, the proper functioning of the public services, the survival of the nation, and protect its own authority and safety. However, the distinction between the internal security and the external security of the State would appear to correspond to the distinction between protecting a regime's authority and safety on the one hand, and ensuring the survival of the nation on the other hand. Whereas the external security of the State touches upon the very heart of the nation, its very existence, the same cannot be said of the internal security of the State; at least not always. "The internal security of the state appears ... to concern the interests of the regime, for those who act against internal security seek not only to

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26. Georges Levasseur, 'Justice and state security', J.I.C.J., vol. V, No. 2 (1964), pp. 234-246 at p. 239.

27. They include treason, espionage, sabotage of defence installations, failure to report any activity likely to injure the defence of the nation. See, ss. 102-108 of the Penal Code.

harrass the government but above all to get rid of it. Hence the idea that such offences are bound up with politics."[28]

Since any government must ensure the internal and external safety of the nation, it is to be expected that it deploys all lawful means against those whose activities could bring about the extinction of the nation, its annexation to a foreign country, its balkanisation, or its enslavement. Governments have always taken pains to kindle, nurture and promote patriotism and nationalism among their citizens as superlative virtues. To serve one's nation, to shed blood for it, is always projected as something noble and glorifying. On the other hand, betraying one's country is considered a very infamous act, a kind of parricide. Treason, like spying for an enemy, is severely punished; and to be branded a traitor is a terrible insult.

The matter is not so clear-cut in most acts against the internal security of the State. This is so because it is more often the safety and authority of a regime or an oligarchy which is at stake. And when the regime acts against insurgents, it appears to be doing so out of selfish interest, out of concern for self-preservation, out of concern to save its own skin. It has been said that regimes do not fall like ripe fruits. It is

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28. Lavasseur, op.cit., p. 238.

necessary to shake the branches, nay, the whole tree. A campaign of opinion will rarely be sufficient to topple a regime. So, in order to achieve their objectives, opponents of a regime do have recourse to illegal or violent means. If they fail, they pay the price for their illegal or violent activities no matter what praiseworthy motives they may have had. They may take comfort from the idea that no particular stigma attaches to a political offender. On the other hand, success would appear as a final vindication of the means employed.

> "If an act against the security of the State is successful and if it achieves its object, the overthrow of the regime, the person who has been successful (either by himself or with co-conspirators acting with him or after him) is assured not only of impunity but also of glory and perhaps of power. This is extremely tempting. No ordinary criminal can hope for such good fortune. The game is worth the candle, especially for those whose passions are deeply roused. The throne or the scaffold ... Political action in such a case is always collective and not individual and all is not lost if one person is caught and punished." 29

B. Subsidiary penal legislation

Not every penal provision is contained in the Penal Code. There are several particular enactments which contain penal provisions. These include the Labour Code,[30] the Law on the Use of Names and Pseudonyms,[31] the Law on the

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29. Ibid., p. 240.

30. Law No. 74/14 of 27 November 1974.

31. Law No. 68/LF/8 of 11 June 1968.

Profession of Pharmacist,[32] the Law on Civil Protection,[33] the Law on the National Civic Service for Participation in Development,[34] the Law on Cooperative Societies,[35] the Law on Sports and Socio-Educational Equipment,[36] the Law on the General Regime of Princes,[37] the Law on the National Forestry Regime,[38] the Law on the Exercise of Banking Activities,[39] the Law on Social Insurance,[40] the Law on Insurance Bodies,[41] the Law on Off-Licences Bars,[42] the Law on Compulsory Insurance,[43] and the Law on Automobile Guaranteed Fund.[44] There are in addition certain subsidiary legislations which are exclusively penal. These include the notorious Subversion Ordinance,[45] the Clandestine

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32. Law No. 69/LF/3 of 13 June 1969.

33. Law No. 73/12 of 7 December 1973.

34. Law No. 73/4 of 9 July 1973.

35. Law No. 73/15 of 7 December 1973.

36. Law No. 74/22 of 5 December 1974.

37. Ordinance No. 72/18 of 17 October 1972.

38. Ordinance No. 73/18 of 22 May 1973; Decree No. 74/357 of 17 April 1974.

39. Ordinance No. 73/27 of 30 August 1973.

40. Ordinance No. 73/17 of 22 May 1973; Decree No. 74/26 of 11 January 1974.

41. Ordinance No. 73/14 of Lo May 1973.

42. Decree No. 73/657 of 22 October 1973.

43. Decree No. 65/DF/565 of 29 December 1965; Law No. 65/LF/9 of 22 May 1965.

44. Decree No. 67/DF/495 of 17 November 1967.

45. Ordinance No. 62/OF/18 of 12 March 1962.

Emigration and Immigration Law,[46] and the Fire-Arms and Ammunitions Law.[47]

Military courts may, in certain situations, try offences committed under any of these enactments irrespective of whether the offender is a soldier or a civilian. The first of such situations is that envisaged by s. 5(2) of the Military Judicial Organisation Ordinance. Under that subsection, military courts have jurisdiction to try "offences of whatever nature committed by soldiers, with or without civilian co-offenders or accessories, either in barracks or on duty". But these courts cannot exercise jurisdiction where the offence was committed out of barracks and while the soldier was off duty. An offence committed under those circumstances would be tried in the ordinary criminal courts. The position is not altered by the fact that the offender is a soldier.

The second situation in which military courts can exercise jurisdiction in this area is that postulated by s. 5(7). Under that subsection military courts are empowered to try "offences of whatever nature involving a soldier or likened person (assimilé), committed in an area subject to a state of emergency or other exceptional circumstance". This means that during war, a state

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46. Law No. 72/21 of 5 December 1974.

47. Decree No. 73/658 of 22 October 1973.

of siege,[48] or a state of emergency declared over the whole country or only over parts thereof,[49] military courts assume jurisdiction over offences of any type committed by soldiers and persons treated as soldiers. So a soldier who, for example, steals,[50] or rapes,[51] or murders, or commits an assault in an area subject to a state of emergency is triable only in a military court. The position is the same whether the soldier committed the offence out of or in barracks, or while on or off duty. A conflict situation however arises where the offence

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48. Art. 11(2) of the Cameroonian Constitution recognises the right of the President to decree 'a state of siege' in the event of 'grave peril threatening the nation's territorial integrity or its existence, independence or institutions'. When this happens the ordinary law is suspended; martial law is proclaimed. In such a case, the civil courts cannot afterwards, at the suit of an aggrieved party, enter upon an inquiry as to whether the circumstances were in fact such as to justify the issue of the proclamation and the acts done in obedience to it.

49. Art. 11(1) of the Constitution empowers the President to decree 'a state of emergency' where 'circumstances require'. In fact there are many areas in Cameroon which are still under a state of emergency: Mezam, Momo, Manyu, Meme, Ndian, Fako, Menoua, Mifi, Bamboutos, Haut Nkam, Nde, Nkam, Wouri, Moungo, and the Sanaga-Maritime Divisions including the District of Ndikinimeki. See, Ordinance No. 72/13 of 26.08.1972 (State of Emergency); Decree No. 72/550 of 14.10.1972 (Extension of state of emergency to a part of the Republic).

50. Ministère Public c. Namba Joseph, Jugement No. 3/67 du 6 mars 1967 (Trib. Mil. Temp. de Douala).

51. Ministère Public c. Babouka Ernest, Jugement No. 11/67 du 17 mai 1967 (Trib. Mil. Temp. de Douala).

committed in the emergency area was perpetrated with the aid of civilian accomplices. If the offence was committed with civilian accomplices while the soldier was on duty or in barracks it would appear, on the strength of s. 5(2), that the jurisdiction of military courts would extend to the civilian accomplices. But what happens where the accused soldier committed the offence with the help of civilian accomplices while he was off duty and out of barracks? Would the military courts assume jurisdiction over both the soldier and the civilian accomplices? The law is silent on this point. But it is generally assumed that in such a case the civilian co-offenders and accomplices would be tried in the ordinary criminal courts while the soldier would be tried by a military court.

C. Offences under the Subversion Ordinance

Section 5(5) of the Military Judicial Organisation Ordinance confers upon military courts the exclusive power to try offences provided in the Subversion Ordinance[52] committed by civilians or soldiers. This notorious statute is generally regarded as the most obnoxious piece of penal legislation in Cameroon. This is not because the Ordinance prescribes high penalties for the offences it created. In fact the penalties in the

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52. Ordinance No. 62/OF/18 of 12 March 1962 (Repression of Subversive Activities) as amended by Law No. 63/LF/30 of 25 October 1963.

Ordinance are milder (the highest prescribed penalty is 5 years' imprisonment plus 2,000,000 francs cfa) than the penalties for comparable provisions in the Penal Code. What has always caused concern about the Ordinance is the nebulous and open-ended manner in which the offences therein contained are couched. Cameroonians often say sarcastically that anything a person does is tantamount to subversion. This is merely a grim and cryptic way of saying that the Subversion Ordinance may be used and is used to strike at anyone who does or says anything deemed to be injurious to the authority and safety of the regime - from petty gossip in the home to overt anti-Government activities. It is primarily on this account that the Subversion Ordinance has been seriously indicted as unjustifiable, aimed at completely shielding public authority from criticism, and contrary to democratic principles in that it constitutues an infringement on the freedom of expression.[53]

But while these criticisms are compelling and justified, the error and attitude should be corrected which

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53. See for example the Cameroon Penal Law Commission, Procès-verbaux de la quatrième session de la commission fédérale de législation pénale ouverte le 13 dec. 1965, p. 96, Ministry of Justice Yaounde; International Commission of Jurists, 'Emergency laws in the Federal Republic of Cameroon', 20 Bulletin of the International Commission of Jurists, September 1964, p. 7; H.N.A. Enonchong, Cameroon constitutional law, Yaounde, 1967, p. 146; P.Y. Ntamark, Constitutional development of the Cameroons since 1914, Ph.D. Thesis, London, 1969, p. 359; J.N. Monie, The development of the laws and constitutions of Cameroon, Ph.D. Thesis, London, 1970, p. 207.

supposes that omnibus penal provisions such as those contained in the Subversion Ordinance are the sole prerogative of Cameroon. All over the world, governments have always found it necessary to have at least one criminal offence couched in blanket terms; a catch-all offence to enable the prosecution of offenders who may escape if prosecuted under other offences. Breach of peace, sedition and conspiracy in Anglo-American criminal law are classic examples of amorphous offences.

> "The essence of the crime of conspiracy is an agreement between two or more persons to commit an unlawful act. The crime is the agreement and its execution or non-execution is irrelevant. Moreover the agreement may be inferred: 'A nod or a wink may amount to conspiracy'. But also it is not necessary that the conspirators should either have met or known each other so long as there was evidence that they were acting in concert. ... A single person may be charged with conspiracy 'with persons unknown'.
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> "Moreover the unlawfulness of the act which the conspirators agree to commit is not limited to criminal acts. ... [A] person may be convicted of conspiracy to commit an act for which he would not be prosecuted if he acted alone. The charge of conspiracy may be used to avoid the necessity of some procedural requirement which attaches to the substantive act. ... As has been said, 'a conspiracy count puts the whole life-style of the accused on trial' ... Finally, and more importantly, the penalties for conspiracy are in effect unlimited." 54

The Subversion Ordinance does not define 'subversion'. Consequently, the term must be given its ordinary meaning. To subvert means to overthrow, to overturn, to

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54. J.A.G. Griffith, The politics of the judiciary, Fontana, Glasgow, 1977, pp. 135-136.

pervert, to ruin. A subversive activity is therefore one tending to ruin or overthrow. In the case of subversive activities against the Government it means activities tending to ruin or overthrow constituted authority. The Subversion Ordinance deals with five distinct activities characterised as 'subversive'.

1) Resistance to the application of laws

"Any person who in any manner whatsoever incites any other person to resist in any manner whatsoever the application of laws, decrees, regulations or orders of any public administrative authority shall be guilty ..."[55] The maximum prescribed penalty is three years' imprisonment plus a fine of 1,000,000 francs cfa. This offence, it is submitted, punishes the inciter and not the incited. If A incites B to resist the application of any law or order, then, under this provision it is A and not B who is prosecuted. The offence is committed as soon as there has been an incitement. The fact that the person incited did not do what he was being incited or instigated to do is irrelevant. But the incitement must be an incitement to resist the application of laws, decrees, regulations or orders of a public administrative authority. If the incitement was for any other purpose, the inciter cannot be properly prosecuted under this provision. Furthermore, if the person incited does in fact resist the

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55. Subversion Ordinance, s. 1; cf. Penal Code, s. 157.

application of laws, etc., then it may well be that he can be prosecuted under s. 157 of the Penal Code.

Provided the inciter is over 18 years of age, his status is irrelevant. He may be male or female, a Cameroonian or an alien, a civilian or a soldier. Moreover, the means of incitement is also immaterial. Incitement is incitement whether done artfully, by suggestion, verbally, in writing, by broadcast or whatever means.

2) Ridiculing public authority

"Any person who acts in any manner likely to bring into contempt or ridicule any public authority ... shall be guilty."[56] This offence is more serious than the previous one. It carries a maximum sentence of 5 years' imprisonment plus a fin of 2 000,000 francs cfa. As in the previous offence, this offence may also be committed by any person and in any manner whatsoever. The act must however be one 'likely to bring into contempt or ridicule any public authority'. The act need not be one which has in fact brought the public authority into contempt or ridicule. It is sufficient that the act complained of was likely to do so.

Contempt means "any defamation, abuse or threat conveyed by gesture, word or cry uttered in any place open to the public, or by any procedure intended to reach the

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56. Ibid., s. 2; cf. Penal Code, ss. 153 and 154: contempt of President, dignitaries and public bodies.

public".[57] The decisive test is the publicness of the act. So any abuse or threat which is not public cannot legally amount to contempt. In Procureur Général de la Cour d'Appel de Yaoundé c. Owona Robert[58] the respondent wrote a letter to the senior administrative authority of his area complaining of his ill-treatment by the local assistant district officer. The letter was sent under confidential cover through the usual administrative channel. The letter came to the notice of the assistant district officer who considered its contents to be offensive and injurious to him. He denounced the defendant who was then arrested and charged before the Yaounde Permanent Military Tribunalwith having acted in a manner likely to bring into contempt or ridicule public authority. The Military Tribunal convicted and sentenced him. His appeal to the Court of Appeal was upheld. On further appeal by the Prosecution to the then East Cameroun Supreme Court, held, (1) that the alleged abuse was never public since the letter in question had been sent under confidential cover, and (2) that it had not been shown that in writing the letter the appellant had the intention to injure public authority. "The scope of the Ordinance of 12 March 1962," the Court said, "cannot be extended to acts foreign to the subversive activities which the enactment aims at

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57. Penal Code, s. 152.

58. C.S.C.O., Arrêt No. 36 du 15 dec. 1964, Bulletin No. 11, 1964, p. 904.

suppressing."[59]

3) Inciting hatred against the Government

"Any person ... who incites hatred against the Government ... shall be punished."[60] The penalty for this offence is the same as for the offence of ridiculing public authority. The offence punishes anyone who tries to rouse anti-Government feeling among the people; anyone who whips up a wish for the overthrow or destruction of the Government. The offence is consummated as soon as the incitement is made. It is of little consequence that there was no response to the incitement. Furthermore, the offence may be committed by any person and the method by which the incitement may be effected is irrelevant. It may be by word of mouth or in writing, through the spoken or written press, or by acting in a particular manner. Indeed, mere criticism may suffice, particularly if such criticism tends to show the Government as bad, callous, ineffective, inept, or condoning or even promoting corruption.[61]

4) Taking part in a subversive enterprise

"Any person ... who takes part in any subversive enterprise against the authorities of the Republic ... or

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59. It is probably significant that this enlightened decision was given by a court composed of expatriate judicial officers: Messrs Corre, Mollion, Parant.

60. Subversion Ordinance, s. 2.

61. Cf. the Victor Kanga Affair, supra, Chapter Nine.

who aids and abets any such enterprise shall be guilty."[62] The penalty is the same as that for the previous offence. This provision was often invoked to deal with any person participating in the U.P.C. insurrection or in support of it[63] as well as against those who offered any form of help or assistance (supply of food, water, money, foodstuff, clothing, shelter, information, etc.) to U.P.C. guerillas as in the case of Ministère Public c. Foé Gorgon & Akoudou Augustin.[64] If the defendant failed to inform the authorities of the presence of the insurgents, he was guilty of partaking in a subversive enterprise even if he gave them assistance under duress: Ministère Public c. Betteng Josué.[65]

Refusing to go to the polls, especially where the refusal is collective, may amount to subversion. In Ministère Public c. Mengué Damaris Règine & 44 Autres[66]

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62. Subversion Ordinance, s. 2.

63. Tribunal Militaire Temporaire de Douala, Ministère Public c. Kameni Adolphe, Jugement No. 4/67 du 6 mars 1967; Ministère Public c. Ngolé Martin, Jugement No. 5/67 du 6 mars 1967; Ministère Public c. Tchaté Martin, Jugement No. 2/67 du 6 mars 1967; Ministère Public c. Kamnekeu Maurice (alias voie sure) & Ngueussi Lucas (alias sans culotte), Jugement No. 1/67 du 13 janv. 1967; Tribunal Permanent Militaire de Yaounde, January 1971: Affaire Mgr Ndogmo et Autres, Affaire Ernest Ouandie et Autres.

64. Tribunal Militaire Temporaire de Douala, Jugement No. 1/60 du 3 dec. 1960.

65. Tribunal Militaire Temporaire de Douala, Jugement No. 20/67 du 22 mai 1967.

66. Tribunal Militaire Permanent de Yaounde, Jugement No. 71 du 15 mars 1971.

the defendants, most of them illiterates, were adherants of the Jehovah's Witnesses religious sect. They refused to vote during the 1971 presidential elections on the ground that their religion does not permit them to participate in politics. They were arrested and charged before the Yaounde Permanent Military Tribunal with "engaging in acts and manoeuvres likely to compromise public security, infringe the laws of the land or injure authority and national unity". All but two of them were convicted and sentenced to various terms of imprisonment.

5) Dissemination of false news

"Any person who publishes or reproduces any false statement, rumour or report or any tendentious comment or any statement or report which is likely to bring into hatred, contempt or ridicule any public authority shall be guility ..." and shall be liable to a fine of from 200,000 to 2,000,000 francs cfa or to imprisonment for a period from one to five years or to both such fine and imprisonment.[67]

This is probably the most noxious of the subversion offences as it makes a very serious inroad into freedom of expression and the press. The provision punishes not only the publication and reproduction of any false statement, report or rumour[68] but also the publication and reproduction

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67. Subversion Ordinance, s. 3; cf. Penal Code, s. 240: false news.

68. Cf. the Tombel Massacre Case. The Bamiléké had settled among the Bakossi, buying land and also beginning to control the commerce of the area. The Bakossi resented this invasion. Tension began to mount between the two communities. Shortly before Christmas 1967, four Bakossi

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of statements and reports which, although true, are accompanied by tendentious comments.[69] Such comments need not be direct. They may be indirect, by insinuation or innuendo. In The People v. Martin Yai, J.F. Gwellem and S.N. Tita,[70] the defendants, respectively reporter, editor and publisher of the Cameroon Times, had published in December 1969 an article captioned 'Tataw Installed Sector Commander'. The article reported that the Armed Forces Minister had 'pointed an accusing finger' at members of the

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Footnote 68 continued from page 1119.

were shot dead by terrorists. Terrorists or no terrorists, the Bakossi put the blame for the killing squarely on the Bamileke. So, attributing the death of their four fellow tribesmen to the Bamileke, the Bakossi came out in number, burning and killing Bamileke. Troops were rushed into the troubled area and by the time order was restored 236 people had died.

A total of 143 Bakossi were arrested and charged before the Yaounde Permanent Military Tribunal with subversion and the dissemination of false news. Seventeen were sentenced to death by firing squad, 37 to life detention, 38 to life imprisonment, 10 to 10 years' imprisonment each, 4 to two years' detention, one man died during the trial, and 36 were discharged and acquitted. See, West Africa, May 20th 1967, p. 672; Victor Le Vine, The Cameroon Federal Republic, Cornell University Press, Ithaca & London, 1971, p. 156.

69. Cf. the Victor Kanga Affair.

70. 'Fate of Times men at tribunal - reporter jailed, editor, publisher fined', Cameroon Outlook, vol. 2, No. 11, Wednesday February 11, 1970, p. 1.

Armed Forces. Defendants were arrested, detained and later arraigned in the Buea Permanent Military Tribunal for publishing a false report of the speech of the Minister of Armed Forces. The prosecution contended that the publication was likely to bring members of the Armed Forces to contempt and hatred with the civilian population. The defendants were convicted. The same allegation of publishing false information was made against the defendants in The People v. Martin Che, Peter Etah Oben and S.N. Tita.[71] The Cameroon Times had on August 29th 1970 carried a lead story captioned 'Bishop Ndongmo arrested for alleged subversion'. The article went on to say that the rebel leader Ernest Ouandie 'gave in'. The prosecution argued that the phrase 'give in' means 'surrender' and that as a matter of fact Ernest Ouandie did not give in but was 'captured'. The report that Ouandie gave in, the prosecution argued, tended to undermine and to ridicule the Government. The defendants were convicted.

D. Offences against fire-arms legislation

Military courts also exercise exclusive jurisdiction over all offences against fire-arms legislation whether committed by soldiers or civilians, and whether committed during peace or war times or other exceptional

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71. 'Trial begins at Military Tribunal on 3 Times men', Cameroon Outlook, vol. 2, No. 80, Wedenesday October 21, 1970, p. 1.

circumstances.[72] Offences against fire-arms legislation are contained in sections 229, 237 and 238 of the Penal Code and in Decree No. 73/658 of 22 October 1973 regulating the importation, sale, transfer, possession and carriage of arms and ammunition. Under this decree it is an offence for anyone to import, sell, transfer, possess or carry any arms or ammunition without the requisite administrative authorisation to do so. Authorisation may be granted by either the local Prefect or the National Security.

1) Illegal possession and carriage of arms

By s. 237(1) of the Penal Code, "whoever without such permission as may be required by law manufactures, exports, imports, keeps, transfers or sells any firearm or ammunition shall be punished with imprisonment for from three months to one year or with fine of from 50,000 to 300,000 francs, or with both such imprisonment and fine."

Here, the actus reus suffices for the offence to be consummated and the only question before the court is whether or not the requisite administrative authorisation had been obtained. In Ministère Public c. Mbei II Paul[73] the defendant who had been given a hunting rifle kept it

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72. Under the old law military courts tried offences against firearm legislation only when such offences were committed in an area subject to a state of emergency. In non-emergency areas, the ordinary criminal courts assumed jurisdiction.

73. Tribunal Militaire Temporaire de Douala, Jugement No. 7/67 du 16 mai 1967.

for one month without the authorisation of the administration. Held, that he was guilty of being illegally in possession of a firearm.

Thus, if A gives his gun to B who keeps it without having obtained the administrative authorisation to keep it, he is guilty of being illegally in possession of a firearm. If A had given the gun without having obtained the authorisation to do so, he is guilty of having illegally transferred a firearm. So, in Ministère Public c. Bineng Jean Francois,[74] the defendant was properly convicted where he had transferred his hunting rifle to someone else without the requisite prior administrative authorisation. The law is the same where, as in Ministère Public c. Kon Samuel[75] the defendant was engaged in the traffic of gun powder.

A soldier on duty may carry a firearm and ammunition; but only such arm and quantity of ammunition as has been normally supplied to him for purposes of his duty. So a soldier may be prosecuted of illegally possessing a firearm where he is authorised to carry a pistol and is found with a rifle. The same would apply where he is in possession of a far greater quantity of ammunition than he is normally supplied with. Furthermore, the fact that

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74. Tribunal Militaire Temporaire de Douala, Jugement No. 26/67 du 24 mai 1967.

75. Tribunal Militaire Temporaire de Douala, Jugement No. 8/67 du 16 mai 1967.

a person is a soldier does not entitle him to possess any type of firearm not supplied to him for the purposes of his duty, without the requisite prior administrative authorisation.

A person who is illegally in possession of a firearm commits a further offence (carrying a double penalty) under s. 237(2) of the Penal Code where he carries such arm outside his residence. It is irrelevant whether the arm thus carried was exposed or concealed. Furthermore, if a person delivers any arm or ammunition to any person without ascertaining whether that person is licensed to keep it he is guilty of an offence under s. 237(3) of the Penal Code and punished as an accessory. The type of arm or ammunition involved is irrelevant. It may be one for killing men or one for killing animals; a civilian firearm or a military firearm; a compressed air weapon or a compressed gas weapon.

It may be noted that the terms 'firearm' and 'weapon' are not co-terminous. A firearm is a weapon but a weapon is not necessarily a firearm. A firearm is a weapon discharged by explosion whereas a weapon is any instrument (a gun, a knife, an arrow, a piece of wood, a stick, a stone, a blade, a grenade, a bomb, etc.) of offence or defence. Section 117 of the Penal Code defines a weapon for the purposes of s. 116 (insurrection) and s. 238 (dangerous carriage of arms) as including both an arm properly so-called and any other article carried with intent thereby to inflict bodily harm or material damage.

2) Dangerous carriage of arms

"Whoever whether licensed or not to bear arms shall bear any weapon within the meaning of section 117 of this Code in a place open to the public in manner liable to disturb the public peace or to alarm any person, shall be punished with imprisonment for from three months to two years or with fine of from 50,000 to 300,000 francs, or with both such imprisonment and fine."[76]

If the weapon was carried in a place open to the public in a manner liable to disturb the public peace or to alarm anyone, it is irrelevant whether the person carrying the weapon was licensed or unlicensed to do so, or whether the weapon was a firearm or not. The essence of the offence is (i) that the weapon is borne in a public place, and (ii) that it is borne in a manner liable to disturb public peace or alarm any person. Places open to the public include bars, sports grounds, markets, halls, cinemas, theatres, the public highway, nightclubs, etc. Any weapon held or used in a threatening manner in public (for example a person in a crowd fires a gun in the air or holds it pointing to the crowd, a person holds an explosive substance menacingly in a crowded cinema) is liable to alarm people and lead to a disturbance of the peace.

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76. Penal Code, s. 238.

3) Explosive substances

Explosive substances also come under firearm offences. Section 229 of the Penal Code punishes with up to one year's imprisonment plus a fine of 100,000 francs any person who "infringes any regulation governing the manufacture, storage, transport, import or export of, or trade in explosive substances". This provision deals with those who illegally deal in explosives (for example, manufacturing or being in possession of gunpowder without authorisation) as well as with those who, though authorised to deal in explosives, contravene any regulation governing the manufacture, sale, storage, transport, import or export of that substance. For example, an authorised manufacturer of explosive substances who fails to store or transport them in accordance with the safety rules required by the regulations in force may be prosecuted under this section.

E. Military offences in the Code de Justice Militaire

Military courts have exclusive jurisdiction over military offences. The ordinary criminal courts have no power to try military offences. Section 5(1) of the Military Judicial Organisation Ordinance directs military courts to try any military offence provided in the Code de Justice Militaire. This is in fact the French code of 1928. It was promulgated in the then French Cameroun in 1940 and savedon the eve of independence by the Ordinance

of 11th November 1959 which created the Cameroonian Army. Article 20 of that Ordinance provided that in the absence of new Cameroonian enactments the rules and regulations in force in the French Army shall apply to the Cameroonian Army. However, only articles 193 to 284 ('code de justice pour l'armee de terre') of the Code are in force in Cameroon. The offences in the Code are of a purely military nature in the sense that they are incident only to military service and may, in principle, be committed only by members of the army.[77] They have no counterpart in civilian jurisprudence and are usually styled 'military offences'. Such offences include: mutiny, insubordination, desertion, unauthorised absence from duty, failure to obey orders or regulations, disobedience to lawful commands or instructions, self-mutilation, sleeping or leaving a place of duty when on guard duty, striking a sentry or compelling him to let a person pass, violence on a sick or wounded soldier, neglect of duty, misbehaviour before the enemy, assisting the enemy, disorders and neglects to the prejudice of good order and discipline, malingering, drunknness, offences against morale such as spreading reports relating to operations likely to create

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77. In some countries, such as in Austria, the law recognises no military offences by civilians. But in Cameroon, a civilian may, on the strength of the Military Judicial Organisation Ordinance, s. 5(2), commit a military offence either as a co-offender or as an accessory. For example, a civilian may be an accessory to a soldier's desertion (art. 194 of the C.J.M.). In practice however, a civilian may commit a military offence only as a secondary party, never as a principal.

despondency or unnecessary alarm. Given the scope of this treatise only four of these offences (desertion, violation of instructions, disobedience to orders and commands) would be discussed.

