PARTICIPANTS' PAPERS

THE ROLE AND FUNCTION OF PROSECUTION IN CRIMINAL JUSTICE

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I. INTRODUCTION

Cameroon is a country situated in central Africa which has a population of approximately 14 million people, spread over landscape with diverse physical features, on an area of about 475 square kilometres. There are about 250 tribes which communicate in different national languages. This diversity has earned the country the appellation "Africa in miniature".

Two official languages are spoken in Cameroon, i.e., French and English, which illustrate the country's bi-cultural historical background. The legal system is bi-jural with the modern law inherited from the British common law and the French civil law systems on the one hand and the customary law on the other.

The common law system is in practice in the English-speaking north-west and south-west provinces of what was West Cameroon, in the former federal republic. In the remaining provinces of French-speaking Cameroon, the civil law system prevails in what is about eighty percent of the country. For the purpose of this presentation, no further reference shall be made to the customary courts, as they have no criminal jurisdiction. The military tribunals and other special courts shall not be discussed as they concern specific categories of offences and offenders.

On 20 May 1972, the late A. Ahidjo, the former President of Cameroon, obtained popular consent by referendum to transform the country into a unitary state. One of the direct consequences of this re-unification would be the harmonisation of the common law and civil law systems and the integration therein of purely Cameroonian concepts and customs, so as to better meet the aspirations of the people. Needless to say, this has been a slow and difficult process, hampered by both technical and political considerations. Considerable efforts have been made, and the country can boast of several statues which reflect these pre-occupations. The organisation and functioning of the Judiciary is regulated by one ordinance. The laws which organise the professions of barrister, bailiff and notary public are all applied nationwide. Ordinance No. 72/4 of 26 August 1972 and its subsequent amendments have harmonised the administrative organisation and the attributions of the courts but, more especially, the legal department. There exist differences related to the mode of collection of evidence and the manner in which it is adduced in court. The personnel of investigative agencies, irrespective of the areas where they perform their functions, receive their training in the same national institutions. Likewise, judicial and legal officers undergo the same academic and professional training in both official languages and are initiated to the fundamental principles of the different legal systems. The National Assembly adopted the Cameroon Penal Code in 1967. The draft bill of a harmonised criminal procedure should be completed in the near future. Sustained efforts are made to adapt existing legislation to the ever evolving social and political context, by integrating therein different notions of human rights,

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democracy, environmental protection, gender equality, etc.

The adoption of Law No. 96/6 of 18 January 1996 to amend the constitution of June 1972, amongst other innovations, significantly modified the status of the Judiciary, which was elevated from the ranks of a mere authority, to a full power, thus becoming the third effective arm of government. A substantial judicial reform is currently underway at the Ministry of Justice to adapt existing legislation to this state of affairs, and to redefine the relationship between the Judiciary and the other powers, more especially with the Executive.

II. ORGANISATIONAL STRUCTURE

In Cameroon, judicial power is exercised by the Supreme Court and other ordinary courts. The basic statutes regulating the organisation and functioning of these courts are Ordinance No. 72/5 of 26 August 1972 and its subsequent amendments and Ordinance No. 72/4 of 26 August 1972d its subsequent amendments. Judicial and legal officers are governed by Decree no. 95/48 of 8 March 1995 on the status of magistracy, which regulates all issues relating to their respective careers.

It has already been stated that Cameroon has one penal code. The prosecutorial systems used to implement this code differ substantially. In the common law jurisdictional area where the adversary system prevails, the basic statutes used are cited as " 'The Criminal Procedure Ordinance' Cap. 43 of the Laws of the Federation of Nigeria" (CPO), and "The Evidence Ordinance Cap. 62 of the 1958 Laws of the Federation of Nigeria" ('Evidence Act). Under the civil law jurisdictional area, the system adapted in referred to as inquisitorial and the procedure code cited as "Code d'Instruction Criminelle' " (CIC).

