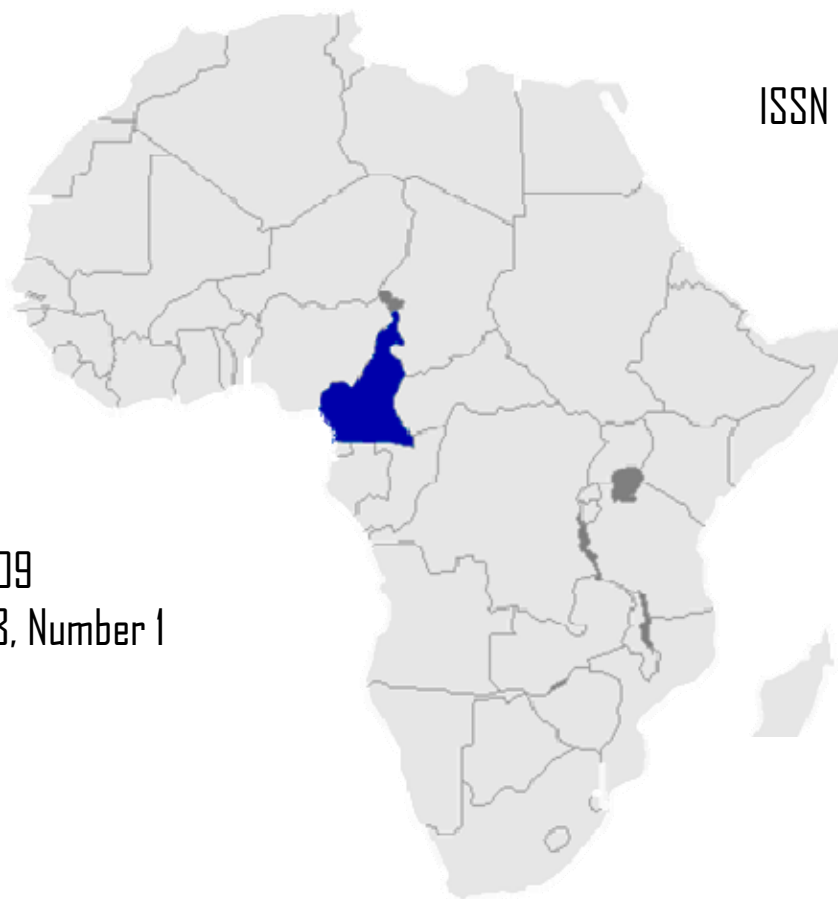


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**INTERNATIONAL PROTECTION OF CHILDREN'S RIGHTS: AN ANALYSIS
OF AFRICAN ATTRIBUTES IN THE AFRICAN CHARTER ON THE RIGHTS
AND WELFARE OF THE CHILD**

Eric NGONJI NJUNGWE*

Abstract

In November 1989, the United Nations adopted the Convention on the Rights of the Child (CRC) and this treaty came into force less than a year later in September 1990. Rather than strictly enforce the provisions of the CRC, African leaders decided to adopt their own version of the CRC, the African Charter on the Rights and Welfare of the Child (African Children's Charter), which was adopted in July 1990 but only came into force nine years later in November 1999. The question is – if the specific protection of African children was so urgent that it necessitated a separate treaty, why did it take so long for African leaders to ratify their own treaty? This article scrutinise the African Children's Charter with a view of bringing out aspects peculiar to Africa that prompted a separate treaty for African children. In this regard, other international human rights instruments are important. This paper will therefore examine the international protection of children's rights prior to the African Children's Charter both under the United Nations (UN) and the African regional human rights systems.

Keywords: Children's rights, child protection, regional protection, international standards, human rights, African Children's Charter.

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1. Introduction

There is a general consensus that children are in many respects more susceptible to human rights violations than adults.¹ However, the point must be emphasised that causes of human rights violations such as poverty and warfare do have a disproportionate impact on children in Africa than their counterparts on other continents. Related to these are other aspects of harmful cultural practices such as female genital mutilation and forced marriages, which have impacted negatively on the African child. It is against the background of this vulnerability that the Assembly of Heads of States and Governments of the Organisation of African Unity (OAU), now the African Union (AU) adopted in 1990, the African Charter on the Rights and Welfare of the Child (African Children's Charter).²

2. International Protection of Children's Rights before the African Children's Charter

International concern for the rights of the child dates far back as the General Declaration of the Rights of the Child of 1924, which was followed by the Declaration of the Rights of the Child of 1959 proclaimed by the UN General Assembly resolution 1386 (XIV).³ However, both declarations were not legally binding on states. It was not until 1989 that the first legally binding instrument on the protection of children was adopted.

2.1. The Convention on the Rights of the Child

Before the adoption of the African Children Charter, the only instrument meticulously protecting children's rights, and legally binding on African states

¹ Frans Viljoen "The African Charter on the Rights and Welfare of the Child" in CJ Davel (ed) (2000), *Introduction to Child Law in South Africa*, pp. 241-215; Julia Sloth-Nielsen "Ratification of the United Nations Convention on the Rights of the Child: Some Implications for South African Law" *South African Journal on Human Rights*, Vol. II Part 3, (1995), p. 401; Geraldine Van Bueren "The United Nations Convention on the Rights of the Child: An Evolutionary Revolution" in CJ Davel (ed) (2000), *Introduction to Child Law in South Africa*, p. 202.

² Adopted by the OAU Assembly of Heads of States and Governments on 11 July 1990, and it entered into force on 29 Nov. 1999.

³ AL Muthoga "Introducing the African Charter on the Rights and Welfare of the Child"- paper presented at the *International Conference on the Rights of the Child*, organised by the Community Law Centre at the University of the Western Cape (1992), p. 123.

was the Convention on the Rights of the Child (CRC).⁴ The CRC was the first international human rights treaty to adopt a comprehensive approach on the protection of children, and has in fact been hailed as a watershed in the history of children.⁵ The Convention covers a wide range of issues and establishes legally binding obligations by laying down international standards, which states must meet both within their domestic legislations and policies affecting children. The CRC defines a child as every human being below the age of 18 years.⁶

The Convention covers civil, political, economic, social and cultural rights.⁷ It contains a broad non-discrimination clause;⁸ provides that the best interest of the child shall be a primary consideration in all actions affecting children;⁹ protects the right and responsibilities of parents and legal guardians over the child;¹⁰ guarantees the right to life;¹¹ and the child's right to a name, nationality and identity.¹² It also protects the child's right to the family and when deprived of his or her family environment;¹³ his right to expression, thought, conscience, religion and association;¹⁴ protects the child from illicit transfer, right to privacy, child labour, drug abuse, sexual exploitation, traffic in children, and all forms of exploitation.¹⁵ It further guarantees child adoption, protects refugee children, the disabled, children of minority groups or indigenous origin and children in armed conflicts.¹⁶ It protects the child against torture, cruel and inhuman treatment; protects the child from capital punishment or even life imprisonment without the possibility of release; and requires the observance of due process in the

⁴ U.N. G.A. RES. 44/25 of 20 Nov. 1989 and it entered into force on 2 Sept. 1990; 28 I.L.M. 1456 (1989).

⁵ Julia Sloth-Nielsen (note 1 above), p. 401.

⁶ CRC, article 1. This definition is however subjected to national legislations which may determine an early age for majority.

⁷ Geraldine Van Bueren (note 1 above), p. 202.

⁸ Article 2.

⁹ Article 3.

¹⁰ Articles 5 & 18.

¹¹ Article 6.

¹² Articles 7 & 8.

¹³ Articles 9 & 20.

¹⁴ Articles 12, 13, 14 & 15.

¹⁵ Articles 11, 16, 32, 33, 34, 35 & 36.

¹⁶ Articles 21, 22, 23, 30 & 38.

administration of justice.¹⁷ The Convention also guarantees socio-economic rights of children, such as the right to health, social security, adequate standard of living, education, rest and leisure.¹⁸

The CRC is the most widely ratified of international human rights treaties¹⁹ with all UN members, except for the US, being States Parties. The body charged with overseeing the implementation of the CRC is the Committee on the Right of the Child²⁰ which has the authority to examine States periodic reports;²¹ work hand in hand with other UN agencies involved in the area of children's rights;²² and make suggestions and recommendations both to the UN General Assembly and States parties with respect to the improvement of issues relating to children's rights.²³

2.2. Children's Rights in other UN Conventions

Before the adoption of the CRC, other international human rights treaties existed amongst which is the International Covenant on Economic, Social and Cultural Rights (ICESCR),²⁴ and the International Covenant on Civil and Political Rights (ICCPR).²⁵ Both instruments did not deal exclusively with children's rights. However, their guarantee of the rights of "all peoples", "all persons", "every human being", "any person", "anyone", and "everyone" does not in any way exclude children. In other words it is logical to say that the rights provided for in these covenants effectively apply to children as well. Besides protecting children under these general clauses, both covenants at certain instances refer to children particularly.

¹⁷ Articles 37, 39 & 40.

¹⁸ Articles 24, 25, 26 & 27.

¹⁹ Julia Sloth-Nielsen (n 1 above) 402. See also Frans Viljoen (n 1 above), 217.

²⁰ Was established in 1991.

²¹ CRC, article 44(1).

²² Article 45(a) & (b).

²³ Article 45(c) & (d).

²⁴ U.N G.A. RES. 2200A (XXI) of 16 Dec. 1966 and entered into force on 3 Jan. 1976; 993. UNTS 3.

²⁵ U.N. G.A. RES. 2200A (XXI) of 16 Dec. 1966 and entered into force on 23 March 1976; 999 UNTS 171.

For instance, the ICESCR guarantees the protection and assistance to the family for its responsibility and care over dependent children.²⁶ It requires that special measures be taken on behalf of children, that they should be protected from economic and social exploitation,²⁷ and that children be protected against child labour.²⁸ It also obliges States to take steps to reduce stillbirth rate, infant mortality and improve on the healthy development of the child.²⁹ Further, the right to education is protected. It guarantees free and compulsory primary education and the progressive introduction of free secondary education. The ICCPR on the other hand call on States parties to ensure that in criminal proceedings involving juveniles the procedures should take into account their age and the desirability of promoting their rehabilitation.³⁰ It also guarantees the child's right to protection by the family, society and the State,³¹ the right to be registered after birth and be given a name,³² and the right to acquire a nationality.³³

3. Children's Rights in Africa prior to the African Children's Charter

Before the adoption of the African Children's Charter, the rights of the child were regionally protected under two OAU documents – the Declaration on the Rights and Welfare of the African Child,³⁴ and the African Charter on Human and Peoples' Rights.³⁵

3.1. The Declaration on the Rights and Welfare of the Child

The work on the rights of children in African extends far back as 1979, the International Year of the Child,³⁶ in which the OAU passed the Declaration on the

²⁶ ICSECR, art 10(1).

²⁷ Article 10(3).

²⁸ Ibid.

²⁹ Article 12(2)(a).

³⁰ ICCPR, article 14(4).

³¹ Article 24(1).

³² Article 24(2).

³³ Article 24(3).

³⁴ Adopted by the OAU Assembly of Heads of State and Government on 20 July 1979.

³⁵ Adopted by the OAU Assembly of Heads of State and Government on 27 June 1981. It entered into force on 21 Oct. 1986; 21 I.L.M. 59 (1982).

³⁶ As proclaimed by U.N. G.A. RES. 31/169 of 21 Dec. 1976.

Rights and Welfare of the African Child (the Declaration).³⁷ This Declaration recognised the need to take all appropriate steps to protect the rights and welfare of the African child.

The Declaration brought out many concerns peculiar to Africa. It raised awareness of the deep concern of African States about the future of African Children as inheritors and keepers of the African cultural heritage.³⁸ This provision illustrates the respect Africans have for their culture and the important role children are supposed to play in a traditional African society.

The Declaration also made it clear that the welfare of the African child is inextricably bound up with that of his or her parents and other members of the family, especially the mother.³⁹ This does not only show how significant the family unit is in an African society, but also exemplifies the traditional role of the African mother whose main task has in the past been tied up to child rearing. Whether child welfare can nowadays be exclusively linked to mothers rather than fathers is debatable. This is true if we take into account the realisation that women are important role-players and must engage in more than just child rearing for the full development of society - responsibilities which are now guaranteed in a plethora of international human rights instruments.⁴⁰

The Declaration also called on all African states to review provisions relating to children in their legal codes paying particular attention to the unequal status of female children in some parts of Africa.⁴¹ This provision depicts the various machinations feminism has undergone and continues to undergo in most of

³⁷ Garton S Kamchedzera "The Complementarity of the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child, in Eugene Verhellen (ed) (1998), *Understanding Children's Rights*, p. 550.

³⁸ Preamble, para 6.

³⁹ Preamble, para 7.

⁴⁰ See the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), U.N. G.A. RES. 34/180 of 18 Dec. 1979 and entered into force on 3 Sept. 1981; 1249 UNTS 13; See also non-discrimination clauses in all human rights instruments.

⁴¹ Principle 2 of the Declaration.

Africa. Examples of these are discrimination against the girl child in education and inheritance. Due to the numerous cultural and traditional practices impacting negatively on children on the continent, the Declaration further urged African states to thoroughly examine cultural legacies and practices that are harmful to normal growth and development of the child such as child marriages and female circumcision. It recommended that legal and educational measures be adopted to abolish them.⁴²

Finally, it requisitioned states to preserve and develop African arts, languages, and cultures, and to stimulate the interest and appreciation of African children in the cultural heritage of their own countries and of Africa as a whole.⁴³ Again, this reiterates the love, respect, and the prestige with which the African culture is upheld; but more so, it depicts the extreme need to retain African cultural values in the face of Western influence. As a declaration however, this document had no binding force in the like of a convention, and could only be regarded as a policy statement for African States.

3.2. The African Charter on Human and Peoples' Rights

The present African regional human rights regime is built on the African Charter on Human and Peoples' Rights (African Charter),⁴⁴ and functions within the institutional framework of the AU. The African Charter makes only one mention of the child in its provisions.⁴⁵ It provides that States Parties should ensure the protection of the rights of the child as stipulated in international Declaration and Covenants. By this therefore, the African Charter effectively endorses internationally adopted principles on children's rights.

Besides, the African Charter in itself does not exclude children in the protection of rights therein guaranteed. It deals with the rights of "every individual", "human

⁴² Principle 3.

⁴³ Principle 10.

⁴⁴ See note 35 above.

⁴⁵ Article 18 (3).

beings”, “every citizen”, and “all peoples” under the jurisdiction of States. A plain language interpretation of these phrases would support the logical conclusion that children are also protected, both as individuals, as human beings, as citizens and as members of a group (peoples).⁴⁶

4. The African Charter on the Rights and Welfare of the Child

Barely a year after the adoption of the CRC, the OAU adopted the African Children’s Charter as an African embellishment to the global protection of children’s rights.⁴⁷ It is obviously not an issue that Africa readily took a regional dimension to the protection of children, for the move was adequately motivated by informed and rational arguments.⁴⁸ The African Children’s Charter was adopted against the background that the situation of most African children remained critical due to the unique factors of their socio-economic, cultural, traditional and developmental circumstances, natural disasters, armed conflicts, exploitation and hunger, and also on account that the child’s physical and mental immaturity necessitated special safeguard and care.⁴⁹ Political and legal reasons have thus far been canvassed for the OAU reaction.

Politically, African patriotism and perceived Eurocentrism in the CRC’s drafting process was of great impetus.⁵⁰ African states resented their low level of involvement in the drafting process of the CRC. The OAU reaction therefore stemmed from a perception of marginalisation and exclusion in the drafting of the

⁴⁶ Frans Viljoen (note 1 above), p. 216.

⁴⁷ Africa is at the forefront of standard setting on children’s rights at a regional level. This is praiseworthy for the continent as it represents a major and excellent contribution to the development of international law on the rights of children.

⁴⁸ Opposition to the process of the CRC in Africa was first raised at a conference titled ‘*Children in Situations of Armed Conflict in Africa*’, organised by the African Network for the Protection Against Child Abuse and Neglect (ANPACAN) and UNICEF, held from 9 to 11 May 1988 in Nairobi, Kenya. A significant outcome of the conference was that the OAU in collaboration with ANPACAN and UNICEF set up a working group of African experts who produced a draft charter that formed the basis of the eventual African Children’s Charter. (See Frans Viljoen (note 1 above), p. 218).

⁴⁹ Preamble to the African Children’s Charter, para; 3. Also highlighted in the preamble is the virtue of the cultural heritage, historical background and values of African civilisation, which should inspire the concept of child welfare in Africa (para.6); and also the African notion of a correlation between rights and duties (para; 7).

⁵⁰ Garton S Kamchedzera (note 37 above), p. 550.

CRC.⁵¹ Both at the Governmental and non-Governmental levels, Africa was under-represented, and its viewpoints not sufficiently incorporated in the drafting process.⁵² Hence the exclusion was not only regarded as unfair, but also perceived to have given African states a limited opportunity to air their views on the contents of the convention.

Legally, although African states later welcomed the outcome of the UN process on the protection of children's rights,⁵³ they did not regard the CRC as the utmost insofar as Africa is concerned. As a global instrument, the CRC was perceived to be the result of numerous compromises. African critics of the CRC and supporters of the African move argued strongly that, regional specificities were sacrificed in the drafting of the CRC at the altar of consensus.⁵⁴ Accordingly, there was the need for a more protective regional human rights treaty that would identify and prioritise issues specifically affecting children in Africa in addition to globally recognised and generally applicable principles.

The African Children's Charter defines a child as "every human being below the age of 18 years",⁵⁵ and unlike the CRC, this definition is not subjected to alternative prescriptions at the domestic level. It outlaws any majority earlier than 18 years. Consequently, states parties are under an obligation to ensure that their legislations square with that provided for in the Charter,⁵⁶ unless national legislation provides for a more conducive mechanism for the realisation of children's rights.⁵⁷ What this means is that, in relation to national legislation, the provisions of the Africa Children's Charter can be regarded as minimum

⁵¹ With the exception of Algeria, Morocco, Senegal and Egypt, Africa's participation in the drafting of the CRC was minimal; see K Arts "The International Protection of Children's Rights in Africa: The 1990 OAU Charter on the Rights and Welfare of the Child", *African Journal of International and Comparative Law*, Vol. 5 (1993), p. 141.

⁵² Muthoga (note 3 above), p. 123.

⁵³ Evidenced in the fact that all African States have ratified the CRC.

⁵⁴ Muthoga (note 3 above), p. 124; Frans Viljoen (note 1 above), p. 218.

⁵⁵ African Children's Charter, article 2.

⁵⁶ Article 1(1).

⁵⁷ Article 1(2).

standards. Deviation from it by national legislation will therefore only be permissible to the extent that national laws afford a better protection to children.

