

The Protection of Individual Rights and Freedoms in Cameroon's Legal Order: Prospects for an Emerging Country

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Abstract

The existence of laws in every given society has as raison d'être the preservation of individual rights and freedoms and to encourage the peaceful coexistence between the government and the governed. The aim of this paper is to examine the protection of individual rights and freedoms under the Cameroonian legal instruments while determining how an effective protection of these rights and freedoms can contribute to a country's political, economic, and socio-cultural developments. It is against these backdrops that Cameroon with its vision of emergence by 2035 has been chosen in a bit to highlight that, among other things, an effective protection of individual rights and freedoms, which can no doubt act as a catalyst to foster the rapid realization of such a vision. To achieve this objective and to deal with the research problem, we undertook desk research in libraries, relevant documentation centers, and internet websites which enabled us to review the existing literature on the question. The findings reveal that Cameroon has a sound legal system for the preservation of individual rights and freedoms but has failed grossly at the level of implementation and enforcement. With the gross violation of these legal norms, it is recommended (among other things) that there is the need to put in place effective independent enforcement mechanisms to guarantee the strict respect of existing national and international laws dealing with the protection of individual rights and freedoms to attain the objective of an emerging nation state.

Keywords: Constitutional, Criminal law, Emerging country, Individual rights, Protection

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INTRODUCTION

The protection of individual rights and freedoms stimulates foreign direct investment, political stability and foreign trade, thereby encouraging citizens to willfully exercise legal obligations and foreign investment flow in. This paper analyzes the protection of individual rights and freedoms within the purview of Cameroon's Constitutional (Law No. 96/6 of 18 January 1996, to amend the Constitution of 2 June 1972, hereinafter 1996 Constitution as amended) and statutory (such as the Criminal Procedure Code of 27 July 2005, hereinafter 2005 CPC and the Revised Penal Code of Cameroon of 12 July 2016 hereinafter 2016 PC) provisions. In addition to Constitutional and statutory provisions, Cameroon has ratified most international treaties and conventions protecting individual rights and freedoms. The ratification is guaranteed under Part VI of the 1996

Constitution as amended titled, "*Treaties and International Agreements*". Pursuant to Article 45 of the Constitution, international treaties or agreements are, immediately after publication, given higher precedence over national laws. Consequently, they can be invoked in the law courts or before the public authorities. The respect, promotion and protection of individual rights and freedoms can facilitate Cameroon's attainment of an emerging country status by 2035. It is, therefore, relevant to evaluate how human rights violations ranging from deprivation of liberty, breach of procedural norms, restriction of freedom of movement and press can affect the growth towards the country's emergence. The various challenges envisaged by the Cameroonian vision 2035 include: consolidating democracy and enhancing national unity, growth and employment, socio-demographic, urban development, regional

development, and environmental protection and good governance (Cameroon Vision 2035 Plan, p.iv. <http://minepat.gov.cm>). The vision hinges on the results of past studies, identification of the population's needs, aspirations and the ambitions of politicians. Successful development models prioritize human dignity through the enforcement of human rights. Unfortunately, this vision shies away from human rights and values. Effective protection of individual rights and freedoms enables citizen contribution to development models. As such, citizens freely contribute to solution of challenges, such as those envisaged by development. The vision's medium-term objectives include poverty alleviation, through becoming a middle-income country, an industrialized country, and consolidating democracy and national unity while respecting the country's diversity. For unity and democracy to be enhanced and consolidated in Cameroon, it should result from awareness and a sound analysis of the country's history and that of other people's worldwide so as to give it a credible springboard. The successful realization of national unity, peace and good governance, which remain vital components for emergence, is the respect for and promotion of rights and freedoms.

SOURCES OF RIGHTS AND FREEDOMS IN CAMEROON

Human rights and freedoms have their source in various international and national instruments. Human rights can be classified and organized in several different ways. The most common categorization of human rights has been to split them into civil and political rights, and economic, social and cultural rights. Civil and political rights are enshrined in Articles 3 to 21 of the Universal Declaration of Human Rights (UDHR) and in the International Covenant on Civil and Political Rights (ICCPR). Economic, social and cultural rights are enshrined in Articles 22 to 28 of the Universal Declaration of Human Rights (UDHR) and in the International Covenant on Economic, Social and Cultural Rights (ICESCR).

Another categorization, offered by the Czech-French scholar Karel Vasak (1977) is that there are *three generations of human rights*: first-generation civil and political rights,

second-generation economic, social and cultural rights, and third-generation solidarity rights. This categorization is at odds with the indivisibility and interrelatedness of rights, as it implicitly states that some rights can exist without others. Prioritization of rights for pragmatic reasons is, however, a widely accepted necessity. Due to the indivisibility and interrelatedness of human rights, this write up handles the three generations of human rights though laying more emphasis on the first-generation human rights and to an extent, the second-generation human rights.

