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## Constitutional and statutory safeguards for fair trial and justice under Cameroonian legal system: A legal appraisal

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### Abstract

The safeguard for fair trial and justice is the bedrock for preventing the abuse of the rights of litigants in criminal adjudication. The Right to Fair Trial and Justice is a Fundamental Human Right embedded in a plethora of international instruments and national legislations. Without safeguard for fair trial and justice, trust in the judiciary and the rule of law collapses. This paper aims principally at analyzing the law rather than criticizing it. That notwithstanding, shortcomings and ambiguities in the laws are fairly raised. The paper is, therefore, not restricted to the exposition of the law – whereas necessary, has equally highlighted modern values, principles, and procedural rules to permit the understanding of the *lacunae* and ambiguities in Cameroon's procedural laws, and for the law maker to find solutions to these shortcomings and incongruities. This is purposefully done so as to grasp a holistic picture of the subject matter, view the Cameroonian constitutional and procedural laws from a wider perspective and make a theoretical and practical analysis of criminal issues. The paper reveals that, though the Cameroonian legal system recognizes the various safeguard measures for fair trial and justice, there is ineffective implementation, high rate of bribery and corruption and non-respect of the principle of Separation of Powers with constant interference of the executive arm of Government in the Judiciary. As a mithridate against this seemingly deplorable situation, it is recommended that an effective follow-up and better living standard be encouraged by the Cameroon government.

**Keywords:** Safeguards, fair trial, justice, criminal procedure, human rights, Cameroon constitution

### 1. Introduction

The law of God and man both give the party an opportunity to defend himself. Even God did not pass a sentence upon Adam before he was called upon to make his defence <sup>[1]</sup>.

A fair trial presupposes a hearing by an impartial and disinterested tribunal; a proceeding which hears before condemns. Safeguard for fair trial and justice is the cornerstone of every judicial system in the world, Cameroon inclusive. Due process of law has two key components: the substantive and the procedural. The former refers to the laws governing rights, duties and liabilities <sup>[2]</sup>, while latter pertains to the means of implementing them <sup>[3]</sup>. While the substantive law is more of an end, the procedural law is principally a means to achieve that end. However, some procedural issues such as the right to a fair trial and the presumption of innocence are ends in themselves and have to be upheld for their own sake, besides their instrumentality in attaining a fair result. Procedural rules do not, however, exist independently of substantive laws because they are sometimes influenced by the substantive laws. For example, the punishment provided in the law is taken into account to decide whether or not a presumed offender can be admitted to bail <sup>[4]</sup>.

Criminal procedure can be defined as the laws and rules governing the mechanisms under which crimes are investigated, prosecuted, adjudicated and punished <sup>[5]</sup>. Therefore, criminal procedure is the method laid down by law for bringing a person who is alleged to have committed a crime before a court of law for trial. It is the laws and rules that govern the

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<sup>1</sup> Byles J in Cooper v. Wandsworth Board of Works (1861-73) ALL ER 1554.

<sup>2</sup> Such as family law, law of contract, etc.

<sup>3</sup> Such as criminal procedure, evidence and civil procedure.

<sup>4</sup> Fonkwe, J., & Eware, A., (2019) Cameroon Criminal Procedure and Practice in Action, Douala, Cameroon, Editions Veritas. P.1.

<sup>5</sup> Ibid.

administration of justice –the procedure that is to be followed in cases involving an individual who is suspected of, or accused of an offence, and this framework spans from complaint and investigation through a trial, where necessary, either resulting in conviction or acquittal. These constitute the whole process of constitutional and statutory safeguards discussed in this paper.

Criminal procedure is a safeguard against indiscriminate application of criminal laws and the wanton treatment of suspected offenders by ensuring that their fundamental rights are respected, starting from their initial encounter with the police, through arrest, investigation, trial, sentencing and appeals. It is, therefore, the steps taken and methods used in bringing and conducting a criminal action. This has to be done in strict consideration of the rights of the litigants. Thus, criminal procedure has a double function: apply the criminal law and help to preserve the rights of the suspect, defendant or accused<sup>[6]</sup>. Hence, it is all about striking a balance between these two interests.

Management of criminal cases is a delicate exercise, for it is highly connected with Human Rights. For example, arrest and investigation limit the right to movement, privacy and corporal integrity of the suspect. The altitude of the public towards crime also leads to psychological embarrassment with possible long-term social, economic and psychological problems. Furthermore, unlike in matrimonial, probates, civil and commercial cases, criminal proceedings could result in restriction of liberty before, during and after the trial. Upon conviction, death penalty and life imprisonment could be imposed for certain serious offences. Although such supreme punishment is at variance with acceptable standards of human rights, some form of punishment or deterrence is necessary to protect the rights of victims of criminal offences.

Human Rights are fundamental rights of every person. These rights are enshrined in Human Rights Instruments ratified by Cameroon and expressly acknowledged in the Preamble of the Cameroon Constitution of 18 of January, 1996<sup>[7]</sup>. The Preamble being an integral part of the constitution<sup>[8]</sup>, its enunciations are binding and the state has the responsibility to uphold and protect them. There exist a plethora of laws regulating the rights to fair trial and justice in Cameroon. These laws encompass international ratified Conventions, regional norms and domestic statutes which are regarded as the legal framework regulating fair trial and justice in Cameroon<sup>[9]</sup>. At the international level, we have the much heralded 1948 Universal Declaration of Human Rights<sup>[10]</sup>, with over 30 Articles and the 1966 International Covenant on Civil and Political Rights<sup>[11]</sup> (ICCPR)<sup>[12]</sup>.

<sup>6</sup> According to Section 9 CPC: (1) A suspect shall be a person against whom there exists any information or clue which tends to establish that he may have committed an offence or participated in its commission. (2) The defendant shall be any suspect whom an Examining Magistrate notifies that he is presumed henceforth either as the offender or co-offender, or as an accomplice. (3) An accused shall be a person who must appear before the trial court to answer to the charge brought against him, whether in respect of a simple offence, a misdemeanour or a felony.

<sup>7</sup> Law no 96/06 of 18 January 1996 to amend the Constitution of 2<sup>nd</sup> June 1972 as amended by law no 2008/001 of 14 April 2008.

<sup>8</sup> Article 65 of the 1996 constitution as amended.

<sup>9</sup> See generally Awa R. Mokom., “The Right To Fair Hearing In Cameroon: Prospects And Challenges”, 2021, accessible at <https://hrirc.org/2021/09/29/the-right-to-fair-hearing-in-cameroon-prospects-and-challenges/> (visited 04 April, 2022)

<sup>10</sup> Hereinafter referred to as UDHR.

<sup>11</sup> Hereinafter referred to as ICCPR.

While at the regional level, we can identify the 1988 African Charter on Human and Peoples’ Rights<sup>[13]</sup>. The ACHPR is also known as the Banjul Charter, which ensures the promotion and protection of Human Rights and basic freedoms in the African continent. At the national level, the Cameroon constitution of 1996 as amended stands tall. Most of these rights are enshrined in the Preamble of the constitution. We also have the Criminal Procedure code sanctioned by Law N° 2005/007 of 27<sup>th</sup> July 2005 on the Criminal Procedure Code<sup>[14]</sup>, the Cameroonian Penal Code<sup>[15]</sup> sanctioned by Law N°2016/007 of 12 July 2016 on the Penal Code<sup>[16]</sup> and finally the 2006 Law on Judicial Organization sanctioned by Law N° 2006/015 of 29<sup>th</sup> December, 2006 as amended and supplemented by law N° Law N° 2011/027 of 14<sup>th</sup> December 2011 on the Judicial Organisation of courts in Cameroon<sup>[17]</sup>. The focus of this paper is therefor to legally analyze the various safeguards for fair trial and justice as viewed under the Cameroon constitution in conjunction with other international instruments and other statutes duly adopted by the Cameroonian law marker. The shortcomings of these laws will equally be interjected. Safeguards for fair trial and justice can be examined in two broad categories. That is, constitutional and statutory safeguards. Some elements of fair trial and justice are found in both the constitution as well as in statutes.

## 2. Constitutional safeguards for fair trial and justice

The Cameroon Constitution provides for several safeguards for fair trial and justice. The preamble of the 1996 Constitution as amended capitalizes on some of these safeguards judging from its importance in ensuring a smooth administration of justice and promoting the rule of law. It is worthy to note here that Article 65 of the constitution clearly states that “The Preamble shall be part and parcel of this Constitution” and thus enforceable. Fair trial has two overriding principles: presumption of innocence and equality before the law.