The African Children's Charter basically guarantees, with a few exceptions,⁵⁸ all the rights recognised and protected in the CRC. This ranges from civil and political rights to economic, social and cultural rights.⁵⁹ In addition to these, the African Children's Charter has taken positive measures to justify its very existence. This is reflected in its incorporation of aspects pertinent to the protection of children on the African continent.

The African Children's Charter creates a Committee to oversee the implementation of the rights guaranteed.⁶⁰ This Committee does perform this role through recommendations to Governments, laying down principles, co-operating with Organisations in the field of children's rights, monitoring the implementation of the Charter provisions, and interpreting the provisions of the Charter.⁶¹ The Committee is also empowered to consider periodic states reports,⁶² and complaints alleging states violations of the Charter provisions.⁶³

5. The African Children's Charter as an African Instrument

The African Children's Charter was adopted as an African adornment to the CRC and until date remains the only legally binding human rights treaty providing a

⁵⁸ The African Children's Charter fails to shield the African child from the imposition of life imprisonment; see CRC, article 37(a).

⁵⁹ Rights guaranteed under the African Children's Charter include non-discrimination; best interest of the child; right to life, survival and development; right to a name and nationality; freedom of expression; association; thought, conscience and religion; the right to privacy; education; leisure, recreation and cultural activities; right to health; right of handicapped children; children in armed conflicts; and refugee children. It protects the child against child labour; against torture and abuse; against harmful social and cultural practices; against apartheid; sexual exploitation; drug abuse; sale, trafficking and abduction. It also guarantees due process in the administration of justice; protects the family; parental care and protection; parental responsibilities; adoption; the child's rights when separated from parents; and the rights of children of imprisoned mothers. Above all, the charter provides the child with some responsibilities.

⁶⁰ African Children's Charter, see generally articles 32 to 45.

⁶¹ See the mandate of the African Children's Committee (article 42).

⁶² Article 43.

⁶³ Article 44.

comprehensive guarantee on children's rights on the continent. Although the Charter efficiently protects issues specific to Africa, it also provide for aspects of general concern. It should be emphasised however that the African Children's Charter is an African document, written by Africans, to work for Africans. It incorporates all the policy principles of the Africa Children's Declaration, hence elevating them to binding principles in a different guise.

Meanwhile, it should be noted that some of the aspects considered to be of critical African apprehension are in some instances generally applicable. For example, poverty, culture and tradition, armed conflict, and discrimination against women are not a monopoly of the African continent. These aspects can easily be identified in Asia, Eastern Europe, and Latin America, if not all over the world. Nevertheless, Africa's perception of these features will be examined. The Africa Children's Charter should also be viewed as part of the dedicated effort by the drafters to develop an African approach to human rights.⁶⁴ This is mirrored in some of its provisions.

5.1. Discouraging customs and traditions inconsistent with the Charter Provisions

Any African custom, tradition, cultural or religious practice that is inconsistent with the rights, duties, and obligations contained in the African Children's Charter is to be discouraged to the extent of its inconsistency.⁶⁵ This is an obligation upon states parties and they are required to take all appropriate steps necessary to realise this responsibility. What is more instructive in this provision is its severity and sincerity. It openly admits that insofar as the African custom, tradition, and culture are hailed, there are aspects of these, which do not lead in

⁶⁴ Note that aspects of specific relevance to Africa had earlier been incorporated in the Declaration on the Rights and Welfare of the Africa Child and the African Charter on Human and Peoples' rights.

⁶⁵ African Children's Charter, article 1(1).

any way to the development and advancement of the African child.⁶⁶ In reality though, the Charter merely calls for a sieving of these practices. As such, those practices in conflict with the Charter provisions do not necessarily need to be rejected in their entirety, but rather, to the extent of their inconsistency. Hence, in most cases, only those specific elements in particular practices that do not support the intent and spirit of the Charter need to be struck down.

5.2. The Right to Privacy of the African Child

Another provision postulating an African perception of children's rights is the provision on the right of the child to privacy. The Charter guarantees the child's right to privacy, but subjects it to the right of parents or legal guardians to exercise reasonable supervision over the conduct of their children.⁶⁷ This approach sharply contrasts that adopted in the CRC. The CRC effectively guarantees the child's right to privacy without the intervention of parental supervision.⁶⁸ It is debatable which of the two approaches works out well for the best interest of the child.

Suffice to say however that the African approach is embedded in the principle that the child's physical and mental immaturity necessitates special safeguards.⁶⁹ The point should also be emphasised that in most African countries, childhood corresponds to a psychological and mental state of mind, the duration of which depends on the family environment.⁷⁰ In most African societies therefore, an individual remains a "child" even after 18 years, so long as he/she remains under his parents' shelter and guidance.⁷¹

⁶⁶ Principle 3 of the 1979 OAU Declaration of the Rights and Welfare of the African Child specifically calls upon States to abolish harmful cultural practices, such as child marriages and female circumcision.

⁶⁷ African Children's Charter, article 10.

⁶⁸ CRC, article 16.

⁶⁹ African Children's Charter, preamble, para 3.

⁷⁰ D Fall-Sow, "The Rights of Children in the African Judicial Systems" in Eugene Verhellen (ed) *Understanding Children's Rights* (1996), p. 493.

⁷¹ Ibid.

5.3. Preservation of African Values, National Independence, and the Promotion of African Unity

In guaranteeing the child's right to education, the Charter envisages an educational system directed at achieving amongst other things, the preservation and strengthening of positive African morals, traditional values, and cultures; the preservation of national independence and territorial integrity; and the promotion and achievement of African Unity and solidarity.⁷² These three aspects are interrelated.

The call for the preservation of national independence readily draws to our mind colonialism, which until the second half of the 20th century persisted across Africa. Colonialism is an icon in the specific history of Africa that will never be forgotten. Its impact on Africa is grave and far-reaching, and should be regarded as inextricably linked to Africa's present day difficulties and underdevelopment. Colonialism was full of repression and clearly exploitative.⁷³ It is therefore not surprising that the OAU took a determined approach aimed at ensuring that independent African States preserved their independence and integrity.⁷⁴ On the other hand, the colonial vilification of African culture and tradition is the backdrop to the continuous determination to preserve and strengthen positive African morals, culture and traditional values, especially with the threatening influence of Western values over the African continent.⁷⁵

Equally, the call for an educational system that would promote the achievement of African Unity and solidarity represents the move adopted in post-colonial Africa. The idea of African Unity occupied the minds of many nationalist African

⁷² African Children's Charter, arts 11(2) (c), (e), (f). See also preamble, para 5.

⁷³ UO Umozurike, *The African Charter on Human and Peoples' Rights* (1997), pp. 21 & 55.

⁷⁴ The preservation of African independence and eradication of colonialism is also protected under the OAU Charter; preamble, paras 1 & 6, and arts 2(1) (c) & (d); The African Charter, preamble para 8 and arts 20 & 29(5). Art 20(3) even goes further to guarantee "all peoples", the assistance of States parties in their liberation struggle against foreign domination.

⁷⁵ African culture and traditional values are also protected in the Declaration on the Rights and Welfare of the African Child, preamble, para; 6 and principle 10; and the African Charter, preamble, para 4 & article 29(5).

leaders,⁷⁶ and finds place in almost all OAU treaties.⁷⁷ The idea was finally consecrated with the adoption of the Constitutive Act of the African Union, by the Assembly of Heads of States and Government of the OAU in Lome, Togo on 11 July 2000.

5.4. Protection of the Family

The African Children's Charter regards the African child as occupying a unique and privileged position in the African society and that he deserves to grow up in a family environment providing an atmosphere of happiness, love, and understanding, so as to harmoniously develop his personality.⁷⁸ It is against this background that the Charter regards the family as the natural unit and basis of society, and obliges states to protect and support it.⁷⁹ It should be pointed out that the perception of family within the African context is not limited to the spouses and their children. It extends beyond that to include the extended family such as cousins, nephews, aunts, uncles, and grand parents.

In Africa, children do not only have the right to a family support, but to be taken charge of by the whole community.⁸⁰ This stresses the importance of the communal elements in African societies.⁸¹ In African traditional societies, the human being could not survive independently of his people, the community.⁸² Living in African traditional societies means "abandoning the aggressive, conquering being, in order to be with others in peace and harmony with the living

⁷⁶ In 1965, President Nyerere showed deep concern over the secession movement of Biafra from Nigeria and regarded it as a setback for African Unity. Similarly, Emperor Selassie as the head of the Consultative on the Nigerian Crisis opined that national unity of individual African States is essential for African Unity, and therefore the territorial integrity of OAU member States was not negotiable. (See E Ankumah, *The African Commission on Human and Peoples' Rights: Practice and Procedures* (1996), p. 163.

⁷⁷ See the OAU Charter, preamble, paras 4 & 8 and article 2(1) (a); Also, article 29(8) of the African Charter imposes a duty on individuals to contribute to the best of their abilities, at all times, and at all levels, to the promotion and achievement of African Unity.

⁷⁸ African Children's Charter, preamble, para 4.

⁷⁹ Article 18(1).

⁸⁰ D Fall-Sow (note 70 above).

⁸¹ P Kunig, W Benedek & C Mahalu, *Regional Protection of Human Rights By International Law: The Emerging African System* (1985), p. 63.

⁸² Ibid.

and the death..."⁸³ In traditional Africa, an individual is considered to be "part and parcel" of a group and depends on his group which is obliged to assist him.⁸⁴

The African conception of man is not that of an isolated and abstract individual, but an integral member of a group animated by a spirit of solidarity.⁸⁵

The philosophy of the individual and the community is summed up in the following phrase; "I am because we are, and because we are, therefore I am".⁸⁶

At all times however, we have the primacy of the family, the clan or the community over the individual.⁸⁷ This was not of subordination, but of complementarity.⁸⁸ Whatever the rationale, it is possible to assert that inasmuch as different family structures exist in Africa, the duty upon States to protect families cannot be dissociated from its protection of the community at large.

5.5. Harmful Social and Cultural Practices

The African Children's Charter urges states parties to eliminate harmful social and cultural practices, especially those prejudicial to the child's health or life, and those discriminatory of the child on any grounds.⁸⁹ In this respect, it bars child marriages and the betrothal of girls and boys, and also calls upon states to legislate the minimum age of marriage to be 18 years.⁹⁰

The issue of harmful cultural practices is very crucial within the African context. Most African societies have held steadfast to their customs despite their negative impacts on children. Besides child marriages and child betrothal, there are other harsh practices like female genital mutilation, killing of baby twins, parents-

⁸³ Quoted from Ankumah (note 76 above), p. 163.

⁸⁴ Ibid.

⁸⁵ Quoted from M Matua "The Banjul Charter and the African Cultural Fingerprint: An Evaluation of the Language of Duties", *Review of the African Commission on Human and Peoples' Rights*, Vol. 6 (1996-97) Parts 1 & 2, 32.

⁸⁶ Ibid, quoting J Mbiti, *African Religion and Philosophy*, (1970), p. 141.

⁸⁷ Mutombo Nkulu, "The African Charter on Human and Peoples' Rights: An African Contribution to the project of global ethic"

<<http://astro.temple.edu/~dialogue/Center/mutombo.htm>> accessed on 20-09-2001.

⁸⁸ Kunig et al (note 81 above).

⁸⁹ African Children's Charter, article 21.

⁹⁰ Ibid.

arranged marriages, male primogeniture, and female inferiority, all protected in the name of custom, tradition, culture, and religion. Some African traditions go as far as supporting discrimination against women in such areas as inheritance, property ownership, and consent for marriage.⁹¹ It is therefore not surprising that the African Children's Charter calls on states to abolish such negative practices.

5.6. Armed Conflicts and Refugees

Another area in which the African Children's Charter carries forward the protection of the African child is in the situation of armed conflicts. It prohibits both the recruitment of children into the armed forces and protects refugee children. On this point the African Children's Charter departs slightly from the guarantee under the CRC. The Charter requires states to refrain from recruiting children into the armed forces.⁹² In line with article 2 of the Charter, this means a watertight prohibition on the recruitment of persons below 18 years of age. Conversely, the CRC only prohibits the recruitment of youths below 15 years.⁹³ Hence while the Charter prohibits persons under 18 from taking part in hostilities,⁹⁴ the CRC allows children between 15 and 18 years to be used directly in hostilities.⁹⁵ An attempt to partially redress this situation is found in the Optional Protocol to the CRC.⁹⁶

The African Children's Charter also broadens the scope of protection of refugee children allowing internally displaced children to be given adequate protection whether such displacement results from natural disaster, internal armed conflicts,

⁹¹ Umozurike (n 73 above), 57. The situations in Nigeria, Lesotho, Zambia and Kenya has been illustrated in Ankumah (note 76 above), pp. 153-154; see also K Arts (note 51 above), p. 151.

⁹² African Children's Charter, article 22(2).

⁹³ CRC, article 38(3).

⁹⁴ African Children's Charter, article 22(2).

⁹⁵ CRC article 38(2).

⁹⁶ The Optional Protocol to the CRC on the Involvement of Children in Armed Conflicts (UN General Assembly resolution A/RES/54/263 of 25 May 2000). Article 1 provides that "States Parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities". On its part, art; 2 urges states parties to "ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces".

civil strife, the breakdown of economic and social order or any other cause.⁹⁷ These aspects resound the precarious situation in which children find themselves in Africa.⁹⁸ Although not restricted to Africa, child soldiers and child refugees are common tribulations on the African continent.⁹⁹ Africa makes headlines with events related arm conflicts¹⁰⁰ with all its accompanying consequences amongst which is the proliferation of refugees. Consequently, by providing that the standard applicable to internationally displaced children shall apply equally to internally displaced, the Charter brilliantly exhibits an insight and realism to the nature of refugee problems on the continent. The relevance of this provision is echoed in the fact that the number of internally displaced people in Africa most often surpass the internationally displaced; most of them being women and children.

5.7. Protecting Children under Apartheid

The African Children's Charter takes a positive step in protecting children under apartheid regimes. It specifically urges states parties to individually or collectively accord highest priority to the special needs of children living under apartheid and states subjected to the military destabilisation of the apartheid regime.¹⁰¹ To this end, they shall direct their efforts towards the elimination of all forms of discrimination and apartheid on the African Continent.¹⁰² It is by now not a secret that until the early 1990s, Apartheid continued to be the worst tribulation and the major stumbling bloc to the full development of humanity in Africa. In no other continent have the adversities of apartheid been felt like in Africa. The term itself was invented on the African continent for the selfish and heartless interests of the minority Whites of South Africa.

⁹⁷ African Children's Charter, article 23(4).

⁹⁸ Frans Viljoen (2001) 'Africa's contribution to the development of international human rights and humanitarian law', *1 Africa Human Rights Law Journal*, p. 23.

⁹⁹ Ibid.

¹⁰⁰ D Torou <<http://www.peace.ac/afstrugglehumanrights.htm>> accessed on 17-08-2001.

¹⁰¹ African Children's Charter, article 26 (1).

¹⁰² Article 26 (3).

When the Afrikaner-dominated National Party won the 1948 general election, it immediately began to implement the policy known as apartheid, which in Afrikaans means "apartness."¹⁰³ Racial discrimination was institutionalised and although initially aimed at maintaining 'White' supremacy over 'Black', it developed in the 60's, to a full plan of "Grand Apartheid" which emphasised territorial separation and police repression, as non-compliance with race laws were dealt with harshly.¹⁰⁴

The notorious system of apartheid did not only exclude blacks from accessing social and economic opportunities in their own country, but also deprived them of their political rights only on the grounds that they were black.¹⁰⁵ This policy ensured that blacks were settled separate from whites and had to carry "passes" or identification documents to come to towns, regarded as non-black areas.¹⁰⁶ Worst still, the Apartheid Regime exported its activities to other countries like Namibia. The cruelty and barbaric nature of this system provoked much agitation and movements in the international arena.¹⁰⁷ The protection of children under such a regime was therefore an indispensable priority for the OAU, and despite its loyalty to its principle of "non-interference";¹⁰⁸ the OAU never yielded its constant attack on South Africa.¹⁰⁹ Today however, the issue of apartheid may

¹⁰³ *Apartheid: The Beginning* <<http://www.learner.org/exhibits/southafrica/apartheid.html>> accessed on 22-09-2001.

¹⁰⁴ *The History of Apartheid in South Africa* <<http://www-cs-students.stanford.edu/~cale/cs201/apartheid.hist.html>> accessed on 22-09-2001.

¹⁰⁵ M Hansungule, 'Domestic Implementation of Human Rights in African Constitutions' (2001), (on file with author). See also Umozurike (note 73 above), p. 54.

¹⁰⁶ *The History of Apartheid in South Africa* (note 104 above).

¹⁰⁷ Apartheid led to the conclusion of several treaties including, the International Convention on the Elimination of All Forms of Racial Discrimination, U.N. G.A. RES. 2106 (XX) of 21 Dec. 1965, and entered into force on 4 Jan. 1969, 660 UNTS 195; the International Convention on the Suppression and Punishment of the Crime of *Apartheid*, U.N. G.A. RES. 3068 (XXVIII) of 30 Nov. 1973, and entered into force on 18 July 1976, U.N. Doc. A/9030 (1973); and the International Convention against *Apartheid* in Sports, U.N. G.A. RES. 40/64 of 10 Dec. 1985, and entered into force on 3 April 1988.

¹⁰⁸ Article III (2) of the OAU Charter. The OAU emphasised the principle of non-interference in "internal affairs" in an effort to avoid conflict between member states.

¹⁰⁹ Ankumah (note 76 above), p. 4; Umozurike (n 73 above), p. 24; Mutombo (note 87 above).

not be a major issue in Africa, particularly with the ongoing democratisation process in South Africa and Namibia.

5.8. Responsibilities of the Child

The African Children's Charter does not fail to reiterate the defended African position taken up earlier in the African Charter whereby individuals do not just claim rights and freedoms without bearing some responsibilities.¹¹⁰ Until date, these African instruments remain the most comprehensive provisions on individual's duties guaranteed in international treaties.¹¹¹ The Children's charter replicates the principle that the promotion and protection of the rights and welfare of the child also implies the performance of duties on the part of everyone.¹¹² In line with this, it imposes duties on the child towards the family, society, and the State.¹¹³ These include the duties of obedience and respect to his family, parents and elders; to serve his national community; to preserve and strengthen social and national solidarity; to preserve African cultural values; to preserve the independence and integrity of his country; and to promote African Unity.¹¹⁴

To preserve African values have always been the intention of the drafters of the African human rights instruments.¹¹⁵ In African traditional communities, rights go hand in hand with duties and the individual is specifically prepared to assume his

¹¹⁰ Para 6 of the preamble to the African Charter provides clearly that "the enjoyment of rights and freedoms also implies the performance of duties on the part of everyone". Article 29 then goes on to provide the individual with duties towards the family, the State and the community.