1) Desertion

It is a military offence under art. 194 of the Code de Justice Militaire for a soldier to desert. The punishment for the offence is imprisonment which, depending on the rank of the soldier, may be for as long as 20 years where the desertion was accompanied by any of these aggravating circumstances: the deserter went away with his gun, uniform or other military equipment; the deserter deserted with the help of a motor vehicle, a canoe or raft, a balloon, or an animal; the desertion took place in a theatre of war or in the presence of the enemy; the desertion was in furtherance of a conspiracy to do so.

A person deserts who leaves or fails to attend to his unit or corps or place of duty; or who absents himself without leave or authorisation. Hence, a soldier who decides to take an extended French leave for over one week is in desertion. A soldier may be a deserter even though his absence was in the first instance legal. Thus if a soldier on normal leave overstays his holiday for as long as two weeks he is in desertion. Furthermore, a soldier who goes absent without permission and then decides to desert turns his absence into desertion and becomes a deserter as from the commencement of his absence. There

would be a 'désertion à l'étranger' (art. 195 of the C.J.M.) where a soldier leaves Cameroonian territory without authorisation. Again, a soldier who while abroad abandons his unit is in desertion. Also, if a soldier was granted permission to go to country A and he goes to country B instead, he is in desertion.

2) Violation of instructions and disobedience to orders

It is a military offence for a soldier or any person treated as such to violate instructions or to disobey lawful orders and commands given by superior officers.[78] An order or command may be negative or positive. The offence would be committed whether the disobedience was wilful or through neglect. It is irrelevant whether the command or order was communicated directly or indirectly, in writing or by word of mouth,[79] or whether it was directed to an individual soldier, a group of soldiers or to the entire unit or corps.

The Code de Justice Militaire however distinguishes between 'la violation de consigne'[80] and 'le refus d'obéissance'.[81] Article 230 of the Code punishes "any soldier who violates a general instruction given to the troops or an instruction he has been personally ordered to

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78. C.J.M., Articles 205 and 230.

79. Quare, whether it may be by gesture.

80. C.J.M., Art. 230.

81. Ibid., Art. 205.

see carried out ..." A soldier may be prosecuted under this article only where he has violated either (i) a general instruction given to the troops, or (ii) an instruction he has been personally ordered to see carried out. If a soldier violates an instruction given to him personally to carry out the proper charge would be disobedience to lawful orders under art. 205. A charge under art. 230 would fail. This would be the more so where the instruction was nothing more than a piece of advice given to the soldier on account of his inebriety. The appellant in Bessaye dit Mbaho Joseph c. Commissaire du Gouvernement[82] was a soldier with the rank of 'maréchal des logis-chef'. He was a habitual drunkard. On 28th May 1963 he was so drunk that the Captain of his unit instructed him to remain indoors and not to venture out. He ignored the instruction. He was arrested and charged before the Yaoundé Permanent Military Tribunal with having offended against art. 230 of the Code de Justice Militaire. He was convicted and sentenced to four months' imprisonment 'for having violated an instruction he personally had to execute'. On appeal to the then East Cameroun Supreme Court, held, that the appeal must succeed for the following reasons: (i) art. 230 does not contemplate the situation where a soldier violates an instruction given to him personally to carry out; and (ii) the offence is not committed

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82. CSCO, Arrêt No. 8 du 8 Novembre 1963, unreported.

where the instruction was given as nothing more than a piece of advice.

A soldier may be properly charged under art. 230 with violating a general instruction only if that instruction was in fact a general instruction addressed to the troops as a whole. If the instruction was only addressed to a particular soldier and he violates it, a charge under art. 230 would fail: Tabi Noah Francois c. Commissaire du Gouvernement.[83] The facts of that case are as follows. A person by name Tchongna, allegedly a 'maquisard' (terrorist) had been caught by the Gendarmerie Brigade at Foumbot and locked up in a cell in the gendarmerie camp. The unit commander issued an instruction to the effect that under no circumstances was the 'maquisard' to be let out of his cell. On 1st November 1961, the appellant, for some apparently vague reasons, let out the detainee who escaped. The appellant was convicted under art. 230 by the Yaounde Permanent Military Tribunal. On appeal to the then East Cameroun Supreme Court, held, reversing the decision of the Military Tribunal, that "an instruction consisting in a prohibition against the removal of a 'maquisard' from his cell cannot be considered a general instruction given to the troops".

However, standing military instructions such as those relating to safety precautions in handling and manipulating firearms are general instructions to troops as a

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83. CSCO, Arrêt No. 33 du 31 decembre 1963, unreported.

whole and must be followed by soldiers including a civilian undergoing military training (prémilitaire). D.. Jean, F.. Bernard and N.. Jean Jacques c. Ministère Public[84] is a sad case in which a prémilitaire was accidentally killed while undergoing military training. These are the facts of that case. The first appellant who had been on shooting practice handed in his gun on return to the barracks without having first verified whether there was still any bullet left in it. According to standing safety instructions he should have done so. The following day guns were issued by the second appellant for use in march past exercises. Among these guns was the loaded one and the person who got it was the third appellant. Unfortunately, neither the second nor the third appellants had also bothered to verify, at the time of issue, whether the gun was loaded or not. They should have done so. While the third appellant was handling the gun, his finger accidentally pressed on the trigger. The bullet that had all along been in the gun went off and killed T.. Mathieu who was also a prémilitaire. The appellants were arrested and charged before the Yaoundé Permanent Military Court with homicide and failing to follow military instructions. They were convicted. Their conviction was upheld by the Supreme Court of Cameroon.

3) Disobedience to lawful orders or commands

Article 205 of the C.J.M. punishes any disobedience

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84. CSC, Arrêt No. 129/P du 15 mars 1973, 8 R.C.D. 164 (1975).

to lawful orders whether such disobedience is as a result of a simple refusal to obey or by just failing to carry out the orders. The disobedience must however relate to the time when the order is to be disobeyed. If the order demands prompt and immediate compliance the accused will have disobeyed if he does not comply at once. If it is to be complied with at some future time then no disobedience lies until the soldier has failed to obey at that future time. Furthermore if the soldier fails to carry out the order as a result of act of God, he cannot be properly convicted of disobedience to lawful orders. If the soldier refuses to obey but subsequently repents and carries out the order, he may not be charged with disobedience to lawful orders. But he may be prosecuted for insubordination.

It is insubordinate behaviour for a soldier to use threatening or insubordinate language to his superior officer or to strike or otherwise use violence to, or offer violence to his superior officer as in Ministère Public c. Beti Luc[85] where a Private assaulted a Captain.

4) Misapplication of public or service property

It is an offence punishable under s. 218 of the C.J.M. for a soldier to misapply or wastefully expend any public or service property. This offence covers the case where the soldier has misused public property while not

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85. Tribunal Militaire Temporaire de Douala, Jugement No. 3/60 du 3 dec. 1960.

necessarily acting dishonestly. It is furthermore an offence for a soldier to make away by whatever means or to lose, or by negligence to damage or allow to be damaged, any clothing, arms, ammunition or other equipment issued to him for his use for military purposes.

F. The problem of double jeopardy

There are no rules in the Military Judicial Organisation Ordinance to prevent the double jeopardy of an offender being punished for the same act both by the ordinary criminal court and the military court. Generally, however, when the accused has already been tried by the ordinary criminal court he may not subsequently be tried by the military court and vice versa.

A problem however arises where a person has committed a number of offences some of which fall within the jurisdiction of military courts and others within the jurisdiction of the ordinary criminal courts. Supposing a person illegally in possession of a firearm were to use it in committing a robbery. Being illegally in possession of a firearm is an offence over which military courts enjoy exclusive jurisdiction. The criminal courts ordinarily have jurisdiction over the offence of robbery. There are two possible solutions to the problem: either allow one of the two courts to try both offences or disjoin the offences and have one tried by the ordinary

criminal court and the other by the military court.

In reality however, jurisdiction over both offences will be exercised by the military court. The general rule appears to be that if several offences include an offence over which military courts have jurisdiction, then all those offences are triable in the military court.[86] Thus a person undergoing military training who fails to follow military instructions with regards to safety precautions in manipulating a gun and as a result unintentionally kills someone, can properly be tried by the military court for both offences: D.. Jean & 2 Others c. Ministère Public. In the sensational case of Ministère Public c. Ernest Ouandié & 28 Others[87] which is often referred to as the 'Procès de la rebellion contre le Gouvernement', the defendants were charged with "attempted revolution, organisation of armed bands, murders and wilful destructions, rapes, arrests, sequestrations, gang robbery, and accessory to these crimes". They were tried for all these offences by the Yaoundé Permanent Military Tribunal. All but two of the defendants were found guilty as charged and sentenced to various terms of imprisonment. The ringleader, Ernest Ouandié, was sentenced to death with his immediate lieutenants and executed by firing squad in a public place in Bafoussam on January 15, 1971.

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86. Military Judicial Organisation Ordinance, s. 5(8).

87. Chronologie politique africaine, Paris, 11 année, Nos. 4, 5 et 6, Juillet - Dec. 1970.

III. Procedure in Military Courts

The general public's idea of a military court is that of a court which applies a swift, rough and summary procedure. This is not necessarily the case; at least not in normal circumstances. Contrary to popular belief, military courts ordinarily follow a more formal judicial procedure with all the accompanying guarantees and safeguards for the rights of the defence than that observed in summary proceedings. In fact s. 8(1) of the Military Judicial Organisation Ordinance specifically prohibits the application of 'la procédure de flagrant délit' (summary trial) in military courts. Indeed, subject to contrary provisions contained in that Ordinance, the procedure applicable in military courts is the same as that applied in the ordinary criminal courts. This is true of pre-trial as well as of trial procedures. As there are two systems of criminal procedure in Cameroon (one based on the common law and the other on the civil law), this in effect means that military courts apply two systems of procedure. In reality what happens is that the Yaoundé and Bafoussam military courts, located in the Francophone side of the country, apply the provisions of the Code d'Instruction Criminelle while the Buea military court, located in the Anglophone part, applies the criminal procedure followed in the Magistrate's Courts and contained in the Criminal Procedure Ordinance, irrespective of the nature and gravity

of the offence committed.[88]

1. Pre-trial procedures

Pre-trial procedures - arrest, search and seizure, custody, bail, initiation of prosecution, and the formal investigatory procedures - are all the steps normally taken when an offence has been committed before the offender is brought for trial in open court. When an offence has been allegedly committed, the police make inquiries in respect of the allegation. This is followed by a thorough and impartial investigation conducted by the military juge d'instruction before the accused can be brought to trial by the military court.

A. Police inquiries

Inquiries into offences committed and over which military courts have jurisdiction, are conducted by judicial police officers (officiers de police judiciaires) who may be civil or military policemen. This job is normally done by personnel of the National Security (i.e. the civil police force) and of the Gendarmerie (which also acts as a military police) in accordance with the rules of criminal

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88. Ordinance No. 4/OF.61 of 4 October 1961 (military judicial organisation); Minister of Armed Forces, Ministerial Instruction No. 1510/MINFA/JM of 24 October 1962; Minister of Armed Forces, Circular NO. 2230/MINFA/600/359 of 30th November 1972.

procedure applicable in the ordinary criminal courts. Thus, arrest, search and seizure, custody, and bail are, subject to contrary provisions in the Military Judicial Organisation Ordinance, governed by the relevant provisions of the Criminal Procedure Ordinance (in the Anglophone; Provinces) and the Code d'Instruction Criminelle (in the Francophone Provinces).[89]

The ascertainment of all offences must be made in a police report (procès-verbal) which must, without delay, be sent to the Minister of Armed Forces, a copy to the Commissaire du Gouvernement, and another copy to the Minister of Justice for information purposes. These reports are given much weight (force probante) in court. Military offences or offences committed by soldiers (even with civilian confederates) may only be investigated by gendarmerie officiers de police judiciaires, particularly if such investigations have to be carried out in military barracks or camps. The civil police have no power of investigation or arrest here. However, should a flagrant offence be committed, the local police may commence inquiries into it but immediately notify the gendarmerie. Absent the case where a flagrant offence has been committed, a civil policeman has no authority to arrest an offender who is a soldier. Only a gendarme may do so. Arrest in military law may be either a close arrest or an open arrest.[90]

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89. See Chapter 15, supra.

90. A person in close arrest may be detained in a civil prison or police station; a soldier in close arrest may be held in a military corrective training centre or detention barracks.

Houses may be searched and incriminating evidence seized. The hour of search is irrelevant; it may be in the day, it may be in the night. However, all night searches may be conducted only upon the written orders of the Armed Forces Minister. But nocturnal searches may be conducted without the Minister's order in any of these circumstances: (i) during a state of emergency, (ii) during a state of siege, (iii) during operations for the maintenance of order, (iv) in the case of offences against state security, and (v) in the case of subversion offences.

A suspect apprehended may be detained for up to 48 hours from the time of his apprehension. The period of detention may however be extended to five days, renewable once for a further period of five days, upon the written authorisation of the Commissaire du Gouvernement. In practice, authorisation is sometimes given verbally and persons may be detained for longer periods than the statutory one. As a check on possible abuses such as these by police and gendarme officers, the law requires them to forward a daily report on detentions to the Minister of Armed Forces and the Minister of Justice. Furthermore, any abuse committed by a police or gendarme officer in respect of arrest, search, seizures and detention may lead to disciplinary sanctions and a claim by the victim for damages in the civil courts. If an offender who is a soldier is detained, his detention must imperatively be notified to his unit. The same applies where a court

warrant or other judicial order is issued against a soldier. A person detained may be granted bail. Granting of bail would appear to be the rule and detention the exception.

B. Formal investigatory procedures

Before trial by the military court there is always a formal investigatory procedure. As a rule this is conducted by a military investigating magistrate (juge d'instruction militaire). Prosecutions in court are conducted by the Commissaire du Gouvernement. He is roughly the equivalent of the Procureur de la République at the ordinary criminal courts. The functions of the Commissaire du Gouvernement vis-a-vis the military juge d'instruction are analogous to those of the Procureur de la République (as contained in the Code d'Instruction Criminelle) vis-a-vis the old juge d'instruction at the ordinary criminal courts.

The military juge d'instruction investigates a charge only upon an order for the laying of information (ordre d'informer) issued by the Minister of Armed Forces or the civil authorities empowered to do so. Generally, the Minister will issue such an order where the facts of the case as contained in the police report are obscure or insufficient and he is of the opinion that further investigations are necessary. In carrying out his investigations the military juge d'instruction has all the

powers of the old investigating magistrate at the ordinary criminal courts. He may go to any part of the Republic to carry out his investigations.[91] He may give rogatory commission to any judicial officer. He may delegate any judicial police officer to undertake particular acts of investigation.

At the end of his investigations, the juge d'instruction makes the file available to the Commissaire du Gouvernement who would then write his submissions. The dossier is also placed at the disposal of the accused's counsel. If the juge d'instruction comes to the conclusion that the case is one over which he has no jurisdiction to investigate into he must immediately send the case-file to the competent court. A copy of the ruling on jurisdiction by the investigating magistrate must be sent to the Armed Forces Minister and, where the case has been sent to the ordinary criminal courts, another copy must be sent to the Minister of Justice. On the other hand, if at the end of the investigations the juge d'instruction is satisfied that the facts disclose no

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91. This applies to the juge d'instruction militaire at the Yaounde Military Court. Since the jurisdiction of this Court is national, the juge d'instruction there may move to any place in the country to carry out his investigations. Not so with the investigating magistrates at the Buea and Bafoussam Military Courts. Since the territorial jurisdiction of these two courts is limited, the juges d'instructions there may only move to localities within the territorial limits of the court.

offence he must dismiss the case and discharge the accused. If the facts do disclose an offence, he must commit the accused for trial. A copy of the committal order must be sent on the same day it is made to the accused's counsel.

C. Submission of cases to court

Cases may be laid before military courts only by order of the Minister of Armed Forces who is the sole authority who decides whether prosecutions should be instituted. In emergency areas however, Provincial Governors have been given extensive powers to maintain order (nocturnal searches and arrest, severe restrictions on the movement of persons and goods, heavy control of all publications, detention for long periods without even being charged, etc.) and authority, exercised concurrently with that of the Armed Forces Minister, to cause prosecutions to be instituted before military courts.[92]

The literature distinguishes between 'mettre en mouvement l'action publique' (to initiate prosecution) and 'soutenir l'action publique' (to conduct prosecution). The initiation or institution of criminal proceedings in

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92. Military Judicial Organisation Ordinance, ss. 8(2) and 11; Decree No. 72/736 of 29 December 1972 (Civil authorities empowered to institute proceedings in the military courts); Minister of Armed Forces, Circular No. 0222/MINFA/600/59 of 31 January 1973.

the military courts is the sole prerogative of the Armed Forces Minister who may delegate some of it to civil authorities. The actual conduction of a case in the military court is done by the Commissaire du Gouvernement. Despite appearances to the contrary, the Commissaire differs from the Procureur de la République at the ordinary criminal courts. The Commissaire du Gouvernement is merely the mouthpiece of the Minister of Armed Forces at the military courts. He exercises no prosecutorial discretion. He may neither initiate proceedings, nor prefer a charge, nor discontinue a case, on his own initiative. Only the Minister may do so, using the Commissaire as a conduit pipe. The Commissaire may only act in the manner he has been directed to by the Minister. The Minister tells him what line of argument to pursue and what submissions to make. Like a true soldier, the Commissaire du Gouvernement must obey the instructions of his superior; his personal convictions or views on any given case are irrelevant.

A case comes to a military court by one of three ways. First, by way of 'citation directe'. This takes the form of an order for direct trial (ordre de mise en jugement directe) issued either by the Armed Forces Minister or the competent Provincial Governor.[93] An order for

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93. By art. 1 of Decree No. 72/736 of 29 December 1972, Provincial Governors may, in an area subject to a state of emergency, initiate prosecution where a civilian has committed any offence (i) against state security, (ii) under the Subversion Ordinance, (iii) under firearms legislation, and (iv) related to any of these. The Governor however has no authority to cause prosecution to be instituted against a soldier who did not act in league with a civilian. If the soldier committed the offence alone, only the Minister of Armed Forces may initiate proceedings against him.

direct trial means that the court is directly seised of the case. No preliminary investigations are conducted in respect of it. A case also comes to the military court by way of a committal order made by the military juge d'instruction. Finally, a case comes to the military court by way of an order for prosecution. This however applies to the Buea Military Court which follows the procedure applicable in the Magistrates' Courts. These orders seise the military court in rem and in personam. This means that the court can only try the persons mentioned in the order and only in respect of the indictments contained therein.

2. Trial procedure

A. Convening the court

A military court can only sit when it has been properly convened. It is convened by the authority (Minister of Armed Forces of Provincial Governor) which had initiated the prosecution. The same authority fixes the date for the trial after consultation with the President of the court and the Commissaire du Gouvernement. The court president must make available to the accused the list of witnesses who have been summoned to come and testify in the case. The list must be communicated to the accused at least four clear days before the date scheduled for the trial. If the matter is one which falls within the legal aid scheme, the

court president must designate counsel for the defendant. Soldiers are eligible for legal aid and an accused soldier standing trial may apply for such aid if he so wishes.

All members of the court must be convened well in advance. In times of war or other exceptional circumstances members of the court are convened by the Commissaire du Gouvernement 48 hours before the opening of the trial and the accused is given only 24 hours within which to choose an advocate.

B. Proceedings in court

On the day of the trial the defendant has to appear in court accompanied by guards.[94] The defendant is required to be present in court. His defence may be conducted for him by an advocate. The institution of a defence advocate who is a military person (as for example in the United States) is unknown in Cameroon and so defence advocates in the military courts are always civilians. The stage at which an advocate may operate is much earlier. Normally, he may assist immediately after the first interrogation, when the accused is informed of his rights. The advocate then has rights of intervention during the preliminary investigation conducted by the military juge

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94. If he fails to appear judgment may be given in default and an arrest warrant issued against him. Moreover, if he is refusing to come to court, he may be brought there manus militaris.

d'instruction. In defending his client, defence counsel must not be in breach of his duty and obligations as advocate. If he fails to show due respect to the court he may be charged with contempt of court under section 154 of the Penal Code.

In normal times 'constitution de partie civile' may be made by the victim of the offence for which the defendant is standing trial. But the civil party may bring his civil action only after the Minister of Armed Forces has decided to prosecute. The victim cannot, by first bringing a civil action against the offender, compel the Minister to prosecute. Moreover, in time of war or other exceptional circumstance 'constitution de partie civile' cannot be entertained by the military court.

Before the court begins to hear the merits of the case, the parties must first register their pleas in bar (if any) in a single memorandum. Eventually, after the court has gone into the merits of the case, it gives a single ruling on both the pleas in bar and the merits of the case. Any member of the court may be recused (i) if he is a spouse or relative of the accused, (ii) if he has been summoned as a witness in the case, (iii) if he is a friend of the accused, and (iv) if there is enmity between him and the accused.

The defendant is used as the primary source of evidence. The court president first questions him to establish his identity. After this formality, he calls on the court registrar to read the charge or committal

order as well as the names of the witnesses (civilians or soldiers) who have been summoned to come and testify in the case. When the witnesses have been called out, they are conducted into a room reserved for them. A witness may only leave the room when his turn comes to testify. After giving his evidence a witness is not allowed to go back into the room where the other witnesses are. Every measure is taken to ensure that witnesses do not confer with each other.

Proceedings in the military court are inquisitorial. The presiding judge does the questioning. He interrogates the accused and is at liberty to ask witnesses any questions concerning their testimonies. As a general rule, witnesses must give their evidence on oath, swearing to speak the truth, the whole truth and nothing but the truth. However, witnesses related to the accused whether by marriage or by blood, the civil party, and minors of 14 years of age are not required to give their evidence on oath and so not much weight is given to such testimonies.

Cross-examination is alien to the system. The presiding judge 'dirige les débats et assure la police de l'audience'.[95] So if counsel wishes to ask the witness any questions he must do so through the presiding judge. Counsel may not ask any question directly of the witness.

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95. Military Judicial Organisation Ordinance, ss. 22(1) and 32.

He puts his question to the presiding judge and prays him to be kind enough as to ask the witness the question. The presiding judge would put counsel's question to the witness only if he thinks the question is proper. However, due to the influence of Anglophone advocates, some judges are not opposed to direct questions put to the witness by the advocate.

The presiding judge conducts the proceedings and sees to it that order is maintained in court. He may order any person disturbing the proceedings to be evicted from the court. If the person resists or causes an uproar he may be arrested there and then, detained, tried and jailed for up to six months without prejudice to the application of the sentence prescribed for contempt of court. The same would apply where the disturbance or uproar was caused by the accused himself. If the defendant decides to be mute and refuses to answer questions posed to him by the presiding judge, as sometimes happens in political trials, the judge is entitled to take no notice and to proceed with the case in the usual manner. Different considerations apply where the accused is mute not out of malice but by visitation of God. If a defendant or a witness is dumb he would have to answer questions put to him and give his evidence in writing. If a defendant is a deaf-mute all questions and answers would have to be done in writing. If the dumb or deaf-and-dumb defendant cannot write then the court must enlist the assistance of

any person who can communicate with him. If a person is deaf, dumb and blind it is extremely doubtful whether he may be tried at all or called as a witness. It is submitted that he may not as it would serve no purpose. The more usual case however is that where a defendant or a witness speaks neither French nor English, or only one of these languages, or again where a document requiring translation has been rendered as evidence in court. In such a case the court must hire an interpreter or translator who would then swear to interpret or translate faithfully.

During the trial the defendant may be allowed to examine and comment on any real evidence tendered in court. As a general rule, the trial must take place in open court. But where trial in public would be dangerous to public order and good morality, the trial may take place in camera. Whether the trial in open court of any given case would be dangerous to public order and good morality or not is a matter for the court president to decide.

When all the evidence has been taken, the court invites (one after the other and in that order) the Commissaire du Gouvernement, the civil party and the defendant (or his advocate) to make their submissions. The Commissaire du Gouvernement may, depending on the directives he has received from the Minister of the Armed Forces, submit that the defendant be discharged and acquitted or that he be convicted and given such and such a sentence . Submissions for acquittals are however rare. Even where it

is thought that the defendant should be acquitted, the Commissaire du Gouvernement does not say so in clear terms. He would say, euphemistically, 'Je m'en remets au tribunal'. After the defence has made its submission, the civil party and the Commissaire du Gouvernement have a right of reply. But as in the ordinary criminal courts, it is the prerogative of the defence to speak last. After the final address by the defence, the court rises and members of the court retire to deliberate on the case.

C. Judgment and appeal

When the court retires in chambers to deliberate, the Commissaire du Gouvernement and the court registrar may not be present. While in deliberation, members of the court may neither communicate with the outside nor separate before a decision has been reached. A decision must be reached on the issue of both guilt and sentence[96] and a single reasoned judgment delivered dealing with the pleas in bar that may have been made at the beginning of

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96. This is distinctly different from what happens in common-law jurisdictions. In England for example, the Court-Martial is convened by a military officer. The trial procedure is adversary in nature. The prosecution and then the defendant present their cases. The prosecution's closing address is followed by that of the defence. Then there is a summing up by the judge-advocate who must adopt an impartial position. After this, there is a deliberation in closed court on the issue of guilt; the court then announces its findings in open court. If the court's finding is one of guilty, it then proceeds to get evidence of character and then retires again to decide on the award of sentence. The sentence is pronounced in open court.

the trial, the question of guilt and of sentence. The court is entitled to examine all matters of fact and law, and aggravating or extenuating circumstances that may have arisen during the court proceedings.

The judgment of the court is read in open court. If the defendant is convicted and sentenced he must be told he has ten days from the day of the rendition of the judgment within which to go on appeal. A defendant in respect of whom judgment has been given in default may enter a caveat in respect of it (faire opposition) within five days. The military court may then review the case.[97] Judgments of the military courts are, in principle, appealable to the superior courts at all times. An appeal from a military court lies to a Court of Appeal and from there to the Supreme Court. However, s. 29(2) of the Military Judicial Organisation Ordinance ousts the supervisory jurisdiction of the superior courts over military courts in respect of most offences triable in those courts. That subsection provides that no form of appeal whatsoever lies in respect of offences against State security (internal or external), offences of subversion, and firearms offences.

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97. Under the Anglo-American system, the findings and sentence of a Court-Martial are of no effect until they have been confirmed by a military commander, the convening officer, or his superior. Both at this stage and subsequently, the proceedings are subject to review by the service authorities who may be moved by a petition on behalf of the convicted soldier. However, an appeal from a Court-Martial may also lie to a superior court.

When judgment has been delivered in the military court, it is the duty of the Commissaire du Gouvernement to see that it is executed. Apart from the military preventive prison in Yaounde in which accused soldiers are detained while awaiting trial, there are no separate prisons for convicted soldiers. A person who is convicted and who goes on appeal must, unless granted bail by the Court of Appeal, remain in prison until the final determination of his appeal. Anyone who has been convicted and sentenced by a military court may petition the Head of State for pardon. Moreover, any convict who has served up to three-quarters of his term may be released on licence by decree of the Head of State. Political offenders often benefit from these measures.

PART SIX

ENVOI

This final part of this work discusses four miscellaneous topics which are nevertheless relevant to our subject-matter: human rights, legal education, the cost of justice, and law reform.

CHAPTER SEVENTEEN

HUMAN RIGHTS

"Human rights," said Andrew Young, the United States' Ambassador to the United Nations in an address in August 1978 to the American Bar Convention in New York, "is not an idea whose time has just come. It is as old as the Judeo-Christian tradition of our scriptures and the declaration of faith in God and the individual which became the basis of our declaration of independence. And if the idea of human rights and the ideals in which we believe are not new, neither is the controversy."[1] In Cameroon too the issue of human rights 'is not an idea whose time has just come'. Some form of human rights existed in pre-colonial Cameroonian societies. "The Cameroon customary law of the time recognised principles analogous to the maxim sic utere tuo ut alienum non laedas, that is, to use your own property or thing as not to injure your neighbour's. Breach of these unwritten and uncodified rules was vigorously enforced by the customary courts."[2] The right to property, freedom of discussion, freedom to protest (even by demonstration), and freedom from unwarranted molestation

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1. 'Andrew Young on the role America has played in the fight for individual liberty', The Times, Tuesday, August 15, 1978, p. 12.

2. H.N.A. Enonchong, Cameroon constitutional law, Yaounde, 1967, p. 180.

all existed in pre-colonial Cameroonian societies.