### 2.1 Presumption of Innocence

It applies only in criminal matters which take the element of proof beyond doubts. Presumption of innocence is both a constitutional and statutory safeguards for fair trial and justice. The controlling principle at the bottom of all criminal trials is the presumption of innocence found in the 1948 UDHR as well as in the preamble of the 1996 Cameroon constitution as amended. The preamble of the Cameroon constitution firmly opines that “*every accused person is presumed innocent until found guilty during a hearing conducted in strict compliance with the rights of defence*”. According to this principle, everyone accused of an offence is presumed to be innocent until his guilt is established by a court of competent jurisdiction, after due process of law and after the accused must have been given a possibility to defend himself. This principle is also

<sup>12</sup> Cameroon acceded to the International Covenant on Civil and Political Rights on 27 September 1984.

<sup>13</sup> Hereinafter referred to as ACHPR.

<sup>14</sup> Hereinafter referred to as CPC.

<sup>15</sup> Law N°65-LF-24 of 12 November 1965 and law N°67-LF-1 of 12 June 1967 as modified and completed by law N°2016/007 of 12 July 2016 on the Penal Code.

<sup>16</sup> Hereinafter referred to as PC.

<sup>17</sup> Hereinafter referred to as The 2006 Law on Judicial Organization as amended.

embedded in the maxim *Audi Alteram Partem* <sup>[18]</sup>, which entails that, no one should be condemned unheard, as buttressed by Byles J in the case of *Cooper v. Wandsworth Board of Works* <sup>[19]</sup>. The principle can also be found in Section 8 CPC, Article 14(2) of the ICCPR, Article 7 of the ACHPR and Article 11(1) of the UDHR.

The Cameroon constitution proclaims its attachment to the U.N. Charter and Cameroon is a signatory to the United Nations Declaration of Human Rights. It follows that this cardinal principle and many others found in those United Nations documents and designed to ensure fair trial and the rule of law have been incorporated into the Constitution of Cameroon. In fact, the preamble of the Cameroon constitution provides that “the law ensures the right of every one to a fair hearing before the court”. Presumption of innocence also means public authorities or media should not make comments to show the accused is guilty. It is regrettable that the social media as well as news outlets most at times violate this cardinal legal principle as we most often than not, see suspects who are yet to stand trial, being brandished on social media platforms and other social media outlets. The presumption of innocence was directly in issue in *The People V Nya Henry and 4 others* <sup>[20]</sup>. In this case, Bea Abednego Kalla, J., sitting at the Bamenda Court of First Instance held that the accused persons' constitutional rights to the presumption of innocence had been breached when the public prosecutor refused to carry out a court order to release the said accused persons on bail <sup>[21]</sup>.

## 2.2 Equality before the Law

It is a cardinal principle at the level of investigation and trial. Unlike presumption of innocence, equality before the law involves both civil and criminal matters. It is a fundamental principle enshrined in the preamble of the Cameroon constitution and other national and international instruments. For example it is embedded in Article 1 of the UDHR, Article 26 of the ICCPR, Article 3 of the ACHPR and Section 1-1 of the 2016 Cameroon Penal Code. Equality implies having equal access to court; legal aid for those who cannot afford; no discrimination with regards to race, colour, sex etc. The preamble of the Cameroon constitution emphasis on equality of gender by stating that “*the State shall guarantee all citizens of either sex the rights and freedoms set forth in the Preamble of the Constitution*”. Notwithstanding these clear legal provisions, litigants are mostly limited because of the egoistic nature of some law enforcement officers who tends to demand huge sums of money from poor litigants who cannot actually afford. This is a great limitation to this principle of equality before the law.

## 2.3 Fair Hearing/Fair Trial

The right to a fair trial has been defined in numerous regional and international human rights instruments. It is one of the most extensive human rights and all international human rights instruments enshrine it in more than one article. The right to a fair trial is one of the most litigated

human rights and substantial case law that have been established on the interpretation of this human right. The aim of the right is to ensure the proper administration of justice and the respect of the rule of law <sup>[22]</sup>. A fair trial presupposes a hearing by an impartial and disinterested tribunal; a proceeding which hears before condemns <sup>[23]</sup>. The preamble of the Cameroon constitution is very compelling. It states: “the law shall ensure the right of every person to a fair hearing before the courts” <sup>[24]</sup>. A fair hearing embodies the principle that a party and his witnesses must be heard; that the court must act only on the evidence produced before it; and that the party who does not understand or speak the language of the court is entitled to an interpreter and that the accused is entitled to examine the witnesses in the Court; a calm atmosphere where witnesses can testify without fear and intimidation; that truth be given freely without any fear of violence; that lawyers should handle their client freely; etc <sup>[25]</sup>. The test for fair hearing is an objective one, one of substance not of form, which must always be decided in the light of the realities of any particular situation.

## 2.4 Separation of powers

Separation of powers is both Constitutional and Statutory. According to this principle which was postulated by Montesquieu in 1748, he indicated that governmental powers must be separated and exercised by three persons: the legislator, the judiciary and the executive. The objective here is to avoid dictatorship. Each of these three arms may not interfere in the domain reserved for the others. Accordingly, the administration of justice must not be interfered with by either the legislator or the executive. This brings to mind the independence of the judiciary. Though this principle has been recognized in the Cameroon constitution, its interpretation is still clouded in doubt. The judiciary is governed by Articles 37 to 38 of the 1996 Constitution as amended. Article 37 (2) of this law states that “...the Judicial Power shall be independent of the executive and legislative powers” and that “Magistrates of the bench shall, in the discharge of their duties, be governed only by the law and their conscience.” But a close reading of Article 37 (3) clearly reveals the interference of the executive arm into the judiciary. Article 37 (3) states that “the President of the Republic shall guarantee the independence of judicial power; He shall appoint members of the bench and of the legal department” <sup>[26]</sup>. The question that begs for answer is whether the judiciary in Cameroon is actually a power or mere authority? It is the considered opinion of this researcher that the interference of the executive power into the affairs of the judiciary greatly hinders the smooth administration of justice.

Other constitutional safeguards designed to ensure fair trial and justice includes: the right to fair hearing; freedom not to be arrested without warrants; right not to be detained without due process of law; the right of the accused to conduct his own defense personally or through Counsel.

<sup>18</sup> Listen to both sides.

<sup>19</sup> (1861-73) ALL ER 1554 “the law of God and man both give the party an opportunity to defend himself. Even God did not pass a sentence upon Adam before he was called upon to make his defence.

<sup>20</sup> (2005) 1 CCLR pp. 61- 66.

<sup>21</sup> Afuba M.D., *The Constitutional Protection of Civil and Political Rights in Cameroon*, University of Botswana Law Journal, 2006. P.73.

<sup>22</sup> Pefela Gildas Nyugha., *The Protection of Individual Rights and Freedoms in Cameroon's Legal Order: Prospects for an Emerging Country*. Journal of Human Rights Law and Practice. 2018; 1(2), P.29.

<sup>23</sup> Article 10 of the UDHR.

<sup>24</sup> See the preamble of the 1996 Cameroon constitution as amended.

<sup>25</sup> *Ibid*.

<sup>26</sup> Article 37 (3) of the 1996 Cameroon constitution.

### 3. Statutory safeguards for fair trial and justice

Besides the Constitutional safeguards, there are statutory provisions also aimed at ensuring fair trial and justice in Cameroon. These provisions are found, for example in the Cameroon Penal Code, the Cameroon Criminal Procedure Code and the 1972 Judicial Organization Ordinance as abrogated/amended by Law N° 2006/015 of 29<sup>th</sup> December 2006 as amended.

In order to ensure a fair trial and justice, many provisions in the Criminal Procedure Code (CPC) set out the rights of an accused with regards to his trial. According to Section 1(i) of this code, the law instituting the CPC stipulate the rules which deal particularly with the rights of the parties and following Section 3 of the same code, the sanction against the infringement of any rule of criminal procedure shall be an absolute nullity when such infringement is prejudicial to the rights of the defense or contrary to public policy. This nullity will not be overlooked and may be raised at any stage of the trial.

This section discusses pre-trial safeguards for fair trial and justice during investigation and fair trial from trial to judgment [27]. Other general safeguards measures will equally be examined.

