AUTOCRACIES AND THE IMPLEMENTATION OF HUMAN RIGHTS TREATIES

The case of Cameroon and the International Covenant on Civil and Political Rights (ICCPR)

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ABSTRACT

Cameroon is a constitutional and political autocracy that has been ruled by two presidents with enormous executive powers for 58 years. The persistence of systematic violation of personal integrity rights despite its evolving constitutionalism which has widely adopted rights friendly legislations has been widely publicised. Its accession to the Covenant and subsequent entrenchment of these Covenant rights was viewed as a significant step in the state-centric approach to human rights protection and their justiciability. Its cooperation with the Human Rights Committee in the state reporting and individual communications procedures has also increased.

Despite these developments the gap between accession and compliance remains wide. Studies across different disciplines have been undertaken to broadly understand the reasons for the widening gap. These studies have shed light on a couple of thematic areas which have been objects of further specialized inquiry on their specific role in explaining the gap between the Covenant accession and state compliance

This thesis explores and examines the problem of political and constitutional autocracy in the context of the implementation of its obligation its obligations under the Covenant with a specific focus on articles 2(3), 7, 9, 10 and 14. The thesis does this by undertaking a detailed study and analysis of the political, constitutional systems and the implementation mechanisms at the domestic as well as international levels. It also reviews and analyse existing laws, policies and practices, communications, state reports, general comments and concluding observations. The autocratic nature of its political structure reflected in its overbearing executive intrusion impacts negatively the interpretation of its obligation under the Covenant and consequently negatively affects its implementation regime.

Although implementation has been a subject of many inquiries and has helped in the evolving jurisprudence of the Human Rights Committee, this thesis contextualizes the inquiry and produces new information that should better explain rights violations. The information generated during these analyses will help identify strengths, weaknesses and challenges of the implementation regime and will contribute towards its improvement.

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This work is dedicated to my children who waited patiently while I spent hours on my desk. And to all the people of Ambazonia for their sacrifices in ensuring that we collectively rewrite the wrongs of this system

ACRONYMS AND ABBREVIATIONS

ACHPR	African Commission on Human and Peoples' Right
ARCAM	Assemblée Représentative du Cameroun
BDC	Bloc Démocratique Camerounaise
CAT	Convention Against Torture
CPC	Criminal Procedure Code
CPDM	Cameroon People's Democratic Movement
CCD	Common Core Document
CEDAW	Convention for the Elimination of Discrimination Against Women
CESCR	Covenant for Economic, Social and Cultural Rights
CRC	Convention on the rights of the Child
CYL	Cameroon Youth League
DO	District Officer
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ECOSOC	Economic and Social Council
FCC	Federal Constitution of Cameroon
GA	General Assembly
GC	General Comment
GCSR	Geneva Convention on the Rights of Refugees
GG	Grundgesetz
HJC	Higher Judicial Council
HRC	Human Rights Committee
IACHR	Inter American Convention on Human Rights
ICCPR	International Covenant on Civil and Political Rights

ICJ	International Court of Justice
MINATD	Ministry of Territorial Administration and Decentralisation
NCHRF	National Commission on Human Rights and Freedoms
NHRI	National Human Rights Institution
NGO	Non-Governmental Organisation
OHADA	Organisation for the Harmonisation of Business Law in Africa
OPICCPR	Optional Protocol of the Covenant on Civil and Political Rights
PC	Penal Code
PIR	Personal Integrity Rights
Res	Resolution
SCNC	Southern Cameroons National Council
SCOC	Southern Cameroons Constitution Order in Council
SDF	Social Democratic Front
UDHR	Universal Declaration of Human Rights
UNGA	United Nations General Assembly
UNGAOR	United Nations General Assembly Official Records
UN	United Nations
UPC	Union de Populations du Cameroon
UPR	Universal Periodic Review
VCLT	Vienna Convention on the Law of Treaties
WJP	World Justice Project
WWII	World War Two

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CHAPTER 1

INTRODUCTION

This research is concerned with Cameroon's implementation of articles 2(3), 7, 9, 10 and 14 of the International Covenant on Civil and Political Rights.[1] These rights are broadly referred to in this study as personal integrity rights[2], primarily as they are concerned with the protection of human dignity and the processes that ensure political, judicial and administrative process that ensure the protection of human dignity.[3] Poe and Tate in their 1994 study on repression considered the violation of these rights as a coercive activity on the part of the government designed to induce compliance in others.[4] Although the conception and framing of human rights and state obligations reflects the universality, indivisibility, interdependence and interrelatedness of these rights, the significance of national particularities including cultural and historical backgrounds play an important role in their realisation. Context matters in implementation because a political order in which the institutions are structured to be rights unfriendly and where the rights to physical security, and due process are frequently violated generates an intense and pervasive fear which annuls the will to exercise other rights.

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[1] International Covenant on Civil and Political Rights (adopted 16 December 1966) 999 UNTS 171 (entered into force 23 March 1976) herein known as ICCPR or Covenant; The rights associated to human worth as considered in this study are articles 7, 9 and 10.

[2] Personal integrity rights are those concerned with individual survival and security, such as freedom from torture, 'disappearance,' imprisonment, extrajudicial execution, and mass killing. (Davenport 2007b:3). For the purpose of this study torture, deprivation of liberty and cruel, inhuman and degrading treatment categorised under articles 7, 9, 10 respectively are referred to here as personal integrity rights.

[3] Articles 2(3) and 14 are two of the most important domestic tools that can be used to mitigate the effect of the violation of personal integrity rights.

[4]Stephen C Poe and C Neal Tate, 'Repression of Human Rights to Personal Integrity in the 1980's; A Global Analysis' (1994) 88(4) American Political Science Review 853-872, 854.

The imperative for pursuing this research stems from the recognition that while accession to the Covenant begins the process of the constructive dialogue, there exists a considerable gap between ratification and the genuine respect of these rights, especially when it comes to personal integrity rights which are intrinsically linked with autocratic regime survival. This gap is even wider in Cameroon with a mixed Franco-British colonial legacy that has produced a complex bi-jural legal system and a constitutional autocracy that has empowered the executive at the expense of the legislature and judiciary. The considerable gap is also associated with structural limitations, wilful disobedience, and ineffective implementation. This research also recognizes that while the principal obligatory implementation monitoring mechanisms through the reporting process and its associated individual communication under the Optional Protocol[5] are essential, domestic limitations or wilful negation of obligation imperils Cameroon's implementation regime.

This thesis also embodies the realization that while Cameroon has acceded to the Covenant, it marks only the beginning of a challenging journey. The journey from accession to ensuring the realization of the rights and obligations captured in the articles of the Covenant has been investigated across disciplines.[6] There is also a vast database that explains why a country like Cameroon ratifies the Covenant without the desire to respect its basic premise. There exist a considerable body of knowledge on the effect that accession to international human rights treaties in general and the Covenant has on the protection of these rights. The effect of the periodic reporting process and individual communication procedures have also produced a considerable pool of data which has impacted and alter the country's attitude in a significant way. In recent years, many studies have investigated the emergence, expansion, and penetration

[5] Optional Protocol Optional Protocol to the International Covenant on Civil and Political Rights, 999 UNTS 171, 16 December 1966, entered into force 23 March 1976

[6] In the political sciences, see Eric Neumeyer, "Do International Human Rights Treaties Improve Respect for Human Rights"? (2005) 49(6) Journal of Conflict Res. 925 Neumeyer concluded that rarely do Human Rights Treaties have unconditional effect on human rights; also see Harold Hongju Koh, 'How is International Human Rights Law Enforced? (1999) 74 ILJ, Oona A. Hathaway, 'Do Human Rights Treaties Make a difference' (2002) 111 Yale Law Journal 1935 etc.

of the international human rights regime, with multilateral treaties garnering much of the attention. Researchers have explored the 'cause' and 'effect' of treaty ratification: the factors that elevate or depress rates of treaty ratification among states and the effectiveness –or rather, the ineffectiveness – of treaty ratification as far as the improvement of human rights practices[7] is concerned.

1. BACKGROUND

Most scholarly works have focused on understanding why countries signup to human rights treaties, even though less attention has focused on the implementation processes of these treaties. Boyle and Thompson's analysis of human rights abuse cases adjudicated under the European Convention on Human Rights is a notable exception. They concluded in their study that state structures that provide more political opportunities domestically and constitutional openness, are more positively associated with claims making at the international arena.8 That is why Keith's question of whether it would not be better to direct efforts and resources towards changing the internal factors that either weaken the state's willingness to respect human rights or impede the state's ability to protect human rights[9] is relevant in understanding the relationship between internal configuration and the Covenant implementation. This is not to say that other factors do not adversely affect the implementation of the Covenant. Given that there is no homogeneity in the internal configuration of repressive countries, the existing scholarship is yet to produce a theoretical framework for understanding how autocracies implement their obligation under these fundamental rights and how the specific political and constitutional construct influence this process. This is the focus of this thesis.

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[7]Wade M Cole, "When All Else Fails: International Adjudication of Human Rights abuse claims, 1976-1999". (2006) 84(4) Social Forces 1909-1935, 1910.

[8] Elizabeth H. Boyle and Thompson Melissa, "National Politics and Resort to the European Commission on Human Rights". (2001) 35(2) Law and Society Review 321-344, 339.

[9] Linda Keith, "United Nations International Covenant on Civil and Political Rights; Does it make a difference in Human Rights Behavior?' (1999) 36 Journal Peace Researh 95-118, 96.

Chayes and Chayes argue that in everyday experience, people, whether because of socialization or otherwise, accept that they are obligated to obey the law; so, it is with states[10]. They advance three reasons why states may depart from this normative framework. Two of these possible reasons are considered herein as factors that by commission or omission would influence Cameroon's implementation of its obligations. The 'inescapable incidents of the effort to formulate rules to govern future conduct frequently produce a zone of ambiguity within which it is difficult to say with precision what is permitted and what is forbidden. Ambiguity in treaty rules is resolved through domestic treaty body interpretations'.[11] Concerning the Covenant, the Human Rights Committee is that treaty body whose views on individual communication and general comments on specific rights builds the corpus of law that shapes state action. The second reason why states depart from this "obligation to obey the law" as raised by Cole to explain noncompliance is the limitations on the capacity of parties to fulfil their obligations. He states that explanations for noncompliance with international human rights treaties, although not necessarily incorrect, are nevertheless incomplete. Focusing too much on intentions obscures another important dimension of compliance: countries' ability to translate treaty commitments into practices. In his study on the gap between ratification and compliance, Cole moved beyond the rationalist's intentions driven analysis of noncompliance to focus on whether 'the bureaucratic, infrastructural, and coercive capacities of states condition their compliance with international human rights law.[12] Cole like Chayes and Chayes, argued that limitations on a state's ability rather than deliberation accounts for non-compliance. For example, inadequate resources to build detention centres and feed inmates have always been raised by Cameroon as an excuse for the violation of article 10(1) despite the minimum conditions rule guaranteed under the Covenant. Cole's managerial argument to compliance does not, however, provide empirical evidence to debunk deliberation especially under autocratic systems that purposely design internal structures to protect influential executives.

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[10] Abraham Chayes and Antonia Handler Chayes, "On Compliance", (1993) 47 (2) MIT Press 175- 205, 185

[11] Ibid, p. 189

[12] Wade M Cole, 'Mind the Gap: state Capacity and the Implementation of Human Rights Treaties (2015) 69 International Organisation 405-441, 406

Whether considered as limitations or deliberations, internal structures within autocratic states suffer from both limitations and deliberations in both their conception and erection. In their study on authoritarian states and human rights, Hafner and Tsutsui make a compelling argument on the effect of variation in the internal domestic structure on the level of repression. They argued that variations across domestic governance structures inside repressive states are important; they are likely to contribute to these state's degree of conformity with international norms of protection by shaping sovereigns' perceptions of penalty for non-conformity.[13] Risse and Sikkink set out to understand the conditions under which international human rights regimes and the principles, norms, and rules embedded in them are internalized and implemented domestically and thus affect political transformation processes. In their study which focused on the rights to life, freedom from torture and arbitrary arrest, they argued that 'enduring implementation of human rights requires political systems to establish the rule of law and some measure of liberal political transformation.'[14]

The relation between an independent judiciary, the nature of the political system and the proper implementation of human rights obligations is mostly a linear one. Using data on the ratification of the Convention Against Torture, Powell and Staton sort to determine the constraining power of judicial institutions on state behavior and the increase in the cost of ratification. They developed a theoretical model which effectively links a state's repressive attitude and its choice to ratify a treaty and which highlights a trade-off between domestic and international pressures.[15] Their study shows that an independent judiciary that can hold the

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[13] Hafner-Burton Emile, Kiyoteru Tsutsui and John Meyer, 'International Human Rights Law and the Politics of Legitimation; Repressive states and Human Rights Treaties' (2008) 23(1) International Sociology 115-141,122.

[14] Thomas Risse and Kathrine Sikkink, 'The Socialisation of International Human Rights Norms in Domestic Practices' in Thomas Risse, Kathryn Sikkink and Stephen C. Ropp (eds), 'The Power of Human Rights; International Norms and Domestic Change ' (Cambridge University Press 2009) 3.

[15] Emilia Justyna Powell and Jefrey K Staton, "Domestic Judicial Institutions and Human Rights Treaty Violation", (2009) 53 International Studies Quarterly 149–174, 154.

executive accountable increases the cost of human rights violation and thus reduces violations. This conclusion does not find favour in other studies. In her cross-sectional study which included Cameroon, Longmiles suggested that in many nations in Africa, an independent judiciary does not have a significant impact on a country's human rights record, contrary to the findings of previous works on judicial independence and human rights.[16] The lack of influence by the judiciary may be as a result of the autocratic nature of its political institutions, a finding other studies that have looked into the effect of democratic institutions have debunked.

In her extensive study including 166 countries and three human rights treaties including the Covenant, Hathaway measured a variety of democratic constraints on government behaviour, including the presence of institutions and procedures through which citizens can express their preferences about alternative policies and leaders; and the presence of constraints on the chief executive, including an independent judiciary and a measure of civil freedom and fair trials for the International Covenant on Civil and Political Rights and the Optional Protocol[17]. Hathaway's findings though not directly related to the premise of this study, are quite essential when interpreted broadly. She argued that every state is constrained to a greater or lesser extent by domestic legal and political institutions. How constrained it is, depends on the degree to which those outside the government can enforce the state's legal commitments. International legal commitments are more meaningful where powerful actors can hold the government to account but where there are no such constraints, even formally binding treaties may be ignored with relative impunity.[18] She concluded that countries with robust legal domestic institutions with a higher likelihood of increasing the cost of commitment through compliance are less likely to commit. On the other hand, countries like Cameroon with a weak domestic

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[16]Leticia Longmiles, "Judicial Independence and Human Rights in Africa". (2011) *The Eagle Feather* 8.

[17] Oona Hathaway (2002) note supra 6 also see Hafner, Tsutsi and Meyer (2008) who also argue that the price for this commodity is low, as enforcement is often little called into question p. 3.

[18] Oona Hathaway, "Why do Countries commit to Human Rights Treaties" (2007) 51(4) Journal Conflict Research 588-621, 593.

implementation regime understand that the cost of commitment is low and thus not engaging in the reporting process, and individual communication bears no burden to the state. The collateral consequences associated with the Covenant are almost non-existent and therefore explains the lengthy delays in implementing views of the Human Rights Committee.

Apart from the nature of the judiciary, the nexus between such protection and the actual enjoyment of these rights is also dependent on several internal factors among which as indicated earlier is the nature of the political institutions which undergird their implementation. In his studies, Davenport examined the repressive tendencies of different forms of authoritarian regimes concerning civil and political rights and personal integrity rights. He concluded that autocratic regimes do not use state repression at comparable levels. Slightly depending on the nature of the autocratic regimes, there is a difference in the level of civil and political rights violations and violations of personal integrity rights. At the same level regimes violate different rights at a different level. He argued that as far as personal integrity rights are concerned '…executive constraints and Gross National Product again decrease repression…'[19]

The plural institution argument as reflected in the study of Ghandi and Przeworski who offer a plausible explanation why autocracies with democratic pluralism will rely on institutions and the support of the opposition to sustain their authority. The duo argued that when authoritarian rulers need to solicit the cooperation of outsiders or deter the threat of rebellion, they rely on political institutions. Partisan legislatures incorporate potential opposition forces, giving them a stake in the ruler's survival. They argued that such autocratic institutions are not just "window dressing," because they are the result of strategic choices and have an impact on the survival of autocrats, and also have effects on policy outcomes.[20] By broadening the base of support for autocrats, these institutions lengthen their tenures. The President of Cameroon, Paul Biya, has been in power since 1982 during which time he has authorized the legalization of more than 120 'opposition' political parties, organising regular elections which his party the Cameroon

[19] Christian Davenport, "state Repression and the Tyrannical Peace" (2007a) 44(4) Journal of Peace Research 485-504, 498.

[20] Jenifer Ghandi and Adam Przeworski, "Authoritarian Institutions and the Survival of Autocrats" (2006a) 40 Comparative Political Studies 1279,1280

People's Democratic Movement has always won. 'Opposition' parties are represented both in parliament and government to legitimise his rule, and as Ghandi and Przeworski posit, to have a stake in Biya's survival. Their argument that more murder occurs under plural autocratic regimes explains the relationship between many autocratic regimes like Cameroon and the persistence in the violation of personal integrity rights which Keith et al. in their 1994 studies explained.

They expanded on their 1994 study on personal integrity rights with the intention to validate or invalidate its findings. Their primary thrust was to answer the question; why some states abuse the dignity of the person? They offered a realist interest driven purposeful rational explanation to this question. In most cases, they postulate, it is because their principal political leaders are willing to repress and because they can act on their choice. They choose to commit abuses of personal integrity rights because they see these inhuman actions as the most effective means to achieve their ends.[21]

All of these studies have answered the 'why' question and have been able to shed some light on the domestic dynamics that affect compliance. Various scholars have overwhelmingly shown that ratification of the Covenant does not in any way change the behaviour of the autocratic state; if anything, they have tended to abuse more. These abuses are even higher for an autocracy like Cameroon with a multiparty system which has the constant potential of increasing pressure on the executive as it happened in the 1990s and 2008. After the ratification of a treaty, a state must decide whether it will implement its obligation under that treaty. In this regard, it must consider whether to accept monitoring of its obligations through processes such as the required reporting procedures or the individual communication mechanism. As many scholars have shown, the effectiveness of the process of implementation at the domestic level depends strongly on the nature of a regime's political structure and the implications such a structure has on the nature of constitutionalism. In many African states, initial constitutional provisions were drawn predominantly from patterns familiar to the departing colonial power, hence reflecting assumptions far more common in the metropolis than in African societies and

[21] Stephen C Poe, Neal C Tate and Linda Keith, 'Repression of the Human Right to Personal Integrity Revisited: A Global Cross-National Study Covering the Years 1976-1993' (1999) 43(2) International Science Quarterly 291-313

being externally imposed, some of these constitutions lacked popular support and legitimacy.[22] In Cameroon, as it is shown in Chapter 3, the political structure is strictly top–down – a situation which has shaped constitutionalism to protect the executive, thus making the enforcement of international norms impossible as the violation of personal integrity rights becomes the principal tenet of regime survival tactics.

It is important to note that the norms of international human rights law, though imperfectly enforced, are implemented through a complex, little-understood legal process which Koh described as transnational legal processes.[23] These processes work through a web of interaction between the international and the domestic through processes of ratification, monitoring and even compensation for breach of obligation. There is no doubt that the internalization of the Covenant either through direct application or internal legislation, has strengthened the primacy of the state as the principal duty bearer in rights protection and has shifted emphasis from international to domestic jurisdiction. However, despite acceding to the Covenant, Cameroon continues the course of impunity. Consequently, the assumption that the law will shape its attitude and reduce violations of these rights has yet to materialize. The failure of the law and other assumptions grounded on factors such as lack of enforcement mechanisms, arbitrary nature of the regime, and internal structures of the state and the strength of its internal regulating bodies. For, as Haschke explains, human rights violations are the consequence of specific and instrumental behaviour authorized by leaders and executives to achieve political goals;[24] and without torture, arbitrary arrests and detentions as well as unfair trials, the survival of the Biya regime in Cameroon, would be increasingly challenged.

The literature on the relation between signature and adherence on the one hand and the persistence in systematic impunity on the other sheds light on the rationale of why Cameroon

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[22] Bonny Ibhawoh, "Between Culture and Constitution: Evaluating the Cultural Legitimacy of Human Rights in the African state" (2000) 22 Human Rights Quarterly 838-860, 845-846.

[23] Harold Hongju Koh, "How is International Human Rights Law Enforced?" (1999) 74 International Law Journal 4

[24] Peter Haschke, "Human rights violations are seen as the consequence of explicit and instrumental behaviour authorized by leaders and executives to achieve political goals" (Conference Paper, Chicago Springs 2011)4.

has committed itself to protect these rights but has failed in the implementation of its obligations. Generally, the enforcement of human rights treaties is multidimensional [25] including both a domestic and an international component of implementation inherently limited to the supervision of domestic measures by political, quasi-judicial or judicial organs. [26] Country-specific studies on this weakness have produced different results which have shown that the nature of these regimes and a range of socioeconomic, social and political factors,[27] to a great extent, account for the lack of proper implementation of state obligations under the Covenant and this is reflected in systematic impunity as shown below.

In Cameroon like in most other autocracies in Africa South of the Sahara, the domestic configuration faces similar structural challenges emanating from a shared legacy of colonialism and post-independence political autocratic institutions micromanaged by an imperial executive which to a great extent accounts for the lack of implementation. As Cole explained, weakly monitored treaties enable decoupling of this sort, as do purely expressive or qualified treaty commitments that allow rights-abusing countries to align themselves with human rights norms while circumventing the legal obligation to abide by those norms. [28] Such weaknesses notwithstanding, the glaring disparity between theory and practice is nowhere more evident than when in the year 2000 Sir Nigel Rodney described torture and other ill-treatment as 'widespread and systematic' and concluded that torture and ill-treatment could only persist

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[25] Yonatan Lupu "Best Evidence: The Role of Information in Domestic Judicial Enforcement of International Human Rights Agreements" (2013) 64 International Organisation 469, 470.

[26] Manfred Nowak, "U.N. Covenant on Civil and Political Rights; CCPR Commentary" (N. P. Engel 1993) p 27-28

[27] Armand Tanoh and Adjolohoun Horace "International Law and Human Rights in Cote d'Ivoire and Benin" in Killander Magnus and Adjolohoun Horace (eds) 'International Law and Domestic Human Rights Litigations in Africa: An Introduction' (Pretoria University Press 2010).

[28]Wade M. Cole, "Hard and Soft Commitments to Human Rights Treaties" 1966-2000' (2009) 24(3) Sociological Forum 573-786, 572.

where law enforcement officers act with impunity.[29] Eight years after Sir Nigel's report, in the year 2008, hundreds of people were killed in the city of Douala, Cameroon, during a protest march against constitutional amendments which were designed to give the president a presidential life term. During these protest marches, hundreds where arbitrarily arrested, tortured and detained incommunicado, with many tried without any minimum standard of fairness.[30] Paul Eric Kingue (see section 4.1.7 p.222) was arrested during the protest, detained for more than 20 days under inhuman and degrading conditions that included placement in a solitary confinement cell; being required to sleep on a bare wet floor; unable to communicate with family members, a lawyer or doctor; being bound and shackled; and being subjected to regular insults and physical threats. His treatment sums up the happenings of that year. Apart from the pervasiveness of such attitudes, the same report accuses the government of using the criminal justice system to punish its opponents. The persistence in the violation of personal integrity rights remains a function of the strict post-colonial constitutionalism and the structure of the state and its consequent impact on the nature of its implementation regime.

Five years down the line since a damning Amnesty International report, the score of Freedom House on Cameroon was six, with seven being the worst. It described the judiciary as subordinate to the Ministry of Justice and political influence and corruption as weakening the courts. Lengthy pre-trial detentions are commonplace, and there are reports of arbitrary detention and judicial harassment of activists.[31] The US State Department report of 2015 also described Cameroon as a Republic dominated by a strong presidency with a multiparty system of government, but with the Cameroon People's Democratic Movement (CPDM) in power since its creation in 1985. In practice, the political system is one in which the president retains

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[29] United Nations Commission on Human Rights (UNCHR), 'Report of the Special Rapporteur, Sir Nigel Rodney, Submitted Pursuant to Commission on Human Rights Resolution 1998/38', *(E/CN.4/2000/9/Add.2) para. 68 p.26*

[30] Amnesty International, 'Impunity Underpins Persistent Abuse' (29 January 2009) www.amnesty.org/en/library/info/AFR17/001/2009 accessed 15 June 2014.

[31] Freedom House 2015 Scores, https://freedomhouse.org/report/freedom-world/2015/cameroon accessed 10 March 2016.

the power to control legislation.[32] In its 2016 report, the Bertelsmann Institute captures the same picture as expressed by the state Department. The legislative and judicial branches, it wrote, have little control over the executive. The 1996 constitution provides for a powerful president, elected for seven years. The executive, on the other hand, has rarely been criticized or held accountable by parliament.[33] These descriptions of the internal realities of Cameroon's attitude towards its citizens are divorced from remedial measures taken to liberalise the political space and guarantee human rights.

In the early 1990s, the government passed the so-called liberty laws to promote fundamental freedoms. One such law was Law No. 90/054 of 19 December 1990 relating to the maintenance of law and order. It granted exceptional powers to administrative authorities to restrict individual freedoms by remanding suspects in custody. This law has been used repeatedly by various administrative officials to detain political opponents and cause overcrowding in detention centres due to lengthy pre-trial detentions.[34] The use of this law to prevent peaceful assembly has often resulted in administrative arrests, lengthy pre-trial detentions under inhuman and degrading conditions, torture and unfair trials.[35] In writing about inhuman treatment and torture, Beth argues that they are often perceived to have a critical bearing on the ability of the government to maintain order, security and its own political power.[36] In this regard, Cameroon has used impunity, deprivation of liberty, cruel inhuman and degrading treatment, kangaroo trials and denial of redress as tools of repression to protect its political power. While violations of these rights have persisted, implementing their obligation as

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[32] US State Department 2015/16

[33] Bertelsmann Institute, 'Cameroon Country Report', (2016) p.9

[34]For example, on 5 September 2005, the Senior Divisional Officer for Fako ordered the detention of one Pauline Mukete and 21 others following the disruption of public peace caused by a meeting of the 'Southern Cameroons National Council' (SCNC), a movement which advocates the secession of the English-speaking provinces of Cameroon.

[35]Also see Eric Kingue v Cameroon, para 2.3, U.N. Doc. CCPR/C/118/D/2388/2014 (2016)

[36] Simmons A. Beth, "Mobilizing for Human Rights: International Law in Domestic Politics" (Cambridge University Press 2009) 256.

recommended by the Human Rights Committee has been impossible because of the association of repression with political power and regime survival. For example, in its 2015 report, Amnesty International stated that prison conditions in Cameroon remain poor with chronic overcrowding, inadequate food, limited medical care, and deplorable hygiene and sanitation. The population of the central prison in Yaoundé is approximately 4,100, for a capacity of 2000.[37] Apart from the insalubrious conditions under which persons deprived of their liberty are detained, many have been subjected to cruel inhuman and degrading treatment and even torture while in detention. These conditions of detention have to an extent been deliberate as Cameroon has failed many times to implement the Concluding Observations of the Human Rights Committee that has consistently demanded the improvement of conditions of detentions.

1.1 Covenant Implementation

The implementation process of the Covenant is designed to achieve the objective of the Covenant as outlined in its article 2(1):

Each state party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

The Covenant has not given clarity on how to translate the generalised prescription into enforceable obligations. Schacter asked whether the obligations to ensure rights and remedies within domestic legal systems requires that states parties make the Covenant itself part of the domestic law?'[38] In response, Nowak argues that the general obligation to respect and ensure the rights of the Covenant as specified in article 2(2) requires states parties to give effect to

[37] Amnesty International Report, "state of the World's Human Rights" (2015/16) p. 107. accessed 16. May 2016

[38] Oscar Schacter, "The Obligation to implement the Covenant in Domestic Law", in Louis Henkin (editor), "The International Bill of Rights; The Covenant on Civil and Political Rights" (Columbus University Press 1981) 312

the rights recognised in the Covenant by legislative or other measures[39]. In its article 2(2) the Covenant clarifies that "each state party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present covenant". Many states have not provided for automatic incorporation but in Cameroon, as stipulated in its constitution, where the Constitutional Council finds a provision of a treaty unconstitutional authorisation to ratify the treaty is deferred until a constitutional amendment is done.[40] Duly ratified treaties once published override national laws.[41]

Seibert-Fohr has argued that the enjoyment of the rights enshrined in the Covenant depends on the implementation measure taken by Statse parties which, as she argues, "are the primary mechanisms envisaged by the Covenant to give effect to the rights of the individuals that it enshrines".[42] While there is no general rule that treaties must be incorporated to have a domestic effect, the Covenant requires implementation through domestic measures. These national measures provide compliance through either legislative, administrative and judicial measures to assess state party's behaviour under the Covenant.

Domestic measures of implementation also embody the provision of individuals within their jurisdictions with an "effective remedy", even when they may decide whether that remedy takes a judicial, administrative or legislative character, or some combination of those

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[39] Manfred Nowak, 'U.N. Covenant on Civil and Political Rights; CCPR Commentary (N. P. Engel 1993) 53

[40] Constitution of the Republic of Cameroon, as amended by Law N° 2008/001 of 14 April 2008 to amend and supplement some provisions of law N° 96/6 of 18 January 1996 to amend the Constitution of 2 June 1972 herein known as Constitution of Cameroon, article 44

[41] Ibid, article 45

[42] Anja, Seibert-Fohr, "Domestic Implementation of the International Covenant on Civil and Political Rights Pursuant to its Article 2 Para. 2 (2001)5 Max Planck Yearbook of United Nations Law, 399-472,400.

approaches.[43] In its article 2 para 3b, the Covenant obliges authorities to ensure that any person claiming such a remedy shall have his right to it determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the state, and to develop the possibilities of judicial remedy. Such measures impose an obligation beyond the provision of domestic mechanisms for a remedy to obligations of results. The emphasis on domestic remedy does not in any way preclude the importance of international jurisdiction of remedy but to denote the importance of the domestic jurisdiction as the most important avenue for human rights protection. In Cameroon, these measures include obligations enshrined in the Penal Code to punish violators, compensate victims of torture and illegal arrest and detention and the obligation of the NCHRF to investigate and report to the competent authorities on any violation of human rights it decides to take up as it is detailly analysed in chapter 4.

1.2 CONSTITUTIONAL ENABLING ENVIRONMENT

It was the necessity to make norms binding and entrenched within the domestic constitutional order that translated the principles embodied in the UN Charter and the UDHR into binding obligations under the International Covenant on Civil and Political Rights.[44] By making the protection of human dignity a central feature of post-World War II institutions, it became clear that the emerging world order would be one in which the nation- states also puts human rights at the centre of their existence. That is why many post-1945 states framed their constitutions to reflect this new dynamic and made the protection of human dignity the central focus of their constitutional order. If there was anyone country where this was more apparent, it was the very country at the center of the challenge of human worth and the inalienability of human rights.

[43] David Kaye, "state execution of the International Covenant on Civil and Political Rights" (2013) 3 UC Irvine Law Review 95, 101. This is also embodied in the spirit of article 2(3).

[44]International Covenant on Civil and Political Rights supra note 1

The great initial models of this new Universalist constitutionalism were the German and Japanese post-war constitutions. These constitutions were the product of Allied thinking.[45]

Die wuerde des Menschen ist unantastbar (human dignity is inviolable) remains the most indelible phrase of the German constitution.[46] For its protection and to ensure that it is not merely an accident of inception, the constitution emphasises that its protection 'shall be the duty of the state.'[47] The protection and recognition of the inviolability of human dignity 'shall bind the legislature, the executive and the judiciary as directly applicable by law.'[48] This rule is however in sharp contrast to most post-independence African constitutions including Cameroon's which were drafted to reaffirm and fortify single-party authoritarian political dispensations. While the protection of human dignity and human rights, in general,[49] were mentioned in some constitutions, they were not couched in words that reflect the notion of human rights and were further undermined by extremely powerful executives 'with the president practically, and oftentimes legally, above the law, executive fiat and arbitrariness became a regular modality of rule in Africa, with damaging consequences for the rule of law.'[50]

The early constitutions of Cameroon like most in Africa South of the Sahara were designed to protect a single party system and in Cameroon. In Cameroon, 'multipartyism was abolished,

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[45] Larry Carter Backer, 'God(s) Over Constitutions: International and Religious Transnational constitutionalism in the 21st Century' (2008)27 Mississippi College of Law Review 101,115.

[46] Basic Law for the Federal Republic of Germany in the revised version published in the Federal Law Gazette Part III, classification number 100-1, amended by article 1 of the Act of 23 December 2014 (Federal Law Gazette I p. 2438), article 1.

[47] Ibid. article 1(1).

[48] Ibid article 1(3).

[49] Federal Democratic Republic of Ethiopia, Chapter III of the revised Constitution of the Proclamation No. 149 of 1955.

[50] Kwasi Prempeh, "Presidential Power in Comparative Perspective: The Puzzling Persistence of Imperial Presidency in Post-Authoritarian Africa" (2008) 35 Hastings Constitutional Law Quarterly 775

criticism of the government was repressed through stringent laws circumscribing freedom of speech, while activists were arrested arbitrarily, detained and tortured.'[51] This pattern that continues to define and inform the post-single party era of Cameroon and has shaped its implementation approaches.

Post-1990 constitutionalism created an imperial executive that has undermined the implementation of the Covenant. With the president practically, and often legally, above the law, executive fiat and arbitrariness has become a regular modality of the rule with damaging consequences for the rule of law.[52] Although the political and constitutional system is structured in a way as to provide the framework for multiparty political participation and the incorporation of international human rights treaties including the Covenant, constitutionalism is still tailored to protect the interest of the state with a vague guarantee of these rights not anchored in any judicial means of their realisation. It is a structure that has undermined the role of the judiciary and controlled the making of laws through a constitutional and electoral formalism that guarantees the government parliamentary supremacy. The problem of implementation is attributed in part to the influence of an inherited model void of the country's historical and political context,[53]and with a deficient separation of powers with potential for excessive and unaccountable executive power. Most of these post-independence constitutions imposed by the departing colonial masters, were quickly transformed into instruments of repression on the pretext of pursuing the coveted but elusive goals of national unity and economic development.[54] While these forms of constitutionalism evolved to incorporate and protect these rights, it failed to provide the basic minimum standards in the adequate separation of powers, independence of the judiciary and an effective mechanism for judicial review of

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[51] Richard Joseph, 'France in Africa' in Richard Joseph (ed), "Gaullist Africa: Cameroon under Ahmadou Ahidjo" (Fourth Dimension Publishers 1978) 8.