The modern concept of human rights may be traced back to the concepts of natural justice and rights found in the Greek City States of ancient times. But perhaps the most important development in this area was the Magna Carta which established the Rule of Law in England over 750 years ago. "No free man," declared the Great Charter, "shall be taken, imprisoned, outlawed, banished or in any way destroyed, nor will we proceed against him or prosecute him except by the lawful judgment of his peers and by the law of the land. To no one will we sell, to no one will we delay or deny right or justice." Magna Carta was the forerunner of the modern concepts of human rights and subsequent comparable documents have directly or indirectly borrowed from it.[3] The French Declaration of the Rights of Man and the Citizen was probably inspired by it. Although the United Nations' Universal Declaration of Human Rights is said to have been influenced by President Roosevelt's concept of the Four Freedoms, the American President himself as well as the draftsmen of that document certainly drew from the Great Charter and the French Declaration of the Rights of Man and the American Constitution. Finally, the European Convention on Human Rights and human rights provisions (where they exist) in the constitutions

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3. O. Hood Phillip & Paul Jackson, Constitutional and administrative Law, 6th edition, Sweet & Maxwell, London, 1978, p. 16.

of Third World countries are based on the United Nations' Universal Declaration of Human Rights. The story of human rights therefore goes back to ancient times and over the centuries there has been a great deal of borrowing here and there by this or that country or organisation.

At this point an attempt must be made to explain what human rights are. The expression 'human rights' has no fixed and uniform definition. But it embraces 'civil liberties' and 'civil rights' - two terms which are themselves used interchangeably. Generally however, a person is said to enjoy a civil liberty when he is protected against some government action, but enjoys a civil right when the law confers upon him a positive power to do something. For example, the right to speak freely is a civil liberty; the right to use public facilities on an equal basis is a civil right. However the line is drawn between them, civil rights and civil liberties taken together encompass freedom of speech and religion, the right afforded to criminal suspects, the rights of citizens to participate in the political process, and the right to equal treatment under the law. In evaluating civil liberties or rights in any given country one considers, among other things, whether there is a 'free' press and an independent judiciary, whether censorship is applied in defence of a ruling party, the degree to which the security forces respect individual rights, and the number of persons who are arrested for opinions rather than for violent or criminal acts.

But what is liberty? What is a right? Liberty may be said to be the extent to which the individual can determine his own destiny and act as he wishes, unconstrained by others in the society or group. The concept of liberty has two basic aspects: a positive aspect that focuses on freedom to participate in the decision making process of the group or society, and the negative aspect that considers an individual's freedom from governmental or social constraints. The concept of right is closely linked to that of liberty although both are not necessarily the same. A right is a claim or a title to anything whatever that can be enforced, or a claim to act, possess or enjoy anything or the use thereof, or it may exist in the nature of a privilege or a power. "That which is so directed for the protection and advantage of an individual is said to be his right. It has been described as a liberty of doing or possessing something consistently with law."[4] A legal right is therefore one which is protected by law. The means of protection is the remedy which the law provides in the event of breach of such right. The existence of a legal right implies the existence of a legal remedy, for one does not exist without the other.

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This chapter surveys human rights provisions in

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4. Jowitt's Dictionary of English Law, Vol. 2, 1977, p. 1581.

Cameroon during the colonial period (Section I) and discusses the justiciability of human rights provisions in the Cameroonian Constitution (Section II).

I. Human Rights in Cameroon During the Colonial Period

During the German colonial period in Cameroon, human rights for the indigenous population were not recognised and consequently not guaranteed by the colonial authority. After the defeat of Germany in the First World War she lost her colonial possessions, including Cameroon which was in 1922 placed under the mandates system and in 1946 under the trusteeship system. The Mandates and the Trusteeship Agreements for the territory contained human rights provisions. The guarantee of human rights in Cameroon is therefore traceable to these Agreements and the United Nations Charter.

1. Human rights provisions in the international tutelage Agreements

Each of the two successive international tutelage Agreements for Cameroon (the Mandates Agreements of 1922 and the Trusteeship Agreements of 1946) contained provisions dealing with human rights. The Mandates Agreements enjoined the Mandatory to "ensure in the territory complete freedom of conscience and the free exercise of all forms of

worship which are consonant with public order and morality".[5] The Mandatory however had the right to exercise such control as was necessary for the maintenance of public order and good government. Under the Trusteeship Agreements, the Administering Authority was directed to "ensure in the territory complete freedom of thought and the free exercise of all forms of worship and of religious teaching which are consistent with public order and morality".[6] It was also enjoined to "guarantee to the inhabitants of the territory freedom of speech, of the press, of assembly and of petition, subject only to the requirement of public order".[7] The only limitation on the exercise of these rights was the requirement of public order. This limitation was in itself not new. It represented the perennial tight-rope of balancing the liberty of the individual against the interest of society at large. The problem however, was that nothing was said as to what constituted 'public order'; it being left to each Administering Authority to determine its content. It was probably assumed that the limitation would be invoked only in appropriate cases. But this was not always the case. In the French Cameroun, for example, human rights provisions were consistently violated.

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5. The British and the French Mandates Agreements for Cameroon, art. 7.

6. The British Trusteeship Agreement for Cameroon, art. 13 and 14; the French Trusteeship Agreement for Cameroon, art. 10.

7. Idem.

Article 76 of the United Nations Charter enjoined the Administering Authority "to encourage respect for human rights and for fundamental freedoms of all without distinction as to race, sex, language, or religion, and to encourage recognition of the interdependence of the peoples of the world". After much hesitation France grudgingly introduced her Declaration of the Rights of Man of 1789 into the French Cameroun. But that Declaration was neither sufficiently specific nor all-embracing. "The French Declaration was no more than a pious declaration of intent to grant certain vague ideas. In any case, the French jurists had always regarded them as a mere socio-political manifesto theoretically unenforceable in any ordinary court of law."[8]

The issue of human rights was one of those areas in which there was marked contrast between the French and the British Cameroons. In the French Cameroun the subject of human rights was almost taboo. In the British Cameroons on the other hand human rights were guaranteed and jealously guarded. Britain transferred her concepts of human rights to the British Cameroons. She introduced four basic freedoms into the territory: freedom of expression subject only to the law of slander and libel, freedom of religion, freedom from arbitrary arrest, and freedom of association and movement. However, while such

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8. Enonchong, op.cit., p. 181.

historic British documents as the Magna Carta of 1215, the Petition of Rights of 1627, and the Bill of Rights of 1689 generally embrace concepts of these freedoms, no English statute has expressly defined the liberties of the individual. But this is probably because fundamental freedoms are axiomatic to the British and are therefore not enunciated in any statute.

2. Introduction of the Universal Declaration of Human Rights into Cameroon

Seeing that there was no uniformity in the application of human rights in the British and the French Cameroons, the Trusteeship Council requested Britain and France, the Administering Authorities of both parts of the territory, to introduce the United Nations' Universal Declaration of Human Rights into Cameroon. The Declaration reads in part:

> "Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of the world ...
>
> Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law, ...
>
> Now, therefore, the General Assembly proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations ...

Art. 1. All human beings are born free and equal in dignity and rights ...

Art. 2. Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status ...

Art. 3. Everyone has the right to life, liberty and security of person.

Art. 5. No one shall be subject to torture or to cruel, inhuman or degrading treatment or punishment.

Art. 7. All are equal before the law and are entitled without any discrimination to equal protection of the law.

Art. 9. No one shall be subjected to arbitrary arrest, detention or exile.

Art. 11(1). Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

(2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Art. 13(1). Everyone has the right to freedom of movement and residence within the borders of each state.

(2) Everyone has the right to leave any country, including his own, and to return to his country.

Art. 17(1). Everyone has the right to own property alone as well as in association with others.

(2) No one shall be arbitrarily deprived of his property.

Art. 18. Everyone has the right to freedom of thought, conscience and religion ...

Art. 19. Everyone has the right to freedom of peaceful assembly and association.

> Art. 20. Everyone has the right to freedom of opinion and expression ...
>
> Art. 29(1). Everyone has duties to the community in which alone the free and full development of his personality is possible.
>
> (2) In the exercise of his rights and freedoms, everyone shall be subject to such limitations as are determined by law solely for the purpose of securing the due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society ...

It was in response to the United Nations' request for the introduction of the Universal Declaration into Cameroon that article 5 of the 'Statut du Cameroun' of January 1959 provided, inter alia, that all laws and regulations in the French Cameroun must respect the principles and fundamental freedoms inscribed in the Universal Declaration of Human Rights and the Charter of the United Nations.[9] In response to the same request the British Government made well-defined and more adequate provision for fundamental human rights in the British Cameroons. These provisions were later included in the Southern Cameroons (Constitution) Order-in-Council, 1960 as sections 76 to 85 and were enforceable under section 86.

Unlike the French Cameroun 'Statut' of 1959, the Southern Cameroons (Constitution) Order-in-Council of 1960 contained detailed provisions dealing with human rights.

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9. The 1960 Constitution of la République du Cameroun contained some of the provisions of the Universal Declaration of Human Rights.

Under the Order-in-Council a person was entitled to a fair hearing within a reasonable time by a court or tribunal established by law. A person charged with a criminal offence was entitled, unless the charge was withdrawn, to a fair hearing held in public by a court of competent jurisdiction within a reasonable time; the decision of the court had to be announced in public. Until he was found guilty, every person charged with a criminal offence was presumed to be innocent. The rule was however not deemed to have been violated on the sole ground that a law has imposed upon any such person the burden of proving any particular facts. A person charged with a criminal offence was entitled to be informed promptly of the nature of the offence, to be given adequate time to prepare his defence, to defend himself in person or be defended by a legal representative of his choice, to examine witnesses called for the prosecution and to have witnesses testify on his behalf, and to have without payment the assistance of an interpreter if he could not understand the language used at the trial. The law provided against arbitrary arrests and barrassment by the security forces. Police powers of arrest were set out in detail in the Criminal Procedure Ordinance.[10] All courts were required by law to keep records of their proceedings and an accused person or any person authorised by him was entitled to obtain copies of the record within a reasonable time upon payment

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10. Ss. 3-30.

of such fees as may be prescribed by law.

Ex post facto legislation was regarded as unjust and undemocratic, so retrospective legislation imposing a penalty was not allowed. No person could be convicted of a criminal offence unless that offence was defined and its penalty prescribed in a written law, save in the case of contempt of a court of record. There were rules against double jeopardy. An accused person had the right to remain silent unless he chose to speak. Subject to considerations of public safety, health, morality, and the freedom of others, one's private life and family were inviolable. The following freedoms were guaranteed and jealously protected by the courts of law: freedom of thought, conscience and religion, including freedom to propagate one's belief or religion; freedom of expression, to hold opinions, to receive and impart ideas and inform without interference subject to interests of defence, public safety, public order, health and morality; freedom of assembly and association; freedom of movement and to reside anywhere in the territory; freedom from discrimination on the grounds of tribe, sex, religion, or political opinion. The Southern Cameroons High Court had jurisdiction to entertain matters concerning human rights violation.

At the time of reunification in 1961, English-speaking Cameroonians entertained grave fears about becoming second-class citizens in a Cameroon dominated by the

majority French-speaking Cameroonians. They therefore pressed but to no avail for minority protection and human rights provisions to be entrenched in the 1961 federal Constitution.

> "Constitutional guarantees of individual liberties were another item of controversy among westerners and between them and the eastern delegation. The guarantees concern a cause Southern Cameroonians considered, not altogether justifiably, lost at Foumban. K.N.D.P. pamphlets persistently had pledged: 'Human rights, in accordance with the United Nations Charter will be protected by the constitution and enforced through courts.' Moreover, the constitution of the Cameroun Republic not only embraced the Universal Declaration of Human Rights and the United Nations Charter, but specifically spelt out about twenty principles and rights taken from them. Most western delegates at Foumban wanted to incorporate such guarantees into the constitution, not just mention them in the preamble; they also wanted the courts to repudiate laws that failed to conform to the principles. 11

II. Justiciability of Human Rights Provisions in the Constitution

The achievement of independence by any country usually involved the enactment of a written constitution which often embodies a declaration of guaranteed rights, such as personal freedom, freedom of religion, freedom of expression, freedom of movement and of association. Are such rights legal rights? and are they justiciable?

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11. Willard R. Johnson, The Cameroon federation: political integration in a fragmentary society, Princeton University Press, Princeton, 1970, p. 188.

1. Justiciable and non-justiciable legal rights

Ordinarily, a legal right is one which is protected by law, the means of protection being the remedy afforded by law when the right is infringed. Human rights provisions in the constitution are clearly legal rights. They are guaranteed - that is, the state has undertaken to protect them. They are embodied in a document which is itself legal; in fact the Basic Law, a law which is above and overrides the ordinary laws of the land. Logically, this argument, based on the notion of the constitution as law, should lead to the inescapable conclusion that human rights provisions in the constitution are justiciable legal rights for, only disputes of a legal nature may be adjudicated by the courts. A dispute is of a legal nature if it affects a person's recognised legal rights or relations. Therefore, prima facie, the violation of a human right provision in the constitution is justiciable unless judicial intervention is validly excluded by the constitution itself.

But the notion of the constitution as law is only one way of looking at a constitution. A constitution is a mode of organising a state and its government. It is a body of fundamental principles according to which a state is structured. It is therefore a document which is essentially political in character - its authority and sanction sound in the realm of politics. This was in fact

the original meaning and effect of a constitution and today, there are many countries which still consider the appropriate function of a constitution to be a political charter of government consisting largely of declarations of objectives or directive principles of government and a description of the organs of government in terms that import no enforceable legal restraints.[12] Such a constitution is said to have no more than a political existence, its provisions are political not legal serving merely to exhort, to direct and inspire governmental action, and to bestow upon it the stamp of legitimacy.[13]

It is evidently desirable that a constitution should have the force of law. But that should not be its sole character. While having the force of law, a constitution should be flexible enough to accommodate needed political commands, that is to say, commands which are legal and yet non-justiciable. "There is no inconsistency in a command being legal and yet not judicially enforceable. Judicial enforcement is not an inexorable criterion of 'lawness'. A provision in a constitution or statute is not less legal because it is not judicially

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12. B.O. Nwabueze, Judicialism in Commonwealth Africa, Hurst & Co., London, 1977, p. 20 et seq.

13. In this connection the American Constitution is often contrasted with the Russian one. The latter is said to have the character of maxims of political morality and the individual rights which it purports to guarantee are regarded in the West as no more than a declaration of objectives, a statement of what the State will hopefully do for its citizens.

enforceable."[14] Accordingly, most constitutions today contain an admixture of justiciable and non-justiciable provisions. This means that not all the relations created by, or arising from the constitution are of such a nature as to be enforceable by the courts. Some are of a purely political nature, and therefore unsuitable for judicial enforcement; their violation is non-justiciable. They are known in the United States as 'political questions' because, though legal, the duty they impose is basically political in nature, and their observance depends upon the fidelity of the executive and legislative action and, ultimately, on the vigilance of the people in exercising their political rights.

> "Luther v. Borden was the first important case in the United States to apply the doctrine of judicial non-intervention in political questions. Beginning with this decision, the idea was developed that there are some cases of which the courts are not authorized to take jurisdiction ... There are certain cases which are completely without the sphere of judicial interference. They are called, for historical reasons, 'political questions'. To what matters does the term apply? It applies to all those matters of which the court, at a given time, will be of the opinion that it is impolitic or inexpedient to take jurisdiction. Sometimes this idea of inexpediency will result from the fear of the vastness of the consequences that a decision on the merits might entail. Sometimes it will result from the feeling that the court is incompetent to deal with the particular type of question involved. Sometimes it will be induced by the feeling that the matter is 'too high' for the courts. But always there will be a weighing of considerations in the scale of political wisdom." 15

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14. Nwabueze, op.cit., p. 25.

15. Maurice Finkelstein, 'Judicial self-limitation', 37 Harv. L. Rev. 338 (1923), pp. 344-345.

A constitution regarded merely as law becomes a boring, dreary, technical legislative enactment. To obviate this effect all constitutions, while having the force of law, invariably contain political objectives which are either affirmed in the body of the document itself (as in the case of the 1961 Cameroonian constitution) or in a preamble outside the enacted portion of the constitution (as in the case of the 1960 and the present 1972 Cameroonian Constitutions). In examining whether the human rights provisions contained in the 1972 Cameroonian Constitution are justiciable or no more than a declaration of objectives having the character of political morality and therefore falling within the realm of 'political questions', it would be of interest to look also at the position under the federal constitution of 1961.

2. Human rights under the 1961 and the 1972 Constitutions

Cameroonian constitutions have always been conspicuous by their lack of a Bill of Rights. A 'Bill of Rights' or 'Declaration of Rights' implies that the rights concerned are entrenched or legally protected against repeal or amendment by ordinary legislative process.[16] Like the 1960 Constitution, the 1972 Constitution refers to the Universal Declaration of Human Rights and lists a number of rights and freedoms, but this is done, again as

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16. O. Hood Phillips & Paul Jackson, op.cit., p. 447.

under the 1960 constitution, not in the main body of the Constitution but in the preamble to it - presumably to underscore the fact that they are intended not to be justiciable rights. The 1961 federal constitution came closer to having something of a Bill of Rights, but the single article that dealt with this issue was too laconic and nebulous to be of much practical value.

Indeed, the 1961 federal constitution dealt with the issue of human rights only tangentially. The main reference to human rights in that constitution was in art. 1(2) which provided, inter alia, that 'The Federal Republic of Cameroon ... affirms its adherence to the fundamental freedoms set out in the Universal Declaration of Human Rights'. The interpretation of this cryptic provision was fraught with difficulties. Evidently, the Declaration referred to was that proclaimed by the United Nations General Assembly on 10th December 1948. It has been hailed as a Charter of liberty of the oppressed.

> "The Universal Declaration is, and remains, the most important instrument and landmark in the history of mankind. It is the Charter of liberty of the oppressed and the down-trodden. It defines the limits which the almighty state machine should not transgress in its dealings with those whom it rules. And, from the lawyer's point of view, most important of all, it proclaims that the rights of human beings 'should be protected by the rule of law'." 17

However, it does not appear that the provisions of

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17. Sean MacBride, 'The meaning of human rights year', J.I.C.J., vol. VIII, No. 2, 1967, p. III.

the Declaration were anything other than mere exhortations, statements of ideals, a common standard which all peoples and all nations should strive to achieve. It is true that several resolutions taken by the United Nations indicate the growing reliance by that body on the proposition that the Declaration established binding obligations, a violation of which by a state may be severely condemned by the General Assembly. It is equally true that the United Nations acknowledges that there can be no international peace or security without the protection of liberty. But it is a commonplace conclusion that the Declaration has no force of law. That this is so is eloquently demonstrated by the European Convention on Human Rights which is designed, as its preamble indicates, to bring about the collective enforcement by European states of certain of the human rights inscribed in the Universal Declaration. If the Universal Declaration had legal force there would have been no need for the European Convention. It would have been redundant. Furthermore, in 1966 the United Nations drew up a more elaborate formulation of human rights in the International Convention on Economic, Social and Cultural Rights and in the International Convention on Civil and Political Rights.

The Universal Declaration did not therefore create legal rights the infringement of which may be adjudicated by a court of law. There is no judicial protection of the rights and freedoms inscribed in the Declaration. For,

there is no Universal Court of Human Rights (analogous to the European Court of Human Rights at Strasbourg) with jurisdiction to pronounce on violations of human rights. The only way in which the United Nations can implement the rights and freedoms inscribed in the Declaration is through the political and not the judicial machinery; and this is by way of condemnation at the General Assembly, but this is ineffective, ad hoc and disjointed. All the Declaration appears to have done is to prescribe a standard of political morality for United Nations member-states. Consequently, a mere affirmation of adherence by any state to the Declaration is of little practical, though perhaps of some psychological, significance to the individual citizen.

Commentators and politicians in Cameroon generally took the view that art. 1(2) of the 1961 Constitution incorporated by reference the Universal Declaration into the corpus of Cameroonian law, that the 1961 Constitution should be read as though the Declaration was part and parcel of it, and that the effect of such an incorporation of the Declaration into the constitution was to convert the provisions of the Declaration not only into legal rights but into justiciable legal rights as well. It is however doubtful whether this view was wholly justified. The language employed in art. 1(2) ('affirms adherence to'), it is submitted, was not sufficiently mandatory to warrant an individual ipso facto and ipso jure to act upon the

provisions of the Declaration. Furthermore, the Federal Republic merely 'affirmed adherence' to the fundamental freedoms set out in the Declaration; it made no undertaking guaranteeing those freedoms to the citizens. Moreover, the departure from the drafting technique, employed in the 1960 Constitution, of laying down seriatim the rights envisaged, would seem to suggest that it was never intended that those freedoms and rights referred to should be justiciable. This would seem to be the only possible and plausible explanation why the Southern Cameroons' delegation to the Foumban constitutional conference regarded the human rights issue as a cause they lost.[18] They had advocated for 'human rights in accordance with the United Nations Charter', human rights 'protected by the constitution and enforced through courts'. There is also another reason why art. 1(2) was vague - perhaps consciously intended to be so. Not all the provisions of the Universal Declaration are of a justiciable nature. Some are merely statements of political morality. Besides, art. 1(2) did not err on the side of precision when it merely alluded to 'the fundamental freedoms' set out in the Declaration without specifying the freedoms, among those set out in the Declaration which the draftsmen of the Constitution considered to be 'fundamental' and also without saying whether the word 'freedom' is used to include 'right' (for, the Declaration enunciates not only freedoms but rights as well).

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18. Johnson, op.cit., p. 188.

The affirmation in art. 1(2) of the 1961 Constitution was therefore of no practical value or usefulness. It was no more than a pious declaration conferring no right on anyone. This was the more so as the affirmation was made in terms of the Federal Republic as a whole and could thus hardly be enforced against the Head of State or any official. In 1970 the now defunct Federal Court of Justice was presented with an opportunity to pronounce on the legal effect of art. 1(2). This was in the case of Eitel Moullé Koula c. République Fédérale du Cameroun,[19] the facts of which were very simple. In May 1970 the Jehovah's Witnesses religious sect was proscribed in Cameroon following the refusal of its adherents to go to the polls during the presidential elections of that year. The plaintiff, an adherent of that sect, contended that the Government's action in proscribing the sect deprived him of the freedom to practise his religion and was tantamount to a violation of the Universal Declaration of Human Rights to which Cameroon has affirmed its adherence. The court had no difficulty in non-suiting him. The court however avoided a discussion on the effect of the affirmation contained in art. 1(2) of the Constitution. Instead, it based its judgment on a law which empowered the Government to proscribe any association whose activities were deemed to be against l'ordre public.

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19. CFJ/CAY, Arrêt No. 178 du 28 mars 1972, 3 R.C.D. 54 (1972).

In fact human rights were honoured more in breach than in their observance. The high-handedness of the much-in-evidence red-bereted gendarmes, police excesses, the ubiquitous secret police and the network of informers, press censorship, the system of passes, nocturnal raids by police and gendarmes, road checks, and other illiberal practices created a tense and uneasy atmosphere of fear and bewilderment. In Anglophone Cameroon there were loud calls for the abolition of police/gendarme raids, loud cries for freedom of speech and press freedom,[20] persistent appeals for the abolition of the laissez-passer because it 'prevents the free movement of people ..., cuts across one of the United Nations freedoms ... and is as bad and repugnant as the pass system in some parts of the world',[21] and the arbitrariness and iron-fist tactics of gendarmes came under constant attack and was a source of persistent complaints.

A different situation would appear to obtain under the 1972 Constitution. In dealing with the question of human rights the draftsman of the 1972 Constitution borrowed a leaf from the 1960 constitution. Human rights provisions in the 1972 Constitution have been inscribed in the preamble and not in the main body of the document.

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20. 'NUCS want press freedom', Cameroon Outlook, Vol. 2, No. 65, Friday, August 28, 1971, p. 1.

21. 'Laisser-passer is another barrier', Cameroon Outlook, vol. 1, No. 25, Friday, August 1st, 1969, p. 2.

Reference is made to the fundamental freedoms embodied both in the Universal Declaration of Human Rights and in the United Nations Charter. A number of specific rights and freedoms have been set out seriatim: freedom of expression, assembly, association, religion, movement, the press, from arbitrary arrest, and so on. At the end of the preamble there is an undertaking by the State that it 'guarantees to all citizens of either sex the rights and freedoms set out in the preamble of the constitution'.

The question which arises here is whether these rights and freedoms, ordinarily justiciable if they had been inscribed in the main body of the Constitution, become non-justiciable simply because they have been spelt out in the preamble. This raises the question of the legal force of a preamble to a constitution. Traditionally, the device of a preamble has always been used to affirm fundamental political objectives - objectives which fall within the realm of 'political questions' and are consequently non-justiciable. Thus in one Cameroonian case it was held that 'les préambules n'énoncent que les principes généraux du droit, et ce à titre indicatif, alors que la loi énonce les dispositions constitutionnelles proprement dites et, de ce fait, l'emporte sur le préambule d'une constitution'.[22] Is one therefore to assume from this rather sweeping statement that the rights and freedoms

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22. Cour d'appel de Garoua, Arrêt No. 9/c. du 5 mai 1973, 6 R.C.D. 143 (1974).

inscribed in the preamble to the 1972 Constitution are non-justiciable? It is submitted that this cannot be the case. The device of a preamble is certainly used to enunciate fundamental political objectives and general principles of law. But this does not mean all that is inscribed in a preamble automatically falls outside judicial protection. The preamble is part and parcel of the Constitution and surely those provisions which are not merely statements of political objectives ought to be protected judicially. Human rights come under this head. An infringement of any right or freedom enunciated in the preamble to the constitution would be tantamount to a violation of the Rule of Law.

It is germane to mention here the position in France because the Cameroonian constitution has drawn from the French one. For a long time the Conseil d'Etat maintained that provisions in the preamble to a constitution did not have the character of legal prescriptions.[23] In the 1960s however, it came round to admit that 'les déclarations de droits et préambules constitutionnels ont force de textes juridiques', a violation of which by the administration was an illegal act that may be challenged in court.[24] But this may only be done if the provision alleged to have been violated is sufficiently precise

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23. C.E., 27 fevr. 1950, R.D.P. 1950. 694, concl. Gazier.

24. C.E., 12 fevr. 1960, Société Eky, D. 1960. 263, note Jean l'Huillier.

and not vague and general.[25] The controversy as to the legal force of the preamble to a constitution was finally laid to rest by a decision of the Conseil Constitutionnel of 16 July 1971 which declared a law referred to it for a decision thereon to be contrary to the freedom of association guaranteed in the preamble to the French constitution.[26]

The preamble to the 1972 Cameroonian constitution is conceptually divided into two parts. The first part proclaims that 'the people of Cameroon' are "proud of its cultural and linguistic diversity ..., convinced that the salvation of Africa depends on the realization of an ever more closely-knit solidarity between the African States ..., resolved to exploit its natural wealth in order to ensure the well-being of every citizen by the raising of living standards ..." This part of the preamble affirms political objectives and is therefore nothing more than a political manifesto. The second part however contains human rights provisions and is couched thus:

> "The People of Cameroon,
> Declares that the human being, without distinction as to race, religion, sex, or belief, possesses inalienable and sacred rights;

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25. C.E., 29 nov., 1968, Tallagrand, Recueil Lebon, 1968,607.

26. D.1972.685. See also, Jean Rivero, 'Les principes fondamentaux reconnus par les lois de la République: une nouvelle categorie constitutionnelle?', D. 1972, chron. p. 265; René Chapus, 'De la soumission au droits des règlements autonomes', D.1960, chron. p. 119.

Affirms its attachment to the fundamental freedoms embodied in the Universal Declaration of Human Rights and the United Nations Charter and in particular to the following principles:

Everyone has equal rights and obligations. The State endeavours to assure for all its citizens the conditions necessary for their development.

Freedom and security are guaranteed to each individual subject to respect for the rights of others and the higher interests of the State.

No one may be compelled to do what the law does not prescribe.

Everyone has the right to settle in any place and to move about freely, subject to the statutory provisions concerning public order, security and tranquillity.

The home is inviolate. No search may take place except by virtue of the law.

The privacy of all correspondence is inviolate. No interference shall be allowed except by virtue of decisions emanating from the judicial authorities.

No one shall be subjected to prosecution, arrest or detention except in the cases and according to the manner determined by the law.

The law may not have retrospective effect.

No one shall be judged or punished except by virtue of a law promulgated and published before the offence was committed.

The law ensures the right of everyone to a fair hearing before the courts.

No one shall be harassed because of his origin, opinions or beliefs in religious, philosophical or political matters, subject to respect for public order.

Freedom of religion and freedom to practise a religion are guaranteed.

The State is secular. The neutrality and independence of the State in respect of all religions are guaranteed.