The term legal department is used in the general sense to translate the French term "parquet" or "ministere public" i.e., the department of public prosecution. The legal department is an integral part of the court. It must be present during all criminal proceedings, its presence is optional in civil matters. Though the legal department is a party to proceedings initiated subsequent to the violation of criminal law, resulting in loss to one or more individuals and disrupting social order, it must exercise a fair amount of impartiality in the execution of its functions, so as to ensure a proper application of the law to all including the suspect. The objective of the prosecution must remain the fair application of the law. The State counsel must ensure that this policy is reflected at all stages of the administration of criminal justice.

A. Court Structure

The administrative set up of the courts is based on the organisation of the administrative units in the country. There is one Supreme Court, which functions as a "Cour de Cassation," ten Courts of Appeal at the provincial level, a High Court for each division, and a Court of First Instance at the level of the subdivision. In practice, however, some High Courts cover more than one division and some Courts of First Instance more than one subdivision.

B. Criminal Jurisdiction of Courts

The provisions of the penal code determine the penalties for different offences. The classification of these offences constitutes the basis for the determination of the competence of the courts in criminal proceedings. The Supreme Court is a court of law and does not go into the merits of the case, but verifies that there is no violation of the law, in the judgements from the Courts of Appeal. If it finds that there has been such violation, the judgement in issue is

quashed and the case referred to a different Court of Appeal to be tried afresh. A case may thus be referred to different appeal courts twice. If an appeal is lodged to the Supreme Court a third time, then the court will hear the case on the merits and its decision is final.

Appeals are filed at the Courts of Appeal directly from the High Courts and Courts of First Instance respectively. Under the CPO, the Court of Appeal does not judge facts. Its judgement on points of law rely on findings based on facts as decided by the trial court. Under the CIC, court proceedings are recorded differently. The Court of Appeal reviews both facts and law.

The High Court is competent to hear and determine felonies, i.e., offences for which the minimum term of imprisonment is more than ten years to the death penalty. The Court of First Instance is competent to hear and determine misdemeanours, i.e., offences for which the maximum term of imprisonment is ten years; and petty offences, i.e., offences for which the maximum term of imprisonment is ten days. Upon conviction, the Court of First Instance may award civil damages amounting to more than five million francs, which is the maximum award of damages in civil cases. In addition to imprisonment, the court may choose other sanctions from a wide array of other principal and accessory penalties.

Minors, i.e., persons aged below 18 years at the time of commission of an offence, are tried before the Court of First Instance. These trials are conducted in camera. However, where the offence was committed in the company of adults, all the suspects are tried before the High Court. In this case, the penalty imposed on the minor after conviction is less severe. Complex misdemeanours may also be tried in the High Court. Territorial competence is regulated by procedural rules.

C. The Characteristics of the Legal Department

Two fundamental principles influence the execution of prosecutorial functions by legal officers by the legal department namely:

- subordination to instructions from hierarchy; and
- indivisibility of action by the legal department.

1. Subordination to Instructions from Hierarchy

The legal officers in charge of prosecution at different levels of the court structure, direct and control all actions conducted by the officers in their respective chamber. They are accountable before hierarchy. Some or all of these functions may be delegated to other legal officers within the chambers under conditions set out in the ordinances on judicial organisation and the decree on the status of magistracy respectively. No legal officer may be appointed to functions which place a senior legal officer under his authority. A relationship of subordination exists amongst the legal officers in the same chambers, between the chambers of the Procureur General and all the State Counsel Chambers in the same province and between the Minister of Justice, keeper of the seals and all the legal departments. The Minister of Justice is a member of Cabinet.

2. Indivisibility of Action by the Legal Department

Legal officers appointed to different functions in the same chambers may execute the same concurrently or in succession, both in Chambers and before the different courts.

Legal officers appointed to functions at the legal department may assist or replace other legal officers in their prosecutorial functions in different State Counsel's Chambers in the same province.

D. Legal and Judicial Officers

Magistrates in Cameroon are referred to as judicial or legal officers, the former exercising their functions on the bench and the latter as prosecutors within the framework of the legal department. The term "legal department" in a strict sense refers to the office of the Procureur General who is the head of the prosecution department at the Court of Appeal. He is assisted by one or more Advocate-General, one or more Substitut-General and in some cases one or more Attaché. The different appellations reflect the seniority of the officers in decreasing order. They are of equal rank as members of the bench in corresponding functions in the courts. For purposes of protocol, the judicial officers take precedence. At the High Court and the Court of First Instance, the head of the prosecution department is the State Counsel who may be assisted by one or more deputy State Counsels. The number of officers in the legal department depends on the classificaiton of the courts according to criteria determined by the Ministry of Justice.