#### 3.1 Pre-trial safeguards for fair trial and justice

The criminal investigation phase is a delicate one, where evidence is assembled against an offender and where the rights of the suspects are usually infringed. This phase is sometimes characterized by gross violation of rights and freedoms by some impetuous investigators who want to obtain evidence through easy unconventional means. It is to curb these infringements of rights and freedoms that the legislator provided for the following safeguards to be observed.

##### 3.1.1 Right to stay silent or Right to remain silent

When a suspect is arrested, he now has the right to remain silent and must be so informed by the police officer arresting him. This is provided for in Section 116(3) CPC. This is an important innovations introduced by the code which is similar to what obtains in other legal systems. Any confession which is irregularly obtained would be inadmissible [28]. In the USA, this is known as the Miranda warning. The language used in a Miranda warning is derived from the 1966 U.S. Supreme Court case *Miranda v. Arizona*. Miranda warning is a type of notification customarily given by police to criminal suspects in police custody (or in a custodial interrogation) advising them of their right to silence; that is, their right to refuse to answer questions or provide information to law enforcement or other officials. These rights are often referred to as Miranda rights [29]. Under the English Judges Rule, the police officers are required to caution the arrested person before taking down statement from him and the caution informs the accused person that he is now in the presence of the police but need not fear anything and the accused is further informed that he is free to make a statement or not say anything, but should he choose to make a statement, whatever he says would be taken down and handed to court as evidence against him [30]. With the advent

of the crisis in the English Speaking regions of Cameroon [31] in late 2016, many arbitrary arrests have been conducted without respecting this safeguard measure.

##### 3.1.2 Right not be subjected to inhumane treatment

A person under police custody should be treated humanely. The Cameroon Criminal Procedure Code emphatically state that “The suspect shall not be subjected to any physical or mental constraints, or to torture, violence, threats or any pressure whatsoever, or to deceit, insidious manoeuvres, false proposals, prolonged questioning, hypnosis, the administration of drugs or to any other method which is likely to compromise or limit his freedom of action or decision, or his memory or sense of judgment” [32]. In other words, no bodily or psychological harm shall be caused to the person arrested [33]. This is also reechoed in the Preamble of the 1996 Cameroon Constitution as amended [34]. Torture *simpliciter* does not automatically means hurting a person. In its most traditional and parachutes understanding, torture must be given a place at the summit of the pyramid of agony [35].

The CPC further emphasized that a judicial police officer, agent of judicial police or any officer of the forces of law and order effecting an arrest, shall order the person to be arrested to follow him and, in the event of refusal, he shall use reasonable force, necessary to arrest the person [36]. Therefore the responsibility of the judicial police officer when empowered with the authority and competence in effecting arrest on a suspect should do so without plaguing or using methods which randomly affect the human rights of the accused [37] in question [38]. The Cameroon Penal Code lays out the sanction for breach of this safeguard measure under the caption “Torture”, punishable under section 132 of the PC. The CPC has however failed to define what “reasonable force” is. It is submitted that the use of “reasonable force” as stated in section 30(2) CPC will mean force that is reasonable to the mind of a common man.

##### 3.1.3 Right to be notified of the Charges in a Language one understands

Once arrested, the suspect shall immediately be informed of the allegations against him, so as to be able to prepare his defense. This is the purport of Sections 199(1) and 122(1)(a)

<sup>31</sup> North West and South West Regions of Cameroon.

<sup>32</sup> Section 122(2) CPC.

<sup>33</sup> Ibid. Section 30 (4) C.P.C.

<sup>34</sup> Cameroon has also ratified the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Rights of the Child (CRC), International Convention on the Elimination of All Forms of Racial Discrimination (CERD), and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). See generally Afuba M.D., *The Constitutional Protection of Civil and Political Rights in Cameroon*, University of Botswana Law Journal, 2006. PP. 67-92.

<sup>35</sup> Minang N. V., Nguindip N. C., (2020), *An Analysis of The Legal Standard In The Fight Against Torture And Treatment of Prisoners Under International Law: What Prospect For Application Under Cameroonian Law?* Law and Safety. 2020. № 1(76), P.126.

<sup>36</sup> Section 30 (2) C.P.C.

<sup>37</sup> In *The People v. Enguene Malgloire*, (JUDGEMENT No. 16/04 delivered on the 16th of January, 2009.

a Superintendent of Police attached to the Garoua Emi-Immigration Police Station used violent and abuses the accused, the accused was charged with assault and false arrest. He was acquitted.

<sup>38</sup> Nguindip; Forsuh & Tetiewe: *Appraisal of the Protection of the Rights of Suspects under the Cameroonian Criminal Procedure Code*, NAUJILJ (1) 2021. P.164.

<sup>27</sup> Post-trial safeguards for fair trial and justice.

<sup>28</sup> See, Sections 315(2) and 122(2) CPC.

<sup>29</sup> Meaning of Miranda warning (Google search 02/04/2022).

<sup>30</sup> *R V. Prager*, [1972] All E.R. 144.

CPC. On the strength of Article 14(3) of the ICCPR, “In the determination of any criminal charge against him, everyone shall be entitled to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him”<sup>[39]</sup>.

Mores so, Section 13(4) CPC provides that where a person summoned to appear before the State Counsel or Examining Magistrate or the Court does so, he must without delay be heard which implies that he must be told why he has been summoned. Also, in this regard, section 410 CPC provides: “An accused in detention shall be notified of the committal order by the Examining Magistrate or the committal judgment of the Inquiry Control Chamber in accordance with the provision of section 39 of this code”<sup>[40]</sup>. In Cameroon, there is generally the problem of language barrier especially with suspects arrested from the English speaking jurisdictions and ferried to the French speaking jurisdictions for trial. At times, the suspects are not really aware of the exact charges against them since the “*Procès Verbale*” is mostly drafted in French.

### 3.1.4 The Right to conduct defence in person or by counsel of choice

One of the major innovations brought by the CPC is the possibility of a suspect to be assisted by his counsel at all the stages of criminal proceedings, especially during Judicial Police Investigation. The suspect or the accused has the right to conduct his defence in person or by a legal practitioner of his choice. Such legal practitioner must be one who is not only entitled to appear before the trial courts but also one who is available to do so. However, where the accused who is tried for a crime in the court has no counsel, one can be assigned to him by that court leaving him no choice<sup>[41]</sup>.

Section 116(3) CPC provides that as soon as investigations are opened, the Judicial Police Officer<sup>[42]</sup> shall, under penalty of nullity, inform the suspect of his right to counsel. It is a fundamental right of a suspect to be assisted by counsel or to receive moral assistance from his family, starting from the level of preliminary investigation<sup>[43]</sup>. The challenge here is the fact that the role played by counsel at the level of police investigation has not been spelt out by the CPC, thereby giving room to speculation. It is not clear whether counsel should simply hold a watching brief, whether counsel has the right to participate in the questioning of the suspect by putting questions to him or whether the role of counsel is limited to advising his client in private. What is certain is that, counsel for the suspect at this stage does not play the same role as during Preliminary Inquiry<sup>[44]</sup> and trial, where he is called upon to overtly defend his client. It is therefore recommended that the CPC

should be amended to clearly define the role of the counsel during preliminary investigation. It should be noted that it is also possible for the accused to apply for legal aid as provided for in section 489 CPC and the Law No. 2009/004 of 14<sup>th</sup> April 2009 Organizing Legal Aid in Cameroon<sup>[45]</sup>.

### 3.1.5 Right to rest, to food, to be visited and to medical attention

These rights are available to the suspect, defendant and as well as the accused. The CPC emphasized that the suspect shall be given reasonable time to rest fully in the course of the investigation and that the period of rest shall be mentioned in the police report<sup>[46]</sup>. More so, the State shall be responsible for feeding persons remanded in police custody. However, such persons shall have the right to receive from members of their families or from their friends the means of subsistence and other necessities<sup>[47]</sup>.

As per Section 122(3) CPC, the person on remand may at any time within the period of detention and during working hours, be visited by his counsel, members of his family, and by any other person following up his treatment while in detention. Visit to the detained accused are better regulated while his correspondences are better protected<sup>[48]</sup>. In fact, Section 245(4) (h) CPC clearly provides that there can be no interception of communication between a lawyer and client accused without the authority of the President of the Bar Council. The code also prohibits the interception of communication on the line of a member of a public institution who enjoys immunity<sup>[49]</sup>.

