Critique on Sections of the Cameroon Criminal Procedure Code

Barrister Atoh Walter M. Tchemi

Criminal Law, Criminal Procedure and Human Rights Law, The Time Law Firm

Abstract- The Research, titled, CRITIQUE ON SECTIONS OF THE CAMEROON CRIMINAL PROCEDURE CODE is a profound critical evaluation and further interpretation on sections of the Cameroon Criminal Procedure Code (herein after referred to as the Code). The Research evaluates the shortcomings or lacunas of these sections and its effects on the principle of a fair trial- human rights. The said Code came into force on the 1st January, 2007, after nearly thirty-two (32) years of research and huge financial sacrifices, cited as Law No. 2005 /007 of 27th July 2005 as the principal Code to guide and facilitate the institution of criminal proceedings in Cameroon. Nevertheless, thirty-two years of research does not make the Code void of shortcomings.

The Research identifies and examines the harmful and devastating repercussions of the shortcomings of the Code to the principle of a fair trial within the Cameroon criminal justice system with complete disillusionment mindful of practical cases observed where the provisions are silent or insufficient to promote and protect fair trial in the courts within Cameroon.

Index Terms- Cameroon, Code, Human rights, Fair trial, Justice, Courts.

I. INTRODUCTION

Critics, in critiquing the fundamental principle of fair trial as explicitly enshrined in Article 10 of the Universal Declaration of Human Rights, contend that, an individual accused in a criminal trial is not the only person who has rights and interests deserving of respect. That there is a well-recognized public interest in the securing of convictions of guilty persons and the vindication of the rights of the victims of criminal conduct. Such opinions to the best of this Research's knowledge, does not transcend the very essence of the principle of fair trial in criminal justice.

Going by the numerous lacunas as appeared in the Code, it would have appeared fair trial is completely a night mare in proceedings touching the criminal justice system in Cameroon.

Fair trial in any criminal proceedings is determined by certain determinants, inclusive amongst others are;

1) Language
2) The twin pillars of natural justice, namely:' nemo judex in causa sua[1] and audi alterem partem'[1]
3) the principle of presumption of innocence and finally
4) the principle of proof beyond a reasonable doubt

A lack thereof will amount to violation of the principle of a fair trial and consequently abuse of human rights. Language, for instance, is a significant determinant of a fair trial. Notably, the effective participation of a person in his/her trial is a function of language. Relating to the principle of fair trial, Oliver Wendell had described the process as,

"***It is the merit of the common law that it decides the case first and determines the principle afterwards ... It is only after a series of determinations on the same subject-matter, that it becomes necessary to 'reconcile the cases', as it is called, that is, by a true induction to state the principle which has until then been obscurely felt. And this statement is often modified more than once by new decisions before the abstracted general rule takes its final shape. A well settled legal doctrine embodies the work of many minds, and has been tested in form as well as substance by trained critics whose practical interest is to resist it at every step."*** [2]**,**

While Deane J, had this to say regarding said principle, **"...it is desirable that the requirement of fairness be separately identified since it transcends the content of more particularized legal rules and principles and provides the ultimate rationale and touchstone of the rules and practices which the common law requires to be observed in the administration of the substantive criminal law"** [3]

From the above opinions, the Research could hold that, the principles of a fair trial is a fundamental element of the administration of criminal justice.

Going by the phraseology, spirit and or wordings of the Code to the effect that, it did fail to address and give the principle of a fair trial a considerable emphasis and elaboration as we shall observe below, has coerced the Research to conclude that, the Code is repressive.

II. RESEARCH ELABORATION AND FINDING

Section 3, is the inception of the Research's critical evaluation as stated herein above.

Sections 3 and section 4 (2) of the Code shall herein be critiqued jointly and severally:

Section 3:

(1) the sanction against the infringement of any rules of criminal procedure shall be absolute nullity when it is:

(a) Prejudicial to the rights of the defence as defined by legal provisions in force;

[1] A man's defence must always be fairly heard

[2] Minet v Morgan (1873) 8 LR Ch App 361 at 368.

[3] Dietrich v The Queen (1992) 177 CLR 292 at 326.

(b) Contrary to public policy.