[52]Kwasi Prempeh supra note 50, 776

[53] Michael Reisman, "Introductory Remarks: Symposium Constitutionalism in the Post-Cold War World" (1994) 19(1) Yale Law Journal 189, 191.

[54] Robert B. Seidman, "Constitutions in Independent, Anglophonic, Sub-Saharan Africa: Form and Legitimacy", 1969 WISC. L. REV. 83, 91.

legislation and administrative acts. The regime survival approach to governance and its consequent constitutional approach which leaves a wide gap between actual constitutionalism and constitutional practice have had far-reaching implications in the way these specific Covenant rights are incorporated and interpreted to protect the citizens. Constitutional reforms since independence have sought to strengthen the powers of the executive and effectively brought both the judiciary and legislature under executive control. The Constitution distinguishes between legislative powers to legislate[55] and the power of the executive to issue rules and regulations.[56] Such a system effectively grants the executive the authority to make laws and control the law-making process of the parliament. On the other hand, while the constitution prides itself upon judicial independence,[57] the president is the one who guarantees that independence with enormous executive powers to appoint, transfer, discipline and dismiss judges, authority to refer matters to the Constitutional Council, and challenges the very concept of judicial independence.

Such a system of executive control which attacks both legislative and judicial independence challenges the implementation of the Covenant both at the domestic and international levels. It may also be argued that the Covenant's laudable interpretation clause that forbids states from engaging in any act that could destroy any of the rights and freedoms recognised in the Covenant or encourage their limitation to a greater extent than is provided for in the present Covenant cushions the effect of domestic influence.[58] In addition, the Covenant's object and purpose plays an essential role in ensuring that implementation must be done to fulfil the object and purpose as stated in article 2(1) and as has been developed by the jurisprudence of the Human Rights Committee. Barak has argued that at a high level of abstraction, the object and purpose of a legal text in what he described as objective purpose are the values, objectives, interests, policy, and function that the text is designed to actualize. [59] The Covenant's unique

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[55] Constitution of the Republic of Cameroon supra note 40

[56] Ibid, article 27

[57] Ibid article 37(2)

[58] International Covenant on Civil and Political Rights supra note 1 article 5(1).

[59] Aharon Barak, "Purposive Interpretation in Law" (Princeton University Press 2005) p. 148

status as a human rights treaty does not only compel but also justifies interpretation that applies to all individuals within their territory and subject to their jurisdiction the rights recognized in the present Covenant.[60] The Covenant also imposes on these states many obligations; negative obligations as stated in article 2(1) and apart from the negative obligation not to infringe on these rights, the Covenant imposes another obligation that requires active measures of implementation through specified conducts including domestic remedies in case of Covenant rights violations.[61]

The enabling constitutional environment for the incorporation of the Covenant is also dependent on whether a country is Monist or Dualist, and this shall also determine whether the Covenant is self-executing or needs enabling legislation to be incorporated as part of domestic law.

1.3 THEORY OF THE RELATIONAL BETWEEN INTERNATIONAL AND DOMESTIC LAW

The legal status of the Covenant within Cameroon's domestic legal order is highly dependent on the theory of the relationship between international law and domestic law. Two primary theories inform this relationship. The Monist theory treats the international and domestic systems as one single legal framework. Under such a configuration, international law is directly applicable to the domestic system.[62]

In their empirical study on the relationship between human rights law and domestic legal order in Africa, Killander et al. found that human rights law is not optimally used as a source of law within the continent.[63] Despite this finding, Cameroon broadly described as falling under the civil and Common Law systems has adopted domestic measures consistent with its obligations

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[60] International Covenant on Civil and Political Rights supra note 1 article 2(1)

[61] Ibid article 2(3)

[62] Peter Malanczuk, "Modern Introduction to International Law" (Routledge, 7th edition, 1997) 63

[63] Magnus Killander and Horace Adjolohoun, "International Law and Domestic Rights Litigation in Africa" in Killander M, (ed). International Law and Domestic Rights Litigations in Africa (Pretoria University Law Press 2010)4.

under the Covenant. Most of the Civil Law countries which were mostly former French colonies with their constitutions modelled after article 55 of the 1958 French Constitution,[64] are also monist in which the Covenant is self-executing. In case of conflict with Covenant provisions, the Covenant has supremacy over domestic legislation.[65]

Cameroon is a complex mix between the Common Law and the Civil Law tradition and should rationally be described as a bi-jural legal system in which Common and Civil Laws interact. However, as Fombad noted, a political and legal desire for complete de-identification of one legal legacy in favour of another has not only created a veritable legal imbroglio but may undermine the basis of a 'United Cameroon.'[66] In 1993, 14 African states including Cameroon signed the OHADA accord (OHADA is the acronym for the Organisation pour l'harmonisation en Afrique du Droit des Affaires, or in English, the Organisation for the Harmonization of Business Law in Africa) and set in motion in 1996 a process of the harmonisation of the Cameroonian law to develop a home-grown legal system. This process has led to a drastic decline in the influence of the Common Law system to the advantage of the Civil Law tradition with huge implications on the protection of the writ of habeas corpus in the Common Law areas. Cameroon can thus effectively be described as a Civil Law country and like most Civil Law countries in Africa, it is monist. Thus, in Cameroon, monism defines that relationship in

[64] Ibid p. 5; also see article 55 of 1958 French Constitution; it states that 'Treaties or agreements duly ratified or approved shall, upon publication, prevail over Acts of Parliament, subject, with respect to each agreement or treaty, to its application by the other party'.

[65] Benin (art 147), Burkina Faso (art 151), Burundi (art 292), Cameroon (art 45), Central African Republic (art 69), Chad (art 222), Congo-Brazzaville (art 185), Côte d'Ivoire (art 87), DRC (art 215), Guinea (art 79), Mali (art 116), Mauritania (art 80), Niger (art 132), Rwanda (art 190), Senegal (art 91) and Togo (art 140).

[66] Charles M. Fombad, "An Experiment in Legal Pluralism. The Cameroonian Bi-jural/Uni-jural Imbroglio" (1997) 16(2) University of Tasmania Law Review 211.

which the Covenant and domestic law are 'manifestations of a single conception of law'.[67] This means that Cameroon's courts and judges can simply apply the Covenant on ratification without any enabling legislation even though there is very little evidence of the use of the Covenant in interpreting constitutional provisions.

The dualist approach to this relationship, on the other hand, conceives of the two systems as two distinct legal orders which emphasize that states adopt the legal measures of the treaties into a national provision before they are cited at the domestic level.[68] Seibert-Fohr has raised three important questions about this relationship: whether an individual may directly invoke the Covenant provisions before a domestic court; whether the state party is required to incorporate the Covenant into its domestic legal system; or whether it is obliged to make it self-executing.[69] A Common Law country like Uganda conforms to a dualist theory in the relationship between domestic and international law. It, therefore, requires implementing legislation giving formal domestic legal effect to the Covenant. In a fundamental difference with a monist country like Cameroon, the Covenant does not become 'real law' until it can be legislatively incorporated into domestic law, thereby becoming enforceable by courts.[70] However as noted in the Bangalore Principles, there has been a tendency for national courts to have regard to these international norms for the purpose to decide cases where the domestic law – whether constitutional, Statute or Common Law – is uncertain or incomplete.[71] Kabumba has argued that judges in Uganda feel comfortable having regard to the jurisprudence of

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[67] Magnus Killander and Horace Adjolohoun, 'International Law and Domestic Rights Litigation in Africa' in Killander Magnus, (ed). International Law and Domestic Rights Litigations in Africa' (Pretoria University Law Press 2010) 5.

[68]Peter Malanczuk, "Modern Introduction to International Law" supra note 62 ap. 63.

[69]Anja Seibert-Fohr (2001) supra note 42 p.416.

[70] Melissa A Waters, "Creeping Monism: The Judicial Trend Toward Interpretive Incorporation of Human Rights Treaties" (2007) 107 Colum L Rev 628, 638.

[71] Concluding statement of the Judicial Colloquium, 'Bangalore Principles' (Judicial Colloquium on the Domestic Application of International Human Rights Norms and on Government under the Law, Bangalore (India), from 24–26 February 1988).

international law to shed light on the scope of constitutional provisions.[72] This relationship has had a far-reaching influence on the way these Covenant rights are interpreted and protected and the general nature of constitutionalism.

Most dualist countries rarely use international law in the interpretation of constitutional provisions. The non-use of international law is attributed to the fact that the legal system allows for the incorporation of international law within the Constitution. Reference to the case of Uganda is again essential to highlight this crucial difference. According to article 123(1) of the Ugandan constitution, a treaty must be ratified following the ratification of treaties Act (Cap 204) and then domesticated by Act of the Ugandan parliament before it can be invoked in domestic litigations. Unlike in monist tradition, in terms of conflict between the Ugandan constitution and the provisions of the Covenant, the Ugandan constitution overrides.[73] This is inconsistent with Art. 27 of the Vienna Convention on the Law of Treaties and has far-reaching implications in its ability to meet its obligation under the Covenant. The implication of this relationship and the contextual reality of the individual countries mean that interpretation of the Covenant cannot follow a pattern that meets its object and purpose. On the other hand, the Ugandan judiciary entrenched in some of its rulings the rule of 'purposive and generous constitutional interpretations when it comes to issues of fundamental human rights. This approach was upheld in the Constitutional Court in the case of Rwanyarare and others v. Attorney General. In a petition brought under article 137(3) of the constitution, Judge Okello JJA declared that; "we think that this court is competent to grant redress under article 50 of the constitution where a fundamental right or freedom guaranteed under the constitution is infringed or threatened"[74].

While many autocracies have constitutions which include provisions that guarantee the superior nature of the Covenant over national laws,[75] the unique nature of the Covenant ensures that their obligations are of an objective nature and protect the fundamental rights of individuals

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[72]Busingye Kabumba in Killander and Horrace supra note 67 p.83.

[73] See Article 2(2) of the Ugandan Constitution.

[74]Dr. Jame Rwanyarare et. al v Attorney General (2003) 2 EA 664(CC)

[75] Constitutions of Benin art. 147, Chad art. 221, DRC art. 215, Cameroon, art. 45, Burkina Faso, art. 151, Togo art. 140.

and not the interest of the contracting states.'[76] The constitutions of countries like Uganda and Zimbabwe provide no clear clarification on these two issues, yet the basic principles of the relationship between domestic law and international law as practiced by Common Law countries remain applicable. It is also an application that unfortunately does not change the factual protection of these rights.

There is hardly any doubt that in Cameroon like in most other autocracies in Africa South of the Sahara, whether of the Common or Civil Law tradition, coercion is used as a policy tool by the government to hang onto power and to deal with internal dissent. Torture, deprivation of liberty, inhuman and degrading treatment and unfair trials are the tools most frequently used to achieve a political objective of executive dominance. The Civil Law tradition that is predominant in Cameroon provides a weak framework and enhances the authority of the executive over the judiciary, thereby making violation of these rights more likely. Consequently, its implementation approach to its obligation under these rights also remains a factor of the weak inherited Civil Law tradition.

This process does require a review of the constitution and other national laws to determine their compliance with Covenant provisions. Implementation of its obligations under these rights requires constitutional entrenchment of these rights. The 1996 constitution affirms attachment to the African Charter on Human and Peoples Rights and duly ratified International Treaties including the Covenant.

1.4 JUDICIAL AND OTHER METHODS OF IMPLEMENTATION

After Cameroon acceded the Covenant, it made it possible through legislative actions for its courts to pass judgments that are consistent with these Covenant provisions and to provide adequate judicial measures against any infringement of its obligations in the Covenant. The judicial implementation of these Covenant provisions is central to their realization. Its Penal Code states that any person who violates individual freedoms may be prosecuted for false

[76] Alexander Orakhelashvili, 'The interpretation of acts and rules in public international law' (2008) 14 EJIL529, 531.

arrest[77] and oppression[78]. Furthermore, the trial court may award damages to victims who file civil actions. The law also provides for the possibility of obtaining compensation for an extended period of detention that ends in acquittal through the following mechanisms: an appeal to the compensation and reparations commission created under articles 236 and 237 of the Criminal procedure code and; an appeal to the administrative authorities. Although these procedures have been deemed inaccessible and ineffective, they constitute a framework through which the undoing, repairing of harm and compensation of victims can be adequately carried out.

On the other hand, its judicial implementation approach has been mainly centred around the referencing of its laws without any substantial evidence on where and how that law has been used to undo or repair the harm caused by authorities acting in an official capacity to violate human rights. For example, each time Cameroon has been accused of the violation of specific Covenant rights, it has responded by referring to the provision of its law which it has consistently used to justify its actions. In the case of *Akwanga v Cameroon*, Cameroon was accused of violating the premise of article 9 in the arrest of Akwanga without a warrant and without informing him of the reasons for his arrests. Cameroon responded by arguing that investigations into the incidences that led to Akwanga's arrest were carried out in full respect of the legislation in force at the time. Referring to the Committee's jurisprudence, the state party notes that it is for the national authorities to decide how to investigate a crime.[79] This approach has consistently led the Human Rights Committee to conclude on many occasions that the availability of remedial measures does not guarantee both their accessibility and effectiveness. In *Kingue v Cameroon*, the Committee declared the communication admissible after Cameroon did not contest the claim by the complainant that domestic remedies even where available were ineffective. The Committee noted that

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[77] Law No.67/LF/1of 12 June 1967 Introducing the Cameroonian Penal Code (herein referred to as PC), article 291.

[78] Ibid section 140.

[79] Akwanga v. Cameroon, No. 1813/2008 para. 4.4

…the author's claim, which is not contested by the state party, that domestic remedies have been exhausted because there is no effective remedy to repair the injury that he suffered as a victim of arbitrary arrest and detention. The compensation commission created for this purpose under the Code of Criminal Procedure has reportedly not yet been set up, and recourse to the administrative courts would be pointless since settled case law excludes from the jurisdiction of these courts issues of compensation for injury attributable to the functioning of the public justice system and since a subsequently adopted law confirms this exclusion.[80]

The requirement of article 2(2) for states parties to adopt legislative and other measures is broad. This broadness includes judicial and administrative measures specific to the requirements of the rights concerned.

Administrative implementation of its obligation under the Covenant as overseen under the auspices of the Ministry of Justice has been through specialist inter-ministerial commissions like the National Commission for Human Rights and Freedoms (NCHRF) which has been set up through executive decrees to coordinate and monitor human rights treaty implementation efforts including the compilation and submission of reports. Such a specialized body compliments legislative and judicial procedure that is required under article 2(2) of the Covenant.

While the domestic jurisdiction is the principal system of implementing the obligations contained in the Covenant, the monitoring system put in place at the level of the Human Rights Committee also plays a vital role in ensuring that these obligations are implemented at the domestic level. When domestic remedies are non-existent or ineffective that is when international remedies are most required. In this respect, article 28 of the Covenant provides for the establishment of the Human Rights Committee as the principal organ of implementation of the Covenant on Civil and Political Rights. It is a quasi-judicial body consisting of 18 independent experts[81] charged with the mandate to monitor the implementation of the Covenant through the Individual Communication, interstate and reporting procedures. Robertson states that the real test of the effectiveness of a system of international protection

[80] Paul Eric Kingue v. Cameroon, No. 2388/2014 para.6.3

[81] International Covenant on Civil and Political Rights supra note 1, article 28

for human rights is whether it provides an international remedy for the individual whose rights are violated.[82]

The individual communication mechanism is the most intrusive mechanism that grants the individual direct access to an international instrument of adjudication. It is dealt with extensively in Chapter 6. While the mechanism's outcome still relies on the domestic measures taken by the state to give effect to the views of the Committee, it is none the less an effective mechanism that not only allows for the scrutiny of how the institutions of states parties deals with their obligations but also how they interpret and implement those obligations.

Another method of monitoring the implementation of its obligations under the Covenant is the reporting procedure. This procedure gives the Human Rights Committee the opportunity to scrutinise state reports on the measures it has taken to ensure respect of Covenant rights and the limitations of its domestic implementation regime. With its General Comments on specific rights and Concluding Observations after each report, the Human Rights Committee provides states with both the sound interpretive approach, orientation of implementation and recommendations that should form the basis of the next report. The implementation of the Covenant through the Reporting process is one of the obligatory procedures for monitoring the obligations of states parties under the Covenant. The reporting procedure also offers Cameroon the opportunity to conduct a comprehensive review of the measures it has taken to harmonize national law and policy with the provisions of the Covenant. The process of compiling its report also gives it the opportunity to interact with civil society organisations in what is known as the constructive dialogue. The reporting periodicities generally represent a minimum reporting requirement. Cameroon has also submitted its report behind schedule. Its initial report of 1985 was submitted three years late, that is, in 1988. Its first periodic report of 1990 was also submitted three years late (in 1993). Its fourth periodic report of 2003 was submitted five years late, that is, in 2008. Apart from the delays which have an impact on the implementation of its obligation, the quality of its reports has been abysmally inadequate. Based on the trend in delays, the Human Rights Committee is even prepared to examine a

[82] A. H. Robertson, "The Implementation System: International Measures" in Louis Henkin (ed), 'The International Bill of Rights: Covenant on Civil and Political Rights' (Columbia University Press 1981)357

state's Covenant implementation record in the absence of a report after notifying the relevant state of the date of such examination.[83] These mechanisms have been inadequate in the implementation processes mainly attributed to the weak constitutional enabling environment and a narrow interpretive doctrine that restricts the enjoyment of the rights herein considered. This procedure has been dealt with in chapter 5.

1.5 Interpretive doctrine

The Covenant and the nature and efficacy of the regimes that monitor and cause their implementation are principles, norms, rules, and decision-making procedures[84] which are always being interpreted. The Covenant is a broad framework of an agreement reached through compromises by the principal duty bearers in the protection of human rights. Pechota describes these compromises as a 'meeting of minds of the contracting parties on the specific duties and obligations they intend to assume, and their agreements that the undertakings must be effectively performed'[85]. Based on this, some scholars have emphatically argued that any campaign that seeks to promote human rights must take into consideration the political processes that led to the development of such norms and especially the will of the states to pursue such a campaign.[86] Jardon Louis's contention is captured in its broadest form in the way the Vienna Convention on the Law of Treaties[87] lays out the general rules of the interpretation

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[83] General Comment 30, para 4(b); See also Rules of Procedure, rule 70, See e.g. Concluding Observations on Equatorial Guinea, (2004) U.N. Doc CCPR/CO/79/GNQ p. 2.

[84] Jack Donnelly and Rhoda E Howard "Human Dignity, Human Rights, and Political Regimes" (1986)80 American Political Science Review 801-817,802.

[85] Vratislav Pechota, "The development of the Covenant on Civil and Political Rights' in Louis Henkin(edt), 'The International Bill of Rights; The Covenant on Civil and Political Rights' (Columbia University Press 1981) 35

[86]Louis Jardon, "The interpretation of jurisdictional Clauses in human rights treaties". (2013) 13 AMDI 143, 105.

[87]Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 2980) United Nations Treaty Series, vol. 1155 herein known as VCLT or the Vienna Rule.

of treaties. These rules lay out the basic principles and methodology of interpretation that embraces a broad range of approaches that cuts across context and time. These principles also hold true for human rights treaties and the Covenant as a non-self-executing treaty without reciprocity. However, in as much as the contents of these treaties in general and the Covenant, in particular, remain vague expressions of desires lacking in clarity of content, indeterminate and exclusively a state-centric construction and because standards are set through interpretation, legal clarity in content and scope is crucial to ensure compliance.

The broadest interpretation of these rights and obligations are essential in the protection of human dignity and to ensure the realisation of the broader obligation enshrined in article 2(1) of the Covenant. For example, to ensure redress for violations, states parties are required under article 2(3) to provide remedies to persons whose rights under the Covenant are violated. The Committee has taken a broad view concerning these rights and obligations, relating them to all provisions of law rather than simply the terms of the Covenant. In its jurisprudence, it has interpreted this right to require a forum to be available to hear an allegation of a violation of a Covenant right when it is sufficiently well-founded to be arguable under the Covenant. It has argued in the broadest sense that remedies must not only be available but effective as well. In Akwanga v Cameroon, the Committee stated about the availability of remedy that;

'with regard to the author's failure to raise claims of torture and unfair proceedings before the domestic courts, the Committee observes that the state party has merely listed in abstract terms the existence of remedies under the Code of Criminal Procedure, without relating them to the circumstances of the author's case and without showing how they might provide effective redress.'[88]

In Dias v Angola, the Committee stated that

under article 2(3) of the Covenant, the state party is under the obligation to provide Mr. Dias with an effective remedy and to take adequate measures to protect his personal security from threats of any kind. The state party is under an obligation to take measures to prevent similar violations in the future.[89]

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[88]Akwanga v Cameroon supra note 79 para 6.4.

[89] Dias v Angola, No. 711/1996 para 10

The proper interpretation of the obligations under article 2(3) is essential for Cameroon to fulfil their negative and positive obligations under article 7, 9, 10 and 14. These obligations both require Cameroon to refrain from acts of torture, arbitrary arrests or detention and if such occur refrain from the inhuman treatment of persons in detention. In line with this broad approach the Committee, in its jurisprudence on article 9(1), stated that the right to security of persons also obtains outside the context of the formal deprivation of liberty. An interpretation of article 9 that would allow a state party to ignore threats to the personal security of non-detained persons subject to its jurisdiction would render to ineffective the guarantees of the Covenant.[90]

Melchem argued that because the Covenant imposes obligations on states that must be fulfilled vis-à-vis individuals as third-party beneficiaries, they would have an obvious interest in interpreting them restrictively to retain more liberty in domestic policy.[91] This restrictive approach to the Covenant's interpretation has been particularly relevant to Cameroon whose survival depends on ultra vires actions against political opponents and can in a significant way account for the widening gap between ratification and compliance.

2. AIMS OF THE STUDY AND RESEARCH QUESTIONS

Based upon the above observations, the study aims first at investigating and discussing Cameroon's capacity and the limitations that imperil proper implementation of its obligations under articles 2(3), 7, 9, 10 and 14 and how these obligations are implemented.

Based on these aims, a series of questions are formulated to guide the study. Two of which are: what are the possible obstacles to the implementation of its obligations and how does Cameroon implement its obligations under articles 2(3), 7, 9, 10 and 14 of the Covenant?

3. METHODOLOGY

This study is interdisciplinary as it combines both the sociological from an international relations perspective and the legal from an international law perspective in understanding how models of state conduct affect content and subject of international rules. The study thus adopts

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[90]Ibid para. 8.3

[91] Mechlem Kerstin, "Treaty Bodies and the Interpretation of Human Rights". (2009) 42 Vanderbilt Journal of Transnational Law 905, 919.

an exploratory approach designed purposely to ease understanding of some of these phenomena under an autocratic system and how implementation occurs under an autocratic polity. In this respect, the study uses the qualitative method given that it is the most productive form of research method in this kind of a study. Norman and Yvonna in entering the field of qualitative research, write: '…qualitative research is an interdisciplinary, trans-disciplinary, and sometimes counter disciplinary field. It crosscuts the humanities and the social and physical sciences. Qualitative research is many things at the same time; it is multi-paradigmatic in focus.'[92]

In answering the above questions, the methodology follows a desktop-based research into primary and secondary data. To understand the changing dynamics in its implementation across different constitutional periods, data is required from its political and constitution frameworks; all its periodic reports and Concluding Observations since Cameroon acceded to the Covenant, and all submitted individual communications. A detailed jurisprudence of these rights has been developed by the Human Rights Committee. The study has involved an analysis of the body of case law relevant to these rights and obligations, including court judgements, depositions and reviews; primary legislation on implementation approaches including the constitutions of Cameroon, its civil and criminal procedure code; the views of the Human Rights Committees, including Concluding Observations, General Comments, etc. The analysis of secondary data includes a broad range of journal articles by scholars, practitioners, and other professionals.

The study also includes a review of books and an extensive review of the work of the Human Rights Committee. Also consulted for this study were different international and regional human rights treaties. It then proceeded with an extensive review of the periodic reports since it ratified the Covenant. In order to capture the state's understanding of its obligation under the Covenant, the study reviewed all Individual Communication to the HRC, General Comments (GC).

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[92]Denzin, Norman K. and Lincoln, Yvonna S.,"Introduction, Entering the Field of Qualitative Research" in Denzin, Norman K. and Lincoln, Yvonna S (Eds.): Handbook of Qualitative Research. London: (Sage Publication 1994)

The historical and descriptive approaches are used in generating the data on the nature of the domestic political order and how this shape domestic approaches in the implementation of the specific provisions under investigation. The data is generated by studying the different governmental arms of the state and how they interplay under an autocratic political order. The executive, judiciary and legislative branches are united through the constitution of Cameroon which functions according to the legal tradition. By understanding the nature of the constitution, the legal tradition and how the different branches of government function, it is possible to understand how the Covenant is internalised and how this internalisation translates into the protection from torture and deprivation of liberty with dignity and humanity.

In considering the cases, the study relied on the case law of the Human Rights Committee. From the jurisprudence of the Human Rights Committee, the study examines all cases that have been brought against Cameroon and whose decisions span a 20-year period. This gives the study the scope in the evolution of the implementation regime. These cases also involve issues in articles 2(3), 7 9, 10 and 14. In the Mukong v. Cameroon case, the Committee found that Cameroon violated article 7 and 9(1) of the Covenant. In the Gorji v. Cameroon[93] case 10 years later, the Committee found Cameroon in breach of its obligation under articles 9(1), 10(1)(2)[94]. In the Akwanga v. Cameroon case the Committee found that Cameroon breached articles 7, 9(2)(3)(4), 10(1)(2) and 14[95]. Akwanga spent seven years in four different prison cells. According to his submission to the Human Rights Committee, he was kept incommunicado for 18 months, subjected to torture and imprisoned under inhuman and degrading conditions.[96] A full understanding of his experience will capture the structural-agency dynamic of systematic impunity and should lay the foundation for a review of Communication 1813/2008.

The study also reviewed initial and periodic reports submitted to the Human Rights Committee. The reports of special rapporteurs are also examined to glean the views of an independent expert on the attitude of the state party towards its obligation under the Covenant. Although the special rapporteur now operates under the special procedure of the Human Rights Council,

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[93]Gorji v Cameroon, No. 1134/2002 paras 5.1- 5.3

[94] Ibid para. 5.1- 5.3

[95]Akwanga v Cameroon No. 1813/2008, para 8

[96] Ibid para. 2.5

it still focuses its work on the obligations laid out in the various human rights treaties. As indicated in the UN system, as of 1 October 2014, there has been 39 thematic areas covered and 14 country mandates established. These thematic areas and countries have included issues relevant to this study.

4. STRUCTURE OF THE STUDY

The study embodies a reflection of critical analysis involving many cases, concepts and doctrinal approaches to Covenant implementation. Thus Chapter 2 discusses the conceptualization of the implementation of the Covenant with a focus on 1) the choice of Covenant as the treaty of inquiry 2) the reason behind the selection of the specific Covenant rights, and 3) the autocratic state considered in the study. It also lays out the foundation of the study by outlining the ways these rights are entrenched in the Covenant, the way the HRC interprets them and the structure of the autocratic polity.

Before positivist empiricism became the dominant mode of scientific validation, historiography provided an important inductive approach to scientific knowledge. Stedman argues that history was a science because it was composed of facts which were events which resulted from the actions of individuals producing them through the framework of institutions.[97] And because human rights protection does not occur in a vacuum and the corresponding state institutions, their development and how they impact implementation are critical to its protection, capturing the historical development of Cameroon with a view to neatly stitching the pieces of vital historical developments necessary to understand the construction of its political system, is the essence of Chapter 3.

Chapter 4 presents an overview of the constitutional system that shapes the implementation approach of Cameroon. Cameroon adopted the political structure and legal systems of its colonial masters. In Cameroon, bi-juralism seems to be inconsistent with the nature of its constitutionalism and the lack of a clear demarcation in its application. Since encroaching into Southern Cameroons, the British colonial legacy has continued to be undermined to the point that it has very minimal influence at the constitutional level. It is noted that the normative standards of the separation of powers are geared at pre-empting the arbitrariness and tyranny

[97] Stedman G, "In Ideology in Social Science" (1972):98.

that inheres in the over-concentration and uncontrolled exercise of power.[98] It also considers the administrative structures put in place and their effectiveness in implementing the state's obligations under these rights. This chapter demonstrate that 'imperial executive' is arbitrary and impinges on the protection of these rights and consequently on the state's implementation of its obligation to protect.

These legal systems have significant implications on how treaties are given effect. While the Common Law and Civil Law systems are most prevalent, there are pseudo mixed jurisdictions in countries with both British and French backgrounds. While the study does not involve comparative analyses of the different systems, emerging differences in the structure and domestic approach have inevitably enriched the overall objective of the study. The judiciary and the protection of rights, powers of judicial review, and interpretive approaches to the role of the imperial executive in the implementation process are all developed based on the nature of the political structure of the state. Constitutional systems matter in the implementation process of these rights. By shedding light on the political structure of the autocracy, the actual as opposed to the formal relationship between the executive, legislature and judiciary and how this relationship impacts the protection of these rights the chapter will establish a better framework for understanding how implementation occurs at both the domestic and international levels.

The Covenant provides for three implementation mechanisms: Inter- state reports, state reporting mechanism, and individual communication mechanism. Chapters 5 and 6 turns to international mechanisms of monitoring implementation. Human rights implementation takes place within two jurisdictions. The primacy of the state in its implementation is central to the drafting of treaties; but also, where states are unable or unwilling to give effect to their obligation, individuals or groups of individuals can 'jump' jurisdiction and seek redress at the Human Rights Committee. The focus is on the political and cultural features of nation- states that prompt individuals to seek redress in the international system by addressing their

[98] Walker Neil, "Taking Constitutionalism beyond the state" (2008) *56 Political Studies* 519, 520-521.

grievances to the HRC.[99] Based on weaknesses in the monitoring process and an emphasis on procedural commitment in merely submitting reports and participation in the reporting process, a number of patterns have emerged in the attitude of Cameroon concerning its substantive commitment to the Covenant that has significantly influenced the way its implements it obligations. Chapter 6 proceeds to critically analyse all the cases dealt with at the Human Rights Committee under the Optional Protocol, with a focus on the procedural and substantive obligations of the state under the Covenant. This chapter asserts that a focus on procedural rather than a substantive commitment to implementing its obligation under these rights is due to the association of these rights with the survival of the autocracy.

[99] Wade M. Cole. When All Else Fails: 'International Adjudication of Human Rights Abuse Claims', 1976-1999(2006) 84 Social Forces 4,8.

CHAPTER 2

CONCEPTUALISING THE IMPLEMENTATION OF THE COVENANT RIGHTS

1. INTRODUCTION

At the end of the 119th session of the Human Rights Committee, there were 169 states parties to the International Covenant on Civil and Political Rights and 116 states parties to the Optional Protocol to the Covenant[100] including Cameroon. These legal commitments have engineered a significant shift in the structure of the international human rights system and a complex interplay between international law and domestic law on the one hand and international law and domestic practices on the other. Despite these connections that brings national practices through a complex monitoring network to international scrutiny, the persistence of systematic violations of human rights across the globe remains rife. The implementation of the Covenant, though a state-centric affair, coexists with regional and international monitoring systems including the right of individual victim adjudication which all play essential roles in a state's approach to implementing its obligation. Consequently, understanding the different thematic areas around implementation is critical.

This chapter outlines and examines the different thematic areas around implementation; develops the foundation argument around each thematic area and explores the justification of the selection criteria. The chapter specifically answers the questions why the Covenant? Why the specific rights? and moreover why the autocratic state of choice?

The Covenant is a pillar of the United Nations human rights system and together with the Universal Declaration of Human Rights (UDHR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), forms the core pillars of the UN international bill of

[100]Report of the Human Rights Committee, 117th -119th Sess., para. 1 at 1, U.N. Doc. A/72/40 (2017)

rights system. While the UDHR's non-binding premise sets a critical moral tone on the universal application, respect and upholding of civil, political and economic rights and plays a vital role in norm formation, the Covenant as a Treaty-based convention is binding on states subject to reservation and other kinds of exceptional circumstances contained in the comment on treaties. It was the understanding that the respect and protection of human rights as a binding national obligation was quintessential for the maintenance of international peace and security[101] that gave rise to the translation of the norm-setting Universal Declaration of Human Rights into a legally binding treaty obligation. This obligation is expressed in article 2 of the Covenant in absolute terms [102] and imposes both duties of results [103] and of conduct [104]. These binding obligations explain to a certain extent the relevance of the Covenant in this study.

The choice of the Covenant is intrinsically tied to its broad scope regarding the protection of different rights and the availability of an expert-led proper monitoring body that has set robust standards regarding the interpretation and implementation of the rights considered. As Keith argued, "adherence to this document would signal an even stronger commitment to human

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[101] Charter United Nations (adopted 26 June1945, entered into force 24 October 1945) 1 UNTS XVI, art.1.

[102] Article 2(1) states that 'each state party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.'

[103] Duties of result impose on states the obligation to refrain from Covenant violations: for example, article 7 is stated in the form of a duty of results: 'No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.'