> The freedom of expression, the freedom of the press, the freedom of assembly, the freedom of association, and the freedom of trade-unions are guaranteed under the conditions fixed by the law.
>
> The Nation protects and promotes the family, the natural basis of human society.
>
> The State ensures the child's right to education. The organisation and control of education at all levels are bounden duties of the State.
>
> Ownership is the right guaranteed to everyone by the law to use, enjoy, and dispose of property. No one shall be deprived thereof, save for public purposes and subject to the payment of compensation to be determined by the law.
>
> The right of ownership may not be exercised in violation of the public interests or in such a way as to be prejudicial to the security, freedom, or existence of property of other persons.
>
> Everyone has the right and duty to work.
>
> Everyone must share in the burden of public expenditure according to his means.
>
> The State guarantees to all citizens of either sex the rights and freedoms set out in the preamble of the constitution."

Some of these provisions are clearly nothing but political objectives and are too imprecise and vague to be justiciable. Such provisions are easy enough to pick out. They are the following declarations: that the human being, without distinction as to race, religion, sex or belief, possesses inalienable and sacred rights; that everyone has equal rights and obligations; that the State endeavours to assure for all its citizens the conditions necessary for their development; that the nation protects

and promotes the family, the natural basis of human society; that the state ensures the child's right to education; that the organisation and control of education at all levels are bounden duties of the State; that everyone has the right and duty to work; and that everyone must share in the burden of public expenditure according to his means.

It is submitted that excluding these provisions all the others dealing with rights and freedoms are justiciable legal rights. The preamble ends with this crucial provision: "The State guarantees to all citizens of either sex the rights and freedoms set out in the preamble of the constitution". The mode of guarantee is protection through the judicial machinery. In a speech at the ceremonial opening of the Supreme Court in December 1973, the Head of State declared: "The mission of judicial and legal officers consists simultaneously in guaranteeing the fundamental recognised rights of every citizen ..."[27]

No case on an alleged violation of any of the rights or freedoms set out in the preamble to the 1972 Constitution has yet reached the courts. But the question whether the government may be held to have violated a provision of the preamble to the Constitution arose in respect of non-retrospective legislation in 1973. The preamble to the constitution and s. 3 of the Cameroonian Penal Code

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27. Ahmadou Ahidjo from A to Z, S.A.E.P., Paris, 1976, p. 123 (A C.N.U. publication).

provide that the law may not have retrospective effect. In September 1972 however, the Government passed a law (Ordinance No. 72/16 of 28 September 1972) prescribing the death penalty for persons found guilty of aggravated theft. Section 3 of that law gave it retrospective effect. The question then arose whether s. 3 violated the provision against ex post facto legislation contained in the preamble to the 1972 Constitution. In Gregory Fru v. The People[28] the Buea Court of Appeal held, per Endeley, C.J., that the constitutional protection subsisted notwithstanding s. 3 of the 1972 Ordinance. This enlightened decision was however not followed by the Bamenda Court of Appeal in Abdu Yakubu v. The People.[29] The court held, per Ekema, C.J., that although the 1972 Ordinance was retrospective it did not infringe the constitutional provision on non-retrospective legislation. The court based its decision on a rather narrow and strict construction of the word 'may' used in the constitutional provision. The use of the discretionary may and not the mandatory shall, the court reasoned, meant that the legislator was not absolutely debarred from passing retrospective laws.

However, these cases at least indicate that the rights and freedoms spelt out in the preamble to the 1972 Constitution are justiciable. Indeed, the human rights

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28. Buea Court of Appeal, Crim. App. No. CASWP/4c/73, unreported.

29. Bamenda Court of Appeal, BCA/32c/75, unreported.

provisions in the 1972 Constitution are regarded in Cameroon more or less as a bill of rights. But these provisions must always be weighed against particular enactments which have a restrictive operation.

3. Limitations on the operation of human rights provisions

When the rights of individuals are over-emphasised, government becomes too weak to keep order. On the other hand if the rights of government are widely stressed the rights of individuals become threatened. For this reason a balance is often struck between the powers of the government and the rights of the individual. Fundamental rights incorporated in the constitution are always restricted, expressly or impliedly, by some such concept as 'public order' or 'due process of law'. Although fundamental rights are conceived as inalienable and sacred, their full enjoyment is always restricted one way or the other. For example, in times of war, or during a state of emergency, the liberties of the individual are drastically reduced. Many parts of Cameroon are still under a state of emergency and individual liberties in these areas are greatly reduced. Administrative authorities in these areas are given wide sweeping powers to maintain order: day and nocturnal searches may be conducted by the forces of law and order, persons may be arrested and detained for days or weeks without being charged, severe restrictions are placed on

the movement of persons and goods, meetings and publications may be prohibited if it is thought that they are likely to cause disorder.

Each right or freedom inscribed in the 1972 Constitution has a restrictive operation. Freedom and security are guaranteed to each individual 'subject to respect for the rights of others and the higher interests of the State'. Everyone has the right to settle in any place and to move about freely, 'subject to the statutory provisions concerning public order, security and tranquillity'.[30] The home is inviolate and no search may take place 'except by virtue of the law'. No one shall be subject to prosecution, arrest or detention 'except in the cases and according to the manner determined by the law'.[31] No one shall be harassed because of his origin, opinions or beliefs in religious, philosophical or political matters, 'subject to respect for public order'. Political parties and groups may take part in elections. They shall be formed and shall exercise their activities 'in accordance with the law'. Such parties 'shall be bound to respect the principles of democracy and of national sovereignty and unity'. Freedom of religion and freedom to practise a religion are guaranteed. But the government may ban

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30. Cameroonians are required by law to carry national identity cards and the police and gendarmerie do stop intercity travellers and ask for pièces.

31. This is a highly controversial area in which practice often belies theory.

any religious movement in the name of public order.[32]

Freedom of expression, of the press, of assembly, of association, and to form trade unions are guaranteed subject to 'the conditions fixed by the law'. In fact the 'conditions fixed by the law' are often restrictive. For example, s. 4 of Law No. 67/LF/19 of 12 June 1967 on associations declares any association of a tribal nature null and void. In 1970 'tribal' unions were proscribed in the country.[33] The Government may, on the proposition of the local prefect, suspend any association 'pour troubles graves' even before taking legal steps to have it dissolved. Civil servants may form a trade union only if they have been authorised by the Minister of Territorial Administration to do so.[34] Freedom of the press is restricted by the system of press censorship and freedom of expression by fear of police spies and informers.

> "What strikes the visitor here more than anything else is the generalised climate of fear. Cameroonians are exceptionally cautious about holding political discussions with strangers - aware as they are, of the large numbers of police spies and informers.

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32. Eitel Moullé Koula c. République Fédérale du Cameroun, op.cit.; 'Between heaven and earth', Cameroon Outlook, vol. 2, No. 36, Friday, May 15, 1970, p. 2; Law No. 67/LF/19 of 12 June 1967 (the Law on Associations).

33. The Cameroon Outlook, vol. 2, No. 16, Monday, March 2, 1970, p. 2, in its editorial captioned 'Tribalism: a new phase', claimed that 'tribal' unions re-emerged as 'country meetings' and suggested that such meetings be covered by security officers.

34. Law No. 68/LF/19 of 18 November 1968 relating to professional associations or unions not governed by the Labour Code.

> 'The walls have ears' ... There are still one or two privately-owned newspapers here; but rigid censorship - applied by the local Préfet (Prefect) - ensures that nothing critical of the government can get printed. In South-west province, the two Anglophone newspapers, the Cameroon Times and Cameroon Outlook, appear quite often with large white spaces in their columns to remind the reader that the prefect has been hard at work exorcising unpatriotic paragraphs." 35

Indeed, the press law (Law No. 66/LF/18 of 21 December 1966) authorizes prefects to seize, before any judicial action against the newspaper concerned, any publication contrary to good morals, likely to disturb public order, or to injure the security of the state. Local prefects are also empowered to vet all articles which local papers intend to publish.

All this does not however mean that no form of press freedom and freedom of expression exists in Cameroon. The censorship power granted to prefects is often abused by them. Some of these prefects use this power to conceal their own ineptitude and to shield themselves from meaningful criticisms. "Most censors hardly know exactly what they are looking for. Thus most of them are seized by hysteria the moment they see newspaper scripts on their tables so much so that even the most rational criticism is blue-pencilled."[36] The government's policy on this matter has always been to encourage and welcome 'constructive

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35. Henry Freedman, 'Ahidjo's seventeen years of iron rule in Cameroon', New African, October 1977, p. 992; 'Ahidjo holds tight the rein', Africa Magazine, No. 77, January 1978, p. 52.

36. 'The down-trodden Cameroon journalist', New Africa, September 1978, p. 67.

criticisms'. The national paper, the Cameroon Tribune, never appears with white spaces and it sometimes carries powerful editorials on government short-comings and the corruption of government officials. Radio Yaounde and Radio Buea run programmes which seriously criticise government officials who misuse their offices or shirk in their responsibilities. These programmes also attack police and gendarme excesses whenever these have come to the public notice.

It is strongly submitted that neither the Press Law, the Subversion Ordinance, nor the provisions in the Penal Code dealing with sedition should be construed by the courts as preventing fair criticism which is reasonably justified in a democratic society. And Cameroon is a democratic State. Every Cameroonian, it is further submitted, has the right to discuss any grievance, canvass and censure the acts of government and their public policy. He may even do this with a view to effecting a change in the party in power or to call attention to the weakness of the government so long as he keeps within the limits of fair criticism. It is clearly legitimate and constitutional by means of fair argument to criticise the government of the day. Moreover, political freedom, particularly free speech, tends to function as a safety valve, preventing resentment and hostility from being transferred into hatred and violence. What should not be permitted is to criticise the government in a malignant manner. Such

attacks, by their nature, tend to affect public order and tranquillity. Similarly, the constitutional provision guaranteeing freedom of expression must be construed as guaranteeing nothing but ordered freedom. The provision cannot therefore be used as a licence to spread false news likely to cause fear and alarm to the public.

En guise de conclusion, one may say, without fear of serious contradiction, that at first the attitude towards human rights in Cameroon was casual and cavalier but that over the last five years or so there has been growing a positive attitude towards the protection of human rights so long considered the exclusive reserve of the most advanced nations. Human rights represent minimal moral standards for human society and are considered a cornerstone of a free society. They indicate the ways in which a society protects individual freedom. However, none of these rights is absolute in character. Freedom is an important good. But it may conflict with other goods. Freedom of religion for example does not serve to protect acts judged to be morally licentious. The speaker's freedom is maximised if he is allowed to incite a riot. But the peace of society may require constraints. So freedom of speech does not extend for example to seditious utterances that pose a clear and present danger to the safety of the Republic. Similarly, press freedom does not extend to the publication of defamatory, obscene, or

seditious matter. Absolute freedom means anarchy. One freedom is tolerable only to the extent that it does not unreasonably curtail another. Unlimited liberty would lead quickly to anarchy, the law of the jungle and the triumph of the strong over the weak. In a developing country like Cameroon, it is imminently desirable that greater freedom must go hand in hand with the raising of living standards, the removal of poverty and starvation and the spread of a better life.

CHAPTER EIGHTEEN

LEGAL EDUCATION IN CAMEROON

In Cameroon the creation of an advocate, a magistrat, or a University law teacher is a long process. As recently as the late 1960s most Cameroonians who wanted to pursue any form of legal education had to go abroad to France, England or Nigeria.[1] It was only in 1962 that there was created in Cameroon a Centre des Hauts Etudes. This is what became known as the Federal University of Cameroon and, since 1973, the University of Yaoundé. Although the Faculty of Laws and Economics was one of the first faculties of the young University it initially attracted only a few students. This was particularly true in the case of prospective students from the English-speaking part of the country who, because the University was strongly French-orientated (it was created under the auspices of Fondation Française) and because they were handicapped by a lack of knowledge of French, did not find going to study in that University an attractive proposition.

Nevertheless, the creation of the Faculty of

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1. Indeed, at the moment, most Cameroonian magistrats, advocates and University law teachers are people who have had their legal education at a University and/or Law School, Inn of Court or Barreau in either Nigeria, Britian or France.

Laws and Economics was a welcomed development as it meant that some form of legal education was now available on the spot, especially to French-speaking Cameroonians and those without resources to go abroad. In 1965 there was another development in the area of legal education in Cameroon. A school of magistracy was created to train the country's future judges and state prosecutors. It was attached, as the 'Magistracy Division', to the Ecole Camerounaise d'Administration which had been created in 1959. At the moment legal education in Cameroon takes two forms, the academic aspect and the professional training.

I. The Academic Aspect

There is only one University in Cameroon, the University of Yaoundé,[2] and the academic side of legal education is offered by the Faculty of Laws and Economic Sciences of that University.

1. The Faculty of Laws and Economic Sciences

To be admitted into the Faculté de Droit et des Sciences Economiques the candidate must meet the necessary

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2. Plans are currently afoot to decentralize the University. Campuses would be created in Buea (School of Translation and Interpretation), Douala (School of Business Administration), Dschang (School of Agronomy), and Ngaoundéré (School of Chemical and Animal Sciences).

entrance requirements. Once admitted into the Faculty the student follows a course of study that leads, after a minimum of four years (now reduced to three), to the award of the Licence en Droit degree.

A. Admission requirements

In Cameroon a child begins primary school at the age of six. He spends seven years there and a further seven years in a secondary school. Secondary education is provided in State-owned and privately-owned (mainly by missionary bodies: the Roman Catholic, Presbyterian, and Baptist) institutions.[3] After four years of secondary education the pupil in the Francophone part of the country obtains the certificate known as the brevet d'études du premier cycle (B.E.P.C.). He spends another two years to obtain the probatoire (sometimes known as the 'premier bac') and a final year to have the baccalauréat (sometimes known as the 'deuxieme bac').[4] The secondary

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3. These schools are known either as lycées (i.e. State-owned grammar schools) or collèges (privately-owned grammar schools) in the Francophone Provinces. In the English-speaking Provinces they are various styled 'colleges', 'secondary schools', 'grammar schools', or 'comprehensive schools'. There also exist the so-called 'commercial colleges' which also have grammar school subjects on their curriculum.

4. The baccalauréat examination (popularly called the 'bac' or 'bachot') is taken into one of a number of sections or 'series': the serie A is the 'literary' section and has several options; the serie B is the economics section; the serie C is the mathematics and physical science section; the serie D is the mathematics - biology section; and the serie E is the 'technical' section. Most students admitted into the Faculty of Laws and Economics are holders of either 'Bac A' or 'Bac B'. The baccalauréat

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school pupil in the English-speaking side of the country spends five years to obtain the General Certificate of Education, Ordinary Level, and a further two years to obtain the Advanced Level.[5]

Any student who has either the G.C.E. 'A' level in at least two 'arts' subjects obtained at one sitting and with good grades or the baccalauréat,[6] may register

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Footnote 4 continued from page 1193.

examination which is a local examination conducted by the Ministry of Education consists of a dissertation on a given topic and a series of comprehensive tests in such broad areas of knowledge as philosophy, literature, languages, natural sciences and mathematics, and finally an oral examination before a panel of 'professeurs'.

5. As recently as 1976 the G.C.E. was an external examination organised by the University of London. Since, the Ministry of Education has taken over and it is now the Cameroonian G.C.E. To obtain the G.C.E. 'O' level the pupil must pass in at least five subjects (including English Language) at one sitting. The pupil himself selects from the relevant G.C.E. syllabus, the number of subjects he wishes to offer. Passes in between seven and nine subjects are fairly common. To obtain the 'A' level the pupil must pass in at least two subjects taken at one sitting. Most students pass in three subjects. The G.C.E. examination consists of comprehensive and essay type questions. There is generally no oral test. The G.C.E. candidate is always expected to show originality and the ability to analyse and criticise in answering his questions.

6. This means that the candidate must have also passed either the brevet (a pupil without the brevet cannot proceed to the bac) or the G.C.E. 'O' level in at least five subjects at one sitting, including mathematics and a science subject.

People without the 'A' level or the Bac may be matriculated for the capacité en droit course after passing a special entrance examination organised by the Faculty for that purpose. The capacité course takes at least two years. The capacité en droit certificate gives access to some civil service position and entitles the holder to register as a 1st Year student in the Licence course. Most capacité students are civil servants in Yaounde who do the course part-time.

at the Faculty of Laws and Economic Sciences. In keeping with Government policy, there is no restriction on the intake. Any applicant who satisfies the requisite entry conditions is admitted. This Faculty is the largest in the whole University with an enrolment figure of over 4000 students. Tuition, as in the other Faculties and Schools of the University, is free. In addition, hundreds of students have a monthly grant which varies between 15,000 to 35,000 francs cfa, depending on the student's year of study and his academic performance.

To obtain the Licence en Droit degree the student must have successfully completed the four years' (now three) course. He may proceed to do a Masters in Law which takes two years and perhaps the Doctorat en Droit for which he must put in a further three years. The Faculty is modelled on the pattern of corresponding Faculties in French Universities both in terms of its organisation and law teaching technique. However, one singular aspect of the Yaounde Law Faculty is that its programme of study is bi-jural in character. Many graduates of the Faculty are in fact not only bi-jural but also bilingual.

B. Organisation and course of study

The Yaounde Faculty of Laws and Economics is divided into four departments: the Economics Department, the Public Law Department, the Private Law (Anglophone) Department, and the Private Law (Francophone) Department.

Each is headed by a 'chef du departement' who is generally either a Professor or an Assistant Professor. The Faculty is headed by a Dean (Doyen) who must be a Professor[7] but who may be a 'privatiste', a 'publiciste', or an economiste. The Dean's deputy and close collaborator is the Vice-Dean. Ever since Cameroonians took over the running of the Faculty in 1973, the Dean has always been a Francophone and his vice an Anglophone. The day-to-day management of the Faculty is carried out with the indisepnsable collaboration of the Faculty's Secretary General who comes under the authority of the Dean.

The programme of study at the Faculty is prescribed by Government decree. It includes subjects which elsewhere are taught only in Law Schools or Inns of Court. However, the Faculty takes into account the fact that its students number many who will not enter any legal profession. Hence, it also aims at broader objectives than just the practice of the law. Which is why in addition to course of a more strictly legal nature, courses in the political and social sciences are also taught - sociology, political ideas, political regimes, public liberties, political economy.

The Faculty awards two basic degrees. The licence en sciences economiques is destined for students specializing

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7. So long as there are Professors in the Faculty no one below the rank of full Professor may be appointed Dean of the Faculty regardless of , so it would seem, his erudition and experience.

in economics while the licence en droit is meant for law students (whether specializing in the private or public law area).[8] The dichotomy is thus between 'juristes' and 'economistes'. But this division is marked only in the last two years of the four years programme. During the first two years all students, whether intending eventually to specailise in the laws or in economics, offer, in addition to their respective main subjects, certain common courses: introduction to economics, sociology, history of Cameroonian institutions, introduction to law. Students who successfully complete the first two years are awarded the certificate of bachelier en droit. This diploma gives access to some civil service positions.

The programme for the first two years for 'privatiste' law students includes the following core subjects: introduction to the English legal system, family law (including customary law), droit de la famille et de la personne, law of contract, droit des obligations, droit constitutionnel (including political regimes and ideas), droit pénal général, equity (including trust), droit

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8. Students intending to enter one of the legal professions or to pursue a career in Government service or business will normally end up with a licence en droit. Because some knowledge of law is viewed as helpful in a number of careers, hundreds of students always flock annually into the Faculty of Laws and Economics, making it the largest Faculty in the University. However, only a small number of all the students who matriculate in the 1st Year ever go through the course successfully and obtain their degrees. The failure rate in the 1st Year is sometimes as high as 70%. Moreover, a great deal of winnowing does take place from year to year.

administratif, and political sociology. These core subjects are compulsory for both English and French-speaking students. Lectures are given in both French and English in the sense that English law subjects are taught in English while French law subjects are taught in French.

In the last two years 'juristes' students must elect between two major fields of concentration: private law or public law. Course offered in the public law field include public international law, civil liberties, private international law, methodology of the social sciences, public finance including taxation, contentieux administratif. The private law field is further bifurcated into an Anglophone section and a Francophone section. But students of both sections must follow a number of core subjects which include droit pénal spécial, droit des assurances, droit du travail, regime foncier, and land law (including conveyancing). The subjects taught in the last two years are: law of torts, sale of goods, law of partnership, mercantile law, civil procedure, carriage (droit des transports), criminal law (special part), criminal procedure, evidence, trust, land law (including conveyancing), taxation, succession, labour law, private international law, public international law, company law, and jurisprudence and legal theory. These subjects are taught in English in the Anglophone section and in French in the Francophone section. Common courses are taught in English and French (i.e. French law courses are taught in French and English law courses are taught in

English; if a particular subject is one over which there exists a uniform Cameroonian law - such as labour law, the penal code, land tenure - the language of lecture depends on the teacher asked to take the subject).

Examinations are held thrice a year; a mid-year examination known as 'partiels' and an end of year examination taken in June and also in October for candidates who failed in the June session. A student who did not enter for the June examination may not enter for the October session. A student may proceed to the next year only if he obtains a pass score on an aggregate of the mid-year and the end of year marks. All students successfully completing the licence en droit programme have the same right of access to the various legal professions whether their field of concentration is private law or public law. In practice however, private law graduates always tend to opt for either the magistracy or the bar while public law graduates almost always opt for a career in the Government service either as administrateur civil principal, inspecteur des douanes, inspecteur des impots, or a functionary in the Ministry of Foreign Affairs. Indeed, a public law graduate who contemplates entering the diplomatic service must undertake a further two years course of study at the Cameroon Institute of International Relations (IRIC).

C. Law teaching technique

The general technique of law teaching in Yaounde

University follows the pattern of law teaching in French Universities. Two methods are combined: cours magistraux or formal lectures and travaux dirigés or 'tutorials'. Lectures are considered the superior pedagogic methods. They are given in amphitheatres which vary in size, the largest having a sitting capacity of 700 students at a time. Teachers prepare their notes and read them out to students who always strive to take them down verbatim and at examinations do their very best to reproduce the teacher's exact words. The University authorities are evidently unhappy about this state of affairs. The student is constantly reminded that a University is not a secondary school where a student can afford to adopt a passive attitude, relying solely on what he has been told by his teachers. The job of the University teacher is merely to guide, orientate and assist the student who must show initiative and originality.

Attendance at formal lectures is not compulsory. Most students prefer to study from the cours polycopiés, that is, mimeographed transcripts of the teacher's lectures. They are widely available and most students do not bother to buy the prescribed textbooks, complaining (to some extent justifiably so) that the books are not available locally. In fact few students ever read any legal literature other than their notes and the teacher's mimeograph. The authorities are not happy with this development. Teachers have been asked to refer students more and more to

the library and to discourage heavy reliance on mimeographs. A University Bookshop is being built to provide students with textbooks.

The second and complementary limb of law teaching in Yaounde University is the method of 'travaux dirigés' (which literally means 'guided work' but which we may render simply as 'tutorials'). These are meant to supplement the formal lectures and attendance at them is compulsory for every full-time student of the Faculty. Whereas the cours magistraux are theoretical expositions dealing more with general principles than with their practical application, travaux dirigés are designed for practical work. Thus they may involve the preparation of a written comment on a court decision, the drafting of written pleadings, the drafting of charges, the drafting of statements of claim, the making of affidavits, the discussion of the various procedural steps which may be taken in a concrete case, the answering of specific questions or problems raised by students with regards to the formal lecture, the discussion of factual problems, and even (although this is never done) the organisation of moots. Unfortunately however, a certain amount of lecturing often goes on even during the travaux dirigés sessions. This is so because these sessions are also expected to be used in filling the gaps left by the teacher in his formal lectures.

Attendance at travaux dirigés sessions is obligatory. Persistent absence for no justifiable reasons

may have a detrimental effect on the student's end-of-year results. At each session students are required to participate not only orally but also by submitting written work whenever there is one to be submitted. Marks are awarded for participation and regular attendance. These marks also count in determining the student's overall results at the end of the year. The importance of travaux dirigés may also be gauged from the fact that each yearly examination is not partly written and partly oral only; it also requires the preparation of a written essay on some point of legal theory as well as the solution of more practical problems.

One of the objectives of the travaux dirigés sessions is to provide a means of contact between teacher and student as no opportunity for class discussions exist during the cours magistraux. Students are divided into 'small' tutorial groups. In fact the groups are not small at all as they usually consist of about thirty students each. Although students are free to go to their teachers' offices if they have problems, discussion and exchange of views between teachers and students, so typical of Anglo-American education, is still noticeably lacking. Furthermore, although students are encouraged to ask questions (during the travaux dirigés sessions and not during the cours magistraux) they are generally not inclined to do so and, in any case, prefer not to take any position which might be regarded as critical or disrespectful of the

professor. Besides, it would seem that some teachers are not inclined to want to close the gap for fear that they might yield some of the authority which they think is necessary for effectiveness as a teacher.[9]

To obtain the licence en droit degree the student must satisfy the examiner in the written and in the oral examinations including the presentation of a dissertation (mémoire) on a legal topic chosen by the student himself. The presentation of a dissertation in part fulfilment of the licence en droit degree was however abolished in 1978. The written examination in the fourth year consists of four subjects. Three of these subjects are made known to the student at the beginning of the fourth year. The fourth written subject, unknown to the students until the day of the examination, is chosen from among the subjects taught, by the Dean of the Faculty. Only students who have satisfied the examiners in the written examination may proceed to the oral one. The oral examination consists of interrogations in four subjects (other than the ones at the written examination). The interrogation on each subject is conducted separately by the teacher who teaches the subject. To be awarded the degree the student must, on aggregate, score an average mark on the following items: the travaux dirigés marks, the mid-year examination marks, the marks obtained at the written examination, and the marks obtained at the oral examination.

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9. It is a rare phenomenon to find a teacher at the University of Yaounde having a meal at the students' restaurant or a drink in the students' canteen.

The names of candidates, their score for each subject, and the total marks obtained by each student are entered on a procès-verbal which is put up on the Faculty's notice board. Successful candidates are indicated by the sign ADD (admission définitive) and unsuccessful ones by the sign AJ (ajourné). Successful students call at the Faculty and collect their 'attestation de réussite' and later, degree. There is no graduation ceremony.

With his Licence en Droit degree the door is open for the young law graduate to elect either private practice, the magistracy, or law teaching at the University. Whichever road he takes he must put in at least another two years of study. If he decides for example to become a law teacher he must continue his studies for at least another two years in order to obtain the degree of Master of Laws. He needs a further three years in order to obtain the degree of Docteur en Droit. Only holders of at least a Master of Laws degree may be recruited to teach law at the Faculty of Laws and Economic Sciences of the University of Yaounde.

2. Law reporting and legal periodicals

Legal writing - whether in the form of treatises, books, commentaries or articles - has exercised and continues to exercise considerable influence over the development, interpretation and systematisation of the law in the

older countries of Europe.[10] This has been aided in no small part by the availability of law reports and legal periodicals. Without them legal writing would have been extremely difficult. Moreover, they are indispensible tools for the student of law, the law professor, the legal practitioner and members of the judiciary. However, although law reporting and legal writing has been with the countries of Europe for several centuries now, it is only a recent phenomenon in Cameroon. During the colonial period there was no form of law reporting in either the French or the British Cameroons. Law reporting and legal

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10. Although in the Anglo-American tradition, the organised exposition of legal principles is primarily the province of the judiciary the works of people like Glanville, Bracton, Coke, Blackstone, etc., have played a decisive role in the development of the common law. Even today, books and articles by legal scholars (whether dead or still alive) are frequently cited in court. In France the role of doctrine (i.e. the body of opinion on legal matters expressed in books and articles) is of paramount importance in the development, interpretation, analysis, synthesis and evaluation of the law. Indeed, "the doctrinal comment in legal periodicals, which often accompanies the reports of important cases, serves as dissent from or concurrence with the underlying theories of the decision, referring to past case-law on the points involved and suggesting valid grounds for decision. Modern doctrine thus tends to place court decisions in the proper perspective, as well as to indicate the policies underlying legislation which must eventually be interwoven into an organised legal system ... French judges themselves recognising the constructive role of doctrine in this regard, do not consider doctrinal dissent, however vigorous, as an affront to judicial prestige. On the contrary they view it as an indispensable aid to the judicial process, and the courts often adopt a theory suggested by a commentator." See, David & de Vries, The French legal system, Oceana Publications, New York, 1958, pp. 124-125.

writing in the country are post colonial developments.

A. Bulletins des Arrêts de la Cour Suprême

These were the first series of law reports ever to be produced in Cameroon. Produced by the Ministry of Justice and printed by the Government Printer, the Bulletins first appeared in 1960 and since then production has been fairly regular. Published every semester, the Bulletins des Arrêts report only cases originating from the French-speaking part of the country and decided by the Cour Suprême du Cameroun (up to 1972 it used to be cases decided by the cour suprême du Cameroun oriental). Cases from the English-speaking Provinces, even when decided on appeal by the Supreme Court of Cameroon, are never reported. All cases are reported in French.

