

# Access to Justice and Human Rights Protection in the Common Law Jurisdiction in Cameroon: Problems and Prospects

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**Abstract:** The article examines the importance of access to justice as an essential instrument for the protection of human rights in Cameroon. It demonstrates that the fundamental rights of persons are best protected and enforced through the process of access to the court. The article further unravels the reality of the Cameroonian situation and posits that there are several obstacles to the realization of access to justice in the country. These obstacles, such as undue delay in the administration of justice, high cost of litigation, reliance on technical rules, locus standi, and illiteracy, are examined in turn, in validation of the proposition. Finally, it inquires on the prospects for improvement of access to justice in Cameroon by advocating for judicial reforms, the resort to alternative dispute resolution mechanisms, less reliance on technical legal rules, and the availability of legal aid schemes as decisive measures liable to positively impact on the quest for the protection of human rights in the country.

**Keywords:** Access to Justice, Human Rights, Protection and Courts

## Introduction

The political and constitutional developments of Cameroon are intertwined with the quest for the promotion and protection of human rights in the country. From the Preamble of the Constitution<sup>1</sup> and other local legislation,<sup>2</sup> issues pertaining to human rights have received merited attention in legal and political discourses even though their application leaves much to be desired. There have been sustained struggles for the protection of the human rights of individuals, groups, and communities in Cameroon. The Supreme Court<sup>3</sup> and the Court of Appeal decisions<sup>4</sup> are eloquent testimonies of this concerted effort to promote and protect human rights and access to justice in the country. While the purpose of the former was to give a death blow to the customary practice embedded in patriarchy, which is based on the belief that women cannot administer or own property, the later examined instances of human rights abuses directed against women.

These decisions to a large extent signalled the concern of the government to correct the last mistakes of human right abuses. While these formalistic approaches can easily be mentioned, the same cannot be said of the actual implementation of mechanisms designed to facilitate the realization of basic human rights. This is because there is a wide gulf between official pronouncements of respect for human rights, and their actual implementation. The explanation for this appears to be that there still exist a number of substantive and procedural obstacles or impediments that not only inhibit the actual implementation of such measures, but

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<sup>1</sup>Law No 96/6 of 18th January 1996 as amended by Law No. 2008/1 of 14 April 2008

<sup>2</sup>Law No 2004/16 of 22 July 2004 to set up the National Commission on Human Rights and Freedoms (NCHRF) Amended and supplemented by law No 2010/4 of 13 April 2010, Law No 90/53 of 19 December 1990 Relating to Freedom of Association. Amended and supplemented by law No 99/11 of 20 July 1999, Law No 90/56 of 19 December 1990 relating to political Parties.

<sup>3</sup>*Zamcho Florence Lum v. Chibikum Peter Fru*, Supreme Court judgment No 14/L of 14 December 1993 Reported in CCLR part 5

<sup>4</sup>*Fomara Regina Akwa v. Fomara Henry Nche*, Appeal No BCA/11c/97 reported at (2002) 1 CCLR 1—122 Part 9.

preclude the masses in general from having access to justice in the Common Law Jurisdictions in Cameroon.<sup>5</sup>

The question is then what are these impediments and how can they be surmounted to guarantee access to justice for the vast majority of Cameroonians? Are there any in-built mechanisms that can be deployed to ensure the attainment of access to justice in the country? What has been the response of the government to the quest for the enforcement of basic rights through increased access to justice?

This article seeks to examine these questions and to chart a new course in the quest for the promotion and protection of human rights in Cameroon through enhanced access to justice. The concept of access to justice and its relationship it fosters with human rights are discussed, prior to examining the various substantive and procedural obstacles conspiring against effective access to justice. In conclusion, the article proposes measures aimed at ensuring that the legal system respond to the aspirations of Cameroonians by guaranteeing improved access to justice for all thereby enhancing the protection of human rights in the entity.

### Conceptual Framework

Access to justice can be looked at from two main perspectives: The narrow and the wider senses. In the narrow sense of the terms, it can be said to be co – extensive with access to the law courts while in the wider connotation it embraces access to the political order, and benefits accruing from the social and economic developments in the country.<sup>6</sup> One may therefore say that, generally speaking, access to justice implies access to social and distributive justice.<sup>7</sup> It is however important to underscore the point that these perspectives are not necessarily disconnected since the extent to which one can have distributive justice in any system is largely determined by the level and effectiveness of social justice in the country. The consequence of this is that any discussion of one aspect of the concept will necessarily entail a reference to enjoy and ensure the realization of any other right, whether civil, political or economic. Thus, while this article will emphasize the concept from the narrow perspective, the wider conception of the term will also be incorporated in the analysis.

Bearing this in mind, one may therefore say that, access to justice<sup>8</sup> refers to the substantive and procedural mechanisms existing in any particular society designed to ensure that citizens have the opportunity of seeking redress for the violation of their legal rights within the legal system<sup>9</sup>. It focuses on the existing rules and procedures to be used by citizens to approach the courts for the determination of their civil rights and obligations<sup>10</sup>. It has been said<sup>11</sup> that access to justice is not limited to the procedural mechanism for the resolution of disputes but includes other variables like the physical conditions of the premises where justice is dispensed, the time it takes for the delivering of justice, the moral quality of the dispenser of justice, the observance of the general principles of the rule of law, the affordability of the cost

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<sup>5</sup>The Common law jurisdiction in Cameroon historically refers to the portion of Cameroon that fell under British administration following the participation of the territory in 1918, with the defeat of Germany during WWI. The portion of the country is represented by the regions of the North West and South West that inherited English common law tradition at independence.