Magistrates working in the Ministry of Justice or on secondment in other organisations are assimilated to legal officers and are subjected to the same regime for promotions, transfers or disciplinary measures. The organ which processes such files is the National Classification Commission, while the organ which manages the careers of judicial officers is the Supreme Council of Magistracy presided over by the Head of State. The proposals and recommendations from these two bodies if met with approval are confirmed by Presidential decree. It is important to note that there are no clear cut demarcations within the magistracy; legal and judicial officers may be appointed to different functions on the bench or in the legal department indiscriminately and at any stage of their respective careers, depending on the exigencies of service.

E. Qualification of Prosecutors

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.

III. THE ROLE OF THE PROSECUTION AT THE INVESTIGATION STAGE

The criminal process commences after the commission of the offence. The victim, witness, or any person having knowledge of the circumstances may report them orally or in writing either to the State Counsel, or any other investigative agency. When the report is lodged at the State Counsel's chambers, the State Counsel shall forward it to the competent investigative agency with specific instructions as to the manner in which investigations should be conducted.

Generally, the judicial police is competent to investigate felonies and complex misdemeanours nationwide and participates in international

investigations. The public security police investigates misdemeanours and petty offences in the major cities and towns. The gendarmerie conducts investigations in the rural areas, where police structures are in existence or inadequate. Specialised agencies conduct investigations in relation to special offences in specific sectors such as the customs or forestry departments.

In the conduct of investigations, the police and gendarmes act as judicial police officers, and assist the judiciary in the performance of some of their duties under the authority and control of the State Counsel. They are "auxiliaries of justice". For all other considerations such as promotion transfers, disciplinary measures and other purely administrative matters, they revert to the authority and control of their superiors within the police and gendarmerie respectively.

Under the Ordinance on Judicial Organisation, the State Counsel has absolute power to personally conduct investigations for all offences. However, in practice, he intervenes in relation to serious offences such as murder, assassination, particularly sensitive cases or those involving senior officials. If dissatisfied with the conduct of investigations, he may instruct the investigator to change his mode of investigation, as well as order fresh or complimentary measures. The investigative agencies are all under ministries other than the Ministry of Justice. The Prisons Department and Social Welfare Services, which are involved in the administration of criminal justice, also belong to different ministries. There is insufficient cooperation between these services and the Ministry of Justice, which lacks adequate resources to ensure effective coordination of different activities.

A. Arrest and Detention

A suspect may be arrested with or without a warrant, after which he must be taken to the place reserved for the reception of arrested persons and informed of the charges against him. He must be provided reasonable facilities to enable him obtain legal advice, bail where applicable, and to permit him to prepare his defence in view of his release. The police and gendarmes shall report to the State Counsel all persons arrested with or without warrants within the jurisdiction. When it is lawful or necessary, the judicial police officers may arrest any person suspected of having committed an offence. In principle, a person shall not be arrested without a warrant except in cases of "flagrant delit". The State Counsel may control the structures used by investigating agencies for the detention of suspects.

Basically, there are two types of investigations: preliminary investigations and flagrant delit investigations. Where a suspect is arrested in relation to a case of flagrant delit, the police shall conduct him to the nearest State Counsel within 24 hours; and, if the State Counsel is not available, before the nearest legal officer within the jurisdiction. The suspect may only be detained thereafter by order of the State Counsel or the said legal officers. The said order is valid for 24 hours and may be extended thrice. Thereafter, if investigations are not completed, the suspect must be released. This form of detention is called "garde à vue," or police custody. In the north-west and south-west provinces, a statement after the administration of the words of caution is recorded from the suspect, and if he presents sufficient surety he may be granted bail.