(2) Nullity as referred to subsection (1) of this section shall not be overlooked.

It may be raised at any stage of the criminal proceedings by any of the parties and shall be raised by the trial court of its own motion.

Section 4: (2) Cases of relative nullity shall be raised by the parties in limine litis before the trial court. It shall not be considered after this stage of the proceedings.

The provisions contained in section 3 of the Code, is to the effect that, where there has been **any** discrepancy in rules of the criminal procedure, there shall be a nullity absolutely, if the infringement is prejudicial to the defence and where there has been a lack of diligence to observe public order accordingly. The scope of this section is vast and vague alike and lends itself to a few key concerns namely:-

1) The Code does not in essence offer a quantifiable gauge as to what actions and activities or lack thereof could arise to constitute a breach or infringement;

2) The word **any** is neither defined nor pronounced for the purposes of this section and could give rise to misuse, abuse and misinterpretations of the provisions and finally;

3) It cast a legal shadow on the fairness of the defence's trial because the wording of the provision is ambiguous, not lucid, and not concise.

Furthermore, Sections 3 (1) and 4 (2) of the Code, prescribes absolute and relative nullities respectively for infringement of any rules of criminal procedure, such instructions as contained therein, smacks the bedrock of the rational of a common law Judge or Jurist who thinks or opines that, nullity should be predicated upon the miscarriage of justice caused by the omission as opposed to omission per se. for instance, could it be observed judicially correct for nullity to be affected on a criminal investigation containing omission with regards to section 124 (1) of the Code to the effect that, the '… ***judicial police officer shall mention in his report … the interval of rest during questioning, the day and hour when …' suspect '… was either released …'*** et cetera et cetera, the answer will be in the negative, for such omissions as aforementioned shall not lead to any miscarriage of justice. Consequently the provisions of said sections are built on very loose foundation and are bound to collapse with obvious dangerous repercussions on the principle of a fair trial.

The observations as noted herein, is based upon the fact that, a Common Law Judge is not taught to apply strictly codified laws as opposed to Civil Law Judges who are trained or groomed to apply strictly codified laws. It wouldn't be an exaggeration, to sum up herein that, such lacunas as contained in above, and to a larger extend in the entire Code, as we shall observe later, stems from the fact that, two distinct legal systems; the English Common Law and the French Civil Law were codified or harmonized (Cameroon being a bilingual country-speaks English and French language), thereby creating a single document; the Code. The Research opines that, it is bad at law, for laws to be codified or harmonized, for often; laws are customs and traditions of a given group of peoples and which has been practiced, observed for a very long period of time and developed through a system of precedent which implies a particular process of reasoning from case to case.

Furthermore, it is important to reiterate that, customs and traditions of any given peoples are unique though with some fabric of similarities with that of others often. How then can we codify or harmonize laws of distinct peoples and circumvent with it successfully without red lines. The Research is of the considered opinion that, the codification of French Civil Law which is essentially codification of authoritative codes and the English Common Law associated with consolidation, is the bed rock of the lacunas contained in the Code. To note, it is relevant to state at this juncture that, the scope and meaning of the common law criminal justice system has been affected by codifications.

The Research propounds with much emphasis that, section 4 of the Code is read with a lot of similar bafflements as section 3 and one may even go as far as suggesting that it was written in total negligence of the defence's interest or the concept of fairness in mind. Prima facie, it provides no exceptions to which the rules may be read or applied absolutely.

The said sections furthermore appears to hand discretion entirely to the trial judge, extolling the nonexistence of the judiciary independence or the constitutional theory of separation of powers.

Here we begin to see the tapestry of the Code begin to ream and weaken. The lacunas are more apparent and opportunities/instances of prejudice and injustice run to the forefront. Another key section of the code which often highlights the prejudice against the defence is the presumption of innocence drawn from the Common Law system which is in line with the Universal Declaration of Human Rights[4].

Section 8 of the Code reads:

Section 8:

1) Any person suspected of having committed an offence shall be presumed innocent until his guilt has been legally established in the course of a trial where he shall be given all necessary guarantees for his defence.

(2) The presumption of innocence shall apply to every suspect, defendant and accused.