<sup>6</sup> See Chukwudifu A. Oputa, *In the Eyes of the Law* (Friends Law Publishers, 1992), P.50.

<sup>7</sup>Social justice is a concept of fair and just relations between the individuals and society. This measured is by the explicit and tacit terms for the distribution of social wealth, opportunities for personal activity, and social privileges. Distributive justice on its part concerns the socially just allocation of resources. Often contrasted with the administration of law, distributive justice concentrates on outcomes. Found in <https://en.m.wikipedia.org> last visited 6/07/2021

<sup>8</sup>According to John Rawls, justice is the principle that free and rational persons, concerned with furthering their own interest, would accept in an initial position of equality as defining the fundamental terms of their association. What this position supports is that while each person has different ends and goals, different background and talent, each ought to have a fair chance to develop his or her talents and to pursue those goals –fair equality for opportunity. It's not a race or contest where the talented or gifted prevails; it should be complete cooperation among all so that there may be reasonable life for all. (Found <https://en.m.wikipedia.org> (Last visited 6/07/2021)

<sup>9</sup>S. Nlerum Okogbule, "Access to Justice and Human Rights protection in Nigeria: Problems and Prospects", *Conectas Human Rights Journal*, Edicao V. 2-N. 3- Jan/2005

<sup>10</sup> Ibid

<sup>11</sup> Ibid

of seeking justice in terms of time and money, the quality of the legal system.<sup>12</sup> Access to justice so explained is therefore a core right essential for the protection and promotion of all other civil, cultural, economic, political and social rights<sup>13</sup>.

It is therefore apparent that access to justice is a charged concept that embraces the nature, mechanism and even the quality of justice obtainable in a society as well as the place of the individual within this judicial matrix. It is also important to underscore the fact that access to justice is undeniably an important barometer for assessing not only the rules of law in any society but also the quality of governance in that society.<sup>14</sup>

While justice itself is an elusive concept,<sup>15</sup> it can loosely be said that it implies equality and fairness; and for there to be meaningful access to justice, there must be some element of fairness and equity in a system to guarantee the realization of the basic fundamental rights. Moreover, to enhance access to justice in any society, it is necessary for certain basic infrastructure to be put in place and the requisite number and quality of the personnel involved in the scheme. For instance, where the courts are not sufficiently manned, or manned by men and women who are morally depraved, then such a court can hardly guarantee social justice to its litigants.<sup>16</sup> Indeed, corrupt judicial officers may very well act as serious impediment to the attainment of justice even where the infrastructures and legal instruments are well – wrought and structured.<sup>17</sup>

It is a well-known fact that, relative to the economic situation in Cameroon, the cost of litigation in the country is so high that the ordinary Cameroonian can hardly afford adequate legal representation when he has a legal matter to pursue before the ordinary statutory courts. This is more so if one considers that the vast majority of Cameroonians are constantly preoccupied with how best to make a living for themselves and their extended family. Perhaps in order to enhance their own economic standing; legal practitioners in Cameroon have devised the method of collecting not only their professional fees but also transportation fees each time they go to court, thus invariably adding to the financial burden of the litigants. When this is considered against the background that a particular case could last up to three years<sup>18</sup> in court, then the

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<sup>12</sup>See. M. I. Gwangudi, “*Problems Militating against Women’s Access to justice in Nigeria*” *University of Maiduguri law Journal* No.5, 2002, PP. 13 – 14

<sup>13</sup>United Nations General Assembly, 2012, p.2 (UNGA,2012, P.2). the claim made by people cover a variety of rights. These range from the main political first generational rights (right to life, fair liberty, right to vote), mainly economic second generation right (to work, to shelter, food etc) and the third-generation solidarity rights such as the right to development, environment etc. The dialogical influences between West and East and its impact on the difference between Western influenced political right and communist supported economic, social and cultural right.

<sup>14</sup>*Njoh LITUMBE (Representing the Bakweri land claims committee BLCC) V. BAKWERI CO – Operative Unionizes of farmers (BCUF Ltd)*, Suit No CASWP/8/2004 reported in (2016) 1 CCCR 1 – 126 part 18. The grounds of appeal in this case were an invitation of the court to determine whether parties to this action were treated on the basis of quality and fairness. Fair hearing was held to mean equal opportunity to the parties to be heard in the litigation before the court. The fundamental principle of fair hearing is determined by the doctrine of *audi – alteram partem*. By that doctrine, (which is a Latin phrase meaning “listen to the other side”, or “let the other side be heard as well”) it is now elementary that a party to a case must be given an opportunity to be heard otherwise the decision taken by the court following the hearing is simply illegal. The court cited in approval the case of *PAM V. MOHAMMWD (2008) 35 NSCOR 129*.

<sup>15</sup> See R.W.M. Dias., *Jurisprudence 4. ed.*, (UK: Butterworth’s & Co Publishers Ltd, 1976), P. 67.