Added to that, the person remanded in police custody may, at any moment, be examined by a medical officer appointed by the State Counsel of his own motion. Such medical officer may be assisted by another chosen by the person on remand at his own expense. The State Counsel may also order such medical examination at the request of the person concerned, his lawyer or a member of his family. Such medical examination shall be carried out within twenty-four hours after the request. At the end of the police custody, it shall be obligatory to medically examine the suspect at his expense and by a doctor of his choice, on condition that either the suspect himself, his counsel or his family members so request. In all cases he shall be informed of this discretion. The report of the commissioned medical officer shall be put in the suspect's case file and a copy thereof given to him. It may be counter-signed by the medical officer chosen by the person so remanded who may, where necessary, endorse it with his views. All these are generally provided for in sections 123 CPC and 37 CPC<sup>[50]</sup>. These are some of the rights that are constantly violated especially the right to medical attention, as many prisoners have lost their lives because of inadequate medical assistance.

### 3.1.6 Right not to be detained without due Process of the Law

The Criminal Procedure Code frowns against illegal detention. As a matter of fact, the code has made provision

<sup>39</sup> Article 14(3)(a) of the ICCPR.

<sup>40</sup> Section 39 CPC: Legal notification shall consist of bringing a legal document to the knowledge of the interested party. It shall be done through administrative channels, in particular by registered letter with acknowledgment of receipt due, or by an officer of the judicial police who shall make a report thereon.

<sup>41</sup> See Article 14(3)(d) of the ICCPR, and article 7(1)(c) of the ACHPR.

<sup>42</sup> Hereinafter referred to as JPO.

<sup>43</sup> See section 122(3) CPC for more emphasis.

<sup>44</sup> Preliminary Inquiry means an investigation of criminal charge done by an Examining Magistrate in view of committing an accused person(s) for trial before the court of First Instance or the High Court. It is a criminal hearing usually conducted by a Magistrate to determine whether there is sufficient evidence to prosecute the defendant. See generally section 142 CPC.

<sup>45</sup> Hereinafter referred to as the 2009 Law on Legal Aid.

<sup>46</sup> Section 122(1b&c) CPC.

<sup>47</sup> Section 122(4) CPC.

<sup>48</sup> See Sections 238-239 CPC.

<sup>49</sup> See, Section 245 (4) (i) CPC.

<sup>50</sup> Section 37: Any person arrested shall be given reasonable facilities in particular to be in contact with his family, obtain legal advice, make arrangements for his defence, consult a doctor and receive medical treatment and take necessary steps to obtain his release on bail.

for sanctions in case of illicit detention. In other words, the CPC has made provisions for compensation for illegal detention<sup>[51]</sup>. The sanction could be with respect to the report issued from such illicit detention and with respect to the authority who ordered the detention. The possibility of bringing an action for illegal detention against a magistrate or a Judicial Police Officer after a discharge or acquittal is a novelty introduced by the CPC and it is reiterated in section 236 CPC. It permits a person who might have suffered prejudice as a result of the illicit act of the authority who detained him, to obtain damages and equally permits the authority to be sanctioned disciplinarily and financially<sup>[52]</sup>.

To ensure that a suspect or the defendant does not suffer illegal detention, the CPC has provided for minimum period of detention. Under the CPC, the duration of police custody is well-specified. The time allowed for remand in police custody must not exceed forty-eight hours renewable once. This period may exceptionally be renewed twice with the written approval of the State Counsel thereby making the possible maximum period for police custody to be 192 hours (8 days)<sup>[53]</sup>. This well-specified duration for police custody guarantees a better protection of the rights of persons from arbitrary detention and consequently safeguard for fair trial and justice. Remand in police custody shall not be ordered on Saturday, Sundays and public holidays, except in cases of felonies or misdemeanors committed *flagrant delicto*<sup>[54]</sup>. However, where the remand in police custody was ordered on a Friday or on the eve of public holiday, it may be extended after a written approval of the State Counsel<sup>[55]</sup>. It should be noted that a person with a known place of abode may not be remanded in police custody except in the case of felony<sup>[56]</sup>.

As concerns prison custody, a person cannot be remanded in prison custody indefinitely. A remand warrant<sup>[57]</sup> issued by an Examining Magistrate must specify the period of validity which must not exceed 18 months in the case of a felony and 12 months in the case of a misdemeanor. See Section 221(1) CPC<sup>[58]</sup>. For the cases of felonies and misdemeanors, arrest warrants are needed except in cases of *flagrant delicto* offences as stated in Section 31 of CPC<sup>[59]</sup>. It is worthy of note that upon expiry of the period of validity of the remand warrant, the Examining Magistrate shall, under pain of disciplinary action against him, order the

immediate release on bail of the defendant, unless he is detained for other reasons<sup>[60]</sup>.

### 3.1.7. Protection from arbitrary detention through the writ of *Habeas Corpus*

There is consolidation of *Habeas Corpus*<sup>[61]</sup>. The provision of *habeas corpus* proceedings demonstrates the desire of the State to respect the freedom of citizens and Human Rights by stamping out cases of arbitrary arrest. Section 584 CPC provides that the president of the High Court or any of the High Court Judges assigned by him, shall have jurisdiction to hear applications and order for the immediate release of any person who is illegally detained. The illegality of the detention may stem from the illegal nature of the arrest or the failure to observe the formalities for detention provided by the law. More statutory blessings to curbed against arbitrary detention is given by section 18 (2)(b) of the 2006 Law on Judicial Organization as amended in consonance with Section 584 CPC. The CPC also makes it possible for the State Counsel to grant the remedy of *habeas corpus* under section 137(2) of the code.

### 3.1.8. Right to Bail

The concept of bail is vital in the administration of criminal justice because it is a manifestation of the presumption of innocence which is a fundamental principle in criminal justice. Since an accused is presumed innocent until proven guilty, the law has made it possible for such presumed offender to be released pending hearing and determination of the allegations against him because the mere fact that a person is suspected of having committed an offence does not *ipso facto* imply that he is guilty of the offence<sup>[62]</sup>. Bail is surety taken or amount of money deposited by a person duly authorized for the appearance of an accused person at a certain date and place, to answer and be justified by law<sup>[63]</sup>. It is normally set out by the judge or any authority empowered to grant bail at the initial appearance of an accused person, the purpose being to ensure the appearance of the said accused person when and if needed subsequently<sup>[64]</sup>.

The word has also been defined as a contract (e.g. bail bond) whereby an accused person is delivered to another person called surety who becomes responsible for the appearance of an accused person at a certain day and place designated. By this device, the accused person or his surety undertakes by a recognizance that in return for being released, the accused will appear in court at the specified time and that if he fails to appear, he (the accused) or his surety will pay a certain sum of money fixed by the court if the accused fails to appear when he is required. The court may require that the accused produce more sureties than one if the offence is very serious. The manner in which applications for bail has been handled by the Courts in the two parts of Cameroon<sup>[65]</sup> before the entering into force of the new Cameroon CPC differed tremendously. This has largely been due to the fact that the Romano-Germanic system of law and the Anglo-

<sup>51</sup> See, Sections 236 and 237 CPC.

<sup>52</sup> Fonkwe, J., & Eware, A., (2019), Op.Cit., at P.9.

<sup>53</sup> See generally section 119 (1) CPC.

<sup>54</sup> See, Section 119(2- 4) CPC.

<sup>55</sup> Fonkwe, J., & Eware, A., (2019), loc.cit., at P.8.

<sup>56</sup> See, Section 118(2).

<sup>57</sup> See Section 218: (1) Remand in custody shall be an exceptional measure which shall not be ordered except in the case of a misdemeanour or a felony. It shall be necessary for the preservation of evidence, the maintenance of public order, protection of life and property, or to ensure the appearance of an accused before the Examining Magistrate or the court. Provided that a person with a known place of abode shall not be remanded in custody except in the case of a felony.

<sup>58</sup> Section 221 states that (1) The Examining Magistrate shall specify the period of remand in custody in the remand warrant. It shall not exceed six (6) months. However, such period may, by reasoned ruling of the Examining Magistrate be extended for at most twelve (12) months in the case of a felony and six (6) months in the case of a misdemeanour.

<sup>59</sup> Section 31: Except in the case of a felony or misdemeanour committed *flagrante delicto*, the person effecting the arrest shall disclose his identity and inform the person to be arrested of the reason for the said arrest, and where necessary, allow a third person to accompany the person arrested in order to ascertain the place to which he is being detained.

<sup>60</sup> See Section 221(2) C.P.C.

<sup>61</sup> See Sections 137(2), 584-588 CPC.

