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*Criminal liability of the Police in Cameroon:
Prospects and Challenges*

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Abstract

This paper looks at the institutional framework and the procedural mechanisms involved in rendering police accountable through the criminal trial process in Cameroon. The difficulties involved in getting a police agent answer for his criminal misconduct as a result of the coexistence of the civil and common-law legal systems will be of particular interest. Challenges facing the criminal trial process prior to and after the enactment of a single criminal procedure code in Cameroon are also examined and recommendation offered with the view to enhancing the criminal trial of police officers in Cameroon without hampering the smooth running of their duties.

Key words: Criminal, procedure, police, accountability, Cameroon, common law, civil law

Introduction

“The police, by the very nature of their function, are an anomaly in a free society. They are invested with a great deal of authority under a system of government in which authority is reluctantly granted, and when granted, sharply curtailed.” Goldstein H. (1977).

The horizon of ethical thought in our time is framed by the respect for human rights and the rule of law. Therefore the yardstick for measuring the extent to which law enforcement officers respect human rights and the rule of law in the course of the performance of their duty is the consistency and conformity with which criminal trial procedure successfully hold agents accountable for abuses of human rights and the rule of law. The enormous power wielded by the police, their possession and use of firearms, and the inevitable practice of discretion in decisions relating to arrest, searches and pre-trial detention require that law enforcement officers operate within the law; (Dermot PJ Walsh 1998) . Indeed, it is in the restraint of the use of power and discretion vested in the police that the respect and equality of the citizen and the liberty and integrity of persons in a state are secured.

Cameroon belongs to the family of nations that recognize in the equality and dignity of human beings, an essential value that should serve as the foundation for the creation, interpretation and application of positive law. This is captured by section 1(3) of the

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Revised Cameroon Constitution of 9th May 1996, “the Republic of Cameroon... ‘Shall ensure the equality before the law of all its citizens’”. Section 1 of Penal Code emphasises that there is no exemption by enacting that all persons are subject to the criminal law. This section clothes in legislative form, the principle already embodied in the constitution that all men without distinction are equal before the law; (Art. 2 UDHR)

In view of the above, the police are subject to criminal law and procedure on exactly the same basis as the ordinary individual; (RCPMP 1962). If a police officer is suspected of having committed a criminal offence, the question that immediately comes to mind is who will investigate him? The law and procedure governing the investigation of that suspicion is not formally affected by the fact that he is such an officer; (Art 123). Similarly, the law and procedure governing his prosecution and trial if it comes to that are generally unaffected by status; (Dermot Walsh 1998 p.345). This aspect of the police being accountable on the same basis as the private citizen is often presented as proof that the police are fully accountable for their actions. Certainly, the criminal law and procedure do serve an important accountability function. They enable the private citizen to use against officers of law and order the very same legal process that they will use against him in the event of either one of them having committed a criminal offence; (Dermot Walsh 1998).

Thus, this article looks at the institutional framework and procedural mechanism in which a police agent is held accountable when he/she commits a criminal offence in Cameroon. Issues including but not limited to the investigation and prosecution of a police suspect, judicial attitudes and political bottlenecks that hinder the trial process of a police officer, issues relating to pre and post enactment of the harmonised criminal procedure code shall be discussed and recommendations to enhance the criminal trial process of a police suspect offered. However, before delving in to all these, it would be proper to have a brief politico-legal history of Cameroon, as a necessary background for a better understanding of the issues that would be discussed in the paper.

Brief Politico-Legal History of Cameroon

Cameroon’s chequered colonial history began when Cameroon became part of the German Protectorate proclaimed on 14 July 1884 in the Berlin Colonial Conference, organised under the chairmanship of the German Chancellor Otto Von Bismarck (Ewang S A, 200 pp 15-30; Anyangwe C,1988 p3). Cameroon was therefore one country under the Germans (Charles M. Fombad 1990 p60). The defeat of Germany in the First World War, (1914-1919) by a co- alliance of Belgian, English and French Forces in Cameroon ushered in Britain and France who agreed to the partition of Cameroon, with France taking the lion’s share (PY Ntamark, 1980). France governed her part of Cameroon as a separate entity until independence in 1960, while Britain administered her own as part of the colony of Nigeria.

On October 1, 1961, the former British Trust Territory of the Southern Cameroons reunified with the Republic of Cameroon which had already become independent on

January 1, 1960, to form the Federal Republic of Cameroon. In this union, the Southern Cameroons and the Republic of Cameroon became respectively the Federated States of West Cameroon and East Cameroon, (PY Ntamark 1980). Following a nation-wide referendum held on May 20, 1972, the people of Cameroon voted overwhelmingly to transform their Federal State into a Unitary State. This merger of the two Federated States of Cameroon gave birth to the Unitary Constitution of June 2, 1972. Law No. 84/1 of 4 February 1984 changed the appellation “United Republic of Cameroon” to “Republic of Cameroon”, while Law No. 96/06 of 18 January 1996 extensively revised the 1972 Constitution.

Up to 1 January 2007, the date of the coming into force of the new Cameroon Criminal Procedure Code (CCPC), the procedure to ensure the criminal liability of the police was quite unique. The uniqueness of this process laid in the fact that before the adoption of a hybrid criminal code system which merges key features of the French Civil law and English Common law systems along with customary law by Parliament in July 2005, criminal procedure was governed separately in Cameroon. In Francophone Cameroon, French *code d'instruction criminelle* of February 14 1838 and its subsequent amendments provided for criminal procedural rules, while in Anglophone Cameroon, it was governed by a variety of common law texts, primarily the Nigerian *Criminal Procedure Ordinance* CAP 43 of 1958. The attendant consequence was that the interpretation of a uniform penal code depended on English or French criminal procedural laws with the sometimes ludicrous result that the same provision of the penal code was given two different meanings depending on whether the Court was French or English speaking (Anyangwe C, 1987).