<sup>16</sup>*Fon Doh GWAYIM III & 9 Ors v. The people of Cameroon*, Suit No BCA/5 C/2006 reported. The court described jurisdiction as the key to adjudication. It is from this obvious that hearing a case before an improperly constituted court as was done in this case violates the principle of fair hearing as such a court does not exist in law. Since the court that purportedly tried and sentenced the accused/appellant in the cited case was illegally constituted and thus lacked the competence and jurisdiction to act as the high court of Ngoketunjia Division or any other legally recognized court in the Republic of Cameroon it was easy for the court of appeal to uphold the appeal.

<sup>17</sup> C. Oputa JSC, a retired justice of the Supreme Court of Nigeria asserts: “It is a calamity to have a corrupt judge, for money – its offer and its receipt corrupts and pollutes not only the channels of justice but the very stream itself. Honesty and judicial retribute are therefore the very minimal requirements of the judicial office”. Equally, See FAKLA BULLETIN Vol. 1 P. 34. Where the lawyers practicing within the jurisdiction of Fako castigated the corrupt practices of some Magistrates/Judges who had been collecting money from suspects/accused persons admitted to bail on grounds of fulfilling the condition for bail in spite of the express provision in Law No 2005 Of 27<sup>th</sup> July 2005 on the Criminal Procedure Code which states that Bail is Free. Section 218 of the Criminal Procedure Code makes bail a fundamental right. More to that, following the table of fees found with the Registrar in Chief of the High Court of Fako, criminal applications for bail are filed tax and fee free.

<sup>18</sup>*Egbe Maureen Arrey v. Ruth Eyong and 2 others with SCDP & 1 other* as third parties, Suit No HCK/11/94. This was an action for negligence which was filed in the year 1996 but judgment was only delivered in year 1997, three years after the filing of the suit. The plaintiff a girl of 16 bought Kerosene one morning from ELF filling station owned by ELF Oil Cameroon. When she

enormity of the financial burden on litigants can better be appreciated. More to this, filing fees in the High Courts are so high that it is often impossible for majority Cameroonians who elect residence in Anglophone Cameroon to have access to court.

In *Ejupu Paulette Efila v. ENEO Cameroon*,<sup>19</sup> an action was instituted in the High Court of Meme, holden at Kumba by the mother of the plaintiff (deceased) who was electrocuted as a consequence of a fallen electricity pole with High tension Cables at Banga Bakundu along the Kumba- Muyuka stretch of the road, the said accident occurred on the 27<sup>th</sup>/12/2008, when the deceased was resting along the pavement of the road due to a collision of two transport vehicles. While on the side of the road a double pole carrying high-tension cables fell across the body of the deceased victim and she was on the spot electrocuted. After the demise of the victim, the matter was reported to the Gandarmerie Brigade at Banga Bakundu wherein a report was established after consultation with medical doctors attesting to the fact that the victim died as a result of electrocution. The defendant failed to assist the family during their trying moment, not even during burial of the victim, despite the fact every indicator pointed responsibility on the defendant ENEO. The plaintiff through her mother (a farmer in Kumba) prepared a suit for filing claiming 92.450.000 Francs CFA as special and general damages for negligence and murder. The suit which was prepared for filing in the 2009 was rejected by the registrar in chief for want of 5% pre-tax fee on the amount claimed. This took the plaintiff another two years to raise part of the pre-taxed and filing fees, reason why the action was only filed in 2011. Quite apart from the fact that the action was filed upon the payment of less than 1% of compulsory 5% pre-tax fee, the action was again withdrawn from court in 2015 by the newly appointed registrar in chief who requested in seeing the receipt evidencing the payment of 5% pre- tax fee which stands at 4.622.500 FCFA. As the plaintiff could not show prove of the payment of the complete pre-tax fee, she was denied further access to court as the matter was removed from the cause list. This was more disturbing as the decision was made irrespective of the fact the section 8 of Law No 2006/015 of 29 December 2006 as amended provides that justice shall be administered in the republic free of charge.

### **Interface between access to justice and human rights protection**

The relationship between access to justice and human rights protection stems from the fact that apart from alternative dispute resolution mechanisms (ADR), it is when individuals have access to the courts which is one of the main organs responsible for protecting the human rights of individuals that they can espouse and seek for the protection of their basic rights. In other words, the legal and institutional structures existing in a system may be such as to preclude the citizens from having access to the courts, who are therefore unable to seek the enforcement or protection of their basic rights. While some of these legal and institutional mechanisms may have been put in place to achieve particular objectives, they may indeed constitute formidable obstacles to the promotion and protection of human rights. Yet other obstacles may be traceable to the structure and composition of the political and economic systems operative in a given country. In the case of Cameroon, and Anglophone Cameroon in particular, it does appear that a combination of the obstacles in the first and second categories has led to a systemic inability of the legal order to guarantee access to justice in the country. The importance of this second class of obstacles stems from the fact that for a developing country such as Cameroon, where the level of illiteracy in rural community is unacceptably high despite the obligation imposed on the State in the Constitution,<sup>20</sup> and the conditions of existence extremely difficult for people to take out a living, issues concerning human rights protection necessarily take a secondary position in the scheme of things.

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poured the kerosene into her taker and ignited the lamp there was an explosion that burnt her to second degree. Despite this, the trial took closed to four years before judgment could be delivered.