<sup>62</sup> Fonkwe, J., & Eware, A., (2019), Op. Cit., at P.65.

<sup>63</sup> See Cyprian Okonkwo, cases on Criminal Law Procedure and Evidence of Nigeria (Excluding the North), Sweet & Maxwell, 1966, p.79.

<sup>64</sup> See generally Timothy Schnacke, Micheal Jones & Claire Brooker: The History of Bail and Pre-trial release, Pre-trial Justice Institute 2014.

<sup>65</sup> French speaking part and English speaking part.

Saxon legal system have been applied in the francophone and Anglophone Regions respectively. The scope of bail has been increased under the CPC. The CPC has made provision for three types of bail, based on the security requested. It could be self-bail, bail with surety, and bail with deposit <sup>[66]</sup>. Remarkable decided cases where bail has been granted in Cameroon includes; *The People V. Fon Doh Gah Gwanyi III and 11 Others* <sup>[67]</sup>; *Ngufor Alexander V. The People* <sup>[68]</sup>; *Nkfutoh Tifuh Michael V. Kom Area Development Cooperative Union Ltd* <sup>[69]</sup>; *The People V. Nya Henry* <sup>[70]</sup>; *The People V. Dr. Martin Luma* <sup>[71]</sup>; *Pius Njawe's case* <sup>[72]</sup>; *Engolo Emmanuel's case* <sup>[73]</sup>; *Ngue Mbock Richard's case* <sup>[74]</sup>.

It is important to note here that bail will however not be granted to a person charged with a capital offence. Indeed, Section 224(2) of the CPC clearly states that no bail will be granted to persons charged with felonies punishable with life imprisonment or death <sup>[75]</sup>. Consequently, it is submitted that the Court has the discretion to grant bail where felony charged is not punishable with life imprisonment or death. In exercising its discretion, the court must consider the following:

- a. The nature of the charge against the accused;
- b. The severity of the punishment;
- c. The quality of the evidence available;
- d. The likelihood of the accused person interfering with the prosecution evidence against him;
- e. His criminal record;
- f. His likelihood committing another or same offence if released.

The challenge faced under the notion of bail is that some judicial authorities tend to extort huge amount of money from accused persons in the guise of granting them bail. The disturbing part of it all is that some of the money collected does not enter the state treasury because it ends in private pockets especially when the accused fails to collect receipts. As a rule, bail ought to be granted to an accused person whenever trial will not take place within a reasonable time.

### 3.2 post – trial safeguards for fair trial and justice

There are several provisions introduced in the CPC by the Lawmaker to considerably reduce excesses and infringements on the rights of defendants and accused persons so as to ensure fair trial and justice. These will be examined in the following subheads.

#### 3.2.1 The Right to Adequate Time and Adequate Facilities to Prepare One's Defence

The defendant is entitled to adequate time and facilities for the preparation of his defence <sup>[76]</sup>. Indeed, as stated in Section 167 CPC, on his first appearance, the Examining

Magistrate must spontaneously inform him of the case against him and the provisions of the law he has violated. He must also be informed that he has a choice to prepare his defence either with or without counsel <sup>[77]</sup> and to be shield from further interrogation by the JPO on the facts in issue.

At the level of trial, the accused is notified of the allegations against him through the summons served on him in case of direct summons <sup>[78]</sup>, or through a prior interrogation at the Legal Department in case of *flagrante delicto* <sup>[79]</sup> action. In all cases, the accused is informed of the allegations against him at the start of the trial through arraignment.

To ensure fair trial and justice, the CPC has provided adequate time to be given to the defence to prepare their case. That is, three days where the accused is prosecuted pursuant to an offence committed *flagrante delicto* <sup>[80]</sup>, at least five days where the accused is being prosecuted by way of direct summons and resident in the locality where he is to be tried, and an additional day for every 25 kilometers. The interval shall be ninety days if the accused resides abroad <sup>[81]</sup>. In case of trial before the High Court, the accused shall be summoned by the Judge hearing the matter, at least ten days before the date of the trial <sup>[82]</sup>, to inform him of the charge against him and to find out whether he has briefed counsel <sup>[83]</sup>.

#### 3.2.2 Proceedings in the language understood by the defendant/ right to an interpreter

An accused is entitled to be informed promptly in the language he understands the nature of the offence alleged against him <sup>[84]</sup>. There is room for the service of an interpreter to be provided <sup>[85]</sup>. When an accused speaks a language other than one of the official languages <sup>[86]</sup> understood by members of the court, or where it is necessary to translate any document produced in court, the presiding magistrate shall of its own motion appoint an interpreter who must not be less than 21 years old <sup>[87]</sup>. The said interpreter shall take oath to interpret faithfully the testimonies of persons speaking in different languages or faithfully translate the document in question. The parties may challenge the interpreter. In this case the court rule immediately on the challenge and such ruling shall not be subject to appeal. When an interpreter does not give a true and faithful interpretation, any party to the proceedings may point this out and move the courts to have the interpreter

<sup>77</sup> See section 170(1c) CPC and Article 7(1) of the ACHPR.

<sup>78</sup> A Direct Summons is an act of the bailiff, issued upon the request of the State Counsel, the Civil Party or Certain Administrative officers who have the right to initiate criminal action in relation to offences touching on their interest. It permits the direct seizure of the court by summoning the accused in front of it. It is used only in cases of misdemeanour and simple offences and not in felonies where preliminary inquiry is obligatory. The accused must be notified thereof to permit him prepare his defence. It must indicate the place, the day, and the hour of hearing, the facts the accused is being reproached for, and must equally identify the accused.

<sup>79</sup> This is a simple and rapid special procedure to seize the court, instituted by Section 114 of the Cameroon CPC.

<sup>80</sup> Section 300 CPC.

<sup>81</sup> See generally section 52 CPC.

<sup>82</sup> Fonkwe, J., & Eware, A., (2019), Op.Cit., at P.11.

<sup>83</sup> Section 418 CPC.

<sup>84</sup> See *Walter Numvi & 2 Others Vs The People*, Judgment in Suit No. CANWR/MA/3c/2015 of 12 July 2016 {SLR vol. 6 pp.2-17}.

<sup>85</sup> See, Sections 354-358 CPC.

<sup>86</sup> According to Article 1(3) of the 1996 Cameroon constitution as amended, the Official languages of the Republic of Cameroon shall be English and French, both languages having the same status.

<sup>87</sup> Section 354 (1) CPC.

<sup>66</sup> See Sections 221(2), 222 and 223 CPC for unconditional or self-bail and Sections 224-235, 246(g) and 397(1) CPC for conditional bail. For bail granted by the Supreme Court, see Sections 516-517 CPC.

<sup>67</sup> Suit No HCND/2C/2005-6 unreported.

<sup>68</sup> 2001 2 C.C.L.R. P. 219-220.

<sup>69</sup> [1997] 1C.C.L.R. P. 92.

<sup>70</sup> Appeal N° BCA/MS/11C/2002 unreported.

<sup>71</sup> Appeal N° BCA/MS/8C/2002 unreported.

<sup>72</sup> Supreme Court Arrête N°63/D du 14 Novembre 1996.

<sup>73</sup> Supreme Court order N°57/P of 27 October 1994.

<sup>74</sup> TPI Ezeka, Judgment N°911/COR.

<sup>75</sup> See section 21 of the Penal Code dealing with classification.

<sup>76</sup> Article 14 (3)(b) of the ICCPR.

replaced. The courts may also on its own motion point out an interpretation which is not true and faithful and then proceed to replace the interpreter after having heard the parties <sup>[88]</sup>. Section 356 CPC is very categorical that the registrar in attendance, the parties or the witnesses shall, not even with the consent of the accused, perform the functions of an interpreter.

Where an accused is deaf and dumb and does not know how to write, the presiding magistrate shall of his own motion initiate the appointment of an interpreter who must be a person who can communicate with him <sup>[89]</sup>. But where such an accused is able to write, the registrar shall reduce into writing the questions or observations to be put to him. It shall be handed to the accused who shall reply in writing. The registrar shall read out both the questions and the answers <sup>[90]</sup>.

Most issues faced at this level result from the difficulty to get hold of a fluent and competent interpreter who will be able to listen, interpret and transpose the exact intensions of the accused or the court especially with the difficulty in perfectly comprehending the two official languages. It becomes more difficult in rural areas where most accused persons are local farmers who can neither speak nor write in the two official languages but of their native language <sup>[91]</sup>.