The need for the uniformity of not only the Criminal Procedure rules but also of the rules of evidence was apparent. While not claiming the authority of Law, Circular No. 3-DL-1129 of 15th March 1966 warned that “the fusion in the new code of the system so far in force, and the reforms which have been introduced, have robbed the old case law of much of its value as a guide”. The circular was addressed to judicial and legal officers requiring them in the performance of their duties to make a break from the old case law introduced by the colonial administrations of Britain and France as far as the interpretation of the Penal Code was concerned. Its consequences extended to the forces of law and order in the handling of criminal offenders and their methods of investigation (Sec.3(2)JLSRR). There was therefore a need for the uniformity of the procedures in both form and conduct concerning arrest, search, detention, trials, convictions and the treatment of prisoners throughout the whole territory of the Republic of Cameroon (Eban Ebai 2008).

The necessity for the uniformity of the criminal procedure law and practice in Cameroon was finally addressed by the establishment of the Criminal Procedure Commission some thirty five years ago. This Commission completed its task, but it took about twenty years for the product “The Cameroon Criminal Procedure Code” bill to be tabled before the National Assembly (Parliament). With the entry into force of the uniform code on 1 January 2007, the administration of criminal justice in Cameroon was expected to move on the same plane devoid of differences in its application, thus, ensuring a concerted and

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more functional criminal trial process in investigation, prosecution as well as in correction.

Investigation of Crimes Committed by the Police is done by Judicial Police Officers (No Independent Commission)

In theory, the law and procedure regulating the investigation, prosecution and trial of a police officer for an offence allegedly committed in the course of his duty are no different from those applicable to a private citizen. The investigation and prosecution of crimes committed by the police are done by officers of the judicial police in like manner as they would be done if the crime was committed by a private individual. In practice, the vast majority of criminal investigations in Cameroon are handled by junior judicial police officers (Police and Gendarmerie) who are identified in the public mind as having special responsibility for the investigation of offences. This gives rise to no difficulty, as long as private citizens commit the offences (Eban Ebai 2008)

Contrarily, when an offence is committed by a member of the police or gendarmerie, the question is raised: who will police them? Will the police apply the same resources, efforts, and commitments to the investigation of the crime allegation against the police as they would against the citizen? While such action might be expected in cases involving gross abuse of authority resulting in death, serious bodily harm of a big political figure or the perversion of justice, the same might not be expected in minor or borderline cases (Brown, N., & Bell, J. 1998).

The investigation of minor cases of crime commission by an agent is often carried out by another officer or a commission delegated by the hierarchical superior. The fact that investigations are carried out by fellow police officers, and interrogations done in police stations which are much familiar to the culpable officer, makes the whole process favorable to an officer. While a citizen who commits a comparable offence may be taken to court and sanction according to the norms, a police officer may be subjected only to internal disciplinary sanctions. But the issue becomes more complicated when the crime is of a serious nature, either involving death, grave deprivation of liberty, gross abuse of human rights or crimes committed by the police with the knowledge or backing of the government. In effect, investigating and prosecuting cases of this nature in Cameroon have often met with a number of pitfalls. It is thus suggested that the investigation of crimes committed by the police should not be investigated by the fellow police officers but by an independent commission or body. As of now there is no such body in Cameroon.

The Absence of a Harmonized Code of Criminal Procedure

Until January 2007, the absence of a harmonized Criminal Procedure Code in Cameroon constituted a major problem in the demand for criminal liability of the police in particular and the administration of criminal justice in general. In the English speaking part of the country like in all other Anglo-Saxon accusatory system, the burden of proof was entirely on the prosecution (police). When an officer decided to make an arrest, he knew he was

liable to be called upon to justify his actions before a court. This acted as a valuable restraint to the abuse of his powers knowing that he would be subjected to questioning in court. In French speaking Cameroon, the police was not questioned and an accused was only allowed to have a lawyer at the trial stage. The primary investigation was done and evidence taken without the presence of a lawyer. A police officer was not called to justify (examine) his actions before the court. These principles clothe every officer in the French speaking part of the country with arresting authority with an arbitrary power and negated the rule of law (Stead PJ, 1983); (David Lawday, 2000).

The introduction of the system of examination in the harmonized criminal procedure code makes it possible for the judicial police officers through out the Republic of Cameroon to be cross-examined in court (*CCPC, S.331(1), (2) and (3); S.332(1)*). This procedure though at the discretion of the court enables the judge or the examining magistrate to enjoy considerable authority even in relation to senior police officers, whose reports can be criticized in open court; (Peter Bringer, 1981). It also gives the judge the opportunity to personally interrogate the judicial police officer about the course of the police investigation and the circumstances of the confession. The police experience the judge's power to control and sanction their behavior in a public trial. Moreover, the public sees for itself that police officers have limited powers and that there is a controlling authority strong enough to protect individual rights against abusive State power.

However, it is hoped that the provisions that have offered judges the discretion whether or not to examine and cross-examine litigants including the police in court will not act as a window to let the police out the net of examination and cross examination. Giving the dictatorial nature of the Cameroon government and the continuous relevance of regime policing, the government is most likely to prevent the exposure of an officer by way of examination or cross examination by the court especially in cases where the crime was committed with the complicity of the government. In this situation, a judge would obviously opt not to examine or cross examine any security official in court if he discovers that examination would expose the police and endanger his career or person. Also the fact that cross-examination is optional still makes it possible for the practice in Francophone Cameroon to prevail, whereby a written report of the police officer about his interrogation of the accused could be substituted for his personal appearance at the trial.

Indeed five years after the coming into force of a single CCPC and the numerous safeguards on human rights abuse, the idea of separate criminal trial processes has continued to influence the attitude of criminal justice officials on both sides of the divide with devastating consequences. In fact the result has been that three years after its application there were more detainees across the country in 2010 (24000) than they were in 2009 (21000). This revelation was made by the Vice Prime Minister, Minister of Justice and Keeper of the Seals, Amadou Ali, while opening the Annual Meeting of Heads of Appeal Courts in Yaounde, Cameroon, from 02 to 05 November, 2010.