<sup>19</sup> HCF/41/2011 Unreported

<sup>20</sup> The preamble of the 1996 constitution of Cameroon as amended. It states “The Nation shall guarantee the child’s right to education. Primary education shall be compulsory. The organization and supervision of education at all levels shall be the duty of the state”.

Professor Claude Ake<sup>21</sup> put the importance of these obstacles in their proper context and perspective when he observed as follows:

*For reasons which need not detain use here, some of the rights important in the West are of no interest and no value to most Africans. For instance, freedom of speech and freedom of the press do not mean much for a largely illiterate rural community completely absorbed in the daily rigors of the struggle for survival ... If a Bill of Rights is to make sense, it must include, among others, a right to work and to a living wage, a right to shelter, to health, to education. That is the least we can strive for if we are ever going to have a society which realizes basic human rights... in Africa, if liberty rights are to be meaningful in the context of a people struggling to stay afloat under very adverse economic and political conditions, they have to be concrete. Concrete in the sense that their political import is visible and relevant to the conditions of existence of the people to whom they apply. And most importantly, concrete in the sense that can be realized by their beneficiaries. This work was referenced by J.N Aduba.<sup>22</sup>*

Indeed, to a large majority of persons,<sup>23</sup> issues of human rights protection appear to be luxuries that they can hardly afford.<sup>24</sup> The result is that it is often seen as an elitist past time designed to attract attention, even when the underlying objective is the promotion of corporate good.

Access to justice is a right recognized under the major international and regional human rights instruments including: the Charter of the United Nations, the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (CESCR), the International Covenant on Civil and Political Rights (ICCPR), the United Nations Convention on the Rights of the Child (UNCRC) and the African Charter on the Rights and Welfare of the Child (ACRWC). The core instruments on the issue, the UDHR and the ICCPR, state that everyone has “the right to effective remedy against violations of fundamental rights.” The UDHR states that:

“Everyone has the right to effective remedy by the competent national tribunals for acts violating fundamental rights granted him by the Constitution or by law.”<sup>25</sup> The ICCPR provides for the same right in more detail by requiring each state party to the Covenant to undertake:

- a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.
- b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the state, and to develop the possibilities of judicial remedy;
- c) To ensure that the competent authorities shall enforce such remedies when granted<sup>26</sup>.

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<sup>21</sup> C. Ake, “The African context of Human Rights” Being a paper presented at the International Conference on Human Rights in the African context held in Port Harcourt, 9 – 11 June 1987, quoted in T. Akinola Aguda, *Rights Human and the Rights to Development in Africa* (Lagos: Nigerian Institution of International Affairs, 1989), P. 26.

<sup>22</sup> See J.N Aduba, “Human Rights and social justice in Nigeria: Issues, Dilemma and Options”, in A. U. Kalu & y Osinbajo (eds.), *perspectives on Human Rights* (Nigerian Federal Ministry of justice, 1992, P. 220), PP. 229 – 231.

<sup>23</sup> *EvarestusAgu v. Henry Nkangasso*, Suit No HCF/0170/06-07 Unreported, the plaintiff a man of Nigerian parentage born in Limbe was arrested by immigration officers who demanded to see his resident permit. He gave them the receipt of the payment of the resident permit since the original had not been issued from Yaoundé. The officers seized the receipt and demanded a bribe of ten thousand francs. Unable to pay, the officers arrested the plaintiff and took him to Buea where the defendant ordered his detention for three days. On his suit for wrongful arrest and detention in the high court Buea, the defendant argued that their act was administrative since the plaintiff was arrested and detained in the course of their duty of doing immigration control. However, the judge held that an arrest accompanied with a demand for bribe cannot be an administrative act that oust the jurisdiction of the high court. He thus found the defendant liable for wrongful arrest and detention which is a human right violation and awarded 400.000 FCFA damages against him personally and not as the commissioner of immigration.

<sup>24</sup> HCK/AB/40/2011 (Unreported). This thesis acknowledges the apparent attempt to ease access to court by the less privilege in the form of legal aids. It however notes that the conditions stipulated for obtaining legal aid is by itself another problem because it is so cumbersome with the members of the commission given the perfect pretext to disregard the law since they have voting powers as to whether an application should be granted or not.

<sup>25</sup> See Article 8 of the UDHR which was adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948. Adopted by the State of Cameroon by State Succession on the 20<sup>th</sup> September 1960.

The ICESCR does not contain similar provision, which obliges the state party to *inter alia*, “develop the possibilities of judicial remedy.” Nevertheless, a State Party seeking to justify its failure to provide any domestic legal remedies for violation of economic, social and cultural rights would need to show either that such remedies are not ‘appropriate means within the terms of article 2(1) of the ICESCR or that, in view of the other means used, they are unnecessary.

Access to justice is a fundamental right that generally guarantees every person access to an impartial process and the opportunity to receive a fair and just trial when that individual’s liberty or property is at stake. However, access to justice does not always involve judicial recourse but the availability of accessible, affordable, timely and effective means of redress or remedies. Access to justice, from a right-based perspective, refers to: the ability of people from disadvantaged groups to prevent and overcome human poverty by seeking and obtaining a remedy, through formal and informal justice systems, for grievances in accordance with human rights principles and standards. The relevance of access to justice within the human rights framework has to be considered at least at three levels: as a fundamental human right recognized for all persons; in terms of its linkages with a range of human rights issues, especially in relation to human rights in the administration of justice and, the role of access to justice in the enforcement of human rights in general. Moreover, the substance of ‘access to justice’ as a right makes it of particular importance in relation to its linkages with ‘equality before the law’ and fair trial.’<sup>27</sup> Finally, the relevance of access to justice within the human rights framework is seen in the ‘justiciability’ of all human rights and access to remedies in cases of violation. The recognition of a right would be meaningless without access to the means of enforcing claims arising from the right.