The above mentioned section propounds; ***'any person suspected of having committed an offence shall be presumed innocent until his guilt has been legally established' …,***

In theory this section when observed ensures a fair trial before the courts, as it assumes that an accused is innocent with his guilt to be proven, however, often times a more accusatory system, which reflects the civil criminal legal structure is applied. By virtue of the lacunas present in the general spirit of the code, the failure of the code to make a quantifiable rule of infringement that may amount to nullity has led to the failure of many trial judges to apply the provisions of the Code the way it is.

Another baffling area which often impinges upon the right of the defence to a fair trial is observed in Sections 307 and 310 relatively,

Sections 307 and 310 read respectively:

[4] Article 11, Pg 50. Human Rights Compilation of Texts, January 2011.

*Section 307****: The burden of proof shall lie upon the party who institutes a criminal action.***
*Section 310****:***

(1) The judge shall be guided in his decision by the law and his conscience.

(2) His decision shall not be influenced either by public rumor or by his personal knowledge of the facts of the case.

(3) His decision shall be based only on the evidence adduced during the hearing.

Res est misera ubi jus est vagum et incertum[5], the said provisions exhibit a very contentious infringement yet, undermining most prominently the institution of a fair trial within criminal proceedings. There is no mention therein of the exceptions to which the vague, ambiguous rules should apply. It suggests therefore and one may be inclined to deduce that evidence may be obtained by any measure and means possible. The tacit suggestion of violation leaves a large scope for corruption as it suggest that proof can be fabricated, withheld, overlooked, trivialized, with little or no regard to both authenticity and veracity. The Research is of the propensity then, that this provision of the Code lends itself to the courts applying the provisions ***ultra liticum***.

Statuta pro publico commodo late interpretantur[6]**,** the black letter of the Code demonstrates a divergent observation with regard to this legal maxim, Section 309 of the Code further sustains and extends the proclivity of the ambiguous, unqualified and oppressive nature of the Code rendering it thus incompetent.

Section 309 reads:

Any accused who pleads any fact in justification of an offence or to establish his criminal irresponsibility, shall have the burden of proving it.

Section 310 of the Code, presents a dichotomy of two tests to be applied simultaneously by the judge with the conjunctive of the word ***AND*** in between the words law and his conscience.

Section 310

1) The judge shall be guided in his decision by the law and his conscience.

(2) His decision shall not be influenced either by public rumour or by his personal knowledge of the facts of the case.

(3) His decision shall be based only on the evidence adduced during the hearing.

The first test is the objective test; where the judge is called to apply the law and the second test is the subjective one, where he is called not to be influenced by his personal knowledge of the facts of the case in reaching his decision. There is a nuance because it is practically difficult for the judge to have room to apply his conscience without the influence of public rumor or his personal knowledge. The application of section 310 (2) contradicts section 310 (1). The contradiction is as such that it does not provide any qualified barometer for conscionable activity, for what is therefore conscionable for one, may not be for the other. If the judge is to be guided by both the law and his conscience in adjudicating as mentioned in the above sub-sections, the principle of a fair trial is therefore undermined as the judge becomes the almighty with too much power at the detriment of the defence.

Another vexatious area of the Code that affects the principle of a fair trial is the claim of state privilege or professional secrets contained in section 325 (2) of the Code.

Section 325 (2) reads: ***(2) Subject to the provisions of section 322 (2), any person summoned as a witness shall be bound to appear and take oath before giving evidence. However, and unless otherwise provided for by law, the oath taken shall not relieve the witness of his obligation to keep the secrets which have been confided to him by reason of his profession.***

Here we see the Code making a classification with respect to prosecution witnesses. To note, in criminal proceedings or justice, Prosecution witnesses are called in Court and obliged by law to speak the truth, the whole truth and nothing but the truth. Therefore such classification as contained in the aforesaid section shall amount to reservation of evidence or information that could lead to the truth in a criminal trial; more so reservation of evidence or information in any criminal trial or proceedings is inconsistent with the principle of a fair trial.