[104] Duties of conduct impose on states the obligation to enact specific domestic safeguards to ensure enjoyment of rights and non-violations.

rights and because adherence to this document would make the state subject to more comprehensive reporting and complaints procedures"[105]

As a human rights treaty, the Covenant confers rights on individuals and corresponding obligations on states parties "to respect and to ensure to all individuals within their territory and subject to their jurisdiction the rights recognized in the present Covenant"[106]. Apart from the qualificative premise of most of the rights which leaves room for different interpretations under different circumstances, the Covenant falls short of being very specific about how these rights should be ensured. Seibert-Fohr argues that the implementation of the rights in the Covenant depends on domestic measures taken to give effect to the Covenant provisions[107]. While international norms and treaty obligations may help 'shed light on the distinctive function of one's system', they do not replace the domestic value system that informs the laws of the country.[108] Apart from being a treaty whose implementation has shaped domestic institutions, it also provides secondary avenues of implementation through the Interstate mechanism,[109] the Reporting System[110] as well as the individual complaint mechanism. While the first mechanism is rarely adhered to, the efficacy of the second largely depends on states submitting reports and to a very large extent on the quality of the reports and their cooperation in the consideration process. Freeman and Gibran have argued that the indispensability of the state in the implementation of these rights and the provision of remedies suffer major mutilation when it comes to enforcing them because of the contemporary organisation of international law that has states as the main constituent units.[111] This limitation is however limitedly

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[105] Linda Camp Keith, "The United Nations International Covenant on Civil and Political Rights: Does it Make a Difference in Human Rights Behaviour?' (1999) 36 Journal Peace Research 95,101.

[106] Covenant on Civil and Political Rights supra note 1 article 2(1).

[107] Anja Seibert-Fohr, (2001) supra note 42 p.400.

[108] Vicki C Jackson, "Constitutional Comparisons: Convergence, Resistance, Engagement" (2005) 119 Harvard Law Review 109, 117.

[109]Covenant on Civil and Political Rights supra note 1 article 41.

[110] Ibid article 40

[111] Mark Freeman and Gibran Van Ert. "International Human Rights Law", (Irvin Law 2004)4.

circumvented by the right of the individual to challenge the state beyond the domestic jurisdiction and in some countries the possibility of challenging the constitutionality of the domestic Statute.[112] The individual complaint mechanism overseen by a separate protocol in which participation is contingent on ratification of the protocol provides for a procedure through which individuals who feel their rights have been violated and who have exhausted all domestic remedies of redress can file in complaints at the Human Rights Committee.

These domestic and international opportunities to hold states accountable for their obligation under the Covenant is reinforced by the high number of state ratification of the Covenant and its Optional Protocol. The great legitimating value of the Covenant accounts for this high ratification despite deliberation in rights violations and a systematic approach through treaty interpretation to 'justify' such abuses.[113] It may be right to argue that while ratification of the Covenant exposes domestic practices to extra-territorial scrutiny, a weak monitoring system and the nature of the domestic regime have not helped narrow the gap between ratification and compliance.

Concerning the merits of the Covenant, Keith has also argued that its strength and that of other human rights treaties lie in their ability to declare international norms of human rights, their ability to generate information about state human rights policies and actual behaviour, and their ability to direct world attention to abuses.[114] Its constraining power to state action is designed to positively influence governments' authority to treat citizens as they see fit, empowering individuals to make states accountable for their domestic activities.[115] Despite ratification, the level of impunity and flouting of its obligation under the Covenant remains disturbingly high. This is the contradiction of the human rights treaty system. It is a

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[112] Constitution of the Republic of Uganda of 22 September 1995, amended by the Constitution Act 11/2005 and the Constitution (Amendment) (No.2) Act, 21/2005 available at: http://www.refworld.org/docid/3ae6b5ba0.html [accessed 5 September 2017] Constitution of Uganda, article 137(a,b).

[113]Hafner et al. 'International Human Rights Law and the Politics of Legitimation: Repressive states and Human Rights Treaties' (2008) 23(1) IS 115,116.

[114] Linda Camp Keith, (1999) supra note 105 pp 99-100

[115]Hafner et al supra note 13 p.116

contradiction which Hafner et al. offer a fantastic insight into by clarifying the disparity even when it does not solve the puzzle of the gap[116]. On a specific perspective, the nature of the duty bearer reflected the state, its legal architecture, its level of wealth, the organisation of its domestic jurisdiction, how it chooses to give effect to its treaty obligation and how it interprets these obligations are critical factors that determine whether rights are protected or violated. This is however not a textbook and straightforward process even if all other factors that affect human rights are frozen. Nonetheless, these factors have a direct or indirect bearing on how states interpret and implement their obligation under different treaty regimes.

2. THE HUMAN RIGHTS TREATY CONSIDERED

The choice of the Covenant lies in the fact that it is the only international human rights treaty that guarantees all of the rights under consideration and the obligation contained in articles 2(1) to respect and ensure the enjoyment of these rights is non-progressive and independent of economic or political development. In contrast to the Covenant, article 2(1) of the International Covenant on Economic Social and Cultural Rights (ICESCR) allows for the progressive realization of the rights. The immediacy in the Covenant's approach generates state obligations and provides for the justiciability of the rights incorporated in the Covenant. This means that when these rights are violated the aggrieved party(s) can move the courts for their enforcement. It also provides a set of 'common minimum standards' across a range of substantive rights. As with other multilateral human rights treaties, the Covenant contains substantive provisions, some of which detail treaty purposes and principles of interpretation, while others specify particular rules: structural provisions related to monitoring and enforcement, and procedural rules pertaining to application, relationship to other international legal norms, entry into force, and related subjects[117]. These are essential substantive and procedural issues that structure the implementation and interpretive approaches of states parties.

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[116]Hafner-Burton and KiyoteruTsutui, 'Human Rights in a Globalizing world: The Paradox of Empty Promises' (2005)110 America Journal of Science 1373, 1374.

[117] Kaye David, 'state Execution of the International Covenant on Civil and Political Rights. (2013)3 International Law Review 99, 100.

The Covenant is also an authoritative legal instrument of civil and political rights with a broad appeal and 'probably the most important human rights treaty in the world'.[118] It is neither issue-specific nor group-of-individuals-specific. While the Convention Against Torture (CAT) is specific to the protection of torture, the Convention for the Elimination of all Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC) apply only to specific individuals, the Covenant 'purports to apply to all classes of persons,'.[119] Other treaties deal with these rights either in times of conflict[120] or in a subsidiary fashion.[121].

As far as the regional treaties are concerned, the African Charter on Human and People's Rights to which Cameroon is also a state party offers a weak monitoring mechanism, and the Charter weakens the African Commission on Human Rights' implementation of its recommendations or decisions. The African Court of Human and People's Rights that complements the work of the Commission strengthen the monitoring capacity of the Charter, but only five countries have yet accepted the declaration that permits individual citizens to seek the jurisdiction of the court directly. While the Human Rights Committee is also seen as ineffective regarding the enforcement of its views, its composition and quasi-judicial nature offer more clarity in legal

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[118] Joseph Sarah, Jenny Schultz and Melissa Castan, "The International Covenant on Civil and Political Right: Cases, Materials, and Commentary (2nd edn, Oxford University Press 2004) 4.

[119] Joseph Sarah and Melissa Castan, 'The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary (3rd edn. Oxford University Press 2013)4.

[120] Convention on the Prevention and Punishment of the Crime of Genocide, 78 UNTS 277, 9 December 1948, entered into force 12 January 1951; also see The Geneva convention relative to the treatment of prisoners of war (G III-1949), Geneva Convention relative to the protection of civilian persons in times of war (Geneva IV-1949).

[121] The Convention on the elimination of racial discrimination adopted pursuant to Gen Ass. Res. 2106 17(XX) of 21 Dec.1965); Also see the convention on the rights of the child adopted by Gen. Ass. Res. 44/25 of 20 November 1989 and entered into force 2 September 1990; The Geneva Convention on the status of the refugee (GCSR)Adopted in Geneva on 28 July 1951 and entered into force on 22 April 1954

interpretation that strengthens the holistic approach of interpretation offered by the Vienna Convention of the Law of Treaties (VCLT).

This study has been limited to understanding the limitations and the implementation approach of Cameroon concerning the Covenant and limited to specific rights. Nonetheless, it recognizes the role that other treaty bodies and charter base approaches to monitoring human rights and especially the new review process under the Universal Periodic Review (UPR) play in monitoring state attitudes towards specific rights.[122] Within the period of the first review process, two autocracies in Africa South of the Sahara ratified the Convention against torture.[123] The UPR has proved its appeal with a 100 percent participation rate in the first review process. The second and third review processes were also concluded successfully. Cameroon's participation in these three review processes has reflected its participation under the individual treaty body mechanisms. While Purna's argument that the level of participation is because of the 'discussion of peers' approach unlike a review by 'expert approach'[124] of the treaty bodies is correct, ongoing studies have shown that the level of participation in such processes alone provides essential tools to monitor state behaviour and to determine their understanding of their obligation. In comparison to the UPR that also deals with thematic issues encompassing all the considered rights, the Human Rights Committee is an expert-led monitoring body as opposed to the Charter base and state-led approach under the UPR. There is also evidence that the practicalities of the UPR are also divorced from its stated goal of 'complementing and adding value' to the work of treaty base approaches. De Frouville explains that in areas where the "Committee points out areas of concern and made recommendations in the most accurate manner, the immense majority of states taking the floor during the UPR have focused on praising a country for its significant achievements in the field of human rights, including its 'pluralist' democracy, the freedom of the media and the interaction with civil

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[122] General Assembly, 'Establishing the Human Rights Council and the Universal Periodic Review,' 15 March 2006, A/RES/60/251.

[123] Rwanda (15 December 2008) and Democratic Republic of Congo (21 September 2010)

[124]Purna Sen, 'Universal Periodic Review. Lessons, hopes and expectations' (Commonwealth Secretariat 2011)45.

society…"[125]. As examined below, despite the Covenants appeal, not all the substantive and procedural rights here considered are written in absolute terms.

3. THE SPECIFIC ARTICLES OF THE COVENANT CONSIDERED

International efforts to protect human dignity and to stop arbitrary actions in the arrest, deprivation of liberty and trial of persons, whether at the domestic or international level, have remained the primary inspiration behind the erection of both domestic and international institutions on the one hand and domestic legislation and international human rights treaties on the other. As Donnelly and Rhoda have argued, the conception of human dignity, in their social and political aspects, express an understanding of the inner nature and worth of the human person and their proper relations with society.[126] It is with this mindset that in developing the post-World War II (WWII) foundation for the peaceful coexistence of peoples and states, the drafters of the United Nations Charter 'reaffirm faith in fundamental human rights, in the dignity and worth of the human person'.[127] It was an affirmation and a recognition which is prominently reflected in the proclamation of the basic rights and freedoms catalogued as the Universal Declaration of Human Rights.[128]

The broad range of rights contained in the Covenant makes it challenging to produce and analyse a state party's obligation in such a qualitative study. The focus on these selected rights is rooted in their centrality of their suppression for the survival of the Cameroon regime. While the violation of other fundamental Civil Rights which Goldstein refers to in his definition of repression as first amendment rights remain high in Cameroon, the restrictions on individuals' civil rights, aimed at limiting the coordination and mobilization capacity of groups and

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[125] Olivier de Frouville, "Building a Universal System for the protection of Human Rights: The way forward in 'M. Cherif Bassiouni and William A. Schabas, New Challenges for the UN Human Rights Machinery" (Intersentia, Cambridge 2011)250.

[126] Jack Donnelly and Howard E. Rhoda (1986) supra note 81 p.802

[127] United Nations Charter on Trust territories (1946), preamble

[128] Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR), preamble.

individuals remain a general phenomenon across different regime types. The way these limitations are carried out is crucial to its effectiveness and the survivability of the Cameroon regime.

It must also be noted that the method used by Cameroon to prevent the enjoyment of what Goldstein describes as first amendment rights are torture, deprivation of liberty, cruel inhuman and degrading treatment and the use of kangaroo courts sometimes through military tribunals to deter political opponents. The violation of these rights is essential to instil fear, prevent free speech, freedom of association and even freedom of conscience and thought. In its General Comment 35 on article 9, the Committee emphasised this point when it stated that the deprivation of liberty and security of persons, torture, unfair trials and lack of remedy have historically been the principal means of impairing the enjoyment of other rights.[129]

Davenport has also argued that these rights are concerned with individual survival and security; such as freedom from torture, 'disappearance,' imprisonment, extrajudicial executions, and mass killing.[130]As Lupu also posits, the cost of prosecutable information on these rights is quite high and leads to fewer litigations, especially under autocracies. The high cost of prosecutable offenses is attributed to whether, a) the litigants in such rights violations have either been deprived of their liberty and cannot provide the information acceptable in court; or b) the government can effectively prevent the accusers from having access to such information through denial of their presence or through hiding such information; and c) the accusers and government interests are at variance[131]. Such restrictions serve the interest of the state, and as Dai argues, 'to assess states' interests in monitoring, we need to know whether they have incentives to protect the potential victims of noncompliance. Such incentives, he argues, will

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[129] Human Rights Committee, General Comment 35, article 9, UN Doc. CCPR/C/GC/35 of 16 December 2014) para 2.

[130]Christian Davenport, "state Repression and Political Order' (2007b)10 American Review of Political Science 1, 3

[131] Yonatan Lupu, "Best Evidence: The Role of Information in Domestic Judicial Enforcement of International Human Rights Agreements" (2013) International Organization, 67, pp 469-503, 475

depend on who the victims of noncompliance are and whether their interests are aligned with that of their states'.[132] When the victims of one country's noncompliance are domestic non-state actors, as in human rights regimes, this state does not represent the victims' interests.[133] Consequently, it is a fact that while violations of such rights are quite rife in Cameroon, domestic remedies for such violations are absent. The lack of such remedial possibilities has implications on the respect of articles 2(3) and 14.

In their 1999 study on why some states abuse personal integrity rights, Poe, Tate and Keith argued that the commission of these inhuman actions are the most effective means for these countries to achieve their ends.[134] They set out and developed five categorisations that explained different levels of personal integrity rights violations. Cameroon fits category three made by Poe, Tate, and Keith in their study of personal integrity rights. Based on their assessment and as stated in category 3, under such a system there is extensive political imprisonment or a recent history of such imprisonment. Execution or other political murders and brutality may be typical. Unlimited detention, with or without trial, for political views is accepted.'[135] Their approach to personal integrity rights investigation is one that emphasises the lack of an effective mechanism that constrains or check the coercive power of the abusing state.

The selected rights are also rights with limited or no qualifying clauses that justify their violation under certain circumstances. These are also rights that manifest the notion of the special status of the human rights law in the concept of non-reciprocity and states positive and negative obligations from both a vertical and horizontal perspective.

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[132] Dai, Xinyan, 'International Institutions and National Policies' (New York: Cambridge University Press 2007)6.

[133]Ibid p. 6

[134] Steven C. Poe, C. Neal Tate and Linda Camp Keith,(1999) supra note 4 p. 296

[135] Ibid 297.

4. THE AUTOCRACY UNDER CONSIDERATION

In Africa South of the Sahara, Cameroon is amongst 21 of the regimes classified as authoritarian, and as Freedom House in its 2014 reports states, these regimes were beginning to abandon the quasi-democratic camouflage that allowed them to survive and prosper in the post–Cold War world.[136] In its 2017 report, Cameroon is classified as 'not free' with a score of 6 for civil liberties and 6 for political freedom with 1 being most free and 7 being least free. Cameroon also has a cumulated aggregate score of 24 with 0 being least free and 100 being most free. According to the Economist Intelligence Units Index of Democracy of 2017, Cameroon 's score as an authoritarian regime rose from 3.46 to 3.61 in 2017 with 0 to 4 classified as authoritarian regimes and 8 to 10 classified as full democracies. The categorisation approach of the Economist Intelligence Index as reflected in the theoretical approach in explaining human rights violations of personal integrity rights under autocracies are based on the repression explanatory framework. In explaining Goldman's 1978 definition of repression,[137] Davenport argues that:

Like other forms of coercion, repressive behaviour relies on threats and intimidation to compel targets, but it does not concern itself with all coercive applications (e.g., deterrence of violent crime and theft). Rather, it deals with applications of state power that violate First Amendment–type rights, due process in the enforcement and adjudication of law, and personal integrity or security [138].

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[136] Freedom House. Discarding Democracy. Return to the Iron Fist. (Freedom in the world 2015) 6. https://freedomhouse.org/sites/default/files/01152015_FIW_2015_final.pdf accessed 18.10.2015.

[137] Goldstein 1978 as quoted in Davenport 2007b supra note 130: repression involves the actual or threatened use of physical sanctions against an individual or organization, within the territorial jurisdiction of the state, for the purpose of imposing a cost on the target as well as deterring specific activities and/or beliefs perceived to be challenging to government personnel, practices or institutions.

[138] Christian Davenport, state Repression and Political Order supra note 130 p. 2.

The classification between authoritarianism and totalitarianism informed the typology of the 1950s to 1960s in the classification of non-democratic regimes. Post-1990 non-democratic states have embraced a high level of openness. In his 2002 studies, Diamond explained a new typology that lies between these two variances and which are neither distinctly democratic nor conventionally authoritarian.[139] Diamond describes such multi-party autocracies or what he terms authoritarian electoral regimes as ones in which 'the existence of formally democratic political institutions, such as multiparty electoral competition, masks (often, in part, to legitimate) the reality of authoritarian domination'.[140] Based on Diamond's classification of such regimes Cameroon with its over 130 political parties, multiparty parliament, and regular electoral calendar will fall between competitive authoritarian and hegemonic electoral authoritarian regimes.[141] This description is also reflected in the 2013 study by Wahman et al. in which they distinguish three types of authoritarian regimes by their methods of 'accessing and maintaining power.' Wahman et al. argue that the methods by which authoritarian regimes maintain power, correspond to three generic types of regimes classified as monarchies, military regimes and electoral regimes.[142] Electoral authoritarian regimes are the ones which allow for some level of opposition participation and contestation and even a high degree of integration of elected opposition officials within the ruling system to legitimate state policies. According to Davenport such mixed and transitional regimes, which combine elements of autocracy and democracy, are the most coercive[143].

In her study on why autocracies sign up to the Convention Against Torture, Vreeland validates Davenport's conclusion and argues that in Cameroon, Gabon, Nigeria, Mauritania, Rwanda, and Cote d'Ivoire, the average score of torture jumped up by two scores following a transition

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[139] Larry Diamond. "Thinking about Hybrid Regimes", (2002)21 Journal of Democracy 13,25.

[140] Ibid p.24.

[141] Ibid p.31.

[142] Michael Wahman, Jan Teorell and Axel Hadenius, "Authoritarian regime types revisited: updated data in comparative perspective" (2013) 19 Comparative Politics 19, 21.

[143] Christian Davenport, state Repression and Political Order supra note 130 p. 11

from single-party autocratic rule to a multiparty system.[144] It is also in such states that the basic principle of 'pacta sunt servanda'[145] in both domestic constitutional and Covenant implementation is seriously challenged. This democratic formalism continues to mask the domestic jurisdiction from coercive international oversight, especially when it comes to dealing with personal integrity rights. The strong desire of Cameroon to survive as a multiparty authoritarian state has translated into constitutionalism that constantly seeks to extend the powers of the executive, suspension of habeas corpus and the prevention of judicial scrutiny and oversight.

Cameroon, like most other autocracies in the region, has developed pluralist institutions[146]as a means of sustaining and soliciting the cooperation of the opposition. Benin has more than a dozen political parties with two represented in the legislature: Burundi is also a multiparty state with more than a dozen political parties and with three represented in the legislature: Cameroon has more than 150 legalised political parties with five represented in the legislature. Gandhi and Przeworski argue that such autocratic institutions are not just 'window dressing', because they are the result of strategic choices and have an impact on the survival of autocrats and have effects on policy outcomes.[147] As an autocracy with a long term serving autocrat who has endured long periods of political upheavals, it has survived through impunity that co-exists with neo-liberal political institutions that have incorporated these rights. These institutions are designed to perpetuate the survival of the state and the president through persistent cosmetic cooperation between the domestic order and international human rights institutions.[148] Its political and legal colonial heritage, which manifests itself today, in a common post-colonial political regime and legal systems, have a significant influence on the way it implements its

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[144] James Raymond Vreeland, "Political Institutions and Human Rights: Why Dictatorships Enter into the United Nations Convention Against Torture', (2003) 62 International Organisation 65, 76.

[145] Vienna Convention on the Law of Treaties supra note 84 p. 26

[146] Christian Davenport ' state Repression and Political Order' supra note 133 at 11.

[147] Jenifer Ghandi and Adam Przeworski, "Authoritarian Institutions and the Survival of Autocrats" (2006a) 40 Comparative Political Science 1279,1280.

[148] See chapter 5 where the reporting process is discussed to highlight the interaction

obligation under the Covenant. Despite Cameroon having some form of a bi-jural legal system due to this historical reality, it is mostly a Civil Law system. The distinctive nature of its Civil Law regime lies in its emphasis on how individual rights are protected from state interference. Its basic premise is that the government executive and the legislature exist in order to regulate individual behaviour through a series of constitutional provisions, decrees, and criminal procedure codes. However, as is discussed in Chapters 5 and 6, these realities concerning the theory are insufficient in practice in guaranteeing and protecting the rights of its citizens. Its relationship with the Human Rights Committee when it comes to dealing with individual communication is critical to understanding the gap between theory and practice in the guarantee and protection of these rights.

As a state party to the Covenant and its Optional Protocol, Cameroon has dealt with several complaints from persons subject to its jurisdiction who claim a violation of their rights under the Covenant. The Committee has had to deal with less than 60 cases from all the autocracies in this region put together. While the Democratic Republic of Congo has had to deal with 21 cases concerning varying violations, it has failed to respond on 15 of those cases while it has provided information on only 5 of them. According to the treaty database, Cameroon has had to deal with 9 cases, and it has responded to most of them, including providing a remedy concerning compensation. Togo has had 5 cases according to the treaty database and has substantively responded to those cases. Angola has had to deal with 2 cases but has failed to cooperate with the Committee in consideration of any of the communication. Benin, Burkina Faso, Mali, Guinea, and The Gambia has not dealt with any case. Equatorial Guinea has had 5 cases but has never submitted a substantive state response to any of the cases. Madagascar has had 5 cases with the last submission being in 1983[149] with the views adopted in 1987 and there is no data found on any of those cases.

5. THE AUTOCRATIC POLITY

In his study on the phenomenon on 'imperial presidency' in Africa South of the Sahara, Kwasi argued that the phenomenon and its persistence in post-authoritarian Africa are rooted first in aspects of its post-colonial history and evolution of the African state; and, second, in aspects

[149] Eric Hammel v Madagascar, No. 155/1983

of its contemporary constitutional design.[150] On the influence of postcolonial regimes, Kwasi further noted that postcolonial African presidents saw themselves as a modern reincarnation of the traditional African 'chief'[151] and the custodian and preserver of hard-won independence. This is a phenomenon that still thrives today and post-1990 presidents have rephrased the traditional chief argument in the form of national security, a threat of political instability to perpetuate themselves as the sole instruments of order. Such threats have translated into a constitutionalism that does not only give these presidents far-reaching powers but also undermine oversight by other branches of government.

The way a country generally interprets and implements its obligation under the Covenant depends on its desire to either protect or violate these rights as a matter of policy. Such an interpretive pattern is also highly dependent on the nature of the regime, the organisation of its political institutions and the benefit it exacts from either course of action. Political 'institutions operating under dictatorships matter in the attitude of these dictatorships to their commitment'. For Cameroon, repression has another dimension: restrictions on individuals' civil rights, aimed at limiting the coordination and mobilization capacity of groups and individuals[152]. Consequently, the institutions of the state are constructed in a way that sustains such policy options because they are the result of strategic choices and have an impact on the survival of autocrats[153]. They also influence policy outcomes and at the same time reflect inclusive domestic institutions that reflect a preparedness on the state's part to respect its obligations.

The expectation that a transition from a one-party military style autocratic rule which is unaccountable and lacks consent to a multiparty autocratic rule would usher in an atmosphere of improved economic performance and respect of human rights, has failed to materialise in Cameroon. There is hardly any doubt that post-1990 autocratic states witnessed great socioeconomic and political transformations. The greatest of these transformations has in the

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[150] Kwasi Prempeh supra note 50 p.764

[151] Ibid p. 776.

[152]Escribà-Folch, Abel. n.d, "Repression, Political Threats, and Survival under Autocracy" International Political Science Review, forthcoming.

[153]Jenifer Ghandi and Adom Przeworski, supra note 147 p.1280.

areas of constitutionalism which entrenched civil and political rights, modified the institutions of the state and institutionalised 'electoral formalism' as the means of power alteration. Cameroon's amended constitution has entrenched charter of rights and a clear separation of powers between the executive, legislative and judiciary. Most of these constitutions have also entrenched a very powerful executive with powers that stretch into the legislative and judicial realms.[154] Most of these autocracies have constitutional provisions which guarantee the right to judicial review by citizens[155] while others restrict such rights to the executive and the legislature.[156]

Despite these constitutional guarantees, Kwame argues that 'the restoration and re-empowerment of parliaments and courts in Africa have not altered the presidential orientation of African governments or diminished presidential supremacy within the political sphere.[157] This imperial executive oversight in Cameroon has dramatically reduced the powers of other balancing institutions because a powerful executive whose survival is guaranteed by the way the other institutions' function guarantees itself such powers as may be reserved for the judiciary or legislature. For example, the independence of the judiciary, which is an important arm in the implementation regime and the interpreting of the constitution, is guaranteed by the executive.[158] To ensure judicial independence Keith has argued that a

'formal guarantee of judges', which can protect a judge from a dictatorial executive or an overzealous legislature and shelter him or her from retaliation should the judge position himself or herself between the people and an abusive state – and this could be especially important during states of emergency – must be guaranteed.[159]

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[154] Constitution of Togo, Article 115, Constitution of Cameroon, Article 47(2).

[155] Constitution of Zimbabwe, Article 167(5), Constitution of Togo, Article 104, Constitution of Uganda, Article 137(3), Constitution of Congo Brazzaville, Article 148.

[156] Constitution of Cameroon, supra note 40, article 52(5).

[157]Kwasi Prempeh supra note 152 p. 773.

[158] Constitution of Cameroon, article 37(3).

[159]Linda Camp Keith, 'Judicial independence and human rights protection around the world' (2002). 85 Judicature 195, 200.

On the contrary, judges in Cameroon are appointed by the President for a specific period.[160] The budget for judges is overseen by the parliament which is an extension of the executive as seen in the relations between the executive and national assembly.[161]

Cameroon is a presidential Republic, and despite a formal legislature that makes laws, actual legislative power rest with the executive. The executive is also empowered to rule by decree and to appoint members of the upper house of parliament as well as those of the Constitutional Council.[162] Elections are regular features that are used as a means of selecting members of the legislature and executive. But in most cases, these electoral formalisms have simply become a common showcase tool that is mastered and enforced from top to bottom. This kind of legitimating process has significantly altered the way they manage the political opposition and deal with country's obligation under the Covenant. While regular elections have been conducted, they have lacked fairness, excluded potential candidates and primarily been rigged in favour of the incumbent. Since 1990, Cameroon has conducted four presidential elections, four parliamentary elections. A centralised approach to governance and control, accounts in no small extent for the gap between theory and practice as far as respect for human rights are concerned.

Decentralisation in Cameroon in its current form has been based notably on the constitution embodied in Law No. 96/06 of 18 January 1996.[163] According to this provision of the constitution, "decentralised local entities of the republic shall be Regions and Councils". Decentralisation, according to the explanatory statement of the law on decentralisation, is designed to devolve the unique powers of the state to Regions and Councils and appropriate resources to regional and local authorities[164]. For instance, elections organised around this

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[160] Constitution of Cameroon, article 37(3).

[161] Ibid, article 25.

[162] Ibid, article 20(2)

[163] Ibid, article 55.

[164] Law N° 2004/017 of July 22, 2004 on the Orientation of Decentralisation; Law N° 2004/018 of July 22, 2004 laying down rules applicable to Councils; Law N° 2004/019 of July 22, 2004 laying down rules applicable to Regions.

decentralisation objective are rigged in favour of the ruling party, especially in areas of strategic economic importance. In urban areas where fraud has been difficult, the government has appointed Government Delegates as chief executive officers over elected Mayors. Such practices have given control of political authority to the government in opposition won municipalities. In other smaller municipalities, the budget or program of action of the municipality is subject to approval by Divisional Officers appointed by the Executive.

Constitutionalism has become a tool in the hands of the imperial executive to manipulate the electoral calendar, institutionalise life presidencies, and entrench unique domestic approaches to interpreting and implementing its obligation under the Covenant. It is a system which coexists with a neo-patrimonial approach to governance which is an ethnic-driven approach. This is brought into sharp focus in a comparative study on the variation of human rights regimes and human rights protection across the world. In this study, Landman establishes that the gap between ratification and compliance is most significant for countries in Africa South of the Sahara and for non-democracies[165]. The conclusion of Landman and others have far reaching implications on how the domestic constitutional order absorbs these rights and how the corresponding institutions enforces state obligations under the Covenant.

6. PATTERNS OF INCORPORATION OF THESE RIGHTS

Cameroon, like most autocracies in Africa South of the Sahara, has formally incorporated these rights as set forth in the Covenant.[166] Most of the Covenant rights including those under investigation are vaguely protected in the preamble of the constitution of Cameroun while the penal and civil procedure codes define the scope of protection and penalties associated with violations. Despite this constitutional guarantee, some have not been expressed in absolute or

[165] Landman, Todd, 'Protecting Human Rights. A comparative Study.' (Martinus Nijhoff Publishers 2011)123.

[166] Constitution of Angola (articles 31 and 36), Benin, 15, 18 and 19, Burkina Faso, 2, 3 and 4, Burundi, 21 and 25, Cameroon, preamble (it should be noted that the preamble is an integral part of the Cameroon's constitution), Central African Republic, 1, 3 and 5, Congo, 8, 9 and 10, Gabon, 1 and 4, Democratic Republic of Congo, 16 and 18, Chad, 17, 18 and 24, Togo, 13, 16 and 18, Rwanda, 10, 15, Ethiopia, 16, 18, 19 and 21, Uganda, 23, 24 and 28

categorical terms, while the true meaning of others is buried within other provisions. This is a pattern that has been observed in other autocracies. In Gabon for example, while the prohibition of torture and other cruel, inhuman and degrading treatment is expressed in categorical terms, it appears to be buried within the framework of the protection of other rights. This ambiguous protection clause obscures the broad interpretive approach of the drafters and exposes the text to varying interpretation. It states that "each citizen has the right to the free development of his person but respecting the rights of others and public order'. Moreover that 'no one will be humiliated, mistreated, or tortured, especially when he is in a state of arrest or imprisonment"[167]. In the Democratic Republic of Congo (DRC), the protection of torture and other cruel inhuman and degrading treatment is subject to many interpretations. While in article 16 of the constitution of the DRC, the right to the physical integrity and the free development of their personality is protected, it is done so subject to the respect of "the law, public order, the rights of others and public morality". In the same provision, the protection against cruel, inhuman or degrading treatment is stated as follows: "no one *maybe* subject to cruel, inhuman or degrading treatment". The "may be" [168] is a qualifying term subject to different interpretations and in conflict with the case law of the HRC on the absolute nature of the protection of torture. Such an approach is in sharp contradiction to the wording in the Ugandan constitution. "No person *shall be* subjected to any form of torture, cruel, inhuman or degrading treatment or punishment".[169]

Torture is a crime of violence against the person and all countries have laws dealing with it. Countries are obliged to criminalise torture as to create an international crime and then be able to exercise universal jurisdiction over the crime. There are explicit constitutional provisions that forbid torture even though some provisions have vaguely defined torture and failed to criminalise the act of torture in the Statute. In its 2012 Concluding Observation on Togo's second periodic report, the Committee Against Torture emphasized the need for the adoption of legislation that clearly defines and criminalises the act of torture. The Committee requested

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[167] Constitution of Gabon, article 1(1).

[168] It is the same word used in the constitutions of Chad: No one may be subjected, either to degrading and humiliating acts 'sévices' or treatment, or to torture. (article 18): Togo, art. 21

[169] Constitution of Uganda, article 24.

that Togo "take the necessary measures to incorporate in the Criminal Code all the elements of the definition of torture contained in article 1 of the Convention, as well as provisions criminalising and penalising acts of torture with penalties commensurate with their gravity"[170].

As Keith argues, "the best way to safeguard individual freedoms is through the enumeration of rights, which extends the reach of the rule of law and provides individuals' protection from the abuse of government power"[171]. While formal as opposed to actual constitutional protection does not guarantee the enjoyment of these rights, they are the first step towards ensuring domestic protection since they provide standards against which to measure the action of states. The nexus between such protection and the actual enjoyment of these rights, is dependent on several internal factors, among which is the nature of the regime. Government agencies instigate the violation of articles 7, 9 and mostly carried out by the police, military and intelligence agencies and in some cases surrogate agencies linked to the state. Most of the violations take place during pre-trial detentions and in some cases during government actions to prevent mass protests and other opposition activities against the state. Administrative detentions have also been used to circumvent state obligation under article 14 and to provide the cover for inhuman treatment of persons in detention. These policy options also have far-reaching implications on the respect of articles 2(3) and 14 of the Covenant and have always been used by respondent states to argue against complainants' non-exhaustion of domestic remedies.[172]

It is evident that apart from systematic state action through its agencies to ensure its survival, power relations between the abuser and the abused, and lack of accountability within the police, military, and intelligence agencies are key driving forces that explain infringement on the dignity of ordinary people. Treaty ratification by itself does not guarantee the protection of

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[170]Human Rights Committee, Concluding Observations on the second periodic report of Togo, adopted by the Committee at its 49th session 29 October-23 November 2012 UN Doc. CAT/C/TGO/2 para. 7.

[171] Linda Camp Keith, 'Constitutional Provisions for Individual Human Rights (1977-1996): Are They More than Mere Window Dressing?' (2002) 55 Political Research Quarterly 111, 112.

[172] Gorji v Cameroon, No. 1134/2002, also see Akwanga v Cameroon, No. 1813/2008.

these rights. While monitoring and other domestic measures ensure avenues of protection and redress, the scope to which these obligations are interpreted and implemented accounts in no small extent for whether these rights are guaranteed or violated. In practice, adequate safeguards to protect those deprived of their liberty from cruel inhuman or degrading treatment by both correction guards and other detainees are absent.

Despite vague legislative provisions in the constitution of Cameroon ensuring due process and the right to habeas corpus,[173] more than 50 percent of those detained are in pre-trial detention. Access to lawyers is made more difficult by the absence of legal aid, and in cases where detainees have been subjected to torture, the provision of medical support is limited. It is not the absence of institutions that compounds human rights abuses; instead, it is the independence and effectiveness of these institutions in areas of investigation and the application of relevant rules of safeguard that ensures and guarantees effective due process.

