

EXPLANATORY STATEMENT : DRAFT BILL ON THE CRIMINAL PROCEDURE CODE

Over the past decades Cameroon has experienced a lot of changes which have affected every segment of the society and which were accelerated in 1982 with the advent of the New Deal regime. This political impetus certainly had its effects on the judiciary, which has hitherto been considered to be fraught with bottlenecks, slow, expensive, less efficient and characterized among other things by obsolete laws.

The laws governing criminal procedure are: the "Code d'Instruction Criminelle" derived from ordinance of 14 February 1838 and subsequent amendments, for the part of the country that was placed by the United Nations under French trusteeship, and the Criminal Procedure Ordinance, extract of the 1958 Laws of Nigeria, and various other laws for the part of the country placed under the British trusteeship.

This duality of sources is certainly anachronistic and unjustified in a State where political unification took place since 1972.

In order to remedy this situation, the State initiated the reform of the criminal procedure as far back as 1973. The draft criminal procedure code is thus the first concrete product of a long effort which benefited from a wide range of national and international expertise. It gives birth to an accusatorial system but with some elements of the inquisitorial procedure. This all embracing document consists of 747 sections and is divided into six (6) books. It is a harmonious blend of the Romano-Germanic and Anglo-Saxon systems.

The main objectives of this law are:

- the harmonization of rules of procedure over the whole territory;
- to guarantee human rights at all stages of criminal proceedings;
- the cutting down of judicial delays;
- the expeditious execution of judgements;
- the recovery of fines as soon as judgement is delivered.

The innovations borne in the present bill as opposed to the actual applicable texts are presented as per various phases of the procedure with reference to main themes.

.../....

BOOK I

PRELIMINARY INVESTIGATIONS

Any person subject to preliminary inquiry and awaiting trial can brief a Counsel at this level.

Any person arrested shall benefit from all reasonable facilities enabling him to brief a counsel, obtain legal advice, make arrangements for his defence, take necessary steps to obtain his release on bail. (Section 37)

Any person with a known place of abode may not be remanded in police custody except in cases of felony and unless corroborative evidence exists against him. (Section 118 (2)).

Detentions shall be ordered by the State Counsel.

The maximum period of remand in police custody shall not exceed eight (8) days (Section 119 (2)) and except in cases of a felony or a misdemeanour committed flagrant delicto, detention in police custody shall not be ordered on Saturdays, Sundays or public holidays (Section 119 (4)).

The person or detention shall not be subjected to any physical or mental constraints. At the end of the police custody, it shall be obligatory to medically examine such a person where he requests it in person (Section 123 (3)).

Any malicious arrest or detention may give rise to payment of damages (Sections 236 and 237).

BOOK II

PUBLIC PROSECUTION

The Procureur General has the power to enter, on the express authority of the Minister in charge of Justice, a nolle prosequi, at any stage of the proceedings before judgement on the merits is delivered (Section 64 (1)). However, the victim is not left without a remedy. In fact, the civil action subsists and the victim may obtain damages for the injury he suffered (Section 64 (2)).

Abandonment or withdrawal of complaint by the complainant stops the prosecution when this is initiated by the complainant himself and as long as no decision has been delivered and when abandonment and withdrawal were freely decided.

.../...

BOOK III

CIVIL ACTION

A civil suit can be instituted by the victim of an offence against a third party who, after compensation for injuries suffered by the victim, has a right to file an action against the suspect standing trial in court for reimbursement.

A civil suit emanating from an offence shall be time barred within 30 years even if it were initiated before a criminal court (section 75 (2), whereas this lapse is 10 years, 3 years, and one year, if the civil action crops from the trial of a felony, misdemeanour or a simple offence.

BOOK IV

EXAMINING MAGISTRATE AND THE INQUIRY CONTROL CHAMBER OF THE COURT OF APPEAL.

The draft code reintroduces the Examining Magistrate who shall be a Magistrate of the bench (Section 142 (3)).

The decisions of the Examining Magistrate may be subject to appeal before the Inquiry Control chamber, within 48 hours of their service (Sections 267 - 274). The said chamber shall hear and determine the appeal within thirty (30) days. The time limit shall be ten (10) days with regard to cases involving remand in custody.

BOOK V

REMAND IN PRISON CUSTODY

Remand in prison Custody shall be ordered only in case of misdemeanour or felony, depending on the gravity of the offence committed by the accused person.

Remand in prison custody shall have a limited duration. The examining Magistrate shall be bound to withdraw the remand warrant issued against an accused or to release him simpliciter if, after a period of eight (8) months for misdemeanours and twelve (12) months for felonies, he has not closed the preliminary inquiry (Sections 226 to 233).

Except in cases of felony and unless strong corroborative evidence exists against him, or the maintenance of public peace so requires, a person with a well known place of abode may not be remanded in prison custody (Section 218 (1)).