### **Factors inhibiting access to justice in common law jurisdiction in Cameroon**

Several obstacles conspire against access to justice in Cameroon. While some of these obstacles are substantive in nature, others are procedural and yet others have their roots in the present political and economic system in the country. The article shall examine some of these factors to see how they have continued to inhibit access to justice in Cameroon.

#### **1. Cost of Litigation**

Justice is a concept that begins from the pronouncement and substance of the law to the different stages and forms of its enforcement. There are operational problems associated with this phenomenon. Usually, claims involving financial compensation for rights violation attract 5% prospective tax on the claim of the plaintiff.<sup>28</sup> This practice in civil matters where government has used exorbitant filing fees and prohibitive pre – filing tax of 5 % of claims to impede access to justice by the poor has created immense problems with regards to the enforcement of basic rights for victims of rights abuses. In addition, relative to the economic situation in Cameroon, the cost of litigation in the country is so high that the ordinary Cameroonian can hardly afford adequate legal representation when he has a legal matter to pursue. This is all the more so if one considers that the vast majority of Cameroonians are constantly preoccupied with how best to make a living for themselves and their extended family. Perhaps in order to enhance their own economic standing, legal practitioners in Cameroon and Common Law Jurisdiction in particular have devised methods for collecting not only their professional fees but also transportation fees each time they go to court, thus invariably adding to the financial burden of litigants. When this is considered against the background that a particular case could last up to four or five years,<sup>29</sup> then the enormity of the financial burden on litigants can better be appreciated. More to this, filing fees in the High Courts are so high that it is

<sup>26</sup> See Article 14 of ICCPR, adopted and open for signature, ratified and accession by General Assembly Resolution A/RES/2200 A (XXI) of 16<sup>th</sup> December 1966. Entered into force on the 3<sup>rd</sup> of January 1976, in accordance with Article 27 and adhered to by the State of Cameroon on 27 June 1984.

<sup>27</sup> See the Preamble of the Cameroonian Constitution 1996 as amended.

<sup>28</sup> *Meme Lawyers Association (Represented) by Prof. Victor Mukwelle Ngoh and Barrister Esemé Martin V. Registrar In chief, High Court, Kumba, and Registrar – In chief, court of First Instance Kumba* Suit No HCK/68/05/99 – 2000 reported in (2001) I – 125 Pt. 7 P.11. Lawyer’s laudable attempt to stop this undemocratic restriction to access to justice but the court of Appeal Buea ruled that the practice that places Tax above justice was good

<sup>29</sup> *Chief Mballe Elias v. Adiang D.N*, Suit No CASP/CC/3m/2010

often impossible for majority Cameroonians who elect residence in Anglophone Cameroon to have access to court. See *Ejupu Paulette Efila v. ENEO Cameroon*,<sup>30</sup>

This article acknowledges the apparent attempt to ease access to justice by the less privileged in the form of legal aid. It however notes that the conditions stipulated for obtaining legal aid are by themselves another problem because it is so cumbersome as members of the legal aid Commission<sup>31</sup> are given the perfect pretext to disregard the law since they have voting powers as to whether an application should be granted or not.<sup>32</sup>

## 2. Lack of judicial independence

The context of independence of the judiciary and the enforcement of human rights through the national courts generally is weakened by the fact that all the members of the judiciary are appointed by the President of the Republic<sup>33</sup> and the Minister of Justice<sup>34</sup> as in the case of Customary Courts, most of whom are members of the executive arm of government.<sup>35</sup> This creates problems of the perception that Magistrates take instructions from the President who appoints them under the provision of Section 37(3) of the Constitution.<sup>36</sup>

Although the Constitution, in its article 37(2), states that judicial power shall be independent of the executive and legislative powers and that a magistrate of the bench shall, in the discharge of his duties, be governed only by the law and his conscience; there is apparently a problem as paragraph 3 of the cited law gives the President of the Republic who is the head of the Higher Judicial Council, the sole right to appoint magistrates of the bench and of the Legal Department. The magistrate cannot, under such dispensation, independently decide on cases of human rights violations where the state has interest.

True judicial independence is an enduring and indeed imperishable attributes of the Common Law.<sup>37</sup> So important is this notion that it has become entrenched not only in the English judicial system, but