The gap between theory and practice in the implementation process in Cameroon and especially in those areas associated explicitly with their obligation under articles 2(3), 7, 9, 10 and 14 of the Covenant and protocol form part of the broader structural problems, including the implementation of their obligation under the Covenant.

7. INTERPRETATION OF THE COVENANT

Interpretation of the Covenant is a crucial element in the implementation process both at the domestic and international levels. The necessity for the definition of the scope and content of guaranteed rights arises from the broad and open nature of both the constitutional and treaty languages of the states and treaty bodies. This necessity is also rooted in the textual and normative differences of the wordings of the obligations and the heterogeneous nature of both the political and legal systems of states parties. Beyond the textual and contextual framework that shapes interpretation, the customary norms within which both text and context operate can

[173] Cameroon, Section 584 of Harmonised Criminal procedure code, Zimbabwe Constitution, article 50(1e), UC, article 23(9), DRC, article 27(presumption of innocence until proven guilty), Togolese Constitution, article 15, The Gambian Constitution, article 19(3b), Nigeria constitution does not expressly require detained persons to challenge the legality of their detention but article 4 seems to guarantee this right to the state rather than the detained person.

be constraining factors. Based on general international law, the Vienna Convention on the Law of Treaties lays down the methodological approach in the interpretation of General International law.

In his brief foreword to Gardiner's book on treaty interpretation, Sir Michael Wood submits that "interpretation is an art, not a science... and in terms of the tools necessary to master this art, he prescribes 'studying the practice"[174]. This entails training and immersion in the law and interaction in the specific area within which a dispute of understanding arises. Wood's prescription holds true within a domestic context that observe rules consistent with the spirit and obligation of the Covenant.

Generally, the interpretation of international law is a critical tool in understanding the scope of duty bearers' positive and negative obligation. Its importance can be gleaned from the fact that most adjudications between complainants and the autocratic state, whether under treaty bodies or domestic courts on right violations, have been centred on the extent to which these states interpret their obligations under the Covenant. Shelton argues that, "as a matter of legitimacy, states have conferred on treaty bodies, a monitoring role, one of gathering information, developing a body of jurisprudence and engaging in constructive dialogue to further the object and purpose of the Covenant and to define and interpret the obligations contained in the Covenant"[175]. Under the rules of operation of the Covenant, the exercise of its interpretation is undertaken by the Human Rights Committee (HRC) which uses several mechanisms to interpret the obligation of states parties. As an appellate jurisdiction for the right bearer, the HRC defers primary authority for treaty interpretation to the states parties. Kerstin Melchem argues that the Committee's interpretative role helps establish a "normative content of human rights and in giving concrete meaning to individual rights and state obligations"[176]. The Committee, as Shelton also argues, uses General Comments (GC)[177] as a device to express its

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[174] Richard Gardiner, "Treaty Interpretation' (The Oxford University Press 2008) xiii.

[175] Shelton Dinah. (Holger P. Hestermeyer et al. (eds) 'The Legal Status of Normative Pronouncements of Human Rights Treaty Bodies. Coexistence, cooperation and solidarity' (2011) Martinus Nijhoff Pubblishers 553, 559.

[176] Ibid 562.

[177] Kerstin Melchen,supra note 91 p. 905.

considered legal opinion on the scope of a right or obligations contained in one of the provisions of the treaty it supervises.[178] For example, General Comment 35 specifies in a detailed manner the spirit of article 9 and the safeguards contained therein. Liberty of person concerns freedom from confinement of the body, not a general freedom of action while security of person concerns freedom from injury to the body and the mind, or bodily and mental integrity. It states that "the right to security of person protects individuals against intentional infliction of bodily or mental injury, regardless of whether the victim is detained or non-detained"[179]. This involves taking action to prevent and to remedy. The General Comment sets it out as follows: " states parties must take both measures to prevent future injury and retrospective measures, such as enforcement of criminal laws, in response to past injury"[180]. The General Comment is exhaustive in its detailed clarification of the scope of article. This broad interpretation ensures that states parties do not use domestic law to restrictively interpret their obligation as was seen in the case of "Gorji v Cameroon"[181].

The interpretive doctrine of the Committee is dictated by the nature of the Covenant as an international human rights treaty and the nature of the rights under general international law and its case law. It is argued that the work of the Committee is very helpful or even crucial to the correct and comprehensive understanding of the object and purpose of the instrument and exact scope and meanings of the requirements set forth in its provisions. While it is governed by the general principles laid out under articles 31-33 of the VCLT, its special status as a human rights treaty also gives the Committee specialised tools in its interpretation. The relevance of the VCLT in the interpretation of the Covenant could be seen in a 1986 case in which in interpreting the scope of article 22 of the Covenant, the Committee stated that

"in interpreting the scope of article 22, the Committee has given attention to the 'ordinary meaning' of each element of the article in its context and in the light of its object and purpose

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[178] For the General Comments of the HRC, see UN, Human Rights Instruments: Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, 27 May 2008, UN Doc. HRI/GEN/1/Rev.9 (Vol. I) and (Vol. II).

[179] Human Rights Committee, General Comments No. 35, Liberty and Security of Person, UN Doc CCPR/C/GC/3 para 9 at 2

[180] Ibid

[181] See chapter 6

(article 31 of the Vienna Convention on the Law of Treaties). The Committee has also had recourse to supplementary means of interpretation (article 32 of the Vienna Convention on the Law of Treaties)"[182]

Relying on standard approaches of interpretation catalogued in the VCLT or its General Comments on the various rights does not mean interpretation of the Covenant is a static business. In Judge v. Canada, the Committee emphasised the dynamic nature of its interpretive doctrine as follows

While recognizing that the Committee should ensure both consistency and coherence of its jurisprudence, it notes that there may be exceptional situations in which a review of the scope of application of the rights protected in the Covenant is required, such as where an alleged violation involves that most fundamental of rights – the right to life - and in particular if there have been notable factual and legal developments and changes in international opinion in respect of the issue raised[183]

The necessity for dynamism was also seen in the dissenting opinions under article 14 in Akwanga v Cameroon and under article 6 in "Turaeva v Uzbekistan"[184]. Akwanga is discussed in detail in chapter 6, section 5. In Turaeva, the Committee stated that "the imposition of a death sentence after a trial that did not meet the requirements for a fair trial amounts also to a violation of article 6 of the Covenant". It however then concluded that there has not been a violation of article 6 in the case in question because "[185]. Despite this view, the Committee concluded that because the state party had commuted the death sentence to life imprisonment, there was no need for a separate consideration of the authors claim under article 6. In their dissenting opinions, Committee members Ms. Christine Chanet, Ms. Zonke Zanele Majodina and Mr. Fabián Omar Salvioli observed that

In the interpretation of human rights law, and in the name of progress, an international body may amend a view it previously held and replace it with an interpretation that provides greater

[182] J.B. et al. v. Canada No. 118/1982, para. 6.3

[183] Judge v Canada, No.829/1998, para 10.3

[184] Turaeva v. Uzbekistan, No. 1284/2004,)

[185] Ibid para. 9.4

protection for the rights contained in an international instrument: this constitutes appropriate and necessary development of international human rights law[186]

As a Human Rights treaty, the Covenant is perceived to possess distinguishable characteristic to public international law and consequently needs special tools in its interpretation. Writing about this special status, Orakhelashvili argues with reference to the European Convention on Human Rights (ECHR) that, the "obligations contained in the convention are of an objective nature and protect the fundamental rights of individuals and not the interest of the contracting states". The special character of the Covenant arises from the obligation of states towards individuals. Concerned primarily with the endowment of individuals with rights. The principle of inter- state reciprocity has no place.

The principle of non-reciprocity has also been reflected in the advisory opinion on reservations of the ICJ. It emphasized the special nature of the Genocide Convention by stressing its individual and holistic protection character. This principle is premised on the fact that while general international law regulates activities between states, the Covenant regulates activities between states parties and all individuals within its territory and subject to its jurisdiction. Despite this emphasis, there is a limit to reciprocity. This limited nature of reciprocity is also the subject of Article 20(5) of the VCLT. Despite the non-reciprocal nature of the obligations in the Covenant, the Committee has invoked article 20(5) to deal with what it perceived as problematic reservations being entered by states parties.

The Covenant however fails to provide guidelines governing the interpretation of articles 2(3), 7, 9, 10 and 14 even though on the other hand it has used the General Comments to, among other things, deal with 'questions related to the application and the content of individual articles of the Covenant'. The interpretation of the obligations related to the stated rights depends on their status under international law. The Covenant's interpretation as defined in its article 5 and the General Comments of the Human Rights Committee remain the guiding principles of the interpretation of articles 2(3), 7, 9, 10 and 14 and all other rights under the Covenant. The importance of these principles follows the broad nature of the codification of these rights under the Covenant, the changing social reality and the development of the jurisprudence of the Committee. However, like most treaty-based human rights systems, it only plays a

[186] Ibid appendix para. 6

complementary role to the primary role of the state in the interpretation, implementation and protection of these rights

For example, article 2(3) has an accessory character. As Nowak wrote, a violation can only occur in conjunction with the concrete exercise of one of the substantive rights ensured by the Covenant. In concrete terms, a violation of article 2(3) will only occur when a state party fails to provide effective remedy for a violation of any of the substantive rights in the Covenant[187]. The peremptory status of article 7 which forbids torture raises obligations that are absolute in nature. The jurisprudence of the Committee has also dealt with the interpretation of article 10(1) by putting in place certain minimum standards which state parties must respect. The interdependent nature of these rights is also a subject dealt with in General Comments 20. It is argued by the Committee that 'the prohibition in article 7 is complemented by the positive requirements of article 10, para. 1, of the Covenant, which stipulates that, 'all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person'. Even though article 9 appears as a qualified right governed by the principles of proportionality, acceptability within a democracy and within certain jurisdictions, its interpretation is broad to include protection of persons out of detention. In other cases, the interpretation of certain rights might be intrinsically attached to certain broad-based principles. For example, the interpretation of article 7 is attached to the protection of human dignity. And while torture is separated to cruel inhuman and degrading treatment by the severity of pain and motivation, absence of both might still be interpreted as torture when perceived as infringing on the inherent dignity of the victim.

Generally, interpretation is not a stand-alone concept. It is inter-woven in the complex multifaceted nature of human rights norms and the structure and nature of the different agencies involved with its utilisation. It is also dependent on whether the norm has a legal effect on the domestic legal system. International human rights norms in the form of laws and practices of foreign nations generally do not have any legal status in a domestic legal system, and therefore have been considered irrelevant in domestic judicial reasoning. In the case of Akwanga v Cameroon, the state party dismissed accusations of torture by arguing that 'torture and ill-

[187] Manfred Novak, "UN Covenant on Civil and Political Rights; CCPR Commentary (Kehl am Rheien 1993) 34

treatment are of a criminal nature and therefore the onus of proof is on the author'. About allegations that the complainants' rights to liberty and security have been violated, Cameroon argued that the SCNC is a secessionist movement, all actions of which are illegal and prohibited. In both instances, it failed to address its substantive obligation to investigate the claim of torture but rather focused its response on the steps it has taken to make the Covenant part of domestic reasoning. This approach cuts across many other autocracies within the same region. In responding to accusations of torture under article 7 of the Covenant in a case brought before the Committee by Zoumana Traore, Ivory Coast argued that Ivorian law (the Criminal Code and the Code of Criminal Procedure) protects citizens from violations as serious as those alleged under article 7. By citing the Ivorian Criminal procedure code, rather than focus on the specifics of the violation of article 7 raised by Zoumana Sorifing Traore, Ivory Coast emphasised procedural rather than substantive commitment to the Covenant. The emphasis on procedural commitment rather than on the specific steps taken to give effect to article 7 remains a disturbing trend that disregards both the reporting guidelines of the reporting process and its relevance in ensuring that these states live up to their Covenant obligations. It is through such restrictive patterns of interpretation that Cameroon defends its own record as evolutionary which challenges the object and purpose of the Covenant.

In line with its broad scope of interpretation, the Committee, in its views in Mariam Sankara et al v. Burkina Faso, stated that the interpretation of article 9 does not allow a state party to ignore threats to the personal security of non-detained persons within its jurisdiction. It is relevant to point out that Cameroon has consistently used 'lack of resources' to defend its incapability to protect the personal integrity of detained persons. It has deliberately ignored the scope of article 9(1) which has a wider field of application. In Dias v Angola, the Committee also stated that article 9(1) 'protects the right to security of persons also outside the context of formal deprivation of liberty' and that any interpretation 'which would allow a state party to ignore threats to the personal security of non-detained persons subject to its jurisdiction would render totally ineffective the guarantees of the Covenant.'

The nature of the Covenant dictates the interpretive doctrine of the Committee as an international human rights treaty. It is argued that the work of the Committee is 'very helpful

or even crucial to the correct and comprehensive understanding of the object and purpose of the instrument and exact scope and meanings of the requirements set forth in its provisions.'[188]

The role of the state as the primary guarantor of human rights is shaped by the nature of its political system, the nature of its constitutionalism and the stability of its actors. As it is shown in Chapter 3 below, Cameroon has evolved from a colonial state under France and Britain to an independent autocratic system with a constitutionality governed by excessive executive control. This has shaped state institutions and the values and principles that informs governance in all areas of society.

[188]Shiyan Sun, 'The Understanding and Interpretation of the ICCPR in the Context of China's Possible Ratification' 2007 6(1) Comparative Journal of International Law 17, 18.

CHAPTER 3

'To understand the social and political dynamics of the human rights experience in Africa, it is necessary to begin in the colonial setting. It is within the colonial setting that the contemporary idea of legal rights as entitlement, which individuals hold in relation to the state, first emerged'[189]

POLITICAL SYSTEM

1. INTRODUCTION.

Present-day Cameroon is a construct of two nations of distinct and highly competitive colonial legacies which have in a significant way, shaped its domestic political structure and influenced its human rights protection regime. Because constitutional systems matter in the protection of personal integrity and civil and political Rights in general, the influence of French colonial legacy on contemporary Cameroon constitutionalism fails to support the protection of these rights.

Despite the tenuous coexistence of two legal systems in Cameroon, the argument that Common Law systems support stronger judicial independence relevant to imposing constraints on governments' repressive tendencies[190] is made redundant in Cameroon by simple political considerations which make the Civil Law system the dominant legal theory in the country. The assertion of Keith et al. is partially supported by the fact that the British Common Law system has tended to produce more explicit and in-depth constitutions; whereas, former, French territories have tended to adopt shorter constitutions that merely set a general outline of

[189]Bonny Ibhawoh, supra note 22, p.845 5

[190] Linda Camp Keith and Ayo Ogundele, 'Legal Systems and Constitutionalism in Sub-Saharan Africa: An Empirical Examination of Colonial Influences on Human Rights' (2007) 29 Human Right Quarterly 1065.

governmental organization.[191] The argument that Common Law systems are designed to protect the individual from the state is also defeated in Cameroon by the dominance of the Civil Law system designed to protect the interest of the state. The protections offered by Common Law systems are in turn thought to be buttressed by a social commitment to the rule of law and institutional checks (e.g. an independent judiciary, separation of powers) that protect individuals from expropriation by the state.[192] These elements are lacking in Cameroon as is shown in Chapter 4.

Cameroon is a state-created through a marriage between international and domestic processes that have significantly shaped its political structure and domestic policies as far as the protection of specific human rights is concerned. Consequently, a proper understanding of its implementation approach to the rights of the Covenant under consideration would require a proper appreciation of the historical context that has given rise to the present political system. As Beth argues, human rights treaties do not exist in a vacuum. She argues that their negotiation and ratification reflect the power, organisation, and aspirations of governments that negotiate and sign them, the legislatures that ratify them and the groups that lobby on their behalf.[193]

Consequently, this chapter's principal argument is that the constitutional and judicial organisations that alters a state's attitude towards human rights protection are primarily a function of the political order that shaped their construction. That is why the relationship between the nature of the domestic political configuration and the respect of personal integrity rights is a function of both a country's historical development and its post-colonial construct as reflected in both its political and constitutional systems.

The chapter begins with a brief historical sketch on the 'creation of Cameroon.' It goes on to discuss the two principal colonial systems whose influence greatly shaped Cameroon's modern political system. French and British colonial legacies left a lasting impact on Cameroon's

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[191] Ibid p. 1071

[192]Martin Seymour Lipset, "The Social Requisites of Democracy Revisited: 1993 Presidential Address" (1994) 59 American Social Research 1-22, 4.

[193] Simmons Beth, "Mobilising for human rights. International in domestic politics" (Cambridge University Press 2009)12.

political system. It is not the aim of this chapter to give a detailed and chronological overview of the development of the political system and how it accumulated power to establish autocratic institutions that have led to the present-day system in Cameroon and its significance as a cornerstone of its implementation approach of the Covenant. Instead it attempts briefly to highlight the end of formal colonial rule as a setting for the creation of an independent autocratic Cameroon state and how such a political system has since been antithetical to a constitutional order favourable to the protection of personal integrity rights.

Welch identifies three features of colonial rule that tended to hinder the protection of human rights.

Colonialism, he argued, created states in which the promotion of self-government was, at most, a minor priority for the ruling powers until the last years of the colonial interlude. Little opportunity existed even after independence for redrawing the boundaries, helping to set the stage for political conflicts and later attempts at secession…' After this first phase, he argued 'an authoritarian framework for local administration was installed, reducing most indigenous rulers to relatively minor cogs in the administrative machinery and leaving until the terminal days of colonialism the creation of a veneer of democratization. And lastly 'European law codes were introduced and widely applied, notably in the urban areas, while traditional legal precepts were incompletely codified, relegated to an inferior position in Civil Law, and applied particularly in the rural areas. Legal recognition and protection of rights in the colonial states of Africa were belated and inadequate, with constitutions hastily created at independence, being in many cases the first significant expression of them[194]

2. BACKGROUND

Since its independence, the state of Cameroon has been characterised by political murders, arbitrary arrests, detentions without trial, as well as false and politically motivated charges of opponents, both real and imagined. The legacy of colonialism in shaping the political structures of Cameroon is undeniable. It continues to play a significant role in the harmonisation process in education, judiciary and the very nature of the political institutions that should undergird the

[194]Claude E. Welch, "Between Culture and Constitution: Evaluating the Cultural Legitimacy of Human Rights in the African state' (2000) 22 Human Rights Quarterly 838-860, 845.

process of rights protection. Colonial policies and approaches are essential determinants of post-colonial political institutions and constitutionalism as 'the idea of control over governmental power, which assumes the form of normative limitations and institutional diversification and operationalised in the rule of law and a specific mode of organising the institutions of government and their interplay.'[195]

For example, post-colonial constitutions in Cameroon, rather than becoming a normative framework for the control of the powers of the state, became a foundation upon which that power assumed both legality and relevance. Quantitative studies in comparative politics and specific case studies have shown a strong correlation between the policies of the colonial era and post-independence constitutionalism. The influence of colonial-era politics on constitutionalism is particularly true for Cameroon because of the holistic inheritance and transplantation of colonialist policies and value systems adopted by the League of Nations[196]for France and Britain.

The League's mandate provision was adopted in the Trusteeship Agreement and vigorously pursued by France and Britain during their Trusteeship mandates in the Cameroons.[197] Article 5 (a) relating to Britain provided that Britain shall have 'full powers of legislation, administration, and jurisdiction in the Territory' to be administered in accordance with its laws subject to modifications necessitated by local conditions and subject to the United Nations Charter and the present Trusteeship Agreement. Article 4(1) of the Agreement relating to France was similarly worded except that it did not require French law to be modified to accommodate local conditions.

The assumption in theory that the system bequeathed to Cameroon has impacted the nature of post-independence political institutions is supported by empirical evidence. In their study of legal systems and constitutionalism in Africa South of the Sahara, Keith and Ogundele argue

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[195]Nqosa Mahao, "The Constitutional state in the developing world in the age of globalisation: from limited government to minimum democracy" (2008)12 African Journal Online 2, 3.

[196] League of Nations Mandate Agreement, 20 July 1922, article 9

[197] Cameroon under United Kingdom Trusteeship Agreement as Approved by the General Assembly of the United Nations, 1945, article 5

that the nature of post-colonial political institutions empowered the executive excessively which, in effect, destroyed the independence of the judiciary and an executive-constraining organ. Makau also contends that the post-colonial state is a reflection of the colonial state. He argues that 'the post-colonial state was autocratic at its inception because it wholly inherited the laws, culture, and practices of the colonial state.[198] The colonial state, he argues, 'was specifically organized for political repression to facilitate economic exploitation.'[199] Lee and Schulz posit that the men who built Europe's colonial empires thought they were doing a favour to those whom they conquered. They argued that the institutional package that they brought to the colonies would ultimately lead to a higher standard of living and quality of government than that provided by the institutions they destroyed.[200] Cameroon's post-colonial scholar, Mbembe writes that such claims negate the re-ordering of society, culture, and identity and a series of recent changes in the way power is exercised and rationalised.[201] He goes on to posit that the primary goal was not only to bring a specific political consciousness but also to make it effective.[202] It is a reordering which was deliberate under French rule and inherited to benefit the autocratic puppets that have ruled Cameroon for the past 56 years.

The goal of colonialism in Cameroon as has been elsewhere was universal: extract economic benefits for the colonizing government. However, France and England had fundamentally different approaches to their colonial rule. While they both wanted to exploit resources and create a profitable environment for their settler communities, France espoused an additional goal of transforming Cameroon's populations into French citizens. Nonetheless, like Cameroon, other French West African colonies enjoyed close economic, political, and cultural

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[198]Makau Mutua, "Justice Under Siege: The Rule of Law and Judicial Subservience in Kenya" (2001) 23 Human Rights Quarterly. 96, 97.

[199]Ibid p.97.

[200] Alexander Lee and Kenneth Schultz," Comparing British and French Colonial Legacies. A discontinuity Analysis of Cameroon" (2012)7 Quarterly Journal of Political Sciences 1, 2.

[201] Achille Mbembe, 'On the post colony (University of California Press) 66.

[202]Ibid p.102.

ties with the metropolis. The French and British rule in the Cameroons were structured around direct or indirect rule respectively.

Direct rule favoured by the French deemed local structures of governance inadequate to meet immediate economic and long-term political goals; they, therefore, established 'civilising' parallel administrative structures. In what was to be a real reflection of direct rule was a 1924 Decree which made applicable laws and decrees promulgated in French Equatorial Africa before to 1 January 1924.[203] Crowder argued that while the French system gave the chief an entirely subordinate role to the political officer, the British system depended on the advisory relationship between the political officer and the native authority, usually a chief, heading a local government unit that corresponded to a pre-colonial political unit.[204].The British also preferred adapting and using existing local structures in what became known as indirect rule. While international rules guided both systems either under the mandate or trusteeship systems, French post-colonial legacy has tended to have a more far-reaching influence on the construction of post-colonial Francophone African states. Lee and Schulz summed it up this way: the two countries' colonial practices in Cameroon differed on a number of dimensions identified as important in previous research: the legal system (Common Law vs. Civil Law), the nature of colonial rule (direct vs. indirect), labour policies (paid vs. forced), and the prevailing religion[205].

On a specific note, studies have also shown that French and British colonial legacies have different influences on post-independence institutions and the way they absorbed their obligations under human rights treaties and especially when it comes to repression of personal integrity rights. While many of these studies have focused on systems with uniquely French or British traditions, a few have focused on the effect of colonial legacy on both systems operating under a tenuous relationship within one system. Post-colonial Cameroon reflects the

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[203] Jeswald W. Salacuse, "Legal Systems of Africa Series: French-Speaking Africa" (Africa South of the Sahara)' (1969) 1, TMC 264, 265.

[204] Michael Crowder, "Indirect Rule: French and British Style". (1964) 34 African Journal of the International African Institute 197-205, 199.

[205] Lee and Schulz supra note 200 p.3.

administrative imperial executive structure of the fourth French Republic. However, unlike France, it was first governed by a single party with the president sharing powers with weak institutions that were immediately dissolved or simply became an executive façade under the control of the president. Prempeh submits that under such a system, parliament, where one existed, was under the de facto or de jure control of the president's party, and its primary purpose was to provide a façade of institutional and procedural propriety to the president's decrees.[206] The proper scope of this control system is rooted in the historical evolution of the state and the externalities that have shaped that evolution.

3. HISTORICAL SETTING

Cameroon has a chequered history that is written depending on the political position of the writers. Its known history is traced back to the 15th century. Le Vine writes in his book on 'The Cameroons' that seafarers in the pay of a rich Lisbon merchant, Fernando Gomez, arrived, possibly in 1472, in the Blight of Biafra and visited the island of Fernando Po. At the estuary of what is now known as the River Wouri, 'they were struck by the presence of immeasurable prawns which they named Rio dos Cameroes or River of Prawns'.[207] Despite this discovery, the Portuguese failed to establish any fixed stations on the Cameroons coast. Fombad argues that the Portuguese highly desired to establish administrative footprints within these territories but malaria prevented any significant settlement and conquest of the interior.[208] On the other hand, the British established a foothold in the armpit of Africa, specifically in what became known as British Cameroon as far back as 1847. In 1858, they took over an English missionary settlement at Ambas Bay in the Gulf of Guinea and named the British colony Victoria, after Queen Victoria. A British Missionary, Alfred Saker would later become the de facto governor

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[206] Kwasi Prempeh, supra note 50, p.764

[207] Victor Le Vine 'The Cameroons; from Mandate to Independence' (University of California Press 1964) 16.

[208] Charles M Fombad, 'Researching Cameroonian Law' (2007) http://www.nyulawglobal.org/globalex/Cameroon.html accessed 02 March 2015

of the new colony in the absence of an officially appointed administrator.[209] Thirty years later, in 1887, Britain sold the settlement to Germany which four years earlier (in 1884) had proclaimed by force a protectorate over mudflat area some 100 miles to the east. Le Vine wrote that the last remaining obstacle to complete German control of the Cameroons after forcefully dismantling the British Court of Equity in Douala, was the British colony in Victoria. The English Baptist Missionary Society sold its holdings to the Basel Mission.[210] Following the British cession, from 1888 onwards, Germany slowly extended its imperial control from its original Kamerun protectorate to the contiguous territory that would later be known as the Southern British Cameroons.

The first German governor, Julius von Soden, would later raise the German flag in Buea and made it the capital of the German protectorate of Kamerun. As far as German rule was concerned, the prioritization of trade over building viable institutions that could enhance governance. Le Vine explains that the German governor saw himself as a realist in administrative matters. He favoured corporal punishments and was unwilling to improve on the working conditions of native plantation workers, approved of keeping native girls as semi concubines in European houses, and generally felt that the primary mission of the White man in a colony exploitation of the economy, came before all other considerations.[211] This pattern of rule would completely endanger German interests in Cameroon following the outbreak of the First World War.

The German protectorate lasted only 30 years until the outbreak of World War 1 in 1914, but during those short years, the Germans negotiated and established the country's international boundaries, set up the institutions of modern administration, and brought about the idea of togetherness amongst the peoples of the various ethnic groups and traditional states of the territory. After the German defeat in 1918, its territories were taken as part of the Versailles agreement and divided between the French and British and governed under the mandate

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[209] Le Vine supra note 207, 18.

[210] Ibid 24.

[211] Ibid 28.

system.[212] Article 119 read: 'Germany renounces in favour of the Principal Allied and Associated Powers all her rights and titles over her oversea possessions.' It also had to cede all its properties within such colonies to any new government that should eventually exercise authority within that colony.

3.1. THE MANDATE SYSTEM AND THE DEVELOPMENT OF DOMESTIC POWER STRUCTURES

The Mandate System became the supranational body instituted by the Treaty of Versailles to oversee the transition of colonial territories which had become treasures of war to self-rule and consequently independence. The position of the League of Nations towards Mandates was a little peculiar. It had nothing to do with allocating territories under the Mandate but left it to the Powers; after the Powers had decided who was going to control what, then the League of Nations was to be a co-guarantor with the great powers.[213] Angie argues that "the task confronting the Mandate System was both unprecedented and formidable. It involved far more than simply bestowing a juridical status on dependent people; rather, it contemplated nothing less than the creation of the social, political, and economic conditions thought necessary to support a functioning nation- state"[214]. These conditions negated the contextual realities of the people of the Cameroons and imposed exogenous approaches to the nation- and state-building that disrupted in a significant manner the natural evolution of these societies.

When the First World War broke out in 1914, British-led forces from neighbouring Nigeria overran areas that included the Victoria settlement which Britain had ceded to Germany in 1887. At the same time, General Aymerich attacked from the French Congo while General Dobell led a seaborne expedition against Douala.[215] A significant consequence of her defeat in

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[212] League of Nations, supra note 196

[213] Denys P. Myers, "The Mandate system under the League of Nations" (1921)96 AAPS 74, 75.

[214] Anthony Anghie, "Colonialism and the Birth of International Institutions: Sovereignty, Economy, and the Mandate System of the League of Nations", (Cambridge studies in international and comparative law 2001)117-118.

[215] Le Vine supra note 207, p.31.

World War I was that Germany, as provided in the Treaty of Versailles, renounced and relinquished title and right to all her colonial possessions. The possessions in question included the Kamerun territory seized in 1916 by Britain and France as war booty. The territory was partitioned between the two Powers along what became known as the Milner-Simon Line. Britain administered the Western zone (comprising two separate areas, later known as the Northern and Southern Cameroons) under a League of Nations mandate. This area was the whole area it had overrun in 1914 at the onset of the War, and it became known as the British Cameroons. To soothe French pain and humiliation resulting from the crushing defeat of France by Germany in the Franco-Prussian war in 1870, France was allowed to take the first German Kamerun protectorate proclaimed in 1884, naming it French Cameroon. The rest of this territory (comprising four-fifths of the total) was administered by France, directly from Paris.

Out of the lost German colony emerged two separate and distinct legal and political entities, British Cameroons and French Cameroon. Each of these two political entities was placed under the Mandate System, the goal being the ultimate independence of the natives of each mandated territory. In its article 22(1), the Versailles Treaty emphasizes one of the core principles of that system thus: as a result of the war which has caused them to lose their former colonial sovereign … as a sacred trust of civilization, the well-being and development of peoples living in those colonies shall be the thrust of the Mandate. The central provision for the legal concept of the Mandate System was thus established by para. 2 that refers to the notion of sacred trust:

"The best method of giving practical effect to this principle is that the tutelage of such peoples should be entrusted to advanced nations who by reason of their resources, their experiences or their geographical position can best undertake this responsibility, and who are willing to accept it, and that this tutelage should be exercised by them as Mandatories on behalf of the League"[216]

In 1922 the League of Nations granted to Britain a mandate over the British Cameroons and a mandate to France over French Cameroon. These territories were categorised according to para. 5 of article 22 as territories at such a stage that the Mandate must be responsible for the administration of those territories under conditions which would guarantee freedom of

[216] League of Nations Covenant supra note 196 art. 22

conscience and religion, subject only to the maintenance of public order and morals. In doing so the League confirmed the 1916 Anglo-French partition put in treaty form in the 1919 Anglo-French boundary treaty between the British Cameroons and French Cameroon (Milner-Simon Declaration). The frontier alignment between the British Cameroons and French Cameroon, as defined by the 1919 boundary treaty, was more particularly determined in the 1931 Anglo-French boundary treaty (Graeme-Marchand Declaration) and confirmed once again in 1946 by the United Nations in the Trusteeship Agreement relative to the British Cameroons and the one relative to French Cameroon.

The British Cameroons and French Cameroon were thus separate, new, legal and political entities created in 1922 by the political force represented by the Mandate System. The juridical basis of their respective existence and the international basis of the frontier between the two countries are the Mandate System, transmuted into the Trusteeship System after World War Two. The two mandates set off to fill the gap left by the Germans. They set up administrative structures reflective of their respective socio-political and legal systems. The French, for example, divided their territory into 'the traditional circumscriptions, and these in turn into subdivisions'.[217] The premise of this transfer of authority was consistent with this civilising approach to colonialism. This approach turned Cameroon into French and British territories within which they experimented their policies within.

As Fombad argues, the League of Nations' agreement with the French and British conferred on these two powers, in Article 9, 'full powers of administration and legislation.' The two powers were authorised to administer Cameroon in accordance with their laws and as an integral part of their territory, subject to such modifications as may be required by the local conditions.[218] The legal foundation of such governance became the basis was the basis for the almost wholesale exportation of the English Common Law and the French Civil Law to Cameroon

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[217] Le Vine supra note 207 p.34

[218] Charles M Fombad, 'Researching Cameroonian Law' (2007) http://www.nyulawglobal.org/globalex/Cameroon.html accessed 10 September 2016.

The court system was also reorganised and presided over by French administrators and justice dispensed according to the norms and customs of the people as long as it was not in conflict with French civilisation. Le Vine stated that the mandate ushered in a new phase of development in the Cameroons. The two Cameroons, he argued, were under separate administrations, and moved off in different directions, propelled by the force of colonial policies. As is shown below, the approach of the two colonial powers to their mandate, though premised under the same legal prescription by the League of Nations, produced two distinct systems that would shape their approach to the Covenant in different ways.

3.2. BRITISH MANDATE

In furthering the premise of the Mandate, the British Order in Council of 26 June 1923 divided its Mandated Territory of the British Cameroons into two parts: a southern part known as the Southern Cameroons and a northern part known as the Northern Cameroons. Each part was tagged with Nigeria in an administrative union and administered as though they formed an integral part of that country. By this act of the Administering Authority, the Southern British Cameroons became a distinct territory from the Northern British Cameroons within the international system and a distinct unit of self-determination. Carlson Anyangwe argues that based on this 'disguised administrative union' British Southern Cameroons then came to share with Nigeria, a common constitution, budget, administration, legal system and technical services.[219]

The British adopted an indirect rule in British Cameroons and used traditional institutions in areas where they existed and tailored to fit British administrative needs. In Northern Cameroons where, traditional Fulani institutions were quite robust and indirect rule worked perfectly to achieve British political and economic objectives without a strong desire to restructure or alter social and political life. In the Southern part of the British territory, Le Vine wrote that the British found a bewildering array of tribal groups, clans, chiefs, and other traditional political arrangements. 'In appointing native authorities, the British tried to maintain

[219]Carlson Anyangwe, 'Betrayal of too Trusting a People. The UN, the UK and the trust territory of Southern Cameroons' (African Books Collective 2009)121

natural political structures and natural ties of family or community'.[220] These were done based on proper British assessment of 'the nature of local socio-political structures and the objective of its mandate.