Each Bulletin is divided into four parts, each part dealing with a particular subject matter. Part one deals with droit pénal, part two with droit local, part three with droit social, and part four with droit civil et commercial. Each issue of these reports is numbered (for example, the issue of the second semester of 1973 is No. 29) and the pagination has been continuous from year to year. However, there is no official form of citation. Most writers cite them as 'Bull.' Cases reported in the Bulletins are not annotated and do not have the familiar 'note' (i.e. critical evaluation or comment by a scholar) often found at the end of some cases reported in French law reports.

Cases decided by the Supreme Court and which are reported in the Bulletins are, in typical French style, formulated like a decree, short, cryptic and largely uninformative. Each case opens with the ritual 'La cour' and 'attendu que' and closes with the traditional refrain, 'par ces motifs, rejette', or alternatively, 'par ces motifs, casse et annule'. An Anglo-American educated lawyer will scan each judgment in vain for any argumentative exposition, expatiation, or citation of cases by the judge. The judge merely refers briefly to the arguments of the appellant and the respondent, saying whether the 'moyen' advanced by the appellant is 'fondé' or not, and then goes on to hold one way or the other (by rendering what is known in the laterature as an 'arrêt confirmatif' or an 'arrêt infirmatif'), stating briefly his reasons for arriving at the decision he has arrived at. The 'reason' advanced often takes the form of a curt attendu clause referring to the relevant law which has been 'violé' or not 'violé'. The clause ends with a statement saying whether or not the 'arrêt attaqué encourt la cassation'. Most judgments take just one and a half pages. A judgment that runs through four pages is a rarity. At the end of each reported judgment are the names of the 'président', the 'rapporteur', the 'procureur général' and 'avocats' in that order.

B. The West Cameroon Law Reports

The West Cameroon Law Reports (only three volumes

of which were ever produced) contain selected judgments of the Supreme Court of West Cameroon. Volume one of the reports contains cases decided in 1962, 1963 and 1964 and is cited as (1962-1964) W.C.L.R. The second volume contains cases decided in 1965, 1966 and 1967 and is cited as (1965-1967) W.C.L.R. The third and last volume in the series contains cases decided in 1968 and is cited as the 1968 W.C.L.R. These reports were compiled, edited and annotated in typical English fashion by Mr J.A. O'Brien Quinn (an expatriate legal officer) on behalf of the West Cameroon Bar Association and published by the Government Printer.

Up to 1970 no attempt was made to report cases decided by the courts in the English-speaking part of Cameroon. In 1970 the West Cameroon Bar Association set up a 'Council for Law Reporting' with Mr O'Brien Quinn as chairman. Mr Quinn then went ahead to produce the reports for 1962-64 and for 1965-67. This initiative was much appreciated by the Bench and the Bar when the first volume of the reports was publicly launched. However, when Mr Quinn proceeded to produce the 1968 volume steps were taken by the Bench and the Bar to prevent him from doing so. It was claimed that he did not consult with the other members of the committee, that law reporting is hardly done by a single person, and that the comments at the foot of some of the judgments already reported were proper only in a law journal and not in a law report. These arguments, it is

submitted, are lame and idle. It is common knowledge that annotations are in order in a law report. Moreover, English legal history shows that law reporting was originally the work of individuals. It is significant that ever since Mr Quinn was forced to abandon this praiseworthy undertaking, his detractors have never been able to produce a single law report.

C. The Annales de la Faculté de Droit

These were reviews produced twice a year by the Faculty of Laws and Economics. They were valuable periodicals, the first of their kind in Cameroon, in which members of the academic staff of the Faculty published articles of legal and economic interest. The first issue of these Annales was produced in 1970. In 1974 however, after the seventh issue had been produced, publication stopped. This was largely because the Cameroon Law Review had been founded in 1972 (under the auspices of the University but run by the Law Faculty) and it was not thought economically advisable to continue with the Annales. Moreover, it was felt that with the founding of the Cameroon Law Review, the Annales had become redundant.

D. The Revue Camerounaise de Droit

The Cameroon Law Review was founded in 1972 by the Law Faculty but it is under the auspices of the University. Initially, the ambition had been to produce twice

a year. But by 1974 it had become clear that this was impossible. Production has been most irregular. Sometimes only a single issue is produced for a year. At other times, no issue is produced at all. The difficulty does not appear to stem from a lack of contributions. The problem appears to be one of lack of funds and the inability of local publishers to do a good job. Efforts are currently being made to overcome these difficulties.

The Revue Camerounaise de Droit has been faithfully modelled on the pattern of the French Jurisclasseur Périodique (commonly known as the J.C.P.). The Revue is divided into three parts. Part I deals with doctrine (legal articles), Part II with jurisprudence (case-law), and Part III with textes (statutory enactments). Part II is further divided into a number of rubrics: jurisprudence administrative, jurisprudence pénale, jurisprudence civile et commerciale, jurisprudence sociale, jurisprudence de droit local, and jurisprudence de droit international privé.

The Review is only bilingual in the sense that articles written in English may be published in it. Otherwise, there is in practice, although perhaps not in terms of policy, nothing bilingual and less still bi-jural about it. There is only one English-speaking member on the Review's twenty-man editorial board. Besides, statutory enactments are reproduced in the Review only in French even though all statutory enactments in Cameroon are available in the Official Gazette in English and in French.

Finally, the Review only reports cases decided by courts in the Francophone Provinces of the country.

E. The Recueils des Grands Arrêts

These are collections, in book-form, of a selection of cases decided by the now defunct Federal Court of Justice sitting as an administrative court. The venture has been that of private individuals. In 1972 Jean-Marie Breton, then a law lecturer in the Law Faculty produced a monograph: Recueil des principales décisions de l'assemblée plénière de la cour fédérale de justice statuant en contentieux (1967-1972). Perhaps the better known of these compilations is the two-volume Recueil des grands arrêts de la jurisprudence administrative de la cour fédéral de justice, by Francois-Xavier Mbouyom, Procureur General at the Supreme Court. Tome one was produced in 1970 and contains cases decided between 1962 and 1970. Volume two was produced in 1975 and contains cases decided between 1970 and 1975. One merit of Mbouyom's collection is that it is bilingual. The reported cases have been translated into English. However, the translation is at times of poor quality and here and there one finds printing errors in the English version. This has greatly whittled down the value of the English version which must therefore be read with much circumspection.

F. Recueil Penant

Founded in France in 1891 by a Mr D. Penant, the Recueil Penant is a revue trimestrielle which reports selected cases from the appellate courts of Francophone African countries and publishes legal articles on any legal aspect concerning any of those countries. In fact however, the Penant publishes articles only on the private law area. There is another French periodical (the Revue Politique, indépendance et coopération) devoted also to French-speaking countries, which publishes articles on the public law area. The Penant styles itself as 'revue de droit des pays d'Afrique'. This is an ambitious and a misleading title. The 'revue' does not in fact concern itself with English-speaking and Protuguese-speaking African countries.

The Penant was, in the colonial era, the only 'review' which reported selected cases of the appellate courts in France's colonial possessions. A number of cases from the French Cameroun were therefore reported in it.[11] Independence did not affect this process. Each issue of Penant reports at least one case originating from the Francophone part of Cameroon. It also publishes legal articles on aspects of law in Cameroon. Although it is a 'revue trimestrielle', the Recueil Penant is in fact

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11. Cases decided by the courts in the British Cameroons were hardly ever reported. Only a handful found their way into the Nigerian Law Reports.

not what would be understood in England or America as a 'law quarterly review'. It does not publish only legal articles. It also reports cases. It is both a 'law report' and a legal periodical. The 'revue' is divided into two major parts, doctrine and jurisprudence. This latter part is further divided into four sections: jurisprudence administrative, jurisprudence civile, jurisprudence pénale, and jurisprudence sociale. There are also two minor parts: chroniques and bibliographie.

G. Le Monde du Travail

To complete this catalogue, one should perhaps mention the quarterly review, Le Monde du Travail, founded in December 1977 by the Ministry of Labour. It publishes articles, cases and statutory enactments and various agreements relating to labour law. It can only be hoped that this review which is making a bold attempt to be both bilingual and bi-jural would stand the test of time.

II. Professional Training

The licencié who wishes to engage in the private practice of the law or follow a career in the magistracy must undergo professional training. Professional training for the magistracy is given in the Magistracy Division (hereinafter referred to as the School of Magistracy) of the Ecole Nationale d'Administration et de la Magistrature (ENAM).

1. The School of Magistracy[12]

Decree No. 59/123 of 27th July 1959 set up an Ecole Camerounaise d'Administration in Yaounde to train the higher cadres of the Public Service. In 1965 a Magistracy Division was added to it and it became the National School of Administration and Magistracy. ENAM comes under the President of the Republic who has delegated his powers with regards to the School to the Public Service Minister. For practical purposes therefore the School is under the Ministry of the Public Service. ENAM trains and provides refresher courses for civil servants, magistrats, and court registrars. Headed by a Director, it consists of a Department of Studes, a General Secretariat, and a Library Section. The Department of Studies is made up of an Administrative Division (for the training of civil servants) and a Judicial Division, in fact, the School of Magistracy. The basic mission of the School of Magistracy is to train the country's future judicial and legal officers.

A. Admission into the School of Magistracy

To be admitted into the School of Magistracy, the candidate must hold the Licence en Droit degree or a recognised and approved equivalent law degree, be a Cameroonian, be of good health, have no criminal record,

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12. See also, Chapter Nine, supra.

and pass the prescribed competitive examination into the School. This examination is held annually around September-October. As recently as two years ago however, there was no concours to get to the School of Magistracy. This was because few law graduates were interested in pursuing a career in the magistracy. Conditions of service were not particularly attractive. Now, things have changed and more and more law graduates are opting for the magistracy. The concours device has therefore been introduced to limit the number of intake each year. Section 11(3) of the Rules and Regulations governing the Judicial and Legal Service specifically provides that "if the number of candidates exceeds the number of available places, recruitment shall be effected by means of a competitive examination".

Persons holding the degree of doctor of laws may be admitted straight away, without having to pass a competitive examination, into the second year of the course. Candidates admitted to the School of Magistracy are called legal probationers. They must take the following oath: "I swear well and truly to perform my duties, scrupulously to keep secret all discussion of judgment, and in all ways to bear myself as a worthy and faithful legal probationer." While in training the legal probationer has the status of probationer civil servant and receives a monthly allowance not subject to pension contributions.

B. Course of study

The duration of studies at the School of Magistracy is two years. The studies comprise practical and theoretical courses as well as courses of training in the courts, in the central administration of the Ministry of Justice and, in suitable cases, in the public services and offices of auxiliary officers of justice. Education and training courses may be undertaken in part abroad. The programme of study is designed not only to turn out someone who can sit on the bench but one who can also prosecute and serve in an administrative capacity in the Ministry of Justice.

During his first year of training at the School of Magistracy, the legal probationer attends courses, seminars, and lectures designed to broaden his general cultural horizon and to increase his legal knowledge. Courses taught include general culture, criminal law, judicial organisation, land law and administrative law. At the end of this first year students go out to the courts to have forensic experience. The general policy has always been to send Anglophone students to courts in the Anglophone Provinces while Francophone students have their forensic training in the courts in the Francophone Provinces. The School itself is divided into an Anglophone and a Francophone section. There is no scheme whereby students from the Francophone Provinces are enabled to acquire forensic experience in the courts in the Anglophone

Provinces. They are in effect shielded from the common-law influence. Anglophone students on the other hand are exposed to the civil-law influence. The School of Magistracy is located in the French-speaking side of the country and some Anglophone students are sent to courts in Yaounde.

In the second year students increase (through lectures) their knowledge in such subjects as criminal and civil procedure, evidence, commercial law, customary law, execution of judgments and so on. They receive practical training at the 'Palais de justice' in Yaounde, and at the Ministry of Justice. Up to 1974, the second year used to end with a three to four months' 'stage' at the I.I.A.P. in Paris. While in training legal probationers may attend any consultation in an advisory capacity. He may be designated ex officio by the appropriate judicial authorities to assist or represent parties before the courts.

At the end of their training all legal probationers (auditeurs de justice) must sit for the end of course examination. Those who succeed (the pass mark is 12/20) are awarded the Diploma of the National School of Administration and Magistracy (Judicial Section) and absorbed into the Judicial and Legal Service on the first scale, first incremental position. They begin their judicial career in the lowest court, the Court of First Instance. Those who fail the examination have their appointments terminated. They may however, in certain circumstances, be appointed

legal assistants (attaché de justice) and placed at the disposal of the Procureur General at an Appeal Court.

One of the issues which has often lent itself to much debate is whether it is really necessary to stretch the training programme at the School of Magistracy over a two-year period. Two years is rather a long time for the scope of the course. The present programme can conveniently be compressed into twelve months (or at most fifteen). This is the more so as the subjects taught are merely a rehearsal of what the student would already have studied at the Law Faculty in Yaounde. It may be noted that the School offers no comparative law courses. This is a matter for regret. The absence of such courses has also contributed to a situation where even in 1979 most judicial and legal officers in either side of Cameroon still remain in cloistered ignorance of each other's legal system.

2. Apprenticeship

In Cameroon there is no 'Law School' which trains private practitioners. The School of Magistracy only trains lawyers who intend to enter Government service as judicial and legal officers. The Cameroon Bar Association has strongly recommended the establishment of an 'Institute of Legal Education' to train lawyers who intend to go into private practice. But until the setting up of such an

institution (if it ever is) the only way the holder of a licence en droit (or an equivalent law degree) may become an advocate in Cameroon is by doing pupillage for two years with an advocate and being called to the Cameroon Bar.

A. Pupillage[13]

Pupillage takes two years. It is governed by the 1972 Bar Law as amended and the Internal Regulations of the Bar. Pupillage is designed to give the pupil advocate skills and techniques in his chosen profession and to test his character and integrity. It is under the control of the Bar Association acting through the President of the Bar Council. To be admitted to pupillage, the candidate must submit proof to the Bar Council that he is Cameroonian, that he has an advocate willing to take him, that he holds the licence en droit degree (or its recognised and approved equivalent) and that he is of good moral character.

Candidates admitted to pupillage take their oath before the Court of Appeal of the place where they intend to do their pupillage. They swear never to say anything contrary to law or morals, and to respect the courts and public authorities. They take the title of avocat stagiaire

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13. This topic has been given exhaustive treatment in Chapter Ten, supra, and so no more than the broadest outlines shall be given here.

(pupil advocate). The pupil advocate works under the guidance, direction and supervision of the advocate in whose chambers he is undergoing his training. They must attend court sessions and also seminars organised for their benefit by the President of the Bar Council. Any pupil advocate may be commissioned by the President of the Bar Council or a court to handle a legal aid brief.

While undergoing his training the pupil advocate must show due respect to his trainer. A pupil advocate does not pay for his training. On the other hand he is not paid a salary by his trainer. He however gets an allowance, the exact amount of which he must negotiate on an individual basis with his trainer. Upon the satisfactory completion of his pupillage, the pupil advocate is called to the Bar as an advocate. But before he can begin to practise, he must have applied for and obtained the authorisation of the Head of State to practise law.

B. The proposed Institute of Legal Education

The present system whereby aspiring advocates receive their professional training in the chambers of individual advocates has always been regarded as unsatisfactory. Accordingly, on 26th July 1976, the Bar Council appointed Mrs Siewe and Mr Luke Sendze to look into the problem of training pupil advocates in Cameroon and make recommendations. The Siewe-Sendze Commission studied the

training of pupil advocates under the French and English legal systems and came to the settled conclusion that training in chambers ought to be discouraged for the following reasons: (i) the pupil may not have an advocate willing to accept him, (ii) the advocate in whose chambers the pupil is undergoing his training may be of mediocre quality - a fact which is true of many Cameroonian advocates, (iii) the advocate may be concerned with only one type of litigation, (iv) supervision of the pupil may be difficult as the advocate may not have much time to devote to him, (v) the President of the Bar Council may not always be able to effectively supervise the pupils' training, and (vi) training in chambers is haphazard and not uniform.

The Commission recommended the creation of a 'Law School' which would train both Government and private lawyers. The course programme which would be the same for both sets of lawyers will include the following subjects: criminal procedure, civil procedure, ethics of legal practice, evidence, the Cameroonian legal system, legal drafting, and conveyancing.

In June 1978 the President of the Bar Council submitted a draft proposal to the Minister of Justice incorporating the recommendations of the Siewe-Sendze commission. The Draft Proposal called for the establishment of an 'Institute of Legal Education in Buea' to be run by a 'Council of Legal Education' also to be created. The Institute and the Council would be placed under the Bar

Association and subject to the overall control of the Presidency. The Institute would offer the courses recommended by the Siewe-Sendze commission and the period of study would be two years. At the end of their training, successful candidates would be awarded a certificate to be known as 'Diploma in Practical Jurisprudence' - a highflown name indeed. So far however, nothing has come of these proposals.

CHAPTER NINETEEN

THE COST OF JUSTICE

This chapter attempts to assess the cost of legal services in Cameroon: the cost of trying a man, the cost of litigating, and the cost of court overheads.

I. Legal Cost

In every trial, the individual directly involved as well as the State incur certain expenses.

1. Expenses incurred by the individual

The defendant in a criminal court or the litigant in a civil court pays for four main items: (i) the court fees and taxes, (ii) the expense of collecting evidence and bringing witnesses to court, (iii) the charges of advocate (if one is briefed) and process servers , and (iv) the expense of travelling to and from the court.

A. Court fees and taxes

In Cameroon the prosecutor in all criminal cases is always the State whether the prosecution arose from a private complaint or otherwise. In any criminal trial

therefore, the individual always appears as a defendant.[1] As a result he pays no court fees and taxes (except where the defendant goes on appeal). In civil matters however, the situation is different. Except where he is granted legal aid (or where, as in labour cases, proceedings are free of charge) the plaintiff in a civil suit must pay the necessary court fees and taxes. They are intended to help defray the cost of operating the court system. Two types of fees are collected, filing costs and service fees.

The amount payable as filing cost depends on the pecuniary value of the plaintiff's claim. According to the fee schedule for the Magistrate's Courts in the Anglophone Provinces the charge for an action involving a subject matter whose monetary value is say 10,000 francs cfa is 700 francs; 2,600 francs where the amount of the claim is 50,000 francs; 3,900 francs where it is 100,000 francs; 7,800 francs where it is 200,000 francs; 11,700 francs where it is 300,000 francs; 15,600 francs where it is 400,000 francs; and 18,500 francs where it is 500,000 francs. Any action whose pecuniary value is more than 500,000 francs must be taken to the High Court which alone has jurisdiction to entertain the action at first instance. The filing cost for any claim above 500,000 francs is

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1. The only situation where an individual in a criminal trial appears otherwise (absent the case of witnesses or where the defendant goes on appeal) is where he is the victim of an offence and he joins in the criminal action against the accused as a civil party in order to claim compensation for the injuries he has suffered.

25,000 francs. In the Francophone Provinces the charge is calculated at 3% of the pecuniary value of the suit. Thus if the plaintiff is claiming say 100,000 francs he would have to pay 3,000 francs filing cost. In the Anglophone courts filing cost must be paid in cash. This is not necessarily the case in the Francophone courts. Costs may be paid by affixing the proper amount of stamps onto the instrument (such as the statement of claim, summons, 'exploit', and so on) before use. Indeed, extensive use is made of timbres fiscales. This practice is gradually gaining currency in the English-speaking part of Cameroon. For example, all over the country documents relating to matters of status such as marriage certificates, birth certificates, age declarations and so on, must have affixed to them fiscal stamps to the value of 250 francs. This has completely eclipsed the practice in former West Cameroon whereby the sum of 180 francs was charged for any legal document signed by the Commissioner for Oaths. The fee for an application for any of the prerogative writs (habeas corpus, mandamus, certiorari), a writ of fifa, or an order of injunction or specific performance is 1,730 francs. In the High Court the filing cost (sometimes also known as 'summons fee') is 25,000 francs in the Anglophone courts, and 10,000 francs in the Francophone courts.

Service fees are also not uniform in Cameroon. The Francophone Provinces, the fees for procedural documents which the huissier serves is roughly 1,200 francs.

In the Anglophone Provinces courts charge 70 francs as service fee for each document to be served plus a further mileage charge, the amount of which varies depending upon whether the person to be served resides far away or near the location of the court. The mileage charge schedule is as follows: 70 francs for the first two kilometres plus 40 francs per subsequent kilometre; however, the maximum mileage charge is 260 francs where the person to be served resides in a place accessible by motorable road, and 520 francs per day of journey if the person to be served lives in an area not accessible by motorable road.

B. The expense of collecting evidence and bringing witnesses to court

Before a case comes up for hearing, the parties or their counsel would have engaged in one form of discovery device or another in preparation for the case. Expenses would therefore have to be incurred on this head. Expenses in the preparation of a case include expenses incurred to obtain statements from witnesses or experts; copies of police or gendarme reports (procès-verbaux or constats de police) and other documents, particularly in accident cases (crucial in insurance claims); expert reports (crucial, for example, in paternity proceedings where a blood test - expertise sanguine - is often necessary), especially if the matter is a highly technical one;

the expenses involved in going to a specified locality to inspect the place;[2] and the expenses incurred in the discovery of papers and tangible evidence in the hands of an adverse party.[3]

However, the expenses incurred in the preparation of a case are generally small because counsels seldom engage in wide-ranging factual investigations.[4] Moreover, experts' fees vary and depend on the type of investigation involved. Expert accountants and auditors, for example, charge higher fees than physicians. But they are seldom solicited. On the other hand, the services of doctors, for forensic purposes, are much in demand. So they do make a lot of fortune out of litigants and the courts. General practitioners in Cameroon charge 2,500 francs for an ordinary medical examination.

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2. This is important in suits concerning real property. In the Francophone Provinces the visit and inspection would often be done by a huissier. The report he makes after such an inspection is known as a constat d'huissier.

3. This is however of limited application in the Francophone Provinces. True, the Code de procedure civile et commerciale provides that a party wishing to use a document must make it available to the other side. But this rule is evidently of no help to a party who needs a document his opponent has but does not wish to use. Courts sometimes permit discovery beyond this by a so-called actio ad exhibendum. But there is, generally speaking, no duty, in non-commercial cases, to make available to the other party documents or other tangible evidence one has but does not wish to use. The maxim is, nemo tenetur edere contra seipsum - nobody is bound to produce documents against himself.

4. Under the French system, evidence collected in advance is known as 'la preuve préconstituée'.

C. The charges of advocates and process-servers

For preparing an original summons or duplicate original summons, notice of appeal or other paper requiring formal service, and levying execution the process-server is entitled to a fee.

Counsel too are of course entitled to their fees. But the fees charged vary and are not subject to official regulation. Each individual advocate fixes his consultation fees as he pleases. Some charge 2,500 francs, others 3,000 francs, others still 3,500 francs, and yet others 5,000 francs. There is in fact no obligation to charge a fee at all. It may be waived. Few advocates however do so; and then only in respect of a person with whom he has some kind of relationship. The fees payable to an advocate for handling any brief are freely negotiated between the advocate and the client. The fee charged is reckoned on the basis of certain factors: the amount of difficulty involved in the work, the importance of the case, and the advocate's personal standing. Some advocates do sometimes take into account the extent of the client's financial distress, that is to say, the extent of his poverty. This factor tends to reduce the fee. In theory the fee for handling any brief must be agreed upon before the brief is taken. In practice however, counsel does sometimes secure from his client an agreement that his fee shall depend on the outcome of the case. Contingency fees are particularly popular in insurance claims.

In actions for small claims or in petty offences, the plaintiff or defendant often does not brief an advocate. Moreover, a party in any legal proceedings in the Magistrate's Court or High Court may be represented by a non-professional advocate. Furthermore, where the action is one for compensation for industrial injury, the plaintiff is entitled to legal aid and would not have to incur any expenses (except the expense of travelling to and from the court).

D. Travelling expenses

A plaintiff or defendant in legal proceedings in court bears the cost of travelling to and from the court for himself and for his witnesses. If the witnesses have been summoned by the court itself, then their travelling expenses and attendance allowances are paid by the court. The attendance allowance for witnesses subpoenaed by the court varies according to the witness's station in life. An ordinary worker is paid 70 francs for each court attendance. Experts, professional men and those in the higher levels of the civil service are paid 1,400 francs for each appearance. The allowances are so small that most witnesses never ask for them.

Whether travelling expenses would be little or much will clearly depend upon how far the plaintiff and his witnesses live from where the court is located and for how

long the case would go on. A drop in a township taxi in Cameroon is 75 francs in Yaounde and Douala, and 50 francs in the other towns. The fare in an inter-town transport is roughly 5 francs per kilometre per person where the road is tarred, and roughly 10 francs per kilometre per son on untarred roads. Since the roads in the rural areas are untarred, litigants there spend a lot on transport.

The various court fees and taxes appear to be reasonable. Whether the cost, for any individual litigant, of obtaining justice is substantial or not would evidently depend on the nature of the suit, its gravity, how complicated it is, the vigour with which it is contested, and the celerity with which it is examined. Provided that inability to pay fees is never allowed to prevent anybody from having access to the courts there seems no strong case against the present scheme of things. It may be argued that although the cost of obtaining justice is well within the ability of even the poor to pay, they however do so with tears. This is certainly true in many cases. One way of alleviating this burden on the indigents is to extend the scope of the legal aid scheme.

2. Expenses incurred by the State

In the days of the itinerant justices in England, for example, courts were expected to be self-financing and

even to make a profit for the King. During the colonial period, courts in Cameroon were also expected to be self-financing. There is still a vestige of this idea. People who make use of the service and facilities provided by the courts must pay for them. But attitudes are changing. The cost of the law should not be such that the poor are prevented from getting justice. Accordingly, in present-day Cameroon it is the prime responsibility of the State to provide the machinery and the facilities for the rendition of justice. The courts are State agencies providing a public service to the citizenry.

The cost, for the State, of setting up and running the judicial apparatus encompasses the following: expenses incurred in building and equipping court houses, judicial emoluments and other salaries (paid to the clerical staff of the courts, etc.), expenses incurred in trying a man, and the cost of managing the legal aid scheme.

A. Expenses incurred on court buildings

Justice used to be rendered under a palm or other tree. That was in the days of old. These are modern times. The State must provide special houses in which justice is rendered. But it is not sufficient merely to provide the court houses. They must be equipped. The courtroom itself needs to be equipped: benches for members of the public; the desk and chair for the judge; benches for advocates; a table and chair for the Prosecution;

table and chair for the court clerk; the witness stand for witnesses; and the dock for the accused. The judges' chambers need to be furnished. So too the offices for the State Prosecutors. The court needs to be provided with stationery, record books and various office equipment. Judges and State Prosecutors have to be provided with means of transport.

These various items have to be either replaced or repaired when existing stocks go bad or are exhausted. The court building itself has to be refurbished from time to time. A small and simple court house with a seating capacity of say one hundred persons would cost no less than three million francs to build. Fortunately, it is not every day that one builds a court house. There are over one hundred court houses in Cameroon. Nearly all of them were built during the colonial period.

B. Judicial emoluments and other salaries

The personnel of the law - judges and state prosecutors - as well as court officials (the clerical staff of the court, officiers de police judiciaire and so on) are paid out of public funds. This payment takes the form of salaries, wages and various allowances. Judicial salaries have been discussed elsewhere in this treatise. An idea of how much is spent by the State on judicial salaries alone may be obtained from this conservative calculation. There are at the moment 160 magistrats in

Cameroon. Their monthly salaries vary, ranging from 110,000 to 250,000 francs. Take the conservative sum of 120,000 francs as the average monthly salary of these magistrats. Their total salaries for one year would be 120,000 x 160 x 12 which gives 130,400,000 francs cfa.

C. Expenses incurred in trying a man

The cost of prosecuting an offender falls on the State. The ministère public spends money in the preparation of each trial. The amount spent of course varies with the nature of the offence committed. The amount would be substantial where the offence is serious and complicated. The State Prosecutor may need expert witnesses, or medical examinations or tests; he may want to go to the scene where the offence was committed and inspect it; he may want the police to carry out further and detailed inquiries. Witnesses called by the State have to be paid an attendance allowance and reimbursed their travelling expenses.

Even when the accused gets convicted and sentenced, the State has to keep and maintain him in prison. The cost of catching an offender, trying him and punishing him (if convicted) may be quite substantial for the State. But then the State is only a legal entity. Behind the corporate veil are individual citizens of the State. These individuals pay taxes. These taxes are used in the

management and running of the affairs and services of the State. For practical purposes therefore, the cost of providing justice, however colossal, may legitimately be regarded as being borne by the community as a whole.