From the above mentioned, it is but obvious that the sections are constructed on very loose grounds which give occasion for further interpretations, consequently conferring too much discretion and prerogative in the hands of the trial judge. In a write up captioned 'fair ***trial a nightmare in the judicial systems in Cameroon'***[7] *Barrister Atoh Walter M. Tchemi* alluded to the evasive institution of a fair trial in Cameroon. He propounds that ***"the judicial system in Cameroon is handicapped by lack of an effective and independent judiciary and furthermore that the courts in Cameroon are instruments of injustice and unfairness. Consequently the fundamental principle of a fair trial can hardly be observed practically within the judicial system in Cameroon".***

The Research is hastened to state herein that, the attainment and admissibility of evidence are critical ingredients of a fair trial, notwithstanding that, the said evidence emanates from a credible and reliable source.

Section 336 of the Code, concerns the admissibility of evidence of a witness in absentia, whether due to death or because of other factors including insufficient time to appear and the excess cost incurred. However, what is apt to say about this section is that it violates the defence's rights to cross examine a witness and therefore represses the application of section 373 respectively.

Section 336 reads: ***Notwithstanding the provisions of section 335, the following shall be admissible in evidence:***

a) any statement made in the course of a judicial proceeding by a person who cannot be heard

[5] it is a miserable state of things where the law is vague and uncertain.

[6] Statutes made for the public advantage ought to be broadly construed.

[7] The Post Newspaper, No 01353, Monday June 25th 2012.

at subsequent proceedings either because he is deceased or because of insufficient time to get him to appear before the court, the excessive expenditure involved, or the impossibility of finding him;

b) statement made in the course of judicial police investigations.

Section 373 provides: ***(1) After a witness has testified, the Presiding Magistrate shall ask the adverse party if he wants to cross-examine the witness, and thereafter the party calling the witness if he wants to re-examine him.***

(2) The Presiding Magistrate or any member of the court where it is sitting as a collegiate bench, may finally put questions to the witness.

It is germane to state that, the above mentioned sections, when applied together, the challenges of both sections 336 and 373 are clearly controversial and promote a barrier to a fair trial. Section 373 propounds, that after a witness' testimony, the adverse party is given the opportunity to cross examine the said witness. The problem herein lies, that practically if that witness is in absentia, how would he or can he be cross examined. The Code is not minded to insure that where such infringements occur, there should be a nullity to the effect of a dismissal.

Section 336 furthermore infringes on the principle of a fair trial and consequently human rights of the defendant or accused as it is a clear principle of evidence that the accused should have the right to face his accuser or question and contest any evidence brought against him/her in a court of law. However, if that witness is not present materially, the rights of the accused to effect his defence is therefore defeated.

To note, the examination of prosecution witnesses/civil claimants in the course of a criminal trial by the accused is very imperative; this system requires the illumination and or clarification of facts by the accused by means of putting vital questions to the said prosecution witnesses/Civil Claimants. The examination of prosecution witnesses is purely an English Common Law Rule to the effect that, an accused is presumed innocent until he has been proven guilty; Actori incumbit probation onus probandi incumbit et qui decit. The application of the provisions contained in section 336 of the Code is in total contravention with the principle of examination of witnesses,/prosecution witnesses.

It is relevant to state at this juncture that, when the prosecution calls a witness in a criminal trial, that witness is required by law to lead the process of examination-in-chief which is the first type of examination as far as the examination of witnesses are concerned and thereafter cross-examination by the other party or the accused, with re-examination by the party called by the prosecution, that is the prosecution witness. The aforementioned are the three types of examinations that must be observed in the course of any criminal trial in order that there be a fair trial.

The Research is hastened to state herein that, the examination of prosecution witnesses in a criminal trial by the accused is therefore a matter of law and not mere practice[8]. Going by the black letter of section 336 of the Code, the examination-in-chief which presupposes the examination of prosecution witnesses by the accused or Counsel on his/her behalf with the objective of eliciting testimony of the alleged facts which the prosecution in calling the witness or witnesses seeks to establish is defeated.

It is very relevant for the accused to cross examine prosecution witnesses in order to test the correctness of the evidence adduced during examination-in-chief. Cross examination has the functions of destroying the evidence of prosecution witnesses in the course of a trial. It equally exposes the malicious intents of prosecution witnesses called by the prosecution and curbs exaggerations.