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However, unlike in the past where it was immaterial that the confession was obtained by inducement or threats, the harmonized criminal code renders such confessions inadmissible in evidence, (S. 122(2), S.315(2) of the CCPC).¹ Thus, reports submitted in court by gendarmes and police officers investigating a crime would no longer be considered as conclusive evidence. The CCPC therefore opens a window to exclude confessions that have been forcefully gotten by agents of law enforcement. On the whole, albeit the limitation pointed above there are hopes that, if properly applied, the harmonized criminal procedure code will enhance criminal liability of the police in Cameroon.

The Difficulty of Treating a Fellow Member as a Suspect Criminal

Primarily, the police find it difficult to treat a fellow member as a suspect criminal, particularly when the alleged offence was committed for the purpose of maintaining public order. This difficulty is enhanced by the awareness that they are all members of the one force, an elitist force, and “God chosen officers” engaged in a common fight against hostile criminal elements on the outside;(Epstein D, 1982)). In Cameroon, to prosecute a fellow member, a “chef“, is considered an abomination, lack of solidarity, a disrespect of “unethical professional ethics” and a sacrifice of the officer in question. Similarly, it would be extremely difficult to secure the cooperation of a police witness against one of their own in an internal criminal investigation. Despite several circulars from the Delegate General for National Security calling for greater accountability in the police, police investigators as well as witnesses have often been reluctant to investigate or prosecute one of their members. (the reluctance with which the police investigated the killing of 9 youths in the Bepanda neighborhood of Douala by a joint command of Police, Military and the Gendarmerie is a case in point). This reluctance has continued unperturbed after the coming in to force of the CCPC with the killing of protesters in February 2008 in Kumba, Douala and Bamenda, students of the University of Buea and many others.

Several other factors such as favoritism, nepotism and outright corruption forestall investigations of crimes committed by members of the law enforcement body. These social ills have made the whole accountability process in Cameroon selective. The prospects of criminal proceedings to be opened against an officer will often depend on where he comes from and who he knows.

The Process of Investigation Is More Favourable to a Police Suspect

The questioning of the suspect police officer by his counterparts is not likely to be preceded by his arrest (Dermot PJ Walsh 1998) p350. The police’s will to refuse cooperation is not undermined by the deprivation of his freedom or privacy by hostile

¹ S. 122(2), S.315(2) of the CCPC.

officials or by a hostile environment. Indeed, the suspect officer's resolve might well be boosted by the fact that he shares a common bond with his interrogators and is fully familiar with and comfortable in his surroundings. In all likelihood, he knows exactly what techniques the interrogators use to secure his cooperation. He also has the practical and moral support of his representative body. When these factors are taken into account, it would seem reasonable to conclude that the standard police criminal investigation is more geared to producing results in the case of citizen suspects than it is where the suspect is a police officer acting in the course of his duty.

Division of the Decision to Prosecute

The philosophy underlying prosecution is that anti-social conduct must be punished. Since anti-social behavior threatens the very fabric of society, the suppression of such conduct is a matter of public interest for society as a whole; (Anyangwe C. 1989, p 85). As a general rule, the Cameroonian State Prosecutor monopolizes the institutions and conduct of prosecutions. But he does not monopolize the discretion whether to prosecute or not (Anyangwe C. 1989) p 87, which he shares with the Minister of Justice. Each of them intervenes in well defined areas; the Minister in matters relating to state security and to the repression of subversive activities; all matters involving parliamentarians, ex-parliamentarians, mayors, and traditional chiefs; senior district officers, district officers, and all high ranking civil servants as a whole, law officers as a whole and those with the status of law officers. The State Prosecutor prosecutes in all other cases; (Ministerial circular No 11 of 16th April 1962 issued by the Minister of Justice to all State Prosecutors (Anyangwe C, 1987 p.53).

The Minister of Justice's sole power to decide on the prosecution of wide ranges of matters cannot be overemphasized. Though it would be deserving that the government would want to seek and guarantee the security of the state by the repression of subversive activities, it would not equally want the police to be exposed by way of accountability for having caused the authorities to realize its goals. At least the authorities would be able to decide on the prosecution of a police officer depending on the operation that led to the abuse of his powers. It follows that an officer who abuses the people's rights in an opposition party's political manifestation is more likely to go free than one who shoots a taxi driver who refuses to stop when asked to do so.

On the whole, sharing the discretionary power to prosecute between the Minister of Justice and the State Prosecutor has not only militated against the prosecution of law enforcement officers, but has to a large extent subjected the independence of the judiciary under the authority of the executive. The powers of the Minister are not limited to the decision whether a case is to be prosecuted or not, but also to stop any prosecution that has been initiated by the State Counsel. With this discretionary power of the Minister of Justice to decide whether or not there should be any prosecution, and his general power of control over the Judiciary, it is very unlikely that he would decide that a police officer should be prosecuted for crimes committed while performing duties that are of interest or in defense of the ruling oligarchy. Moreover, such a decision becomes even more

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unlikely if the crime was committed while the police officers was performing duties, such as preventing an opposition political party from militating, forcefully stopping a pressure group from publicly sensitizing the masses etc. In Cameroon, the primary mandate of the police has gone far beyond safeguarding the political system to that of preserving a political class or clan in power (Eban Ebai 2008)

The Minister of Justice's Discretion

Whenever the Minister of Justice decides that there must be a prosecution in respect of a certain matter, the State Prosecutor must abide by that 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 order or not to order prosecutions is absolute and is exercised whether there be compelling evidence to warrant prosecution or not. The Minister need give no reasons for his decision.