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<sup>30</sup> HCK/41/2011 Unreported an action was instituted in the High Court of Meme, holden at Kumba by the mother of the plaintiff (deceased) who was electrocuted as a consequence of a fallen electricity pole with High tension Cables at Banga Bakundu along the Kumba- Muyuka stretch of the road, the said accident occurred on the 27<sup>th</sup>/12/2008, when the deceased was resting along the pavement of the road due to a collision of two transport vehicles. While on the side of the road a double pole carrying high-tension cables fell across the body of the deceased victim and she was on the spot electrocuted. After the demise of the victim, the matter was reported to the Gandarmerie Brigade at Banga Bakundu wherein a report was established after consultation with medical doctors attesting to the fact that the victim died as a result of electrocution. The defendant failed to assist the family during their trying moment, not even during burial of the victim, despite the fact that every indicator pointed responsibility on the defendant ENEO. The plaintiff through her mother (a farmer in Kumba) prepared a suit for filling claiming 92.450.000 Francs CFA as special and general damages for negligence and murder. The suit which was prepared for filing in the 2009 was rejected by the registrar in chief for want of 5% pre-tax fee on the amount claimed. This took the plaintiff another two years to raise part of the pre-taxed and filling fees, reason why the action was only filed in 2011. Quite apart from the fact that the action was filed upon the payment of less than 1% of compulsory 5% pre-tax fee, the action was again withdrawn from court in 2015 by the newly appointed registrar in chief who requested in seeing the receipt evidencing the payment of 5% pre-tax fee which stands at 4.622.500 FCFA. As the plaintiff could not show prove of the payment of the complete pre-tax fee, she was denied further access to court as the matter was removed from the cause list till 2021 when this article is written.

<sup>31</sup>The Legal aid Commission Kumba set up to assess the application made by Mme Nee Nkongho Regina Manyo for legal assistance to pursue her action in suit No HCK/AB/40/2011.

<sup>32</sup> In *Mrs. Bate Nkongho Regina Manyo v. Bate Oscar*<sup>32</sup>(Suit No HCK/AB/40/2011 Unreported), the plaintiff Mme Bate Nee Nkongho Regina Manyohhad, on 23 March 2012 applied for legal aid as she lacked the means to hire a lawyer. After over six years she did not get any reply from the Commission. Quite apart from the fact that the composition of the Commission gives its members the perfect opportunity to discriminatively disregard applications, in this particular case, the application was motivated in view of pursuing a claim for which an advocate and magistrate who could influence the decision of the Commission were involved.

<sup>33</sup>Article 37(3) of law No 96/6 of 18 January 1996, Amended by Law No 2008/1 of 14 April, 2008

<sup>34</sup>Section 7 of Decree No 69/DF/544 of 9<sup>th</sup> December 1969 as amended.

<sup>35</sup>34<sup>th</sup> Ordinary Session held from the 6<sup>th</sup> – 20<sup>th</sup> November 2003 Banjul, Communication No 266/2003 between *SCAPO, SCNC v. The State of Cameroon*, a ruling was given calling on the state of Cameroon to oust itself from issues touching on the judiciary; it was specifically held that the President of the republic should not be a member of the higher judicial Counsel

<sup>36</sup> Ibid

<sup>37</sup>See *Garba V. University of Maiduguri*, [1986] 1 NWLR 550. Judicial independence is important because it guarantees that judges are free to decide honestly and impartially, in accordance with the law and evidence, without concern or fear of interference, control, or improper influence from anyone. Judicial independence ought to be the hallmark of Cameroon's

in most judicial systems across the globe.<sup>38</sup> A judicial officer should not, directly or indirectly, however remote be put to pressure by any person whatsoever, be it government, corporate body or an individual to decide any case in a particular way. He should be free to make binding orders which must be respected by the legislature, the executive and the citizens, whatever their status. Judicial independence seemingly is far-fetched as the appointment and removal of judges are not insulated or isolated from politics, ethnicity favouritism, and other primordial considerations. Apart from the problem of appointment and removal, which inevitably compromise its independence and impartiality, it is weighed down by the lack of funding and financial autonomy.

### 3. Delay in the administration of Justice

The delays in the administration of justice as an aspect of access to justice are becoming very worrisome. That there is inordinate delay in the administration of justice in the Common Law Jurisdiction in Cameroon is a pedestrian statement. We see ordinary cases of trespass and other related dispute over land before the Courts lasting between three to five years only to discover at the appellate court that they lacked jurisdiction to entertain<sup>39</sup>. The Courts of Appeal have in all cases where customary courts, Court of First Instance and the High Court act outside the scope of their jurisdiction, declare the entire proceedings null and void. A number of circumstances could give rise to this delay and persistent abuse of jurisdiction by these courts: Non-appearance of lawyers in the Customary Court and the inability of magistrates to deliver judgments on time. It has almost become an accepted fact in the common law jurisdiction of Cameroon that cases must last several years in court before they are concluded. This article argues that under such circumstances, citizens would naturally be reluctant to initiate actions for the enforcement of their basic rights.

### 4. Undue Reliance on Technical Rules

Undue reliance on technical rules in accessing the courts for the enforcement of fundamental rights is problematic in Cameroon. It is noted that law is an inherently technical subject and this technicality is manifested in the various rules and procedures in place. For a litigant to be able to approach the courts, he has to retain the services of a legal practitioner who will initiate the appropriate action, on his behalf. The litigant, however well-educated he may be, is usually unable to understand the intricate processes and rules applicable to his case. The situation is certainly worse for an illiterate Cameroonian, and when one realises that a vast majority of Cameroonians are legal illiterates then the actual picture can better be appreciated. This is hardly the case with actions conducted in customary courts as the litigants are familiar with the proceedings and customs of the people. Since the jurisdiction of the Customary Court is limited to 69.200 FCFA, litigants are bound to approach the regular Court of First Instance and the High Court the High Court where the rules of technicalities are highly observed.