¹¹¹ Note however that imposing duties on individuals have also been provided for in other international conventions. For instance, art 29(1) of the Universal Declaration of Human Rights provides that "everyone has duties to the community in which alone the free and full development of his personality is possible". Paras 5 of the preamble to both the ICESCR and the ICCPR provides also that the individual has duties to other individuals and to the community to which he belongs, and is under a responsibility to strive for the promotion and observance of the rights recognised therein; see also The Inter-American human rights system which provides for duties under the American Declaration of the Rights and Duties of Man.

¹¹² Preamble, para 6.

¹¹³ African Children's Charter, article 31.

¹¹⁴ Ibid.

¹¹⁵ Kunig et al (note 81 above), p. 89.

social responsibilities.¹¹⁶ The obligation to care for family members remains one of the features that lie at the heart of the African social system.¹¹⁷

The conception of the individual who is utterly free and utterly irresponsible and opposed to society is not consonant with African philosophy.¹¹⁸

Individual rights cannot make sense in a social and political vacuum, devoid of the duties assumed by individual.¹¹⁹ This appears to be truer of Africa than any other place.¹²⁰ It is therefore not by accident that African children were also given responsibilities alongside the guarantee of their rights and freedoms in the Children's Charter. Nonetheless, the Children's Charter does not expect all children to have the same responsibilities and as such recommends that these duties should take into account the age and ability of children.¹²¹

6. Conclusion

What can be discerned from the above is that the African Children's Charter is a document which adequately showcases the priorities of the African continent without undermining the relevance and status of the CRC. But in spite of its effort at complementing the global protection of children, the African Children Charter has constantly maintained a low profile in the international human rights arena. It is not known to most Africans and has been rarely used relative to the CRC, both at the international and national levels. Non-governmental organisations (NGOs) have not taken up the initiative required to give the Children's Charter the full publicity it deserves. One of the reasons for this slow move is that the Charter took long to come into force.

The reaction of African States shows a seemingly low acceptability of the luminous endeavour by African experts on the protection of children on the

¹¹⁶ Ibid.

¹¹⁷ T W Bennett, *Human Rights and African Customary Law* (1995), p. 6.

¹¹⁸ Quoted from Kunig et al (note 81 above), p. 89.

¹¹⁹ Matua (note 85 above), p. 17.

¹²⁰ Ibid.

¹²¹ African Children's Charter, article 31.

continent. The Charter needed just 15 instruments of ratification (less than one third of OAU members States) for it to come into force,¹²² but it took almost a decade to get the required ratifications causing it to come into force on 29 November 1999. This is absurd when compared to the CRC that took ten months to enter into force.¹²³ As of now (15 December 2001), more than ten years after its adoption, the African Children's Charter counts only 21 States Parties (less than half of OAU member States).¹²⁴ This bleak experience is crucial and African States should take up the initiative to ratify the continent's foremost children's instrument.¹²⁵

The African Committee on the Rights of the Child (Africa Children's Committee) consequently has a major role to play with respect to the protection of children on the continent. To this end, it would be wise for the Committee to give the widest possible publicity to the Children's Charter, and also encourage NGOs to join its efforts in this regard. Further, the African Children's Committee should extend the initiative of the African Commission by properly scrutinizing States reports under the Children's Charter.¹²⁶ It should enter into constructive dialogue with States, and design programmes aimed at helping States fulfil their obligations under the Charter. More so, since the provision on the content of states reports remain vague, it is hope that the African Children's Committee will easily deal with this aspect in its reporting guidelines. In this regard, it would be important to avoid unnecessary broad requirements that may hamper the quality of reports.

¹²² African Children's Charter, article 47(3).

¹²³ See note 4 above.

¹²⁴ Centre for Human Rights, University of Pretoria, <<http://www.up.ac.za/chr/ahrd/ahrd.html>> accessed on 15-12-2001.

¹²⁵ States that have **not ratified** the African Children's Charter include, Algeria, Botswana, Burundi, Central African Republic, Comoros, Congo, Ivory Coast, DRC, Djibouti, Egypt, Equatorial Guinea, Ethiopia, Gabon, Gambia, Ghana, Guinea-Bissau, Liberia, Libya, Madagascar, Mauritania, Mauritius, Namibia, Nigeria, Sahrawi Arab Democratic Republic, Sao Tome & Principe, Sierra Leone, Somalia, Sudan, Swaziland, Tanzania, Tunisia, Zambia.

¹²⁶ The African Commission had included a paragraph on the protection of children and young persons in the "Guidelines for National Periodic reports" in an effort to examine states conduct towards children; Annex XII to the African Commission's *Second Activity Report*, para; 30. (See Frans Viljoen (note 1 above), p. 217.

In addition, it is worth of mention that a long time has elapsed since the OAU thought of the plight of African Children, and when constructive action is to be taken through the African Children's Committee. It is indisputable that between the adoption of the African Children's Charter and the coming into existence of the Committee¹²⁷ the situation of most Africa children have worsened. As such there is the need for urgent action, but also commitment on the part of the members of the Committee to see that the situation of children in Africa is properly redressed. Consequently, it should consider appointing Special Rapporteurs especially in areas where children are more affected like armed conflict situations, children with HIV/AIDS,¹²⁸ etc. Therefore, improvements in the situation of children in territory of states parties will not only be indicative of the Committee's success, but also an encouragement to non-states parties to reconsider their positions. As such, it will be a major achievement for the Committee to convince states parties to take their obligations under the African Children's Charter serious.

Above all, states should also encourage and support the activities of the Committee by observing the rights guaranteed in the African Children's Charter and adhere to their obligations therein. They must understand that the survival and effectiveness of the Committee will depend much on the moral and financial support they give it. The OAU/AU¹²⁹ as such should also prioritise issues on human rights and allocate sufficient financial resources in this regard. This will be a positive move towards the triumph of respect for human rights in Africa.

¹²⁷ Delayed because of the fact that the African Children's Charter just came into force.

¹²⁸ This can be covered by the right to adequate healthcare, and should aim at scrutinizing the governments' policies towards children affected by the virus.

¹²⁹ Should in case the African Union replaces the OAU (as it is expected to be the situation), then the responsibility of fully supporting and encouraging respect for human rights on the continent should accordingly shift over to it.

THE JUDICIARY AS THE LAST HOPE FOR THE PROTECTION OF DEMOCRACY AND HUMAN RIGHTS IN CAMEROON

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Abstract

The failure of the controlling forces, administrative and parliamentary to effectively protect human rights in Cameroon is evident. Under such circumstances, the judiciary seems to be the last resort for millions of Cameroonians whose human rights and freedoms are violated on a regular basis. As a neutral arbiter, the judiciary stands the best position to protect human rights and check power abuses. Firstly, judges are presumed to be learned, impartial and apolitical, as such they are free to judge without fear or favour. Secondly, the judicial organ is often regarded as the least dangerous branch of government as it neither controls the purse nor the sword. Consequently, it can ensure the delicate power balance. But unfortunately, the effectiveness of this judiciary is limited. Externally, it is a dependent partner surrounded by a docile public. Internally, it is reactive than active, incompetent, corrupt, and succumbs to pressure. So, for the judiciary to play the role incumbent upon it, the environment has to be favourable and judges have to strive to be competent, neutral, impartial, and independent.

Keywords: democracy, human rights, judicial power, checks and balances, public participation, judicial independence, executive control, separation of powers.

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1. Introduction

The judiciary is that indispensable arm of government which intervenes when all else has failed. It is supposed to be the ultimate protector of democracy, human rights, and the check of power abuse. It is only in a situation of separation of powers that the 'state of law' can be guaranteed. With the separation of powers constitutionally endowed and practised, there is guarantee that law and liberty will be respected. According to MacIver, "none should be entrusted with power without some guarantee against its abuse"¹ for the "temptations of power are too great for it to be left in the discretion of any men".³

2. The Concept of Separation of Power

By being limited to specialised functions, the different branches of government develop both expertise and a sense of pride in their role. This would not be the case if they were joined together or overlapped to a considerable degree.⁴ Moreover, qualities that might be crucial to one function could be ill-suited for another – "energy in the executive", not energy but "deliberation and wisdom" are best qualities for a legislator. Legislators need to conciliate divergent views and interests, and instil confidence in the people. As for the judiciary the qualities wanted are special as well, not the executive's energy and dispatch, not the legislator's responsiveness to popular sentiment or his ability to compromise, but his "integrity and moderation."⁵ Separation of powers is therefore a system that harnesses the self-interest of different institutions to check each other that the people so governed are better served than one where there is concentration of powers and responsibility.⁶

¹ Robert M MacIver, *The Modern State* (1962), p. 373. Oxford University Press.

³ Ibid. p. 202.

⁴ United States Information Agency, *An outline of American Government* (1990) p. 373. Official Document.

⁵ Ibid.

⁶ E. S Griffiths, *The American System of Government*, 4th ed (1965), p. 113. New York: Frederick A. Praeger Publishers.

In Cameroon, one witness the concentration of powers in the hands of the executive,⁷ corruption is endemic,⁸ power abuse and the violation of human rights and democratic norms are common currency. Due to parliamentary and extra-parliamentary reasons, the legislative arm of government is weak and has proven incapable to effectively balance executive power.⁹ It is has bowed down above all to the weight and manipulations of the executive. With psychological and physical violence, the public has been rendered powerless¹¹. Also, the masses are disorganised and the majority of them do not know their rights.

The creation of the National Commission of Human Rights and Freedoms in 1990¹² has not saved the situation. This is so because this organ is an administrative body, members are appointed by presidential decree and it depends on the administration for survival. With the failure of preventive measures, it is the place of judges to apply responsive measures in collaboration with the forces of law and order to rescue the situation. The fundamental question therefore is whether the Cameroonian judiciary is the last hope for the country? Given the privileged position it is supposed to have, it is unfortunate that it is subjected to many limitations.

3. The Special Status of the Judiciary Branch of Government

Most democratic governments try to maintain their judicial system's objectivity by deliberately insulating courts from external influence. No doubt, in our country, the judiciary is awarded a special status¹³ which makes it the most apt body to

⁷ Thierry Michalon, *Quel Etat pour l'Afrique?* (1984), p. 58. Paris: l'Harmattan, The negro-african presidentialism is a deformation of the parliamentary and presidential systems, in a dictatorial sense.

⁸ Godwin B Moye, "An Explanatory Essay on the Continuation of Corruption in Cameroon", unpublished.

⁹ Constantin L. Georgopoulos, *La Démocratie en Danger* (1977), Paris: L.G.D.J. The parliament has been variously described as a yessy institution, a house of registration, rubber stamp, hand clappers. One begins to doubt the raison d'être of this institution.

¹¹ Nfor N Susungi, *Crisis of Unity and Democracy: Can a Country which has Pronounced Itself Dead be Saved by Democracy?* (1991), p. 204. Abidjan: Open University

¹² Decree No. 90/1459 of 8 November 1990.

¹³ Decree No. 95/048 of 8 March 1995 on the status of the Magistracy (Magistrates are therefore not governed by the General Rules and Regulations of the Public Service).

apply the “rule of law”. The judiciary is not opened to anybody, and members are given special treatment. Unlike the political branches of government, the members of the judiciary are not elected.

3.1. Judges as Well-Educated, Honest, and Even-Headed Individuals

Judges are respected for their learning, experience, and impartiality. In addition to the general rules of the public service,¹⁴ to be a magistrate the candidate has to be a holder of a “Maîtrise” in law from a Cameroonian University and a diploma of the National School of Administration and Magistracy (Judicial Division). The latter condition may be replaced by adequate professional experience acquired in Cameroon, subsequent to the “Maîtrise” in Law or equivalent qualification or five years as advocate, “Professeur agrégé” in a Law Faculty or holder of Doctorate degree in Laws, Lecturer in the Faculty of Law, Court Registrar, Court Registry Administrator or Notary where the competence and professional activities of the candidate in legal matters qualify him for the exercise of judicial duties¹⁵. It is therefore not surprising that the judge is seen as a Technician in Law who interprets the law and at times creates it.¹⁶ The fact that justice is rendered publicly and free of charge, reasons given for decisions, and rulings rendered enforceable gives more credence to the judiciary.

Like in any jurisdiction or legal system, judges in Cameroon must take an oath of office. The Cameroonian judicial oath reads thus:

“I, XYZ, swear before God and all men honestly to serve the people of the Republic of Cameroon in my capacity as a magistrate, to render justice impartially to all in accordance with laws, regulations and customs of the Cameroonian people, without fear, favour or malice”.

¹⁴ Décret No 94/1994 du 07 Octobre 1994 portant Statut Général de la Fonction Publique de l'Etat.

¹⁵ Decree No 95/048 (note 13 above), article 11.

¹⁶ Article 5 of Decree n° 95/048 of March 8, 1995. This is also an innovation of the 1996 constitution, article 37(2).

This oath obliges judges to decide cases fearlessly. The judge must ignore any personal consequences, adverse or otherwise that may affect his decision. That is, in his judicial function, the judge must be subject only to the law and his conscience.¹⁷ Any violation of the Oath of office constitutes a disciplinary offence. Djuidje notes that the Cameroonian judge engages to be an “extra-ordinary” being, to resemble God.¹⁸

To ensure their impartiality, judges are well remunerated as their salaries are in the top echelon of the public service structure. They also have enormous fringe benefits, and those at the top have official cars, twenty-four hour security at residence, free electricity and telephone, free fully-furnished accommodation in the prestigious parts of cities, etc, and their status are subject to review and upgrade.¹⁹ All these are to ensure that they are not subjected to various pressures, and should not fall prey to bribery and corruption. These are to enable them to effectively play their role in the administration of justice. Public confidence in their impartiality in the discharge of their judicial duties is perhaps the greatest bulwark to the resilience of the institution.

Also, judges are expected to be sober, orderly, and discreet in their private lives. Lives that reflect competence, independence, integrity, dignity, and moderation, in fact, exemplary and irreproachable lives. This is emphasised by the statutory provision that “any impropriety, breach of honour and dignity constitutes a disciplinary offence”.²⁰ Also, duty unconsciousness and professional incompetence are sanctioned. Judges are irremovable, and may not receive another posting, even as a promotion without their consent. To ensure judicial immunity, section 306(3) of the Cameroon Penal Code states that proceedings in court and speeches made and documents produced are absolutely privileged

¹⁷ Brigitte Djuidje. “Le Statut du Juge Judiciaire Camerounais: Un Tableau Contraste”, *Annales de la Faculté des Sciences Juridiques et Politiques*. Université de Dschang: Presses Universitaires d’Afrique, Tome 3 (1999) pp. 54-66.

¹⁸ Ibid, p. 48.

¹⁹ See decree No 97/016 of 22 January 1997, awarding advantages to certain Magistrates (duty allowance, lodging, housing, water, electricity, telephone).

²⁰ Decree No 95/048 (note 13 above), article 46.

and cannot ground an action for defamation.²¹ The procedure of taking judges to court is very complicated.

It is because of the reputed position of judges that they are often asked to serve in a variety of public capacities. They have been appointed to head various commissions and institutions where they have played very significant roles.²² They therefore have a multiplicity of ways to mobilise public opinion. In this regard, they have to remember the immortal words of Louis Jaffe that:

“... the power of the parliament and of its executive in theory unqualified, will in practice be limited by the constitution as currently expounded and by the public opinion which can be mobilised to reinforce it. In this area there is no organ so competent to expound and so potent to mobilise public opinion as the judiciary. If the judges are complaisant towards governmental power, government will of course take what it is given. If the judiciary is prepared to provide leadership, its voice will be listened to with respect and gratitude”.²³

For the functioning of the judiciary in Cameroon to stand the test of time, the constitution, the grundnorm, must be properly worded and reasonably constructed. This is because the constitution is a legal instrument giving rise, *inter alia*, to individual rights capable of enforcement in a Court of Law.²⁴ The constitution must be constructed to meet the changing economic conditions and habits of thought to render their provisions meaningful in a heterogeneous and evolving society like that of Cameroon.²⁵

3.2. Judges as Apolitical Personalities

It is generally accepted that the judiciary is by nature apolitical. “Much of the legitimacy of the court’s decisions rests upon the fiction that it is not a political

²¹ Rodel vs. Worsley (1969) 1 A.C. 191, The People vs. Gorji-Dinka (1968-70) U.Y.L.R 112, Mukwelle Ngoh vs. The People (1977). C.L.R. 188, Nkili Abessolo c/. Ministère Public (1970) Bulletin n° 23, P. 2769.

²² Laurent Ezzo (Minister of Health, Justice, Armed Forces, etc) Mbella Mbappe (Minister of National Education, Justice, etc).

²³ Louis L Jaffe, *English and American Judges as Law Makers* (1969), p. 19.

²⁴ Ibid.

²⁵ Lord Reid in Myers vs. D.P.P. (1965) A.C. 100. See Senator Adesanya vs. The President, Federal Republic of Nigeria and Anor (1981) 5 S.C. 112.

institution but exclusively a legal one”.²⁶ Judges are non-political appointees, recruited through a competitive examination and follow special training. Consequently, as arbiters, they are not expected to participate in politics. This is because judicial independence implies independence from political influence. Therefore participating in politics will arouse doubts as to the judges’ ability to be impartial. Moreover, in theory at least, it is a criminal offence punishable with up to five years imprisonment for anyone who is a representative of the executive authority to issue an order or prohibition to any court. Thus, the Minister, Governor or Prefect who does so plays foul of the law and can be properly convicted and sentenced. This shields judges from orders of the political organ.²⁷

Sometimes, judges have a difficult, embarrassing, and occasionally odious task, which may involve harsh statements, the imposition of serious penalties, or the adoption of unpopular and unpalatable decisions. Because judges are not elected, they can focus on what is “right” even if that is not necessarily popular.²⁸ The majority is not always right especially in the less developed countries where the citizens do not know their rights. With the relative instability of the politicians, a permanent and learned judicial corps is needed to serve as guide to the disorganised and ignorant masses.

The counter majoritarian nature of the judiciary is actually an advantage and not a flaw. To ignore the wishes of a minority is democratic enough, but there is the risk of the “tyranny of the majority”.³⁰ The minority, according to democratic principles, must always bow to the wishes of the majority, though the majority must respect and protect the rights of the minority. In a constitutional democracy, therefore, there should be majority rule balanced with minority rights.³¹ Limits on

²⁶ Carlson Anyangwe, *The Magistracy and The Bar in Cameroon* (1989), p. 56. Yaoundé: CEPER, quoting Robert Dahl.

²⁷ Cameroon Penal Code, Section 126(a).

²⁸ S. S Lagon “The Role of the Independent Judiciary”, *Freedom Papers*, United States Information Agency (July 1993), p. 9.

