

The Effectiveness Of The Principle Of Presumption Of Innocence And Equality Of All Before The Law In Criminal Offenses In Cameroon

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Abstract—The principle of presumption of innocence and equality of all before the law in Cameroon is one of the fundamental principle of fair hearing and justice. Everyone accused of committing an offense is presumes innocence until proven guilty and everyone should be treated equally before the courts without any form of discrimination. These two fundamental principles can be seen first from the preamble of the Cameroonian constitution, the Cameroonian penal code, the criminal procedure code alongside other international conventions like the Universal Declaration, the international covenant on civil and political rights and the African Charter on human and People's Rights which Cameroon is a party to. Despite these laws put in place, this principle of presumption of innocence and equality of all before the law still suffer from setbacks before the Cameroonian courts. This is because of ineffective implementation of these laws by the Cameroonian courts, corruption of some of the judicial personnel's, lack of independence of the judiciary and the ability of the administration to undermine the authority of the courts. This article therefore has as objective to examine the effectiveness of the principle of presumption of innocence and equality of all before the law in criminal offenses in Cameroon. to meet up with the objective of this article, the research adopted a doctrinal research method where have examined both primary and secondary source of information. Our findings reveals that despite the fact that our laws guarantee these two principles they are constantly been violated daily and we recommend that; the state should increase the fight against corruption in the judicial sector, ensure the effective implementation of the laws and more.

Keywords— *Presumption of innocence, equality, offenses.*

1.0.Introduction

The word “criminal” is derived from the word crime. The word crime is synonymous with the word offence and both words are interchangeable. A crime is an act or omission which under any written law is deemed to be a crime thus attracting punishment.¹ A fair, effective and humane criminal justice system is one that respects the fundamental rights of accused, suspects and offenders in cases where they are accused of committing any crime². An accused person who is facing trial has fundamental rights which must be respected. It is not because he is accused of committing a criminal offense that he should be treated like an animal. The law has given some basic rights to be respected by courts and judges when handling such criminal cases and Presumption of innocence is one of the fundamental rights given to an accused person in case when in has been accused of committing an

¹ NAH THOMAS FUASHI,(2024), Lecture notes on Criminal Procedure, Faculty of law and Political Science, University of Dschang, P, 4.

² United nation office on drugs and crime, (2009), handbook for professionals and policymakers on justice matters involving child victims and witnesses of crimes, P.1.

offense. By the preamble of the Cameroon Constitution, a person shall not be convicted of a criminal offence unless that offence is defined and the penalty therefore is well prescribed in a written law. This cardinal principle of legality is expressed in the Latinism “*nullum crimen, nulla poena sine lege*” meaning “no crime, no punishment without a text”. This is the embodiment of Section 17 of the Cameroonian Penal Code. In criminal trials, there are always two parties involved. It is usually, the State and the accused. For example, **The People V. Kenfack, DPP V. Kenfack** (Appeal from **Kenfack V. The State** will be expressed as **Kenfack v The People**). In criminal matters, the accused must appear in court, because the judge has to watch his demeanor to determine at the end of the day whether the accused is guilty or not. It is for this reason that the accused must be given a chance to defend himself.

The crime rate in Cameroon is on the rise and at the same time an increase in mob justice. It is impossible today for a day to go by without hearing of an offense being committed in one of

In the adversary system of justice like Cameroon, it requires the judge to come to court as a neutral referee, ignorant of all the evidence adduced during the preliminary inquiry. He only becomes acquainted with the facts of the case at the trial. He has no investigatory power. He cannot cross-examine witnesses nor can he appear as advocate on the other side.³ But this rule was violated in *Jones V. National Coal*

the cities of the country. The increase of such crime wave demands urgent needs from the competent authorities to protect the citizens from criminal who continue to take life daily. While it is the responsibly of the state to fight against crimes by holding offenders responsible for their acts, it is also an obligation imposed on the state and the judicial system that everyone accused of committing an offense should be treated equally and benefit from all the fundamental rights guaranteed by the Cameroonian laws and other international instruments to which Cameroon is a party to guaranteeing the presumption of innocence and equality of all before the law. we have therefore examine the notion of the principle of presumption of innocence and equality of all before the law, the institutional guarantee of the principle, exceptions to the principle of equality under Cameroonian law and challenges faced in the implementation of the principle and possible ways forward.