### 3.2.3 Right to a public hearing/ justice administered in public

The law stressed that justice must be administered in public <sup>[92]</sup>. The credibility of a legal system depends on whether the Courts are able to hear and determine cases in fairness. The internationally accepted standards of a fair trial are provided for by Article 14 of the 1966 ICCPR. It specifically provides for equality of all before the Courts and for the right to a fair and public hearing by a competent, independent and impartial Court established by the Law, regardless of whether it is a criminal trial or not <sup>[93]</sup>. In essence, it provides that all judgment shall be pronounced in open court and that any breach of this principle renders the whole proceeding null and void *ab initio* <sup>[94]</sup>. This principle aims at ensuring that a person standing trial before the court is given and seen to be given a fair trial and hearing. The principle is therefore another aspect of the broader principle of judicial neutrality, impartiality and independence embedded in the Latinism *Nemo Judex in Causa Sua*. Justice must not only be done, it must also be seen to be done. This standard is provided for by section 302 CPC which makes it mandatory to conduct trials in public subject to certain exceptions. This is in line with Article 14(1) of the ICCPR, which makes the right to a public hearing one of the vital elements of a fair trial and justice.

Exceptionally however, some matters may be held in camera (behind closed doors) on grounds that a public hearing will be dangerous to the security of the State, public order or morality <sup>[95]</sup>. Such matters may include minors,

matrimonial cases, etc. The public may also be excluded in special circumstances where publicity would compromise the proper administration of justice. The publicity of a trial entails the conduct of the hearing in public and the publicity of the judgment rendered. The Court is supposed to make public information about the time and venue of the hearing and provide adequate facilities for interested members of the public to witness the trial. More so, the cause list must be posted at vantage position at the court premises. Failure to post the cause list before the hearing is a violation of the rule of publicity of the hearing <sup>[96]</sup>. The principle of public justice also entails that everyone, if he or she is so minded, to walk into the court house quietly and follow its proceedings. But any person who disturbs the peace of the court may be charged with contempt of court that is, *Contempt sedenti curia* meaning “Contempt of Court in the face of a proceeding”. Some of the instances where persons have been prosecuted for contempt of court under Section 154 PC have had to be with clashes between judges and lawyers <sup>[97]</sup>.

### 3.2.4 Reasoned Judgment

Another statutory safeguard for fair trial and justice is reasoned judgment. The courts are duty bound to give reasoned judgment, that is, the reasons for their decisions. This is important because it avoids arbitrariness in the judge’s decisions. It also enables the appellate court to control the proceedings and decisions of the lower courts. Any judgment which is not backed up by reason is null and void as stated in Section 7 of the 2006 Law on Judicial Organization as amended and Section 389 (3) CPC. As a matter of fact, Section 388(3) is to the effect that reasoned judgment must be reduced into writing. In *Re-Daniel Akpombang v Benji Gbaroko* <sup>[98]</sup>, the learned trial judge had pronounced formal judgment in court but reserved his reasons for the judgment. A reasoned judgment was not produced in writing and a copy was only delivered one year afterwards. The West Cameroon Court of Appeal had no difficulty in holding that in such a situation the judgment was a complete nullity <sup>[99]</sup>.

In *Joshua Nwana V. Commissioner of Police* <sup>[100]</sup>, it was held by the West African Court of Appeal (WACA) that the words “I believe that all prosecution witnesses are telling the truth and the defendant is lying. I find the case proved”, constituted a written judgment although undoubtedly a brief one. In the case of *Matinez Joseph V. Nkweatta’s Metal Enterprise* <sup>[101]</sup>, it was held by the Appeal Court that the requirement of writing reasoned judgment is that it should set out clearly the issues to be decided, the evidence given on both sides, the view of the court on that evidence, the reason why the court accepts one view in favour of the other, any case or legal principle upon which the court bases its conclusion and in a criminal matter whether or not the

<sup>88</sup> Ibid. Section 355 CPC.

<sup>89</sup> Section 357 CPC.

<sup>90</sup> Section 358 CPC.

<sup>91</sup> See *Angoh Aloysius Ebebi Vs The People and Ngankam Rigobert*, Judgment No. 178/P of 13 May 1993 {RCJCS part 2, vol. 1, p. 746}.

<sup>92</sup> See Section 6(1) of the 2006 Law on Judicial Organization as amended.

<sup>93</sup> Fonkwe, J., & Eware, A., (2019), Op. Cit., at P.323.

<sup>94</sup> See also Article 14(1) of the ICCPR.

<sup>95</sup> The term “public order” in the specific context of section 302 CPC is invoked wherever there is risk that the evidence to be adduced during the trial may perturb the peace and tranquility of the society. National security

preoccupations and preserving of military secrets have equally been invoked to justify exclusion of the public on grounds of public order. Public order may be invoked to protect family secrets or details on the private lives of parties.

<sup>96</sup> Fonkwe, J., & Eware, A., (2019), loc. cit., at P.323.

<sup>97</sup> *Victor Mukwelle Ngoh V. The People*. CASWA/17c/73 (unreported).

<sup>98</sup> [1962] N° 64 W.C.L.R. 62.

<sup>99</sup> See also *Ngu Benedicta Biaka V. Francis Biaka*, Supreme Court Judgment No. 38/L of 3<sup>rd</sup> April 1992.

<sup>100</sup> 1964-65 W.C.L.R.

<sup>101</sup> 1968-70 UYLR 50.



court has a reasonable doubt. Finally, the conclusion of the court should be unambiguously stated.

### 3.2.5 Judgment rendered free of charge

It is statutorily provided that justice shall be administered free of charge subject only to the fiscal provisions concerning stamp duty and registration and those concerning the reproduction of the records of proceedings for appeals. This is spelled out in Section 8(1) of the 2006 Law on Judicial Organization as amended. However, if the case requires the service of an advocate, the litigant must be prepared to pay the advocates fee. Providing justice free of charge does not however mean that litigants are exempted from paying court fees, stamp duties and registrations.

Notwithstanding, litigants can always make recourse to legal aid where the means of instituting the action is not financially attainable. Section 8 (2) of the 2006 Law on Judicial Organization as amended and Sections 482 and 489 of the Cameroon CPC make provisions for legal aid. Legal aid in Cameroon is governed by Law No. 2009/004 of 14<sup>th</sup> April 2009 Organizing Legal Aid. Legal assistance to the accused is available under two circumstances to wit; where the accused does not have sufficient means to pay for legal assistance; and where the interest of justice is required. As a matter of fact, to ensure fair trial and justice, it is the state's obligation to provide free legal assistance to an indigent accused who is unable to defend himself against the prosecution which is endowed with enormous human and material resources. However the law has set out the categories of persons who could apply to legal aid <sup>[102]</sup>.

### 3.2.6 Right of appeal

One of the statutory safeguard for fair trial and justice is the right of appeal. A litigant who is dissatisfied with the decision(s) of the court below has the right to go on appeal to have his case re-examined by a panel of judges. It is for this reason that the courts have been structured in a hierarchical manner to distinguish for example the Courts of original Jurisdiction from the courts with Appellate Jurisdiction. Whereas, most trial courts are single judge courts, most appellate courts are collegiate <sup>[103]</sup>.

Equally as a safeguard measure, the time limit for filing various appeals have been well specified under the Cameroon CPC. According to section 440 CPC, the time limit for filing an appeal to the Appeal Court is 10 days and 5 days for a Cross- Appeal. At the level of the Supreme Court the time limit for filing an appeal against a judgment on merit is 10 days, 7 days for interlocutory rulings and 30 days for judgment in default <sup>[104]</sup>. For appeals against the rulings of the *Inquiry Control Chamber*, the time shall be 5 days in accordance with Section 479 CPC and 48 hours for appeal against the decisions of Examining Magistrate <sup>[105]</sup>. This specification have help to avoid unnecessary delay in the administration justice.

### 3.2.7 Right of Recusal

To ensure fair trial and justice, care has been taken under the CPC to prevent a magistrate from trying a matter in which he has an interest. One basic rule of natural justice is

that no one shall be judged in his own case, well grounded in the Latinism *nemo iudex in resua*. Therefore, once the circumstances are such that any right thinking member of the society may say that the judge is biased, then the judge should not hear and determine the case <sup>[106]</sup>. It is in line with this principle of law that the CPC in its Book 6, Part 3, creates a special procedure entitled challenge against the magistrate of the bench or a judge <sup>[107]</sup> Thus, any magistrate of the bench or a judge may be challenged for any of the following reasons;

- a. Where he or his spouse is a relative, guardian or relative by marriage up to the degree of uncle, nephew, first cousin or the child of the first cousin of one of the parties;
- b. Where he or his spouse is employer, employee, next of kin, donee, creditor, debtor, companion of one of the parties or director of an enterprise or company involved in the case;
- c. Where he has previously taken part in the proceedings or if he has been an arbitrator or counsel or witness;
- d. Where he or his spouse is a party in a case which shall be tried by one of the parties;
- e. Where he or his spouse is involved in any incident turning to show friendship or hatred towards any of the parties and likely to cast a doubt on his impartiality.