³⁰ Alexis de Tocqueville, *Democracy in America* (1945), New York (analyses the dangers of democracy).

³¹ Carlson Anyangwe (note 26 above), p. 70.

governmental power and guarantees of individual rights will be meaningless without some institutional means of curbing the power of the majority. While the other branches of government are more responsive to the majority, the judiciary remains the perfect vehicle for protecting minority rights. Unlike other authorities, judges have no constituencies; they represent the constitution and derive their authority from it.³² They are therefore free to judge without fear or favour.

4. The Judiciary as the Least Dangerous Arm of Government

Generally, the judiciary is often regarded as the weakest branch of government since it neither controls the purse nor the sword.³³ But this is an advantage, for it becomes the least dangerous to human rights and consequently, can serve as an unbiased arbiter to the other branches. Human rights have always been threatened by politics and money.³⁴ In Cameroon, the budget is prepared and executed by the executive,³⁵ and voted by the parliament. The judiciary plays an insignificant role of control when the preventive controls of the political organs have failed or have detected criminals. The forces of law and order (gendarmes, police, and army) that have been violating human rights are part of the executive branch. It is often stated that they are at the disposal of administrators. The judiciary, therefore, stands free and isolated from these dangers.

The famous passage written by Alexander Hamilton more than a century ago is still accepted as a valid observation that:

“Whoever attentively considers the different departments of power must perceive that in a government in which they are separated from each other, the judiciary, from the nature of its functions, will always be the least dangerous branch to the political rights of the Constitution; because it will be least in the capacity to annoy or injure them. The Executive not only dispenses the honours, but holds the swords of the community. The Legislature not only commands the purse but

³² S. S Lagon (note 28 above), p. 3.

³³ A. G Karibi-Whyte, “The Relevance of the Judiciary in the Polity – In Historical Perspective”, *Nigerian Institute of Advanced Legal Studies* (1987), p. 25. Lagos.

³⁴ Luc S Mpouma, *Libertés Publiques*. Université de Yaoundé, F.D.S.E. (Cours Polycopié), p. 1.

³⁵ Article 48 of Ordinance No. 62-CF-4 of 07th February, 1962 regulating budgetary Law, states that “under the authority of the President of the Republic, the Minister of Finance prepares the Finance Bills”. The vote holders who execute the budget are mostly administrators.

prescribes the roles by which the duties and rights of every citizen are to be regulated. The Judiciary on the contrary has no influence, over either the sword or the purse; no direction either of the strength of the wealth of the society, and can take no active resolution whatever. It may truly be said to have neither force nor will but merely judgement”.³⁶

It is because of this “harmless” position occupied by judiciary that judges can endeavour to apply the laws rigorously and avoid the unjust ones so as to achieve real justice. In the words of Hon. Dr. Akinola Aguda, “Our courts must regard themselves as courts of justice, not merely courts of law especially where human freedom and dignity are concerned”.³⁷ This judiciary is posited as an unbiased arbiter, not only between the people and the government, but also between the governmental branches themselves.

5. The Role of the Judiciary as a Delicate Power Broker

In 1996, the Cameroonian judiciary was up-graded from a mere authority to a power.³⁹ As a separate branch of government, it can therefore, guarantee democratic freedoms by preventing the concentration of powers in Government.⁴⁰ The Magistracy constitutes a controlling force against abuse and arbitrary exercise of power.⁴¹ Administrative judges in Cameroon can apply two remedies to maladministration. The annulment of the injurious act and/or if the act causes injury, there is an action for indemnification. The administrative authorities are therefore aware of the fact that they are not above the law, as they can be controlled by the specialists of law.

³⁶ A. G Karibi-Whyte (note 33 above), p. 25; S. S Lagon (note 28 above), p. 3.

³⁷ J. A Aguda, “The Judiciary and the Democracy – The Nigerian Experience”, *Judiciary in the Government of Nigeria* (1983), Chapter 2, Ibadan: The New Press Ltd.

³⁹ Law No. 96/06 of 18 January 1996 on the Revision of the 1972 Constitution. That notwithstanding, the Cameroonian judiciary, like the piper, plays to the tune dictated by the executive and it is a farce to talk of the independence of judicial power in Cameroon today, for, what has in effect happened is that the judiciary has been reduced into allies or partners of the executive: Charles M Fombad, “Judicial Power in Cameroon’s amended Constitution of 18 January 1996”. *Juridis Périodique*, No. 34 (1998), p. 68.

⁴⁰ S. S Lagon (note 28 above), p. 3.

⁴¹ Fabian Kemkeleng, “The Protection of Human Rights by the Magistrate in Cameroon”, *Maîtrise Memoire*, F.S.J.P., Dschang University, Cameroon (1997/1998), pp. 3-4.

The institutions of the judiciary can serve as a check to the other branches of government: the Supreme Court is the highest jurisdiction of the state in administrative, judicial, and audit matters, that is why it has benches dealing with all these matters.⁴² The first bench is responsible for administrative matters and the third bench has to control and rule on issues concerning public accounts. Through the Court of Impeachment, the judiciary has the ability to scrutinise the actions of the highest government authorities, including the President in the case of high treason, the Prime Minister, members of Government, and other high authorities in the case of conspiracy against the security of the state.⁴³

The Constitutional Council is a mixed organ which is competent in constitutional matters.⁴⁴ It has powers of judicial reviews and is the regulatory organ in the functioning of the state institutions. Though it is a mixed organ (political and judicial), the fact that members should have recognised professional reputation implies that the law specialists are favoured. Technically, it is empowered to declare laws, treaties and procedural rules as unconstitutional. It also decides on the regularity of presidential and parliamentary elections, referendum consultations, and declares the results.

However, all these roles are still being performed by the Supreme Court as the Constitutional Council continues to exist on paper only. According to the American Chief Justice Marshall, judicial review is the “very essence of judicial duty”.⁴⁵ Although some people argue that it violates the principle of separation of power, it allows the judiciary to be a counterweight to the other branches. A breach of the Constitution renders the resulting act illegal and invalid. Judicial review, or saying “no” to other branches of government is valuable as deterrent.⁴⁶

⁴² Law No. 96/06 (note 39 above), article 38(1).

⁴³ Ibid, article 53(1).

⁴⁴ Ibid, articles 46-52.

⁴⁵ Donald A Ritchie, *Heritage of Freedom History of the United States* (1985), pp. 217-218. Macmillan Publishing Company (in the famous case of Marburg v. Madison in 1803).

⁴⁶ S. S Lagon (note 28 above), pp. 7-8.

6. Limitations on the Cameroonian Judiciary

There has been general disappointment with the institution generally seen as the last resort when things are not moving well. There is no doubt that the ability of the judiciary to effectively play the role incumbent upon it depends on some external and internal factors. For the judiciary to protect human rights effectively, the environment should be favourable. However, the environment under which the judiciary operate in Cameroon is not very conducive. This judiciary is an actor within a system. It is a neutral referee between the governors and the governed. The importance of the political and social situations of Cameroon cannot be over-emphasised. An analysis of this situation reveals that judges are dependent and the citizens are inactive.

6.1. The Judiciary as a Dependent Partner

For the Judiciary to perform its strategic role effectively, it must be independent of all manipulation by an organ, group, or person. It should be free from intimidation, coercion, or pressure.⁴⁷ The 1996 constitution attributes judicial power only to the classical judiciary jurisdictions, that is, “the Supreme Court, the Courts of Appeal and the Magistrates Courts”. According to Professor Kamto,⁴⁸ this is a very restrictive view; for the judiciary to really check the other powers, it should effect judicial review, control administrative acts and even impeach culprits.⁴⁹ Without this, we doubt the effectiveness and independence of justice as a power. No doubt, the American Supreme Court Judge is at the same time judiciary judge, administrative judge, and constitutional judge.

Also, the Cameroonian political regime, as most African regimes, is presidential. This implies that the pivot of power is a man, the President of the Republic who concentrates in his hands the essential if not all of the powers. He is the Head of

⁴⁷ Bernard Muna, *Cameroon and the Challenges of the 21st Century* (1993), p. 67. Yaoundé: Tama Books.

⁴⁸ Maurice Kamto, “Les Mutations de la Justice Camerounaise à la Lumière des Développements Constitutionnels de 1996”, *Revue Africaine des Sciences Juridiques*. Faculté des Sciences Juridiques et Politiques, Université de Yaoundé II, Vol.1, N°1, 2000, pp. 10-14.

⁴⁹ In Cameroon, the Constitutional Council and Court of Impeachment notably are not treated under the Judiciary Power.

State, Head of the Armed Forces, indeed the Head of Government and, above all, Head of the Magistracy. No doubt, he guarantees the independence of the Judiciary, assisted in this task by the Higher Judicial Council.⁵⁰ Kamto poses the questions – why does the executive guarantee only the independence of the judiciary and not that of the legislative? Who guarantees the independence of the executive itself?⁵¹ Politicians whose positions are threatened mostly by judicial impartiality should have been the last to be trusted with genuinely guaranteeing such impartiality.⁵²

The 1996 constitution of Cameroon, therefore, as its predecessor of 1972 fails to formally recognise and protect the judiciary power. The expression “Judiciary Power” on its own cannot transform our judiciary into a separate branch of government as is the case in America.⁵³ It is irrational that this constitution refers to electoral disputes concerning regional and council elections to administrative courts, but reserves the most important disputes concerning presidential and parliamentary elections as well as referendum operations to the constitutional council for advice. This is surprising because the constitutional council is composed of presidential nominees who are not necessarily jurists and who simply give “advice”⁵⁴ on the polity of the nation.

The constitution further provides that the President of the Republic shall make judicial appointments and pronounce disciplinary sanctions concerning judges.⁵⁵ He is assisted in this task by the Higher Judicial Council which he presides himself. This can lead to politicisation for the President faces the temptation to reward loyalty and conformity. No doubt there’s a creeping politicisation of the judicial profession; a fact that has led to apathy, frustration, fawning and the

⁵⁰ Law No. 96/06 (note 39 above), article 37(3). It should be noted that the Higher Judicial Council has no proper powers, as it gives only its opinion. Is it not paradoxical that this organ has more powers in France where the judiciary is an authority than in Cameroon where it is a “power”?

⁵¹ Maurice Kamto (note 48 above), p. 15.

⁵² Charles M Fombad (note 39 above), p. 68.

⁵³ Ibid, p. 65.

⁵⁴ See articles 47(4), 48(1), and 50 of the 1996 Constitution.

⁵⁵ Ibid, article 37(3).

longing for favours exhibited by many judicial and legal officers.⁵⁶ The judiciary, like the legal department, is under the control and supervision of the Minister of Justice who is not a Chief Justice. The salary of judges does not, as in England, come from a special fund voted by Parliament. It is the executive which provides funds for the judiciary and the legislature approves its expenditure. Unlike the case in America, the Cameroonian judges are not irremovable for they are faced with the problems of arbitrary measures as suspension, inopportune transfers, and retrogradation. For example, the transfer of judges is not only frequent,⁵⁷ but it is possible for a member of the bench to be appointed to the legal department and vice versa.⁵⁸ There is also budgetary dependence of the judiciary on the legal department.⁵⁹ The Cameroonian Judiciary therefore functions like a branch of the executive and it is a farce to talk of judicial independence in Cameroon.

There also exist possibilities for the interference of the administration in the course of justice. The Minister of Justice can intervene with any civil or criminal matter under judicial consideration. This is acceptable if this discretion is used judiciously and for public good only, but it leads to the undermining of the authority of the courts.⁶⁰ This is not surprising for the judiciary lacks independent machinery for enforcing judgements. The state's repressive apparatus (the police, gendarmerie, and the army) form part of the executive, "by whom their administration and operational use is controlled".⁶¹ The bailiffs or process-servers for the execution of decisions rely on these "forces". Also, the President of the Republic has the power of granting pardons/clemencies to judicial sentences. As if its competence in the judicial organisation and the creation of jurisdictional

⁵⁶ Carlson Anyangwe (note 26 above), p. 21.

⁵⁷ Frequent transfers are detrimental to service as they kill incentive, zeal to work, disrupt family life and encourage indolence and inefficiency.

⁵⁸ This is the application of the concept of "Le Magistrat Polyvalent" in the Cameroonian Magistracy.

⁵⁹ It was formerly the Procureur Général who controlled the budget and he was made to appear stronger than and superior to the Judge. He has had the possibility of making things difficult for the judge.

⁶⁰ Carlson Anyangwe (note 26 above), pp. 50-54.

⁶¹ Ibid. p. 35.

orders⁶² are not enough, parliament has another possibility in intervening in the functioning of the magistracy through legislative validations. Furthermore as is the case in America with the existence of “political questions”, the Cameroonian judges, like the French, are forbidden to rule on cases of “Act of State”.⁶³

6.2. Lack of Public Engagement of the Judiciary

We measure the effectiveness of the submission of the administration to the law through the appeals made by the public against the administration. Despite the multiplicity of ills (public or private) in Cameroon, there are few appeals to the Courts. The lack of a viable public engagement can be explained by illiteracy and poverty. Law is a difficult science to master; the majority of Cameroonians do not know the law or their rights. It is in part necessary to know the law or recognise a violation to request redress.⁶⁴ You cannot protect your rights without knowing them, for you will not be aware of their violation if you are not conscious of their legal irregularity. As Bipoun-Woum rightly puts it, the problem of legal education is an obstacle to administrative control and legality in general.⁶⁵ It is therefore not surprising that the majority of court cases concern civil servants and private organisations. This is so because civil servants constitute the most integrated, economically viable and intellectually matured class within the system.⁶⁶

As regards administrative cases, the would-be-plaintiffs fear reprisals.⁶⁷ Citizens are afraid of instituting proceedings against public officials or institutions because the administration can turn against them and refuse providing them with public services. The creation of the Court of Impeachment is merely a formality;

⁶² Article 26(1)(5) of the 1996 Constitution..

⁶³ This concept is based on two criteria: the relations between the executive and Legislative and Diplomatic Relations. Confirmed in the following ruling: CS/CA 31st may 1979 KOUANG Guillaume. CS/CA 29 November 1979 Essomba Antoine c/Etat du Cameroun : CS/CA 29 may 1980 MONKAM TIENCHEU.

⁶⁴ Luc S. Mpouma (note 34 above), p. 107.

⁶⁵ Ibid, pp. 107-108.

⁶⁶ Ibid, p. 109.

⁶⁷ Ibid, p. 109.

generally, the “big ones” remain untouchable and the citizens helpless⁶⁸. More so, the receivability of cases before the administrative court is not simple. The rules are complex and the procedure costly. To take a case to the administrative bench, the pre-litigation complaint (“recours gracieux préalable”) is compulsory.⁶⁹ Besides the strictness of this rule, there are many complications as regards the competent authorities and the time-limit. A mistake made by an authority is punished severely by the Cameroonian Law. The time-limit is followed strictly on pain of foreclosure,⁷⁰ and few Cameroonians can master these complexities.

One is tempted to conclude that the complexity and legal technicalities of bring administrative actions in Cameroon is simply a legal instrument aimed at restricting administrative litigations to a minimum. The judge is contented to be playing an incarnatory role, following the wishes of the executive, its master. This certainly discourages the would-be-plaintiffs for they believe it is a waste of time and money. Worse still, after the rejection of pre-litigation complaint under foreclosure,⁷¹ the appeal against the administrative decisions is still subjected to complicated conditions.⁷² As if these were not enough, the administrative jurisdiction is centralised⁷³ in major towns. Only the rich, courageous, free, and patient can leave the suburbs, hundreds of kilometres away, to follow up a case in the nation’s capital. The others stay disillusioned and frustrated.

6.3. Intrinsic Weaknesses of the Judicial Process

Reduced to their most basic purpose, all courts in all political systems exist to resolve disputes. Consequently, their decisions must be based on recognised

⁶⁸ Unlike the American Supreme Court which has intervened in impeachment cases (as the Watergate Scandal), there has never been any impeachment proceedings in Cameroon.

⁶⁹ Article 12 of Ordinance No. 72/6 fixing the organisation of the Supreme Court.

⁷⁰ Jean C Kamdem, *Institutions Administratives et Droit Administratif* (1988/89), pp. 105-113, Reading Pack, University of Yaoundé.

⁷¹ *Ibid.* p. 114.

⁷² Law No. 75/17 of 8 December 1975 fixing the procedure before the Supreme Court in Administrative matters (especially article 7).

⁷³ Law No. 96/06 foresees the creation of inferior administrative benches (article 40) which have not yet been operational.

and approved standards if they are to endure.⁷⁴ Following the principle of power separation, the legislature makes law,⁷⁵ the executive applies the laws, and the judiciary adjudicates. It is true that to adjudicate the law, judges can interpret and create it⁷⁶ but this is exceptional. The fact is that unlike the other two branches, the Judiciary has to wait for cases to come before it and normally should not initiate legislation.⁷⁷ Concomitant with the fact that the judge is expected to live a cloistered existence, uninterested in the world outside the Court, is the view that he must be self denying, exercise self-restraint and not show any initiative.⁷⁸ Moreover, the judge should not initiate proceedings, except in the case of *contempto sedante curia*, that is, the court cannot intervene on its own to initiate and commence proceedings against a wrongdoer. It must wait until it is moved by somebody.⁷⁹ This has the advantage of providing a “cooling period” so that inflammatory issues may be considered more rationally. But this blocks the judge, for he may see things go wrong, but must wait for action to be initiated by a plaintiff, who might not do so for one reason or the other. And even if the case is brought to Court, there are conditions of receivability to be followed.

In the case of the Cameroonian administrative judge, the situation is even worse. Montesquieu had warned that laws have to be proper to the people for whom they are made, and it will be a great coincidence if those of a nation fit in another. But our judges lack originality and prefer to copy what has been established by the French judge. Due to the inertness of our administrative judges, the Cameroonian administrative law is more legislative than judge-made, more receptive than innovative. By depending in a spontaneous manner on French cases, concepts and rules, these judges cannot give appropriate solutions to

⁷⁴ S. S Lagon (note 28 above), p. 12.

⁷⁵ Even the Judicial organisation and the creation of new jurisdictional orders are the competence of the Legislature (Law n° 96/06, op. cit. art. 26(1) c).

⁷⁶ Shaw vs. DPP (1962) A.C. 220.

⁷⁷ S. S Lagon (note 28 above), p. 11.

⁷⁸ In Cameroon, it is a criminal offence punishable by sections 125 (a) and 126 (b) of the Penal Code if he purports to do so.

⁷⁹ Carlson Anyangwe (note 26 above), pp. 25-26.

Cameroonians cases in the light of national realities.⁸⁰ Yet, justice must not only be done, but must be seen to be done.