As earlier mentioned, the preamble, which is part and parcel of the Constitution, guarantees a variety of rights and freedoms (Article 65 the 1996 Constitution as amended). The Cameroonian legal order has been framed to integrate and crystallize some of these individual rights and freedoms specifically provided for in the Constitution and referred to as fundamental human rights and freedoms. The law condemns in very strong terms any derogation by whosoever to the fundamental rights and liberties as previewed under Article 4(2) of the International Covenant on Civil and Political Rights (ICCPR) 1966, Article 12(2) of the European Convention on Human Rights (ECHR) and Article 27 of the American Convention on Human Rights (ACHR).

With Cameroon gearing towards an emerging nation by 2035, it is imperative that these individual rights and freedoms be respected to the letter, so that citizens will have the freewill to invest in the country and carry out infrastructural and economic development. Despite the fact that Cameroon has put in place both Constitutional and legislative measures to guarantee and enforce these rights, more is still required to be done for it to attain the status of protection needed for an emerging nation.

INDIVIDUAL RIGHTS AND FREEDOMS: A PREREQUISITE FOR AN EMERGING COUNTRY

The protection of individual rights and freedoms is a condition *sine qua non* for the emergence of every given country. The role of the civil societies and the NGOs in such moves cannot be overemphasized. Democratic governments, or transnationally active

members of democratic civil societies, are the strongest supporters of human rights regimes. They then externalize their ideology, persuading and encouraging other governments to implement human rights norms. Many scholars espouse both positions at once, arguing that powerful democracies coerce and induce others to respect human rights norms for idealist reasons. According to Moravcsik, government should coordinate their domestic policies in order to enhance the protection of individual rights and freedoms especially with the desire to attain emergence. Ideational explanations look to the altruistic pursuit of principled ideas. Governments accept binding international human rights norms, in this view, because they are swayed by their obvious ideological and normative appeal [2]. “The seemingly inescapable ideological appeal of human rights in the postwar world,” writes Donnelly, who espouses a wide range of explanations for human rights regimes, “is an important element in the rise of international human rights regimes.... True hegemony is often based on ideological ‘power’” [9]. The Cameroon government despite its efforts to protect human rights and freedoms, has instead played a predominant role in the violation of these rights. If governments employ institutional commitments, like domestic institutional commitments, to “lock in” policies against future political uncertainty in the area of human rights, development and democracy will follow suit.

While many emerging countries have focused on reforming global governance and put pressure on multilateral agencies and mechanisms to reflect their new international role, their commitment to improving the international human rights system is less clear. Their performance and conduct in the field of human rights is often inconsistent with their foreign policy activities. For example, they frequently abstain in multilateral fora from supporting resolutions condemning flagrant human rights abuses. The governments of some of these countries also have allowed public funds to finance commercial and other developments in foreign countries that contributed to flagrant human rights violations of local people. It is vitally important,

therefore, for civil society in each of these emerging powers to demand transparency and accountability from their governments, as well as consistency between their governments’ human rights commitments and the decisions and positions they adopt on the international stage. One way to do this is to analyze the voting record of a particular country in the traditional international fora, as well as its foreign policy activities at bilateral, regional and multilateral levels, with a view to publicizing information revealing possible or imminent inconsistencies. By working alongside national institutions and other civil society groups, NGOs can contribute to strengthening democracy at the national level. This kind of approach is timely and can benefit from the fact that the emerging powers have only recently begun to assume a higher profile in multilateral and other fora [4]. In Cameroon, though such civil societies and NGOs do exist, they are strictly subjected to governmental and administrative controls which make their role in the promotion and protection of individual rights and freedom ineffective.

The bases of protection of individual rights and freedoms in Cameroon are viewed under both constitutional and statutory legislation as earlier highlighted. Cameroon vision is geared towards proper democracy by 2035 and for this to obtain, the physical integrity of every citizen and the right to freedom of association should be respected and protected by the state. There should be the advent of proper human rights protection and the treatment of citizens by the government. The respect regional and international instruments duly ratified by Cameroon which are enacted to guarantee the protection of individual rights and freedoms in order to meet up of emergence should be fully implemented. The study carried out while drafting the paper reveals that Cameroon is lacking in most of the aspects highlighted supra. Elections are rigged, citizens are molested by the military for expressing their grievances, and journalists are arrested and detained for daring to speak or write the truth, and many other malpractices which will greatly hinder emergence by 2035 if measures are not taken to address these ills. Following the adoption of laws on freedom of

association, the country recorded a number of significant divergences as seen in the violent representation of remote identities as well as outbreak of tensed or even irredentist conflicts. Moreover, in spite of significant progress made, the democratic process is still facing difficulties, not least of which is the crisis of participation of women and youths [14]. One of the major challenges for the Cameroon government is, therefore, to consolidate national unity and democracy in peace and respect for the rule of law. This implies the existence of a Constitutional State, promotion and respect for individual and collective freedoms, power separation, and the emergence of a strong and accountable civil society on the one hand, and the existence of a pro-active and strong state, capable of containing centrifugal forces and enhancing national solidarity on the other hand. The challenge implies participatory and decentralized management of public affairs with the involvement of all Cameroonians, as well as significant reduction of social, cultural and political disparities.