Despite British efforts in maintaining traditional institutions and ensuring their participation in governance and other judicial aspects of the community, the British focus had been mainly administrative and economic. This focus meant that Britain failed to develop a British Cameroons political consciousness in fulfilling the objective of self-rule. To a certain extent, this explains why its two territories have never had the level of its nationalism that underpinned their different struggles. Instead, they developed stronger attachments to Nigeria as was the case with Northern British Cameroons and to Cameroon as was the case with Southern British Cameroons. The alignment became apparent in the UN-sponsored plebiscite of 11 February 1961 in which the former voted to integrate with Nigeria while the latter voted to federate with Cameroon.

Despite British focus on administrative and economic issues, a group of Southern British Cameroons intellectuals used their presence in Nigeria to develop a foundation for long term political involvement in shaping Southern British Cameroons emergence from colonial rule. The formation of the Cameroon's Youth League (CYL) by a group of Southern British Cameroonians, was an important milestone that defined Southern Cameroons history. While the CYL was a common interest or mutual welfare association whose foundation was outside Southern Cameroons, their leaders became involved in Nigeria's nationalist groups.[221] The two founders, Dr. Emmanuel Lifafa Endeley and P. M. Kale, would later play an important role in Southern Cameroons domestic politics, with Dr. Endeley campaigning actively in 1961 for the integration of Southern British Cameroons into Nigeria during an UN-organised plebiscite.

The approach to British rule that left existing traditional structures of power intact led to a high level of cooperation with its Trust Territory. On the other hand, the French managed their mandate by implementing policies of cultural and political assimilation, with the goal of creating French citizens out of their mandate.

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[220] Le Vine supra note 207, p.198.

[221] Ibid 199.

3.3. FRENCH MANDATE

The French mandate's idealistic goal of civilizing the Africans stretched beyond dismantling local institutions including those left behind by the Germans. They included offering French citizenship and legal rights of Frenchmen to western educated Cameroonians.[222] The French approach produced two sets of citizens with two sets of rights. The 'subjects' were subject to native customs while the 'civilized citizens' enjoyed civil and political rights identical to persons of French origin. Le Vine argues that this approach of administration stemmed from a paternalistic perception of the African; a perception that would have far-reaching implications concerning the conventional structures of governance invested in the Council of Notables, the native chieftaincies and the system of justice.[223]

The civilizing process was overseen by elaborate political and administrative institutions, the most important of which was the Civil Commissioner for the colony who was responsible to the minister of colonies. The Commissioner possessed both administrative and military powers as other French colonial governors in French Equatorial Africa. They could appoint regional and district administrative officers including members of the Administrative Council (Conseil Administratif) – a body composed of the most critical administrative personnel and French notables used by the Commissioner for the colony discretionally as a matter of policy to gradually phase out customary institutions.

The French also used the Council of Notables and the Chiefs to further policies conceived in Paris. The powers of the Chiefs were greatly reduced even before the creation of the Council of notables. Crowder argues that the French system placed the Chief in an entirely subordinate role vis-a-vis the political officer. The Chief was a mere agent of the central colonial government with clearly defined duties and powers. He did not head a local government unit, nor did the area which he administered on behalf of the government necessarily correspond to a pre-colonial political unit[224]. Though they found it impossible to immediately dispense with the services of the German-era Chiefs, they steadily reduced their autonomy and authority,

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[222] Alexander Lee and Kenneth Schultz.supra note 200, p.7

[223] Le Vine supra note 207 p.99.

[224] Michael Crowder supra note 204, 199.

treating them as petty bureaucrats who could be hired and fired at will.[225] This erosion, Le Vine argues, constituted another means through which the French sought to introduce a French-created system of local control. Apart from taking away customary authority from the Chiefs, they were reclassified into three categories with sometimes overlapping territorial jurisdictions. Such a system has so far had far-reaching implications on cohabitation of different chiefdoms as claims of legitimacy and territorial delimitation have characterized the relationship between these artificially created and natural chieftaincies. One of the most significant aspects of this local control was its influence on the administration of justice. The German Schiedsgerichte (mixed courts) vested in the Chiefs were undermined with the reorganisation of chieftaincies in 1922 when judicial powers were transferred under the authority of French-controlled administrative authorities. The perception of Africans as people who needed European civilisation meant that Europeans and 'évolués' were subject to the laws of the mother country, while ""natives"" were subject to local customary law, though this law was usually interpreted and enforced by the colonial administration.[226] The system of the 'évolués' and 'indigenat' created a dual legal regime based on criteria that fractured society and created a class system that hugely benefitted the colonial project.

French rule generally and effectively undermined civil society development and customary processes through the introduction of the 'indigenat' seen as discriminatory, semi autocratic administrative and judicial authority invested in the administrators and most importantly the suppression of native courts. Through the suppression and sometimes deposing and exile of natural chiefs, the French gradually took over the nerve centre of the structure of society and replaced them with French-tailored institutions and stooges. This would become the foundation upon which French policy during the Trusteeship period revolved.

4. FROM TRUST TO STATEHOOD

The Charter of the United Nations was adopted in June 1945 in San Francisco and entered into force on 24 October more than a year after the Yalta Conference of 1944. On 13 December 1946, the UN created its Trusteeship Council to replace the Mandate System of the defunct

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[225] Alexander Lee and Kenneth Schultz supra note 204,11

[226] Ibid.

League of Nations. The Trusteeship system was established under Chapters 7 and 8 of the UN Charter as a mechanism to safeguard stability in a territory's transitional process of attaining self-governance. The primary objective of the Trusteeship system was expressed in Article 76B of the UN Charter on Trust territories, as follows:

'to promote the political, economic, social, and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence as may be appropriate to the circumstances of each territory and its peoples and the freely expressed wishes of the peoples concerned, and as may be provided by the terms of each trusteeship agreement.'[227]

The experiences with the League of Nations Mandate System as one of the first international concepts of political trusteeship modelled on a Common Law trust serve as a background to the UN Trusteeship System.[228] It could be the continuation of a more robust platform following the mode of termination of World War II. The Trusteeship system did not change the approach of the British and the French. If anything, it reinforced the approaches of the two trustees. Within both territories controlled by the United Kingdom and France, the policies and institutions put in place to oversee the transition were conceived abroad for the broadest application possible. While France's Trust ambition as was with the Mandate system was to see Cameroon as its metropole assimilated in France, the British hoped that their two trust territories of Southern and Northern Cameroons would become integral parts of the administration of Nigeria.

If the premise of the Trusteeship was to uphold the principle that the interests of the inhabitants are paramount and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of those territories, then the policies adopted by Britain and France in particular within the trusteeship period failed to achieve those objectives for the Cameroons. As is examined below, while France and the UK adopted direct and indirect rules respectively, the

[228]Nele Matz, "Civilisation and the Mandate System under the League of Nations as Origin of Trusteeship' (2005) 9 Max Plank Yearbook of United Nations Law 47, 51.

unification of Cameroon produced a state of two conflicting political and constitutional systems which have since been unable to harmonize a system of governance to provide for the enabling environment for Covenant rights protection.

4.1. UN Trust Territory of French Cameroon

France, like the United Kingdom, received a mandate under article 73 to administer Cameroon based on article 76B of the UN Charter on Trust territories. At the onset of its Trusteeship, France aimed at integrating Cameroon into the French Union in line with its assimilationist policies under the Mandate System. This was governed by the French 'general principle of subordination, centralisation and uniformity' reflected in France's 1946 constitution. After the Brazzaville Conference of 1944, France grouped French overseas territories into its Associated states and Associated territories. Cameroon fell in the latter category and its citizens given the right to elect representatives to the French National Assembly and the Council of the Republic.

This French approach was facilitated by a premise of the Trusteeship agreement which guaranteed that Cameroon could be administered as an 'integral part of France.'[229] The premise of this agreement which is crucial to the internal political development of Cameroon guaranteed that France undertook to respect the primacy of the interest of the population of Cameroon and develop their gradual participation in the administration of their territory; ensure and safeguard their security and develop their economic interests and property rights; ensure the intellectual progress of Cameroonians by developing primary, secondary and technical education; and most importantly ensure freedom of conscience, speech and association. Crucial to this clause to administer Cameroon as an integral part of France was the right given to France to establish customs, and fiscal and administrative unions with other territories.[230]

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[229] UN Trusteeship Agreement as approved by the General Assembly of the United Nations, New York (1946) article 4,

[230]Martin Rene Atangana, "The end of French Rule in Cameroon. Political and Economic Development in Cameroon in the Post-War Era (1946-1956)" (University Press of America 2010) 11.

This translated into the negation of existing indigenous structures and forms of governance into colonial structures and foreign modes of governance. The preferred policy of assimilation and acculturalisation was never inspired to create a self-government but to the erection of a system of governance where French Cameroonians "would participate in the central government of the French Republic dominated by the French"[231]. While the UN Trusteeship Council supervised these activities, nationalist groups which demanded the immediate unification and independence of both Cameroons were very critical of the clause which demanded that Cameroon be administered as an integral part of France.

This clause split French Cameroon between evolutionary leaders who, despite their misgivings about France's intentions, nonetheless aligned their political objectives towards greater association with France, and revolutionaries who wanted a clear break with French colonial policies. The evolutionary leaders led by former President Ahmadou Ahidjo formed the Bloc Démocratique Cameroonaise (BDC) highly favoured by France, while the revolutionaries who wanted immediate independence, reunification and non-interference were grouped under the first indigenous political party in Cameroon known as l'union des Populations du Cameroon (UPC) headed by its late charismatic leader Reuben Um Nyobe. The significance of these alignments in shaping the post-independence Cameroon constitutional system was enormous. Richard wrote that the significance of these constitutional developments in France for Cameroon was that the French administration, in order to counteract the development and popularity of radical elements and entrench its power on Cameroon, it used its control over the Chiefs and the agents of local administrations to encourage the growth of pro-colonial administrative tendencies and in many cases, ensure their election to the national and territorial assemblies.[232] That was seen in the election in 1951 where the revolutionary party failed to gain a single seat in the Assemblée Territoriale (ATCAM). Before the election of 1951 a French decree of 9 October 1945, had instituted an Assemblée Representative du Cameroon in

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[231] David. E. Gardinier, "Cameroon: United Nations Challenge to French Policy" (Oxford University Press 1963) 1.

[232] Richard Joseph, "Gaulist Africa: Cameroon Under Ahmadou Ahidjo, Enugu" (Fourth Dimension Publishers 1978) 47-55.

Yaoundé (ARCAM). This was a Representative Assembly whose members would in turn elect representatives to the Paris Assembly.

In 1956, the Mendes Reforms were translated into law No: 56-619 of 23 June 1956 which became the basis for a political and constitutional framework of the new state. It provided for the setting up of a legislative assembly in Yaoundé with 70 elected Deputies from a single college by direct universal suffrage, a government with ministers headed by a prime minister, Cameroonian citizenship, a flag, an anthem, and a motto. Ndille et al. argue that despite these initiatives the French kept a firm grip on Cameroon. The French National Assembly retained supreme powers over legislation, and its laws continued to take precedence over decisions made by the Cameroonian Assembly. The state public services, including the District Officers (DO) and Traditional Rulers, were placed under the office of the High Commissioner.[233]

France granted independence to French Cameroon on 1 January 1960 and sponsored the new state's admission to the United Nations in September that year. The post-independence leaders had been carefully selected through political manoeuvres and carefully crafted decrees and legislation to serve French interests and continue to construct Cameroon's constitutional development in line with the image of France. Independence did not represent a clean break from the colonial era. Many would argue that the new era simply replaced colonialism with neo-colonialism, where the state was still coerced, or at least influenced, by the former colonial power and colonial policies leading to instability and political turmoil.

4.2. UN Trust territory of British Southern Cameroons

By article 73 of the UN Charter, the administering power 'recognize the principle that the interests of the inhabitants are paramount and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of those territories.' According to the Trusteeship agreement signed between the United Kingdom and the United Nations in 1946, Britain assumed full powers of 'legislation, administration, and jurisdiction over the territory…' also, it was granted the powers to 'administer the Southern Cameroons according to its laws and as

[233] Roland Ndille and Rose Anjoh, "On a Plata of Gold? A Critical Narrative of Nationalism and Independence in French Cameroon" (2016) 38 Historical Research Letter pp. 3-4.

an integral part of its territory, and with such modifications as may be required by local conditions….'[234] It was on those basis that the internal configuration of Southern Cameroons concerning its political and constitutional structures were shaped.

The assertion that trustees should abide by the basic objective of the trusteeship system, 'to promote the political, economic, social, and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence,' [235] reflects the cornerstone of both the Mandate and Trusteeship systems. Gordon et al describe the emerging political systems as a hand-me-down suit never fitted to its new wearer. Western multiparty political systems, they argue, (hastily handed over to Africans experienced with only colonial despotism) did not 'fit.'[236] The Trusteeship System was no doubt merely a political cloud that obfuscated the continuation of colonial practices under a legal institution. The nature of the states that emerged from this system and the subtle and sometimes brutal control that still exist under an imperial presidency is a direct reflecting of the nature of colonial policies.

Up to 1960, the Southern Cameroons, though under international tutelage, was administered by Britain as part of her contiguous colonial territory of Nigeria. However, its distinct identity and personality, separate from Nigeria, remained unassailable. UN Resolution 224 (III) of 18 November 1948 protected the Trust Territory from annexation by any colonial-minded neighbor. While acknowledging that the Trusteeship agreement made allowance for 'administrative union', the resolution provided that 'such a union must remain strictly administrative in its nature and scope, and its operation must not have the effect of creating any conditions which will obstruct the separate development of the Trust Territory, in the fields of political, economic, social and educational advancement, as a distinct entity.'[237]

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[234] UN Trusteeship Agreement as approved by the General Assembly of the United Nations, New York (1946) Article 5(a), p. 4.

[235] United Nations Charter on Trust territories (1946) Article 76b

[236]. April A. Gordon and Donald L. Gordon (eds.). Understanding Contemporary Africa. (Boulder, CO: Lynne Rienner2007)4.

[237]Gumne et. al v Cameroon, No.266/03

In 1954 the Southern Cameroons became a self-governing region within Nigeria and gradually asserted its distinct identity and its aspiration to statehood through increased political and institutional autonomy, and in 1958 the British government stated at the UN that the Southern Cameroons was expected to achieve in 1960 the objectives set forth in article 76 b of the UN Charter. The British position was in sharp contrast to its 1948 declaration before the UN Trusteeship Council in which British representatives stated that: "…it is improbable that the Trust territory, given the artificiality of its territorial boundaries and the heterogeneity of its ethnical composition will ultimately become a separate political entity"'[238]. Another statement by the United Kingdom to the fourth Committee of the United Nations General Assembly in 1958 clearly stated that the Cameroons under the United Kingdom administration was expected to achieve in 1960 the objectives outlined in UN Charter article 76 and requested the Trusteeship Council to examine this position and that of its visiting mission. In resolution 1218 (xiii) the UN Trusteeship Council to transmit its observations to the General Assembly to enable it in consultation with the administering authority to take the necessary measures to ensure the full attainment of the objectives of the Trusteeship system.[239]

On 13 March 1959, in a move that undermined the spirit of Article 76B of its Charter on Trust Territories, the General Assembly adopted Resolution 1350 (XIII) recommending a plebiscite in the Southern Cameroons to determine its political future. The Resolution was followed by another General Assembly resolution, 1352 (XIV) of 16 October 1959, ordering a plebiscite to be held in the Southern Cameroons 'not later than March 1961'. The people of the Southern Cameroons were to pronounce themselves on 'achieving independence' by either 'joining' Nigeria or the Republic of Cameroon.

Following these developments on 1 October 1960, the Southern Cameroons became officially separated from Nigeria, and its Constitution Order in Council came into force. As a full self-governing territory with all the instruments of power within legitimate state institutions like a house of parliament, Chiefs and a Prime Minister. The Southern Cameroons oversaw all internal matters except defense and foreign affairs that were overseen by the United Kingdom.

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[238] UN Doc T/AC.14/24(1948) quoted in Le Vine supra note 204 p.200

[239] United Nations, 13th session, 782 plenary meeting Gen Ass. Res. 1281 (XIII) para 3

Before the plebiscite and subsequent federal union, the Southern Cameroons was fully self-governing from 1954 to 1961. It was a thriving constitutional democracy operating a parliamentary system of government modelled after that of the British. During that period, it had two free and fair elections, a peaceful regime change, and a Constitution (the Southern Cameroons Constitution Order-in-Council 1960) based on values of democracy, the rule of law, an independent judiciary, an open society, a free press, freedom of expression and movement, human rights and accountability.

On 31 May 1960, the Trusteeship Council adopted Resolution 2013 (XXVI) requesting the UK Government "to take appropriate steps, in consultation with the authorities concerned, to ensure that the people of the Territory are fully informed, before the plebiscite, of the constitutional arrangements that would have to be made, at the appropriate time, for the implementation of the decisions taken at the plebiscite"[240].

These Resolutions had far-reaching constitutional implications. The clarity of a vote to join Nigeria was reflected in the constitutional framework of Nigeria. With a robust decentralized system, the Southern Cameroons would have joined Nigeria as a full self-governing region. On the other hand, Cameroon was structured as a centrally-run Republic with a unitary constitutional framework and therefore needed far-reaching constitutional amendments to accommodate a Southern Cameroons with its Anglo-Saxon background.

On 11 February 1961, Southern Cameroons voted to join the Republic of Cameroon and on the 21 April 1961, the UN General Assembly passed resolution 1608 (XV) inviting 'the Administering Authority, the Government of the Southern Cameroons and the Republic of Cameroon to initiate urgent discussions with a view to finalizing before 1 October 1961 the arrangements by which the agreed and declared policies of the parties concerned would be implemented.'[241]. It is instructive to note that for this Resolution to pass, 64 Nations voted for, 23 against, while 10 abstained. La République du Cameroon, supported by France and French-speaking Africa, except Mali, voted against. This resolution was supposed to be the instrument

[240] Trusteeship Council, para. 3, UN Doc. T/1556/appendix (1961)

[241] GA. Res. 1608 (XV), para 5

of implementation of the vote of 11 February 1961 which would have then establish a Union treaty between the two nations.

The United Nations, France, and the United Kingdom failed to implement this resolution thereby allowing Cameroon to oversee the unification process all alone. It did so by dictating the terms of the union and amending its constitution to create the federal constitution which became the foundation document of the Federal Republic of Cameroon. On 30 October 1961, Britain transferred sovereignty over the territory of Southern Cameroons to the Republic of Cameroon. It should also be noted that a similar plebiscite on the same day saw British Northern Cameroons voting to integrate into Nigeria. Similar policies of assimilation and neglect form the causes of the Boko Haram crisis in Northern Nigeria.

The unification of French Cameroon and British Southern Cameroons in 1961 created a new state with an internal configuration at odds with its constituent parts. Both the institutional and cultural legacies under the Mandate and Trusteeship Systems which were wholly inherited by the French and British approaches to fulfilling their obligations under the UN Charter remained unchanged. Politics in Cameroon after the 'termination' of the Trusteeship System has been characterised by autocratic forms of rule, the erection of clienteles' institutions, corruption, general economic failures and systematic violations of human rights. Apart from the impact of colonial rule, pre-independence political struggles shape the post-independence institutional setting, allowing the emergence of entitlement style governance and state building. It also laid the groundwork for the emergence of political parties along regional/ethnic lines and a patron-client relationship. Such socioeconomic and political configurations fostered dictatorial consolidation politics marred by violence.

5. THE BIRTH OF THE FEDERAL REPUBLIC OF CAMEROON

As stated above, Cameroon is a state of two nations put together through a flawed UN-sponsored plebiscite that translated into outright annexation. These two nations inherited both French and British colonial legacies which significantly impacted their constitutional structure. There have been three constitutional periods of great significance. On 15 April 1961, the UN passed a Resolution recognising the results of the plebiscite which went in favour of union with Cameroon. It then invited the administering authority, the Government of Southern Cameroons and the Republic of Cameroon to initiate urgent talks in view of finalising before 1 October 1961 the arrangements by which the agreed and declared policies of the parties would be

implemented. The Resolution was followed in 1961 by a constitutional conference organised to draw up a constitution that should define the federation of the two states. The federal system that came into existence in September of 1961 was based on a two- state federation consisting of West Cameroon, that is, former British Southern Cameroons, and East Cameroon, the former French Cameroon[242]. This translated into a constitutional structure reflective of the colonial legacies of the two states until the country became the 'United Republic of Cameroon' in 1972 when a unitary system of government was introduced. The two federated states had each retained their inherited colonial system of justice although this was under the control of a Federal Ministry of Justice.[243] However, the early history of the independent and unified Cameroon was marked by strides towards complete political and legal unification.

Soon after unification, president Ahidjo issued decree No. 61-df-15 of 20 October 1961 wherein the Federation was divided into administrative regions with a Federal Inspector in each administrative region accountable to the Federal President. Ebune argues that the Federal Inspectors were empowered to represent the president in all areas of civil life and judicial matters 'supervised and enforced federal laws and regulations, maintained order according to the laws and regulations in force, and had at their disposal the police force and gendarmerie, and federal services'.[244] By this absolute decree, the president set in motion a process that would completely dismantle the economic and political structures of Southern Cameroons in favour of a more centralised state which he could micro-manage.

Despite this approach by 1964, two Federal Law Reform Commissions had been created to draw up a Penal Code, a Criminal procedure code, and several other Codes. Its only achievement was the 1967 Penal Code which remains the only reasonably successful legislation that reflects the country's dual legal culture, although it was substantially based on the French Penal Code. Based on the unitary Constitution of 1972, Ordinance no.72/4 of August 26, 1972, which has been amended several times, a civilian-style unitary system of

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[242]Charles Manga Fombad, supra note 66 p.214

[243]Ibid

[244] Joseph B. Ebune, 'The Dilemma of the Federal System in West Cameroon, 1961 – 1972' (2016) 3(7) Journal of Scientific Research and Studies 133-139, 137.

courts was created to replace the different court structures that had operated in the two states.[245] Nevertheless, the new Constitution of 1972 sought to preserve the integrity of the two legal systems. In its article 38, the drafters stated that,

'the legislation resulting from the laws and regulations applicable in the Federal state of Cameroon and in the Federated states on the day of entry into force of this constitution shall remain in force in all of their dispositions which are not contrary to the stipulation of this constitution, for as long as it is not amended by legislative or regulatory powers.'

On this account, despite the unified court structure, the two pre-independence legal systems continued to operate.

Also, the two constitutional systems guaranteed the rights of their various citizens from being subjected to torture, cruel inhuman and degrading treatment, and protected their rights to personal liberty and security.[246] While the Cameroon constitution of 1960 presented blanket protection of these rights in the preamble, the Southern Cameroons Order in Council was quite explicit in its protection and included specified limitations. For example, the protection of torture was expressed in these terms: 'No person shall be subjected to torture or inhuman or degrading punishment or other treatment'.[247] In sharp contrast to the 1996 constitution, the preamble of the 1960 constitution was not considered an integral part of the constitution, thereby making the vague rights protection non-justiciable.

Another significant difference in the two constitutional systems which is critical in today's constitutionalism in Cameroon was in a judicial review of civil and political rights legislation. The Southern Cameroons Order in Council provided in its section 86(1) the possibility that 'any person who alleges that any of the provisions of this chapter has been contravened in relation to him may apply to the High Court of the Southern Cameroons for redress.'[248]

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[245]Charles Manga Fombad, supra note 66, p.212

[246] Preamble of the 1960 Constitution of Cameroon and Chapter VII of the Southern Cameroons (Constitution) Order in Council herein known as SCOC.

[247] Southern Cameroons Order in Council (SCOC), article 73(1) of.

[248] Ibid section 86(1)

The Federal constitution which was considered a highly developed amendment of Cameroon's 1960 constitution entrenched civil and political rights as contained in both the UDHR and the UN Charter.[249] As a result of this, despite the unified court structure, the two pre-independence legal systems continued to operate.[250] Issues of human rights[251] and administration of justice[252]were maintained under Federal jurisdiction with enormous presidential authority in ensuring both their independence[253]and the viability of the judiciary. In 1972, the Federal system of governance was replaced by a unitary system which translated into the dissolution of the two separate judicial system.

5.1. POLITICAL STRUCTURE OF THE STATE

So far, the first part of this chapter has clearly shown the strong correlation between colonial policies and the emergent state since these colonial states were the determining factors that conditioned the countries' development. Political turmoil defined the construction of the Cameroon state. This turmoil was defined by the nature of the colonial policies of the French and the competing approaches of domestic forces fighting to terminate it.

As Awasom wrote:

'…this political turmoil was the handiwork of French administrators who indulged themselves in the uphill task of exterminating anti-French Cameroonians. Prime Minister Ahidjo used the turmoil as a pretext to obtain emergency powers from parliament to design Cameroon's [first]

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[249] Article 1(2) of the 1961 Federal Constitution of Cameroon (FCC). http://archivesoftyranny.org/wp-content/uploads/2017/02/Constitution-of-Federal-Rep-of-Cameroon-1971.pdf accessed 11 January 2015

[250]Charles M. Fombad "Researching Cameroonian Law" (2011)3.

[251] Article 6(1a) of FCC.

[252] Article 6(1d) of FCC.

[253] Article 32(2) of FCC.

constitution. The constitution was adopted in a referendum while a state of emergency was in force, [and] the French army was protecting the Ahidjo government against its citizen.'[254]

In the French Cameroon, the unitarist presidential system of the state was highly influenced by the structure of the French Fifth Republic which concentrated powers in the executive. On the other hand, in the former British Southern Cameroons, the brief parliamentary system of governance was a replica of the British Parliamentary democratic order. Both nations evolved based on the values and norms of their respective colonial masters until 1 October 1961 which saw the creation of a federal system in response to the vote of 11 February 1961 in Southern Cameroons to form a federation with the Republic of Cameroon. Since 1961, the structure of the state has reflected the unitarist presidential system with enormous powers to legislate and adjudicate resting with the executive.

Based on this unitarist presidential configuration, there are 10 regions, 58 divisions, 269 sub-divisions, and 53 districts. There are 10 regional governors and 58 divisional officers. The President appoints these administrative officials who are organized under the Ministry of Territorial Administration and Decentralisation (MINATD). These administrative officers represent the President in the local regions to decentralize the seat of government from the capital city, Yaoundé.[255]

5.2. System of Laws

As indicated in section 3.4 the premise of the League of Nations agreement was governed by its article 9 which granted 'full powers of administration and legislation' to both Britain and France to govern their respective territories. The two powers were authorized to administer Cameroon per their laws and as an integral part of their territories, subject to such modifications as may be required by the local conditions. Consequently, this became a conduit through which the Common and Civil Law systems were introduced as the primary sources of law in

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[254] Nicodemus Fru Awasom, 'Politics and Constitution-making in Francophone Cameroon 1959-1960' (2002) 49 Africa Today 3, 3.

[255]Human Rights Instruments, core document forming part of the reports of state Parties: Cameroon, HRI/CORE/1/Add.109.

Cameroon. The arrangement under article 9 of the Covenant of the League of Nations was transferred to the Trusteeship system as is evident by the preamble of the Nigeria Order in Council of 1946, replacing the Cameroons under British Mandate Order in Council 1923, as amended by the Cameroons under British Mandate Order 1932. This provided that 'whereas the intention has been expressed that, notwithstanding the termination of the existence of the League of Nations, the Cameroons shall continue to be administered following the obligations of the said Mandate until other arrangements have been agreed between the Mandatory Power and the United Nations...'

Because the Southern Cameroons was initially administered as an integral part of Nigeria, the laws introduced by Britain to the Nigerian system were transferred to the Southern Cameroons. As indicated earlier, the real source of the Common Law into Southern Cameroons was the British Foreign Jurisdiction Act of 1890. This Act granted Britain sweeping powers to exercise or even alter the laws of its foreign possessions. Mikano Kiye argues that one of the most influential pieces of legislation enacted by the British was the Southern Cameroons High Court Law of 1955.[256] It governed the administration of justice by the colonial High Court of Southern Cameroons. This law was the domestication of the Foreign Jurisdiction Act into Southern Cameroons and became the source of law all through British administration and beyond. This involved the Common Law, doctrine of equity.

On the other hand, the source of laws in French Cameroon has been holistically French and French-derived laws which were both imported and made by French colonial administrators respectively. Like in the case of Southern Cameroons, the instruments of French laws in Cameroon were also anchored in article 9 of the League of Nations agreement between France and Britain which granted both countries 'full powers of administration and legislation'. Generally, in French speaking colonies, the primary source of procedural and criminal laws was the Code d'instruction Criminelle and the French Code of Criminal Procedure of 1808. This Code was introduced into French Equatorial Africa via Senegal in 1903 and was rendered applicable to Cameroon by the Decree of 22 May 1924. France passed a decree in 1924 which became the source of French authority to legislate within Cameroon which stated that, 'the

[256] Kiye E. Mikano, "The Repugnancy and Incompatibility Tests and Customary Law in Anglophone Cameroon (2015) 15 African Studies Quarterly 86.

Commissioner of the Republic shall promulgate Statutes, decrees, orders and regulations made by the Government of the mandatory state, as well as orders and regulations made by the Government of the mandated territory'. That notwithstanding, these statutes, decrees, and regulations that were in force in France were not to be rendered executory in Cameroon except by decrees of the French Head of state. In May 1924, another decree indicated that 'Statutes and decrees promulgated in French Equatorial Africa before the 1st day of January 1924 are hereby rendered executory in the territory of Cameroon placed under French mandate. The powers conferred on the Governor-General and Lieutenant Governors by those instruments shall devolve on the Commissioner of the Republic.'[257]

The federal system of government that came into place and its subsequent dismemberment in 1972 and 1984 gradually strengthened the ascent of French and French-derived laws in Cameroon. These laws coexisted with a political structure that strengthens executive powers over legislative prerogatives and judicial oversight.

Colonialism, whether in its pure and unregulated form or disguised under the Mandate or Trusteeship system, profoundly altered the political and constitutional structure of Cameroon. First, the basic shape of the state itself was the consequence of European administrative convenience or imperial competition. It was a phenomenon seen across the continent. On Rwanda, Melvern posits that its great divisions might have been more natural to heal and its tragic history somewhat different had it not been for the involvement of outside interest.[258] The influence of Belgium and then France shaped Rwanda's institutional dynamics which influenced policy choices in a more dramatically. Like most other trustees, they tailored socioeconomic and political systems based on their subscribing ideology. Trust Territories under the capitalist system adopted a 'marketisation and liberalisation' approach to both nations- and state-building which prioritise civil and political rights over economic, social and cultural rights. It is tempting to agree with Mandani when he uses the genocide in Rwanda to argue that political economy alone as a framework of analysis fails to explain why post-

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[257] Second French enabling decree of 22 May 1924 pursuant to article 9 of the League of Nations Mandate of 1922 quoted in Le Vine p. 123

[258]Linda Melvern, "A People betrayed; the role of the West in Rwanda's genocide" (Zed Books 2009)29.

independence strives in Africa cut across social classes rather than between them[259]and that the political legacy of colonialism and the colonial state is a legal, institutional complex.[260]. These systems dictated the nature of the political systems and the priority of the regimes concerning the protection of human rights.

French and British colonialism altered the political and constitutional structure of the state of Cameroon and its implications for the protection of human rights. Like most other African countries, the political system in Cameroon since its independence in January of 1960 reflects the pre-independence political configuration instituted under the trusteeship system. It is highly structured on the French model that centralises substantial powers in the executive. It is a form of personal rule-oriented constitutional structure based on loyalty to the President as opposed to institutions, which are regularly monitored and controlled to ensure that they do not achieve any balance of power that could threaten the system.[261] Richard submits that under such a system, multiparty politics was abolished, criticism of the government was repressed through stringent laws circumscribing freedom of speech, while activists were arbitrarily arrested, detained and tortured.[262]

Cameroon's human rights regime is informed by this complex historical experience, which has had far-reaching implications on its legal framework, political structure, and constitutional order. As a product of both the France and British colonial heritage, the attempt by successive Cameroon Presidents at unifying the two systems through coercive assimilationist policies has created tensions between the two peoples that threaten the state.

It is a tension expressed by Neil Walker as follows:

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[259] Mamdani Mahmood, "When Victims become killers. Colonialism, Nativism and the Genocide in Rwanda" (Princetown University Press 2002)19.

[260]Ibid p. 20.

[261]Petros Ogbazghi, "Personal Rule in Africa: The Case of Eritrea" (2011) 12 African Studies Quarterly 2, 2.

[262] Richard Joseph, "France in Africa' in Richard Joseph (ed), Gaullist Africa: Cameroon under Ahmadou Ahidjo" (Fourth Dimension Publishers 1978) 8.

The desire by the francophone leadership in Cameroon to eliminate any trace of the Anglophone system through constitutional amendments of 'dubious legality' remains the political context in which Cameroon constitutionalism is evolving. If constitutionalism matters in the general protection of human rights and its obligation under the Covenant, then those normative standards that are geared at pre-empting the arbitrariness and tyranny that inheres in the over-concentration and uncontrolled exercise of power must be observed to the letter[263]

The languages of rights and colonial paternalism coexist. The role of international law during the mandate period was partly to regulate the relationship between the colonising and the colonised state. But as Anghie argued 'the contradiction within the mandates was that their aim was to further self-government, but at the same time they created a structure that replicated colonial relationships.'[264] This contradiction has been shown in the almost whole exportation of colonial law and practices into Cameroon legalised by the mandate agreement with Britain and France and sanction by article 9. This wholesale exportation of law and practice has created a political structure deficient in accommodating a constitutionalism that can guarantee these rights. The domestic constitutional enabling framework for the implementation of these rights within this political structure has been shaped by colonial factors. Article 45 of the 1996 Constitution is still modelled along the lines of article 55 of the 1958 French Constitution. Of interest to this study is the 1972 constitution with amendments in 1996, 2008 and 2015 in which significant entrenchment of these rights have been achieved and some modest attempt made at entrenching the separation of powers. However, as it is discussed below, the overlap of constitutional authority works in favour of the executive and undermines in a significant way the protection and realization of the rights considered herein.

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[263] Neil Walker, "Taking Constitutionalism beyond the state" (2008) 56 Political Studies 519-543.