### 5. Locus standi

This article notes that one other factor used to preclude access to courts in Cameroon is the overused concept of *locus standi*. This could indeed create a formidable obstacle in the quest for the protection of human rights. *Locus Standi* is not an easy concept to define but one can say that it basically means the standing to sue. It refers to the right of a party to an action to be heard in litigation before a court of law tribunal or the legal capacity of instituting, initiating or commencing an action in a competent court of law or tribunal without any inhibition, obstruction or hindrance.<sup>40</sup> In other words, "For a person to have *locus*

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constitutional democracy which unfortunately is not the case as the judiciary is pursuant to Article 38 of the constitution under the control and supervision of the executive arm of government. True judicial independence served as a shield that secures and protects fundamental constitutionally enshrine values

<sup>38</sup> Cameroon inclusive as per Section 37 of the 1996 constitution as amended

<sup>39</sup> *Malafa Efungani v. Ndivo Mondo*, Suit No CASWR/CC/02/2011, the Court of Appeal Buea nullified the Buea Customary Court decision filed before the court in 2006. The court nullified the decision of the lower court on grounds that the lower court lacked jurisdiction in entertaining actions touching on ownership of land. The appeal which was filed in 2011 was only dismissed or nullified in 2014 three years after

<sup>40</sup> *Chief David Ikome Molinge & others v. Chief Simon Lyonga Musenja & others*, Reported at (2000) 1 CCLR 1. In this case Justice Fonkwe JCA as he then was in the court of Appeal Buea held that the court could even suo moto meticulously examine the



*standi* in an action he must be able to show that his civil rights and obligations have been or are in danger of being infringed. Thus, the fact that a person may not succeed in an action does not have anything to do with whether or not he has standing to bring the action”.<sup>41</sup>

Despite the conceptual and rhetorical lip- service paid to the many concepts enshrined in the 1996 Constitution, as amended the breach in practice is striking, as is the absence of a good grounded understanding of precise manner in which these concepts shall be translated on ground.<sup>42</sup>

### Prospects and proposals for reform

The question of access to justice in Cameroon is so fundamental to the promotion and protection of human rights that it is necessary to appraise the prospects in the light of the deficiencies and inadequacies highlighted above.

There is no doubt that the present government is desirous of enhancing the promotion and protection of human rights in the country in tandem with democratic norms. This can only be achieved if concerted efforts are made to address the issues along the following lines:

### Judicial Reform

There is an overwhelming need for a reform of the judicial process in the country in line with the global concern for human rights protection. This is necessary because the judiciary plays a pivotal role in ensuring that individuals have access to justice. It is suggested that the starting point of such reform should be a review of the judicial rules/ ministerial circulars that inhibit access to justice. In this connection, the Ministerial Circular which precludes a large proportion of the citizens from enforcing their fundamental rights through exorbitant pre filling fees and procedures must be reviewed and the filling fees reduced. This will invariably lead to a marked reduction in the current agitations and crisis in Anglophone Cameroon since it will enhance access to courts, and affords aggrieved persons the opportunity of ventilating their views and claims in the court of law.

Justice Aya Paul, president of the High Court of Meme Division holden at Kumba as He then was in <sup>1</sup>*Meme Lawyers Association (Represented) by Prof. Victor Mukwelle Ngoh and Barrister Esemé Martín V. Registrar In chief, High Court, Kumba, and Registrar – In chief, court of First Instance Kumba*<sup>43</sup> praised Lawyer’s laudable attempt to stop this undemocratic restriction to access to justice but the court of Appeal Buea ruled that the practice that places Tax above justice was good. This is where judicial activism comes in, as the courts will act as veritable instruments for the espousal of claims and rights. It is gratifying that Justice Aya Paul had declared the determination of the Registrar in chiefs of the High Courts and the Courts of First Instance in the English speaking regions of Cameroon to collect a 5% pre filling fees unconstitutional. Though not expressly stated in the court’s ruling, it is the view of this researcher that the aims of such decision of the judge was to;

- reduce the cost of litigation and broaden access to justice;
- reduce delays so that cases can be decided speedily and to ensure that litigants have equal opportunity regardless of their resources, to assert or defend their rights.

It is also important that conscious efforts be made to reduce the perennial delay in the attainment of justice in the country. A situation where a simple case of unlawful dismissal of an employee could last between 3 to 5 years<sup>44</sup> before being disposed of, does not speak well of the legal system and make mockery

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records of proceedings and evidence to determine if the plaintiff has locus standing to have initiate the suit. This decision of the court puts the centrality of standing in all civil actions in courts in a rather typical Cameroonian context. The courts according to this view should not limit itself but meticulously examine “the records of proceedings and evidence adduced” on the principle that “an elementary principle of procedure that only persons having an interest to protect may bring an action in court.

<sup>41</sup> Ibid

<sup>42</sup>The preamble of the 1996 constitution as amended calls for the respect of traditional values but did not define what those traditional values are

<sup>43</sup> Ibid

<sup>44</sup> *Societe Shall Cameroon SA v. Kemayou Henri*, Appeal No 79/S/04-05 of 15/5/2005 Reported in Labour Law Principles & Practice in Cameroon by Michael A Yanou at page 77. In this case the court followed the common law trends in insisting on a high burden of proof in dismissal cases. As per the authority under consideration, it is therefore not simple enough for the employer to dismiss the worker on grounds of loss of confidence. The High Court, Court of Appeal and Supreme Courts all held

of the government's commitment to ensure increased access to justice by a large majority of Cameroonians who elect residence in the English-speaking regions of Cameroon.