1.1.The notion of the principle of presumption of innocence and equality of all before the law under Cameroonian law

Board,⁴ where the court interfered with the facts of the case and both parties went on appeal and the judgment was reversed for this reason. Lord Denning M. R was categorical that the judge must not intervene unduly at the trial. The only exception where he could do so is when his interest is at stake. Compare this position with the French judge who is more or less an investigator. He comes to court already acquainted with the

³ NAH THOMAS FUASHI,(2024), Op, Cit, P. 11.

⁴ [1957] 2 K.B. 55.

facts of the case. This implies that he might have made up his mind as to which party will carry the day, thereby rendering the trial a mere formality. Here, one envisages the possibility of abusing the right of the accused in contrast with the system which obtains in England.

Presumption of innocence is a fundamental principle in criminal law which requires that everyone who is accused of an offense is presumed innocent until proven guilty beyond reasonable doubt. The notion of equality of all before the law refers to the fact that everyone who has been accused of committing an offense must be treated equally without any form of discrimination as to Sex, Religion, rich or poor, national or foreigners.⁵ Etc. This means that in a criminal trial, the burden of proof is on the prosecution to prove the guilt of the accused beyond a reasonable doubt, and the accused is not required to prove his or her innocence. The presumption of innocence is extended to everyone without any form of discrimination. Cameroon's amended Constitution of 14 April 2008⁶ contains some inalienable and sacred rights of the human person in its Preamble⁷ including the principle of presumption of innocence and equality of all before the law. Generally, the

presumption of innocence principle allows for the inference that the burden of proof in criminal proceedings is imposed on the Prosecutor. The principle that each person should be presumed innocent until guilt is proven is a cardinal principle of criminal proceedings and one of the most recognizable rights of the accused in the civilized world⁸. It is expressed literally in both UDHR⁹ and ICCPR¹⁰ and in a number of other international treaties. The presumption of innocence is also recognized by national laws in various countries including Cameroon. This is reflected in the Cameroon constitution of 1996 in the preamble which is to the effect that "anyone accused of an offense is presume innocent until proven guilty"¹¹. This same right has been recognizing by the criminal procedure code of Cameroon principally in article 8¹² of the criminal procedure code of Cameroon. This is a very important principle in criminal law since punishment of crimes deals deprivation of liberty of individuals.

However, this right today is being violated today before the courts. Despite that the obligation to provide the accused with protection is directed to the court, the role of media during criminal trials can be in contradiction with the

⁵ Nana Charles Nguindip,(2023), "Re-evaluating the Legal and Institutional Complications Affecting the Protection of Women's Rights in Cameroon: The Need to Remedying the Odds", *PANCASILA AND LAW REVIEW*, P, 1-

⁶ Law no 2008/001 of 14 April 2008 which amend some of the provision of law no 96/06 of 18 January 1996 which amended the 1972 Cameroonian constitution

⁷ **Simon Tabe Tabe** (2018), *the Judiciary and the enforcement of constitutional rights in Cameroon: Emerging challenges*, *Ria Recht in Afrika*, vol. 21 issue 1, P. 38.

⁸ Karoline Kremens, (2013), *The Protection of Accused Person in International criminal law According to Human law Standard*, *Wroclaw Review of Law Administration and Economics* Vol. 1.2. P. 35.

⁹ Article 11(1) of UDHR of 1948.

¹⁰ Article 14 of the ICCPR of 1966.

¹¹ The preamble of the Cameroon constitution

¹² Article 8 provides thus : Any person suspected having committed an offense shall be presumed innocent until his guilt has been legally established in the course of trial where he shall be given all necessary guarantees fir his defence

presumption of innocence. It is not uncommon that television, radio and press deliver a verdict before the judgment has been deliberated in a court of law. The media tend to present the ongoing cases in an extremely biased way, portraying those accused of crimes against humanity, war crimes and genocide already as guilty criminals and monsters. No remedy against such an approach is designed for criminal proceedings; it needs to be introduced in the near future to assure the accused a fair trial. The treatment given to accused person makes one to wander of the notion of presumption of innocent. Worst of this is situation of mob justice where someone suspected of having committed an offense is beaten to death without any formal trial. The worst situation is that some of these accused persons cannot afford the services of a lawyer to defend their innocence. The law is very clear for guilt is not determined because you were accused of committing an offense but until when the court pass it verdict. With a verdict of guilt, the accused person is still innocent and benefits from protection offered by the law.