The application stating the challenge shall be in writing and shall be forwarded in two copies:

- To the President of the Court of Appeal if it is directed at a judge of the Court of appeal other than the president or a magistrate of a lower court; or
- To the president of the Supreme Court if it is directed at the President of the Court of Appeal or a member of the Supreme Court other than its President <sup>[108]</sup>.

It is also possible to replace a defaulting Examining Magistrate <sup>[109]</sup>. The decisions of the Examining Magistrate may be subject to appeal before the Inquiry Control Chamber <sup>[110]</sup>.

### 3.2.8 The right to speedy trial

The accused person is entitled to a fair trial within reasonable time. This is because the accused person is entitled to know his fate as soon as possible so that the curtailing of his liberty for the period of the trial can be minimized. The puzzle in the minds of many scholars is to determine what amount to "reasonable time" within the meaning of the law. The CPC has failed to give a clear meaning of this statement and it has because many accused persons to suffer undefined lengthy trials.

### 3.2.9 Equality of arms

The principle requires that there should be a fair balance between the opportunities given to the parties involved in the litigations <sup>[111]</sup>. For example, each party should be able to call witnesses and cross-examine the witnesses called by the other party. This principle is embraced by the Cameroon

<sup>106</sup> See Eriobuna V. Obiora (1999) 8 NWLR PT 616 p. 622.

<sup>107</sup> See, Sections 591-599 CPC.

<sup>108</sup> Ibid. Section 594(1) CPC.

<sup>109</sup> See, Section 146 CPC.

<sup>110</sup> Ibid. Sections 267-274 CPC.

<sup>111</sup> Fonkwe, J., & Eware, A., (2019), Op. Cit., at P.328. See also Awa R. Mokom., (2021), op.cit.

<sup>102</sup> See sections 5(2) and sections 6(1).

<sup>103</sup> See section 3 (NEW) of the 2006 Law on Judicial Organization as amended on the classification of Courts in Cameroon.

<sup>104</sup> See, Section 478 of the Cameroon CPC.

<sup>105</sup> See, Section 271 CPC.

CPC and it is manifested in five essential components: the right to be present during trial <sup>[112]</sup>, the right to counsel <sup>[113]</sup>, the possibility of legal aid, the right to be tried in the language the accused understands and the right to be granted adequate time to prepare for the trial.

### 3.2.10 Prohibition of second trial for same offence

No one shall be liable to be tried or punished again for an offence for which he or she has already been finally convicted or acquitted. In criminal procedure, this is aimed at upholding the principle of non bis in idem, otherwise known as the principle against double jeopardy. Under the CPC, the accused can plead the defence of *autrefois acquit* or *autrefois convict* <sup>[114]</sup>. These are special pleas in law. The *raison d'être* for this plea is that a person shall not be tried twice for the same offence for which he had been previously discharged or acquitted, convicted or pardoned. It should be noted that the pleas of *autrefois acquit* and *autrefois convict* can be made and upheld only where certain conditions are satisfied. These conditions are; the accused must have been tried on the facts in issue <sup>[115]</sup>, the trial must have been done by a competent court <sup>[116]</sup>, there must be similarity in the facts of the charge, and that the trial must have ended with acquittal or conviction.

## 4. Other safeguards measures by the state to ensure fair trial and justice

The Cameroon lawmakers and competent authorities have also instituted general safeguards measures to ensure fair trial and justice. These includes; decentralization of justice, unity of courts, particular emphasis on the execution of court decision, the establishment of criminal records, special considerations given to some categories of persons under the CPC etc.

### 4.1 Decentralization of Justice

The administration of justice is decentralized with courts located at the level of Sub-divisions, Divisions, Regions and the nation as a whole. This decentralization has been prompted by the country's desire to bring justice nearer to the people, thus giving the litigants the possibility of seeking redress in court when need arises. This is however on papers as we have many areas not covered by courts thereby making the administration of justice a hideous task. It is recommended that government of Cameroon should match existing legal provisions in the 2006 Law on Judicial Organization with actions.

### 4.2 Unity of Courts

Apart from the decentralization of justice, there is the possibility of the unity of criminal and civil courts in Cameroon <sup>[117]</sup>. The same court handles civil and criminal matters because there is still a serious shortage of judicial personnel. It should be pointed out that Cameroonian judges do not specialize in any particular branch or area of law. There are no separate judges for criminal matters. That

notwithstanding, the current members of the audit branch of the Supreme Court have been trained on how to probe into state accounts.

### 4.3 Possibility of Entering a *Nolle Prosequi*

The possibility of entering a *Nolle Prosequi* could be considered as a step for the justice system to ensure the safeguard of fair trial and justice in Cameroon. The CPC empowers the Procureur General to enter on the express authority of the minister of justice a *nolle prosequi* at any stage of the proceedings before judgment on the merits is delivered as provided for in Section 64(1) CPC. The implementation of this measure is explained by the necessity to encourage harmony and national integration which a judgment may jeopardized under certain circumstances. However, the victim is not left without a remedy. In fact a civil action subsists and the victim may obtain damages for injury suffered <sup>[118]</sup>.

### 4.4 Special considerations given to some categories of persons under the CPC

In furtherance of safeguard for fair trial and justice, special attention have been accorded to juvenile, pregnant women as well as persons who are more than 60 years of age under the CPC. The prosecution and trial of Juveniles have been given special attention. According to section 700 (3) CPC, an infant shall not be prosecuted by direct summons except in the case of a simple offence. A minor from 12-14 years of age shall not be remanded in custody except when he is accused of capital murder or of assault occasioning death <sup>[119]</sup>. A minor aged between 14-18 years may be remanded in custody only if this measure is considered indispensable <sup>[120]</sup>. Infants shall be detained only in Borstal institutes or a special section of the prison meant for the detention of minors. Where there are no Borstal institutions or special sections of the prison, the infant may be detained in the prison for adults but must be separated from them <sup>[121]</sup>. Where minors are being transported or when they are brought before an Examining Magistrate or before the court, steps shall be taken to prevent contact with adult detainees or with the public <sup>[122]</sup>.

Special Courts to hear and determined matters involving minors have been set up both at the level of the Court of First Instance and the Court of Appeal. The special courts are composed of Magistrates of the bench and assessors <sup>[123]</sup>. Such assessors shall be appointed for a term of two years by a joint decision of the Ministers in charge of Justice and that of Social Affairs <sup>[124]</sup>. More so, all judgments delivered by courts sitting in cases of juvenile delinquency shall be exempted from stamp duties and shall be registered free of charge <sup>[125]</sup>.

The prison system has also been organized under the code to facilitate the social rehabilitation of the minor after the execution of his sentence or measure ordered. However, not only a convicted minor can benefit rehabilitation <sup>[126]</sup> from a

<sup>112</sup> See the provisions of Sections 349, 350 and 351 CPC.

<sup>113</sup> See the provisions of Sections 170, 352 and 417 of the CPC. In fact, the Cameroonian CPC provides for mandatory legal representation for capital offences.

<sup>114</sup> See Section 395(3) CPC Section 638(b) CPC.

<sup>115</sup> Police Vs Johnson, 1955 LLR 55.

<sup>116</sup> R Vs Hodge, 6 NLR 56.

<sup>117</sup> See for example Sections 59, 61, 63, 64(3), 71, 75, and 76 of the Cameroon CPC.

<sup>118</sup> Section 64(3) of the CPC.

<sup>119</sup> Section 704 of CPC.

<sup>120</sup> Section 705 CPC.

<sup>121</sup> Section 706(1) & (2) CPC.

<sup>122</sup> Section 707 of CPC.

<sup>123</sup> See, Sections 709(1) and 740(1) CPC.

<sup>124</sup> Section 709(2) CPC.

<sup>125</sup> Section 727 CPC.