However, there is no law which positively empowers the Minister to exercise discretion to prosecute. Apparently, his power to do so stems from his position as the authority that controls all the State Prosecutors in the country and is traceable to ministerial circular No 11 of 16th April 1962 issued by the Minister of Justice to all State Prosecutors. This circular instructs all State Prosecutors to inform the Minister of all matters which appear to be of a certain importance, such as matters relating to the security of the State, police and policing, the suppression/repression of subversive activities as well as all matters involving law officers and those with the status of law officers. As said before, if the Minister of Justice decides that there must or must not be a prosecution in respect of a certain matter, the State Prosecutor must abide by that decision irrespective of his own views. This has made the Minister's discretion to order or not to order prosecutions absolute and exercisable, whether there be compelling evidence to warrant prosecution or not. In any case, the Minister may order the discontinuance of any criminal proceedings that have already been instituted.

In practice, however, the Minister seldom (except in flagrant crimes) decides that high ranking police officers and those with the status of law officers should be prosecuted. This explains why generally the officers who appear in courts in Cameroon to face criminal charges are almost always those in the lower ranks of the corps; (*Motion No. HCB/12m/78 delivered by Justice Ekor Tarh V.P on Tuesday, 5th September 1978*). Most of the agents in the higher ranks who commit offence are hardly ever prosecuted. The case of Peter Baseh and 9 others v. the Commissioner of B.M.M. Bamenda, Aminou Buba Gagere, is a case in point. Irrespective of the fact that the judge alleged three offences against the commissioner of police; inhuman act of subjecting the detainees to unlawful castigation contrary to section 135 of the Penal Code, his contemptuous behavior in not appearing in court contrary to section 154 of the Penal Code and his refusal to obey a court summons contrary to section 173 of the penal code, he was never prosecuted, because there was no order from the Minister of Justice for his prosecution. Also the commander of the joint military police and Gendarmerie operation that extra-judicially executed 9 youths in the Bepanda neighborhood of Douala was never

prosecuted. The decision of the court of first instance in favor of police commissioner Abuengmo John Amuh in the case of *Chi Daniel Awasum v. Abuengmo John Amuh Appeal No BCA/7/1997 Unreported*, attest to the fact that it is not always in the interest of the judicial system to prosecute senior police officers even when they are involved in serious criminal offences.

Other Factors Militating Against Prosecution of Crimes Committed by Police Officers and the Effects on Accountability

The Concept of Policing

The concept and structure of a police force is partly a product of history and partly a response to specific problems. The Cameroon police, being a product of French and English colonial policing models, share to a large extent their concept, structure, functions and mode of control. Developed as an instrument of colonial plunder and oppression the Cameroon police has over the years alienated itself from the generality of citizens and relies heavily on the tools of government for the enforcement of its decisions and policy preference (Eban Ebai 2008)p. 322. Article 2 of Decree No 2001/065 of 12th March 2001 on the Special Status places the command and administration of the police corps under the direct authority of the President of the Republic who is its supreme commander.

Article 5 goes further to state that the police execute missions that have been defined by governmental authorities within their respective competences, and in conformity with the directives of the President of the Republic; (*Article 5(2) of decree No 2002/003 of 4th January 2002 on the organisation of the General Delegation for National Security*) The President delegates the power of general management and control to the Delegate General, who he appoints and dismisses and who is answerable to him. The Delegate General not only fulfils the executive functions but determines matters on operational lines in like manner as the Commissioner of the Garda Siochana, the Chief Constable in England or the Inspector General of the Police in Nigeria. The fact that executive and operational matters of the Cameroon police originate from political leaders and not from the professional hierarchy not only affects its decisions on when, where and how to act, but also limits its susceptibility to accountability to the people.

Since the institution of multiparty politics in 1990 came as a result of pressure from the masses and not from a genuine will of the authorities to have democracy thrive in Cameroon, the political authorities have continuously used the police to suppress any opposition (Eban Ebai 2008). The arrest and detention of political opponents are common and rampant. Mr. JJ Ekindi recounted a story when he and other opposition leaders, including Mr. Samuel Eboa who was quite advanced in age, were arrested. They were given 50 strokes each every morning as “breakfast”. In fear of the fact that Mr. Samuel Eboa may die from the 50 strokes, he decided to take 25 of Mr. Eboa’s strokes. In such instances, one would hardly expect the police to be called to order, because they were

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acting on the orders of the authorities; (*US Department of State, Country Report on Cameroon 2004*).

Concerning criminal investigation, the police act on the orders of the Public Prosecutor, who directs the investigation and initiates the prosecution. In administrative police matters, the police are under the orders of administrative officers. Unlike the English bobby who enjoys freedom from his common law right to act in criminal investigations, a Cameroonian police officer is quite limited as one hierarchical superior or another directs his actions. Like his French counterpart, placed under the tight control of the state, a police officer in Cameroon benefits from the protection of the state and is not exposed to personal accountability, in like manner as his English or Nigerian counterpart would. They are servants of their employers for the purposes of vicarious liability and the action *per quod servitium amsit* respectively. Thus, being a servant of the state, whose primary responsibility is to see to its security, accounting for crimes, mostly those, committed in defense of the state, has not always been evident.

State Security and Executive Arrogance

The preservation of state security, territorial integrity and national unity are fundamental priorities to the Cameroon government. These priorities play an important role in a decision not to prosecute police officers in individual cases where prosecution might otherwise have been warranted. Article 35(2) of the Constitution states: "The Government shall, subject to the imperatives of national defense, the security of the state or the secrecy of criminal investigation, furnish any explanations and information to Parliament". This Article has constitutionally provided a shield to the Cameroon police with which it protects itself from proper accountability. Police managers and government officials often give whatever answer they can afford when confronted with issues relating to police misconduct in Cameroon; (Ebai Eban 2008)

A glaring case was noticed in 2001 when the deputies pressurized the government to throw more light on the disappearance of nine youths in the Douala neighborhood of Bepanda. The then Minister of Communications and the spokesperson for the Government, Professor Augustine Federick Konchou, told parliamentarians and the people to listen to the government which had the means of investigating what happened to the nine youths in Douala rather than pressurizing the government. Professor Konchou also rushed in defense of gendarmerie officers who shot an unarmed mob of protesters in Kumbo in 2002 by stating that they acted in legitimate self defense.