[264] Anthony Anghie, "Imperialism, Sovereignty, and the Making of International Law. Cambridge" (Cambridge University Press, 2005) 316

CHAPTER 4

DOMESTIC FRAMEWORK FOR COVENANT IMPLEMENTATION

1. INTRODUCTION

In acceding to the Covenant and through such activities as individual communication and state reporting[265] mechanisms, states parties send a signal of their desire to respect their obligations under the Covenant. Yet in practice, there exist a considerable limitation and a lack of desire for actual protection of these rights. One of the problems, Hafner-Burton and Tsutsui argue, is that global human rights treaties supply weak institutional mechanisms to monitor and enforce regime norms, offering governments the incentive to ratify human rights treaties as a matter of window dressing…'[266] These weak institutions are reflected in both domestic institutions like weak constitutionalism that translates into a lack of judicial independence, over-encroaching executive prerogatives and a weak role of the Human Rights Committee at the international monitoring and enforcement level. In a May 2012 paper presented at the annual conference of the International Studies Association, Von Stein argued that some autocrats operate by creating an air of legitimacy and authority.[267] It is through such a repressive mechanism, he contends, that such autocratic systems regularly test their relevance.

While most societies – whether democratic or autocratic – engage in some form of domestic repression, the peculiarity with autocratic systems lies in the absence of an internal structural configuration on which citizens can rely to promote and protect their rights. Generally, Human Rights Treaties are only relevant within a context of viable domestic institutions which can protect human rights and hold violators accountable. Donnelly and Rhoda have argued that the

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[265] See Chapter 6 on the discrepancies between participation in the reporting process and the quality of the reporting.

[266] Emilie M. Hafner-Burton, Kiyoteru Tsutsui and John Meyer, supra note 13 p.119.

[267] Von Stein Jana, 'The Autocratic Politics of International Human Rights Agreements' (Conference paper 2012)3.

ability of citizens to enjoy their rights depends on an effective national system of enforcement. Such a system they argued requires the "separation of the functions and powers of government and the conferral of independence on the courts so that they may watch over and review the actions of other branches of the government"[268]. The absence of such a remedial institution including the separation of powers as a factor of the nature of the constitutional system and the assent it gives to the protection of these rights renders ineffective any human rights protection regime.

Africa's contemporary constitutions legalise opposition parties, impose term limits on presidential tenure, grant independent courts constitutional review authority, and guarantee essential civil and political liberties.[269] Most of the autocracies in Africa South of the Sahara, including Cameroon, are presidential unitary Republics[270] with a presidential system of government, a multi-party constituted parliament and a judiciary whose independence is mostly guaranteed by the executive[271]. The exceptions are Ethiopia that operates a semi-presidential federal Republic and Nigeria, which runs a presidential unitary federal system with considerable powers devolved to the states. The preamble of the Ethiopian constitution sets a tone that marks a departure from the turbulent past that inspired its present constitutional framework. Apart from entrenching human rights,[272] a fundamental and foundational principle of the state, it also recognises diversity and devolution of powers in building 'a single political community which is based on our common consent and the rule of law to ensure lasting peace.'[273]

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[268] Jack Donnelly and Howard-Hassmann Rhoda, 'Assessing National Human Rights Performance: A Theoretical Framework' (1988) 10 Human Rights Quarterly 214, 246.

[269] Kwasi Prempeh, 'Africa's 'Constitutionalism Revival': False Start or New Dawn?' (2007) 5 International Journal of Constitutional Law 469,471.

[270] Constitutions of Angola (Article 1), Benin (Article 2) Burkina Faso (article 31), Chad (article 1); also see appendix 1.

[271] Constitution of Chad (article 145), Cameroon (article 37(2).

[272] Constitution of Ethiopia, Preamble para. 2.

[273] Constitution of Ethiopia, Preamble Para. 1.

Apart from the framework of constitutional entrenchment, International human rights law has created legally binding obligations for states parties to adopt national laws to reflect treaty obligations and to create legitimate institutions to ensure that these rights are guaranteed. The ability for citizens to enjoy their rights depends primarily on these national enforcement regimes, including the availability of remedies when these rights are violated. Donnelly once more argues that national law, legal institutions, the principle of the rule of law, and substantive rules -- are essential to assuring that the state operates as the protector rather than a violator of human rights.[274]

As has been shown in Chapter three, the political trajectory of Cameroon to full sovereignty and political independence has been fraught with institutional limitations which have put rights protection in conflict with the political aspirations of the executive. Consequently, it needed some measures of domestic action for the Covenant to be implemented as domestic law. Generally, this has depended on the relationship between the Covenant as an international treaty and the domestic law in Cameroon. This relationship has also depended on whether the Covenant has direct applicability or needs prior legislation to be invoked and how this legislation is crafted to give effect to Cameroon's obligation under the Covenant. Article 2 para.1 of the Covenant addresses this as follows:

'Each state party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status'.

This could be construed as ensuring direct applicability until it is read together with para. 2:

'Where not already provided for by existing legislative or other measures, each state party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or

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[274] Jack Donnelly, "The virtues of Legalisation' in (S Mercled Garcia and B Cali) The Legalisation of Human Rights. Multi-disciplinary Perspective of Human Rights and Human Rights Law (2006, Routledge, New York) 67, 7

other measures as may be necessary to give effect to the rights recognized in the present Covenant'.

In its General Comment No. 31 of article 2, the Human Rights Committee has stated that:

'Article 2, para. 2, requires that states parties take the necessary steps to give effect to the Covenant rights in the domestic order. It follows that, unless Covenant rights are already protected by their domestic laws or practices, state Parties are required on ratification to make such changes to domestic laws and practices as are necessary to ensure their conformity with the Covenant. Where there are inconsistencies between domestic law and the Covenant, article 2 requires that the domestic law or practice be changed to meet the standards imposed by the Covenant's substantive guarantees. Article 2 allows a state party to pursue this in accordance with its own domestic constitutional structure and accordingly does not require that the Covenant be directly applicable in the courts, by incorporation of the Covenant into national law'

In recent years and in the face of domestic political resistance and the threat from Boko Haram, Cameroon's priority has changed from locking in with its international obligations under the Covenant to national security, and this has translated into legislation which has had more executive rather than legislative and judicial ascent. The role of the legislature is critical in defining the parameters on how defined laws are translated including the enabling domestic environment for the rights incorporated to be invoked in domestic courts[275] and critically too, to the political, administrative and judicial organisation.[276]

This chapter thus outlines the constitutional incorporation of the rights to effective remedy as defined under articles 2(3), the prohibition of torture as forbidden under article 7, the right to security of person under article 9, the humane treatment of persons in detention under article 10, and the right to fair trial as provided under article 14. It then considers the role of the judiciary in the implementation of state obligations under these provisions and finally examines the role of administrative procedures in the implementation process. The chapter determines that the national framework for the implementation of these rights in Cameroon is inadequate. This inadequacy is due to excessive executive control in the making, interpretation, and application of the law compounded by the way the institutions responsible for implementation are structured. Powell and Staton have argued that "effective domestic enforcement is not only

[275] Constitution of Cameroon, article 26(2a).

[276] Ibid, article 26(2c).

a function of the power of the courts to set a limit on state behaviour but also of the government's expectations whether victims of repression will seek legal redress"[277]. The expectation of a government to respect and ensure to its citizens the rights in the Covenant must be reflected in the way it has structured its national political and constitutional environment to ensure that accession to the Covenant finds an accommodating domestic environment that can translate into rights protection.

2. THE NATURE OF THE CONSTITUTIONAL SYSTEM

Cameroon's constitution does not exist in a political vacuum. It functions within a multi-layered hierarchical political bureaucracy with competing interest. The system that has absorbed the political opposition as accessories to the survival of the state and the laws that supposedly project a liberal, open and transparent political order. Such an order Prempeh argued, may be associated with the jurisprudence of executive supremacy that regards the ' state' (personified in an omnipotent chief executive), and not a supervening constitution, as the source, juridically speaking, of all 'rights' and 'freedoms.'[278] It may equally relate both to the form of the institutional arrangements adopted in given societies, but also to the effectiveness of the constitutional order as a whole, especially that of protecting human rights against the legislature.[279] Neil has also argued that the historical preoccupation of modern constitutions amongst others is directed against the dangers of tyranny or arbitrariness associated with the concentration of political power.[280] Beyond hindering the dangers of tyranny, Gavison sets out three essential pillars of a constitution. First, to both authorise, and to create limits on, the

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[277] Emilia Justyna Powell and Jeffrey K Staton, 'Domestic Judicial Institutions and Human Rights Treaty Violation' (2009) 53 International Studies Quarterly 149–174, 150.

[278]Kwasi Prempeh, "A New Jurisprudence for Africa" (1999) 10 Journal of Democracy 135, 139.

[279]Ruth Gavison, "What belongs in a Constitution" (2002) 13 Constitutional Political Economy 89, 91.

[280] Walker Neil, "Taking Constitutionalism beyond the state" (2008) 519 Political Studies 519, 521.

powers of political authorities. Second, to enhance the legitimacy and the stability of the political order. Third, to institutionalize a distinction between 'regular politics' and 'the rules of the game' and other constraints (such as human rights) within which ordinary politics must be played.[281] Like other constitutional scholars have argued, it is also useful for constitutions to be reflective of the socioeconomic, political and cultural contextual realities of the country in question. Such a reflection will go a long way to prevent the kind of wholesale exportations experience during immediate post-independence constitutions. Such constitutions should, at their barest minimum, ensure the separation of powers between the three arms of government, entrench fundamental civil and political rights and provide a firm basis to avoid executive amendment of the constitution. Constitutions, Lutz also argued, may not describe the full reality of a political system but when carefully read they are windows of the underlying realities.[282]

Post-1990 constitutional amendments in Cameroon have been sold to the people and the world as a body of norms designed to mitigate or eliminate the perennial ills of autocracy that have in most African countries translated into massive curtailment of rights. Such curtailment led to declining economic development associated with exclusion of vast sections of the society and political instability associated with state impunity. While many of the amendments in the post-independence Cameroon constitution have considerably opened up the political space for the ordinary person, they have not adequately addressed the institutional weaknesses that made dictatorship and the concomitant repression, corruption, and economic mismanagement inevitable.[283]

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[281] Ruth Gavison, supra note 279 p.90.

[282] Donald Lutz, "Towards a Theory of Constitutional Amendments" (1994) 8 American Political Science Review 355, 355.

[283]Charles M. Fombad, "Constitutional reforms and constitutionalism in Africa: Reflections on some current challenges and prospects" (2011) 59 BLR 1007, 1010.

3. CONSTITUTIONAL STRUCTURE OF POWER

Cameroon is a political construct of two nations coexisting in a tenuous relationship. These two nations inherited both French and British colonial legacies which significantly impacted their constitutional structure. The 1996 and 2008 constitutional amendments defined the constitutional structure of modern-day Cameroon and the way this constitution absorbs the notion of rights protection. It has one of the most complex autocratic structures of power. The impact of colonial legacy on both the political and constitutional structures and the way they impact their human rights regime is more visible on the nature of their constitutionalism. It inherited a constitutional system drawn overwhelmingly from patterns familiar with the departing colonial power, hence reflecting assumptions far more common in the metropolis than in particular African societies.[284] This has also translated into a jurisprudence of supremacy that regards the state and not the constitution as the juridical source of all rights and freedoms.[285] Their Civil Law tradition reinforces the notion of the state as supreme and citizens as subservient to the state. These attributes have had huge implications on rights protection, interpretation, and enforcement.

The 1996 constitution in which significant entrenchment of these rights are spelled out and some modest attempts made at entrenching the separation of powers is the central focus of this analysis. However as shall be examined below, the overlap of constitutional authority works in favour of the executive and undermines in a significant way the protection and realization of the rights considered herein.

3.1. 1996 CONSTITUTION; THE NEW FACE OF CAMEROON'S CONSTITUTIONALISM

For a legal environment to be conducive to impact litigation, there is a need to have a constitution which entrenches human rights; a constitution with a bill of rights in which protected rights are justiciable. Is it currently the case? Besides, the courts and especially constitutional jurisdictions should be accessible to all persons in all matters, especially in

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[284] Bonnie Ibhawoh, 'Between Culture and Constitution: Evaluating the Cultural Legitimacy of Human Rights in the African state' (2000) 22 Human Rights Quarterly 838, 846.

[285] Kwasi Prempeh, "A new jurisprudence for Africa" (1999) 10 Journal of Democracy 139.

constitutional review-related matters and not only in electoral disputes as is currently the case generally. The constitution defines the relationship between the government and the people; it defines the laws and regulates the powers and interactions between the different centres of powers.

The Cameroon constitution defines the rights and obligations of citizens and demarcates the powers of the various arms of government. It is the embodiment of the rules, norms, and mechanisms through which personal integrity rights can be protected. The role and relationship between the different centres of power are as important as the rules they are created to enforce. Constitutional power in Cameroon like in most constitutions is distributed between the executive, legislature and judiciary. Unlike the fourth French Republic where the French vested supreme authority in the National Assembly, the Cameroon constitution is modelled after the constitution of the fifth French Republic where the centre of power rests in the executive arm. However, unlike the French where legislative and judicial independence can have checks on the executive, the constitution of Cameroon prides itself on executive supremacy associated with matters of judicial and legislation competences.

3.1.1. CONSTITUTIONAL PROTECTION OF RIGHTS

The corresponding legislation in Cameroon for the implementation of the Covenant and other international treaties clearly states that "the president of the Republic shall negotiate and ratify treaties and international agreements. Treaties and international agreements falling within the area of competence of the legislative power as defined in Article 26 shall be submitted to parliament for authorisation to ratify" [286] . This parliamentary authority, however constitutionally guaranteed, is limited to issues of fundamental liberties, civil status, penal procedures, political, administrative and judicial organisation, financial and patrimonial matters, social and economic programme and the educational system.[287] This limitation is justified by the sweeping executive powers to legislate that is vested in the hands of the president with its impending implications on the sovereignty of parliamentary proceedings. These broad-based powers without any apparent limitations threaten primary legislation

[286] Constitution of Cameroon, article 43.

[287] Ibid, article 26(2a-f).

enacted by parliament and potentially undermines human rights protection. Most legislations enacted to protect personal integrity rights and other human rights require enabling institutions for their realisation. These institutions usually require executive decrees to be established. For example, the Cameroon Penal Code was created by secondary law,[288]and despite subsequent amendments to the law, the old provisions have remained in force.

The preamble of the constitution affirms Cameroon's "attachment to the fundamental freedoms enshrined in the Universal Declaration of Human Rights, the Charter of the United Nations and The African Charter on Human and Peoples' Rights, and all duly ratified international conventions…"[289]. These various treaties embody the principle for the protection of the inherent dignity of all persons. This is expressed in specific terms in the protection against torture, inhuman and degrading treatment, deprivation of liberty and any other action that impairs the protection of individual rights.

The Covenant on ratification and publication effectively became part of the domestic law without the need for a separate legislative act for its incorporation.[290] This has given ordinary citizens the opportunity to seek enforcement of their rights before national courts and tribunals. Any conflict that arises between any of the Covenant provisions and the constitution before it was ratified is resolved through a constitutional amendment as defined by article 44 of the constitution. The superiority of international law as outlined in the Vienna Convention on the Law of Treaties[291] over domestic law is a point explicitly grounded in the Cameroon constitution, as expressed in its article 45. This ensures that in the event of a conflict between domestic and international law, the latter will have priority. On a specific note, this means that

[288] Law No.67/LF/1of 12 June 1967 Introducing the Cameroonian Penal Code.

[289] Constitution of Cameroon, preamble.

[290] Constitution of Cameroon, article 45.

[291] Vienna Convention on the Law of Treaties (signed 23 May 1969, entered into force 27 January 1980), 1155 UNTS 331, 8 ILM 679, Article 27. Cameroon acceded to it on 23 October 1991.

the Covenant 'takes precedence over domestic law in the hierarchy of norms.'[292] It is important to note that this section is given additional relevance by article 65 that makes the preamble, being the only section of the constitution that guarantees personal integrity rights and other rights, an integral part of the constitution. Before its 1996 constitutional amendments, the preamble was never considered as part of the constitution. After the amendment, the preamble has become an integral part of the constitution that can be invoked as a constitutional provision in the protection of these rights. The preamble outlines the state's responsibility to see that, "every person has the right to life, to physical and moral integrity and humane treatment in all circumstances. Under no circumstance shall any person be subjected to torture, to cruel, inhuman or degrading treatment"[293]. Despite outlining these rights in the preamble, the constitution is however very vague in the protection of Covenant rights articles 2(3), 7, 9, 10(1) and 14 and mostly deferring responsibility to secondary legislation. That means while the protection of these rights is outlined in the preamble of the constitution, their actual protection is spelled out by a separate law.

The constitution is supposed to be the supreme law of the land and should, therefore, be very categorical and explicit not only on the protection of these rights but also on the mechanisms of their enjoyment and instruments of redress. Apart from the vagueness, several constitutional provisions undermine the constitutional implementation of the rights considered. The most important of this is the emergency powers provisions defined under article 9. The president of the republic may, where circumstances so warrant, declare by decree a state of emergency which shall confer upon him such special powers as may be provided for by law.[294] In the event of a serious threat to the nation's territorial integrity, existence, independence or institutions, the President of the Republic may declare a state of siege by decree and take any measures as

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[292] Constitution of Cameroon, article 45; also see article 79 of Senegalese Constitution. According to Article 27 of the Vienna Convention on the law of treaties, a party may not invoke the provisions of its internal law as a justification for its failure to perform a treaty.

[293] Constitution of Cameroon, preamble

[294] Constitution of Cameroon, article 9(1).

he may deem necessary. He shall inform the nation of his decision by message.[295] While Cameroon has never officially entered a derogation under article 4 of the Covenant, it has imposed curfews, state of emergencies and used administrative actions and antiterrorism legislation to limit the enjoyment of certain rights.

It must be noted that the rules governing situations of emergency are spelt out both in the jurisprudence of the Human Rights Committee[296] and the Covenant [297] as stated in article 4(1):

in times of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the state's parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin

Also, essential and necessary to this condition is the obligation of the state party to officially declare[298] a state of emergency unlike what happens in Cameroon where a de facto state of emergency has been in existence for more than 20 years. The executive has used state of emergencies and curfews to suspend due process, turn a blind eye on torture as a means of extracting information, incommunicado detentions, cruel inhuman and degrading conditions of detentions. In its 2017 report, Amnesty International noted that

security forces continued to arbitrarily arrest individuals accused of supporting Boko Haram, often with little or no evidence and sometimes using unnecessary or excessive force. Those arrested were frequently detained in inhuman, life-threatening conditions. At least 101 people were detained incommunicado between March 2013 and March 2017 in a series of military

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[295] Constitution of Cameroon, article 9(2).

[296] International Covenant on Civil and Political Rights supra note 1, article 4(1).

[297] Human Rights Committee, 'General Comment 29: states of Emergency (Article 4)' UN Doc. CCPR/C521/Rev.1/Add.11 (2001).

[298] Ibid para. 2.

bases run by the Rapid Intervention Battalion (BIR) and facilities run by the intelligence agency[299]

Article 9 of the constitution of Cameroon is quite important in giving clarity to the president's excessive powers. In having the right to declare a state of emergency and conferring extra powers to the executive branch, the president cannot be held responsible for any abuse that occurs during that state of emergency. Apart from the accumulation of unwarranted authority, the president is exempt from prosecution in acts committed in pursuance of articles 5, 8, 9 and 10 of the constitution and he shall not be accountable for them during the exercise of his functions.[300]

The emergency powers to legislate by decree is solely vested in the hands of the president. This gives the executive alone enormous room to navigate in terms of the interpretation and of its powers and the limit of executive actions during a period of emergencies.

3.1.2. THE EXECUTIVE

'With the president practically, and oftentimes legally, above the law, executive fiat and arbitrariness became a regular modality of rule in Africa, with damaging consequences for the rule of law'[301] The US State Department, in its annual human rights report in 2017, describes the political system as "… a republic dominated by a strong presidency. The country has a multiparty system of government, but the Cameroon People's Democratic Movement (CPDM) has remained in power since it was created in 1985. In practice the president retains the power to control legislation"[302] and a conformist parliamentary majority that facilitates the control of

[299] Amnesty International, 'state of the World's Human Rights' (2017/2018) p.113

[300] Constitution of Cameroon, Article 53(3).

[301] Kwasi Prempeh, supra note 50, p.775

[302] US State Department, Bureau of Democracy, Human Rights and Labour, Country Report of Human Rights Practices (Cameroon 2017) https://www. state.gov/documents/organization/277223.pdf p. 1

the legislative process[303]. According to its 1972 constitution, as amended in 1996 and 2008, executive power is shared between the president, a prime minister and cabinet ministers whom he appoints. The president is the head of state,[304] armed forces[305] and despite the guarantee of judicial independence in the constitution;[306] the guarantor of the independence of the judiciary.[307]Fombad argued that politicians whose rule is threatened by the independence of the judiciary should never be constitutionally vested with the powers to guarantee its independence.[308]

Beyond being the organ that guarantees the independence of the judiciary, executive control over the judiciary is sanctioned in article 37(3) of the Constitution, which puts the absolute and unfettered power to appoint, promote, and discipline judges all in the hands of the President of the Republic, the head of the executive arm of the state. According to the Commonwealth Latimer House Principles, Cameroon is still one of those Commonwealth countries where executive only appointment of judges still exists. According to the Latimer House principles, the appointment of judges should follow an independent process which must require a combination of legal safeguards and settled political conventions to be a reliable and legitimate means of appointing judges.[309] While this principle recognises the peculiarity of different

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[303] The ruling Cameroons People's Democratic Movement (CPDM) maintains 153 of the 180 seats in lower House and 56 of the 70 seats in the Senate.

[304] Constitution of Cameroon, Article 5(1)

[305] Ibid. article 8(2).

[306] Ibid. article 37(2).

[307] Ibid. article 37(3).

[308]Charles Manga Fombad, 'Judicial Power in Cameroons' amended of 18 January 1996'. (1998) 34 (Juridise Periodique No. 34, 1998) 68.

[309] Bingham Centre for the Rule of Law, "The Appointment, Tenure and Removal of Judges under Commonwealth Principles" (2015) p. xvi para. 1.4 BIICL. https://www.biicl.org/documents/689_bingham_centre_compendium.pdf?showdocument=1 accessed on 12 June 2015

domestic jurisdictions, the necessity for judicial independence, impartiality, competency and honesty will guarantee that different systems will uphold the rule of law.

The president's powers also stretches into the legislative branch with the authority to appoint one third of the members of the Senate.[310] Under the constitution, the legislative branch exercises parliamentary authority to legislate[311] while at the same time the executive branch encroaches in this domain and exercises governmental powers to issue rules and regulations in the implementation of parliamentary legislation,[312] and considerable legislative authority exercised in the form of decrees and ordinances. The exercise of decree powers under certain circumstances is exempt from administrative court review. However, some exceptions have occurred in which executive orders have been deemed so ultra vires that ordinary courts have declared their competence to handle them. In the Wakai et al case in which more than 172 persons were arrested and detained under executive prerogative without due process, the Bamenda High Court noticed that the extent of the violation of Convention rights was out of character that it could not be seen as administrative acts and so it declared its jurisdiction to hear the case.[313]

Again, Fombad argued that the enormous powers given to the President of the Republic under the constitution to appoint, dismiss, promote, transfer and discipline judicial officers, especially judges and prosecutors, limits in a fairly significant way not only the independence of the judiciary but also the effectiveness of the separation of powers[314]. This concentration of power goes deep and has been institutionalised as reflected in the Cameroon constitution in defining the role of the Higher Judicial Council (HJC) which assists the president in the appointment of

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[310] Constitution of Cameroon, Article 20(2).

[311] Ibid article 26

[312] Ibid article 27; also, see article 8(5) and article 12(3).

[313]Wakai and 172 Others v. The People (1997)1CCLR 127.

[314] Charles M. Fombad, "Researching Cameroonian law" (2011) www.nyulawglobal.org/Globalex/Cameroon1.htm accessed 04.13 .2015.

members of the bench and the legal departments.[315] The promotion, appointment, transfer, and discipline of magistrates and judges pass through the hierarchy of the minister of Justice who makes proposals and recommendations to the presidency of the republic before it gets to the Higher Judicial Council. The Council is presided over by the head of the executive branch of the government who is the president of the country. The president promotes, appoints, transfers and integrates magistrates and judges into the judiciary. The president has the powers to move magistrates and judges from one department to the other. A presiding magistrate on the bench can be transferred to the legal department as a prosecutor and vice versa. In other words, there are no specific magistrates and judges assigned to the bench and the legal department. They all work interchangeably, i.e., the Court of First Instance and the High Courts, and the Office of the Attorney General at the levels of the Courts of Appeal and Supreme Courts, with the Minister of Justice as the hierarchical supervisory authority. This department supervises, controls and directs all investigations, and prosecutes same at different levels.

The problem with this organ is its composition and its independence. There are 10 members of the Higher Judicial Council, including the president as the chair, the minister of Justice appointed by the president as the deputy chair, three parliamentarians who probably must have gained their seats through their allegiance to the statecraft and a single independent personality still appointed by the president and three senior judges all of whom are presidential appointees. This assisting body, in helping executive prerogatives in the appointment of judges, hardly meets the test of the Bingham Commonwealth principles. Another worrying executive intrusion which calls to question the independence of the judiciary is the power of the President to dispense of fixed retirement age for judges. The case of former supreme court Advocate General, Justice Ayah Paul Abine is relevant in understanding how the executive abuses power. Justice Ayah who was a group 1 magistrate was arrested and detained for his political opinions against the policy of sending French speaking judges in English speaking courts. According to Article 629 of the Code of Criminal Procedure,

when a magistrate of the judiciary is liable to be charged with an offense, the competent public prosecutor submits an application to the President of the Supreme Court, who designates One judge charged with investigating the case and three others, with a rank less equal to the one in

[315] Constitution of Cameroon, art. 37(3).

question, with a view to the eventual judgment of the case in the first instance. The President of the Supreme Court then indicates the city where the case will be judged

Unable to put Justice Ayah on trial, the President of the Republic chaired a meeting f the Higher judicial Council on 1st July 2017 which decided to send Justice Ayah on early retirement.

Another area of executive overstretch is in legislative intrusion, and the constitution empowers the president of the republic to legislate by way of an Ordinance for a limited period and for given purposes.[316] This is particularly troubling as this area of executive exceptionalism involves executive intrusion into constitutionally guaranteed rights. While the constitution guarantees the power of legislative prerogative over the passing of bills,[317] the president can legislate by Ordinance in "safeguarding individual freedom and security"[318].

The constitutional structure of power between the three arms of government treats both the executive and legislature as powers, while the constitutional status of the judiciary is reflective of its status in the French Constitution[319] as an authority whose independence must be guaranteed by the executive. This diminutive constitutional status of the judiciary somehow accounts for the lack of judicial independence. This has far-reaching implications in judicial oversight in the protection of constitutionally entrenched human rights and the interpretation of state obligation under the Covenant.

3.1.3 THE LEGISLATURE

Cameroon's legislature is a bicameral structure with a lower house known as the National Assembly and an upper house known as the Senate. The National Assembly is made up of 180 members elected by universal suffrage for five years.[320] The Upper House of the National

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[316] Constitution of Cameroon, article 28.

[317] Ibid. article 26(1).

[318] Ibid. article 26(1a).

[319] Constitution of the fifth French Republic, Article 64

[320] Constitution of Cameroon, article 15(1).

Assembly or the Senate was conclusively established with the election of 14 April 2013 of 70 Senators, with 56 from the ruling Cameroon Peoples Democratic Movement (CPDM) and 14 from the opposition Social Democratic Front (SDF), and the appointment of 30 others by the president of the Republic on 8 May 2013. Because of this appointment, four other political parties including the National Union for Democracy and Progress (NUDP), the National Alliance for Democracy and Progress (ANDP), the Movement for the Defence of the Republic (MDR) and the Front pour la salute National (FNSC) have a seat each in this Upper House, bringing to six the number of political parties represented at the Senate. The Senate made up of 100 Senators amongst whom are 20 women, and 15 traditional rulers went operational on 14 May 2013 during its session as provided for by the law. The president's party has an absolute majority in the National Assembly, and he appoints most members of the Constitutional Council which he chairs. By being the primary source of bills to be debated in Parliament, the executive branch apart from its ability to legislate by decrees, controls in a significant way the kinds of bills that are debated and adopted in Parliament.

The ANDP and FNSC were once an integral part of the NUDP. All the leaders of these three parties including the MDR have been members of the government of the ruling CPDM and long-time political allies. The leaders of all these political parties have once been or have at one time or the other held top-level positions within the Cameroon National Union which ruled the country as single party dictatorship from 1966 until 1984 when it changed to the CPDM. The president therefore has a secure parliamentary supremacy and unquestionable executive powers which facilitates both the making, interpretation and enforcement of laws. For example, its 2014 antiterrorism law was debated in parliament and passed using the ruling party's absolute majority in Parliament. Despite procedural flaws in its introduction, it was passed by the legislative branch, approved by the constitutional law commission and signed into law by the President. For example, Chapter 3, Section 11 of the law states that, "the duration of remand in custody shall be fifteen (15) days renewable upon the authorization of the state prosecutor"[321]. The power vested by this law to the prosecutor is in direct conflict with the role of a trial magistrate who is constitutionally vested with the powers to decide on detention. Since

[321] Dibussi Tande, 'Law on the suppression of anti-terrorism Act (Law No 2014/028 of 12/23/2015) <www.dibussi.com/2014/12/cameroon-terrorism-law.html>accessed on 05.01.15

Cameroon's independence, the ruling party has maintained its legislative majority and has increased its powers through four significant constitutional amendments, leaving both the judiciary and legislature as mere auxiliaries of the executive.

Article 26 of the Constitution defines the legislative prerogatives of the Parliament, especially concerning the protection of fundamental rights. It guarantees the protection of fundamental rights and 'safeguards the protection of individual freedoms and security.[322] This is a critical area of legislative prerogative, especially in areas of entrenchment of state obligation under the Covenant. The gap in the convergence between its obligation on these rights under the Covenant and its practice can be narrowed by legislative actions to create an enabling environment for their protection. Parliament is the critical institution in law making, and represents the collective aspirations of the masses, translating such aspirations into laws and ensuring that executive action in the protection of human rights is regulated through adequately crafted legislation. Unfortunately, the executive is such a powerful and omnipresent institution that has the powers to amend the constitution at will, extend the mandate of the National Assembly or completely dissolve it. In examining the impact of excessive executive influence on the constitution, Ndifor concluded that:

'…based on three decades of legislative superiority and constitutional weakness, it is safe to conclude that the use of executive decrees for permanent, rather than temporal law-making undermines the standard legislative process. In the context of Cameroon, the extensive and uncontrolled use of executive decrees is evidence that the legislature is being marginalized and democratic institutions are ineffectual.'[323]

It is in the backdrop of this reality that the judiciary operates as a weakened and dependent institution incapable of striking down primary legislation.

3.1.4. THE JUDICIARY

Cameroon has been described as having a bi-jural system with a tense co-existence between the Common and Civil Law systems. Fombad submits that "the bi-jural system or at least the remnants of it which exist today de facto, has no clear de jure constitutional recognition or

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[322] CC, Article 26(2(1a)).

[323] Bounaventure F Ndifor, 'The Politicisation of the Cameroon Judicial System' (2014) 1 Journal of Global Justice and Public Policy Volume 27, 38.

protection"[324]. The co-existence of these two opposing legal systems is traced to the colonial era which entrenched the Civil Law in the former French Trust Territory of Cameroon with the Common Law system in the former UN Trust Territory of Southern Cameroons with no constitutional protection. He also argues that in 1972, the Cameroonian constitution attempted to organise and structure the judicial system, but it left out any specific instruction on how the law would be applied in mixing Common and Civil Law and the effect it would have on the judicial system that the constitution was trying to create.[325]

The political mix of both systems designed for progressive harmonisation has translated into the selected application of justice and has seen detainees under the Common Law jurisdiction being tried using Civil Law procedures. It is also noted in some politically charged cases of detainees being deliberately moved from the Common Law jurisdiction to avoid its strict procedural obligations of the presumption of innocence and right of the writ to habeas corpus.[326] The overall scenario is captured by Fombad in his thesis on legal pluralism as an evolution of legal bijuralism within the context of dubious political legalism aimed at political absorption and assimilation[327]. This systematic attempt at political absorption alongside deliberations in structuring the judiciary in a way that challenges its efficacy and independence has far-reaching implications on the notion of fair trial, provision of minimum conditions while in detention, personal security and even torture.

This sort of political system leaves a state without a stable constitution that guarantees personal integrity rights through the rule of law with an effective of powers between the legislative, judiciary and executive branches. It is a system in which Judicial independence coexists with an imperial executive organ that oversees and controls each department of the state and a weakened legislative branch, which is incapable of effective balance. Despite these institutional defects, the principles underlying the administration of justice are partially reflected in the

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[324]Charles Manga Fombad, supra note 66, p.216.

[325] Charles Manga Fombad, 'Cameroonian Bi-Juralism: Current Challenges and Future Prospects', (1999) 5 Fundamina 216.

[326] See Chapter 5 in the cases of Akwanga v Cameroon, Mukong v Cameroon, Gorji v Cameroon

[327]Fombad, Experiment in Legal Pluralism, supra note 66 p.214.

preamble of its constitution. Justice shall be administered in the name of the people[328]; the law shall ensure the right of everyone to a fair hearing before the courts and specific to this study; every person has a right to life, to physical and moral integrity and humane treatment in all circumstances. Under no circumstances shall any person be subjected to torture, to cruel, inhuman or degrading treatment.[329]

Yet the force of the law depends strongly on its underlying principles and the institutions put in place to administer justice. In their study on the assessment of national human rights performance, Donnelly and Rhoda argued that, "the most effective internal checks require the separation of the functions and powers of government and the conferral of independence on the courts so that they may watch over and review the actions of other branches of the government"[330]. The institutional framework for judicial independence is outlined in the constitution and other ordinances issued by executive decrees. Despite this framework, the executive controls the tools that guarantee the independence of the judiciary as a direct means of enhancing its own powers. Apart from appointing judges, the executive determines their salaries through decrees, controls the Higher Judicial Council that oversees the discipline of judges[331] and can decide on the retirement and promotion of judges without an independent review process. While judges of the fourth grade are required to retire at age 65, third grade ones at 60 and first and second grade judges at 58[332], the president may by decree dispense with the retirement age.