<sup>126</sup> Rehabilitation is a measure which unless otherwise provided by the law expunges a conviction for felony or misdemeanor. It puts an end to any

conviction. In the case of death of the convict, the application may be followed up or even filed by his spouse, his ascendant or his descendant. In the case of the death of the applicant, any application for rehabilitation already filed may be continued by the Legal Department <sup>[127]</sup>.

Equally, pregnant women, persons who are less than 18 years and more than 60 years of age may not be imprisoned in default of payment of their fines <sup>[128]</sup>. With all this in mind, it can be concluded that CPC these special measure gives the code a humanitarian outlook.

#### 4.5 Particular Emphasis on the Execution of Court Decision

There is particular emphasis on the execution of Court decision with regards to pecuniary sentence, the conditions for the recovery of fines and cost have been meticulously set out and even offer the convict the possibility to be granted bail after the execution of the imprisonment warrant <sup>[129]</sup>. Section 560(1) CPC is to the effect that after the execution of the imprisonment warrant, the convict may request its suspension by furnishing a surety guaranteeing payment of the pecuniary sentence within a period of two months from the day following the signing of the recognizance by the surety <sup>[130]</sup>. By Section 572 of the CPC, when the duration of imprisonment in default has been served, no other order of imprisonment shall be made for the same debt.

#### 4.6 Establishment of Criminal Records

The code enables judicial authorities and other government departments to be informed of the criminal records of citizens. Section 573 of the CPC provides for the establishment of criminal records at the registry of each court of First Instance and at the Ministry in charge of Justice. The criminal records established at the registry of the Court of First Instance are known as *District index* and shall concern persons born within the jurisdiction of the said court.

The criminal records kept at the Ministry in charge of Justice are known as the *Central Index* and shall centralize particularly the index cards of the criminal records of persons of Cameroonian or foreign nationality born abroad; Criminal records of persons of foreign nationality born in Cameroon whose birth have not been declared at the Cameroonian civil status registry and who reside in Cameroon and Criminal records of persons of Cameroonian or foreign nationality whose place of birth is unknown or who have doubtful nationality.

#### 5. Challenges to the effective implementation of the safeguards for fair trial and justice in Cameroon

The Cameroonian legislator can seemingly be hailed for the enormous efforts made to clearly identify elements of fair trial and justice enshrined in both its domestic laws and international instruments duly ratified. The initiatives, which have greatly improved on the promotion and protection of human rights, is one that needs to be lauded after an in-depth examination of both the constitutional and statutory safeguard measures put in place to ensure that

litigants benefit from fair trial and justice in Cameroon. However, giving it hundred percent credits will of cause be a denial to accord objectivism in knowledge and wangling false tongue.

There is constant check and interference in the judiciary arm of the State. The interference of the executive power into the affairs of the judiciary greatly hinders the smooth administration of justice in Cameroon. This is because Article 37(3) of the 1996 Cameroon Constitution as amended gives the president of the Republic, who is the head of the executive arm of government, the *locus standi* to interfere in the judicial arm of the State <sup>[131]</sup>. This flaws the idea of judicial independence in Cameroon. It is on this note that an independent judiciary void of any form interference from the executive arm or the legislative arm of the State is vigorously recommended so as to guarantee the rights of fair trial and justice.

Equally, the low salaries base of most Magistrates and Judicial Police Officers have greatly contributed to the high rate of bribery and corruption in the judicial system. This has cause litigants to lose confidence in the whole procedure and thereby discrediting the idea of equality and fairness before the law. Some Courts, police stations and gendarmerie posts have been turn into business premises where judgments is sold in favour of the highest bidder. Most of the money collected in court at times does not reach the state coffers. Despite the existence of the anti-corruption unit (CONAC), the follow-up is not effective. It is therefore recommended that an increase in the salary base of these legal officers as well as increase in social benefits will go a long way to better off the effective implantations and administration of justice. The government should also commit herself genuinely to the fight against bribery and corruption.

With the advent of the crisis in the English Speaking regions of Cameroon in late 2016, many arbitrary arrests have been conducted without respecting the rights of neither the suspects nor the accused. More so, most of them are always subjected to inhuman treatment and summary executions especially those suspected to be separatists. These are fundamental breach of the rights to fair trial and justice enshrined the constitution, international conventions duly ratified and national statutes. Equally, the use of vague words by the CPC without clear definition has also encouraged the violation of certain rights of the suspects or accused. For example the use of “reasonable force” as stated in section 20 (2) is vague and encourages torture on any suspects who might resist arrest. It is submitted that with the clarity of these provisions in the code, it will go a long way to fortify the safeguards for fair trial and justice.

In Cameroon, there is generally the problem of language barrier especially with suspects arrested from the English speaking jurisdictions and ferried to the French speaking jurisdictions for trial. At times, the suspects are not really aware of the exact charges against them since the “Proces Verbale” is mostly drafted in French. It was believed that the putting in place of the National Commission for the

accessory penalty and to any preventive measure except to confinement in a health institution and closure of an establishment.

<sup>127</sup> Section 678 CPC.

<sup>128</sup> Section 565 of CPC.

<sup>129</sup> Sections 559-560 CPC.

<sup>130</sup> Section 558 (1) CPC.

<sup>131</sup> The Article makes the President of the Republic the guarantor of the independence of the judiciary, appoint members of the bench and legal department, be merely assisted in this task by members of the Higher Judicial Council, and nominate members of the bench and shall implement discipline actions against judicial and legal officers with the Higher Judicial Council merely acting as opinion givers.

Promotion Bilingualism and Multiculturalism in 2017<sup>[132]</sup> could be a Saving Grace. After about five years of its existence, its impact is yet to be clearly ascertained especially in the field of judiciary.

Another challenge is at the level of having a competent interpreter so as to ensure the right of an accused to an interpreter. Most issues faced at this level result from the difficulty to get hold of a fluent and competent interpreter who will be able to listen, interpret and transpose the exact intensions of the accused or the court especially with the difficulty in perfectly comprehending the two official languages. It becomes more difficult in rural areas where most accused persons are local farmers who can neither speak nor write in the two official languages but of their native language.

Apart from that, there are some of the rights that are constantly violated especially the right to medical attention, as many prisoners have lost their lives because of inadequate medical assistance.

The challenge faced under the notion of bail cannot be overemphasized. Some judicial authorities tend to extort huge amount of money from accused persons in the guise of granting them bail. The disturbing part of it all is that some of the money collected does not enter the state treasury because it ends in private pockets especially when the accused fails to collect receipts. As a rule, bail ought to be granted to an accused person whenever trial will not take place within a reasonable time. This is mostly not respected. The decentralization of justice is not effective. Most Sub Divisions and Divisions in Cameroon are not covered with courts as stipulated in the Judicial Organizations Law of 2006 as subsequently amended<sup>[133]</sup>. The law is simply a paper tiger. Despite the special considerations given to juvenile in Cameroon under the CPC, the Military Courts in Cameroon still try minors without taking into considerations these special considerations accorded to juvenile.

## 6. Conclusion

Cameroon is a State that respects the rule of law in keeping with the sacrosanct principle of Article 1-1 of the Penal Code<sup>[134]</sup> which is also found in other international instruments duly ratified. The application of every law, especially procedural law is instrumental and imperative for the machinery of justice to be effective. The commission of crimes is an inevitable aspect that is plaguing every society whether with bonded principles or not. Conscious of this, Cameroon has been able to identify sacrosanct principles of fair trial and justice which are embedded in the constitution in keeping with international standards. National statutes have been able to reinforce same. Cameroon as a country bonded under the auspices of recommended and recognized criminal and procedural dispositions ensures that the rights of the parties during the pre-trial and post-trial processes should be respected and enforced by the competent judicial authorities. It is experienced that, even though with all these measures put in place to ensure the effective guarantee of

fair trial and justice, the implementation and enforceability has been problematic and questionable. To expunge the drawbacks x-rayed in this paper and attain the objectives spelt out in the above-mentioned law, the government of Cameroon must take proactive measures, take the challenge to step up the enforcement of already existing laws regulating the rights of fair trial and justice as will give a positive look to the various recommendations advanced in this paper.

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<sup>132</sup> The commission was created by Presidential Decree No. 2017/013 of 23rd January 2017 as an advisory body with legal personality and financial independence. The commission is placed under the authority of the President of the Republic.

<sup>133</sup> See sections 13 and 16 of 2006 Law on Judicial Organization as amended.

<sup>134</sup> Section 1-1 PC is titled "No exemption" and it states that "all persons shall be subject to the criminal law".

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