A further restraint on police accountability was laid down by Ministerial circular no 11 of 16th April 1962. This order gave the Minister of Justice the sole power to decide on the prosecution of matters relating to the security of the state and to the repression of subversive activities. Several cases that would have warranted prosecution have not been prosecuted, because the Minister has not ordered their prosecution under the pretext that the police acted in the interest of state security. This has been in the forefront to preventing the prosecution of law enforcement officers for the crimes they commit. The case of *Peter Baseh and 9 others v. the Commissioner of B.M.M. Bamenda* is a case in

point. Mr. Baseh and nine others who were suspected of subversive activities were arrested and detained by the Commissioner of BMM Bamenda, Mr Aminon Garere Buba. During detention, (3rd July 1978 to 4th September 1978), the applicants were subjected to severe torture. On 28th August 1978, a motion which was commenced in the Bamenda High Court was challenged by Mr Itoe, the Procureur General, that the High Court lacked jurisdiction to entertain matters of a subversive nature.

The learned Judge Ekor Tarh argued that the application is for immediate release of the detainees; *habeas corpus*. The High Court on behalf of the President of the Republic acts for the People of Cameroon and has a right to investigate the detention of a Cameroonian or a friendly alien in relation to the legality of such a deprivation of liberty. For the High Court to assume jurisdiction, therefore, the subject matter for the application must primarily be based on a detention or imprisonment of a subject, which is incapable of legal justification. It is not a right to adjudicate on the criminal matter of the detainee, but it is to inquire into the form of his detention. Therefore, to bury the learned Procureur General's argument, the learned Judge Ekor Tarh concluded that it was not a matter under what law or for what offence the individuals were detained, but as to what manner or under what authority they were so detained and that, in the absence of this, the applicants could not be detained for subversive activities, which were neither complained by some administrative authority or evidenced by them or the gaoler. He also held that the judges of the High Court by that provision (Section 16 (1) (c) owe a duty to safeguard the liberty of the subject as watchdogs of the laws of Cameroon, which is of the highest constitutional importance, affording a remedy to the meanest subject against the most powerful in the Cameroon, and it is intended to ensure that there is no misuse of powers (*detournement de pouvoir*) of detention by any agent or institution without a proper form of authority. The authority here could be judicial or administrative. The judicial authority is always backed by a warrant of either the investigating military or civilian magistrate or, in exceptional cases, a justice of the peace.

But in matters of internal and external state security, the territorial administrative heads (Governor, Senior Divisional Officer etc.) authorize the detention, but the offender must be brought before the court within the time provided by law, that is, 24 to 48 hours, and this authority is invariably evidenced in writing. In this case, the Commissioner of BMM did not appear in person, nor sent the necessary evidence; nor did he cooperate with the Procureur-General or the Court. The Commissioner's attitude undermines the constitutional guarantees and the very laws of the state he is called upon to enforce.

Cases of this nature have increased significantly since 1990, when multi-party politics was introduced in Cameroon. Under the umbrella of national security, the Minister of Justice and in fact the government in general have intervened by deciding not to initiate or by calling off prosecutions initiated by the DPP in respect of crimes committed by the police in course of the performance of their duties. The reasons given have been that a police officer acted in defense of national security or in preservation of the territorial integrity of the state or in legitimate defense. A glaring example was noticed in Douala in 1991 when a police commissioner opened fire on a protesting mob and killed many

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people. The furious mob blocked him in a police station with the intention to retaliate, but he was promptly airlifted by helicopter to safety. Commissioner Asanga was never prosecuted on the basis that he acted in the interest of state security and in defence of public institutions. Several others have gone home free after shooting in similar incidences in the University of Yaoundé in 1991-1992, in Bamenda, Douala, Kumba and Kumbo in 1990, and recently at the University of Buea.

The coming in force of the harmonized CCPC in January 2007 has not altered the situation. In February of 2008 many Cameroonians lost their lives from the shots of law enforcement officers, in the popular protest against President Biya's announcement to revise the constitution and takeout article 6(2) that provided for the limitation of presidential term of office to allow him continue to rule. The investigation and subsequent prosecution of officers involve has not led to any known convictions.

The continuous contempt showed by executive officers including law enforcement officers towards the judiciary underscore the inability of the criminal trial process to render police accountability in Cameroon. The case of D. S. Oyebowale V. Company Commander of Gendarmerie for Fako (Suit No. HCF/0040/HB/09(unreported)) is a glaring example. On 11 June 2009 the applicant, a Nigerian sailor, was arrested on the high seas en route to Cameroon by one Mr. Leyi Prosper, the Company Commander of the Gendarmerie Company of Fako Division, Cameroon. There was no apparent reason for his arrest, neither were any charges read to him at the time of the arrest. He was later taken to Cameroon and detained at the Gendarmerie Brigade in Limbe. Even at this time, he was not made aware of the reasons for his arrest and detention. While in detention, his boat was abandoned on the shores where it was dilapidating and was being looted.

The applicant requested release on medical grounds due to his deteriorating health but the respondent refused to grant that request. On 03 July 2009, the applicant applied to the State Counsel in Limbe for release on bail (Sec.224(1), 225 CCPC). This process was again hindered by the refusal of the respondent to report to the State Counsel for a bail hearing. On 08 July, the applicant filed a motion on notice in the High Court of Buea for an order of habeas corpus under s. 584 of the CCPC and section 18(2) (b) of the Judicial Organization Ordinance, for the determination of the legality of his detention. Pursuant to s. 585 (3) of the CCPC, the court issued an order for the respondent to produce the applicant in court on 23 July, together with the documents authorizing his arrest. This order was flaunted by the respondent who failed to release the applicant or to produce him in court as ordered. On 04 August, upon hearing counsel for the applicant and the State Counsel, a High Court judge, ordered the immediate release of the detainee under s. 585(4) and 586(2) of the CCPC. However, the respondent again refused to obey this order. The applicant was kept in detention until 20 August when he was released on bail. This release on bail was clearly in violation of the court order which had mandated his immediate and unconditional release.