No matter the judicial process, whether inquisitorial or adversarial, the judge simply reacts⁸¹ and the judge decides on the basis of given facts. With the inquisitorial, there is no presumption of innocence in Court.⁸² The judge investigates and decides if there is sufficient evidence to warrant a trial and if so, conducts it and interrogates witnesses. The adversarial system is based on partisan presentation of evidence most favourable to each side and assumes that self-interest will prevent any relevant facts and arguments from being overlooked, with the judge being a neutral umpire. In fact, in the English Court of Appeal case of *Jones vs. National Coal Board*,⁸³ Lord Denning was categorical that the judge must not intervene unduly at the trial. In both civil and criminal cases, the judge enforces strict rules about what evidence is allowable and how cases are conducted, and rules on objections raised by either litigant.⁸⁴ In criminal cases, the burden of proof rests on the state (the prosecution); the accused is presumed innocent until proven guilty beyond reasonable doubt.

The willingness to assure valuable witnessing shows a radical difference between the English procedure in which the system of cross-examination obliges the witness to answer only the questions posed to him, and the French procedure which stands essentially for spontaneous evidence which should not be interrupted.⁸⁵ A continental advocate does not ordinarily examine or cross-examine witnesses. If witnesses are examined orally, the judge plays the

⁸⁰ Opinions of Mon Marcel Nguini and Professor Joseph Bipoum-Woum cited by Jean C. Kamdem (note 70 above), p. 33.

⁸¹ S. S. Lagon (note 28 above), pp. 3-4.

⁸² The rule on presumption of innocence was affirmed by Lord Sankey in *Woolmington vs. DPP* (1935) A C. 462 by Bairamain S.P.J. in *Goni Kinnani vs. Bornu Native Authority* (1957) N.R.N.L.R 40, and by Kester Ag. J in *Cyril Areh vs. commissioners of Police* (1959) N.R.N.L.R. 230, p. 231.

⁸³ (1957) 2 Q.B. 55.

⁸⁴ S. S Lagon (note 28 above), p. 4

⁸⁵ Article 331 of the "Code de Procédure de Pénal" see Robert Vouin, "L'évolution de la Procédure Pénal Française et les Enseignements du Droit Etranger", FDSE, Paris, p. 287.

principal role. Under French procedure, the judge is empowered to order four kinds of investigations in civil proceedings, to wit, expertise, the personal investigations of the judge, his questioning of the parties and his recording of the testimony of witnesses.⁸⁶ These investigations are known in French Law as “mèures d'instructions” or just “instructions”. The purpose of “instructions” is to clarify the facts and provide the evidence necessary to decide the case, but which has not been made available by the parties. This kind of court intervention in civil proceedings is an outstanding feature of the investigatory system.⁸⁷

The judge in the investigatory system comes to court fully acquainted with all the facts and evidence got during the preliminary inquiry. He is an active participant in the whole trial, asking questions and calling anybody as witness whom he feels may help him arrive at the truth. Counsel for defense can question a witness only through the judge's intermediary. The latter has the discretion whether or not to ask such questions to the witness. The prosecution in this case is not required to prove the guilt of the accused. The practice is to presume the guilt of the accused unless he exonerates himself, which means that the burden of providing his innocence lies on the accused himself. The inquisitorial system does not, therefore, see any need for cross-examination and re-examination of witnesses. It has been submitted that a judge who comes to court already convinced that the accused is guilty of an offence would hardly change his mind at the end of the day, as his decision would not only be based on the evidence adduced in court, but also on the former dispositions of the witnesses⁸⁸.

6.4. Self-Imposed Limitations

Judges, consciously or not, succumb to socio-cultural (familial attachments, sex, sentimental and class prejudices) and socio-economic (poor working conditions

⁸⁶ C. N Ngwasiri, “Some Problems of expertise in French Civil Proceedings”, *Civil Justice Quarterly*, (1989), p. 168: Sweet of Maxwell.

⁸⁷ Ibid

⁸⁸ Andrew S Ewang, “The Test for Criminal Liability is Proof Beyond all Reasonable Doubt: Any Doubt must be Resolved in Favour of Accused”, *Juridis Périodique*, No. 27 (1996), p. 59.

especially poverty) environmental pressures.⁸⁹ Judges have to be respected and appreciated by the society,⁹⁰ and as stated by Ehrlich, “there is no guarantee of justice except the personality of the judge”.⁹¹ There is a general belief in Cameroon that judges are not upright, not honest, and that in order to go through a case, you have to “meet” the magistrate concerned. Since they are always corrupted, their decisions are not free from suspicion of bias, prejudice and partiality. As such, justice becomes an affair of the rich, the powerful, who can use it as an instrument of exploitation and repression.

At times, judges succumb not only to pressures, but also to threats. Consciously or unconsciously, some of their decisions on delicate issues are self-censored. This can be explained by belonging to a group or having sentiments or being afraid of the sword of Damocles. It has been discovered that judges are usually afraid of attack on the administration, that is, on power or declare decisions against it. That judges are psychologically affected by the penal warning that “whoever, being a legal or judicial officer, issues an order or prohibition to any executive or administrative authority - shall be punished”.⁹² Therefore fear has led to a situation of discriminatory justice, crime protection, and impunity. The fact that the “sweating” President of the Supreme Court declared while proclaiming the results of the 1992 Presidential Elections that there were many irregularities but that the Courts were not competent to rule on them, was therefore not surprising to many Cameroonians.

While judges are presumed to be learned members of the society, entry into the National School of Administration and Magistracy (ENAM),⁹³ which trains judges has for long been tainted with malpractices. Despite the existence of competitive entrance exams, admissions has often been through the “back door” and

⁸⁹ Brigitte Djuidje (note 17 above), pp. 48-53

⁹⁰ Bernard Muna (note 47 above), p. 110.

⁹¹ Robert M Maclver (note 4 above), p. 266.

⁹² Article 126(b) of the Cameroonian Penal Code.

⁹³ French acronym for “Ecole National d’Administration et de la Magistrature”.

promotions based on reasons which have nothing to do with competence,⁹⁴ rendering the ability of some judges in doubt. Also, from the personnel point of view, jurisdictional duality is more a principle than a reality. Most often, it is the judiciary judges who rule accessorially on administrative litigations.⁹⁵ Many of these judges do not master the general principles of administrative law and justice⁹⁶. They cannot disown the spirit, techniques and methods of reasoning so acquired from their training, and tend to impose them on administrative cases. Yet, the administration is supposed to be governed by special rules.⁹⁷ The fact that they are not specialised, accounts for their extreme prudence, lack of audacity and courage.⁹⁸ Generally therefore, corruption, fear, and at times incompetence of the Cameroonian judge serve as adverse publicity. There is therefore the inactiveness of the institution due the public's lack of confidence.

7. Conclusion

It is not enough to proclaim rights, they have to be protected.⁹⁹ To declare that we are a “state of law” or “democratic” does not make us one. There is generalised lawlessness in our society and with the weaknesses of the other controlling forces; the courts have to be the last resort for the guarantee of the “rule of law”. The judiciary is supposed to be a valuable asset for the protection of human rights and to check power abuse. However, extrinsic and intrinsic factors have made it unable to play this role effectively. The danger is that, the citizens are usually helpless with the impotence of the justice system and can resort to other means like mob justice and manifestations in a bid to obtain satisfaction.

Constitutional government is above all, judicial government. Respect for the law and for the work of the courts is crucial to the survival of any democracy .An

⁹⁴ In the Anglo-Saxon countries, it is the experienced and successful legal practitioners who are appointed as judges.

⁹⁵ Professor Alain Bockel, cf. Jean C Kamdem, *op. cit.* p. 32.

⁹⁶ We hope that the section of Administrative Judges created in ENAM will solve the problem in future.

⁹⁷ As confirmed in the French Arrêt Blanco. (Rules exorbitant to common or civil law).

⁹⁸ Jean C. Kamdem (note 70 above), p. 34.

⁹⁹ Bernard Muna (note 47 above), p. 86.

effective judiciary is therefore of vital importance as it inspires confidence in the people. It serves as a check by preventing the concentration of power in government and its subsequent abuse. When courts challenge governmental action, they validate the government's status and legitimacy and provide an important element of political stability.¹⁰⁰ The fact is that there should be "checks and balances" and when things are not moving, judges as extra-ordinary citizens should play a fundamental role. But for them to play the role incumbent on them, judges have to be competent and be guided by the law and their consciences. The mentality of the judges must change; they have to be aware of the sacredness and the strategic place of their mission. They have to be competent, neutral, impartial, in a nutshell, independent. It is only through these conditions that they can be the last hope to Cameroonians of all works of life.

¹⁰⁰ S. S. Lagon (note 28 above), p. 9.

AN ANALYSIS OF NATURAL RESOURCES RELATED CONFLICTS IN CENTRAL AFRICA AND THE GULF OF GUINEA

Durrel N. HALLESON*

Abstract

In the Africa, the presence of natural resources in countries has been the bedrock of despicable conflicts, the effects of which has been slow economic growth, prolonged violent conflicts, and undemocratic regimes. Countries in conflict are also characterized by grave human rights violations and autocratic rulers making little or no room for democracy. This article maps out the various natural resources related conflicts in the Central Africa and the Gulf of Guinea, looking at the causes and overview of these conflicts. The article also highlights community-based conflicts linked directly or indirectly to the presence of natural resources. This approach is useful because most literature available on natural resources related conflicts focuses more on violent conflicts between different groups attempting to gain control of the natural resources.

Keywords: Conflicts, civil war, natural resources, Central Africa, Gulf of Guinea, dictatorship, community activism, human rights abuses.

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1. Introduction

It has been asserted repeatedly that the presence of natural resources is at the centre of most of the conflicts that have bedeviled most resource rich countries in Africa. Africa is home to some of the best known resource related conflicts in the world today. This assertion is true if we consider the conflicts in countries like Angola, the DRC, Chad, and Republic of Congo, and to an extent in Nigeria. These countries have all witnessed some form of violent conflicts which could be explicitly or implicitly linked to the presence of different kind of natural resources. Despite the absence of any form of violent conflicts in other countries such as Cameroon, Equatorial Guinea, and Gabon, the presence of resources has created a deep seated disgruntlement from a majority of the population as revenue from these resources hardly trickle down to the masses.

2. Extractive industries, resources-related conflicts in Central Africa and the Gulf of Guinea

A major cause of most natural resources related conflicts in resource rich countries like those of the Central Africa/Gulf of Guinea region is the way in which these resources are extracted, the distribution of revenues from exploitation, and the level of involvement of local population in development decisions. Explaining the main reason of the conflicts related to natural resources in some of the countries of the region is the fact that warring parties at the level of conventional conflicts need money badly and would take it wherever they can find it. It has been asserted in some studies that of all natural resources, oil has the highest risk of civil conflict because of the large rents it offers and the shocks to which the government and the national economy are exposed.¹ While this assertion is true to countries such as Nigeria, other countries such as Angola, DRC and Central Africa have been involved in conflicts (prolonged in some circumstances) on resources other than oil.

¹ Aderoju Oyefusi, "Oil Dependence and Civil Conflict in Nigeria", *Centre for Studies of African Economies*, CSAE WPs/2007-00.

The natural (extractive) resources related conflicts in the Central Africa/Gulf of Guinea region could be classified into the following types - separatist conflicts; oil companies and local communities; inter-states conflicts; and conflict between the state and politically armed groups wanting to gain control of the country. It is public knowledge especially in Africa that wealth generated from the exploitation of natural resources has been largely used to prop up undemocratic regimes, line the pockets of elites and fuel violent conflicts. Unbridled corruption, human rights violations, and environmental degradation are residue of the exploitation of Africa's extractive resources. The next sections will examine in brief some of the conflicts that have engulfed this region from independence.

3. Republic of Angola

3. 1. The Angolan Civil War (1975-2002)

Angola gained independence from Portugal in 1975 after a 13 years guerilla war (1961-1974). However, after independence, Angola became involved in a civil war that lasted for almost four decades. The civil war pitched the Popular Movement for the Liberation of Angola (MPLA) led by Eduardo Dos Santos who took over power upon the death of Augustinho Neto and became President of Angola, and the National Union for the Total Independence of Angola (UNITA) led by Dr. Jonas SAVIMBI.

The Angola civil war could be divided into two phases with the first phase from 1975-1991 that culminated with the signing of the Bicese Accord on May 31, 1991 which called for a cease-fire, the formation of a new unified national army, and the holding of Angola's first multi-party elections for a new president and national assembly. The second phase of the Angola civil war lasted from 1992-2002 involving still the ruling MPLA which emerged victorious in the country's first multi-party elections and UNITA that refused to recognize the results of the elections and instead took up arms.

While the first phase of the Angolan civil war was dominated with foreign interventions and a battleground for the Cold War, the second phase saw the prominent role of natural resources – oil for the government (MPLA) and diamonds for the UNITA rebel group. This war is usually referred to as “Angola’s Resource war”.² While oil and diamonds have dominated the war in Angola, it is asserted that during the first phase of the war (1975-1991) UNITA used to sell ivory and hardwood to neighboring countries (Zambia, Zaire, and Namibia). However, UNITA’s war efforts were largely financed by revenues from selling illicit diamonds. It is estimated that between 1992 and 1998 UNITA received about \$3.7 billion from diamonds.³

Although diamonds were primarily used to support UNITA war efforts, revenues from oil were used by the government in funding its war efforts in fighting the UNITA rebels. In 1993, UNITA controlled 70% of the national territory, while the government controlled the major oil fields. With the increased oil production in 1994, the government was able to rearm and expelled UNITA from territories it occupied between 1992 and 1993. Oil therefore was especially significant in playing a critical role in the MPLA regime’s war strategy and in the interests of much stronger states that supported the MPLA against UNITA.⁴

3.2. The Cabinda War of Separation

Cabinda is a province of Angola geographically distinct from the rest of the country. Situated north of Angola on the Atlantic coast, it is separated from the mainland by a strip of the Democratic Republic of Congo ("DRC"). To the north, Cabinda is bounded by the Congo. The province of Cabinda has for almost thirty years been fighting for its independence first from Portugal and later from Angola. Like the Niger Delta in Nigeria, Cabinda is Angola’s main oil producing

² Saraly Andrade & Joaquin Morales, “The Role of Natural Resource Curse in Preventing Development in Politically Unstable Countries: Case Studies of Angola and Bolivia” *INESAD Development Research Working Paper Series*, No. 11, November 2007.

³ Kirsten H Andersen, “Resources and Conflict in Angola: An Economic Conflict Analysis”, *Department of Economics*, University of Oslo, Norway (2003).

⁴ William Reno, “The Real (war) Economy of Angola”, Institute for Security Studies, <http://www.issafrica.org/pubs/Books/Angola/11Reno.pdf>, accessed May 2009.

region, providing 60 per cent of Angola's oil and this probably is the main reason for the protracted struggle between the secessionists movements led by the Cabinda Forum for Dialogue (FDC) and the Front for the Liberation of Cabinda (FLEC), and the government. Despite the fact that Cabinda is Angola's main oil production area, it is asserted that there is a very little presence of the oil companies' foreign employees in town and those present live in a gated compound called Malongo surrounded by landmines. Lack of employment opportunities for the local population and the contrast between poverty and more obvious wealth has sparked more vocal dissent.

The death of the UNITA rebel leader Jonas SAVIMBI in 2002 signaled the end of more than 3 decades of civil war that left over 500,000 deaths and brought UNITA to the negotiating table. Though a peace deal was signed between the ruling MPLA government and UNITA in 2002 that led to the putting in place of the Program for Social and Productive Reintegration of Demobilized and War Displaced People, political conflict between UNITA and the MPLA remained.

4. Federal Republic of Nigeria

4.1. The Nigerian Civil War (1967-1970)

The Nigerian civil war was deeply rooted in ethnic tensions between the eastern region led mainly by the Igbo and the Muslim dominated north. The presence of oil in the Eastern (Biafra) region may have informed its decision to secede from the Federation. At the period of the outbreak of hostilities, the Eastern region produced about 65% of Nigeria's crude oil and Shell-BP was responsible for about 84% of Nigeria's oil production. Shell-BP was a strategic actor in the war with about two thirds of its operations in the Mid Western and Eastern Regions. The position of Shell-BP during the war became very critical to both the break-away Biafra Republic and Federal Government with regard to whom it should pay its royalties. Prior to the beginning of the war in May 1967 total production of

crude oil in Nigeria averaged 580,000 barrels a day but this figure quickly dwindled to about 404,000 barrels per day.⁵

The Nigerian civil war like the Angola and DRC (formerly Zaire) civil wars that broke out in the years immediately after independence was a Cold War proxy war although it could be asserted that the involvement of foreign powers in the Nigerian civil war was also motivated by the presence of oil. The Federal Government was overtly supported by the British with significant interests in the Nigerian oil industry while France supported the Biafra Republic probably to reduce the potential threat of the Nigerian Federation to the French hegemony and its interest in the Eastern Region - the French oil company SAFRAP controlled 7% of Nigeria oil production.⁶

Despite the deeply rooted ethnic tensions between the Northern and Eastern regions branded as the cause of the civil war, it is believed that the Biafra rebellion was encouraged by the presence of oil because a successful secession from Nigeria would be economically beneficial to the Igbo dominated Eastern region. The Northern States who “unfortunately” were not blessed with the presence of oil dissatisfied with the oil revenue sharing formula demanded for a reversal of the manner of calculating Federal payments to State governments; a formula established when the economy was largely dominated by agricultural products. This could explain why during the battle were fought more over control of oil fields, pipelines, refineries, and ports and the highest casualties were registered in oil producing areas such as Ogoniland in the Niger Delta region.

Though the Nigerian civil war ended with the defeat of the Biafra secessionists and the reunification of the country, it became clear that oil would continue to shape the political landscape of Nigeria. For instance immediately after the close of the war, Nigeria witnessed a jump in its oil revenues which unfortunately

⁵ Chibuike Uche, “Oil, British Interests and the Nigerian Civil War”, *Journal of African History*, Vol. 49 (2008), pp. 111-135.

⁶ Ibid.

resulted in widespread corruption and inequitable economic development.⁷ After the civil war, Nigeria has been able to maintain a sort of fragile peace sandwiched with ongoing violence and uprising in the Niger Delta region with renewed call for self determination and/or local control of oil resources.