The notion of equality of all goes alongside the principle of presumption of innocence and therefore, everyone accused of committing an offense must be treated equally without any form of discrimination. This principle is well adumbrated in the Cameroonian penal code.¹³ It is no doubt that the penal code is one of the guarantors for the protection of human rights and the rights of the accused persons to fair

hearing. All the offenses which can be imputed against an accused have been provided for in the penal code. For an accused to be tried for an offense, that offense must have been provided by the penal code¹⁴. This goes with the principle of legal provided in section 17 of the Cameroon penal code¹⁵. Thus a right to fair hearing, for an accused person to stand trial for an offense, that offense must have been provided for by the law. The aim of this section is to fight against abuse of power from the administrative authority and also the possibility of preventing a judge from defining what is an offense and attributing sanctions to them. One of the best right of fair hearing accorded to an accused person under the penal code is the equality of all before the law¹⁶.

The rational for the principle of presumption of innocence and equality of all before the law can be justified based on the principle of fairness, respect for human rights and deterrence of abuse. This explains why these principles are well elaborated in the Cameroonian Constitution in its preamble. The Cameroonian laws, has therefore comply with these two principles as guaranteed by international instruments in the protection of accused persons in relation to their prosecution. For example, the Universal declaration of Human rights of 1948 is part of the Cameroonian laws and even part of our constitution as far as the protection of Human rights is concerned. The UDHR contain right of

¹³ Law no 2016/007 of 12 July 2016 on the Cameroonian penal code

¹⁴ Section 17 of the penal code.

¹⁵ The above section provides that: No punishment shall be imputed on an individual except provided for by the law.

¹⁶ Section 1-1. This section provides that, *everyone shall be subjected to the criminal law.*

fair hearing protecting an accused person which can be raised by accused person before the courts in Cameroon including ; non discrimination provided for in article 2 of the UDHR¹⁷, right against torture provided in article 5¹⁸, equality of all before the law as provided in article 7¹⁹, right to effective remedy before the competent tribunals provided in article 8²⁰, right against arbitrary arrest and detention provided in article 9²¹, right to full equality and public hearing as provided in article 10²², presumption of innocence and no punishment of an offense except provided for by the law as seen in article 11²³. An accused person standing trial has the

¹⁷ **article 2 states that:** *Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.*

¹⁸ **Article 5 provides that;** *No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.*

¹⁹ **Article 7 provides that:** *All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.*

²⁰ **Article 8 provides that:** *Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.*

²¹ **Article 9 provides that:** *No one shall be subjected to arbitrary arrest, detention or exile.*

²² **Article 10 provides that:** *Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him*

²³ **Article 11 provides that:** (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*

right to benefit from the protection accorded by the universal declaration of human rights as stated above.

To further ensure the protection of these two principles, every accused person has the right to raise these two defenses before the courts in Cameroon. One of the main changes in the judicial system in Cameroon was the judicial organization that took place in 2006 in Cameroon²⁴ which was characterized by decentralization of justice in Cameroon. This means that justice is administered at the regional, divisional and sub-divisional level with the creation of regional appeal court found at the level of the region, the high court found at the level of the division, the court of first instance found at the level of the sub-division. One of the rights of fair hearing is to permit the accused person to be tried in his area of jurisdiction where he committed the offense or where he was arrested. This will permit him to have access to his relatives and afford a lawyer. The 2006 law provides other right of fair hearing to the accused such as reasoned judgment;²⁵ justice is rendered free of charge;²⁶ justice must be administered in public;²⁷ judicial decisions and court orders are enforceable though out the territory²⁸. It is the responsibility of Cameroonian courts to ensure no

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

²⁴ Law No.2006/015 of 29th December 2006 on Judicial Organization of Cameroon as amended.

²⁵ Section 7 of the 2006 Law.

²⁶ Section 8 of the 2006 law.

²⁷ Section 6 of the 2006 Law.

²⁸ Section 10 of the 2006 Law

accused person brought on trial should be discriminated upon no matter his or her ethnicity, social status etc. it should be the responsibility of the prosecutors to prove that the accused person committed the offense. But some problems are still faced before Cameroonian courts today where mob justice continues to be the order of the day as a result of loss of confidence in the judiciary. When this happens, the principle of presumption of innocence cannot really be enforced by the courts. Again, some of the judges are corrupt and turn to give preferential treatment to certain person accused of committing offenses as a result of their wealth, political background and more. This undermines the principle of equality of all before the law and thus leading to mob justice which has seen innocent people killed.