The basis of protection of individual rights and freedoms under the Cameroonian Constitution as well as under statutory instruments is worth examining, while laying emphasis on the fact that an effective protection and respect of these rights and freedoms will facilitate the realization of the aspiration of emergence. Emphasis is equally laid on the institutional protection of individual rights and freedoms.

Constitutional Protection of Individual Rights and Freedoms

The most controversial issue with the Cameroon Constitution is the fact that there is great debate and uncertainty as to which Constitution is officially and currently in force based on many amendments. This is mainly because courts and jurists have remained unsure, and most at times are unable to determine with convincing clarity whether the 1996 Constitutional amendment, increasing the number of articles from thirty-nine to sixty-nine, actually abrogated the 1972 Constitution. If the 1996 Amendment truly abrogated the 1972 Constitution, the amendment was a complete overhaul and created a new Constitution. Per Fombad [5]:

"...the 1996 Constitutional amendment is essentially negative, defensive and merely a protective obfuscation of the 'status quo ante'. Shrouded in obscurity, it is a moribund arrangement in which autocratic practices and policies are deeply embedded and is marked by presidential absolutism and a feeble legislature." (p.173)

This Constitution is the highest law of the land and most of the human rights and freedoms are found in the preamble of the Cameroon Constitution which by virtue of this law forms an integral part of the Constitution (Article 65 supra). From the scope of application, it is generally recognized that human rights are classified into the so-called three generations of rights: namely, civil and political rights, social and economic rights, and the solidarity or collective rights. In Cameroon, the rights mostly violated are those of the first generation and by extension, second-generation human rights. A clear example is seen during events that tamper with the security of the state wherein random killings and arrests are affected by both the authorities and the terrorist sects. The state must therefore ensure that these Constitutional provisions are respected to the latter irrespective of the period under consideration. Such practical events in Cameroon can be seen from the activities of the *Bokko Haram* sects in the Northern part of the country and the instability in the two English speaking regions of the country. This has greatly affected the economic, political and social climate of the country resulting to low investment and economic development. Lately, the country has witnessed a drastic drop in economic development, increase in insecurity and low living standards. To better protect individual's rights and freedoms, some of these individual rights and freedoms found in the Constitution have been given statutory cloak because of their high consideration.

Statutory Protection of Individual Rights and Freedoms

Statutory national instruments have given much force to the protection of individual rights and freedoms found in the Cameroonian Constitution. In this light, we shall examine some Constitutional protections crystallized in Cameroonian statutory instruments with

regards to the protection of individual rights and freedoms taking into consideration particular aspects. Some of these legal instruments that have paid special attention to the rights and freedoms stipulated in the Constitution are the 2016 PC, the 2005 CPC, the 1992 Cameroon Labor Code, the OHADA (Organisation pour l'Harmonisation en Afrique du Droit des Affaires) law, and a host of others. These instruments have outlined rights and freedoms, elaborated their nature and provided some punishment to those who think going against these rights is a normal phenomenon.

Statutory Protection of Individual Rights

Under the context of this paper, individual right are those rights which are sacred and inalienable inherent in human beings. The scope of this paper has been limited to first-generation human rights and to a lesser extent second-generation human right. This section brings out the relevance of the protection of individual rights and freedoms in Cameroon while proving that this is a tenet for the emergence of Cameroon by 2035. Emergence is on several aspects: political, economic, and social. Considering the fact that there are a whole lot of these rights, and to better understand the concept under study, some of these individual rights will be examined in the light of statutory protection. The researcher cannot claim knowledge of having examined all the rights.

The Right to Life: The first of the rights given attention to and protected by a separate legal instrument different from the Constitution is the right to life. The right to life is a first-generation human right and as a moral principle, it is based on the belief that every human being has the right to live and, in particular, should not be deprived of such right by another human being. The concept of the right to life arises in debates on issues of capital punishment, war, abortion, euthanasia, justifiable homicide, and public healthcare. The evolution of the right to life as a concept took place slowly in multiple areas in many different ways and the past millennia in particular has seen a large set of national and international legal documents (examples being the Magna Carta and the United Nations

Declaration of Human Rights) codifying the general ideal into specifically worded principles.