The judge's decision ordering the immediate release of the applicant was well founded in law. The applicant was arrested without a warrant at a time when there was no apparent cause to suspect him of criminal activities. He was not made aware of the reason(s) for

his arrest, neither were any charges brought against him when he was subsequently detained. The respondent was in breach of ss. 30-31, and 119 of the CPC, which consequently rendered the arrest and detention unlawful. Moreover, the respondent failed, in the first instance to appear in court to advance reasons for his decision to arrest and detain the applicant despite having been duly served a court order and in the second instance, failed to immediately release the applicant pursuant to the court's order.

It should be noted that the State Counsel who made an appearance in the "interest of the state", could do no more in his submissions to the court than merely condemning the respondent for failing to obey the court twice. He described the respondent's attitude as, "grossly contemptuous and smacks of unbridled arrogance towards the judiciary". In only a few incidences due to the flagrant nature of the crimes, the national and international community have forced the government to prosecute the Police offenders. In several of such cases, the prosecution is a kind of mock trial where real justice is never applied. This is exactly the type of prosecution that took place in the case of the Bepanda 9. Similarly, many more have been left without justice in Cameroon in the face of police impunity especially after the shootings following the February 2008 protest.

The Relationship between the State Counsel and the Police Hinders the Prosecution of Police Officers

In Cameroon, all prosecutions are governed by the principle known as *opportunité des poursuites*, that is, the principle of expediency or advisability. Under this principle, the State Prosecutor has the power to decide on the sufficiency of the evidence, to determine the adequacy of incriminating evidence, and to decide whether to prosecute any given matter or not.

In practice, due to the relationship that police officers enjoy with the Department of Public Prosecution both as members of the Judicial Police Corps, the police have taken upon themselves to decide whether a matter is to be prosecuted or not. Unlike the situation in Nigeria where the police have the discretion to decide to prosecute or not depending on whether the offence is a minor one, in Cameroon, the discretionary power to prosecute resides only with the Minister of Justice and the Department of Public Prosecution. Thus, the usurpation of the function of the "*Juge de l'opportunité des poursuites*" by the police is more marked in cases concerning the prosecution of police officers themselves. Even where they decide to forward a police report concerning the investigation of a crime committed by one of them to the State Counsel, it is likely to be tailored in their favor. It therefore follows that there is a lower incidence of State Counsel prosecutions against police relative to that against civilian suspects.

The State Counsel is dependent on police to do the necessary footwork to enable him to decide whether or not prosecutions are warranted in individual cases. This situation creates an environment in which a decision to prosecute a member for an offence committed in the course of his law enforcement functions might be more difficult to take than would be the case for a private citizen who committed a similar offence for personal

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gain or malice. A particularly relevant factor in this context is the availability of the internal police disciplinary process to cope with aberrant professional misconduct. The state counsel could be persuaded that many police criminality cases could be dealt with more conveniently and satisfactorily by the internal procedure rather than through the expense and publicity of a criminal trial. This would be especially true of minor criminal offences. Further support for this view can be found in the apparent reluctance of juries to convict police officers for offences committed in the course of their law enforcement efforts. From the State Counsel's perspective, therefore, it might make more sense to go directly for the disciplinary option. In the case of citizen suspects, however, the disciplinary option is unavailable. Accordingly, the State Counsel might feel more compelled to prosecute in order that justice should be done.

The Wider Problem of lack of Judicial Power in Cameroon.

A cardinal element of a constitutional government is that governmental powers have the potential of being constrained to operate within limits provided by the constitution Okon Akiba 2004. By extension, the effective enforcement of human rights depends to a large extent on the role of the judiciary to adjudicate human rights violations by the executive (police). To play an effective role the judiciary must necessarily be independent in order to adjudicate fairly and impartially. Judicial independence in this sense is understood first in terms of judicial autonomy (the ability to adjudicate human rights violations impartially) and secondly in terms of judicial power (ability to enforce decisions). In Cameroon the problem of judicial independence manifests itself in two ways; first in the absence of autonomy and secondly in the lack of judicial power. Although these elements of judicial independence are interrelated, this article is concerned with highlighting the second element of judicial independence. References would be made to some aspects of judicial autonomy to the extent that they are inseparable from and contribute to the problems engendered by the absence of judicial power in Cameroon.

A root cause of the absence of judicial independence in Cameroon is associated with the constitutional status of the judiciary in relation to the executive and the legislature. The judiciary occupies a subordinate position to the legislature and the executive. Prior to 1996, the Cameroonian judiciary was referred to under the 1972 Constitution as an "authority" rather than a power like the executive and the legislature. When this Constitution was revised in 1996, the status of the judiciary was elevated to that of a "power". However in practice the executive has continued to occupy a superior position.

The purported change of status of the judiciary from an authority to a power has been undermined by provisions which render judicial power a myth rather than reality; Joseph Kankeu (2003). The 1996 Constitution of Cameroon places the judiciary in very unambiguous terms under the auspices of the executive. Article 37(2) states that the judiciary shall be independent of the executive and the legislative powers. Yet this same provision is contradicted by article 37(3) which undermines judicial independence by stating that the independence of the judiciary shall be guaranteed by the President of the Republic (head of the executive). Moreover, Article 37(3) of the Constitution gives the President unfettered powers to appoint, promote and discipline judges. Although the

constitution provides that he shall be “assisted” in these duties by the Higher Judicial Council, that institution can only provide its “opinion” to the president. Hence, its opinion does not necessarily have binding authority. The Higher Judicial Council itself is not an autonomous body. It is a quasi-administrative body made up largely of appointees of the president (Charles Fombat 2008). More objectionable is the fact that the President of the Republic, head of the executive is the chair of the Higher Judicial Council that is supposed to advise the very same President.

Moreover, funding of the judiciary and remuneration for judges depend on the goodwill of the executive, a factor which compromises the independence of the judiciary. These factors combine to produce a judiciary that is subservient to the executive and therefore cannot be relied upon to take decisive measures against it. In the limited instances where individual judges (as in the case of fragrant abuse of power by law enforcement officers) have transcended these barriers and ruled against police officials, the general absence of judicial power makes enforcement a formidable task.