Despite the fact that, the Cameroonian constitution, the penal code, the criminal procedure code and the law on judicial organization guarantees equality of all before the law and the presumption of innocence, they are certain exceptions to the principle of equality of all accused persons before the law.

1.2.Exception to the principle of presumption of equality of all before the law

According to the general principles of law, all men are equal in front of the law and are subject to the criminal law. This can be seen clearly in , Section 1-1 of the Penal Code. In practice however, there are a number of persons who enjoy immunity from prosecution. This implies that, certain categories of persons are treated differently by the criminal law because of

either their status or other reasons. Thus the exceptions to the principle of equality of all before the law include;

1.2.1. Minors children²⁹

A child is not the same like an adult therefore special protection needs to be accorded to them differently. The Cameroonian penal code has distinguished them in terms of criminal responsibility in their protection. the Penal Code (hereinafter PC) provides different treatments to children depending on whether they are below the age of 10, between 10-14 years, or between 14-18 years; the Code recognizes that a minor or juvenile is any person aged less than eighteen (18) years.³⁰ One of the fundamental innovations of the 2005 Cameroonian Criminal Procedure Code¹ is the harmonization of juvenile justice within the country.³¹ Like adults, young persons have the responsibility to be law-abiding. When a young person breaks the law, he must be charged, prosecuted and sentenced like an adult.³² By virtue of the Cameroonian Penal Code article 80, the children incapable of getting into conflict with the Cameroonian penal justice system are those below the age of twelve.³³ Children between the

²⁹ A child has been defined in article 1 of the Convention on the Rights of the Child(CRC) as *"For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier"*

³⁰Section 80 of law no 2016/007 OF 12 JUL 2016 _ 0 RELATING TO THE PENAL COD

³¹ **S Tabe Tabe**(2012), A CRITICAL APPRAISAL OF THE JUVENILE JUSTICE SYSTEM UNDER CAMEROON'S 2005 CRIMINAL PROCEDURE CODE: EMERGING CHALLENGES, PER / PELJ, VOLUME 15 No 1, P. 148.

³² **Ibid**, P. 151.

³³ SECTION 80: Infancy (1) No criminal responsibility shall arise from the act or omission of a person aged less than 10 (ten) years. (2) An offence committed by a person aged not less than 10 (ten) years and not less

ages of twelve and eighteen are considered to be capable of making decisions, which when implemented can seriously conflict with the penal justice system with serious implications for the children, who in the reasoning of the law are considered to be juveniles. Therefore, a minor of less than 10 years or equal to 10 years is totally criminally irresponsible.

1.2.2. Persons who are immune from prosecution

The Head of State could only answer for acts committed in the exercise of his functions in case of high treason. In this case he will be tried in the Court of Impeachment. For him to appear before this court it can only be by a vote of the National Assembly. This is in line with Section. 53(3) of Law no. 2008/001 of 14th April 2008 amending and supplementing certain provisions of Law no. 96/06 of 18th January 1996, which states that acts committed by the head of state in pursuant of SS 5,8,9 and 10 are not triable during and after his mandate. This measure does not extend to the Prime minister and other members of government who in addition to being amenable before the Court of Impeachment in cases of conspiracy against the security of the State, could also be summoned before the ordinary courts like other citizens for the offences alleged to have been committed by them.

Again, members of parliament enjoy parliamentary immunity in accordance with

than 14 (fourteen) years may attract only such special measures as may by law be provided. (3) For an offence committed by a person aged over 14 (fourteen) and under 18 (eighteen) years, responsibility shall be diminished.