The Cameroon government in its own level has contributed enormously in seeing that such rights should be respected. This is highly expressed in the 2016 PC in its sections 275 and 276. Section 275 entitled "murder" states that *"whoever causes another's death shall be punished with imprisonment for life"*. Meanwhile section 276 states that:

"whoever commits murder after premeditation or by poisoning or with a view to trafficking the organs of the victim or takes part in the preparation, facilitation or commission of a felony or misdemeanor or to enable the escape or to procure the impunity of the offender or of an accessory to such felony or misdemeanor, shall be punished with death."

The law is harsh on any one who intentionally takes away another person's life. This shows the will of the legislature seeing the importance of the right to life of individuals and humanity as a whole. These two Sections (275, 276) are very explicit in the way they protect the right to life of every person. More so, Sub-Section 2 of Section 276 states that though the identity of the perpetrator of the act is not known, murder shall be deemed premeditated. Section 340 which focuses on "Infanticide" is also aimed at protecting a new born child within the age of one month from being killed by her mother or her mother subjecting her to such offence. As a matter of fact, murder does not only sound inhuman, but gives a bad impression about the country, reduces the population and the labor force, especially when those killed are within the bracket of the labor force of the country. The social and demographic pattern of Cameroon is typical of developing countries. Indeed, it is characterized by a massive population growth with very high growth rates and a significantly young population.

The right to life is one of the most violated human rights in Cameroon especially with the escalation of the Anglophones crises in the north-west and south-west regions of Cameroon and the *Bokko Haram* insurgency in the northern part of the country. Violence and

unrest that escalated in late 2016 after a series of strikes and protests against what teachers, lawyers and students viewed as further discrimination against Anglophones resulted in indiscriminate killings of both civilians and the military, illegal arrests, and the destruction of property. A report issued by Amnesty International in June 2018 reveals that hundreds of people have been killed since the crisis erupted [1]. Most of the victims involved in these unfortunate killings are mostly the youths who happen to be the labor force of the country. This will nevertheless have a negative effect on the work force of the country, leading to low economic development. For Cameroon to attain emergence, it will need to preserve this population through effective implementation of procedural laws and the right to a fair trial.

Right to Education: The importance of education in every developed country cannot be over emphasized. The second of such Constitutional protection is the right to education. The right to education has also been recognized as a fundamental human right in a number of international conventions, including the International Covenant on Economic, Social and Cultural Rights. This convention recognizes a right to free, compulsory primary education for all, an obligation to develop secondary education accessible to all, in particular by the progressive introduction of free secondary education, as well as an obligation to develop equitable access to higher education. The right to education also includes a responsibility to provide basic education for individuals who have not completed primary education. In addition to this access to education provisions, the right to education encompasses the obligation to avoid discrimination at all levels of the educational system, to set minimum standards and to improve the quality of education. Significant progress was made through strategies implemented by the government with the view of meeting the needs of the population, particularly in the education and health sectors. However, the long period of recession weakened operational capacities as evidenced in the drop in human capital, the collapse of the social sector, constant disparities, and

considerable impoverishment of the country and finally, the drop-in life expectancy.

The 2016 PC stipulates in Section 355-2 that *“any parent with sufficient means who refuses to send his child to school, shall be punished with fine of from 50,000 to CFAF 500,000”* and should a parent repeat that act of not taking proper care to educate the child or train him or her, the punishment shall be imprisonment for from one year to two years. The law has particularly targeted parents who have means and have been unwilling to submit their children to be educated. However, the government remains the number one authority competent to encourage the aspects of education, especially basic education, for an effective realization of its vision of emergence by 2035. This right has been violated in Cameroon, especially as a result of the instability in the two English-speaking regions of Cameroon where education has been paralyzed for close to three years now. Despite government efforts, this situation has not been brought to normalcy.

The Right to a 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. The right to fair trial includes; the right to be heard by a competent, independent and impartial tribunal, the right to a public hearing, the right to be heard within a reasonable time, the right to counsel, the right to interpretation, etc. As a basic principle of fair trial, the spirit of the law to let the accused being informed of the charges against him is so imperative. The 2005 CPC states that at the commencement of the trial, the Presiding Magistrate shall, after declaring the session open and ask the Registrar to call the cases listed for hearing, he shall for each case called, ascertain whether all the parties and other persons summoned are present or absent, cause the charge to be read out to the accused

and shall ask him whether he pleads guilty or not guilty, and verify the identity of every accused. When the facts of the case have been read to the accused and the prosecution discovered it sustains a different offence, it shall amend the charge and inform the accused again accordingly. See generally Sections 259 (1), 338 and 362(1) of the CPC. The necessity of the accused to know the reason for his being dragged to court for trial is very important and can bring a case to appeal for non-respect of this procedure. A country where there exists the respect for the rule of law, fair trial and justice will no doubt attract investors, promote regional integration as well and economic development there by leading to emergence. The right to a fair trial is a practice that Cameroon is yet to fully embrace despite existing legal dispositions elaborately laid down.