In any case, the courts do not run at a loss. They constitute, on the contrary, a substantial source of income for the Government. Take a tiny court like the Tiko Magistrate's Court. It makes at least 6,000,000 francs annually from court fines, fees and taxes. Take also the small Buea-Muyuka Magistrate's Court. It collected 5,707,486 francs from fines, etc. in the 1974/75 year; and the tiny Mamfe Magistrate's Court netted 1,887,000 francs during the 1975/76 year. Courts located in the bigger towns have incomes which are several times higher than these. Take the Douala, Edea, and Garoua Courts of First Instance for example.

Table 5 : Revenue from courts

Court	DOUALA	
Year	Amt. due	Amt. paid
1968/69	45,468,052	17,179,286
1969/70	41,412,475	7,910,665
1970/71	51,977,581	400,959
1971/72	-	-
1972/73	-	-
1973/74	-	-
1974/75	78,643,847	33,380,981
1975/76	67,383,333	33,112,416

Table 5 continued

Court Year	EDEA Amt. due	EDEA Amt. Paid	GAROUA Amt. due	GAROUA Amt. Paid
1968/69	-	-	1,616,732	483,749
1969/70	-	-	1,803,804	143,144
1970/71	-	-	-	-
1971/72	-	-	14,190,690	11,221,126
1972/73	14,731,304	2,293,687	-	-
1973/74	13,712.244	3,952,840	-	-
1974/75	15,771,198	3,577,348	-	-
1975/76	27,822,099	2,447,010	4,917,691	2,335,456

Source: Compiled from financial statistics available at the Ministry of Justice Yaounde.

In the Francophone Provinces court fines are not paid on the spot as is the case in the Anglophone Provinces. On paper the total amount of fines imposed by a court for a given year may be so much. But in reality not all of that amount is ever paid in. In the above statistics the column 'Amount Due' shows the total amount of court fines for the year. The 'Amount Paid' column indicates the amount actually collected for the year. It would easily be observed that a substantial amount of the total fines is never always collected or paid in. The reasons for this were given by one State Prosecutor in his annual report:

> "Il convient de singnaler ici, que le faible rendement enregistré dans le domaine de recouvrement d'amendes et frais de justice provient d'une part, du fait que certains débiteurs qui déclinent à dessein une fausse adresse alors de la constation de l'infraction deviennent introuvables au moment du recouvrement; et d'autre part, à la moralité corrompue de certains gendarmes et policiers qui, chargés du recouvrement d'amendes et des frais de justice, s'arrangent souvent avec ceux des débiteurs connus, pour mettre carrément leur dossiers dans les tirroirs en vue de laisser courir la prescription en leur faveur ou encore de retourner ces dossiers au parquet, assortis des procès-verbaux rapportant effectivement que les interessés ont été infructueusement recherchés." 5

II. Legal Aid

The provision of State aid to poor litigants or accused persons without means is a distinctive feature of all modern systems of the administration of justice. It is based on the liberal idea that the machinery of justice ought not to be denied on the grounds of financial need. The concept of equality of everyone before the law is meaningless if a person cannot, because of lack of means, have access to the law courts. In such circumstances justice would be available only to the rich and outside the reach of the poor. This is consistent with a humane and civilised social system. The provision of legal aid to

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5. Report dated 11 March 1976, by the Procureur de la République, Douala, on the 1974/75 Judicial Statistics for the Douala Court of First Instance; Parquet No. 35/CF/PPR/D1a, p. 9, Ministry of Justice, Yaounde.

the underprivileged is an attempt to redress the balance between the rich (the State inclusive) and the poor in the judicial process. It represents a shift towards the concept of a 'welfare law'.

In the former West Cameroon, a limited form of legal aid existed in civil and in criminal matters. In criminal matters, it was based on the English 'Poor Persons' legislation and was available under s. 352 of the Criminal Procedure Ordinance but in respect of capital offences only. Even then it was not automatic. The section provided that 'if the accused is not defended by a legal practitioner the court shall, if practicable, assign a legal practitioner for his defence'. In the civil law area there was a form of legal aid concerning only matters in forma pauperis. Here, fees could be waived by the court if the applicant could convince the court that he was a pauper. The High Court and the Court of Appeal had power under Order 7 Rule 83(3) of the Federal Supreme Court Rules 1961, to waive fees for paupers upon application made by motion on notice supported by affidavit.

In former East Cameroon, there was also only a limited form of legal aid available during the pre-independence period. Decree No. 60/224 of 5th December 1960 set up legal aid offices at each court in the country. Legal aid was available as of right in certain cases or on request depending on the applicant's financial situation. This decree was amended by Decree No. 64/DF/155

of 6th May 1964 (itself also amended by Decree No. 65/DF.93 of 2nd April 1965) and extended to the former West Cameroon. These various enactments have now been repealed and the current law on the subject is Decree No. 76/521 of 9th November 1976 'portant reglementation de l'assistance judiciaire'. This decree establishes legal aid commissions at the courts of the Republic, spells out those eligible for legal aid, deals with the effect of grant of legal aid, and indicates the conditions under which legal aid would be withdrawn.

1. Legal aid commissions

There is a legal aid commission instituted at each court in Cameroon. The legal aid commission at each court is competent to grant legal aid with regards to proceedings before and the execution of judgments from the court. These commissions are under the control of the Minister of Justice. Ordinarily, each commission at a Court of First Instance consists of three members: the presiding judge of the court concerned, the State Prosecutor (or the commissaire du gouvernement in a military court), and the local Prefect or sub-Prefect. Each commission has a secretariat which is run by the chief registrar of the court at which the commission has been instituted. In the appellate courts (Court of Appeal, Supreme Court) each commission consists of five members:

the president of the court concerned (chairman), the State Prosecutor of the court, a practising barrister designated by the President of the Bar Council, a representative of the Minister of Finance, and a bailiff designated by the State Prosecutor of the relevant court. Each commission also has a secretariat which is run by the chief registrar of the relevant court.

All decisions by the commissions are by majority vote. But in the event of split the chairman has a casting vote. Members of each commission are convened by the chairman of the commission concerned. Members must be convened at least four days to the scheduled date of the meeting. Each commission may, by decision of the Minister of Justice taken on the advice of the presiding judge of the court at which the commission has been set up, split into sub-committees where the number of applications for legal aid warrants it. In an urgent case, the chairman of a commission may provisionally grant legal aid pending a final decision of the commission on the matter.

2. Eligibility for legal aid

By section 1 of the Legal Aid Decree, legal aid is granted "in order to enable a natural person, party to a trial or in an ex parte proceeding (un acte de juridiction gracieuse), to obtain judgment or the order applied for, or their execution, with dispensation to advance all or

part of the fees he ought normally to bear". In Cameroon therefore, legal aid is available only to natural persons. Artificial persons fall outside the scope of the scheme. So too organisations, foundations, clubs, and associations whether charitable or not. Legal aid is however not restricted to contested cases. It is available in ex parte matters, cases of executive references, and in the execution of judgments. Legal aid is granted either as of right or on request.

A. Legal aid on request

Legal aid is granted on request after examination by a legal aid commission of the application for legal aid. It is granted by reason of the financial situation of the person requesting it. This means that the decision whether to grant such aid or not is based on the familiar means test. Application for legal aid may be made orally or in writing. The application is made to the secretary of the relevant commission. The secretary of each legal aid commission is the chief registrar of the court at which the commission has been instituted. Oral applications are reduced into writing by the secretary. The application together with the required documents attached thereto is then forwarded to the chairman of the commission.

All applications for legal aid must be accompanied by a document or documents to satisfy the commission that the applicant is of insufficient resources. The

requisite supporting document is either a certified copy of the applicant's tax return, a certification of non-taxation, or a certificate from the local administrative officer indicating, where necessary, whether the applicant is subject to the minimum fixed tax. If the application is not accompanied by any of these documents, the secretary of the commission must inform the applicant that he has thirty days within which to produce the document. If the applicant is still unable to produce any of these documents after the thirty days have elapsed, his application for legal aid is rejected by an order of the commission's chairman after consultation with the legal department.

If the application for legal aid is in order (that is, it is accompanied by the required supporting document), it is the duty of the commission to hear the applicant, investigate his financial resources, determine the importance to the applicant of the exercise of this rights (this means the commission would probably have to consider the merits of the applicant's case), invite (at its discretion) the adverse party to challenge the applicant's claim of lack of means, and to make a reasoned ruling, without much delay, stating whether or not legal aid has been granted.

Legal aid is granted to natural persons of insufficient means to enable them to assert their rights in court or to enable them to execute any judicial decision obtained without the grant of legal aid. The following

persons are eligible for legal aid on request: (i) indigents, (ii) the rank and file of the Armed Forces, (iii) persons subject to the fixed tax tariff, Rate A, (iv) persons subject to the minimum annual fiscal tax, (v) a wife in divorce proceedings where she is the mother of an infant child and has no income of her own, and (vi) persons other than those already mentioned where the anticipated expenses of the suit cannot be borne by their resources initially thought to be sufficient.

When a legal aid commission has made a ruling on an application for legal aid, the secretary of the commission must notify the applicant within five days through administrative channels. If the application is successful, a copy of the decision granting legal aid is forwarded within five days to the head of the local Stamp Registration Office. The presiding judge seised of the case must then designate an advocate (or a bailiff in the case of execution of judgment) to assist the beneficiary of the aid.

Decisions of a legal aid commission on grant or refusal of legal aid are not subject to appeal by any of the parties. However, the ministère public and the President of the Bar Council are each entitled as of right to refer for review by a legal aid commission at an Appeal Court, within ten days, any ruling made by a legal aid commission at a court of first instance. Decisions of legal aid commissions are not subject to judicial review.

B. Legal aid as of right

Legal aid is granted as of right by reason of the nature of the matter and in the cases provided for by law. Without prejudice to those cases in which legal proceedings are free of charge (for example, in labour matters), legal aid is available as of right to the following persons: (1) injured employees; legal aid is automatic for employees, victims of industrial accident, claiming compensation against their employers; (2) deserted wives; legal aid is also automatic to a deserted wife who is unemployed and without means in proceedings to obtain maintenance for herself and children under her care; (3) appellants against a death sentence; legal aid is finally automatic for any person sentenced to death who has appealed against that sentence and whose defence was not conducted in the court below by an advocate.

An advocate commissioned under the legal aid scheme to defend a beneficiary of legal aid receives four types of payments: he is reimbursed the cost incurred by him in conducting the case; he is reimbursed his travelling expenses (if he has incurred any); he is reimbursed the expenses incurred on accommodation (where necessary); and he is paid 5,000 francs per day throughout the whole trial.

3. Effects of grant of legal aid

Once granted legal aid covers proceedings still

to be instituted and matters which are sub judice. Legal aid extends as of right to acts and proceedings relating to the execution of judgments and any order made by the court after the aid has been granted. If in the course of the trial of the case for which legal aid was granted another matter arises involving the beneficiary of the aid, the earlier finding of lack of means is conclusive of the issue whether he is of insufficient means. However, a specific grant must be made in respect of this new case.

Legal aid granted is not withdrawn simply because the court seised of matter has declared itself incompetent to try the case. It remains available to the beneficiary when the case comes before the competent court. Indeed, until the matter for which the assistance was originally granted has been finally disposed of, legal aid once granted may only be withdrawn under the conditions laid down by law.

The person to whom legal assistance has been granted is entitled to the free services of an advocate, bailiff, process server and auctioneer. He pays no court fees or taxes. Witnesses' fees and travelling expenses are paid by the Government Treasury. He pays no stamp duty or taxes whether on summonses, judgments or other procedural documents. The same is true even of documents which he wishes to use as evidence and for which he would, in normal circumstances, have to pay stamp duty and taxes. Even if the case goes against him, he pays no costs and fees. They are all borne by the Government Treasury.

4. Withdrawal of legal aid

Legal aid may be withdrawn only by the commission which had in the first place granted it. A commission may withdraw legal aid in one of two circumstances: (i) if the beneficiary's financial position has substantially improved after the grant of the aid, and (ii) if the beneficiary had obtained the grant by fraud. The commission may act on its own motion, at the request of the ministère public, or at the behest of an adverse party. In all such cases the beneficiary must be notified of the commission's intention to withdraw the assistance granted to him. Any withdrawal of legal aid must be supported by reasons. However, legal aid may be withdrawn at any time and at any stage of the case. Once legal aid has been withdrawn the applicant becomes fully liable for all court fees, taxes and costs.

Although legal aid in Cameroon covers both civil and criminal matters, it is only concerned with matters that come within the court framework. It does not extend to the provision of legal advice or services outside the court. It is submitted that the limitation of the scheme to matters that have already come to court leaves much to be desired as it still leaves unaided a large sector of the population, people who need legal advice but who are too poor even to afford the money to pay the advocate's consultation fee. There is no persuasive reason why the

existing scheme should not be extended to involve lawyers other than private practitioners. In this connection the provision that legal assistants (auditeurs de justice) may be commissioned to handle legal aid briefs is an enlightened one. Indeed, one may venture to suggest that one of the duties of the legal department should be to provide legal advice in civil cases.

Decentralisation of the legal aid scheme by establishing a legal aid commission at the seat of each court in the country must be welcomed. It has brought the scheme nearer to those who need it most - those at the bottom rung of the socio-economic scale. However, the scheme serves only a limited purpose if, as is the case at the moment, it remains incognito to the people who need it most - the underprivileged. The overwhelming majority of the people are illiterate and uninformed. No attempt has been made to educate them on this point. As a result most of them do not even know of the existence of the scheme. This is true not only of the people in the villages (who need as much attention as the town dwellers) but also of the underprivileged sector of the urban population.

CHAPTER TWENTY

LAW REFORM AND THE FUTURE

Law reform means much more than just reprinting, amending or harmonising laws.[1] It supposes a comprehensive and profound revision of the laws; a thorough review, rethinking, reformulation and better draftsmanship; a remoulding of the laws to keep pace with modern trends while also reflecting the people's more and cultures. Every law reform exercise is necessarily an attempt to improve and modernise the existing legal order, to change the legal status quo.

Nowadays, it is the exception rather than the rule to find an independent African country that has not embarked or is not embarking on a radical revision of its statute laws, particularly those of colonial heritage. For over a decade now Cameroon as part of an overall Government policy to harmonise and codify all the laws in force in the country, has also been engaged in the revision of her laws and trying to see how best to deal with the three systems of laws in the country. The situation here is complex.

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1. When a fresh print of laws is made by the Government Printer with the authority of the Government, incorporating all necessary additions, omissions, substitutions and amendments and eliminating all repealed matter, the process is known as reprinting. Harmonisation is nothing more than a 'scissors and paste' operation.

There are three systems of law co-existing in Cameroon: the customary law, the common law, and the civil law. Furthermore, local legislation (in the shape of laws passed by the National Assembly, decrees and ordinances by the Head of State, subsidiary legislation made by Ministers, and local subsidiary legislation in the nature of by-laws, orders and rules made by Provincial Governors, Prefects, and local councils for their own particular areas of authority) is in an immensely unwieldy and confused state; a mosaic, a veritable labyrinth in which even those initiated in the law can easily get lost. Finally, Cameroon is constitutionally a highly centralised unitary state. Given these factors, law reform in Cameroon has rightly come to be regarded by the Government and law reformers as not only necessary but urgent, albeit the delicacy of the exercise. "This is both an urgent and delicate task; urgent because it is obvious that sets of laws which correspond to different principles cannot co-exist for long within a unitary state; delicate because it affects the traditions and values of men."[2]

There are two aspects of law reform: reform of the substantive and adjective law on the one hand, and reform of the form of the law on the other hand. Substantive law is the law administered by the courts, that is, the content of the principles and rules, mainly in terms

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2. Press conference by President Ahidjo on 9th February 1973, ACAP Daily News Bulletin, 10th February, 1973, p. 30.

of a person's rights and duties. Adjective law on the other hand is the law which relates to practice and procedure, that is, the law which deals with the bringing of legal proceedings in court, civil or criminal. Reform of the form of the law means that the law ought to be well drafted, simple, intelligible, certain, well-arranged, adequately indexed, easily accessible to all, and up-to-date.

Unfortunately, this has not always been the case. Legislation in Cameroon is largely ad hoc and framed to deal with particular situations or mischiefs as they arise. Laws are framed 'extemporaneously, not as parts of a system, but to answer particular exigencies as they occur'.[3] Attempts are hardly ever made to integrate new laws dealing with substantive aspects of that same subject. Thus, the law on a given area is often found to be scattered over a number of principal and subsidiary legislation, including amendments and supplements. Furthermore, the legislator not infrequently resorts to the technique that may be described as 'framed legislation': encatments often contain provisions to the effect that a particular aspect of the law shall be dealt with in detail by a future enactment (often a presidential decree or a ministerial order). Again, it sometimes happens that laws are so hurriedly

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3. Marshall H.H. & Marsh N.S., 'Case law, codification and statute law revision', in R.A. Woodman (ed.), Record of the third commonwealth and empire law conference. Sydney-Australia 25 August - 1st September 1965, Sweet & Maxwell, London, 1966, p. 420.

drafted that no sooner have they rolled out of the printing press than there are amendments. In fact amendments and supplements come so frequently that it is really a headache keeping pace with them. Finally, there are sometimes deplorable specimens of badly drafted and translated laws. Under these circumstances, any meaningful reform exercise should not only be limited to a reform of the substantive and procedural law but should extend to a reform of the form of the law.

But how can this task best be done? By consolidation?[4] revision?[5] piecemeal legislation? or codification?

Cameroon has elected codification. There was never a public debate on this issue and the choice of codification à la francaise as a method of law reform appears to have been instinctive rather than conscious and deliberate. Nevertheless, in the Cameroonian context, codification would appear to be the best method of achieving legal unity in the country. Besides, all countries today strive towards the attainment of a code. A code purports to contain all the law upon a particular subject. It is

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4. That is, the incorporation of the content of a number of existing statute laws, together with amendments, into a single enactment.

5. Revision is said to consist of preparing and providing for public use, an up-to-date set of the laws as of a particular date, incorporating all amendments and adaptations made thereto and eliminating therefrom all repealed, obsolete and unnecessary matter. Cf. Marshall & Marsh, op.cit., p. 427.

said to crystallise the law and to preclude the citing of any case law or statute on the subject. But then, the word 'code' is not a term of art and there is no compelling reason why a code may not allow some reference to previous decided cases in order to make its provisions meaningful.

The efficient working of a code should not be hampered by a wrong approach to its administration. Accordingly, the Cameroonian codes, as I envision, should clear up uncertainties in the existing law and the difficulties caused by the co-existence of three systems of law and several uncoordinated and possibly conflicting judicial decisions. The fact that a code is said to crystallise the law on a particular subject is the more reason why the court should be allowed to interpret it (liberally, using travaux préparatoires where necessary) and to supply a casus omissus whenever necessary. A Cameroonian code should not prevent a body of case-law growing up around it. In France, for example, the existence of codes has not diminished the importance of jurisprudence. The makers of a code cannot foresee all possible contingencies. Human prescience is limited. Therefore, after a code is promulgated, cases are bound to arise for which no provision has been made. A customary remedy for such a situation is the introduction of legislation to amend the code. But there is no reason why there should also not be judicial law making in this area.

Codification need not consist of a single

compendium. The laws of France and Germany, for example, can be found in several codes. However, the codes of those countries are quite large. What is needed in Cameroon is the drafting of smaller codes with greater specialisation. For example, there should be a family law code, a mining code, a law of property code, a commercial code and so on. The great merit of these small and specialised codes is that they can more easily be amended than if they formed part of a larger code. Thus, for example, it was easy to abrogate completely the 1967 Labour Code and replace it with the 1974 one.

The extent to which codification has been embarked upon in Cameroon has not been the same in the civil and in the criminal laws areas. More effort has gone into the criminal than into the civil law.

I. Codification in the Civil Law Area

At the moment, only one code, the Labour Code, has been produced in the civil law area. However, this part of the law had received its fair share of attention during the colonial period.

1. Attempts at codification during the colonial period

The codification attempts by the Germans and the French during the colonial period were not concerned with

law reform as such. Each colonial power introduced a variant of its own laws into the territory as the basic law. But provision was always made for the continued existence of the indigenous law. True, serious limitations were placed on it. But once a rule of indigenous law had passed the 'repugnancy' and the 'incompatibility' tests (or the 'civilisation' test as in French Cameroun), it was enforceable by the courts. However, indigenous law was neither uniform nor written. Nurtured in the system of codes, the Germans, and the French after them, unlike the English unused to codes, saw in this 'oral' law an uncertain law and so undertook to codify it. The purpose of the exercise was therefore to ascertain, record and harmonise the content of the indigenous law.

A. The German attempt

As early as the 1890s, the Germans had set themselves the gigantic task of ascertaining and codifying the laws and customs of the natives in Germany's colonies. In 1896 a certain Professor I. Kohler of Berlin produced a questionnaire entitled 'Questionnaire for the study of the legal situation of the so-called primitive peoples especially in the German colonial territories'. It was divided into five parts: family law, property law, criminal law, procedural law, public and international law. It contained one hundred main questions and numerous subsidiary questions.[6] For nearly a decade however, nothing was

6. File No. TA-18, Cameroon National Archives, Yaoundé.

heard of this project.

But on 3rd May 1907 the Reichstag adopted a resolution requesting the Imperial Chancellor "forthwith to collect and examine the material relating to the law of natives in the German colonies and to cause an authentic collection of the customs of the natives to be compiled".[7] Accordingly a sub-committee was set up to prepare a draft questionnaire. The earlier draft by Professor Kohler was readily adopted with only a few modifications. Several copies of this questionnaire were sent out to Governor Seitz in Buea for distribution to local administrators in the Schutzgebiet von Kamerun.

The research was slowly conducted. This was partly because those assigned to conduct the interviews were either local administrators or missionaries who had other duties and considered the project to be less urgent and of secondary importance. Up to the time of the outbreak of the First World War in 1914 material had been collected from only six coastal tribes: the Boulou, Bakossi, Bassa, Banok, Batanga, and Mabea.[8] The collected material (still available at the National Archives in Yaoundé) is a fascinating record of the indigenous law as it was before European colonisation. Although the material concerns

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7. Victor Lehmann, 'The German appellate practice', in Barnett Hollander, Colonial justice - the unique achievement of the Privy Council's committee of judges, Bowes & Bowes, London, 1961, p. 109.

8. File No. TA-18, Cameroon National Archives, Yaoundé.

only six tribes, the law therein recorded reflects fairly accurately the indigenous law as it obtained in the other tribes of the country.

B. The French attempt

When France replaced Germany as the colonial power in what became known as the French Cameroun, there was some hesitation on the part of the new colonial power as to whether to revive the abortive attempt by the Germans to codify the indigenous law. There were those who advocated codification as the proper way of dealing with indigenous law. It was argued that through codification the indigenous law would be made uniform, clear, certain and of great help to judges who applied it. On the other hand, there were those who argued that codification would stultify, mummify, misrepresent and distort indigenous law and that indigenous law which would have evolved, adapting itself to changed circumstances would, by being cast into the mould of a code, become static, giving the picture of a law as it was at the time of the codification.

The French however came to the conclusion that codification was the best thing to do about indigenous law. In the 1930s attempts were therefore made to codify the indigenous law in Cameroun following an earlier attempt to do the same thing for Togo in 1926. By a circular of 11th October 1932 the Commissaire de la République directed the heads of the administrative units in Cameroun to conduct

research on the ways and customs of natives in their respective areas of administration; a research to serve as a basis for a general codification. "This codification," the Commissaire however noted, "shall not be completely unalterable. Custom evolves under diverse influences just as our civil law has undergone those modifications brought about by case-law. But native customary law, without claiming the force of the civil law, shall constitute a precious guide for the native tribes."[9]

The research was only to be concerned with the civil law area. The investigators were directed to use the French Code Civil as a model; to follow its method and classification of subject-matter. All material collected had to be classified, by ethnic group, under the following five rubrics:

I. Community: definition, constitution, dissolution, exclusion, community groupings, community council, head of the community.

II. Persons: domicile, absence, marriage, filiation, adoption, authority over minors, custody, majority and emancipation, interdiction.

III. Property: common property, definition, constitution, transfer, wills, gifts inter vivos.

IV. Contracts: object and nature of contracts,

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9. Henri Labouret, Le Cameroun, Centre d'Etudes de politique étrangère, Paul Hartmann, Paris, 1937, pp. 79-80. My translation.

conditions of validity, proof, principal contracts (sale, exchange, hire, loan, bailment, agency, pledge or pawn).

V. Prescription.

A subsequent circular of 2nd May 1933 requested the investigators to find out what the indigenous law was before European colonisation, whether the law had changed and if so, the factors responsible for such change.

Unfortunately, this project failed to give the awaited results. The French made the same mistake as the Germans had. They entrusted the task into the hands of local administrators. Their administrative responsibilities made great demands on them and they approached the project with a lackadaisical attitude, considering it to be of secondary importance. The sketchy material collected was simply discarded because the individual investigators concerned had failed to follow the pattern of the Code Civil. It was decided to start the whole project all over again. But it never was. It was abandoned. What ought to have been done would have been to set up a committee specifically commissioned to undertake the project.

It was largely because of the failure to produce a comprehensive code in the civil law area with regards to indigenous law that the French embarked on what they termed 'codifications spéciales'. Even here, not much was done. In response to observations by the Permanent Mandates

Commission on the dangers of marriages in Africa by persons under the age of puberty, the French had passed a decree on 30th November 1926 prescribing severe penalties for parents who married off children below the age of puberty. Almost a decade later, an Arrêté of 26th May 1934 was passed regulating marriages between natives. It was provided that Muslims would continue to be governed, in this respect, by Islamic Law. All other natives who were not Muslims were, except for the Kirdi, Bamoun and Bamileke, to be governed by the codified customary law of marriage annexed to the 1934 arrêté. But this arrêté had many short-comings. For example, it created an irrebutable presumption that handing over the bride to the groom meant that marriage consideration had been completely paid off. This ignored the fact that under indigenous law marriage consideration is paid in instalments and may continue throughout the duration of the marriage. The arrêté was also in error when it prescribed a fixed monetary amount as what should be paid as marriage consideration. Many provisions of the arrêté were simply ignored. Another arrêté of 11th January 1936 had to be passed to deal with the short-comings of the earlier arrêté.

Up to the time of independence in 1960 no further attempts at codification were made by the French. But from time to time, attempts were made to compile in easily accessible form all the laws in force in the territory. The initiative was however that of individual French legal

officers serving in the territory rather than an official undertaking by the Government. Among these compilations one may cite the Répertoire général des textes législatifs et règlementaires applicables au Cameroun compiled in 1954 by H. Chêne, the five volumes of Codes et lois du Cameroun compiled between 1956 and 1958 by Gaston-Jean Bouvenet and René Bourdin, and the seven-volume Répertoire chronologique du droit camerounais compiled between 1965 and 1968 by Guermann M. and R. Olivier.

No corresponding compilations existed in the Southern Cameroons. Some of the laws applicable there were to be found in the 1958 revised edition of the laws of Nigeria. But there were some laws applicable in the territory which were not to be found in the 1958 edition of the laws. Such laws included pre-1900 English statutes of general application, the laws for the time being in force in England with regards to divorce and matrimonial causes, and legislation by the Southern Cameroons House of Assembly. No one had taken the trouble to ascertain and compile these various laws.

Nor was there any attempt by the British to record or codify the indigenous law. However, a Native Authority could, and if the Commissioner required, must record what in its opinion the indigenous law was on any point within its jurisdiction, and if the Commissioner was satisfied that such a declaration was correct, it became effective within the jurisdiction of the Native Authority

which made it. A Native Authority could also recommend to the Commissioner that a rule of indigenous law be amended within its jurisdiction. The Commissioner approved the amendment if he was satisfied that it was expedient, not repugnant to natural justice, equity, or good conscience and not in conflict with any written law in force in the territory.