Cross examination remains the most excellent and surest means of testing the veracity in all criminal actions, reasons why in June 2000, cross examination was introduced into the French legal system by the Law of 15 June 2000 thereby reinforcing the promotion and protection of the principle of presumption of innocence and the right of the accused. The said piece of Legislation mentioned herein came into force on 1st, January 2001.

The Research intimates further that, the principle of a fair trial and justice are being violated in any criminal trial with the prosecution witnesses in absentia.

It is not an over statement to state herein, that, the examination of prosecution witnesses and specifically cross examination in a criminal trial is a genuine and absolute vital instrument that renders the process of any criminal proceedings more credible.

Considering the aforesaid and with regard to the provisions of section 336, the Research is quick to make mention herein that; the Code is oblivious as far as the search for the truth in criminal proceedings is concerned.

In summing up the lacunas of the aforementioned section, the Research observes with profound disgust the silence of the Code in compelling judicial police officers or agents who record statements during investigation with sanction or penalty upon disregard or disrespect to any subpoena to appear in court to lead the process of examination-in-chief. Practically, it is observed in courts very many a time that, the prosecution or the state counsel has had serious problems in an attempt to cause judicial police officers to appear in court in order to give evidence or lead the fundamental rights of examination-in-chief, since the said judicial police officer is not oblivious of the fact that, no direct and spelt out serious penal sanctions awaits him or her. In such a dilemma the prosecution is left wanting and with the desire to prosecute at all cost, he or she resorts to section 336, thereby violating the fundamental process of examination-in-chief and the principle of a fair trial. It is relevant to state that, the challenges of the aforementioned section are poignant and compelling for its application is alien to typical common law criminal justice system.

Another vexatious section of the Code which impinges on the principle of fair trial is Section 438 of the Code, which defies the deeply rooted principle of review of trial courts' judgments and orders or rulings alike by the court of appeal by precluding appeal against interlocutory ruling ordering investigation.

Section 438 of the Code reads:

Any interlocutory ruling ordering an investigation shall be immediately enforceable. It shall not be subject to appeal.

[8] See Section 188 of the Evidence Ordinance

To note, the fact that, the Code permits Judges and Magistrates to apply their consciences in reaching decisions in criminal proceedings, ubi supra, rulings or orders consequently emanating from whatever applications, are bound even if not often to be biased or prejudicial to the interest of the party against whom the said ruling or order is delivered which will normally warrants a review of same by a superior court of criminal justice. The Research opines that, the classification of interlocutory ruling with regard to appeal as contained in the aforesaid section has defeated the very essence of the criminal justice system that observes fairness, equality and impartiality, equally with the fundamental conception that, appeal against any court decision is of right once there is thread of procedural insufficiencies or bias, see **R. VERSUS WOOLMINGTON,** (1935)[9].

Going by the black letter of section 443 (1) of the Code, the Study is baffled with one important question, that of, is it possible for an Appellant or Counsel on his/her behalf to get all supporting documents, that is, copies of a Judgment appealed against together with records of proceedings within 15 (fifteen) days in order to file memorandum of grounds of appeal as required. The answer is in the negative.

Section 443(1) reads:

Section 443: (1) The registrar who receives the notice of appeal shall immediately make a report thereof and shall with written proof or by a writ of the bailiff, request the appellant to file his memorandum of grounds of appeal, as well as all supporting documents within fifteen (15) days from the day following the date of registration of the appeal, otherwise the appeal shall be inadmissible. Mention of such notice shall be made on the report.

The Study is of the considered opinion that, it is verily practically impossible for the Appellant or Counsel on his or her behalf to prepare and file a lucid and succinct memorandum of grounds of appeal, 'as well as all supporting documents within fifteen (15) days from the day following the date of registration of the appeal' as contained in the aforementioned section, supporting documents shall include, inter -alia, the Judgment appealed against, records of proceedings and more specifically, written submissions as was held in **TAKU MATHIAS NGULEFAC VERSUS THE PEOPLE OF CAMEROON & 1 Or.**[10]**.**

To Note, it takes our Courts/Registries in Cameroon weeks and even months to prepare and make available Judgment and records of proceedings appealed against to the Appellant. Consequently it becomes difficult to prepare and file written submissions (supporting documents) together with memorandum of grounds of appeal at the same time.