In the rest of the country, there is no police bail. In simple cases, the police may close the file and release the suspect in the face of insufficient evidence or where an alternative solution is preferred to eventual prosecution. Otherwise, the suspect is transferred to the State Counsel with his file, where he may either be remanded in

custody awaiting trial, (preventive detention) or allowed to appear for the rest of the proceedings as a free man.

When an offence is committed in the presence of a legal officer within his jurisdiction, he may arrest the suspect himself or order for his arrest and remand him in custody pending investigations preceding summary trial. The State Counsel may, if he deems it fit, by endorsement on the warrant direct that the person be released on bail, upon his entering into recognizance for his appearance as may be required on the endorsement. A person suspected of an offence punishable with death shall not be admitted into bail, except by the judge of the High Court. If he is in prison custody, the court shall issue an order of release to the officer in charge of the prison or other place of detention and such officer on receipt of the order shall release him.

The conditions under which the suspect may benefit from bail are specific by law. When admitted to bail, the suspect shall only appear before the State Counsel as directed. When the accused person is arraigned before the court, this bail is substituted with court bail. The prosecution may object to an accused person being released on bail by the court, even in respect of a bailable offence on serious grounds. Though this objection is not binding on the court, it is given due consideration and upheld where the circumstances so warrant.

B. Warrants

The State Counsel has wide powers to order any measures necessary during investigation to enable him obtain evidence which will contribute to the manifestation of the truth. It is in this regard that warrants of arrest, search warrants remand warrants, etc. are his prerogative. Investigating officers do not have the power to issue these warrants, which are however executed either by the investigative agencies or with their assistance, under the supervision and control of the State Counsel.

IV. THE INITIATION OF PROSECUTION

The provisions of section 23 (1) and (2) of the Ordinance on Judicial Organisation, authorise the State Counsel in criminal matters and without prejudice to the rights of the victim, to investigate and record offences, conduct judicial inquiries and investigation, institute proceedings and investigations, issue arrest and detention warrants, and refer cases to the competent courts.

A. Prosecutorial Discretion

The State Counsel has absolute discretion as regards initiation of criminal proceedings. Even where there is sufficient evidence, the State Counsel may refrain from prosecution, if this is not the most suitable solution or if prosecution may jeopardize other interests. This discretion is subject to an internal check to control abuses by the principle of subordination to hierarchy.

The evidentiary standard required to indict a suspect is a prima facie case. Under the CPO, when investigations are completed, the investigating officer forwards the file along with any exhibits to the State Counsel recommending what action should be taken in his report. The State Counsel determines the final outcome of investigations.

Under the CIC, the file is forwarded to the State Counsel with the suspect. The State Counsel may release him or remand him in custody awaiting trial. The complete case file is then transmitted to the competent court, so that the trial judge may take cognizance of its contents before the trial.

B. Preliminary Inquiry

Preliminary inquiry is the investigation of a criminal charge by an examining magistrate, with a view to the committal of the suspect before the appropriate court. This investigation is conducted in Cameroon, not by a judicial officer as is the case in most countries, but by the State Counsel. He is assisted throughout the inquiry by a court registrar, who records all statements and performs other clerical functions. The absence of the registrar during the inquiry renders the whole process null and void.

The conduct of the preliminary inquiry is regulated by the ordinance on judicial organisation. State Counsels, have the same attributions under both prosecutorial systems. Any differences, in the mode of implementation arise essentially from divergencies under procedural rules.

Preliminary inquiries are, save for contrary legal provisions, obligatory in cases of felonies, and optional for misdemeanours and simple offences. The objective of the inquiry is to ascertain that there is sufficient evidence to justify the accused person being put on trial. At the end of the inquiry, the State Counsel makes an order which either commits the accused person before the competent court or closes the file and discharges him. This discharge does not bar the prosecution from conducting another inquiry on account on the same facts.

V. THE ROLE OF THE PROSECUTION AT THE TRIAL STAGE

A. In the Common Law Jurisdictional Areas

The prosecution prefers charges for misdemeanours and petty offences, bills of indictment where the offence committed is a felony, or the accused person is indicted in the High Court. The charge sheet or bill of indictment is filed at the registry of the competent court, where the chief registrar ensures that it is registered. The case is enrolled on the cause list at the date suggested by the legal department and for which service has been effected on the parties.