Section. 68(2) (b) of C.P.C This immunity, however, is not absolute. Parliamentarians are only covered by speeches made or votes cast by them in the National Assembly while performing their duties. Anything done outside that is not covered especially if the M.P is of fraudulent disposition. For example, he might have committed an offence against the State Security or he might have been caught committing an offence *flagrante delicto*. Before an M.P or Senator is prosecuted his parliamentary immunity must first be lifted by the plenary of the National Assembly or Senate, if this is in session or by the Bureau of the National Assembly or Senate if the Assembly is not in session. In the case of **S.E Sona V. Commissioner of Police [1962]**, Mr. Sona, an M.P in the then West Cameroon parliament was arrested, prosecuted and sentenced without a requisite authorization from the relevant organ. It was held that the prosecution of Mr. Sona was null and void. In the case of **F.N Eko V. Sam Mofor, [1971] No. WCCA/11/71 unreported**, the respondent, Hon Sam Mofor, M.P. for Santa in the West Cameroon House of Assembly was charged with assault by the Police. He claim parliamentary immunity .The Procureur General for West Cameroon with the assistance of two Police Officers nevertheless continued investigation into the matter where upon Sam Mofor, instituted a private prosecution in the Bamenda Magistrate Court against them for attempt to prosecute him contrary to S. 127 as read alongside with S. 94 of the Penal Code. S. 127 provides as follows “*any judicial, legal or investigating Police Officer*

who contrary to any law conferring immunity prosecutes, arrest or tries a member of the Federal or Federated government or of the Federal or Federated Assembly shall be punished with detention from 1-5 years". The Procureur General promptly discontinued the private prosecution of Mr. Sam Mofor by entering a *nolle prosequi*. The trial court held the Procureur General liable. This decision was over ruled by the Court of Appeal. This Court of Appeal's decision has been criticized as follows; "*when the state prosecutor does discontinue a private prosecution instituted against him in his private capacity, he assumes the role of the judge in a matter in which his own interest looms very largely. This offends against the basic principle that no one shall be judge in his own case-nemo judex in res sua*"³⁴.

Furthermore, diplomats enjoy some form of immunity. The subject of diplomatic immunity is covered by the Vienna Convention of 18 April 1961 on Diplomatic Immunity which Cameroon adhered to on the 15 of April 1977. Diplomatic agents in foreign countries enjoy a particular status. They are covered by Diplomatic immunity based on the notion of extraterritoriality. During their stay in a foreign country they are considered as living out of the country receiving them. By this fiction, the buildings housing their missions are considered as a portion of the foreign country in the country of residence. A criminal action cannot be brought against a Diplomatic agent nor can he even be

called upon to give evidence in court while he is in function.

1.2.3. Mental incapacitated adults

Dementia is a type of mental disorder (psychic or neuropsychic), serious characterized in particular by the alteration of mental faculties which, medically established, constitutes a cause of criminal irresponsibility. The impact of dementia on criminal responsibility depends on the seriousness of the impairment and the time of its occurrence. Under article , 78 para. 1 of the PC, provides that (1) Criminal liability cannot result from the act of an individual suffering from a mental illness such that his will has been abolished or that he could not be aware of the reprehensible nature of his act. However, for dementia to produce this effect, it must still have existed at the time of the facts. This requirement implies both temporal proximity (disorder contemporaneous with the facts, and not prior or subsequent to them) and causal proximity (an offence which is the direct and immediate consequence of the disorder). Someone who is mentally insane cannot be treated equally the same way with some who has all his mental faculties.

1.2.4. legal inequality

-Firstly, there is the existence of special courts. In Cameroon, there are some special courts which are competent to hear cases involving specific individual like the military court, the court of impeachment, the administrative court, the special criminal court, the constitutional council. These courts which do not hear cases involving everybody include the

³⁴ Carlson Anyangwe 1989, The Magistracy and the Bar in Cameroon, CEPER, P 68

military court, court of impeachment, the special criminal court etc. These courts constitute an exception to the principle of equality because the principle of equality requires that everybody should be tried in the same court.

Secondly, there is the existence of the Caution Judicatum Solvi. Provided in Article 73 and 74 of the Criminal Procedure Code, this refers to an amount of money which a foreigner must deposit before his or her case can be heard in a Cameroonian court. This constitutes an exception to the principle of equality because Cameroonians are not supposed to deposit this amount of money. Therefore, in front of a Cameroonian Court, a Cameroonian is not treated the same way as a foreigner

Thirdly, there are some inequalities which exist between the administration and the administered. For example the properties of the administration cannot be seized whereas the properties of private individual can be seized. Also, there is the existence of the Acts of Government (les actes de government). Acts of governments are defined as those decisions taken by administrative authorities who cannot be contested or judged by any person. Even a magistrate cannot contest an act of government.