All malicious detentions may give rise to payment of damages. (Section 236 and 237).

The Examining Magistrate may replace a remand in prison custody with judicial supervision which shall be implemented out of prison.

BOOK VI

TRIAL OF OFFENCES AND HOLDING COURT SESSIONS

In order to speedily hear and determine matters and ensure that the cause lists are balanced new matters instituted either by a charge from of the Legal Department or by a committal order from the examining magistrate shall be instituted after consultation between the President and the State Counsel of the Court.

With a view to reinforce the maintenance of order in court, members of the forces of law and order shall be placed at the disposal of the President of the Court for the duration of each Court session (Section 303). This measure shall enable Magistrates to hold sessions peacefully without fear of being assaulted.

The procedure before courts shall be accusatorial. This shall reinforce the neutrality of the presiding magistrate and guarantee the presumption of innocence.

In order to curb unjustified adjournments Section 343 provides thus: "The Court shall not adjourn a matter sine die under pain of sanctions against the magistrate concerned".

Anyone who is' a victim of an offence may claim damages in court by making oral or written submissions (Section 385 (1)).

Judgements shall be either delivered immediately at the close of the hearing or adjourned to a later and fixed date announced in court (Section 388). In either case, they shall be written before they are delivered.

Where a person has been sentenced to a term of imprisonment lower than one year and has indicated his intention to lodge an appeal, the Court may, on the application of the convict, grant him bail until the expiry of the time for appeal, provided he fulfils the conditions for his appearance and surety (Section 397). This order may be reversed where, on the expiry of the time limit for appeal, the released convict does not file an appeal.

BOOK VII**APPEALS**

In order to put an end to the endless shuttling of proceedings between the Courts of Appeal and the Supreme Court as a result of decisions that are reversed by the latter, the transfer of the reversed decision to another Court of Appeal is henceforth prohibited and the Supreme Court shall in this case rehear the matter and decide not only on the merits but also in law.

It shall therefore become an appellate jurisdiction of the third degree where it reverses a decision from the Court of Appeal.

BOOK VIII**ENFORCEMENT OF COURT DECISIONS****A - PECUNIARY SENTENCES.**

In order to accelerate the recovery of Judicial fines, pecuniary sentences, excluding damages, shall be paid immediately at the Court registry. Where the convict fails to pay, he shall serve a term of imprisonment in default of payment (Section 393 (1)). He shall be entitled to reimbursement where the judgment is reversed on appeal (Section 393 (2)).

This makes it possible to remedy inconveniences inherent in the practice that is in force in the French speaking provinces of Cameroon, which consists in recovering fines and Court fees only after the preparation of documents for execution, which has resulted in the accumulation of billions of francs in areas.

Fines and Court fees may be paid even before a judgment becomes final.

In case of discharge and subsequent acquittal, reimbursement may be obtained.

After the execution of an imprisonment warrant for non payment of court fines, the convict may apply for the suspension of the warrant provided he can produce a guarantee of payment within two (2) months from the date of engagement. (Section 559 and 560).

B - CRIMINAL RECORDS

In addition to the criminal records kept in the registry of every Court of First Instance and concerning persons born within the jurisdiction of the said Court, the bill has provided for another criminal record kept in the Ministry of Justice and known as the Central Card Index which

Centralizes criminal record cards concerning:

- persons of Cameroonian or foreign nationality born abroad;
- - persons of foreign nationality born in Cameroon whose birth has not been declared at the Cameroonian Civil Status Registry where they reside in Cameroon ; and
- persons of Cameroonian or foreign nationality whose place of birth is unknown and who have doubtful identity.

C - SPECIFIC PROCEDURES

The main new specific procedure is the writ of habeas Corpus.

The provision of the writ of habeas Corpus makes it possible to put an end, by a court decision, to detentions without warrants or through irregular warrant. This initiative may be taken by the victim or a third party.

In the eight French - speaking provinces of Cameroon and in respect to some simple offences, the Legal Department may fix the fine to be paid by issuing an arbitral order without necessarily going to court. But in default of payment by the offender, the matter shall be filed in Court. The bill extends this procedure to all simple offences and institutes same throughout the country.

The privilege of jurisdiction which existed only in favour of Judicial Police officers and Magistrates with regard to their trial for acts committed in the discharge of their duties has been extended to Administrative Authorities. The latter would be tried out of their unit of competence.

The punishment of juvenile delinquency has been given special attention. A procedure that takes into consideration the fragile nature of children and their living conditions has associated as Assessors for their trial in Court, some personalities who shall be chosen by the Ministry of Justice and the Ministry in charge of the Protection of the Child and who shall be reputed for their knowledge and interest in childhood issues. The prison system has also been renovated in order to improve the rehabilitation of minors after they have served their sentences or any other measure where no sentence was passed against them.

.... /