When the matter is called in court for the first time, the accused person is arraigned and his plea recorded. In most cases, accused persons cannot afford legal assistance, which may be obtained under the conditions prescribed by law. When standing trial for a felony punishable with death, the court appoints defence counsel for the accused person from the private bar. The cost of his defence is borne by the State. When the accused person does not have counsel, it is the duty of the court to ascertain that the accused person understands the legal issues at each stage of the proceedings, and that his rights are protected.

Following a plea of guilty, the court calls on the State Counsel to present the facts of the case. All exhibits including the statement recorded from the defendant are then tendered in evidence with leave of the court. The accused person is given the opportunity to make an explanation. If the court is satisfied from his explanation that the accused person fully understood the implications of the plea, and that he is not putting up a defence, it shall make a ruling convicting the defendant. State Counsel then discloses the past criminal record of the convict to the court. The defendant is invited to make an allocutus, which is a plea for leniency before sentencing. If the court finds that the defendant did not intend to plead guilty, his plea is substituted with a plea of not guilty, and a full trial is conducted.

Where the accused person enters a plea of not guilty, the case is adjourned to a further date to enable the accused person to prepare his defence. At the hearing, the witnesses for the prosecution are called commencing with the complainant, and the

investigator is usually called as the last witness. They are led under examination in chief by the State Counsel, subjected to cross-examination by the accused person or his counsel, and re-examined by the State Counsel to clarify any issues which arose under cross-examination.

There is little or no consultation and close collaboration between the State Counsel and defence counsel. The two are engaged in a "legal battle" and disclose their intentions or strategies only when required to do so by the law or the court. All evidence is adduced during the trial with leave of court, and the other party may object to its admissibility in evidence. The court must make a ruling for every application. The conditions of admission, i.e., the weight to be attached to evidence, are determined by strict exclusionary evidential rules.

Great skill is necessary to be an efficient prosecutor or good defence counsel, and these skills can to a great extent influence the final outcome of the proceedings. At the end of the case for the prosecution, the court makes a finding as to whether or not a prima facie case has been made against the accused person. When a prima facie case has been made against the accused person, the court invites him to make a defence and remain silent. He may testify from the dock, or opt to testify on oath. The standard of proof necessary to secure a conviction is beyond a reasonable doubt and this onus rests on the prosecution and may only shift under specific circumstances provided by law.

Opening addresses may be made at the commencement of the trial. This practice is observed before the High Court, but often omitted in the Court of First Instance. The same applies to the closing address. In the address, both the defence counsel and the State Counsel summarize the facts of the case, analyse the evidence adduced and review the different legal issues raised in the course of the trial. It is at this stage, that the State Counsel may make recommendations relating to sentencing to the court. The order of addresses is established by rules of procedure, and the defence counsel has a right to reply. Thereafter, any further reply can only be made on point of law after leave of court. It is important to note that addresses are not part of the trial and their contents are not binding on the court.

In cases involving petty offences and misdemeanours, the court may pass a verdict and proceed with sentencing immediately after the trial. For felonies and serious midemeanours, the court usually adjourns to a further date for judgement and sentencing. The sentence is executed immediately by bailiffs under the control of the State Counsel. However, in the event of an appeal, execution of the sentence is suspended.

B. In the Civil Law Jurisdictional Areas

Upon indictment, the complete case file (and the past criminal record of the accused person) is sent to the court, so that the trial judge may take cognizance of its contents before hearing.

When the case is called for the first time the court proceeds to the verification of the identity of the accused person and records his plea. As is the case in the north-west and south-west provinces, accused persons usually plead not guilty. The evidentiary rules under the CIC are not strict. The trial is conducted in an inquisitorial manner, where the presiding judge has wide powers and plays an active role in the effort to arrive at the manifestation of the truth. The standard required for conviction is about that of a prima facie case. The intimate conviction of the judge determines the final verdict.