1.2.5. Social in equality

Generally, litigants are expected to pay some charges. Since everybody does not have the same amount of money, sometimes the poor persons are unable to pay the charges which are required by the courts. It is obvious that those persons who do not have money to pay the charges require by the courts shall find it difficult

to bring a case in court. In this case we cannot pretend to say the poor and the rich have equal access to the court or are equal in front of the law. Even though the institution of judicial assistance tries to resolve this inequality, this does not terminate the fact that it is an exception to the principle of monopoly.

1.2.5. Other exceptions

Judges enjoy what is known as judicial immunity. This is previewed to guarantee a smooth administration of justice. There exist two categories:

- Immunity in relation to speeches and writings in court provided they are in relation to the matter being considered.

- Immunity in relation to account of court proceeding. It covers the faithful account without malice of such proceedings and speeches save only of a prosecution or action for defamation. It also covers the publication of any judgment or judicial order, including those passed in a prosecution or action for defamation. See, S.306 (3, 4 and 5) of the Penal Code. Where there is a family relationship, in certain circumstances, a member of the said family may be immune from prosecution for what would have been considered an offence. This is in order to maintain family ties. The following are examples:

- By virtue of article 100(2) of the Penal Code the offence of assessor after the fact is inapplicable between husband and wife.

- Furthermore, under S. 95 of Penal Code, a husband and wife cannot be guilty of conspiracy.

- The offences of theft, misappropriation, false pretence; special theft and misappropriation; and

credit by fraud and fraudulent retention, provided in S. 318, 319 and 322 respectively, according to S. 323 of the Penal Code shall not lie against a person guilty of the acts therein, against his spouse, against his legitimate or adoptive or adopted ascendant or descendant, or against his natural ascendant or descendant up to the second degree either living with him or after recognition, or to a surviving spouse in respect of necessities belonging to the deceased spouse.

Members of Elections Cameroon (ELECAM) the organ in charge of managing elections in Cameroon are immune from prosecution in the exercise of their functions. See S. 3 of Law no. 2006/011 of 29th December 2006 as amended to set up and lay down the organization and functioning of ELECAM.

1.3.Challenges faced by Cameroon with compliance with the principle of equality of all and presumption of innocence in criminal law in Cameroon

The judiciary is one of the three pillars of the modern democratic State and is indispensable to the process of checks and balances which are so important to the way States are meant to operate and function. The process of checks and balances is seen as arising from the doctrine of the separation of powers between the executive, the legislature and the judiciary as described by Montesquieu in his book “the spirit of laws” published in 1748. It is the responsibility of the courts and judicial system to ensure that everyone should be treated equally. However, the principle of presumption of innocence and equality of all

before the Cameroonian courts is faced with challenges.

1.3.1. .Corruption

Corruption is a general phenomenon and the definitions applied to it vary from country to country in accordance with cultural, legal or other factors, including the nature of the problem as it appears in each country.³⁵ Its specificities stem essentially from the patrimonial nature of the State, to behaviors and the practices of administrative bureaucracy³⁶. The World Bank defines corruption as the “the abuse of public office for private gains ³⁷.” Transparency International (TI) further defines corruption as “inappropriate or illegal behavior of the public sector official (politician or public officer) by misusing the entrusted power for private gain of the person or related people³⁸. It has become so systematic in Cameroon to the extent that the country has persistently been classified by TI as one of the most corrupt in the world. Corruption threatens the enforcement of constitutional rights by the judiciary in Cameroon, especially since the Cameroonian judiciary is composed of Cameroonians. It is open secret that many judges have thrown the judicial tradition to the wind by engaging in corrupt practices. In fact, where the judiciary is corrupt, justice goes to the highest bidder and becomes a question of “cash and

³⁵ NYINGCHIA & LENO (2021), *Appraisal the Independence of the Judiciary in Cameroon in the Fight against Corruption*, NAUJIL Journal vol. 12, issue 1, P. 182

³⁶ Ibid.

³⁷ Ibid.

³⁸ Transparency International. Frequently asked questions about corruption perception index, (2002); press release 28 August 2002. Available at www.transparency.org, Accessed 15/03/2024.

carry³⁹. Commenting on corruption in the judiciary in Cameroon, one writer said⁴⁰ “Justice in Cameroon, like Father Christmas, is only available to the highest bidder”. The ills of corruption affect the judiciary and it will be unrealistic, if not hypocritical to say that the Cameroonian judiciary has not been attacked by this evil.⁴⁰ Corruption is a threat to the justice system itself. This practice has conditioned the minds so many brought before the court as they will open say that their innocence does not matter because he does not have money to buy his freedom. The corrupt nature of the judicial system has widened the scope between the rich and the poor as justice is now meant for the rich at the detriment of the poor masses.