4. 2. The Niger Delta Region: Oil-Related Violence and Uprising

The crisis in the Niger Delta region is could consider as multidimensional considering the different perspectives held by the different protagonists. The problems of the Niger Delta have been attributed to the presence of oil. The Niger Delta alone accounts for over 90% of Nigeria's oil revenue. The region is also richly endowed with natural gas, Nigeria's next greatest potential earner.⁸ Geographically the Niger delta comprises of the following states; Abia, Akwa Ibom, Bayelsa, Cross River, Delta, Edo, Imo, Ondo, and Rivers. Ironically, the Niger Delta region has been described as the most backward and underdeveloped region in Nigeria despite its endowment in oil and gas.⁹

Despite the widespread poverty reported in the region, the situation of the population is further compromised by activities of the oil corporations on the environment. For instance, due to the many forms of oil-generated environmental pollution it has become extremely difficult for the populations to farm and fish. The Niger Delta crisis began as an appeal to public disaffection by the population of the Niger delta region but this appeal which in the 1990s was in ways of organized protest usually met with military repression which sometimes led to deaths of protesters. The execution of nine of the Ogoni activists including Ken Saro Wiwa in 1995 by the military junta of General Sanni Abacha amidst international condemnation is considered the turning point in the crisis.

⁷ John Bacher, "Nigeria: Oil and Dictatorship", *Peace Magazine*, Sept-Oct 1998, <http://archive.peacemagazine.org/v14n5p12.htm>, accessed June 2009.

⁸ Aderoju Oyefusi, note 1 above.

⁹ Ibid.

The Niger Delta region has now become an archetypal case of what can be referred as a “zone of violence”.¹⁰ Unlike other conflicts herein discussed, the Niger Delta conflict is one led by community members of the oil producing areas against the oil companies and the government. Disenchanted with the non-compensation of their lands by oil companies as well for environmental damage, there has been the emergence of militant groups such as the Niger Delta Peoples’ Volunteer Force (NDPVF) and the Movement for the Emancipation of the Niger Delta (MEND). MEND has become the umbrella militant group for the Niger Delta region with a claim of fighting for the defence of the rights of the larger population of the Niger Delta.

MEND objects to environmental degradation caused by the oil companies, underdevelopment of the region, and the lack of benefits to community from exploitation of its extensive oil resources. The attack by this militant group is greatly distorting oil production and causing lost of revenues to both the Nigerian government and the oil companies. For instance in 2003, some 70 percent of oil revenue was stolen or wasted, while MEND attacks on two Shell oil fields in February 2006 accounted for some 477,000 barrels per day of the reduced output.¹¹ The avalanche of problems faced especially by oil companies in the Niger Delta is prompting them to redirect their attention to offshore oil activities moving far away from the risks of MEND attacks.

The conflict in the Niger Delta region may be far from being resolved anytime soon despite laudable efforts made by the government such as the establishment of the Niger Delta Development Commission in 2002 and Community Development Projects financed by oil companies such as Shell. Despite these efforts there are some pertinent issues such as the fact that these projects are

¹⁰ Michael Watts, Ike Okonta & Von Kemedi, “Economies of Violence: Petroleum, Politics and Community Conflict in the Niger Delta, Nigeria”, *Institute of International Studies, University of California*, <http://www-geography.berkeley.edu/PeopleHistory/faculty/Economies%20of%20Violence.pdf>, accessed June 2009.

¹¹ Stephanie Hanson, “MEND: The Niger Delta’s Umbrella Militant Group”, *Backgrounder*, Council on foreign Relations (March 2007), <http://www.cfr.org/publication/12920/>, accessed May 2009.

carried out by the companies simply for purposes of public relations and not as a need to respond to real life problems of the local communities. The extensive use of repressive force as a response to protests by local communities demanding for greater share of oil revenues or for reparation for environmental damage will only go a long way to prolong the conflict. Therefore the Nigerian Federal Government need to initiate a credible sustained dialogue on control of resources with Niger Delta civil society groups and the local populations, and ensure improvement and transparency in the management of revenues from oil. Also oil companies should prioritize long term ability to operate in Nigeria over short-term goals and seek community assent before proceeding with production related projects.¹²

5. Democratic Republic of Congo

The Democratic Republic of Congo formerly Zaire, is a glaring example of a country bedeviled by the availability of natural resources. The DRC is potentially one of the richest countries in Africa endowed with a wide range of natural resources from oil, minerals, and timber. The fight for control of the enormous revenues flowing from the exploitation of these resources has been at the centre of the violent conflicts in the DRC. Unlike the conflicts in Angola and Nigeria that were based on oil and to an extent diamond, in DRC the conflict was largely fuelled by the enormous availability of solid minerals such as gold, coltan, diamonds, and to an extent timber. This conflict has been referred to as the “Second Congolese War” and it began in 1998 one year after Laurent Kabila became President following the overthrow of President Mobutu Sese Seko who was president for over 30 years.

The Congolese civil war has been described as one of the world’s deadliest war since the Second World War with an estimated 3.3 million deaths. Unlike the first civil war that broke out immediately after the independence and became a spillover of the Cold War with the dominant presence of both Western and Soviet

¹² International Crisis Group, “The Swamps of Insurgency: Nigeria’s Delta Unrest” *Africa Report*, No. 115 of 3 August 2006, <http://www.crisisgroup.org/home/index.cfm?id=4310>, accessed May 2009.

forces, the second war has been dictated primarily by the interests of surrounding African states.¹³ The war has been referred to as “Africa’s world war” with each of these countries supporting one or more of the warring factions. The conflict was sustained by the desire of armed factions to control large reserves of gold, diamonds, copper, and other minerals. The rebel groups in the eastern region of DRC fighting the government were supported by Rwanda, Uganda, possibly together with Burundi, and anti-government UNITA rebels from Angola; while the government of the DRC was supported by Angola, Zimbabwe, Namibia, Chad, and possibly also with Sudanese soldiers and Rwandan Hutu extremists.¹⁴

Alongside the African countries in the Congolese conflict was the growing presence of multinational extractive industry companies. In a report released by the UN appointed Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth in the Democratic Republic of Congo,¹⁵ several corporations were linked to the activities of rebel groups within the DRC. About 33 companies from Germany, Belgium, Rwanda, Malaysia, Tanzania, Switzerland, Russia, India, the UK, Netherlands, and Pakistan were involved in the importation of minerals from the DRC through Rwanda. There were also companies that directly supported rebel groups such as the Citi Bank that facilitated loan payments to the Rally for Congolese Democracy that held monopoly over coltan resources in the Goma area.¹⁶

¹³ The following African States were directly involved in the Second Congolese War; Angola, Burundi, Namibia, Rwanda, Uganda.

¹⁴ Mika Vehnamaki, “Diamonds and Warlords: The Geography of War in the Democratic Republic of Congo and Sierra Leone”, *Nordic Journal of African Studies*, Vol. 11, No. 1 (2002), pp. 48-74.

¹⁵ Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo (UN Expert DRC Panel Report S/2001/357 dated 12 April 2001), <http://www.un.org/News/dh/latest/drcongo.htm>. In a Security Council Meeting of May 11, 2002, Neighbouring Countries challenged the report on exploitation of resources of Democratic Republic of Congo, <http://www.un.org/News/Press/docs/2002/SC7561.doc.htm>.

¹⁶ Vuyelwa Kuuya, “The Illegal Exploitation of Natural Resources and Other Forms of Wealth in the Democratic Republic of Congo”, (1 November 2008), *Lauterpacht Centre for International Law*, University of Cambridge. http://www.business-humanrights.org/Links/Repository/737123/link_page_view, accessed April 2009.

A 2005 Human Rights Watch report stated that AngloGold Ashanti had deals with FNL rebels notorious of their human rights abuses in Ituri. Though the company denied any wrong doing, it was named by the UN Panel of Experts' report as one of the eighty five (85) multinationals operating in DRC and not being in compliance with the OECD guidelines for multinational enterprises. The Rwandan Army that was also supporting some of the rebel groups through, Rwandan Metals according to the UN Panel of Experts' report is estimated to have exported at least 100 tons of coltan per month and that within a period of 18 months, Rwanda must have made at least \$250 million providing it the resources to sustain its stay in the DRC. The report also stated that the government management of State resources was void of any transparency and accountability and promoted patronage by allocating mining concessions to companies from Zimbabwe to ensure the Zimbabwean government's continued support in its war efforts against the rebel groups.

With the assassination of Laurent Kabila in 2001 and the ascension to power of his son Joseph Kabila, the Congolese war of resources entered a new phase marked with the need for peace. On April 19, 2002 following the Inter-Congolese Dialogue at Sun City in South Africa, a partial agreement was signed between the Mouvement pour la Liberation du Congo (MLC) led by Jean Pierre Bemba and the Government led by Joseph Kabila. Though the Sun City Agreement was supposed to signal the end of the conflict in DRC with the withdrawal of all foreign troops and a formation of a transitional government, Rwanda and Uganda continued supporting rival militia groups in the eastern part of DRC.

The Congolese conflict took an international dimension primarily because of the country's rich natural resources. For instance between 1998 to 2003, mainly in the northeastern Congo, Uganda troops took direct control of gold rich areas and coerced gold miners to extract the gold for their benefits and looted Congolese

gold valued at over \$ 9 million.¹⁷ Uganda's role in the war was stated in an International Court of Justice ruling in 2005 which found that Uganda violated Congo's sovereignty by invading it and providing military, financial, and logistical support to Congolese rebels within the country between 1998 and 2002.¹⁸ It is estimated that between August 1998 and April 2004 almost 3.8 million people died in the DRC. The Congolese war of 1998 to 2004 sandwiched with skirmishes until early 2009 depicts the role of natural resources in fuelling conflicts in Africa.

6. Central African Republic

The Central African Republic (CAR) has for more than ten years been trapped in recurrent armed conflict with a civil war between October 2002 and March 2003. These years of armed conflict has led to a complete collapse of basic infrastructure, social services, and high insecurity. Though Central African Republic is hugely endowed with a wide range of resources such as timber, diamond, gold, uranium, and ivory, the conflict in the Central Africa Republic seem not to be directly linked to the presence or even control of these resources. This view is supported by the International Peace Information Service (IPIS) which in a study revealed that most of the territories held by rebels contain only few natural resources.¹⁹ This is in contrast with what obtained in the war in the DRC where the rebels and government troops controlled sizeable areas endowed with natural resources. The IPIS report also reveals that the only violence in the CAR that had a direct link to obtaining access to natural resources is from heavily armed illegal poachers interested in ivory.

¹⁷ Human Rights Watch, "The Curse of Gold" (1 June 2005), <http://www.hrw.org/en/reports/2005/06/01/curse-gold>, accessed March 2009.

¹⁸ Henry Wasswa, "Will Uganda Pay Up for Congo Occupation?", *Global Policy Forum*, 26 July 2007, <http://www.globalpolicy.org/component/content/article/163/28685.html>, accessed May 2009.

¹⁹ Steven Spittaels & Filip Hilgert, "Mapping Conflict Motives: Central African Republic", *International Peace Information Service (IPIS)*, Antwerp, February 2009, http://www.ipisresearch.be/dbpdfs/20090217_Mapping_CAR.pdf.

Currently an uneasy peace now reigns in CAR assured by the MICOPAX, a regional peace keeping force under the auspices of Economic Community of Central African States (ECCAS), the European Union Force (EUFOR) which was a bridging operation until the United Nations peacekeeping force (MINURCAT) took over in March 2009.²⁰ While natural (extractive) resources have not been directly linked to the conflict in CAR, it could not be excluded that in future the presence of these resources might become a potential source of conflict. The possibility that oil might be discovered in the North of CAR and the possible exploitation of uranium in the South could also be seen as potential drivers for insecurity and conflict in future.

The major rebel groups fighting against the government of the CAR are the Armée Populaire pour la Restauration de la République et la Démocratie (APRD), Union des Forces Démocratiques pour le Rassemblement (UFDR), and Forces Armées Centrafricaines (FACA). While these are the main fighting groups, other actors with stakes in the CAR conflict include Chad, Libya, France, and Sudan. All these actors either support the government or the rebels and their interests are diverse as that of the fighting groups. For instance the government of Ange Felix Patasse gave Libya rights to prospect for and exploit oil, uranium, and other minerals following Libya support to the government in May 2001 to quell an attempted coup.

The Brussels based International Crisis Group had criticized the international community for their complacency in devaluing the political dialogue which gave up on reconciliation in return for simple disarmament and also by "...granting blank concessions to rebel leaders without demanding anything else from them except lip-service to legality".²¹ According to Human Rights Watch the conflict in the CAR has led to the death of hundreds of civilians, more than 10,000 houses

²⁰ For more information about MINURCAT, see <http://www.un.org/Depts/dpko/missions/minurcat/facts.html>.

²¹ International Crisis Group, "Central Africa Republic: Untangling the Political Dialogue" *Africa Briefing*, No. 55 of 9 December 2008, <http://www.crisisgroup.org/home/index.cfm?id=5800&l=>, accessed March 2009.

burned, and approximately 212,000 persons forced to flee their homes to live in desperate conditions deep in the bush in northern CAR and the neighbouring countries. From the above, the conflict in CAR unlike that in countries such as Angola, DRC, or Nigeria has no direct bearing on the presence of natural (extractive) resources. However, we cannot at this juncture exclude the potential of these resources (oil prospects in the north and exploitation of uranium in the south) to fuel a full scale resource-related conflict in the future if the present peace deal is not closely monitored as political, socio-economic, and security challenges keep CAR in a vulnerable position.

7. Republic of Congo (Congo-Brazzaville)

The Republic of Congo like the other countries of the sub-region has had its own share of the resource-related conflicts that have been ravaging the region. Like Nigeria, the conflict in Congo-Brazzaville is hugely motivated by the presence of oil and the need for the different warring factions to capture the gains from oil exploitation. The Congo-Brazzaville conflict began after the results of the first multiparty elections in 1993 that saw the defeat of Denis Sassou-Nguesso who has been in power since 1979. Pascal Lissouba became President but his tenure was short-lived (1993-1997) as tensions heightened between his supporters and supporters of former President Denis Sassou-Nguesso ahead of the 1997 scheduled presidential elections which never took place as the country became immersed in a civil war that saw Denis Sassou-Nguesso come back to power.

Oil was considered a crucial factor in the war and like in the other countries different actors had very high stakes in the country. Oil is the mainstay of the economy of Brazzaville accounting for over 94% of the country's export earnings. During his more than twenty years as President, Denis Sassou-Nguesso established a neo-patrimonial state, redistributing oil profits to allies and potential enemies through educational benefits, military employment, and an ever-

expanding civil service.²² According to Englebert and Ron²³ the country's monthly oil production during the height of the political tension between Lissouba and Sassou-Nguesso was 200,000 barrels with an estimated monthly earning of \$75 million in export revenue and this probably served as an incentive for whoever could claim legal control over the government.

The fight for the control of the country's oil revenues was split along ethno-regional and factional lines leading to the establishment of prominent three militia groups; Lissouba's Cocoyes, Sassou's Cobras, and Kolelas' Ninjas. Angola supported militarily Sassou's cobras helping secure Brazzaville and Pointe-Noire. By October 1997 Sassou-Nguesso emerged victorious in this first wave of violence that lasted for almost three years. A transitional government was instituted in Congo-Brazzaville by Sassou-Nguesso with a promise to hold presidential elections in 2001. Shortly after the transition period was established, war broke out between the government backed by Angola and the southern militias. Unlike the war in DRC, Angola, or even in Nigeria, the war in Brazzaville did not deteriorate into a war of secession. Though the southern militias may have had the motive and the base for secession given that Congo-Brazzaville's oil is located directly off the southern shores, it never developed into a determined secessionist movement. The failure of the civil war in Brazzaville in deteriorating into the type of resource-related wars seen in other African countries such as in Sierra Leone, Angola, or Sudan could not be easily explained by the resource curse theory.²⁴

Considering that the impetus for the conflict in Congo-Brazzaville was political uncertainty and a desire by elites to control a greater share of the country's oil for themselves and supporters; southern military and political leaders were quick in surrendering in return for amnesty, reintegration into their former public sector

²² Pierre Englebert & James Ron, "Primary Commodities and War: Congo-Brazzaville's Ambivalent Resource Curse", *Comparative Politics*, Vol. 37, No. 1 (October, 2004), pp. 61-81.

²³ Ibid.

²⁴ Ibid.

jobs and a desire in sharing in the country's oil wealth. While the peace agreement was signed in December 1999 brokered by President Omar Bongo of Gabon, had there been no political upheaval and uncertainty, it is unlikely that Congo-Brazzaville's resources would on their own have triggered a civil war.

8. Republic of Chad

Though prospection for oil began in Chad as far back as the 1950s, oil was discovered in the 1970s and by 1989 Exxon Mobil, Chevron, Shell, and later PETRONAS began negotiations with the Government of Chad to exploit oil. During all these years before the construction of the Chad-Cameroon oil pipeline between 2000 and 2003, Chad has been involved in a civil war (1979-1982) followed in 1989 with a short rebellion that led to the overthrow of President Hissen Habre. Chad's first civil war had no direct linkage to the presence of natural resources because during this period until the start of oil exploitation in 2000, the country was considered one of the poorest countries in the world.

Chad's second civil war which began in 2005 could be described as having a direct link to the country's emergence as a producer of oil. In some instances, the civil war is described as a "spillover" from Darfur, Sudan and to an extent these two wars are entangled. Chad oil production is marginal compared to countries like Nigeria or Angola (200,000 barrels per day from the three Doba oil fields). From 2003 and 2005 the Government of Chad received huge sums as royalty payments from the oil consortium and oil revenues (in 2004 the Government was expected to receive between \$140-150 million as oil revenues paid into Chad's escrow account at Citi Bank in London and over \$200 million in 2005). During the life-span of oil production (25 years) it is expected the government may earn more than \$5 billion in oil revenues. The major goal of the civil war between the rebels and government was to topple President Idris Deby whose government has been described as corrupt and does not allow the profits from the oil exploitation to trickle down to the impoverished Chadian people.

Unlike in Nigeria, DRC, or Angola, the war in Chad was fought principally in the capital N'djamena far from the southern oil producing region of Doba. Though it could be said that the 2005 civil war was sparked off by those disgruntled with the way the government was managing the oil revenues, i.e. the rebel groups (United Front for Democratic Change, United Forces for Development and Democracy, amongst others), ethnic and political tensions between the North and the South fomented the current violence. It is estimated that by January 2006 almost 614 Chadian civilians had been killed. On February 8, 2006 a cease-fire agreement (Tripoli Agreement) was signed between the government and the rebel groups following mediation by President Muammar Kaddafi of Libya. Despite the peace deal, fighting continued until 2008 even with a comprehensive peace deal signed in October 2007. Peace in Chad is assured now by a European Union Peacekeeping Force (EUFOR). While Nigeria's militants focus most of their assaults on oil platforms and pipelines in an effort to throw the country's production offline, Chadian rebels have not threatened oil production in their attempts to oust Idris Deby.