The corresponding structure for the administration of justice rests at the heart of the conflict between judicial powers and its independence and executive control or oversight. Despite its

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[328] Constitution of Cameroon, article 37.

[329] Ibid. preamble.

[330] Donnelly and Rhoda 1988 supra note 81 p. 232.

[331] Decree No. 95/048 of 08 March 1995 on the Status of the Magistracy (SOM), amended by decree 2004/080 of 13 April 2004, article 62(1)(2).

[332] Ibid, SOM article 71(4).

unique status,[333] Cameroon's judicial system is structured in a manner that reinforces its subordination to the executive. The most repressive machinery of the state, that is, the police, army, and gendarmerie, are all extensions of the executive arm and oversee critical aspects of human rights protection associated with judicial oversight, including arrests, detentions, and pre-trial investigations. These executive appendages can stretch their powers into the judicial realm through administrative actions in the area ordering detentions. With such a level of executive intrusion and control of the judiciary, the executive frustrates most attempts at holding public officials to account. Powell and Staton have argued that effective domestic enforcement of either constitutional or Covenant provisions is not only a function of the power of the courts to set a limit on state behaviour but also of the government's expectations whether victims of repression will seek and receive legal redress.[334] Such a system will also depend on how accessible it is to the ordinary citizens and how it is structured to render justice to the unjustly afflicted.

3.1.5. GENERAL FRAMEWORK FOR JUDICIAL ENFORCEMENT

There are two main judicial centres of power that oversee the implementation of the law. Judges of the bench preside over cases and according to the constitution "their activities shall be guided by the law and their conscience",[335] while prosecutors form part of what is known as the legal department. The legal department functions to enforce laws, judgments and in criminal matters undertakes investigations, issue warrants and general prosecutions and investigations.[336] The Prosecutor General heads it at the level of the Appeals and Supreme Courts, and answerable

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[333] Decree No. 95/058 of 8 March 1995 grants the magistracy a special status which exempt magistrates from the general rule of the public service.

[334] Emilia Justyna Powell and Jeffrey K Staton, 'Domestic Judicial Institutions and Human Rights Treaty Violation' (2009) 53 ISQ 149, 153.

[335] Constitution of Cameroon, art. 37(2).

[336] Judicial Organisation Ordinance 2006 ss 14(1) and 17(1) and Criminal procedure code 2006, art 142(3).

directly to the ministry of Justice[337] and by a state Counsel at the level of the High Courts and Courts and answerable to the General Prosecutor of the Appeals Court within that geographic region. The legal department shall, as provided for in this section, comprise the magistrates in the legal department of the Supreme Court, the Court of Appeal, the High Court and the Court of First Instance.[338]

Although the court system in Cameroon is decentralised, adjudication of the violation of personal integrity rights remains complicated. Fombad argued that,

the effect of the 1972 Judicial Organisation Ordinance, which has since been amended on several occasions, is that English Common and French Civil Law continue to co-exist, however uneasily, in both parts of Cameroon, but are now applied within an essentially civilian-style court structure. It is this court structure that operates in both legal districts of the country[339]

The enforcement regime of the judiciary is significantly affected by the executive influence over both legislative and judicial matters but most importantly in the way the court system is structured and how this structure enables both access and ensures its independence.

3.1.6. STRUCTURE OF THE COURT SYSTEM

Judicial organisation in Cameroon is spelled out in Ordinance No. 72/04 of 26 August 1972 and amended by Law No 2006/015 of 26 December 2006 and most recently Law No 211/027 of 14 December 2011. Judicial organisation ordinance structures the courts as from the Supreme Court, Courts of Appeal, lower courts for administrative litigations, lower audit courts, military courts, High Courts, Courts of First Instance and Customary Courts.[340] As Fombad wrote, at the apex of this judicial pyramid is the Supreme Court, the only court specifically mentioned in any detail in the Cameroon constitution. The organisation, functioning, composition and duties of all the other courts mentioned in part V of the

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[337] Ibid section 30(2).

[338] CPC, section 127(2)

[339]Fombad, Experiment in Legal Pluralism, supra note 66, 319

[340] Law on Judicial Organisation (Law No 2006/015 of 26 December 2006) section 3, https://www.legal-tools.org/doc/df57e8/pdf/ accessed 14 August 2014

constitution are left to be determined by subsequent legislation. The Court of First Instance operates in each sub-division, a High Court for each division and a Court of Appeal for each region, and a single Supreme Court for the entire country. The Supreme Court has amended section 9(1) of Ordinance No. 72/06 of August 1972 to confer to the administrative bench of the Court the sole authority to deal with charges of administrative disputes against public authorities. This amendment leaves the country with one administrative court with huge implications for accessibility and cost, and because of the backlog of cases, effective remedy can be difficult. Despite a 2008 constitutional amendment to decentralise the functioning of the courts to handle administrative disputes, which human rights cases fall under, there is yet to be a smooth transition[341].

Part V (articles 37–42) of the constitution outlines the powers and responsibilities of the judicial branch. This section establishes the Supreme Court together with the Courts of Appeal and the Tribunals and defines their roles under the executive government. The President retains the power to appoint the members of this judicial branch of government.

Part VII (articles 46–52) of the constitution, defines the Constitutional Council and its duties to rule on the constitutionality of laws and to oversee national elections and referendums. The constitution of Cameroon, therefore, provides for a Constitutional Council in Part VII (articles 46–52) different from the Supreme Court in Part V (articles 37–42)

According to the constitution, the administrative bench shall examine all the administrative disputes involving the state and other public authorities and shall also give final rulings on appeals against final judgements passed by lower courts in cases of administrative disputes.[342] In 1999, Akwanga brought a challenge against the military tribunal and the competence of the Civil Law jurisdiction, to oversee his trial [343]. Both appeals were unsuccessful. It must be noted that Akwanga had been arrested within the Common Law jurisdiction, transferred to a Civil Law jurisdiction and tried in a military tribunal. This routine action of the state underscores its distrust of the courts in the Common Law jurisdiction in handling highly charged political

[341] Constitution of Cameroon, article 40

[342] Constitution of Cameroon, article 40.

[343]Akwanga v Cameroon No. 1813/2008 para 5.4.

cases. That is why most politically charged cases emanating from the Common Law jurisdiction are either transferred to Yaoundé where Civil Law is the dominant legal theory[344] or are dealt with by military tribunals.[345]

Also, critical in this study is the role of the military tribunal which has been used in several cases against civilian political opponents of the regime.[346] The military tribunal has frequently been used to undermine stringent rules of procedure demanded by the civilian courts. For example, in the case of The People v Nyah Henry,[347] the judge granted bail and ordered the release of the defendants, but five days later the prosecutor ignored the decision and brought the defendants before the same judge charging them with two additional counts. The refusal by the legal department to respect the court judgement violated the rights of the defendants to the presumption of innocence guaranteed in the constitution of Cameroon[348] and the Covenant[349]. The judge relied on section 301(1) which states that where a case is not ready for hearing, the court shall adjourn it to its very next sitting and may order the release of the accused on bail, with or without sureties. The court may also order judicial supervision.'[350]

The structure of Cameroon's court system does not resolve the conflict between the Civil and Common Law systems. This conflict compounds the already complicated problem of access to the proper courts handling issues associated with the violation of personal integrity rights and the questions of delays associated with the backlog of cases. This conflict has far-reaching implications on the overall due process and especially in areas of access to the appropriate

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[344] The People v. Nya Henry Tichandum (22 August 2002), Appeal No. BCA/MS/11C/2002.

[345]Human Rights Committee, Womah Mukong v. Cameroon, Communication No. 458/1991, U.N. Doc. CCPR/C/51/D/458/1991 (1994).

[346]Akwanga v Cameroon No.1813/2008. Also, see Mukong v Cameroon No-458/1991; Gorji v Cameroon No.1134/2002.

[347] The People v. Nya Henry Tichandum (22 August, 2002), Appeal No. BCA/MS/11C/2002

[348] CPC, section 8(1)

[349] Covenant on Civil and Political Rights, supra note 1, article 14(2)

[350] CPC, Section 301(1)

courts of competence and the duration such cases may take. And as it is shown below, access and backlog of cases are compounded by executive intrusion, the conflict of jurisdictions brought about by the tenuous coexistence between the Common and Civil Law jurisdictions and the very bureaucratic nature of the court system.

3.1.7. ACCESS AND DURATION OF CASES

The Cameroon justice system is structured in a manner that renders access extremely difficult. In most cases, complaints about human rights violations are made against public authorities. Under the Common Law jurisdiction, the ordinary courts have automatic jurisdiction to deal with such cases. On the other hand, in a predominantly Civil Law jurisdiction like Cameroon, there are ordinary courts separate from administrative courts which have jurisdiction over such human rights cases. The judicial organisation of the courts fails to specify the jurisdictions within which human rights cases can be heard. This lack of specification leaves a gap in which victims of rights abuse have to resolve before bringing a case for adjudication. Although complaints against human rights violations are generally made against public authorities, the ordinary courts at both the district, sub-divisional and even divisional levels do not have jurisdiction to either hear such complaints or provide a remedy. Only the Courts of First Instance at the district level and high courts at the divisional level have the loci to hear cases against public authorities in the violation of the rights of people within its jurisdiction. It is mainly in the High Courts that cases of habeas corpus are heard. Per Ordinance No. 72/6 of 26 August 1972 that fixes the organisation of the Supreme Court, only the administrative bench of that court has the locus to hear cases of administrative dispute against the state and public authorities. With a single administrative bench located at the capital, accessibility to ordinary victims across the entire country is difficult. In Communication 272/2003 at the African Commission on human and people's rights, Cameroon argued that:

'the delays observed in the administration of justice in Cameroon are due to the underdeveloped nature of the country, which does not have the means to provide all the facilities required for a

diligent justice system, and not a deliberate desire by the government to hinder the administration of justice.'[351]

This delay also means that the court must deal with many cases and thus risk being slow. In the same case, Cameroon recognised this fact when it argued that "the complaint is still under consideration before one of the highest national courts which certainly has a lot of backlog in the works…"[352]. Apart from the usual problems of sorting out the appropriate courts that compound access, the desire by both the executive and judiciary to undermine the Common Law jurisdiction also possess a huge problem in dealing with human rights cases.

4. JUDICIAL PROTECTION AND THE IMPLEMENTATION OF STATE OBLIGATIONS

According to the United Nations, the rule of law refers to a principle of governance in which all persons, institutions and entities, public and private, including the state itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards.'[353]

One of the most important recommendations of the Human Rights Committee in its views in individual communications as expressed in the Akwanga case is as follows:

'In accordance with article 2, para. 3 (a) of the Covenant, the state party is under an obligation to provide the author with an effective remedy, which should include a review of his conviction with the guarantees enshrined in the Covenant, an investigation of the alleged events and prosecution of the persons responsible, as well as adequate reparation, including compensation. The state party is under an obligation to avoid similar violations in the future"[354]

This recommendation puts the judiciary at the centre of both the protection and the implementation regimes of state obligations under the Covenant. This section examines the

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[351] African Commission on Human and Peoples Rights, Association of victims of Post electoral violence and Interrights v Cameroon in communication 272/2003 para. 59, decision on 25 November 2009 http://www.achpr.org/communication/decision/272.03/ accessed 09. 12. 2014

[352] Ibid para. 60.

[353]United Nations, 'Reports of the Secretary General on the Rule of Law and Transitional Justice in Conflict and post conflict societies' in S/2004/606 para. 6 p.4.

[354] Akwanga v. Cameroon, No. 1813/2008, para. 9

role of Cameroon's judiciary in both the protection regime and the implementation of its obligations under these specific rights.

4.1. THE PROTECTION REGIME OF CAMEROON'S JUDICIARY

The right to be protected from torture, deprivation of liberty, detention under inhuman and degrading conditions and to have a fair trial including an effective remedy for any infraction of these rights is a fundamental human right guaranteed by the constitution and the Criminal procedure code of Cameroon. Constitutional guarantees alone do not automatically translate into the respect and enjoyment of these rights without the power of institutions like the judiciary to be independent and with the powers to continually review the actions of both the legislature and executive. In their study on the assessment of national human rights performance, Donnelly and Rhoda argue that "society requires the discharge of certain political functions, and large-scale political organization requires the state. However, the state—especially the modern state—also presents particularly serious threats to human dignity"[355]. That is why internal state institutions must function as a cushion against the tyranny of the executive. The Cameroon constitution procedurally performs this task and guarantees judicial independence from both the legislature and executive[356]and empowers the Constitutional Council[357]to review legislative and executive actions. Such safeguards notwithstanding, there are foundational theoretical flaws that make these guarantees by themselves insufficient in ensuring the protection of these rights. The role of the judiciary in the protection of rights in Cameroon has been mostly dependent on the theory of the relationship between its domestic law and international law. Fombad argues that Cameroon is a dual system consisting of two unique but conflicting legal systems, the English Common Law, and the French Civil Law, operating in tenuous coexistence.[358] While such a legal system is considered as a mixed jurisdiction, Cziment

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[355] Donnelly and Rhoda 1986 supra note 84 p. 803.

[356] Constitution of Cameroon, article 37(2).

[357] Ibid article 46-47.

[358] Charles M. Fombad, "Researching Cameroonian law". (2011). www.nyulawglobal.org/Globalex/Cameroon1.htm accessed 02 .02.15.

concluded using Palmers nine interim conclusions on shared traits of classical mixed jurisdictions that Cameroon is not a mixed jurisdiction.[359] The reason, she argues, is that 'Civil Law is retained in the region where it was administered by the French, and Common Law is retained in the region administered by the English.'[360] Efforts at harmonization have been limited causing the state to continually moved arrested persons from the common to the Civil Law jurisdiction where it feels it has more control over judicial proceedings in contravention of the spirit of section 584 of the Criminal procedure code. The most recent of such unified laws is the Criminal procedure code which went into effect on 1 January 2007. Before then, the country operated a dual criminal procedural system reflecting its bi-jural nature; the inquisitorial system derived from French Civil Law, and the accusatorial system which emanates from English Common Law.

In July 2005, there were efforts to create a hybrid system, which merged essential aspects of the common and Civil Law systems. Before the new Criminal procedure code came into force on 1 January 2007, criminal procedure was governed separately. This created a massive problem in the interpretation of existing statutes to the extent that the outcomes were dependent on whether they were interpreted by French courts or English courts. The case of the People v Oben Maxwell illustrated the complexity of the political environment within which the judiciary operates and its politically charged construction which renders it ineffective as an institution of justice.

Another fundamental principle that guarantees right protection in every society is the guarantee of the right to fair trial. This is manifested by the quality of the courts which is reflected in its independence and its access by ordinary citizens. Having dealt with the question of the independence and to a specific extent access to the Council, another critical determinant to access is the ability of citizens to have the possibility of legal aid. In ensuring access to the courts by all, the government passed law No. 2009/4 of 14 April 2009 to organise legal aid

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[359]Stella Cziment, 'Cameroon: A Mixed Jurisdiction? A Critical Examination of Cameroon's Legal System Through the Perspective of the Nine Interim Conclusions of Worldwide Mixed Jurisdictions (2009)2 EWCC 2.

[360]Ibid p.8.

aimed at facilitating the material conditions of access to justice. This guarantees to everyone the right to apply and to receive legal aid from the moment a case is brought in front of the courts until the moment the judgment is executed. The problem with obtaining legal aid lies in the fact that the commission charged with determining the application of litigants lacks independence. Like the Constitutional Council discussed below, most of its officials which include the president of the court concerned, the representative of the legal department of the said court and the representative of public authorities are appointed by the executive branch. This lack of impartiality is also magnified by a lack of transparency in the judicial process.

Corruption also affects the subjective dimension of article 14(1) by influencing the neutrality of the courts. Political corruption which entails executive or legislative influence in the judiciary process is rife in Cameroon. In its 2016 ranking, the World Justice Project (WJP), ranked Cameroon in the rule of law index 18th out of 18 countries examined in Africa South of the Sahara. It was ranked 109th out of 113 countries and jurisdictions worldwide. The WJP performance measures corruption using "44 indicators across eight primary rule of law factors, each of which is scored and ranked globally and against regional and income peers; constraints on government powers, absence of corruption, open government, fundamental rights, order and security, regulatory enforcement, civil justice, and criminal justice"[361]. Key to these was the total absence of civil justice and the presence of endemic corruption which makes impartiality as a critical ingredient in the protection of these rights impossible.

One of the principal avenues through which Cameroon has mitigated the effect of corruption has been through the transfer of matters from one court to another. This phenomenon ensures that in the interest of public policy, the supreme court may withdraw a case from one court and transfer it to another court of the same jurisdiction or appoint magistrates within the jurisdiction of a different Court of Appeal to hear and determine the matter.[362] For example, in the Judgment in Nguemgne Josephine vs. the People and Ngasse Clovis Noël, the Supreme Court

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[361] World Justice Rule of Law Index (2016) found in https://worldjusticeproject.org/sites/default/files/documents/ROLIndex_2016_Cameroon_en.pdf accessed 15 October 2016.

[362] CPC, article 604.

justified the transfer of the case by on the grounds that there is reason for legitimate suspicion where there is sufficient ground to think that the examining magistrate or the trial court seized of a matter is unable to deliver a judgment with impartiality due to the leanings or interests of the judges concerned[363]. While this is explained in a manner that insinuates the protection of due process, the mere fact that the executive can intervene in an ongoing judicial matter further demonstrates the lack of judicial independence and the extent of outreach of executive power. Apart from excessive executive intrusion and control, corruption plays a significant role in altering the outcomes of judicial procedures and influencing executive actions

In the Concluding Observations of its 5th periodic report

While acknowledging the measures taken by the state party to combat corruption (Operation Épervier), the Committee notes with concern that corruption is endemic in the state party. Also, troubling are reports that public authorities, including those in the police, judicial, tax, education and health sectors, often extort money from individuals as a condition for providing services. The Committee takes note of the state party's anti- corruption measures but is still concerned at allegations that these measures are exploited and misused in order to target certain prominent individuals, including political figures (arts. 2, 14, 25 and 26)[364].

In the same observation, it recommended that the state party should:

(a) step up its efforts to combat corruption and to ensure that it does not go unpunished; (b) ensure that all cases of corruption are independently and impartially investigated and, where applicable, that appropriate judicial penalties are imposed on perpetrators; and (c) establish strict standards for public officials and ensure that those responsible for acts of corruption are subjected to disciplinary action and are prosecuted in court[365].

The autocratic nature of the political and constitutional system makes the judiciary an ineffective institution to overrule the actions of the executive on substantive, as well as procedural grounds; and even more difficult to interpret and apply the constitution in order to overturn rights-abusive statutes, especially in the face of a rigorous and committed repressive

[363] No. 31/FCR of 15 April 2008

[364] Human Rights Committee: Concluding Observations pursuant to its report submitted under article 40 of the Covenant para. 9 in UN Doc. CCPR/C/CMR/CO/5 (2017)

[365] Ibid. para.10

regime.[366] The structure of the political and constitutional system renders institutional avenues of redress almost impossible. Under such a system, civil society actions, external pressure and legal actions against deliberative institutional weaknesses become the sole avenues through which citizens can safeguard their rights.

4.2. THE CONSTITUTIONAL COUNCIL

Cameroon's Constitutional Council is a political construct put in place as a compromise to political demands for constitutional reforms. Cameroon's constitutional development have seen 5 different constitutional changes, with the most far reaching being in 1996 with the introduction of the Constitutional Council. The Federal constitution of 1st September 1961 provided for a Federal Court of Justice which was vested with the powers amongst others (1) to decide conflicts of jurisdiction between the highest courts of the two federated states[367] (ii) to decide complaints against administrative acts on grounds of 'ultra vires' and could take a review of legislative action and give advisory opinions.[368] In 1972, a new constitution was ushered in which abolished the federal structure of the state and put in place a unitary centralised political structure. As Fombad wrote, insofar as the determination of the constitutionality of the law was concerned, the new constitution reproduced the mechanism of the previous one with the only exception being the replacement of the Federal Court of Justice by the Supreme Court.[369]

The constitutional amendment of 1996 introduced for the first time, a Constitutional Council in Cameroon's constitutional history. As per the constitution, "the Constitutional Council shall

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[366] Jonathan Lupu, "Best Evidence: The Role of Information in Domestic Judicial Enforcement of International Human Rights Agreements" (2013)67 International Organisation 280.

[367] Federal constitution of Cameroon of 1961, article 33(1a), http://archivesoftyranny.org/wp-content/uploads/2017/02/Constitution-of-Federal-Rep-of-Cameroon-1971.pdf accessed 11 January 2015

[368] Ibid, article 14

[369] Charles M. Fombad, "The new Cameroonian Constitutional Council in a comparative perspective: Progress or retrogression?" (1998) 42 (2) Journal of African Law172-186, 174

have jurisdiction in matters of the Constitution, rule on the constitutionality of laws, and shall be the organ regulating the functioning of the institutions"[370]. The constitution guarantees judicial independence from both the legislature and executive [371] and empowers the Constitutional Council[372] to review legislative and executive actions and gives final rulings on the constitutionality of laws and the operation of international treaties. It also rules on the actions of the institutions of the state and whether their actions are consistent with the spirit of the constitution.[373] Genuine constitutionalism will require a fair system that ensures that the spirit of the constitution is respected. Such a system is essential in the implementation process of the Covenant as laws must be consistent with the spirit of the constitution and consequently with the Covenant.

The credibility and independence of this process is undermined by the subordination of the judiciary to the executive and legislative branches; the limited way with which an imperial executive refers matters for review[374] and the partisan nature in the appointment of its members[375]. The implication of these procedures that strips the judiciary of independence translates into diminished judicial authority to overturn rights abusing statutes and review executive and legislative actions inconsistent with the constitutional protection of human rights. Without such powers of substantive review of law, policy, and practice, even the most dedicated and independent of judges can act only against wilful or careless violations of human rights.[376]

The Constitutional Council is inadequately equipped to deal with the task of handling the constitutionality of the law. This inadequacy is compounded by issues of access, composition,

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[370] Constitution of Cameroon, article 46.

[371] Ibid. article 37(2).

[372] Ibid. article 46-47.

[373] Ibid article 47(1)

[374] CC, article 47(2).

[375] CC, article 51(2).

[376] Jack Donnelly and Rhoda Howard-Hassmann supra note 345 p.232.

as well as the perils brought about by a strong executive control of the Council. These limitations impact in a very negative way any process that could seek to uphold the respect of the Covenant's rights here considered. Without the powers to declare rights-infringing legislation and acts as unlawful, executive excesses in the violation of fundamental rights cannot be controlled or curbed.

5.2.1. ACCESS TO THE CONSTITUTIONAL COUNCIL

The constitution has created avenues concerning constitutional structures and procedures through which to determine the constitutionality of executive and legislative actions. Despite the existence of these provisions, Fombad has however stated that the merits of the Council must be determined by their independence from executive control, access by ordinary citizens to and its competence in fulfilling its mandate. Unlike in Cameroon, in the Congo, Togo and Uganda ordinary citizens can challenge the constitutionality of the law. In Cameroon only the president and other elected officials can refer matters to the Constitutional Council. Such a restriction prevents ordinary citizens from directly challenging the constitutionality of laws and actions that violate their constitutional rights, especially in areas as critical as the respect of personal integrity rights. With a constitution that has been enacted without a broad national consensus[377] by members of parliament who have been mostly handpicked, elected through fraud and some appointed by the executive, the need for citizens to be able to challenge the legality of executive or legislative actions is crucial to protect the rights to human worth.

As a matter of general principle, writing about the Constitutional Council Fombad argued, there are two ways of approaching the concept of judicial review. One is available and open to all; the other is restricted to specific categories of individuals.[378] The Cameroon Constitutional Council has adopted the latter approach. Based on the constitution, matters are referred to the Council by a specific group of people; the President of the Republic, the President of the National Assembly, the President of the Senate, one-third of the members of the National

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[377] Donald S Lutz, supra note 282, 356. Lutz argued that constitutional matters requires a distinctive and deliberative process

[378]Charles Manga Fombad, 'The New Cameroonian Constitutional Council in a Comparative Perspective: Progress or Retrogression?' (1998) 42 Journal of African Law 172, 178.

Assembly or one-third of Senators.[379] Ordinary citizens are in no position to compel the government to respect their constitutional rights, especially in crucial areas like torture, deprivation of liberty and the inhuman treatment of detained persons. The inability of ordinary citizens to challenge the constitutionality of the law and actions of public authorities under a system of immense executive power robs the citizens of the power to compel the state to respect their human rights. This lack of access makes the Constitutional Council another institution used by the executive to legitimise itself. Fombad has also stated that there is no evidence in Francophone Africa of any president who ever referred a matter for judicial review before the Constitutional Council.[380]The constitutionality of laws and governmental action have never been challenged not only because of the limited way by which it can be referred to the Constitutional Council but also because its independence as an institution is questionable.

4.2.1. INDEPENDENCE OF THE CONSTITUTIONAL COUNCIL

Another factor that impairs the relevance of the Council on critical matters is the way its members gain their position into the Council. The president designates three of the members of the Constitutional Council including the president; the president of the National Assembly designates three others; the president of the Senate designates three others, and the Higher Judicial Council designates the remaining two.[381] The President of the Republic then appoints the designated members.

When considered through the lens of how the Senate and the High Judicial Council are constituted, it leaves no doubt about the overarching role of the executive in selecting, designating and appointing members of the Council. The weakness of the constitution in guaranteeing the independence of the Council in the area of the appointment of its members inevitably transfers sovereignty of decision-making from the Council to the imperial executive. Executive control is also strengthened by a constitutional provision that allows ex-Presidents of the Republic to become ex officio members in the Council for life. The Constitutional

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[379] Constitution of Cameroon, article 47(2).

[380]Charles Manga Fombad. 'The New Cameroonian Constitutional Council in a Comparative Perspective: Progress or Retrogression?' (1998) 42 Journal African Law 172, 180.

[381] Constitution of Cameroon, article 51(2).

Council is not a judicial organ as it functions out of the control of the constitutional mandate of the judiciary.[382] It is a political body composed mainly of appointees of the president. The Council's primary loyalty in matters of the constitutionality of the law is with the president. Consequently, it is not expected for it to challenge the constitutionality of the law of which he is the primary source as well as the motivation in their enactment. Fombad thus concluded that the reality behind the façade of the Constitutional Council is that the executive (President) still pulls the strings.[383] Cameroon can thus be seen as a country that lacks an effective judicial review process through which citizens can effectively challenge the laws and actions that violate personal integrity rights as protected under the constitution. Without such a judicial review process, coupled with a vague constitutional guarantee of these rights that leaves a gap for a restrictive interpretation of its obligation under both the constitution and the Covenant, persistent violations of these rights are inevitable.

Even in cases where the judiciary can act independently, an imperial executive also has the potential to increase the cost of information available to victims of executive abuse, hide evidence, deprive litigants of their freedom, and make it difficult for credible evidence to be presented to the judiciary.[384] This renders effective judicial action against abuse impossible as 'information must be subject to the law of evidence' which are admissible for proper judicial action.

The entire constitutional framework for the implementation of its obligation under the Covenant is fraught with inherent limitations associated with the nature of political structure and its supportive constitutionalism. One of such limitations is the ease with which the executive has amended the constitution in order to prolong its mandate over the people.

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[382] Ibid, see section 5 and section 7.

[383]Fombad, the new Constitution of Cameroon supra note 380 p.185.

[384] Jonathan Lupu, "Best Evidence: The Role of Information in Domestic Judicial Enforcement of International Human Rights Agreements" (2013)67 International Organisation 469

5. CONSTITUTIONAL AMENDMENTS AND ITS IMPACT ON RIGHTS PROTECTION

Fombad has argued that one of the major causes of political and constitutional instability during Africa's first three turbulent decades of independence was the ease with which post-independence leaders subverted constitutionalism by regularly amending their countries' constitutions to suit their selfish political agendas. The nature of constitutionalism in Cameroon is characterised by many constitutional caveats that render effective constitutional rule difficult or impossible. These caveats engineer a systemic problem of constitutional arbitrariness reflected in the ease with which they can be amended and special executive procedures that create parallel avenues of governance. Fombad further writes that a constitution must be regarded as a living document, which is designed to serve present and future generations, as well as embody and reflect their fears, hopes, aspirations, and desires. Consequent on this assertion is the fact that amendments and revisions to clarify or correct a lacuna or to extend the constitution to cover new ideas, new information, or new circumstances that had not been anticipated at the time it was drafted seem perfectly in order.

Constitutionalism in Africa South of the Sahara, as it was during both single party rule and immediate post-1990 plural autocratic order, still follows the pattern of amendments to adjust constitutions for political gains.[385] The desire and ease with which Cameroon seek and get amendments to the constitution and specific provisions are indicative of the weakness of the principle of constitutionalism and a clear indication of an imperial executive, which survives through means beyond its legal powers and authority. Constitutional changes need to be viewed as a core part of modern authoritarian projects. Powerful individuals or groups can abuse the constitution making process to create constitutional orders in which they face few constraints on their power and in which they will be difficult or impossible to dislodge. Constitutionalism has been used as an instrument of public relations and coexists with a widening gap between law and practice. As stated earlier, the gap between law and practice widens alongside a vague constitutional and political framework that erodes every possibility of the protection of human rights and makes protection vague and inaccessible.

[385] Lutz supra note 282 p. 357

In most of the constitutions of Francophone countries, the constitutional court is the structure that determines the constitutionality of law and actions. As stated, in the Togolese constitution,

'the constitutional court is the highest jurisdiction of the state in constitutional matters. It is [the] judge the constitutionality of the law and it guarantees the fundamental rights of the human person and of the public freedoms it is the regulatory organ of the functioning of the institutions and of the activity of the public powers'[386].

In a landmark ruling in October 2005, Burkina Faso's Constitutional Council invoked the principle of non-retroactivity of the law to argue that a constitutional revision of the year 2000 limiting presidential terms to two five-year periods did not apply to former President Blaise Campaore.[387] In 2014, an attempt to amend the constitution to extend his 27-year rule caused an uprising that led to a military takeover. The same approach to constitutional amendment in Chad in 2005, approved a change to the constitution, removing a two-term limit, which allowed President Idriss Derby to run for a third term in 2006[388]. The open nature of the constitutional language on term limit and the powers vested in the president to amend the constitution structurally damage the rigour of the Constitution. A constitutional amendment in 2003 eliminated presidential term limits and allowed late president Omar Bongo of Gabon to run for re-election. The change also increased term length from five to seven years[389].

The Rwandan constitution provides for a seven-year presidential term renewable once. It proceeds with a firm stance on the term limit to state that; under no circumstances shall a person hold the office of President of Republic for more than two terms. In December 2015, the Rwandan people voted overwhelmingly to eliminate the constitutional presidential term limit. The amendments gave current President Paul Kagame the opportunity to run for a third term and to continue with an autocratic pluralism hailed as development- and reconciliation-

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[386] Constitution of Togo of 1992 with amendments through 2007, article 99

[387] Decision No. 2005-007/CC/EPF;Burkina Faso Constitutional Council

[388] By Law No 008/PR/2005 of 15 July 2005, the 1996 constitution was amended to remove term limits, See article 61

[389] Article 9 of the Gabonese constitution revised by law No. 13/2003 of 19 August 2003. As in the Chadian constitution, the phrase 'he is re-eligible' appears as an open-ended term limit definition.

oriented, but which masks both a domestic and extra-territorial terror regime bent on eliminating his opponents. While the vote was overwhelmingly for the termination of the term limit, there is no doubt that it was a setback in constitutionalism in Rwanda and a strong reminder of the strong influence of the executive over all other areas of the society. It may also be argued that as long as the process of constitutional amendment is anchored in law and due process, it is not problematic to have an extension in the number of terms in office. After all, did Franklin Delano Roosevelt not serve more than two terms in office? The reason why George Washington served two terms and stepped down despite his popularity was to set a precedent that the office was more important than the 'man'. Roosevelt, like Kagame, served in unprecedented times and felt like he was the only one capable of stopping the US depression. However, the difference between Roosevelt's situation and those being observed across Africa South of the Sahara is that the US had no limit on presidential terms until the 22nd amendment of the constitution in 1951.

The same constitutional manipulation occurred in Cameroon in 2008 when the National Assembly amended the 1996 constitution to remove the limit of two presidential terms. It should also be noted that the lack of presidential limit exists alongside a constitutional mandate that grants the president or his parliament enormous powers to amend the constitution. It must be noted that in Cameroon like in most of the other countries indicated above, amendments to the constitution has always resulted in massive protests which has often been suppressed using violent means. During the amendment process of 2008, hundreds of people were arrested, tortured and others summarily executed. Those detained were kept incommunicado for weeks under inhuman and degrading conditions. Most were locked up without charge or trial using administrative prerogatives. Constitutional amendments in Cameroon has always been arbitrary and has altered the political and constitutional structure of the state at the expense of accountability and rights protection. The silence of the Constitutional Council on the constitutionality of the 2008 constitutional amendments that removed presidential term limits[390] and article 51(1) that changed the term limit of Constitutional Council members further raised many questions about its independence.

[390] Constitution of Cameroon, article 6(2).

6. NATIONAL COMMISSION OF HUMAN RIGHTS AND FREEDOMS

In his study on the role of National Human Rights Institutions (NHRI), Reif describes them as "domestic non-judicial institution(s) for the implementation of international human rights law'[391]set up either under an act of parliament, the constitution, or by decree with specific powers and a mandate to promote and protect human rights. In determining the effect of NHRI on Personal Integrity Rights, Cole and Ramirez concluded that NHRI improves long-term physical integrity outcomes and show a positive effect on torture, deprivation of liberty, inhuman and degrading conditions and disappearances. They argued that rights outcomes rather than organisation structures and powers shape the efficacy of NHRI[392]. That the high level of institutionalisation of physical integrity rights in global human rights discourse has given rise to norms and practices that reduce their prevalence. [393]

The creation of a National Commission on Human Rights and Freedoms in Cameroon became an avenue through which independent human rights "monitoring, evaluation, dialogue, concerted action"[394] were possible. National human rights institutions are critical national tools in promoting and monitoring the effective implementation of international human rights standards. They perform core protection issues such as the prevention of torture, cruel inhuman and degrading treatment and protection of persons deprived of their liberty. The Cameroon National Commission on Human Rights and Freedoms (NCHRF) plays a pivotal role as defined by its law of creation with the protection and promotion of human rights and freedoms. In this regard, it is mandated to receive all denunciations relating to violations, conduct inquiries, carry

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[391] Linda Reif, "Building Democratic Institutions: The Role of National Human Rights Institutions in Good Governance and Human Rights Protection" (2000) 13 Harvard Human rights Journal 1-69, 2.