Furthermore, written submissions often make references to paragraphs or pages of the records of proceedings and the Judgment appealed against, without records of proceedings and copy of the Judgment appealed against, it becomes difficult to prepare and file any written submissions together with memorandum of grounds of appeal, especially when Counsel for the Appellant was not present during the hearing and determination of the proceedings leading to the Judgment appealed against.

In **THE PEOPLE OF CAMEROON & 1 OR VERSUS SIMO PIERRE & 1 OR**[11] , it took the Appellant more than two (2) months to get copies of the Judgment appealed against and the records of proceedings, (which Judgment was delivered on the 12th day of May 2010), in order to prepare and file his written submissions and which submissions were only filed at the Registry of the Court of Appeal and not at the Registry of the Court that delivered the said Judgment appealed against as required.

In this regard, the Research therefore contend that, the decision of the Learned Justices in **TAKU MATHIAS NGULEFAC VERSUS THE PEOPLE OF CAMEROON & 1 Or.,** in dismissing ***Suit N0: CASWR/5C/2010*** on grounds that, Appellant memorandum of grounds of appeal filed at the Registry of the Lower Court without his written submissions (supporting documents) attached thereto was in contravention with the provisions of section 443 of the Code, is bizarre and needs a review, the Learned Judges did fail at this instant case to apply the prerogative of their consciences and as required, ubi supra.

Critiquing the Code, the Research has observed with complete disillusionment that, there are no sections therein that empowers the Court of Appeal to grant leave for:-

1. enlargement of time within which an appellant can file his or her notice and grounds of appeal,
2. further grounds of appeal to be filed,

It is a settled principle at law that, upon proof of:-

I. competent and pending appeal before the Court,
II. printed records compiled and served on the appellant after the time of appeal has elapsed,
III. occurrence of unforeseen circumstances beyond the control of the appellant, such as the death or change of Counsel, any application for leave to file further grounds of appeal must be granted. To note, this was the position in ***FON DOH GAH GWANYIN III & 9 ORS. VERSUS THE PEOPLE OF CAMEROON***, See pages 834 and 835, 'CIVIL PROCEDURE IN NIGERIA' 2nd edition, by Fidelis NWADIALO.

The Research is hastened to state herein and with regard to the aforesaid that, our Learned draftsmen of the Code were myopic not to have envisaged the occurrence of unforeseen circumstances beyond convict's or appellant's control, to the effect that, for instance, same could not file his notice and grounds of appeal within the statutory time period prescribed by **section 440** (1) of the Code.

Section 440: (1) The time-limit allowed for filing an appeal shall be ten (10) days with effect ***from the day following the date the judgment after full hearing was delivered, for all the parties, including the legal Department.***

The Research propounds that, unforeseen contingencies are inevitable, consequently it is indeed incomprehensible to think of

[9] Incorporated Council of Law Reporting, Special Issue – 135 years of The Law Report and The Weekly Law Reports.
[10] Suit N0: CASWR/5C/2010, Unreported.
[11] Suit N0: CFIK/DS/112c/2009, Unreported.

any Code, without provisions contained therein, enabling appellant to file and obtain leave to file his or her notice and grounds of appeal out of time or to file further grounds of appeal. It is relevant to state that, the silence of the Code as to provisions enabling the filing of appeal out of time is misleading and a blow to the rights of the defence and the principle of a fair trial.

Considering the aforesaid and coupled with the fact that, the research is out to share the message of justice within the criminal justice system in Cameroon, the Study intimates that, where an appellant is unable to file notice of appeal within the relevant time limit, and he or she is desirous to do so, an application for an extension of time to appeal should be granted for the supreme interest of justice.