9. Republic of Cameroon

9.1. The Anglophone Problem and Oil

Cameroon has been described as an island for peace in a region marred by conflict. In 2009, Cameroon was considered by the Global Peace Index as the 95th safest country in the world from 92nd in 2008 and 76th in 2007.²⁵ According to the Fact File on Cameroon published by the Institute for Security Studies (ISS) in South Africa,²⁶ the government to an extent managed to ensure political stability but this is largely contradicted with huge concern for human security. While Cameroon like all the other countries of the Gulf of Guinea and the Central Africa is endowed with a diversity of natural resources, it has not witnessed any overt conflict in exception of the 1984 attempted coup, political unrest in the 1990s and the skirmishes with Nigeria over the Bakassi peninsula. Nonetheless,

²⁵ Vision of Humanity, *Global Peace Index Rankings*, <http://www.visionofhumanity.org/gpi/results/rankings.php>, accessed June 2009.

²⁶ Cameroon: Fact File Security Situation available on www.iss.co.za, accessed June 2009.

there is the potential of conflicts related to regime security and human security with direct or indirect linkages to natural resources.

On regime security, Cameroon's potential security threat is from the secessionist groups in Anglophone Cameroon. In the 1990s at the wake of political liberalization that swept across Africa including Cameroon, several Anglophone associations and pressure groups emerged protesting against Anglophone marginalization, assimilation, and exploitation by the francophone dominated government. One of the most articulated reasons amongst others for the re-awakening of Anglophone nationalism and a potential source of conflict in Cameroon has been the relative underdevelopment of the Anglophone regions and the fact that according to these groups they have not benefited sufficiently from its rich resources, particularly oil. According to Jua and Konings,²⁷ this has led to a feeling of not being recolonised by the francophone dominated regime but marginalized in all spheres of public life and considered as second class citizens. The claims of these Anglophone associations and pressure groups to the presence of oil could not be considered baseless. Since 1975, they claim 75% of crude oil produced in Cameroon comes from the Rio del Rey offshore basin which span from Fako and Ndian divisions in the South West region. In addition, Limbe another Anglophone town is host to Cameroon's lone oil refinery station, SONARA with majority of those working there mostly from the Francophone part of Cameroon.

All the Anglophone groups are unanimous on the grievances of the Anglophones, however there are divergences as to the approach to be adopted that would benefit this population. The Southern Cameroons Youth League (SCYL) for instance stands for an armed struggle as a viable option in the face of the intransigence of the government to open any meaningful dialogue with them. The position of the SCYL is equally shared by the Southern Cameroons National

²⁷ Nantang Jua and Piet Konings, "Occupation of Public Space: Anglophone Nationalism in Cameroon" *Cahiers d'Etudes Africaines*, Vol. 175, No. 3 (2004), p. 609-634.

Council (SCNC) which is advocating for an independent Southern Cameroons i.e. a return to the pre-1961 status quo. In pursuing this approach, on the night of December 30, 1999 militants of the SCNC took over the CRTV Buea Radio Station and on December 31 proclaimed the independence of Southern Cameroons. This incident could have degenerated into an armed conflict had the government responded with arms. The independence proclamation ring leaders were later arrested and detained in Yaoundé.

While Cameroon until now may have escaped any extractive (oil) related conflicts, the claims of the Anglophone secessionist groups especially with regards to the fact that they have not benefited from revenues from oil exploitation should not be undermined. Some scholars have however considered that because of the offshore location of its oil, Cameroon may unlikely witness any resource related conflict.²⁸ This assertion is justified that unlike in Nigeria where there are particular groups (Igbos and Ogonis) “sitting” on the oil, in Cameroon there is no group sitting on the oil, even though the population in Ndian Division in the South West Province claims that crude oil exploited in Cameroon is from Rio del Rey in the Ndian Division.²⁹ Such discontented population could easily align its support with the secessionist groups.

The government has refused to acknowledge the existence of “an Anglophone Problem”. In 1999, President Paul Biya for the first time in a dismissive manner alluded to such a problem but that it is orchestrated by a handful of hotheads and vandals. Like in Nigeria, Angola, and even in DRC where particular groups have overtly fought the government to secede because of not having proceeds from natural resources found in their regions trickle down to them, Cameroon it could be said it is just a matter of time if enough caution is not taken now. Cameroon therefore harbors a latent conflict, especially as the government is engaged in

²⁸ James D Fearon & David D Laitin, “Ethnicity, Insurgency, and Civil War”, *American Political Science Review*, Vol. 97, No. 1 (Feb 2003), pp.75-90.

²⁹ Andre Edimo, “Oil Production in Our Land”, *The Frontier Telegraph*, http://www.thefrontier Telegraph.com/content/oil_production_in_our_land.html, accessed June 2009.

cracking down on Southern Cameroons activists and there is the existence of an exiled Southern Cameroons' government allegedly with basis in Nigeria. It is possible that this group could win the sympathies of militant groups in Nigeria which are fighting the same course in Nigeria and the two groups have a common interest over the Bakassi peninsula.

9.2. The Chad-Cameroon Pipeline and Local Communities in Cameroon

The Chad-Cameroon Pipeline Project financed jointly by the World Bank Group and a consortium of oil companies comprising of Exxon Mobil, Chevron, and PETRONAS is one of the largest private investment into Sub-Saharan Africa. This project held a lot of mixed expectations from local and international NGOs and local communities in Cameroon and Chad. This project involves the transportation of crude oil exploited in southern Chad through a 1070 km pipeline through Cameroon to the coast of Kribi in south Cameroon. More than half of the pipeline cuts across Cameroon's tropical rainforest which is home to the indigenous pygmies and the Bantu communities.

While the project was perceived as a "development" project it was also a source of potential conflict. In Chad there were already rebel groups in the south fighting the Muslim dominated government in N'djamena. However, what is interesting in the Chad-Cameroon pipeline analysis in relation to oil related conflicts is that the local communities considered the project as a solution to their problems but according to different opinions from these communities their lot may instead have worsen with the passage of the pipeline. During the construction phase there were several strikes mostly by local workers laying pipes in Cameroon. In most cases these strikes were often brutally repressed by police forces deployed by the government at the behest of the consortium. Ever since the end of construction of the pipeline in 2003 there have been many outstanding claims by communities that they have not been compensated or inadequately compensated for damage caused to their lands with the passage of the pipeline. While these claims in some cases have been resolved, the problem of

compensation if not totally resolved is a potential source of conflict with a possibility of sabotage of the pipeline by aggrieved local communities.

Unlike the ongoing oil exploitation which is mostly located offshore, the Chad-Cameroon pipeline project is the first oil related project in Cameroon with a direct relationship with the local communities. An open confrontation between the local communities, the consortium, and the government may have been avoided during the construction phase; however, these communities are expecting to see the revenues from the oil used both in Chad and Cameroon to improve their livelihoods through the creation of social facilities. In the Niger Delta region of Nigeria, cases of the sabotage of pipelines by local communities disgruntled with oil companies have been widely reported, and the prospect exists that such strategies may be adopted in Cameroon if the exploited communities feel abandoned by the government and the oil companies.

10. Oil Related Inter-State Disputes

10.1. The Cameroon-Nigeria Dispute over the Bakassi Peninsula

Nigeria in an unprecedented move invaded Cameroon in 1994 claiming sovereignty over the Bakassi peninsula. This move by the then government of General Sani Abacha of Nigeria heightened tensions between the two countries. Bakassi was considered as a territory of Cameroon before Nigeria's invasion. Cameroon immediately after the invasion took the case to International Court of Justice and after more than five years of legal wrangling the ICJ ruled in 2002 that Bakassi belonged to Cameroon pursuant to the Anglo-German Agreement of 1913. The ICJ went further to uphold the existing maritime boundary between the two countries in accordance with the Declarations of Yaoundé II and Maroua signed by Nigerian former military ruler General Yakubu Gowon and Cameroon's former President Ahmadu Ahidjo in 1971 and 1975 respectively. Despite the ICJ judgment, Nigeria troops finally withdrew from Bakassi only after a series of diplomatic interventions facilitated by UN former Secretary General Kofi Annan

that culminated to the signing of the Green Tree Accord in 2006 in the USA between Cameroon and Nigeria on the timeline of the handing over of Bakassi to Cameroon. Cameroon only regained full sovereignty of the Bakassi peninsula only on August 14, 2008.

It is alleged that the possible presence of large reserves of oil in the Bakassi peninsula must have motivated Nigeria's invasion of the peninsula in the first place considering that Bakassi lies adjacent to the Niger Delta oil rich region in Nigeria. One of Cameroon's pleas that offshore blocks found around the Peninsula to which Nigeria had already accorded exploration and exploitation licenses should be ceded to Cameroon was rejected by the ICJ as it instead endorsed Nigeria's delimitation method which kept intact all the country's existing offshore fields. The 1994 invasion of Bakassi by Nigerian troops added to earlier skirmishes between the forces of the two countries in 1981 and in both cases an open conflict involving the two countries was only narrowly avoided thanks to the resolve of the leaders of the two countries to find a peaceful solution. The conflict between Nigeria and Cameroon over control of the Bakassi peninsula could be considered as a low level conflict but with enormous potential that it could have escalated into a violent interstate conflict.

10.2. Equatorial Guinea - Gabon Dispute over Corisco Bay

For several years, Gabon and Equatorial Guinea have been engulfed in a dispute over the sovereignty of the potentially oil-rich islands in Corisco Bay. Dispute over these islands have in several occasions brought these two countries at the brink of war. While Gabon has recognized Equatorial Guinean sovereignty over the inhabited islands, it has refused to do so over the three uninhabited islands of Mbanie, Coctotiers, and Congas probably because of the high chance of finding more oil in the islands. Any of the countries that gained sovereignty over the disputed islands will automatically get exploration rights to much larger potentially oil-bearing offshore areas. In 1972 Gabonese troops in an unprecedented move

invaded the island of Mbanie chasing out the Equatorial Guinea army and this event sparked off sporadic clashes between the two countries.

However, for long it was seen as if the conflict was over until in 2003 when during a visit to the Island by Gabonese Defense Minister Ali Bongo, he re-stated Gabon's claim to the Islands. This statement sparked off new tensions between Gabon and Equatorial Guinea and following a meeting with the then UN Secretary General, Kofi Annan at the UN headquarters the two presidents agreed to UN mediation. It could be said that the resolve of the two countries and the UN mediation may have put off another oil-related conflict in the Gulf of Guinea but with no definite solution yet insight, nothing is certain. Like the Nigeria-Cameroon conflict over the Bakassi peninsula, probably only a decision by the International Court of Justice may bring any certainty to this dispute between Gabon and Equatorial Guinea, and just like Nigeria and Cameroon, the implementation of any such decision could require extensive diplomatic intervention.

11. Conclusion

In 2005, the UN Security Council adopted a resolution that recognized the link between the illegal exploitation of natural resources, the illicit trade in such resources and the proliferation and trafficking of arms³⁰ as one of the factors that fuel and exacerbate conflicts in countries such as the DRC. Of the countries in the Central Africa sub region and the Gulf of Guinea, only Cameroon, Gabon, Equatorial Guinea, and Sao Tome and Principe have not had any sort of overtly natural resources-related conflicts despite being endowed with wide range of resources (oil, minerals, and timber). Some scholars have justified the absence of any significant violence in these countries as a result of the combination of two factors; location of offshore oil and the institution of neo-patrimonial political system. These countries could have been spared any significant outbreak in

³⁰ UN Security Council Resolution 1607 (2005), adopted by the Security Council at its 5208th meeting, on 21 June 2005.

violence for now but the failure to institute a political system now that guarantees good governance considered as central to creating an environment that fosters sustainable and equitable development that in essence will promote sound revenue management only places them in very precarious situation.

As seen in some of the cases above, when a government depends largely on wealth from the exploitation of natural resources, there is a tendency for such a government to reduce its dependence upon its citizens, making it less accountable to them and depend less on them for its legitimacy. It is within this context that most of the conflicts in the Central African sub region are situated as governments tend to become very concerned about any threat to what can be effectively their main source of power. During a UN Expert Group Meeting on Natural Resources and Conflicts in Africa in Cairo in 2006³¹, it was agreed that natural resources are inherently good as they can generate wealth and contribute to peace and development. The Experts said that to ensure that Africa's natural resource wealth serves as an engine for sustainable socio-economic development rather than a source of inter and intra-state conflict and under-development, good political, economic, and corporate governance is of primary importance.

³¹ UN Expert Group Meeting on Natural Resources and Conflict in Africa: Transforming a Peace Liability into a Peace Asset, 17-19 June 2006 Cairo, Egypt, <http://www.un.org/africa/osaa/reports/EGM%20Natural%20Resouces%20and%20Conflict%20in%20Africa.pdf>, accessed June 2009.

CHALLENGES OF ADMINISTRATIVE REFORMS AND PUBLIC SERVICE ACCOUNTABILITY IN AFRICA: THE CASE OF CAMEROON

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Abstract

The paper addresses issues of enhancing quality services in the public service sector by focusing on issues areas such as accountability, ethics, human resources development among others. The paper argues that the proper utilisation of information and communication technologies (ICTs) would greatly enhance and improve public administration and quality services delivery in transitional polities, Cameroon in particular. As the country experiences the throes of the structural adjustment Programme (SAP) it became necessary to set functional policy actions to meet output functions in respect of quality services delivery to its citizens. The paper therefore identifies factors that contribute to the lack of accountability and malpractices in the civil service; suggest policies and ICT strategies to promote accountability of public services; and provide a brief conceptual discussion on the benefit and link of ICT to Governance. Proactive strategic policy measures are recommended as the way forward for improved public service sector for the country.

Keywords: administrative, corruption, inertia, information, capacity building, public policy, public service, reform, information technology.

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1. Introduction

In Africa today, there is wide spread awareness that to enhance public service accountability will be a better way to good governance. In fact, maintaining appropriate standards, values, ethics and accountability has been what most institutions are attempting to build. The concern now for accountability to enhanced public service delivery in Africa is key to wipe out corruption. An essential pre-condition for any legitimate exercise of state authority is the efficient provision of a good public service. The degree to which public service institutions of developed countries embrace the values of responsiveness, accountability and integrity in responding to the needs of its people is an important aspect of good governance and should be an example to emulate by developing countries.

In Africa, the Poverty Reduction Strategy Paper (PRSP) which was adopted emphasizes the realization of the development goals identified, notably the strengthening of governance, efficiency of public service and institutional framework. The issues of ethics and accountability should be linked with the concept of good governance. As observed, most Africans interact with public institutions on a regular basis whether it is to pay taxes, apply for a passport, driver's licenses and following up files in ministries. Many civil servants feel that dealing with public administration is not only cumbersome but also often frustrating and confusing because of "backdoor" dealings involved. Pushing of files, oiling of palms, soya, beer, are some of the expression used to describe these acts of corruptions due to no standard system in the public service. These situations apply to many African countries. The issue of ethics and accountability for enhanced public service should be considered within the context of the anti-poverty strategies put in place by African governments. Therefore, setting up an enhanced and efficient public service delivery system that is accountable and responsive to the needs and demands of the people is an important policy option to reduce corruption in the public service, and also the magnitude and level of poverty within the society. Meanwhile, the absence of clearly stated, defined and

enforced polices to promote professionalism in the public service allows the whole system to be vulnerable to malpractices and corruption.

2. Accountability and Ethics

2.1. Accountability

This implies that public managers must be ultimately answerable to elected public officials. The term used up the concept of overhead bureaucracy i.e. a method of controlling public servants by making them subordinate to the will of elected representatives. It also implies responsiveness to the wishes of those elected in parliament. Parliamentarians asked questions in parliament, this makes the executive to sit up and be accountable. Accountability and responsiveness of the public service to the people promote trust in Government.

Ethics and accountability complement one another because professional ethics is the basis of accountability. The Institute of public management in Cameroon has internal rules and regulations which enforces accountability within the institution. The introduction of management information system (MIS) Evaluation procedures, Management by objectives (MBO) is all internal accountability mechanism. Accountability and responsiveness of public services to the people promote trust in Government (Olowu, 1993, Meheret 1998). Any public service must have rules and regulations to ensure accountability.

2.2. Work Ethics

Accountability and ethics are the main values of employees in any well structured public administration. These are the norms of behaviour that public officials must strictly adhere to in the process of delivering public services to the public, which connotes a sense of integrity, responsiveness, acceptability, answerability, professional conscience, honest, neutrality, self-denial and a passion for excellence in the public services (Kamto, 1997).

Many Governments make use of many practical measures to enforce compliance with ethical codes and standards by public servants. The most common of these tools is ethics legislation that requires public servants, and those viewing for public jobs to fill out financial and private property disclosure forms. This an important measure to control illicit enrichment and unlawful amassing of wealth by public servants through abuse of official positions (Levine, et al.1990).

Ethics, conjures vital principles of consistencies, honesty, fairness, integrity and responsiveness in public service organization. In an egalitarian society, elected representatives of the people and an active civil society ensure that managers of the public service adhere to acceptable standards of professional conduct in carrying out their official responsibilities. These standards are the rights of the people and should have been the barometers for enhanced ethics and accountability in public service delivery.

3. Factors that Contribute to the Lack of Accountability and Professional Standards of Public Services in Africa

3. 1. Disregard for Rules

Today the public administration is considered as the main strong hold of corruption. Consequently it constitutes a priority area of action. There are norms, values rules in most public services in Africa, even if they do exist, there is wanton disregard for practices of accountability by public managers and civil servants. The problem is the text of application which is never respected. Lack of firm political commitments by African governments to institutionalise public services has led to the declining values of professionalism in most public services in Africa. Bellow are points for discussion:

3. 2. Ministries Administrative Bottlenecks: Epicentre of Inertia

Most public administration mostly in west Africa have resisted attempts to be proactive All those who have had the misfortune to go after a file in some of

these public services have a long story to tell. The stories rang from a missing file, incomplete file, and the interminable absence of a boss or the break down of a computer.

Most government efforts to speed up the treatment of files for civil servants have often met with ferocious resistance from people who think their survival depends on tips and outright corruption. Even the institution of a Public Service Day in the administration has been diverted from its main goals of creating awareness about the need for efficacy to mean a moment when officials award contracts for banners, organize conferences, and make empty speeches about hard work and results. Preaching virtue and practicing vice can be the best qualifier for most of the high officials in administration. How else can one describe an authority that goes out to tackle an issue of public importance and all he can tell a distress population is that he will take their complaint to the competent authority.

The introduction of a computer pool at most Ministries of public service and Administrative Reforms appears today as one of the most sorrowful innovations in administration. The number of desperate persons who hover around the windows of the said computer pool to get the same respond month after month is sad. No one knows the rights statistics about how long it takes to treat the file of any civil servant or any user of the civil service facilities in most public administration.