Statutory Protection of Individual Freedoms:

Statutory protection should not only be accorded to individual rights but equally to individual freedoms. The individual freedoms found in the Cameroonian Constitution have been crystallized by other statutory instruments, which has gone a long way to guarantee their protection. For a country heading towards proper democracy, the guarantee of individual freedoms must be taken into consideration. Some of these individual freedoms will be examined.

Freedom of Movement: We also have freedom of movement, mobility rights, or the right to travel. This is a human rights concept encompassing the right of individuals to travel from place to place within the territory of a country and to leave the country and return to it. The right includes not only visiting places but changing the place where the individual resides or works. Such a right is provided in the preamble of the 1996 Constitution as amended. As a matter of fact, the Constitution *inter alia* states categorically that “every person shall have the right to settle in any place and to move about freely, subject to the statutory provisions concerning public law and order, security and tranquility”. The 2016 PC protects this right in Article 291 entitled “False Arrest”. This Article states that whoever in any manner deprives another of his

liberty shall be punished with imprisonment for from five years and with fine of from CFAF 20,000 to CFAF 1,000,000. It goes further to increase the quantum of punishment to imprisonment for from 10 to 20 years if the deprivation of liberty lasts for more than a month and is accompanied with physical or mental torture or the arrest is affected with the aid of a forged order from a public authority or of a uniform unlawfully worn, or pretending an appointment not held. Arbitrarily depriving an individual of their liberty is strictly prohibited as established under Articles 30 to 38 of the 2005 CPC, which analyzes the whole process of arrest within the ambit of the law. What strikes our attention is the fact that despite these legal dispositions, there are regions in Cameroon where the administration has continuously prohibited movement of persons and property within a given period of time with the issuing of indefinite curfew. This is a common recurrence in the two English-speaking regions of Cameroon, which is prompted by armed separatist forces who want to secede from French – majority Cameroon to form a new nation called “Ambazonia”. (CameroonOnline.org, 2018). This phenomenon has completely paralyzed business and economic activities within these regions and Cameroon at large. Business operators have deserted the area and investment rate has drastically fallen with commercial transactions coming to a standstill. If the situation is not swiftly addressed, it will of course hinder the process of emergence.

Freedom of Religion, of Belief and of Worship: Freedom of religion or freedom of belief is a principle that supports the freedom of an individual or community, in public or private, to manifest religion or belief in teaching, practice, worship, and observance. It also includes the freedom to change one’s religion or belief. This fundamental human right has been protected by the Cameroon Penal Code in a number of sections. The first of such protections titled “freedom of conscience” is provided by Article 269 of the 2016 PC. The Penal Code also protects the minister of religion from any kind of insult on account of his ministry under its Article 270. A country that practice and promote religious freedom will give room for foreign investors

and traders with diverse religious backgrounds to invest and trade without fear of religious prosecution.

Institutional Protection

Institutional protection of individual rights and freedoms is ensured by the courts, the National Commission on Human Rights and Freedoms, and other institutions. These institutions help to guarantee the enforceability of individual rights and freedoms in Cameroon. The problem here is the fact that these institutions lack credibility and enforceability as we will see subsequently. Many citizens have lost confidence on the effectiveness of such institutions because of their impartiality in rendering decision on human rights violations.

Role of National Commission on Human Rights and Freedoms (NCHRF)

The NCHRF is an independent institution for consultation, monitoring, evaluation, dialogue, concerted action, promotion and protection in the domain of human rights. The National Commission on Human Rights and Freedoms, hereinafter referred to as the "Commission", was set up by Decree No. 90/1459 of 8 November 1990. It is placed under the administrative supervision of the Prime Minister's Office. The Commission is part of a series of legislative and regulatory measures adopted at the close of 1990 to consolidate the process of democratization of public life.

The mission statement is "*Independent institution for consultation, monitoring, evaluation, concerted action, promotion and protection in the area of human rights*". The NCHRF founding laws are based on a law – No. 2004/016 of July 2004 which set up the NCHRF. The Commission is charged with the defense and promotion of human rights and freedoms. In this capacity, it receives all denunciations relating to violations of human rights and freedoms; conducts all enquiries and carries out all the necessary investigations on cases of violation of human rights and freedoms and reports thereon to the President of the Republic; refers cases of violation of human rights and freedoms to the competent authorities; inspects, as and when necessary, all types of penitentiaries, police stations and gendarmerie brigades in the presence of the

state counsel with jurisdiction or his representative; such inspections may lead to the drafting of a report to be submitted to the competent authorities; studies all matters relating to the defense and promotion of human rights and freedoms; proposes to public authorities measures to be taken in the area of human rights and freedoms; disseminates by all possible means instruments on human rights and freedoms; coordinates, where necessary, the activities of non-governmental organizations wishing to participate in its work and whose stated objective is to work in Cameroon for the defense and promotion of human rights and freedoms; maintains, where necessary, relations with the United Nations, international organizations and foreign committees or associations pursuing humanitarian objectives, and informs the Minister of External Relations thereon.