As in other jurisdictions, the judiciary in Cameroon depends on executive officials such as the police for the enforcement of its decisions. The law requires the police to assist bailiffs and process servers in the enforcement of judgments; (Section 11 of the CPC). In the context of enforcement of court orders against the executive, including the police, this is particularly problematic for at least two reasons. First, the police are subordinate to the President of the Republic who is their commander in chief (Article 3(1) of Decree No 2001/065 of March 2001 on the Special Status of Civil Servants at the service of National Security). The President is responsible for their appointments, promotions , controls and discipline through the Delegate General of Police. Thus their career depends on these two executive officials and therefore affects the nature of the service they render. They would logically seek to preserve the interest of the executive in order to secure their career. The police as executive officials have the tendency to showcase their political ascendancy by portraying themselves as being accountable to the executive hierarchy rather than the judiciary. Secondly, there is some innate reluctance of executive officers (security forces) to enforce court orders against their colleagues. Thus enforcing a judgment from the court against an executive authority and in particular where this affects the interest of the state is conceptually incongruous and an impractical expectation given the normative pressures on the security forces. In the Cameroonian context adherence to judicial orders does not only offset the current imbalance of power between the executive and the judiciary but threatens the career of the enforcement officers who defy the odds to enforce court orders against the executive. Against that backdrop it is therefore unsurprising that the official in the *Oyebowale Case* could defy the court on more than one occasion and not conceal his arrogance towards the judiciary in stating that he was accountable to the Governor of the Region rather than the judiciary.

Contempt for court orders represents a general absence of a rule of law culture in Cameroon. It undermines the institutions of the state and in particular ridicules the notion of judicial power. Members of the judiciary have repeatedly lamented the fact that police officials who show contempt in this manner are not made accountable. A judge of the

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Supreme Court once questioned (among other aspects) how the judiciary can boast of its independence when “State officials who maliciously resist the enforcement of court decisions, are not brought to book?”;(Mathias Epuli, J) It is therefore necessary for the development of a culture of the rule of law that the executive develops a practice of adherence to judicial orders if criminal liability of the police were to attain its full potentials.

Recommendations

Undoubtedly, on paper the current institutional framework and the criminal trial process to render criminal liability of the police represent an improvement from the previous processes that were not only divergent but were also deficient in provision aimed at rendering the criminal liability of the police. However, it is contended that the new CCPC would not go far enough to render criminal liability of the police until the judicial, executive, legislative and political character of the country changes.

Empowering the Judiciary

It is evident from the problem of lack of judicial power in Cameroon that a major aspect necessary to secure the effectiveness of criminal liability of the police is an independent judiciary vested with adequate powers to sanction police disrespect for court orders. This paper suggests that there is need for a constitutional revision of the provisions guaranteeing judicial independence and therefore judicial power. The independence of the judiciary as an institution provides that authoritative nature of their decisions which compels even a police officer to act in accordance. Thus, in Cameroon as a mechanism for enhancing judicial independence a transparent and objective system for judicial appointments should be developed (Charles Fombat 2007).

This system should involve a more independent Higher Judicial Council. All Presidential appointments to the judiciary must be confirmed by the Higher Judicial Council and the President should cease to be a member of that institution. Judges selected on established and transparent criteria through an independent process are less amenable to external influence. An approach worth exploring is that of Nigeria. The 1999 Constitution of Nigeria has established a mechanism for judicial appointments which has a significant prospect for judicial independence. Thus, the Constitution makes it incumbent on the President to appoint judges on the recommendation of the National Judicial Council, and with confirmation by the Senate (Articles 231(2), 238, 250, 260, 266 and 271 of the Nigerian Federal Constitution of 1999). The candidates recommended to the President are chosen from a list recommended to the National Judicial Council by the Federal Judicial Service Commission and the Judicial Service Committee of the Federal Capital Territory of Abuja. Thus, the appointment process goes through two independent institutions before the President is required to act. Moreover, the President's appointments must be confirmed by the Senate. Again, the president is not a member of any of these institutions involved in the process (Federal Constitution of 1999, s. 20 of

Schedule 3, Part II). A more transparent and rigorous process as that which obtains in Nigeria has greater prospects for empowering judges and securing judicial independence.

Judicial power could also be secured by making provision for a clear and transparent disciplinary procedure subject to an independent judicial review. A provision along those lines will pre-empt the tendency of disciplinary measures for purely political reasons. The position in Namibia is instructive. The Namibian Constitution provides for only two grounds for removal of a judge from office; these are serious misconduct and mental incapacity (Art.84 of Namibian Constitution). The Judicial Services Commission is the only institution sanctioned to initiate investigations into any allegations concerning a judge and to recommend action to the President. Again, this system is a highly appraised system, because it has the potential to provide adequate security of tenure by guarding against arbitrary removals from office.

Further, it is necessary to guarantee financial autonomy of the judiciary and adequate remuneration of judges. It is now widely recognised that financial autonomy is vital to judicial independence hence judicial power (art. 7 of the UN Basic Principles on Independence of the Judiciary). The judiciary must be adequately funded and must be in control of the administration of its budget, (Lovemore Madhuku). Judiciaries that are reliant on the executive for financial resources are susceptible to pressures to achieve outcomes that are favourable to the executive (James Spigelman CJ 2003). It has been suggested that there should be a return to the practice in the former West Cameroon where the judiciary's budget was controlled by the Chief justice through the registrar, Anyagwe Carlson 1988). This eliminates the executive's ability to limit the judiciary's budget as a means of exerting its influence over the judiciary. If their low status continues to be exacerbated by their inadequate financial position their level of respect with regard to police officers would erode leading to their ability of render criminal liability of the police.