### **Alternative dispute resolution mechanisms**

Even more significantly, efforts should be made to increase awareness of and resort to arbitration or other methods of alternative dispute resolution mechanisms in the country. Not only are these mechanisms more cost-effective, they are largely in tandem with the traditional methods of dispute settlement, which has served African societies so well before the imposition of the received English law in Africa Anglophone Cameroon inclusive.<sup>45</sup> Happily, there is now a growing trend to formalize and popularize the use of these mechanisms as viable alternatives to the judicial settlement of disputes in Cameroon.<sup>46</sup>

It can hardly be disputed that resort to this mechanism couple with improvement in the socio-economic and political conditions of the masses will go a long way in ensuring increased access to justice by a large majority of Cameroonians.

### **Enhancement of Legal Aid Scheme**

One important agency that can usefully be deployed to enhance access to justice in the country is the Legal Aid Scheme, which was established to provide assistance for indigent Cameroonians unable to secure the services of private legal practitioners to enforce their legal rights.<sup>47</sup> This law stipulates the conditions under which legal aid may be provided and establishes commissions with a mandate to examine and process legal aid applications. The law allows individuals who cannot afford to appear before the court to have their rights enforced and those who have already obtained a writ or judgment in their favour but are unable to follow through to enforcement stage for want of resources to make an application for legal aid. It mandates that legal aid commissions with the task of examining and approving applications for legal aid be established at all levels of the courts.

Although the scheme has been unable to make significant impact in this endeavour over the years partly due to structural and operational problems,<sup>48</sup> it is suggested that it be made more proactive to meet the yearnings and aspirations of Cameroonians through creating greater access to justice. This will necessarily entail the widening of the scope of its operations in terms of increase in the level and category of potential beneficiaries from the scheme the subject matter coverage, coupled with aggressive public enlightenment exercise.

This is because similar schemes have proved extremely successful in developed countries, as an instrument for enhancing access to justice.

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in a case that lasted in court for over 10 years that a worker who was sacked for what the employer simply characterized as lost of confidence was unreasonable.

<sup>45</sup> A.A O. Okunniga, *Transplants and Mongrels and the Law: The Nigerian Experience* (Inaugural Lecture Series 62, *University of Ife press*, 1983), pp. 20-21

<sup>46</sup> E. M Amandong., *Alternative Dispute Resolution (ADR) Hybrid in Cameroon as a form of Legal Protection for consumers of Defective Products* (Jurnal.hukumonline.com) Access 6/07/2021. As part of the awareness creation exercise, the author has established that consumers of defective products in Cameroon should be exposed to the various extra-judicial channels once they can be adopted by Government and through which the consumers can enforce their rights.

<sup>47</sup> Law No 2009/004 of 14 April 2009 to organize Legal Aids in Cameroon. Apart from the cumbersome procedure, section 20(2) of the law provides that the commission may also invite the opposing party to give any explanation like to challenge the inadequacy of the applicant's resource.

<sup>48</sup> This article acknowledges the apparent attempt to ease access to justice by the less privilege in the form of Legal Aids. It however notes that the conditions stipulated for obtaining legal aid is by itself another problem because it is so cumbersome with members of the commission given the perfect pretext to disregard the law since they have voting powers as to whether application should be granted or not. In *Mms Bate Nkongho Regina Manyo v. Bate Oscar*<sup>48</sup> the plaintiff Mme Bate Nee Nkongho Regina Manyoh had on the 23<sup>rd</sup> day of March, 2012 in Suit No HCK/AB/40/2011 applied for legal aid as she lacked the means to hire a lawyer and the cost of proceedings but for over eight years has not gotten any reply from the commission. Quite apart from the fact that the composition of the commission gives its members the perfect opportunity to discriminatorily disregard applications, in this particular case, the application was motivated in view of pursuing a claim for which an advocate and magistrate who could influence the decision of the commission were involve.

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### Conclusion

An attempt has been made in this article to show the linkage between access to justice and the quest for the promotion and protection of human rights in Anglophone Cameroon. We have also shown that there are a number of fundamental obstacles to the attainment of this highly desirable goal of increasing access to justice. While some of the obstacles are substantive, others are procedural. The point has further been made that some of the laws which are geared towards ensuring human rights protection, also have unintended effect of engendering undue delays, and consequently, conspire against access to justice.

The implication of this is that there is need to strike a delicate and beneficial balance between the desire to maximize human rights protection and the imperative of enhancing greater access to justice in Cameroon as a whole.

Thus, the right of an accused person to be given adequate time and facilities for the preparation of his defense need not result in undue delay in the dispensation of justice which has been said to be a three-way traffic; for the plaintiff, the accused and the society at large.<sup>49</sup>

It is only when we approach the issue along these lines that the overwhelming concern for increased access to justice in Cameroon as a whole and Anglophone Cameroon in particular will be realized and basic human rights given their proper place in the scheme of things.

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<sup>49</sup> See *The people of Cameroon v. Lucia Ngwe*, Suit No HCF/385<sup>C</sup>/13 reported in *Criminal Law and Procedure in Cameroon* by Michael A Yanou at pp56