The Commission is informed of measures taken within the framework of a state of emergency decreed by the President of the Republic. The Commission submits to the President of the Republic and to the Prime Minister annual reports on its activities and on the status of human rights in Cameroon. The Commission has quite broad but well-defined scope and means of intervention. As it were, though the Commission is empowered to carry out investigations, with the help of judicial authorities, in its task of defending human rights and freedoms, it does not have the competence of a court. The Commission cannot, indeed, intervene in proceedings before a court nor challenge the validity of a court decision. Its means of action in the defense of human rights and freedoms are denunciation, mediation and conciliation. Indeed, the Commission has a leading role to play in the promotion of human rights and freedoms: advice to public authorities; dissemination of international instruments on human rights; maintenance of relations with all types of organizations concerned with human rights at both the national and international levels (www.achpr.org). The bone of contention here is to establish whether the commission has been able to meet up to expectation especially with the ongoing gross violation of individual rights and freedoms in Cameroon. In many perspectives, the

commission has failed in many practical events that have resulted to wanton violation of human rights and freedoms. This is because the Commission is not actually independent as its mission statement purports, and because it has no enforcement mechanism. Thus, its findings are more or less insignificant in resolving human rights violations in Cameroon because they are accountable to the government which is mostly responsible for these violations. The ongoing socio-political crisis in the two English speaking regions of the country is a glaring example on the failure of the commission.

Institutional Challenges

There is poor management of institutions put in place to guarantee the protection of individual rights and freedoms. It is also characterized by weak administrative rules that guide actions towards the protection of individual rights and freedoms. The case of the National Commission on Human Rights and Freedoms is a glaring example of institutional weaknesses. As it were, though the Commission is empowered to carry out investigations, with the help of judicial authorities, in its task of defending human rights and freedoms, it does not have the competence of a court. The Commission cannot, indeed, intervene in proceedings before a court nor challenge the validity of a court decision. Its means of action in the defense of human rights and freedoms are denunciation, mediation, and conciliation. The Commission submits to the President of the Republic and to the Prime Minister annual reports on its activities and on the status of human rights in Cameroon. This raises another concern as to the enforceability of its submissions in cases of human rights violations, particularly in cases where the violation is perpetrated by the government itself. This is contrary to the common law principle of natural justice which purports that a person must be heard by an impartial tribunal. This is buttressing in the Latin maxim *Nemo Judex in causae sua*, that is, no one should be a judge in his own case as illustrated in the case of *Garda V University of Maiduguri* (1986) W.L.K (part 18) 550.

FUNDAMENTAL HUMAN RIGHTS RESTRICTIONS IN CAMEROON

The barriers to an effective Constitutional protection of individual rights and freedom abound ranging from Constitutional limitation, failure to respect certain Constitutional provisions and institutional challenges. The system presents a number of shortcomings that stem from its mode of construction and to lapses in its self-regulatory mechanisms. The system is trapped by its practices and lacks the capacity to respond and to anticipate. There are also lapses in monitoring/evaluation which prevent it from adapting to the requirements of modern management and to permanent global changes. On the administrative front, shortcomings can be seen through the recruitment method and devolution of positions, carelessness of state employees, indifference vis-a-vis public property, corruption and misappropriation of skills, mix-up of roles, inertia, cumbersome procedures, multiplication and compartmentalization of institutions, irrational choices in public resource allocation.

Constitutional Limitation

Human rights have never, in no place nor at any time, absolute rights. Some limitations and restrictions are, therefore, necessary and inevitable. The scope of these limitations and restrictions effectively determines the quantum of human rights protection enjoyed by citizens. The limitations and restrictions to the fundamental rights that appear to be recognized and protected in the Cameroon Constitution take diverse forms.

First, the fundamental rights in the Constitution are based on the outdated notion that the state, as the primary actor responsible for creating an enabling environment in which citizens can enjoy human rights, is also the only actor that could possibly violate those rights—a vertical system of responsibility. There has been extensive debate amongst comparative Constitutional lawyers about the need to ensure a horizontal application of human rights to cover other actors, such as non-governmental organizations (NGOs) and multinationals, whose activities can also violate the human rights of individuals. Unlike some Constitutions, such as those of Angola,

South Africa, and Kenya, which now provide for a horizontal application of human rights provisions, the Cameroonian Constitution is limited because it only allows for vertical responsibility [8].