2. Attempts at codification since independence

The political unification in 1961 of the 'two Cameroons', each of which had a different legal system, culture and official language, at once meant that a modus vivendi, at least for the immediate future, had to be found to accommodate both systems. It was not a sane proposition to abandon laws of colonial heritage and make a complete tabula rasa. Accordingly, successive Cameroonian constitutions have always provided for the continuation in force of all existing laws not officially or implicitly repealed.[10] However, while no one was in any doubt that legal unity could not be achieved contemporaneously with political unity, no one was equally in doubt that the ultimate goal to aim at was for national legal unity. This meant not only harmonising the legal systems of the

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10. 1960 Constitution, s. 51; 1961 Constitution, s. 46; and 1972 Constitution, s. 43.

two federated states (West Cameroon and East Cameroun), but reforming existing laws. The death of the federation and the adoption of a unitary system of Government in June 1972 has given greater stimulus, drive and persistence to the law commissions in Cameroon because 'sets of laws which correspond to different principles cannot co-exist for long within a unitary state'.[11]

In February 1964 two federal law reform commissions were set up: the Federal Commission for Penal Legislation and the Federal Commission for Civil and Customary Legislation.[12] The latter commission was charged with the preparation of a draft Cameroonian Civil Code, a Code of Civil and Commercial Obligations, and a Civil Procedure Code. Little has however been achieved in this area. None of these proposed codes has been produced. A proposed draft code on family law was circulated among judges, lawyers and various other persons for comment. That was in 1973. But nothing has been heard of it ever since. Members of the Civil Legislation Commission appointed by Order No. 15 of 13th November 1973 are: His Lordship Justice S.M.L. Endeley (chairman), Paul Bonniol and Augustin Tefak, JJ., Barristers Simon Francois, Paul Aubriet, Luke Sendze, Ben Muna, and Paul Koti; chiefs Christopher Tsala, Dieudonne Koambi, Lamido

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11. Press conference by President Ahidjo, op.cit.

12. Decree No. 64/DF/84 of 29th February 1964.

Amansali, Fon Angwafor III, Joseph Kamga, and Richard Ntoko; the Archbishop of Yaounde, the Secretary General of the Eglise Presbyterienne du Cameroun, and Iman Mohamed Ali. The Commission excludes University law teachers, sociologists, anthropologists and linguists. The Commission is concerned only with the customary law and so far its work is still in the exploratory stage. What is being aimed at is not to produce a customary law code but to ascertain, record and then integrate all aspects of customary law with the 'modern' law. This would be in keeping with Government policy to do away with the dichotomy between 'modern' law and 'customary' law in the civil law area and to have just 'one civil law' as there is just 'one criminal law'.

Only one code, the Labour Code, has been produced in the civil law area. This Code which was promulgated in 1967 drew heavily, but not exclusively, from the French Code du Travail d'Outre-Mer of 1952. Given the changed political situation in the country in 1972, the 1967 Labour Code was completely withdrawn and a new Labour Code, with important deviations from the old one, was promulgated in 1974.

II. Codification in the Criminal Law Area

The codification exercise has been vigorously pursued in the criminal law area. This is understandable.

This area of the law touches on the liberty of the individual. Before independence and reunification the criminal law and procedure applicable in the Southern Cameroons was already codified. So too was the criminal law and procedure applicable in the French Cameroun. In the Southern Cameroons the Nigerian Criminal Code Ordinance, Cap. 42 of the 1958 laws and the Criminal Procedure Ordinance, Cap. 43 of the 1958 laws were fully applicable. The French Code Pénal and Code d'Instruction Criminelle (as modified to suit local conditions) were applicable in the French Cameroun. The provisions of the codes applicable in one territory were not the same as those applicable in the other territory. Moreover, whereas the criminal procedure in the French Cameroun was, in essence, inquisitorial in nature, that in the Southern Cameroons was accusatorial coupled with concepts of protection against self-incrimination.

At independence and reunification, given the dispartiy in the two systems, a Federal Commission for Penal Legislation was set up in 1964 and asked to prepare two draft codes, a draft penal code and a draft criminal procedure code. Since then, there has been continuous activity in this area.

1. The genesis of the Cameroonian Penal Code

The Cameroonian Penal Code took a little over two

years to draft and it came out in two stages. Book I (the General Part) became law on 12th November 1965 and came into force on 1st October 1966. Book II (the Special Part) became law on 12th June 1967 and came into force on 1st October 1967. Although the Criminal Law Commission was charged with producing the code, its actual drafting was done by a committee of three (made up of one Englishman, Mr Clarence Smith, and two Frenchmen, Messrs Richard Gilg and Robert Parant). The committee drew from the Italian Penal Code of 1931, the ill-fated French draft Penal Code of 1934, the Nigerian Criminal Code (based on the 1879 draft code of James Fitzjames Stephen for use in England, which, although not adopted by that country, was passed into law with variations in a number of Commonewealth countries including Queensland and Canada), and the French Penal Code. The Criminal Law Commission had hoped to draft not only the Penal Code but the Criminal Procedure Code as well. They never actually did so although they did make a rough outline of a proposed criminal procedure code.[13]

2. The Criminal Procedure Code

The Penal Code had been drafted entirely by foreigners. The drafting of the Criminal Procedure Code

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13. See generally, J.A. Clarence-Smith, 'The Cameroon Penal Code: practical comparative law', 17 I.C.L.Q. 651 (1968).

on the other hand is being undertaken entirely by Cameroonians. The Criminal Procedure Code Commission is constituted as follows: (i) the President and Procureur General of the Court of Appeal for the South West Province, (ii) the President and the Procureur General of the Court of Appeal for the North West Province, (iii) the President and Procureur General of the Supreme Court, (iv) the Directors in the Ministry of Justice, (v) two law Professors (one Anglophone, and one Francophone) from the Law Faculty of the University of Yaounde, (vi) two advocates - one Anglophone and one Francophone, (vii) one representative each from the following bodies: the General Delegation of the Gendarmerie, the General Delegation of National Security, the Directorate of Army Legal Service, and the Directorate of Documentation. Two technical advisers from the Presidency attend working sessions of the Commission as observers. The clergy, trade unions, sociologists, anthropologists and linguists are not represented in the Commission.

The initial work on the Criminal Procedure Code was not done by the Commission. A proposed draft of the code had earlier been prepared by the Ministry of Justice. It was certainly based on the rough outlines prepared in 1966 by the Criminal Law Commission. This draft was then submitted to the Criminal Procedure Commission as a basis on which to start. The Commission studies the proposed draft article by article making proposals, suggestions,

amendments, deletions, additions and so on, where necessary. Actual drafting article by article and chapter by chapter is done by a drafting committee of four members (two Anglophones and two Francophones). It is the duty of the Drafting Committee to put the views and ideas agreed upon by the Commission in legal phraseology, and to present the code clearly, simply and intelligibly. The Committee also has as its task to ensure that both the English and the French versions of each article import one and the same idea. There is also a Harmonisation Committee of four members (two Anglophones and two Francophones) whose duty it is to look into those sections of the proposed draft code over which members of the Commission have failed to agree and to make recommendations.

Indeed, disagreements (sometimes violent and acrimonious) there have been. Some members of the Commission have tended to approach the whole law reform exercise from a partisan point of view; seeing it through the optics of a struggle as to which system (the common law or the civil law) will emerge victorious. Way back in 1964 when the Law Commissions were first set up, one commentator had warned against the dangers of this retrograde and reactionary attitude.

> "The struggle for dominance between the two foreign systems must, like the Cold War, be kept out ... It must not be allowed to reduce the work of a Law Reform Committee to that of negotiation. A Cameroon legal science is the basis for research. The search is for a Cameroon idea of legality, first as it is (influenced by European ideas)

> and then as it ought to be in the light of Cameroon culture ... The idea is not to attempt to compromise the three systems, or to copy the one or the other. Nor is the choice that of which is the best to be adopted or which should survive. The struggle for survival among preconceived or conservative ideas must also be discouraged." 14

Fortunately, the Commission as a whole is very conscious of its onerous mission. Debates during working sessions have, on the whole, been lively, constructive and fraternal. At the moment the Commission is virtually through with its task and it is expected that the Code (of about 600 sections) would become law before 1979 runs out.[15]

The general physiognomy of the Code adequately reflects the common law and the civil law systems.[16] Which is not surprising. The Commission used the following source material: the Criminal Procedure Ordinance, the Code d'Instruction Criminelle, the French Code de Procedure Penale, and the Canadian Criminal Procedure Code. The Cameroonian Criminal Procedure Code is, like the Cameroonian Penal Code, bilingual and bi-jural. To take random examples, the Code contains provisions relating to the presumption of innocence, constitution de partie civile, habeas corpus, and cross-examination. When the

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14. P.B. Engo, 'Some aspects of legal reform in Cameroon', ABBIA No. 6, August 1964, pp. 157-171, at page 160.

15. Fieldwork interview.

16. Fieldwork interview.

Code would have been promulgated, codification in the criminal law area would have been over. Full attention would then be focused on the civil law area.

III. The Future

It is in the civil law area that law reform in Cameroon will encounter the stiffest test yet. To be sure, there shall not be much of a hurdle in the family law area. The law on this subject in both halves of the country is almost the same and there are already a number of legislative enactments (the law on the use of names and the law on civil status registration) common to both sides of the country. Outside the family law area (for example, law of contract, commercial law, property law, civil procedure) however, the Cameroon law reformer faces an arduous task. There is a temptation here of simply adopting the French Code Civil and having it translated into English. This is what has happened in Mauritius. Such a modus operandi is in fact no law reform (or 'harmonisation' as the exercise is commonly known in Cameroon) at all and does not commend itself to the Cameroonian law reformer. Law reform in the civil law area should be carried out piecemeal, taking one area at a time and producing monographs to be commented upon by various members of the community. This writer has already suggested that Cameroon should settle for smaller codes

(because easily drafted and revised) and that greater attention, than has hitherto been the case, should be paid to draftsmanship and language.

It is in fact easier to harmonise the common-law system in Anglophone Cameroon and the civil-law system in Francophone Cameroon than it is to harmonise their parent systems in England and France. To begin with both systems are not indigenous to Cameroon. Secondly, unlike France, Britain did not introduce a carbon copy of her legal and judicial system in Cameroon. She introduced a system which was closer in many respects to what France introduced in the French Cameroun. Thus for example, unlike in England but like in France and in the French Cameroun, magistrates in the British Cameroons participated actively in the criminal trial and gave reasons for their decisions. Thirdly, whereas France extended her various codes (with minor tinkerings to suit local conditions) to Francophone Cameroon (thus ensuring that the law there was substantially the same as that in France) Britain did not make a timeless extension of her laws to Anglophone Cameroon. The reception provision made the common law, the doctrines of equity, and statutes of general application in force in England only as of 1900, applicable in Anglophone Cameroon. Thus only pre-1900 statutes applied and still apply (whether any of such statutes have in fact been amended or repealed in England itself) in Anglophone Cameroon. This in effect means that there is sometimes a gulf between 'English' law in Anglophone Cameroon on a

particular subject and the law on the same subject in England.

The tendency to look at law reform in Cameroon as a struggle between the common law and the civil law as to which system would emerge victorious must be eschewed. It would be a sad thing if law reformers in Cameroon were to approach law reform from preconceived ideas and sectarian loyalties. There is no doubt that some do look at it from this angle. Such an attitude must be strongly condemned. The task for the Cameroonian law reformer is to produce a legal system which in essence answers to Cameroonian needs, fits into Cameroonian circumstances and synchronizes with Cameroonian aspirations in the modern world. It is submitted that any rule of law which passes this test must be included in the Cameroonian legal arsenal whether such a rule originates from the civil law system, the common law system, or any other legal system in the world. The exercise cannot be a question of the majority imposing its will on the minority, for, law reform must not be allowed to degenerate into a count of heads.

Having said all this one can still point to the fact that so far, in the interaction between the common law and the civil law the latter has come on top. In areas such as military law, administrative law, and the judicial and legal service the influence of the civil law has totally eclipsed that of the common law and the Labour

Code bears all the stamp of the civil law influence. It is however submitted that it is premature to take this as an index of the direction towards which things would necessarily continue to move. Take for example, the most recent code, the Criminal Procedure Code. The impact of the common law in it has a slight edge over that of the civil law.

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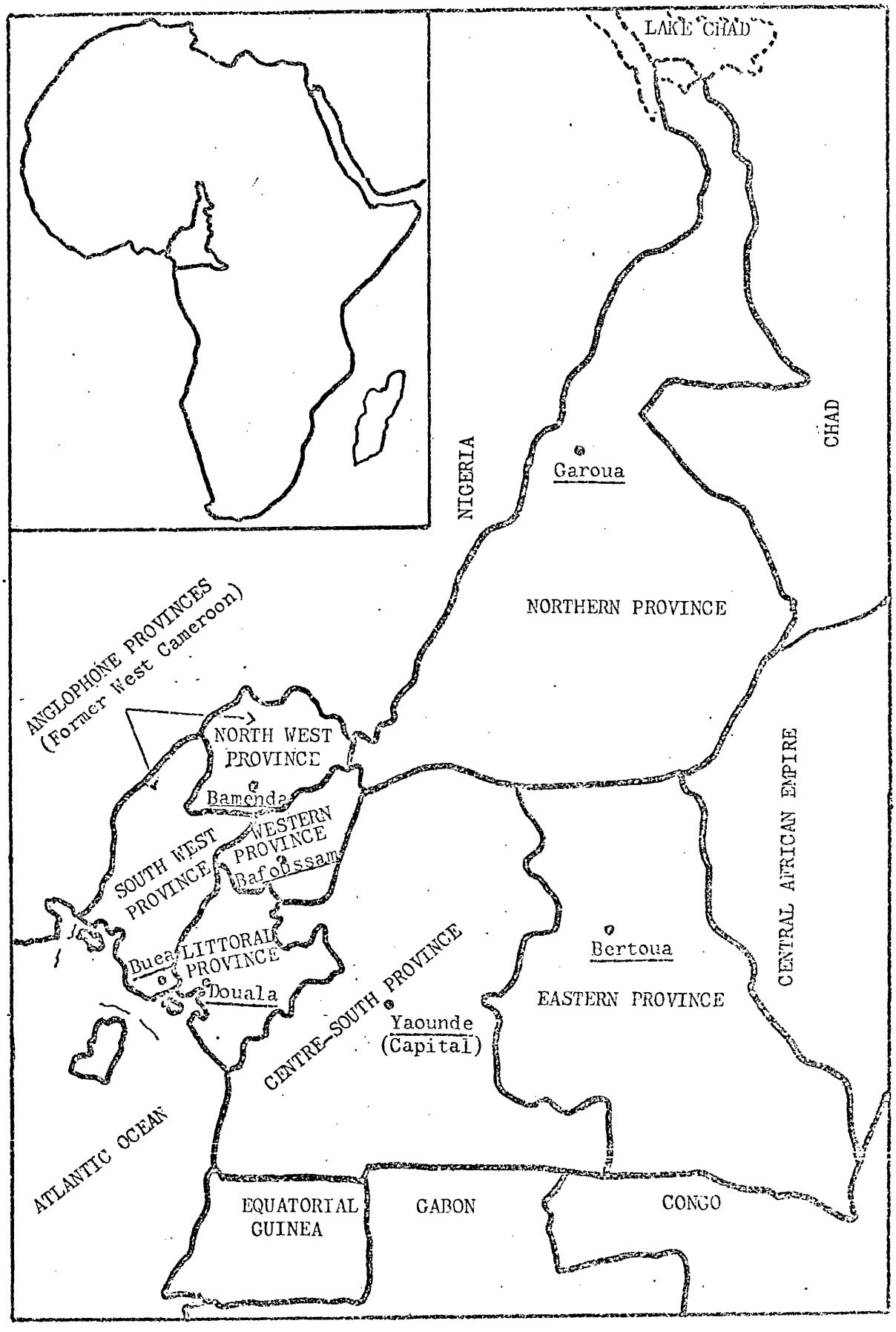
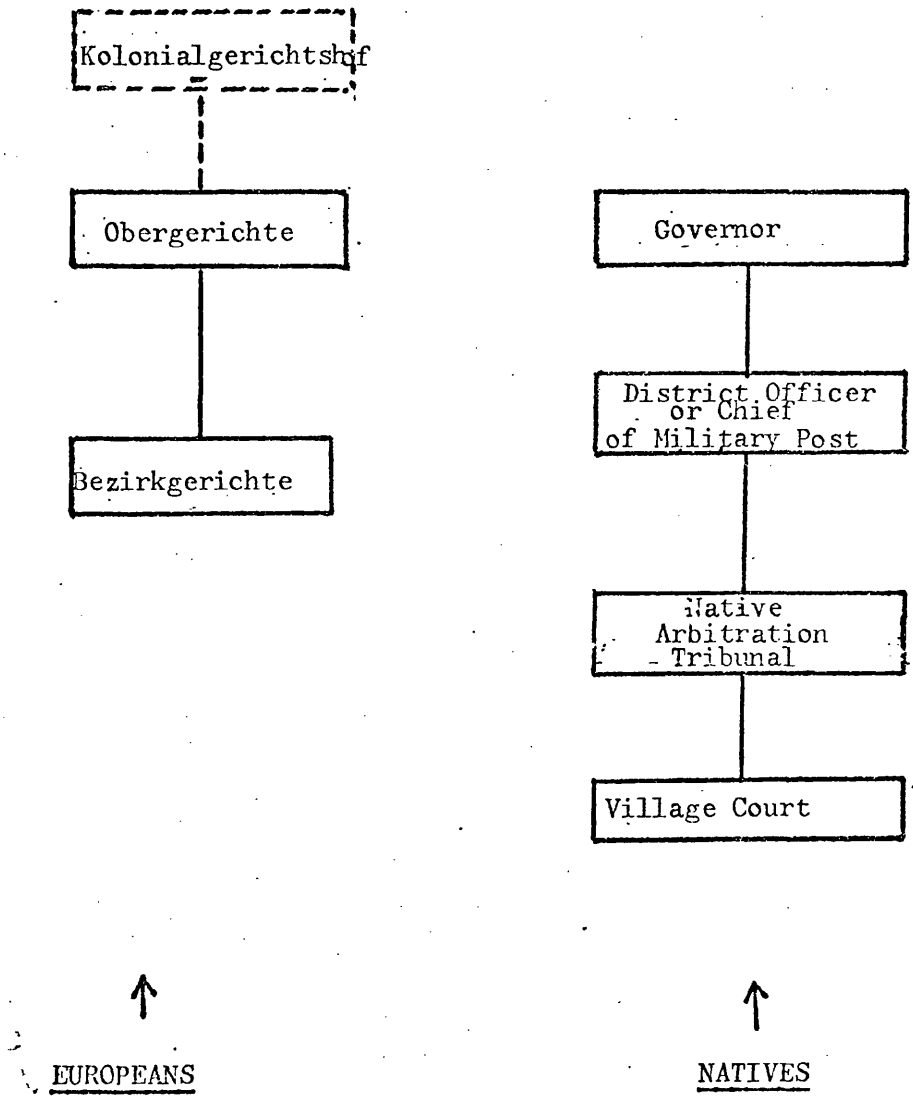


Map of CAMEROON showing Provinces, Provincial H/Qs and geographical position in Africa