The defendant does not testify on oath, as he is under no obligation to tell the truth. He may choose to remain silent throughout the proceedings. The defendant is

presumed innocent until proved guilty but the onus seems to rest on him to prove that he did not commit the offence.

At the end of the trial, the State Counsel makes a submission to the court similar to the closing address under the CPO. The defence counsel replies thereto and the defendant is the last person to address the court, if he so wishes. The case is usually adjourned for the verdict and sentencing, and the judgement is often drafted subsequently. The sentence is not executed until the time allowed for appeal expires, unless the court orders otherwise. Judgements are executed by bailiffs under the control of the State Counsel.

C. Suspension of Prosecution

The State Counsel may suspend prosecution with leave of court, under various sections of the CPO. Section 284 refers to withdrawal by the State Counsel following an application by the victim to withdraw his complaint. The State Counsel may, under section 75 of the CPO and at any time before judgement, obtain leave of court to suspend prosecution. There are others, perhaps the most interesting is the Nolle Prosequi. This is an application made orally or in writing by the State Counsel to the court indicating that the prosecution does not intend that the proceedings continue, under section 73 of the Evidence Act. Unlike other applications for suspension of prosecution, the State Counsel need not offer the court an explanation, and the court is bound to grant the prayer.

The effect of suspension will vary depending on the stage at which the application was made to the court. In all cases, the court should specify whether the accused person is discharged or acquitted. Generally, where the accused person is not called upon to put up a defence, he is discharged; and if he is asked to make a defence, he is acquitted. The prosecution may subsequently prefer a fresh charge on account of the same facts following a discharge. An acquittal, operates as a bar to prefer a fresh charge on account of the same facts.

Under the CIC, once criminal proceedings have commenced, they must continue till completion. It is important to note, that contrary to the situation under the CPO, an accused person may be tried and convicted in absentia.

D. Plea Baragaining

There is no plea bargaining in Cameroon.

E. Private Prosecution

Private prosecution is possible both under the CIC and CPO for petty offences and some misdemeanours. In practice, this right is not exercised in the north-west and south-west provinces. Details of the procedure will not be discussed here. At the trial, however, the State Counsel is a party to the proceedings. His submissions are usually limited to an analysis of the legal issues and the impact of the offence committed, on public order.

The "constitution de partie civil", though a civil law notion, applies in the north-west and south-west provinces under the Ordinance on Judicial Organization. By this procedure, the victim of an offence may file a civil claim for damages for any loss resulting from the commission of an offence, at the same time as his complaint. It is not the duty of the State Counsel to establish the civil claim, he may, however, address the court on the issue in his submissions, where the claim is justified and make any recommendations as to the quantum of damages to be awarded to the victim.

VI. SENTENCING

The principles of sentencing are set out in Book One of the Penal Code. Sentencing is the prerogative of the Judge. The role of the State Counsel in sentencing is to assist the court in arriving at an appropriate sentence, by providing it with maximum information as to the circumstances under which the offence was committed and any previous criminal record that the convict may have. Any recommendations as to sentencing, general or detailed, are not binding on the court.

VII. THE RIGHT TO APPEAL

Where the State Counsel is dissatisfied with the judgement due to any violation of legal provisions or inappropriate sentencing, he may refer the judgement to the Court of Appeal for review.

VIII. CONCLUSION

The harmonisation of the legal systems and the judicial reform referred to earlier are both ambitious and by no means easy objectives to attain. There are numerous, political, social and legal considerations to address and sometimes divergent interests to reconcile. The political authorities at the highest level of the State have expressed their commitment to see the process through, and laudable efforts are being made to secure necessary funding.

While awaiting the successful completion of the process, the necessity for the effective and diligent execution of their respective duties by the personnel involved with prosecution at different levels cannot be overemphasized. Moral integrity should be a prerequisite for integration into the magistracy, and the violation of professional ethics should be severely sanctioned. Pecuniary and other professional incentives should be afforded to the personnel of the legal department and investigative agencies, so as to prevent and abate corruption as well as other forms of professional malpractice. There is a need for increased cooperation within the Magistracy and the investigative agencies and greater collaboration with other services involved in the different phases of the administration of criminal justice.