Second, the fact that these rights are expressed in the language of hope, aspiration, and exhortation, which is typical of preambles, negates the attempt by Article 65 of the Constitution to make the Preamble, in substantive terms, 'part and parcel of the Constitution'. This is no more than a declaration, which is supported by Barthélemy's 1899 thesis that such 'declarations of rights are no more than solemn proclamations of principles, rules for the conduct of the state, pure maxims of political morality, promises whose force lies solely in public opinion and whose solemn inscription alone is made by the Constitution, without the possibility for individuals to enforce their observance or their practical realization' [11]. The effectiveness of the human rights provisions also depends on the language in which they are couched. Perhaps the most remarkable feature of the Cameroonian human rights provisions is the extent to which the so-called rights are couched in obscure language.

Third, the so-called rights are not expressed in a manner that imposes any obligation on the State. For example, 'freedom of religion and worship shall be guaranteed' by whom, when, and how? Again, 'no person may be compelled to do what the law does not prescribe'. And more troubling is the use of extensive claw-back clauses which clearly indicate that the nature and extent to which citizens will effectively enjoy any of the promised human rights will depend on the goodwill of the legislature, and there is no obligation on it to enact law, that will promote rather than undermine human rights.

Fourth, it is generally recognized, even under international human rights instruments, that there might be periods of national emergency which threaten the very existence of the State and which may justify not merely restrictions, but certain extraordinary measures entailing the temporary suspension of certain human

rights, especially when state security is in danger, be it internally or externally. The challenge is to provide for such exceptional circumstances without leaving too much discretion on the part of the government to use it as a pretext for restricting people's rights. The 1996 Constitution as amended takes the extreme position, which gives the government a go ahead to act once it determines that there is a state of emergency. Thus, Article 9 of the Constitution states that the President, 'where the circumstances so warrant', may declare a state of emergency or state of siege by decree and 'take any measures that he may deem necessary'. The only apparent check on the use of this power is that he should 'inform the nation of his decisions by message' [6]. This provision merely repeats the approach adopted in previous Constitutions and it is, therefore, no surprise that from the 1960s until the 1990s, there were areas in Cameroon that had been continuously under the state of emergency, with all the consequences that go with this; for example, the West Province during the UPC uprising, and the North-West Province during the era of political liberalisation in the 1990s. This of course is not a good vision for country striving for emergence.

Lack of Enforcement Mechanisms

The justifiability of the fundamental rights provisions is crucial to their effectiveness. The illusion of constitutionally protected human rights in Cameroon is laid bare by the absence of any effective mechanism for ensuring that these provisions are not violated. The adoption in the 1996 Constitution of the discredited French Constitutional Council model of control of constitutionality of laws effectively deprives ordinary citizens, who are usually the main victims as well as the primary beneficiaries of human rights provisions, of any right to challenge a law that violates their human rights. This is because the Constitutional Council has segregated parties who are competent in bringing action before it. There are generally two main ways of seizing a tribunal like the Constitutional Council. One way is to make it open and available to all; the other is to restrict it to specific categories of individuals. It is generally recognized that the most efficient system is that which allows

private individuals to bring matters before the court so as to properly enforce their rights. Cameroon opted for a system that restricts those who have the right to bring matters before the Council as seen under Article 47(2) of the Constitution and also Art 7 of the 2004 Law regulating the organization of the Constitutional Council.

It is clear from this that the ordinary citizen, unless he or she is a candidate to disputed presidential or parliamentary elections, has no right to bring a matter before the Council. Citizens are therefore in no position to compel the government in respecting their Constitutional rights, especially on important matters like human rights, freedom of speech, and freedom from arbitrary arrest.

The Notion of Separation of Powers

It is now generally recognized that the strict doctrine of separation of powers as propounded by *John Locke* and *Montesquieu* does not exist and is neither desirable nor practicable. Nevertheless, the three organs of State, namely, the legislature, executive, and the judiciary, should be so structured that none should dominate the other and they should be able to operate in such close cooperation that each should act as a check on the other. The limits and level of interference of each organ should be clearly defined by law.

The Cameroonian political system, although essentially presidential, is a hybrid of the French system of limited separation of powers and the US system of semi-rigid separation of powers [7]. In this respect, the Constitution recognizes the principle of separation of powers. It deals with what it refers to as 'executive power' in Part II, with 'legislative power' in Part III, and with 'judicial power' in Part V. Three Sections of the 2016 PC, namely, Sections 125 ("Any public servant who – (a) Assumes the exercise of legislative power; or (b) Refuses to enforce any provisions of law – shall be punished with detention for from six months to five years"); 126 ("Whoever—(a) Being the representative of the executive authority, issues any order or prohibition to any court; or (b) Being a legal or judicial officer, issues any order or prohibition to any executive or administrative authority—

shall be punished with detention for from six months to five years"); and 127 ("Any judicial, legal or investigating police officer who contrary to any law conferring immunity prosecutes, arrests or tries a member of the federal or federated Government or of the federal or federated Assembly, shall be punished with detention for from one to five years"), all provide penal sanctions against any persons who violates the principle of separation of powers.