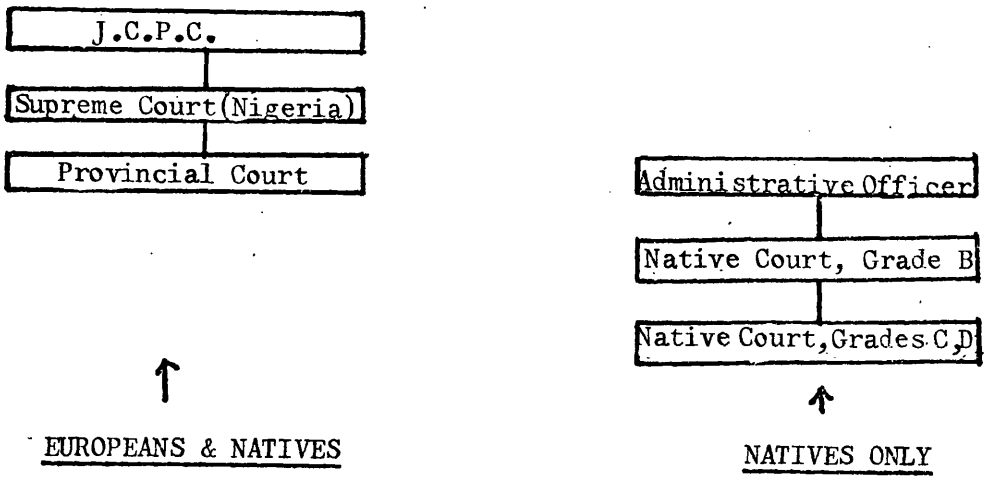
APPENDIX II

GERMAN COLONIAL JUSTICE IN CAMEROON

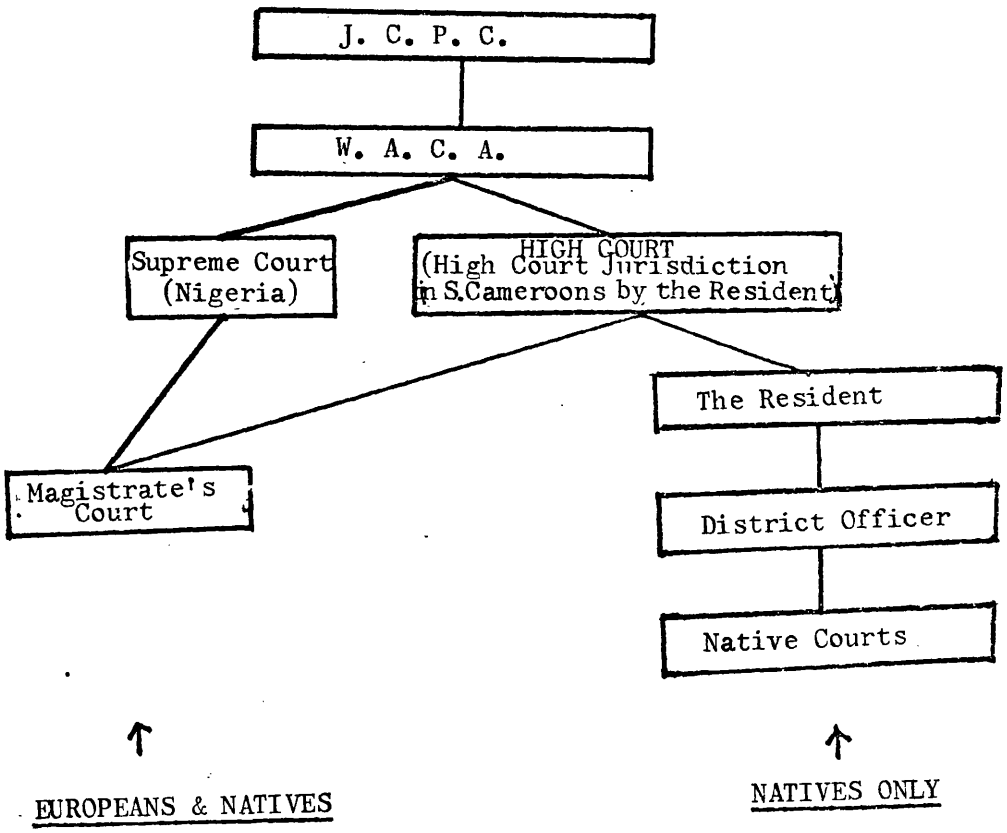
THE COURTS STRUCTURE: 1892-1915



THE COURTS STRUCTURE: 1924-1961

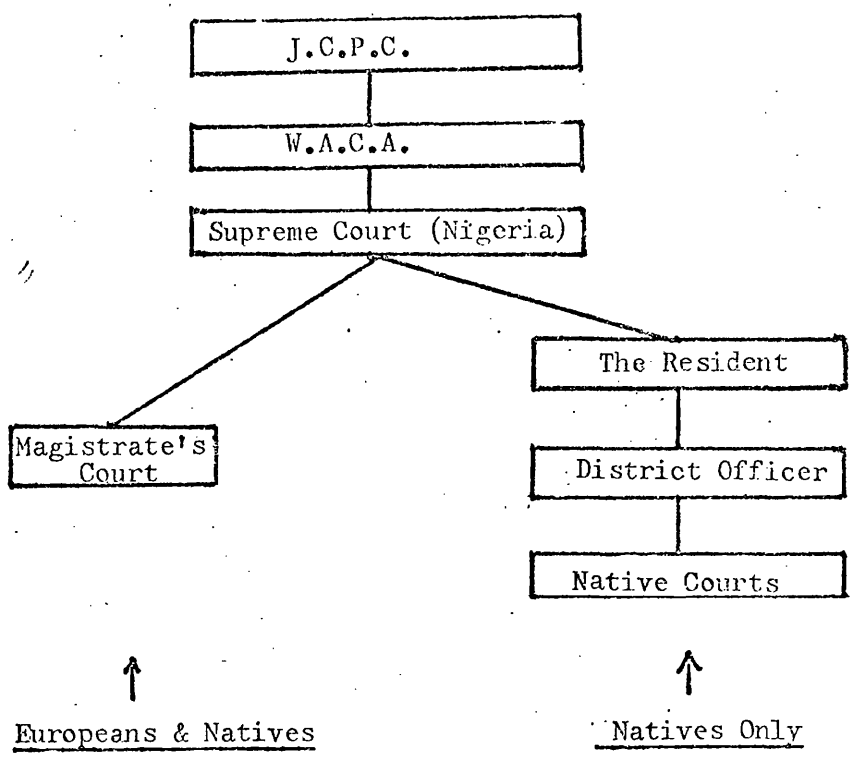


(i) 1924-1933

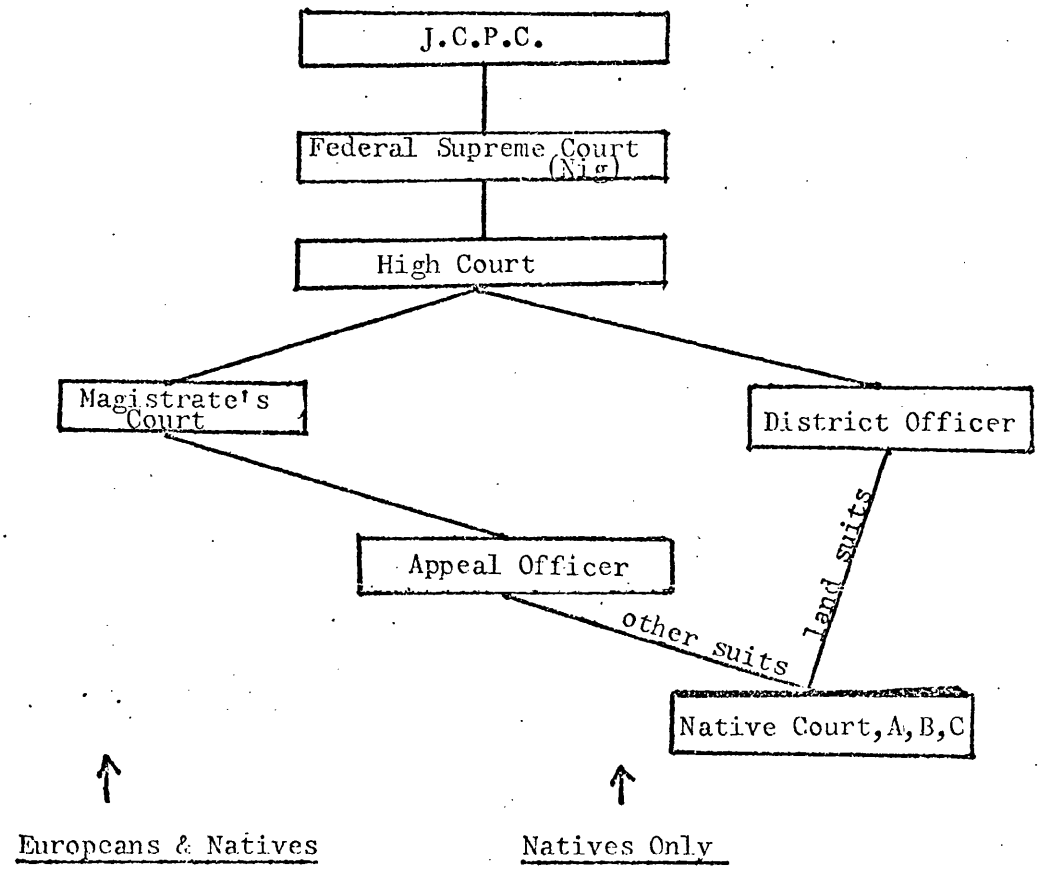


(ii) 1934-1943

APPENDIX III



(iii) 1943-1954

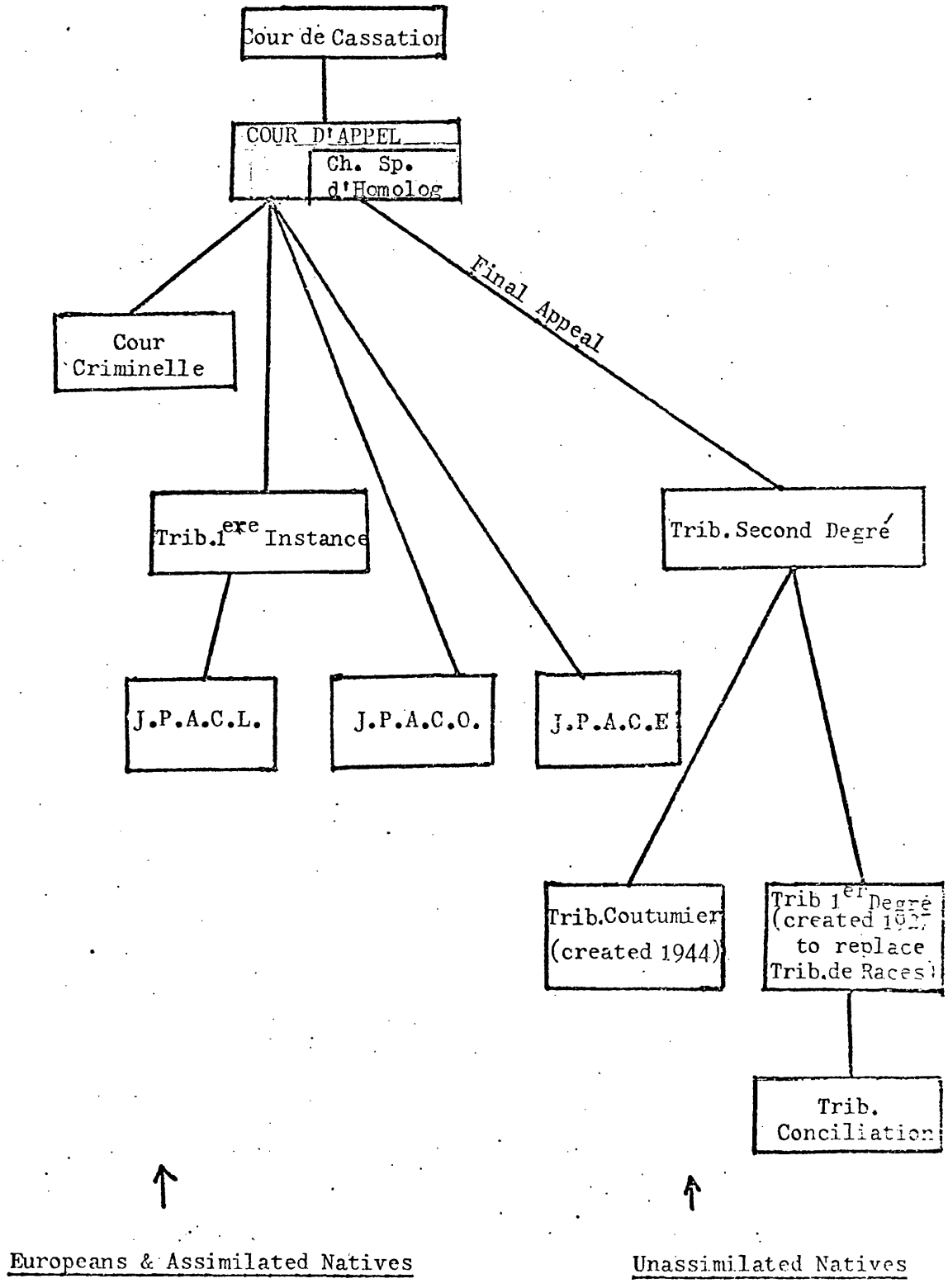


(iv) 1954-1961

APPENDIX IV

FRENCH COLONIAL JUSTICE IN CAMEROUN

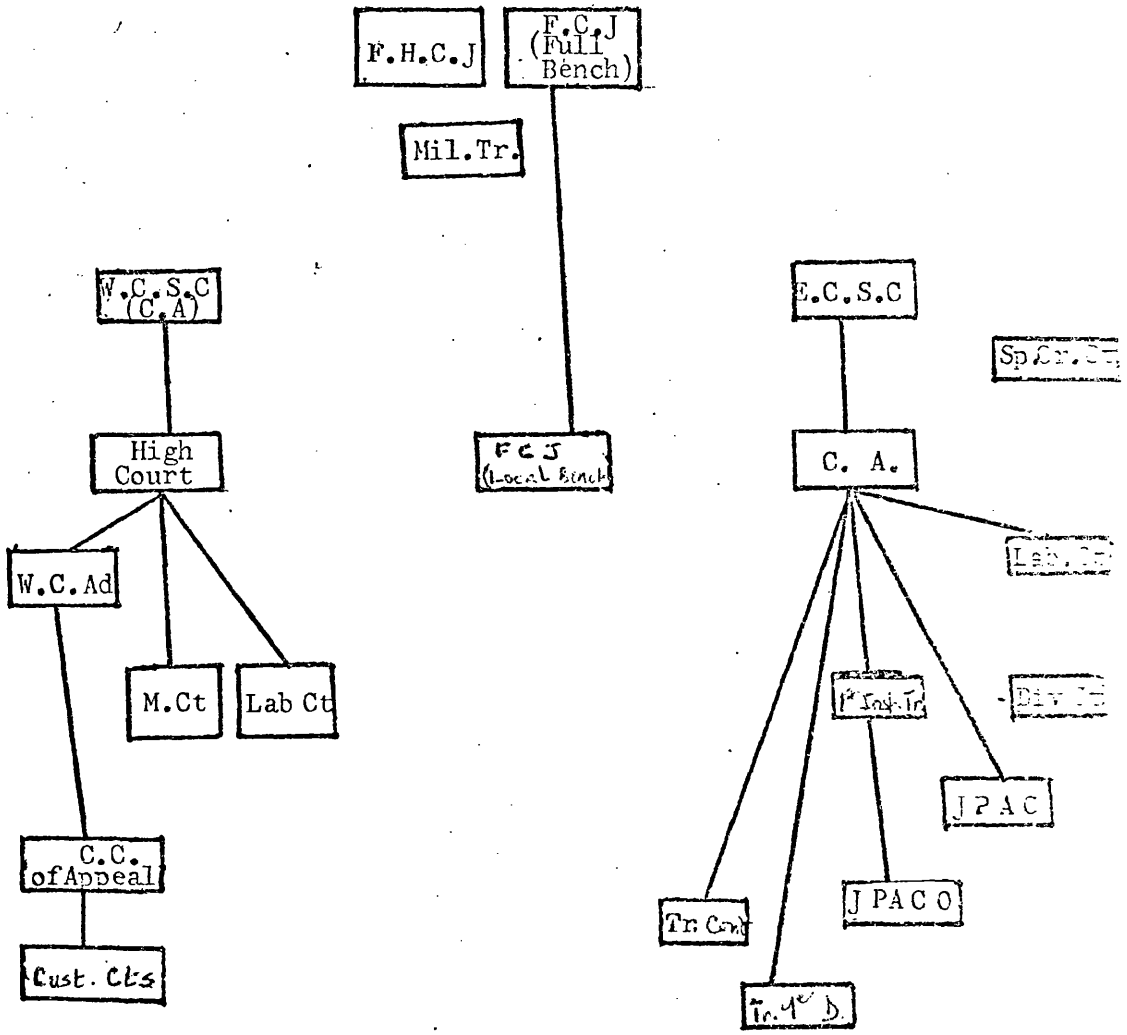
THE COURTS STRUCTURE: 1921-1959



APPENDIX V

COURT STRUCTURE OF THE FEDERAL REPUBLIC

OF CAMEROON



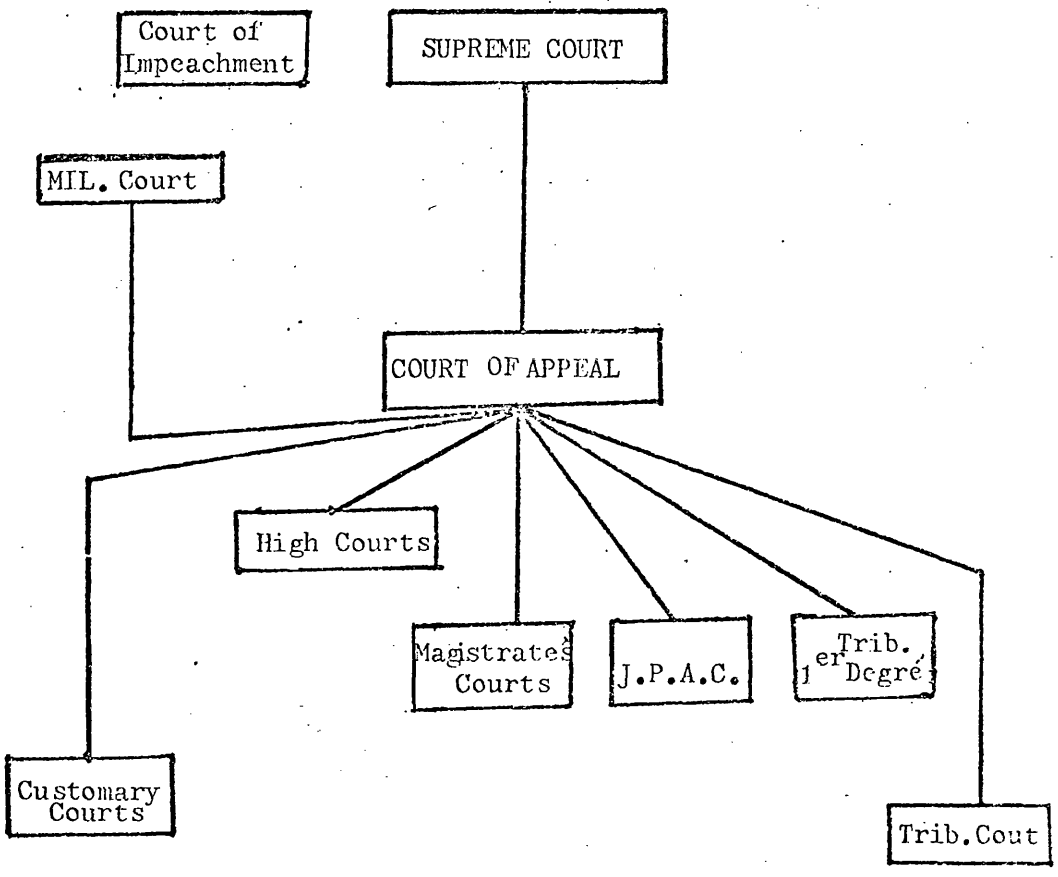
West Cameroon Cts Federal Cts East Cameroon Cts

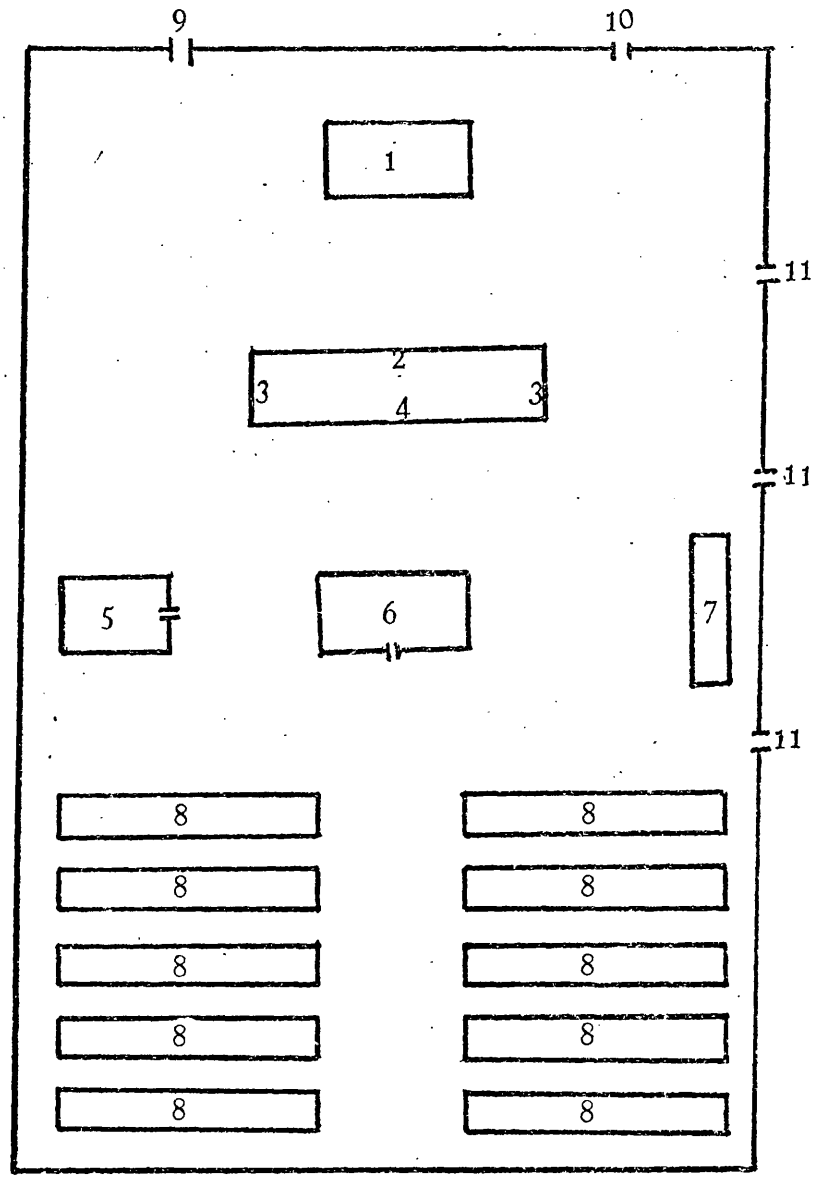
W.C.S.C. = West Cameroon Supreme Court
E.C.S.C. = East Cameroon Supreme Court
W.C.Ad. = West Cameroon Administration
Sp.Cr.Ct. = Special Criminal Court
Div.Ct. = Divisional Court
Tr.Cout = Tribunal Coutmier
J.P.A.C. = Justices de paix a competence correctionnelle
F.H.C.J. = Federal High Court of Justice
F.C.J. = Federal Court of Justice

APPENDIX VI

COURT STRUCTURE OF THE UNITED REPUBLIC

OF CAMEROON

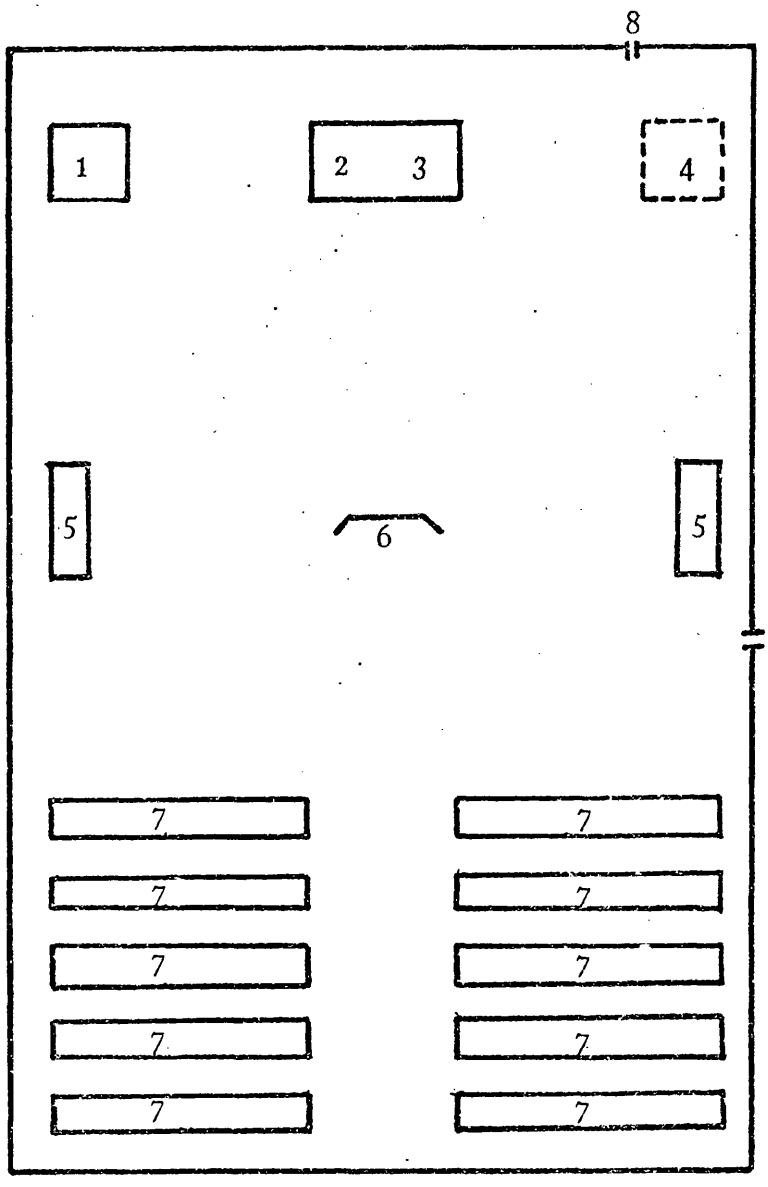




Courtroom Layout in Anglophone Cameroon

1. Presiding Judge
2. Court Clerks
3. State Prosecutors
4. Advocates
5. Witness-box
6. Dock
7. Convicted persons & persons waiting to be bailed
8. The Public
9. Entrance & Exit for Judge
10. Entrance & Exit for Court Clerks
11. Public entrance & exit

APPENDIX VIII

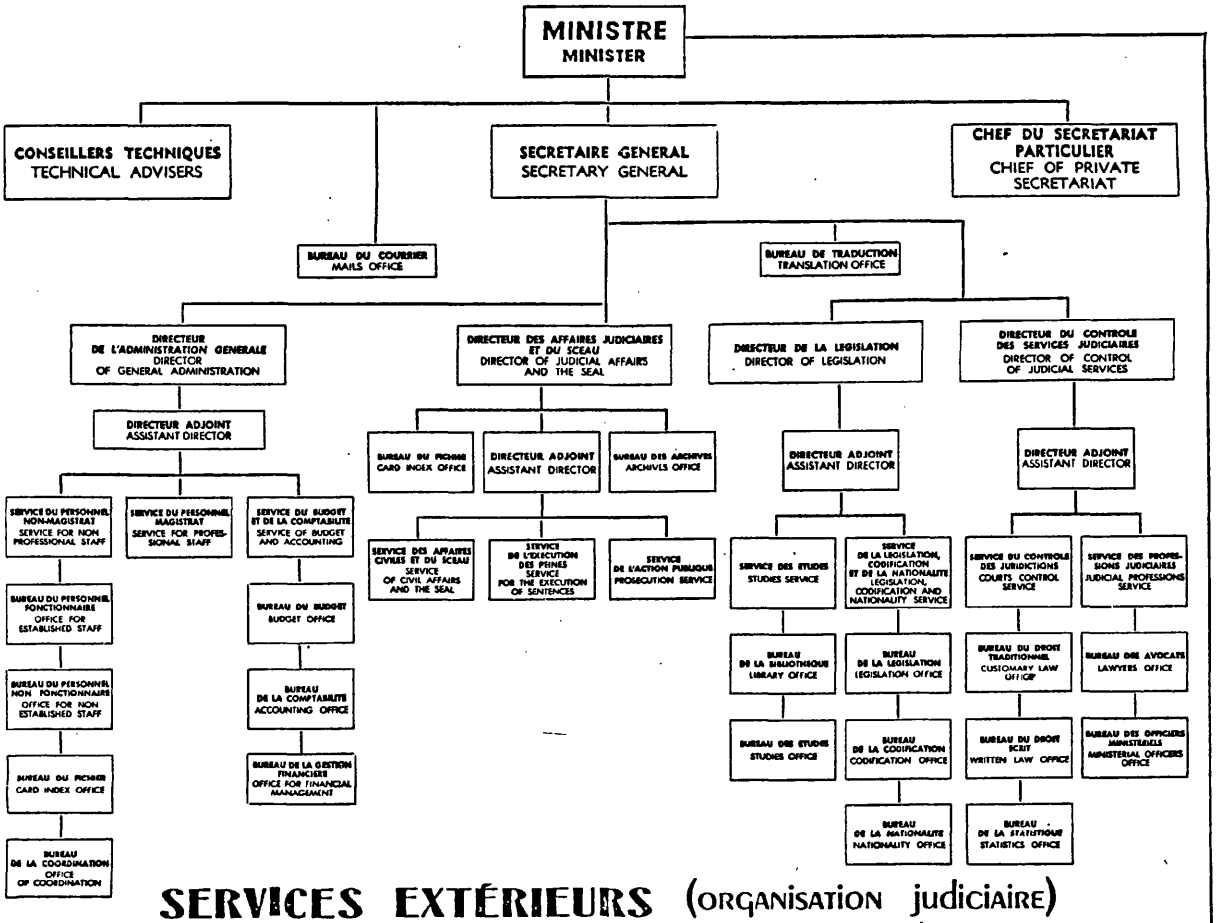


Courtroom Layout in Francophone Cameroon

1. State Procecutor
2.or 4. Registrar
3. Presiding Judge
5. Advocates
6. La barre
7. The public
8. Entrance & Exit for Judge, Prosecutor and Registrar.
9. Public entrance & exit

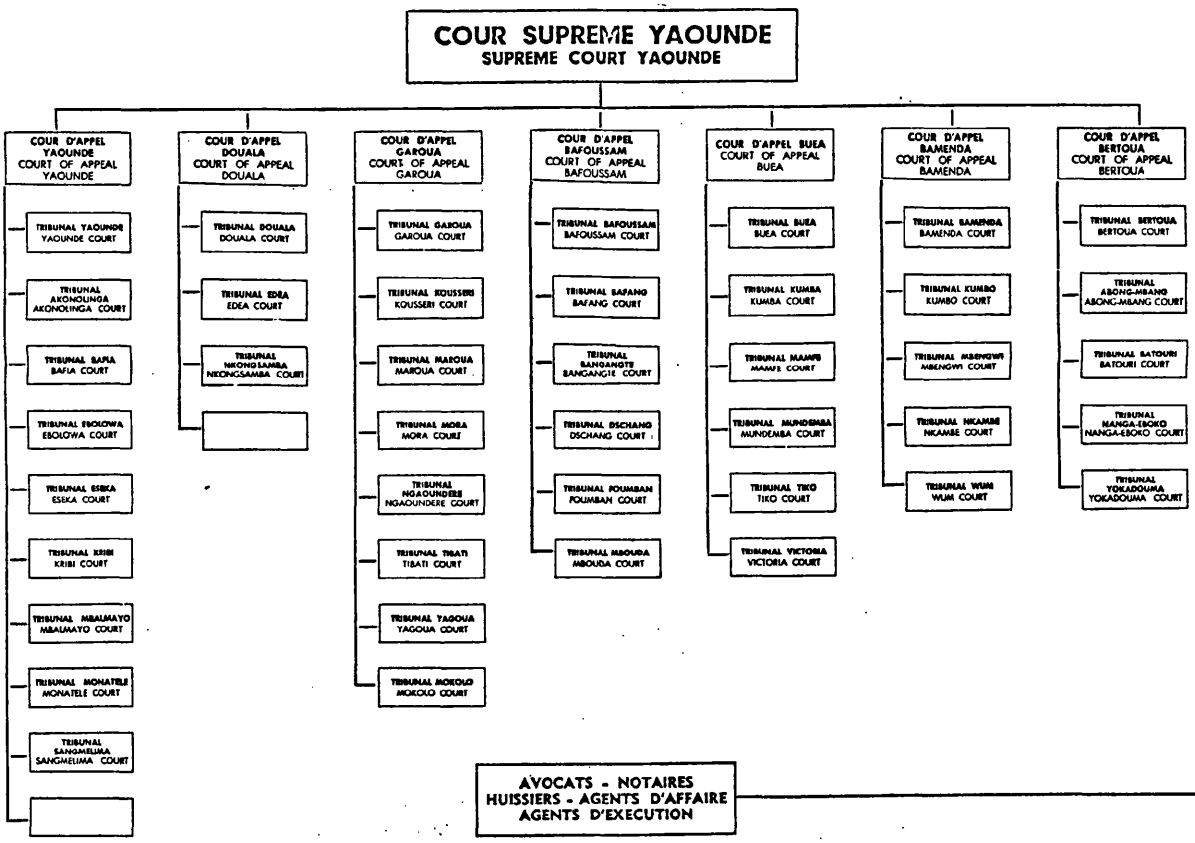
ORGANIGRAMME of the MINISTRY of JUSTICE

CENTRAL SERVICES

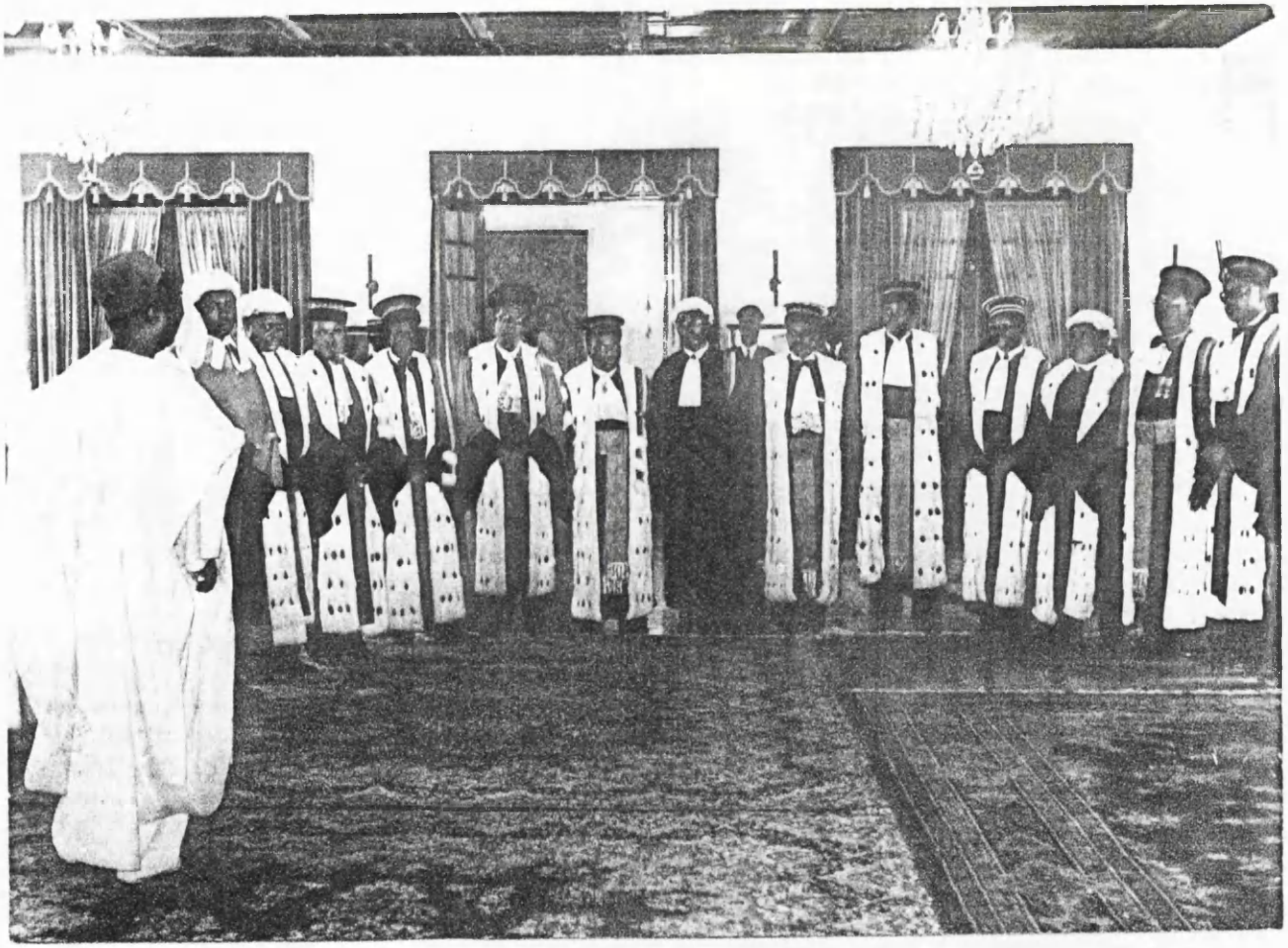


SERVICES EXTÉRIEURS (ORGANISATION JUDICIAIRE)

EXTERNAL SERVICES (JUDICIAL ORGANISATION)



IMPRIMERIE NATIONALE — YAOUNDE



SOME SENIOR MEMBERS OF THE CAMEROONIAN MAGISTRACY. (AT THE FAR LEFT OF THE PICTURE IS THE CAMEROONIAN HEAD OF STATE). NOTE THE DIVERSITY IN THE ROBES.

(PHOTO INFOCAM)