Another problem which leads to corruption in the judicial system is lack of funds which can permit the judges to protect the fundamental rights of accused persons before the courts. Independent funds will have permitted this court to function well or without any financial difficulties which can push for corruption. In Cameroon the Courts are run by a budgetary allocation made through the Ministry of Justice. The Minister of Justice goes to parliament each year to seek for funds to run the courts. This aspect has a serious implication on the enforcement of constitutional rights by the judiciary because it depends on both the executive and legislative power for its funding. Furthermore, another factor which is inconsistent with judicial enforcement of constitutional rights

is that the judges in the courts depend on the legal department for any material need to run the courts under their control⁴¹. The funds the Minister receives are directed to the Legal department. A judge who needs furniture, stationery, transport facilities and so on, must depend on the Legal Department for those items. In fact, the budgetary dependence of the judiciary on the Legal Department is not healthy for the effective enforcement of constitutional rights by the judiciary. It is suggested that a fund should be created to run the courts and judges should be given the responsibility to control funds for their various courts⁴².

1.3.2. Undermining the Authority of the Courts by the Administration

A characteristic feature of the administration in Cameroon is that it can interfere with the administration of justice. Some criminals or litigants, with obviously bad cases run for ministerial intervention in a matter before the court. The Minister of Justice as overall boss may at any time instruct a judge on how to handle a particular case or may even use his power to exercise prosecutorial discretion to ask a State Prosecutor to discontinue with a case or to withdraw the case from the court. Such intervention in particular goes against the principle of equality of all especially when everyone who is in the same group is not given the same opportunity. The issue of the administration undermining the authority of the court is a major challenge to the protection of the

³⁹ Simon Tabe Tabe (2018), Op. cite, P. 46.

⁴⁰ Ibid.

⁴¹ Simon Tabe Tabe (2018), Op. cite, P. 48.

⁴² Ibid.

rights of the accused. The courts are bound to sanction anyone who violates the law and at the same time sanction anyone who violates an administrative order. This usually creates a problem as the administration can violate or make an administrative order which violates the right of an individual before the court and the court will be forced to implement that same order.

The idea of the administration undermining the authority of the court comes as a result of lack of independence of judiciary. In Cameroon, the Constitution prescribes the separation of powers into legislative, executive and judiciary⁴³. Consequently, a system that does not respect or adhere to separation of powers and constitutional supremacy is a major impediment to the promotion of judicial independence and democracy⁴⁴. The word “independence” can be understood in different ways depending on the context in which it is employed. In this context, it means not subject to control or influence of another, not associated with another entity and not dependent or contingent on something else⁴⁵. It is manifested by the freedom of the judge to enter a judgment not bound by any hierarchy or pre-existing norms⁴⁶. During the solemn session of the Supreme Court of Cameroon on the 26th of February 2010, the Chief Justice, Justice Alexis

Dipanda Mouelle intimated that the independence of the judiciary is an essential condition to quality justice. He further identifies the threats affecting the independence of judges with the most grievous being financial pressure, social pressure and political pressure.⁴⁷ Financial pressure according to him led to corruption and the Learned Justice stressed that such pressures should be eliminated or allayed by some mechanisms protecting judges.⁴⁸ More than five years that this strong observation was made by the highest Justice in the country, nothing has been done to guarantee the independence of the Judiciary in Cameroon.⁴⁹ The lack of independence of the judiciary in particular prevents the judges in the protection of the rights of accused. The legal departments are answerable to the minister of justice and keeper of the seal. This gives the possibility for the minister to intervene in the trial that he wishes by instructing these prosecutors to either continue with a particular case or discontinue. Also the idea of the hierarchy is another problem.

1.3.3. The advent of social media court

Social media today has become one of the challenges faced by the judiciary in the performance of their functions especially in enforcing the principle of presumption of innocence. At times, someone might be accused

⁴³ Articles 5, 14 and 37 of the 1996 constitution.

⁴⁴ **R Ellet**; 'Judicial Independence under the APRM: From Rhetoric to Reality', South African Institute of International Affairs, 2015; SAIIA Occasional Paper 212, P. 6.