Creation of independent Body to Manage Police Affairs

In effect, an independent body should be created to manage recruitment, training, promotion, appointments and discipline of the police. In this case the example of the Police Service Commission of Nigeria could be useful. This investigation of police misconduct is handled by people other than the police officer themselves. With such a mechanism put in place all the short coming pointed above would be resolved. Moreover police agents would be more careful in performing their duties, knowing that in event of any misconduct they would be investigated by people they have little or no control over.

Development of Political will and Change of the concept of poling

The system's reluctance to open up to democratic values of check and balances, which enables most police officer criminal misconduct to escape detection, at least in part, because the prosecution involving senior members of the force has not been ordered by the Minister of Justice is most troubling. As such the Cameroon government must open

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up to democracy principle of accountability transparency, respect of human and the rule of law to create an opportunity for the police to be more amendable to these principles. Also the regime oriented policing that now exist in Cameroon must change to people oriented or democratic policing that is answerable to the people rather than to the government in power.

Conclusion

Indeed, control of police activities in a bid to render them more accountable is tightening everywhere in the world. But the extent of such control is somewhat obscure in Cameroon because of greater secrecy over police work. Public prosecutors and examining magistrates control police investigative work. Detectives need permission from a state prosecutor to pursue an investigation, which might suggest that Cameroon, like the French government, has never harboured great confidence in the police. As to control by the judiciary, this is quite different from the way things work in Nigeria where police have as much independence in criminal investigation as in the rest of their work, subject to presenting a worthwhile case in court.

While agreeing with most writers on the difficulty in rendering the police accountable through the Criminal law, it is stressed that the difficulty is more marked in democratising states with a combined legacy of colonial policing structures and single party dictatorship and a gagged democratic system like Cameroon where regime policing is still very relevant. It is hoped, however, that some day when the yolk of the legacy of colonisation will be released, and democratic values and social equality fully embraced, the police will be much more responsible for the crimes they commit in course of their duties.

References

- Amnesty International Reports on human Rights in Cameroon 2000-2003
- Anyangwe C. (1987) Cameroon Judicial System, (CEPER Yaounde).
- Anyangwe C. (1989) The Magistracy and The Bar, (CEPER, Yaounde).
- Benett R and Corrigan R, 'Police Occupational Solidarity: Probing a determinant in the deterioration of Police Citizen Relations', Journal of Criminal Justice.
- Brown, N., & Bell, J. (1998) French Administrative Law, (Clarendon Press, Oxford).
- Charles Fombad (2008), 'Constitutional Reforms in France and their Implications for Constitutionalism in Francophone Africa' Open Society Institute: Africa Governance Monitoring and Advocacy Project, 4
- Charles Fombad (2007), 'A Preliminary Assessment of the Prospect of Judicial Independence in Post-1990 African Constitutions' (2007) 2 Public Law 233, 250

Charles M. Fombad(1990), «The Scope for Uniformised National Laws in Cameroon», Rev. Jur. Afr., No.3.

Chi Daniel Awasum v. Abuengmo John Amuh Appeal No BCA/7/1997 Unreported.

David Lawday (2000), Policing in France and Britain: Restoring confidence locally and nationally (Report of a seminar held in London 8-9 November 2000, Chameleon Press), p.12.

Dermot PJ Walsh (1998) ‘The Irish Police A legal and Constitutional Perspective’ (Round House 1998) P. 345

Ebai Eban (2008) ‘The role and development of human rights based policing in the transition from dictatorship to democracy in Cameroon’, unpublished PhD Thesis.

Enonchong H.N.A. (1967), Cameroon Constitutional Law, Centre d’Edition et de Production de Manuels, Yaounde.

Epstein D (May, 1982) ‘The Complaint: Advisory Reflections to the Law Enforcement Agencies Head’ Police Chief p. 58.

Etannibi EO Alemika (2003) ‘Police Reform and Oversight in Nigeria’, Centre for Law Enforcement Education (CLEEN) Lagos & Police Service Commission Federal Secretariat)

Ewang Sone Andrew, (2007)(eds)“Criminal Procedure in Cameroon: from dualism to a common code”,Presses Universitaires d’Afrique, Yaounde, 2007.

Evidence Ordinance cap 62 of the revised edition of the Laws of the Federation of Nigeria 1958.

Federal Judicial Service Commission drops some Rogue Judges Nominated for the Court of Appeal, Saturday 20 June 2009.” Available at <http://www.nigeriannewsservice.com/index.php/Gossip/Federal-Judicial-Service-Commission-drops-some-Rogue-judges-nominated-for-the-Court-of-Appeal-Nikki.html> , accessed on 20 December 2011.

Goldstein, H.(1977) Policing a Free Society, (Ballinger Publishing Co., Cambridge).

James Spigelman CJ (2003, ‘The Rule of Law and Enforcement’, 26 University of New South Wales Law Journal.

Joseph Kankeu (2003), Droit Constitutionnel: Theorie Generale, (Tome II, 8th edition, Presse Universitaires des Dschang)

Criminal liability of the Police in Cameroon: Prospects and Challenges By Eban

Mathias Epuli, (2006 J., Opening Address presented at the Seminar on ‘The Independence of Justice and the Fight Against Corruption in the Judicial System’ Organised By The Commonwealth Secretariat Yaoundé, March, 2006. Available at <http://www.coursupreme.cm/index.php?csc=allocution10>, last accessed December 2011.

Mbu, A.N.T (1989), *the Mill of Justice*, (Yaounde, CEPER, 1989).

Ntamark P.Y.(1980), « The Constitution of the Federal Republic of Cameroon and the Federal Principle,» *Cameroon Law Review*, 2nd Series, No. 19-20.

Okon Akiba (2004), ‘Constitutional Government and the Future of Constitutionalism in Africa’ in Okon Akiba (ed), *Constitutionalism and Society in Africa* (Ashgate,)

Peter Bringer (1981), «English and French Criminal Law in Cameroon», *J.A.L*, Vol.25, No.1, 1981.

Royal Commission on Police Powers and procedures (London: HMSO Cmnd.1728, 1962)

Stead, P. J. (1983) *The police of France*, (Macmillan, New York)