The Research is hotfooted to make mention herein that, section 746 of the Code and specifically subsections (K),and (L) of same have substantially weakened and destabilized the adducing of evidence in criminal proceedings in Cameroon.
Section 746 of the Code reads:

(1) All previous provisions repugnant to this law are hereby repealed, in particular:

k) The provisions of the Criminal Procedure Ordinance (Cap 43 of the Laws of Nigeria 1958);
l) The Evidence Ordinance (Cap. 62 of the Laws of Nigeria 1958) as regards criminal

Repealing the Criminal Procedure Ordinance as well as the Evidence Ordinance, Cameroon did embrace a Code that has made no absolute provisions as to exactly how proof should be brought in criminal proceedings before the Courts. Irritatingly, the Code talks of proof as opposed to evidence. The rejection of both the Criminal Procedure Ordinance and Evidence Ordinance by the Code, undeniably and unquestionably has left a black hole as to the application of the Rules of Evidence in criminal proceedings in Cameroon. Section 746 (L) of the Code which has repealed the Evidence Ordinance, is now seemingly replaced with sections 307 and 310, ubi supra, thereby exposing the ambiguity and unfinished nature of the Code. Criminal justice system is aimed at dispensing fairness, impartiality and equality amongst the parties in criminal trials in order to protect human rights, being fundamental rights. But with such lacunas as cited herein, these attributes or goals as stated above cannot be observed.

The Research intimate with all humility herein that, the success of any piece of law or legislation depends largely on the existence of practice directions. A lack thereof, will amount to frequent and enormous subjective and ambiguous or further interpretations of sections of the law at the detriment of the entire community, to note, in ***Suit N0: CASWR/27M/CR/2011[12], BETWEEN JAMES YUWE DONGO (APPELLANT) VERSUS THE PEOPLE OF CAMEROON & TENDO SUNNY (RESPONDENTS)***, the Appellant/Applicant herein by way of motion on notice applied to the Court of Appeal South West Region for leave to file an appeal out of time against judgment in ***SUIT NO: LM/389C/2011[13],*** delivered on the 22/08/2011, by Justice Bea Abednego Kalla, the Learned Justices of the said Court of appeal granted leave for Appellant to file appeal out of time contrary to the provisions of section 440 (1) of the Code (supra), in the said unanimous decision of the learned Justices granting the said leave, the learned Justices intimated amongst others that, ***'…because of his ill health applicant could not appeal within time before this court. We are of the opinion that even though there is a time limit within which to appeal in a criminal appeal, which is 10 days, circumstances can sometimes warrant a party not to be able to respect this time limit. It will only be fair and equitable if the court extends the time within which such party can appeal'…' in view of the above and since the Respondents are not opposed to the application, we think that the application is proper before us. We grant same and make the following orders:- Applicant is hereby granted 10 days from the date of notification of this ruling to file notice and grounds of appeal in SUIT NO: LM/389C/2011'.***

Whereas, a similar application in **Suit N^{0}. CASWR/16^{m}/CR/2012** between ***TOH JOACHIM MIKI HUMPHREW (APPLICANT) AND THE PEOPLE OF CAMEROON (RESPONDENTS)***, was rejected in conformity with section 440 (1) of the Code, which reads:

Section 440 (1) the time-limit allowed for filing an appeal shall be ten (l 0) days with effect from the day following the date the judgment after full hearing was delivered, for all the parties, including the legal Department.

The application of the Code as earlier noted, is not guided by any practice directions, consequently the Judges are bound to interpret same the way they personally perceived often, as seen herein above at the detriment of accused or appellant.

III. CONCLUSION

Conclusively, Cameroon's much proclaimed Criminal Procedure Code, an intercross between the French Civil Law and English Common Law systems, along with Customary Law, emerged in an effort to address the common practice of arbitrary and unlawful arrests, secret detentions, and the prejudice of criminal proceedings in Cameroon. The Code, which is opined to offer an efficient, reliable and legally sound set of structured rules and guidelines to facilitate criminal proceedings; instead, offers a legal straightjacket within which the parties, particularly the defence are obligated to operate.

The Research is of the opinion that, the drafters of the Code, failed to take into considered account the social aspects and contexts which will allow the code to flourish as a superior legal instrument to facilitate fairness, transparency and accountability within criminal proceedings. As such, it can be deduced that mindful of the aforementioned sections and provisions of the Code, as was founded by the Research, the Code is in parts ambiguous, not succinct, and not lucid allowing too much scope for misinterpretation and subsequently misapplication as evidenced in many instances highlighted in this write up.