It is generally not strange (not to quote any country) to go on retirement and wait for three, four, five years without the required retirement benefits just because those handling the file have no interest in speeding up the file. "Call me by next week, come back in two weeks, etc." are the refrains that members of the public get when there are faced with the Public administration. One would have thought that the computer has come to facilitate matters for the public. Instead besides the long chain of officials that a simple file must go through before getting up to the Minister who may at time reject it, the malfunctioning of the machine is often

a justification for inefficiency and the inability of officials to take responsibility for the lack of a proactive spirit and sense of initiative in the services they are called up to render to the public. If the country has to lay claim to any meaningful development one day, it is indispensable for those appointed to duty posts to have the minimum possibility to take certain initiatives or even to be audacious enough to assume their responsibilities

3. 3. Government Inaction

According to his papers Jean Bosco Talla (Gredde Afrique 1999.), his survey concluded that, in Africa low salaries, the desire to acquire wealth at all cost, people not knowing their rights. He also pointed out that, the anti-corruption campaign in some countries are merely a wasted effort since Government had not taken any measures against the corrupted and the corrupters. It is felt that state machinery protects corrupters and the corrupted, and because of this impunity, corruption is a sea serpent neither the head nor the tail of which we can see. Respondents felt that had the first Gentleman of 30% been punished, corruption would not have been institutionalised in the public service. As concerns salaries, those interviews had a lot to say: They felt that given a minimum of well being, corruption in the public service would reduce on its own. To them people don't really need to be Rockefellers; rather they need to be able to asset themselves a little more in the society.

The quarterly journal (Banks d'Afrique issue of July 2006) noted that accountability revolves around corruption. This does not only kill the Nation economically, it also has a societal effect-because it prevents the building of a solid society founded on valorisation of the individual. Corruption in the civil service opens to anyone the door to any position with the first hope that the necessary skills will be acquired on the job, unfortunately the miraculous acquisition of these skills never occurs; schools loose their value. Those of young people who value work become discouraged. Children the most vulnerable members of the society, adopt as away of life and as the only way to succeed,

the practice of intrigues, cheating, corruption of teachers and civil servants etc. A person who is recruited in the civil service through cheating sees nothing abnormal to do the same thing in the public service. The civil service thus hatches a society of incompetence, ill prepared to face the international intellectual competition of the third millennium.

3.4. Lack of Professionalism, Declining Sense of Integrity, and Honesty, and Personal Agenda

Declining sense of integrity honesty, lack of professionalism and conflict of interests has destroyed African public service. The explanation we can give here is the way things are done in darkness, under the table. An example can be given on how promotions are done. No clear objectives criteria for staff evaluation. As such not the most competent are usually promoted but the well politically connected. As a result of injustices, people get discouraged by what happens around them and do not hesitate to resort to corrupt practices.

3.5. Corruption and Malpractices in the Civil Service

All over Africa, there is a general cry against corruption: It is shocking that act of corruption have been witnessed among top Civil and Government leaders in most African Societies. In Africa, the situation is now a general pandemonium. Thus most Africa Government has now embarked on a fight against corruption. Over the media, in conferences and seminars, in schools etc. there is the re-awakening of consciences towards this great societal malaise. Corruption is a state of life void of moral and ethical consciousness. Corruption is inevitable when individuals place their self-interest above social interest. Corrupt individuals are always in the habit of enriching themselves more than offer quality service, which may serve as a rich legacy of their impact.

3.6. Corruption in the award of Government contracts.

In most Government, in Africa, there are laws and decrees put in place to rigorously control purchases, services, suppliers and work bills to the state.

These actualities, which are generally carried out within the framework of what is called “Government contracts”, provide a very fertile ground for corruption in most public service in Africa. We would not delve into the various commissions that award contracts. However most concern areas cited (Fredrich-Ebert-Foundation Yaoundé 2004) was corruption is highlighted as the causes of unaccountability in most African public services are:

- The customs service.
- The justice department.
- Graft in the army and in the forces of law and order.
- Political corruption and public services.

3. 7. Customs Department

Everywhere in Africa, customs officials immediately go on defensive when asked questions about their services to the nation. The custom agency considers every declaration of goods as false. The customs officer like a police officer examining a car document carries out a long and pains taking search for abnormalities. This harassment will go on until the customer gives a tip to the official.

3. 8. Justice Department

Rather than uphold justice, the justice department has become one of the most corrupt institutions in Africa countries. In Cameroon, it is even alleged that magistrates walk the corridors of the legal department sometimes deliberately seeking out businesspersons to “say hello” to, more often to inform them of law suit against him or his relative. Bribery is also rife among members of the judiciary. Strangely, it has even noticed that a member of the judiciary is often obliged to bribe a colleague before a service can be rendered.

After winning a case, the magistrate is obliged to pass something under the table before the court decision is signed. This happened to a magistrate who after waiting for 5 months for the decision to be issued found himself obliged to pay about \$200 to the Court Registrar for him to draw up a decision. This testimony

from one of the participants of an international workshop on justice recently was confirmed by many. Magistrates of legal department who serves as prosecution trade their favours and weighs down heavily on judicial police, officers and bailiffs by abusively quashing their cases after being corrupted by litigants.

The magistrate and public prosecutor signed bailiffs emolument statements envelope exchange hands before and after these statements are signed. The Olusengun Obasanjo case as a young military officer in the 60s can also be sighted. According to Bate Bissong in his book “The Bastards” he narrated how Obasanjo was called to questioning as soon as was discovered that obasanjo who was a junior officer in the army has bought a car. Justifiable receipts were tendered during the investigation. As an officer Obasanjo kept part of his salary which enabled him to save and later bought a car. Today that bothered to question unjustifiable wealth?

3.9. Political Corruption

During the international workshop that brought together international political and opinion leaders, the problem of corruption in the electoral process was discussed exhaustively. Participants talk and frown about the sale of voting cards, rigging by administrative authorities etc. There are so many fraudulent activities during the political period that most civil servants are involved.

3.10. Public Administration

Corruption belongs to the category of phenomena which Durkleim (1990) describes as “pathological” which should not be confused with those considered as normal” the researcher seeks to understand a pathological phenomenon with a view to knowing it in order to correct it, to straighten it out, and make it to become what should be. One might be tempted to say that these researchers are going beyond their competence if they decide to make themselves the judge of things they observe. Durkleim notes that even through our aim is to study reality;

all our efforts would be completely worthless if we did not attempt to redress identified problems.

Ethics, integrity honesty trust, and accountability describe desirable characteristic and values of public service. These terms connote a sense of responsiveness, answerability and acceptability, norms of behaviour that public officials must strictly adhere to in the process of delivering public services to the citizenry. Modern government make use of many practical measures to inform compliance with ethical code and standards by public service agency. The most common of these tools is ethics. Legislation that requires public servants and candidates for public jobs to fill out financial and private property disclosure forms. This is important measure to control illicit enrichment and unlawful amassing of private wealth by public servant through abuse, of official position (Lewine et al 1990).

3. 11. Poor remuneration policies

Poor working conditions and low pay are some of the problems that contribute to the deplorable service record of African public services (Kamto 1998) Poor salaries do not motivate public employees to increase productivity or enhance commitment to public service. Public service salaries are not competitive with what the private sector offers for similar qualifications and competence level. This situation has encouraged brain drain, or to other sectors especially NGOs in search of better salaries and condition of work.

Poor pay has remained the major setback in most African public services. Poor pay has produced the following negative results.

- Medical doctors in public health institutions set up private practices in private clinics to have ends meet;
- Engineers stay in air condition offices instead of carrying out projects on site;
- Teachers are searching for nominations into administrative positions instead of teaching in schools or universities;

- Everyone would want to work in an office to control finances since the realities are there for those who work in these offices are extremely rich.

3. 12. Weak Institutions for Enforcing Accountability Standards

Government watchdog organisations have always been mandated to oversee the strict enforcement of professional standards of conduct in public service institutions. We can site example of: state control debts, anti corruption, ethics commissioned but these institutions have not been effective in enforcing professional standards. Anti-corruption civil service tribunals or disciplinary councils which look into irregularities, such as abuse of authority, embezzlement of public funds, unlawful enrichment etc have proven ineffective because of too much patronage. Very often, the higher ups in the organization intervene in the work of such bodies and ask for clemency/leniency to protect their protégés. The support structures for the administration of justice are:

- Inadequately trained staff;
- Poorly equipped and paid staff.
- Missing case files and poor management of information due to manual processes of documents.
- The public service has long been subjected to control and manipulations by politicians. It has compelled public managers to be answerable to politicians at the cost of a diminished sense of responsiveness and accountability to the people.
- The lower echelon s of the public services are overstaffed with semiskilled workers ,including clerks, secretaries, mail boys, reproduction staff etc all of whom have no marketable skills to venture into the labour market. This employee generally receives poor pay but stay on because of job security

4. Strategies to Promote Accountability in African Public Services

There are many strategies that could be mentioned in this paper but we would concentrate on the ICT strategy for obvious reasons. All the discussions and debate made in all seminars the world over point to the fact that there is a link

between information and communication technology in any modern management. The modern management means efficiency and effectiveness of service delivery especially in the public services. If African countries took the use of information and communication technology seriously and used them appropriately the public services would have been different from the mess we experience today.

4.1. Application of ICT

As in the context of globalisation, the importance of the appropriate application of Information and Communication Technologies (TIC) for efficient delivery of public service is obvious. Therefore, all over the world, rich countries and developing countries are engaged in harnessing the potential of e-administration. In the framework of the AFRICAN Governance programme, some pilot initiatives in some African countries for e-administration have been launched in the one hand, and some e-government projects are being implemented, notably the telemedicine project, on the other hand, with relative success.

It is evident that with the fast growth of ICT environment in some African countries, there is an enhanced use of ICT for public services delivery and in the medium or long term, the whole African continent would move to knowledge technology driven. To reach this ideal there is need for the government and its development partners, private sector and civil society to engage in co-ordinated and participatory concrete actions to get our public service moving.

4.2. Use of ICT at the Institutional level:

- Develop the capacities of an Agency to fully appropriate and lead the expansion of e-government in your country in terms of policy dialogue, policies and strategies elaboration, resources mobilisation...with specific Governmental institutions intervening as implementing agencies based on their specific expertise and missions.

- Set up an E-gov Unit at the Agency and provide necessary human, financial resources for their functioning.

4.3. Policies and Strategies

- Elaborate national ICT policies in individual country and a National E-Gov. Programme to be implemented, highlighting the VISION of the country on ICT for human development.
- An established legislative and regulatory framework for ICT issues like data security and protection, digital signature e-commerce, ICT education. Enacting laws and regulations for uninterrupted growth of ICT, in conformity with the world trade organisation (WTO) An act should be enacted to protect against computer fraud, hacking and damage to programs and data that may spread computer virus;
- Widespread introduction of ICT education in public and private educational institutions be encouraged. This is a prerequisite for producing skilled ICT manpower.
- Donor agencies, NGO's and other development partners of your country be encourage to help build the necessary capacity in area of.

4.4. Infrastructure Improvement

- To support the growing demand of the ICT sector, appropriate ICT infrastructure be established in public and private sector, as telecommunication infrastructure should be considered as infrastructure development industry like development of roads;
- In order to establish direct connectivity with international information and communication back-bone, African government should intensify the total connection of all sectors by the fibre optic submarine cable network;
- Basic telecommunication facilities are extended to the rural and underserved areas to bring the greater mass into the stream of ICT activities both by private public sector.

4.5. Efficiency in Service Delivery

- Government should establish immediately inter-banking payment system in electronic form.
- The use of ICT in health care is encouraged, especially in the area of electronic medical records, telemedicine, medical and health education.
- Telemedicine system network should be introduced throughout the individual country for cost effective delivery health care services.
- All hospitals and medical research centres should be linked by computer networks – with one medical centre of excellence as a central hub in order to make expert services available throughout the individual country.
- A computer based management information system with suitable wide area networks WAN and local area networks (LAN) should be established for Supreme Court and for the courts of first instance and appeal courts in individual countries.
- Local presentations and training should be used to make the population more familiarized with ICTs.
- Re-engineering of processes of the Key sectors of the economy will increase performance, and speed. Re-engineering will considerably reduce time and restructure administration for better performance.

4.6. Computer Information Network

Implementation of one common network for everyone. Entails building a super-high way linking all the regions on administrative unit of any African country and the creation of sectoral Intranets to coordinate the activities of various sectors. This will enhance free exchange of expertise and data and reduce the costly movements now made in search for reliable data in various sectors.

Each Ministry, Division, Government body should create an ICT cell, to be managed and run by well trained ICT professional. All Ministries, Divisions, agencies of government and autonomous organizations should set up web sites where all policy documents and information relevant to the public shall be posted

as early as possible and regularly updated. There should be a web portal of Government from which link will be provided to the web sites, like e-forms, e-procurement, e-recruitment, e-results etc. Government should introduce and promote ICT based services like G2G (Government to Government), G2E (Government to Employee), G2C (Government to Customers). Preference should be given to ICT literate candidates for the purpose of recruitment in public offices.

4.7. Human Resources Challenges

The numerous challenges posed into the Information Society have demonstrated the degree to which all economic and social development is determined by the quality of human resources. Not only does the lack of sufficient human resources in terms of quality and quantity remain a difficult problem, but national ICT related skills are sadly lacking. There are several reasons for this state of affairs:

1. Absence of a national ICT training policy; in most African countries.
2. Prohibitive access costs;
3. Unsuitable training structures and programmes;
4. Lack of information on the needs of the labour market;
5. Inadequate training/employment;
6. Lack of awareness of ICT challenges.

4.8. Shortage of Technical Skills

There is an acute shortage of technical staff in government services to design, install, operate, troubleshoot, support and maintain tools and internet nodes/hosts and networks which can provide technical support to and users. Numerous internet initiatives have been constrained resulting in delays or poorly implemented due to the low number of technical experts with the requisite computer networking and internet mode installation skills e g ISPs and tertiary institutions have to rely on a few local Experts. At the level of our councils, the participatory budget mechanism in councils can use ICT to improve public access to budget information. An example is the municipality of ESTONIA in Eastern Europe the council began using the Internet and citizens could voice

their opinion on budget priorities through Internet. Most council can be encouraged to redirect their resources to these projects.

4.9. Legal Regulatory Framework

The engagement of a Government to adopt and expand electronic government in its interaction with citizens, private sector and other public actors should go along way to helping any administration to be transparent with a regulatory framework. This will accelerate the setting up of a favourable legal Environment with sound rules and regulations tackling most issues related to electronic government issues (i) cyber Security (ii) cyber privacy, (iii) confidentiality, (v) access to, dissemination of, and preservation of government information; (v) accessibility of persons, (vi) digital signature E-commerce, (vii) e-administrative documents etc.

5. Benefits Information and Communication Technologies

Around the world, information and communication technologies (ICTs) are being touted as key instruments for enhancing economic development and promoting social, cultural and political progress. Cognizant of the tremendous potential offered by ICTs, most countries have embarked on significant policy and regulatory changes in order to create an enabling environment for harnessing and deploying ICTs for development purpose. In many parts of the world, governments and businesses are also working towards the creation of high-speed broadband information networks and infrastructure for better service of the citizens.

It is believed that the developing countries can derive the greatest benefits from the use of ICTs. New information and communications infrastructure and services are believed to provide developing countries with unprecedented opportunities to overcome their structural handicaps as well as their weaknesses arising from the lack of social and economic infrastructure, to leapfrog into the information age and society alongside their developed counterparts.

Recent studies and research however indicate that ICTs could also exacerbate existing disparities between nations and create what has been termed a 'digital divide'. Although few contest the potential of ICTs to enhance the development process, a number of critics contend that expecting ICTs to radically transform developing societies and address their structural weaknesses ranging from economic and social disparities, political fraction and indigenous cultural degeneration is far fetched. ICTs cannot be considered as the panacea for all social and economic problems. They are merely tools, and with all tools and instruments, ICTs can be effectively used only when they are harnessed and deployed with clearly identified objectives and through skilfully structured policy mechanisms and infrastructure deployment. It is here that appropriate policy and regulatory frameworks for the success of a nation's ICT initiatives and more importantly their effective use for purposes of public service and for socio-economic development.

6. Recommendations for Public Administration Reforms

To make the public administration more effective, Efficient and results-oriented, the following are suggested:

1. Accelerate the Public administrative reforms on harmonizing governmental structures and operations and re-engineering business processes.
2. Develop a national Enterprise Architecture Program which builds on a comprehensive business driven blueprint of the entire government which will (i) reduce redundancy, (ii) facilitate horizontal and vertical information sharing (iii) establish a direct relationship between IT and public administration, i.e. Citizen-customer-focused government,
3. Ensure web presence for all, the Ministries and governmental institutions.
4. Develop a Governmental intranet, preferably using harmonised broadband technologies, at Central level with interconnection with division at the provincial, Level.
5. Evaluate ongoing and develop and implement more thematic e-gov., G2G (Government to Government), G2E (Government to Employee), G2C

- (Government to Customers) such as programs as (e-health, e-commerce and trade, e-education, e-elections, e-taxation, e-Customs...
6. Deploy Computer based Management Systems, Information Management Systems in the public administration.
 7. Setting deadlines for the processing of files so as to avoid the abusive retentions which brings about secret dealings.
 8. Eliminating while raising salaries, all pernicious inequalities which characterize the structure of the incomes of employees given that such inequalities give rise to unhealthy frustration liable to greatly upset the harmony and balance necessary for a good public service.
 9. Instituting allowances, emoluments, and advancements likely to compensate or encourage output.
 10. Setting up of career profiles aimed at guaranteeing a minimum of rationality in the promotion of state employees and sustainability.

Reducing the length of time for holding key administrative positions. Those measures of general nature must be complemented and reinforced by measures specific to each sector e.g. finance, media, education, customs, army, police, public contracts etc.

7. Conclusion

Most Civil Servants in the African continent have never been well compensated. Because of the poor compensation and reward policies, this has generated administrative malpractices throughout the continent. This has compelled public servants to succumb to fraud. Introductory report by (Valantin Zinga) on corruption in Cameroon the media viewpoint attests to the cases of corruption in Africa. But there is another view, which state that malpractices exist in our public service because individuals whose purchasing power has dwindled have not acquired the habit to fight for their rights. To compensate the losses sustained, they fall on those whom they are called upon to serve.

Finally mobilization and collection of state revenue in Africa is very much affected by corruption. Not even poor pay. But the zeal to get rich quick has contributed to the civil service not producing the expected results. An enhanced sense of standards and accountability is required to curb rampant corruption in the revenue generation process in Africa. It is an illusion, as the international Financial institutions hypocritically claim to attack this “canker-worm” in our civil service without putting the nature of African Government to question because, it is worth emphasizing that if corruption is a central element in the functioning of the state, destroying it means shaking the whole political system founded outside any productive process. For leaders who need stability so as to remain in power. In any case international institutions “suffering from credibility plunged African into the economy)” quagmire” through standardized structural adjustment programs which do not take the specificity of each country into account.

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