⁴⁵ **B A Garner** (2014), *Black's Law Dictionary*, 10th edition, USA, Thomson Reuter, , at p 887.

⁴⁶ **F. Hourquebie**; (2012), *L'Indépendance De La Justice dans Les Pays Francophones*, Les Cahiers De La Justice, , vol 2, pp 41-60.

⁴⁷ **A D Mouelle**; 'Indépendance-De-La-Justice-au-Coeur-De-La-entree-Solennelle'
<http://www.camerooninfo.net/article/cour-supreme-lindependance-de-la-justice-au-coeur-de-larentree-solennelle-122667.html> visited 19/05/2024.

⁴⁸ Ibid.

⁴⁹ <http://www.cameroon-info.net/article/cour-supreme-lindependance-de-la-justice-au-coeur-de-larentreesolennelle-122667.html> visited 19/05/2024.

of committing an offense without real proof but the way the information and facts have been shared on the social media space undermines the innocence of the accused person. At times even when the person who was alleged to have committed the offense was found not guilty by the courts, the same social media will accuse the judge of being corrupt. This poses a big problem in the protection of innocent accused persons from benefiting from all the rights of fair hearing in all criminal process.

1.3.4. Qualification of Prosecutors and judges

To qualify as a judicial or legal officer, the holder of a postgraduate diploma (generally in private law though other disciplines are accepted), must pass a highly competitive examination into the National School of Administration and Magistracy (ENAM). The duration of the training is two years and consists of eight months theory on ethics, draftsmanship, court management, etc. The rest of the time is consecrated to practical training in the courts at the Ministry of Justice, the private bar, the investigative agencies and other services involved in the administration of justice. There is an examination at the end of the training, and, if successful, the pupil magistrate is integrated into the magistracy as a grade one legal or judicial officer. He is appointed to a function, which corresponds to his grade by presidential decree. Before assuming office, an oath is taken before the Supreme Court. Appointments and transfers are not made for a specified term; the periodicity of transfers depends on the exigencies of service.

The training given to these personnel in the court is insufficient. Justice is a very complicated issue. The judicial system plays a very important role in the maintenance of peace as well as fight against mob justice. Once the people lost confidence in the judicial system, it becomes a very big problem. This training given to these judicial officers is too small. At times they did even understand the judicial system well. Again, these competitive exams are full of fraud and the concepts of regional balance which indicate that some persons make it because the state has to ensure the notion of regional balance and not even by merit. The protection of the rights of presumption of innocence and equality of all before the law in criminal process before the courts are faced with a series of challenges emanating from the system of judicial function in Cameroon. The notion of hierarchical subordination is really a threat to independence of courts in handling cases concerning the violation of the rights of persons before the courts in Cameroon. Among the challenges discussed under this chapter include; lack of independence, corruption, undermining the authority of the court by the administration etc.

2.0. Conclusion and recommendations

The 1996 constitution of Cameroon contains fundamental human rights like the right to fair trial, presumption of innocence, equality of all before the law and more. Alongside the constitution, there are other international instruments signed by Cameroon to this same effect like the UDHR, the ICCPR, ICSECR, and The African Charter on Human and People's

Rights etc. Cameroon is party to several international legal instruments that recognize the principle of presumption of innocence and equality of all before the law, including the African Charter on Human and Peoples' Rights. However, there have been concerns raised about Cameroon's compliance with these principles, particularly in relation to the country's criminal justice system. Accused persons may be held in pretrial detention for long periods of time without being charged or tried, undermining the presumption of innocence. Accused persons may face unfair trials or be denied access to legal counsel, undermining the principle of equality before the law. The judicial system in Cameroon is susceptible to political interference, which can undermine the principle of equality before the law and lead to unfair trials. Cameroon has faced criticism for discrimination against certain groups, including ethnic and religious minorities, which can undermine the principle of equality before the law.

We therefore recommend that; the state of Cameroon should increase the fight against corruption in the judicial sector. This is because one of the reasons for discrimination within the judicial system is the ability for judges to be bought over by the rich. Secondly the independence of the judiciary should be guaranteed. This will limit the ability of the administration from intervening in judicial matters. Again, there should be a general sensitization of the Cameroonian population on the importance of presumption of innocence and equality before the law without any form of

discrimination. Some rights are easily violated because the accused persons do not even know they have such rights in existence. Thus sensitization will help a lot of people.

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