Furthermore, the Code is seen as an exhibition of the hidden agenda of a democratic pretension. In an environment where the violation of rules is a common national practice; where the judiciary does appear to be severed from the executive limb; where police abuse generally goes unpunished, where the

[12] Unreported.
[13] Unreported

prosecution and Legal Department are not prosecuted for malicious prosecutions, where cogently adduced evidence is not tenured in hearings, amounting to inefficient, prejudiced proceedings, and where the entire penal structure is fashioned after an accusatory culture which thrives on finding the accused guilty to be proven innocent.

Needless to say, although the Code has numerous flaws and Lacunas, some of which have been identified throughout the Research; it is still a landmark instrument which serves as a fundamental piece of legislation for criminal proceedings in Cameroon. One needs to ponder however, with the advent of human rights and the emphasis on the institution of a fair trial; is the Code as it is now presented will suffice? The answer will obviously be in the negative.

To turn this negative outcome into an affirmative and hopeful actuality, a review or reform of the Code could be the required recourse to bring the Code to meet up the requirements of the principles of a fair trial and consequently the law on human rights. This will bring about checks and balances to ensure a smoother, more efficient and fair application of the Code. The hope remains, that Cameroon will engender a penal culture conducive for a revised Code to be effective.

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REFERENCES

[1] Criminal Procedure Code (Law No:2005/007 of 27th July 2005), 'an exact reproduction of the special issue of the Official Gazette of 18th October 2005, the authenticity of which is guaranteed'
[2] The Cameroon 'Penal Code'.
[3] Law No: 2006/015 of 29th December 2006, on Judicial Organization.
[4] Black's Law Dictionary, Ninth Edition by Bryan A. Garner.
[5] Oxford Advance Learner's Dictionary, 8th Edition.
[6] Law No: 96/06 of 18 January 1996, as amended (Cameroon Constitution) to amend 2nd June. 1972 Constitution.
[7] Human Rights Compilation of Texts, Vol. 1, January 2011.
[8] Sowemac Law Reports Volume One – Four
[9] Readings in the Cameroon Criminal Procedure Code, edited by Ewang Sone Andrew.
[10] The History Guide in Lectures on Modern European Intellectual History.
[11] Criminal Procedure Codes of Poland, German Democratic Republic 91968), U.S.S.R
[12] The Great Soviet Encyclopedia, 3rd Edition (1970-1979).
[13] The Lectric Law Library.
[14] Yale Law School Legal Scholarship Repository.
[15] Basic Principles of Criminal Procedure of the USSR and the Union Republics (1958).
[16] 1789 Declaration of the Rights of Man and the Citizens.
[17] Cameroon Common Law Reports, parts seven to sixteen
[18] Digest of Appeal Cases by Olakunle Orojo (1980)
[19] Common Mistakes in English, by T.J. Fitikides, Fifth Edition.

AUTHORS

First Author – Barrister ATOH WALTER M. TCHEMI, THE TIME LAW FIRM, P.O.BOX 244, TREASURY STREET KUMBA, MEME DIVISION, SOUTH WEST REGION, REPUBLIC OF CAMEROON, Email address: atoh@thetimelawfirm.com, Web-Site: www.thetimelawfirm.com , Telephone, mobile (00237) 677 62 73 08, Office (00237) 24 36 28 44

The Author, is a member of the Human Rights Commission of the Cameroon Bar Association, a Legal Critic, Barrister-at-law of the Supreme Court of Cameroon, holder of an LLB- university of Dschang Cameroon, and M. A in international Politics (Ceris) Belgium. Head of THE TIME LAW FIRM AND C.E.O - Pro Bono Group (PRO BONO GROUP, is a Human Rights non-political and non-profit making Organization that, renders pro bono legal services to persons, specifically LGBTI persons who cannot afford for legal assistance. Pro Bono Group equally institutes public interest litigations. Created in 2011, mindful of Prefectorial Order Ref: No.39/D14/5/506 OF 08/11/2011), a father of one.