A close examination of the amended Constitution shows that although it is ostensibly a regime of separation of powers based on cooperation and collaboration between the three organs of power, the exorbitant powers conferred on the executive, especially on the President of the Republic, enable the latter to completely dominate the other two powers [10].

The 1996 Constitution, as amended, guarantees judicial independence as it states in its Article 37(2) that "*Judicial power shall be exercised by the Supreme Court, Courts of Appeal and Tribunals. The judicial power shall be independent of the executive and legislative powers.*" After stating unequivocally on one hand how independent the various arms of government should be, the Constitution on the other hand takes away the same by stating 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*" (Article 37(3)). This example points to an important contradiction in the Constitution that has created key weaknesses used by the executive to infringe on the independence of the judiciary by indirectly giving the executive power over the judiciary; the Constitution thereby takes away the power of judicial review of executive action. By giving one branch of government the power to guarantee the independence of the other, the framers of the Cameroon Constitution could not have been thinking of a truly independent judiciary or separation of powers while drafting the Constitution, as posited by Mbaku and supported by this research [12]. This is explained by the fact that the Constitution was framed to create a presidential state in which

the President of the Republic will hold the supreme power to manage the judiciary as he sees fit. This position has been properly illustrated in the build up to this point of the research wherein the executive has the prerogative to oversee the inner workings of the judiciary. This situation is made clearer by the fact that judges and magistrates see themselves as civil servants reporting to the executive branch, and not as part of an independent branch of government. As the main law of the land, the Constitution puts the responsibility of assuring the independence of the judiciary in the hands of the executive. Together with the format in which judges and magistrates are trained in Cameroon, this lends itself to the idea that judges and magistrates feel a false sense of justification in making politically sound but legally untenable decisions because of the fear of either losing their jobs or being sent to prison. After reviewing the inherent weaknesses built into the Cameroon Constitution, there is no gainsaying the fact that a Constitution's integrity depends as much on its content as on its proper interpretation and execution [3]. This dependency weakens the strength of the judiciary to effectively adjudicate on human rights violations. The non-separation of powers is detrimental to the attainment of emergence in the sense the political, social and economic rights of the citizens will not be properly be respected because the various arms will not be able perform their function objectively. It is submitted that for Cameroon to attain the status of an emerging nation by 2035, there must be respect of a strict separation of powers with each arm of the state exercising her functions without fear of intrusion from another arm.

CONCLUSION

Cameroon recognizes the fundamental human rights as stipulated under various regional and international instruments like the Universal Declaration of Human Rights, the African Charter on Human and Peoples Rights, etc. Considerable efforts have been made to conform to these regional and international instruments upon ratification thereof. Also, various measures have been taken to give them substance in the day-to-day activities of the people. The rights and liberties of individuals

are so sacrosanct that the Cameroon legislature has thought it wise to insert them in the Constitution. Adding this set of rights in the Constitution which is the highest law of the land is a very important recognition on the importance of these rights and freedoms. A further adumbration of these individual rights and freedoms in other state legal instruments shows much commitments, love and desire by the government to guarantee these protections. Where there is guarantee of individual rights and freedoms, there is human rights, democracy and justice in the necessary domains are ensured and seen. With all these in place, the vision of emergence by 2035 is realistic.

However, based on our findings, we realized that the protection of individual rights and freedoms are not effectively guaranteed due to failure to adequately implement Constitutional provisions, administrative inactiveness, institutional challenges, administrative restrictions, government unwillingness to handle internal crisis, amongst others. The political process and the recent electoral operations seem to leave a good number of people indifferent. The mistrust is evident in low participation rates in elections, a total lack of interest by some social categories including the youth, and few women in positions. All these factors are such as to undermine the legitimacy of elected leaders and to encourage acts somewhat incompatible with the peace necessary for economic and social progress. The stake here is to reverse this trend and to get rid of such an imitative and superficial democracy and change to a real democracy where every citizen participates and chooses according to the way he perceives the world including his interests. The stake points to the need for political formation and the capacity building of chief actors including civil society.

All the same, the good number of reforms under way and untold sacrifices so far conceded by the people give hope for promising signs of growth, the fruits of which will be used for the well-being of all. Cameroon will also be able to make steady progress in its democratic process. It is thus suggested that future reports will provide an occasion to assess what progress Cameroon

has made in the protection and promotion of human rights and what Constitutional and legal difficulties are involved in the protection of human rights and civil liberties in domestic law.

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