[392] Wade M Cole and Francisco Ramirez, 'Conditional Decoupling: Assessing the Impact of National Human Rights Institutions, 1981 to 2004' (2013) 78 (4) American Science Review 702-725, 703

[393] Ibid

[394] Section 1(2) of Law No. 2004/016 of 22 July 2004 to set up organisation and functioning of National Commission on Human rights and Freedoms.

out necessary investigations into alleged violations and study all matters relating to the protection and promotion of human rights.[395] According to the mandate of the Commission as defined by the law of its creation, it plays a vital role in human rights monitoring and documentation. To this end, it examines all issues raised relating to human rights, disseminates instruments relating to human rights; collaborates with the United Nations Organisation and other institutions;[396] and, of course, as a matter of executive oversight and control, it informs the President.[397]

In 1993, the United Nations General Assembly adopted a set of rules and international standards designed to guide the work of National Human Rights Institutions (NHRI) in the protection and promotion of human rights. According to the Paris Principles, institutions like the NCHRF also have the responsibility to examine:

'…any legislative or administrative provisions, as well as provisions relating to judicial organizations, intended to preserve and extend the protection of human rights; in that connection, the national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights…'[398]

To enhance the work of the NCHRF in Cameroon and to align its activities with the provisions of the Paris Principles, the National Committee on Human Rights and Freedoms were transformed into the National Commission on Human Rights and Freedoms,[399] by Law No. 2004/16 of 22 July 2004.

It was created as an independent institution for consultation, monitoring, evaluation, dialogue, concerted action, promotion and protection in the domain of human rights. To enhance its

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[395] Ibid section 2.

[396] Human Rights Committee, 4th periodic report of Cameroon, UN doc. CCPR/C/CMR/4 p. 16

[397] NCHRF supra note 394 section 2.

[398] Paris Principles, adopted by General Assembly resolution 48/134 of 20 December 1993 para 3a (1)

[399] The National Committee was set up by Decree No. 90/1459 of 8 November 1990.

independence, the Commission is described as a legal entity and given financial autonomy; and to facilitate access to it, it was said that it would have branches all over the territory of Cameroon.[400] However, all of these have also failed because the executive appoints its members, and despite legal provisions to the contrary its funding and sustenance are decided and micromanaged by the same administration[401]. Despite state guarantee of partial funding, the Commission has been cash-stricken and ineffective in independent monitoring and reporting of human rights violations.

6.1 Independence of the Commission

While the work of the Commission is pivotal, it is also undermined by excessive executive intrusion in two key areas; that is, its composition and financial independence.

For example, of the 30 members who make up the Commission, most if not all gain their position directly or indirect through presidential appointments. The Commission also runs a permanent Secretariat at the helm of which is a Secretary General who is also an appointee of the Head of state.[402] It is also stated in its status that working group chairpersons of the Commission can be members of the government, senators, judicial and legal officers, law enforcement officers who are mostly appointees of the executive branch.[403]

Another clear area of concern that affects the independence and possible effectiveness of the Commission is the lack of financial independence. According to its founding laws, its resources shall be derived from the state budget[404]and its expenditure subject to state accounting rules.[405] The lack of financial autonomy has translated into some form of executive control of the activities of the Committee especially in critical areas of monitoring state institutions like

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[400] NCHRF supra note 394 sections 3 and 5.

[401] Ibid Section 1(3)

[402] NCHRF supra note 394 section 11.

[403] Ibid section 18.

[404] Ibid section 20.

[405] Ibid section 21.

prisons, investigating claims of torture and the implementation of the views of the Human Rights Committee on individual communication. The creation of the Department of Human Rights and International Cooperation in the Ministry of Justice to monitor and to implement international conventions on human rights and to sensitise personnel of judicial and prison services on the standards for the protection of human rights[406] seems to be an attempt by the government to undermine the NCHRF which is already heavily controlled by the executive branch. In reacting to Cameroon's fourth periodic report on the steps taken to strengthen the NCHRF, the Human Rights Committee in its Concluding Observations stated that "further measures could be taken with a view to ensuring the effective functioning of the NCHRF in full independence from the Government"[407].

Most institutions created by the government to oversee and/or monitor and cause the implementation of its obligation under the international human rights regime are heavily micromanaged by the executive. This massive executive intrusion seeks to protect it against domestic and internal intrusion since most violations of personal integrity rights are acts of executive action.

7. INTER-MINISTERIAL COMMITTEE

Apart from the regular constitutional framework whose design determines how effective the obligations contained in these rights are implemented, the government has created an Inter-Ministerial Committee for monitoring the implementation of recommendations and decisions of the United Nations Human Rights Committee and the African Commission on Human and Peoples' Rights (ACHPR).[408] The Prime Minister heads the Committee and is charged with the duties of:

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[406] Decree No. 2005/122 of 15 April 2005 on the Organisation of the Ministry of Justice.

[407] Human Rights Committee, concluding observations UN Doc. CCPR/C/CMR/CO/4 para 7

[408] Order No. 81/CAB/PM of 15 April 2011 article 1, relating to the establishment and organization of the Inter-Ministerial Committee for monitoring the implementation of recommendations and/or decisions of international and regional mechanisms in charge of Promoting and Protecting Human Rights.

- 'listing the different matters brought before the said bodies;
- monitoring the implementation of the recommendations and/or decisions following the different matters thus settled;
- proposing responses to the recommendations and/or decisions of the above-mentioned bodies;
- monitoring the effectiveness of implementation of the validated proposals; and
- reflecting and deciding on the internalization of certain observations and recommendations of these mechanisms tasked with promoting and protecting Human Rights[409].

The broad-base representation of the Committee which is chaired by the Secretary General at the Prime Minister's office includes representatives from 10 other ministries, including members of the National Committee of Human Rights and Freedoms (NCHRF).[410] This Committee's heavy responsibility under the Covenant has included ensuring the implementation of the views of the Human Rights Committee on individual communications. It has worked to oversee issues of compensation[411], especially in the violation of articles 7, 9, 10 and 14. As it is shown in Chapter 6, it has recorded a less than 10% success rate in its operations.

The political and constitutional structure of any state is an excellent indicator of its practices when it comes to personal integrity rights. As the literature on treaty compliance and regime type has determined, torture, deprivation of liberty and inhuman and degrading treatment are frequent occurrences under multiparty electoral autocratic systems. In the same token, the literature on treaty ratification of these states also supports the correlation between regime type and the high rate of ratification of the Covenant. It is not the object of this study to prove this correlation. Instead, as it is shown below, there is a strong correlation between the domestic organisation of the constitutional and political structures and the appreciation of these states of their obligation under the Covenant. Despite constitutional provisions guaranteeing the

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[409] Ibid article 2

[410] Ibid article 3

[411] In Njaru v Cameroon No.1353/2005, views of 19 March 2007, the Committee has engaged to ensure that judicial proceedings against persons responsible for poor treatment and arrest of Njaru; in Gorji v Cameroon No. 1134/2002 of 14 March 2002, Views of 15 March 2005, the Committee has concluded an agreement to compensate Mr. Gorji with 40.000.000 CFA.

protection of these rights, substantive legal, institutional and procedural practices hinder courts from being effective in the protection of the rights. How Cameroon interprets and implements its obligation not to torture, to treat detainees with humanity, to engage in a fair trial, and to provide effective remedy are a direct consequence of the domestic structures that ensure the survival of the autocracies.

The entire process of constitutional amendments can be seen in the backdrop of the nature of the regime and the relationship between the executive and the other branches of government. It is within this context that constitutionalism and its relation to the protection of articles 2(3), 7, 9, 10 and 14 are analysed.

CHAPTER 5

INTERNATIONAL IMPLEMENTATION MECHANISM: THE REPORTING PROCEDURE

1. INTRODUCTION

The international legal system has always been factored to "…recognize only states as the primary players in its evolving network of rules and obligations"[412]. The individual has gradually become a powerful subject under international law and the Optional Protocol of the Covenant,[413] which Chapter 6 of this thesis is concerned with, creates an individual complaints mechanism whereby individuals in member states signatory to the Covenant can submit complaints otherwise known as communications to the HRC for consideration; a process that has created the most complex jurisprudence in the UN international human rights law system. It is relevant in human rights accountability and the strengthening of the Human Rights culture and alternative avenues of redress far away from domestic institutions. Besides this individual complaint mechanism is the state reporting mechanism which considers regular reports from states parties to the Covenant.

These are reports presented by all states parties to the Covenant on the specific measures they have taken to give effect to the rights recognised in the Covenant and the progress made towards the enjoyment of these rights. Its initial and periodic reports usually includes the

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[412] Anne F Bayefsky (ed), 'The UN Human Rights Treaty System in the 21st Century' (Kluwer Law International 2000) xvii

[413] The Optional Protocol of the ICCPR was adopted by GA Res. 2200 A (XXI) of 16 December 1966, which adopted the Covenant itself. Both the Covenant and the Optional Protocol entered into force on 23 March 1976. It establishes the individual complaint mechanism through which individuals claiming the violation of their rights set forth under the ICCPR can complain to the HRC.

measures – including legislative, judicial, administrative or other measures – which they have adopted to achieve the enjoyment of the rights recognised in the Covenant.

According to article 40(1), such reports must be submitted by states parties within one year of becoming a party to the Covenant and at regular periods thereafter. Requests for submission of a report under article 40, para. 1 (b), of the Covenant may be made in accordance with the periodicity decided by the Committee or at any other time the Committee may deem appropriate. According to the jurisprudence of the Human Rights Committee, states parties are usually required to present periodic reports every five years.[414]

Hafner and Tsutsui argument about weak institutional mechanisms to monitor and enforce regime norms that in turn offers governments the incentive to ratify human rights treaties as a matter of window dressing…'[415] is an appropriate way to describe the workings of the HRC. Such an argument that portrays the lack of or the presence of weak monitoring and implementation regime is not unanimously seen as valid. The perceived anarchic international monitoring regimes void of an overarching arbiter that leaves the compliance to treaty obligations to what may seem as "occasional compliance by nation states acting out of transparent convenience or self-interest"[416] does not also reflect the reality of the monitoring compliance regime of the Covenant. Despite this perceived anarchic nature, Koh argues that international human rights law is enforced in much the same way as domestic laws. These international norms of international human rights law, he contends, may be under-enforced or imperfectly enforced; but they are enforced through a complex, little-understood legal process which he describes as transnational legal processes[417]. Koh describes the three phases of enforcement as institutional interaction whereby global norms of international human rights

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[414] Human Rights Committee, Rules of Procedure of the. UN doc CCPR/C/3/Rev.10, 11 January 2012, rule 66(2).

[415] Hafner-Burton and Kiyoteru Tsutsui, 'Human Rights in a Globalising World. The Paradox of Empty Promises' (2005) 110 (5) American Journal of Science 1373–1411,1374.

[416] Harold Hongju Koh, "How Is International Human Rights Law Enforced"? (1999) 74 International Law Journal 1397, 1399

[417] Ibid

law are debated, interpreted, and ultimately internalised by domestic legal systems. To claim that this complex transnational legal process of enforcing international human rights law via interaction, interpretation, and internalisation exists does not mean they work well[418]. These processes work through a web of interaction between the international and the domestic through processes of treaty construction, accession, internalization, and reporting, monitoring and even compensation for breach of obligation.

The idea of monitoring human rights implementation through review of periodic reports originated in a 1956 resolution of ECOSOC which requested states to submit, every three years, reports on progress achieved in advancing the rights enumerated in the Universal Declaration of Human Rights.[419] It was modelled on the International Labour Organisation reporting process. According to article 22 of the International Labour Organisation constitution from 1919, members were required to make an annual report to the International Labour Office on the measures which they had taken to give effect to the provisions to which they were a party. ECOSOC's Resolution 624 B (1956) asked states to submit a report describing developments and progress with respect to human rights initially every three years and from 1965 on an annual basis. In 1980, the General Assembly terminated the requirement due to the incorporation of the procedure in the Covenant and other Human Rights treaties.[420]

The state reporting mechanism has been regarded as one of the best methods of monitoring the implementation of the obligations of the Covenant. The reporting procedure as explained by McGoldrick is the most widespread and established implementation technique for the international implementation of human rights. He further contends that the obligation to submit reports is the only obligation which states parties to the Covenant assume on ratification or

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[418] Ibid

[419] Economic and Social Council, ECOSOC Resolution 624 B (XXII) of 1 August 1956.

[420] United Nations General Assembly Organisation Resolution 35/209 of 17 December 1980 55th Session, para 2 at 236 http://www.un.org/documents/ga/res/35/a35r209e.pdf accessed on 07.04.2015

accession.[421] It was established as a binding the human rights treaty which consisted of a voluntary system of self-monitoring by way of reporting that is supervised by six independent expert Committees [422] . This mechanism offers the Human Rights Committee with the opportunity to scrutinize a state party's compliance to the treaty, but unnecessary courtesy has led to a lot of missed opportunities to hold states accountable. It constitutes an essential element in the continuing commitment of a state to respect, protect and fulfil the rights set out in the Covenant.

state reports are expected to present not only the state of domestic law and practice, but indicate as well "the factors and difficulties, if any, affecting the implementation' of the treaty"[423]. This report gives a state party in the reporting process the opportunity in the constructive dialogue phase to help mitigate the effect of any limitation on the state party's side to fulfil its obligation under the Covenant. Unlike the Individual Communication under the Optional Protocol, the reporting process is mandatory and provides a comprehensive tool for examining the general state of human rights under the Covenant. It also provides the Committee with the opportunity to examine the measures necessary to improve states human rights practices and to examine the obstacles a state faces in fulfilling its obligations under the Covenant. As the harmonised guidelines stipulate, reporting is used as "an opportunity to take stock of the state of human rights protection within their jurisdiction for policy planning and implementation" [424] . Another objective is to provide an opportunity for "constructive engagement with relevant actors of civil society"[425]. This constructive engagement begins at the time of ratification, through the interactive phase of compiling the report and at its

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[421] Dominic McGoldrick, 'The Human Rights Committee: Its role in the development of the International Covenant on Civil and Political Rights' (Clarendon Press-Oxford 1991)62

[422] International Covenant on Civil and Political Rights supra note 1 art.40

[423] Human Rights Committee, Rules of procedure: U.N. Doc. CCPR/C/3/Rev.8., Rule 66.1 at 15

[424] Human Rights Committee, Report on Indicator for Monitoring Compliance with International Human Rights Instruments in U.N. Doc. HRI/MC/2006/3 (2006), para. 9.

[425] Ibid para. 10.

conclusive phase provides an opportunity for the delegation of the state party to be questioned on the measures it has taken to fulfil its obligation under the Covenant and the difficulties it has or is entering in this process.

Most major UN treaties supply a monitoring body that monitors compliance. The Covenant is monitored by the Human Rights Committee[426]with a permanent locus standing to consider reports from member states on their compliance with their treaty obligation, adopt general comments, and consider individual complaints. The Committee is composed of 18 independent individuals of "high moral character and recognized competence with a high level of credibility and impartiality even though its mandate might limit its effectiveness"[427]. Under article 40(4), the Committee is permitted to make "...general comments as it may deem appropriate". Though the views of the Committee are not binding to the parties to the Covenant, the Covenant as a treaty under international law is binding. In this respect flouting the views of the Committee in respect to any obligation under a binding treaty means a violation of international law which states must remedy or risk pariah status.

This chapter analyses the importance of the reporting procedure as an obligatory implementation mechanism and how the entire process of compiling and defending reports helps Cameroons to fulfil its obligation as defined by article 2(2) of the Covenant.

2. AN OVERVIEW OF THE REPORTING PROCESS

Article 40 of the Covenant obliges states parties to submit an initial report within one year of the Covenant coming into force as far as the state party is concerned on the measures, they have adopted which give effect to the rights recognized and, on the progress, made in the enjoyment of those rights. The initial report provides information on the implementation of the Covenant, while subsequent reports usually include measures taken to implement the Concluding Observations of previous reports and factors and difficulties affecting the implementation of the obligations of the Covenant. In accordance with the intent of the reporting process, states parties' reports look beyond the constitutional and institutional

[426] International Covenant on Civil and Political Rights supra note 1, article 28

[427]International Covenant for Civil and Political Rights supra note 1 article 28(2).

safeguards put in place by the state as discussed in Chapter 4[428] but also the difficulties and limitations faced by states in fulfilling their obligations under the Covenant.[429]

The state report is the foundation of the review process. In subsequent reports, the state provides information on the implementation of each provision of the Covenant and on the measures taken to implement the Committee's previous Concluding Observations, as well as on progress and developments since the previous report. A few examples of the interactive nature of the process shows its importance in altering states attitude. In its Concluding Observation on Cameroon's third periodic report, the Human Rights Committee wrote:

The Committee notes that the third periodic report of Cameroon was incomplete and did not address all of the concerns expressed by the Committee in its previous concluding observations on Cameroon's second periodic report. It welcomes, however, the updated information, including written information and legislative texts, provided by the delegation. It further welcomes the willingness of the state party to make additional submissions in writing with respect to particular concerns articulated by members of the Committee

In its Concluding Observations on its fourth periodic report, the Human Rights Committee expressed the following concerns on article 2(3):

'the Committee is concerned about the delays in ensuring effective remedies and appropriate compensation for violations of Covenant rights in compliance with views adopted by the Committee on Communication Nos. 458/1991 (Mukong), 1134/2002 (Gorji-Dinka), 1353/2005 (Njaru), and 1186/2003 (Titahongo). (art. 2)'[430]

The state party responded by providing details of the compensation packages of most of the complainants and the difficulties in providing an effective remedy in the case of

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[428] Some of those constitutional and institutional safeguards are internalisation of the Covenant provisions, NCHRF, Inter-ministerial Committee, Penal Code, Criminal procedure code, etc.

[429] One of such limitations that have been dealt with in helping Cameroon fulfil its obligation on article 10 is 'lack of resources'. It has constantly argued that lack of resources accounts for overcrowding in its jails.

[430] Human Rights Committee, Concluding Observations of Cameroon's fourth Periodic Report to the Human Rights Committee (2010): CCPR/C/SR.2739 and 2740 p. 2 para. 6

communication 1813/08. In this regard, it argued that the complainant has failed to provide an interlocutor with whom the state party could discuss with

In paragraph 7 of the same observation, the Committee stated as follows: "the state party should further guarantee the independence of the National Commission of Human Rights and Freedoms by providing it with adequate resources to carry out its mandate effectively… furthermore, reports publicized by the NCHRF should be widely disseminated and made easily accessible".' In its response in its fifth periodic report, the state party responded that 'the NCHRF enjoys greater independence because, as already mentioned, the voting right of members representing Government departments has been withdrawn, and its financial resources increased.'[431]

These examples show a summary of some of the specific aspects of how the reporting process works. It is nonetheless exhaustive of the entire process as issues of specific concerns with the implementation of the obligations under the various articles are also critical to the report. In this regard, in its fourth periodic report, Cameroon argued in the implementation of article 7 that "the Cameroonian legislator seeks to adequately protect the human person through the prohibition of torture, cruel, inhuman or degrading treatment. Also, administrative measures and court decisions are taken against perpetrators"[432]. In as much as measures are taken to show commitment to the individual rights, the state party must include information on the state's constitutional and legal framework that is not provided in the core document. Such is necessary to give clarity on the constitutional and institutional framework put in place to support the effective enjoyment of the rights in the Covenant. In this regard, Cameroon laid out the legal framework for its protection and argued that it has put in place a Penal Code that criminalises acts of torture.

The reporting process does not only indicate steps taken to ensure implementation of a state party's obligation but also outlines the factors and difficulties affecting the implementation of

[431] Human Rights Committee, state report submitted under article 40 of the Covenant (2016): CCPR/C/CMR/5 p.7 para. 1.

[432] Human Rights Committee, Concluding Observation supra note 430, para. 287, p. 86

those rights.[433] This approach is not unique to the Covenant. The Convention on the Elimination of Discrimination Against Women is even more exhaustive on the issues of obstacles. It demands the explanation of "factors and difficulties affecting the degree of fulfilment of obligations under the Convention' and of 'the nature and extent of, and reasons for, every such factor and difficulty, and should give details of the steps being taken to overcome them"[434].

One of the fundamental problems faced by states parties beyond the institutional framework in implementing their obligation is the problem of awareness. That is why the Committee expects the states parties to indicate in their reports the way human rights knowledge is promoted at every level of society within that state. In its fifth periodic report Cameroon submitted that

> with regard to periodic reports, it should be noted that following the presentation of the 4th periodic report, the government informed the national community through a press and radio release which stated the major directives of the Concluding Observations, as well as detailed sources for access to this information, in particular the Ministry of External Relations (Department of the United Nations and Decentralized Cooperation) and the Website of the United Nations High Commission for Human Rights.'[435]

It is also worth noting that reporting alone, even when the guidelines for reporting are followed, does not still lead to its desired outcomes. The quality of the reports also matters. O'Flaherty argues that dissatisfied with the quality of many reports, the Committee has resorted to issuing General Comments to guide government officials involved in the drafting process, one of which is involved with the general process and the other with the specific articles.[436] The obligations of the states include undertakings by them not only to respect, but also to actively

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[433] Covenant on Civil and Political Rights supra note 1 article 40(2).

[434] Guidelines on the form and the content of reports to be submitted by states parties to the international human rights treaties, HRI/GEN/2/Rev.1/Add.2, 5 May 2003, para. c 3.

[435] Cameroon Fifth Periodic report, supra note 431 p. 31, para. 153.

[436] Michael O'Flaherty, "The Reporting Obligation under Article 40 of the International Covenant on Civil and Political Rights: Lessons to be learned from consideration by the Human Rights Committee of Ireland's First Report", (1994) 16 (3) Human Rights Quarterly 515-538, 515.

ensure all the rights mentioned in the Covenant to individuals within their territory.[437] These guidelines on reporting have been extremely useful in improving on the quality of reports and increased scrutiny on state actions during the review process.

The Committee's procedure is derived from practice and the rules of procedure of the Committee which follows an established procedure in consideration of state reports. Proceedings usually begin with oral submissions from the state party, followed by the intervention of Committee members through questions or comments. The proceeding is then suspended for one day, followed by a response section from the state party and general remarks and comments from Committee members.

These reports which are often supplemented by NGO presentations are subjects of public scrutiny with the representatives of the state Parties.[438] The Committee also usually requires states Parties to facilitate the participation, through an appropriate consultative process of civil society organisations, in the preparation of reports. Such a process encourages and facilitates, at the national level, public scrutiny of government policies and a constructive engagement with relevant actors of civil society. The process is usually conducted in a spirit of cooperation and mutual respect, with the aim of advancing the enjoyment by all the rights protected by the relevant convention.

After consideration of state reports, the Committee proceeds to draft and adopt its comments comprising a critique of the report, noting positive factors, drawing attention to matters of concern and making suggestions and recommendations. It is based on these recommendations that the next report is made.

The examination of these reports provides a medium of conversation between Committee members and state party representatives and lays the framework for promoting state party compliance with Covenant obligations. As Conte et. al. have argued, upon completion of the process, the Committee issues its Concluding Observations which may note its concerns regarding aspects of the state party's implementation of obligations or it may make

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[437] Ibid p.515

[438] See generally CCPR Centre, UN Human Rights Committee: participation in the reporting process- Guidelines for Non-Governmental Organisations.

suggestions and recommendations to help the state party become more effective in implementing its obligations under the Covenant.[439] The entire reporting process is a conversation between stakeholders and relevant actors in the protection regime. It's importance in ensuring that states implement their obligations under the Covenant cannot be overemphasised. This process would be irrelevant without the quality of the report itself presented by the states parties. That is why the Committee has issued specific guidelines on how this report should be compiled and presented.

2.1 GUIDELINES FOR PREPARING STATE REPORTS AND REPORTING

The guideline is divided into common core and section specific documents which are further divided into four sections. Section 1 addresses the purpose of the reporting process. Section II provides guidance on the format in which reports should be submitted. Section III addresses the content of state reports, consisting of a common core document submitted to each treaty body in tandem with a document specific to that treaty body. The common core document forms the initial part of each report to each treaty body and includes a constitutive substantive provisions information. The treaty-specific document constitutes the second part of the report. Individual guidelines on the content of the treaty-specific document are drafted once the content of the common core document has been finalised. The objective of the core document is to facilitate the implementation of reporting obligations by states parties by reducing repetition and overlap in the information submitted to several treaty bodies. Full information on the general framework for the protection and the promotion of human rights in the state is included in the common core document, as this provides the setting within which the provisions of the all human rights treaties are implemented.

2.2 OBJECTIVES OF THE REPORTING PROCESS

The primary objective of the reporting process as the principal tenet of the Covenant's monitoring instrument of states party's implementation of their obligation is to indicate the measures states have adopted which give effect to the rights recognised in the Covenant and

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[439] Alex Conte and Richard Burchill, "Defining Civil and Political Rights; The jurisprudence of the United Nations Human Rights Committee' (2nd edn Ashgate 2009)18

on the progress made in the enjoyment of those rights. It is possible to conclude on seven functions of reporting which can be outlined as initial review, monitoring, policy formulation, public scrutiny, evaluation, acknowledging problems, and information exchange.[440] These objectives were reaffirmed mainly in the harmonised guidelines published in 2006.[441] As stated in the first chapter of the guidelines, they are simply intended to guide states in fulfilling their obligations under article 40 of the Covenant. In as much as the guidelines do not seek to alter the attitude of the state, they provide a road map that helps states to engage in an interactive process between the main stake holders within its territory.

Another critical objective of reporting is to provide a regular and periodic comprehensive review by a state party of the state of implementation of human rights, progress achieved, and obstacles encountered. This gives an opportunity to reflect on the measures necessary to improve the human rights situation and a reaffirmation by the state party of its continuing commitment to respect and ensure observance of the rights set out in the treaties to which it is a party. As stated in the harmonised guidelines, reporting is intended to provide a coherent framework within which states can use to meet their reporting obligations under all the international human rights treaties to which they are a party using a coordinated and streamlined process.[442] The constructive dialogue in the process of preparing their reports for the treaty bodies permits states Parties not only to fulfil their international obligations but also provide an opportunity to take stock of the state of human rights protection within their jurisdiction for policy planning and implementation.[443]

2.3 Preparing state Reports

The guidelines for the preparation of state reports requires states to consider setting up appropriate institutions for the preparation of their reports. These institutional structures which could include an inter-ministerial drafting Committee and focal points on reporting within each

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[440] See harmonise guidelines on reporting, supra note 434

[441] Ibid

[442] Ibid para. 7.

[443] Ibid para. 9.

relevant government department should support all the state's reporting obligations under the international human rights instruments and could provide an effective mechanism to coordinate follow-up to the concluding observations of the treaty bodies.[444] Such structures should allow for the involvement of sub-national levels of governance where these exist and could be established on a permanent basis. The state concerned is required to hold national consultations with civil society, national human rights institutions and human rights experts in line with the principle that the Universal Periodic Review ought to 'ensure the participation of all relevant stakeholders, including non-governmental organizations and national human rights institutions.[445]

Cameroon set up an Inter-ministerial Committee charged with the preparation of its report. The drafting of its report since the creation of this Committee has been overseen by the Inter-Ministerial Committee for monitoring the implementation of recommendations and/or decisions arising from regional and international mechanisms for the promotion and protection of human rights under the Prime Minister, Head of Government. The guidelines on the reporting process reflect a participatory approach where a draft report is prepared by a team including representatives from the Prime Minister's Office, the Ministry of Justice and the Ministry of External Relations, based on contributions from various administrative units. It is after that that it is submitted for pre-validation to national stakeholders. The national stakeholders are drawn from the regions of Cameroon which are mostly governmental institutions working under ministerial departments in the various regions. The resulting draft is then proposed for review to civil society organisations during a consultation meeting organised by the NCHRF[446] before its final validation during a workshop including all stakeholders. During these phases, various aspects of the draft are fine-tuned, including the strategic, normative and institutional framework for human rights promotion and protection.

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[444] Ibid para. 13.

[445] Human Rights Council, "Institution-building of the United Nations Human Rights Council", 18 June 2006, A/HRC/5/1, p. 2, para. 3m.

[446] The consultation for the fifth periodic report took place in Yaoundé on Tuesday, January 12, 2016. http://allafrica.com/stories/201601131465.html accessed March 12, 2016.

Many treaty bodies rely on additional information from other sources to corroborate the information of the state party. This is where both domestic and international non-governmental organisations play an important role. In Cameroon for example, the NCHRF which has often been criticised by the Committee for lack of independence, has increasingly become more robust. Other non-governmental organisations like the now defunct Human Rights Defence Group (HRDG) of the late human rights activist, Albert Mukong submitted counter reports to the Committee in the past. During the fourth periodic review process, International Federation of Action by Christians for the Abolition of Torture (FIACAT) and Action by Christians for the Abolition of Torture (ACAT) presented a report emphasising Cameroon's noncompliance with its Criminal procedure code on the arrest and detention of criminal suspects. ACAT argued that officers continue to execute arrests without any warrant and have exercised administrative powers of preventive detentions without any judicial procedure, in violation of the CPC. Both organisations drew the attention of the Committee of the fact that (la torture physique est encore utilisée dans des cas isolés. C'est la torture psychologique qui a pris le pas, les agents ne voulant pas laisser de traces) while physical torture is only used in isolated cases, psychological torture is now the norm because the authorities do not want to leave a trace.[447]

The importance of NGO reporting emphasises their role in advocacy, monitoring, strategic litigation and most importantly education. These counter reports shed more light in areas like torture, deprivation of liberty, and inhuman and degrading treatment in detention. These are vital areas which autocracies like Cameroon never give detail consideration to in their reports

This process thus offers a forum wherein national consultation and dialogue between the government and people through national and regional human rights institutions can take place. This dialogue facilitates and encourages public scrutiny and discussion with civil society and

[447] Human Rights Committee, fourth periodic report of Cameroon presentation by FIACAT/ACAT 2009 FIACAT and ACAT 2009. http://tbinternet.ohchr.org/Treaties/CCPR/Shared/20Documents/CMR/INT_CCPR_NGO_CMR_97_8403_E.pdf p.2

NGOs about treaty implementation and government policies.[448] In this way, the process can bring different domestic stakeholders together and encourage communication between them and at the same time raises awareness about the treaty. The process, hence, aims 'to promote social mobilisation.'

3. AN OVERVIEW OF CAMEROON'S FIRST THREE REPORTS

Cameroon acceded to the Covenant in 1984 and, according to the premise of the Covenant, its first report was due in June 1985.[449] Its first report was submitted in August 1988, three years behind schedule. Though the Committee welcomed the report of Cameroon, it never the less expressed regret that it had been submitted late and that it did not provide sufficient details on the measures taken to assure the practical implementation of the Covenant and that it did not contain any statistical data.[450] The Committee questioned Cameroon about the independence of the judiciary. It raised concerns about the way judges are recruited, appointed and promoted. [451] In its response, Cameroon argued that it doesn't matter who makes the appointment, but what mattered was the quality of justice dispensed.[452]However, as has been seen all through the years from Mukong to Akwanga, the quality of the justice dispensed has highly been influenced by executive preferences and actions. The Committee also questioned the competence of military courts to try civilians. Despite this criticism, 5 years after the first report and 20 years after, Mukong and Akwanga respectively were still tried by a military court.

Cameroon's second periodic report was due 26 September 1990 but was only submitted three years later in 1993. It was more detailed than the initial report and came at the heels of political liberalisation and the holding of the first ever multiparty presidential elections which led to

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[448] See harmonised guidelines for reporting supra note 434 para. 8.

[449] Covenant supra note 1 article 40(1a)

[450] Consideration of Reports Submitted by states parties under Article 40 of the Covenant: Initial Report of Cameroon, U.N. Doc. CCPR/C/36/Add.4 para 454-486(1988) (1989) para 456 at 108

[451] Ibid para 468

[452] Ibid para 481

massive human rights violations. The report also detailed the institutional changes that arose from the political liberalisation and the legal framework that undergird them. For example, Cameroon elaborated on the role of the constitution and the judiciary in the protection of human rights. It argued that

> In Cameroon, the main role of the judiciary is to guarantee to all citizens and residents respect for the rights recognized by the legislature, to protect them in their person, property and honour, to settle any disputes between them, and to track down offenders so that they can be brought to justice and punished[453]

Cameroon also argued that "violence, brutality or physical assaults' against a detainee or any other individual is punishable from six months to five years' imprisonment"[454]. So to make the implementation of these provisions more effective, the Code of Criminal Procedure provides for every individual to be examined by a doctor of his choice before entering and upon leaving prison.

In examining Cameroon's initial and second periodic reports, one notices a significant disparity in the content and quality of the report especially in the areas of the constitutional, political, legal institutions. The initial report was presented at a time of single-party rule and less political competition while the second periodic report offers more depth of knowledge about the legal and institutional framework for the protection of human rights. By the time the second periodic report was presented, the National Committee of Human Rights and Freedoms (NCHRF)[455] had been created. The creation of the NCHRF added more value to Cameroon's human rights culture even when it had only an advisory role. Despite this institutional development, Cameroon's second periodic report according to the concluding observations of the Human Rights Committee was more of a summary and more theoretical rather than substantive. Torture according to the Committee was practiced in a systematic way resulting in the death of victims. It also deplored the fact that such brutality is practised in prisons, as well as non-

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[453] Human Rights Committee, consideration of Reports Submitted by states parties under Article 40 of the Covenant: Second Periodic Report of Cameroon, U.N. Doc CCPR/C/63/Add.1 (1993) para 12 at 4

[454] Ibid para 56 at 11

[455] The NCHRF was established by Presidential Decree No. 9P-1459 of 8 November 1990

respect for the provisions of article 10 of the Covenant in detention centres where men and women, convicted and non-convicted prisoners, adult and juvenile offenders are held in the same, generally insalubrious, cells.[456]

One of the most important recommendations of the Committee was asking that "Cameroon avail itself of the constitutional reform to incorporate in the national legal system all the rights guaranteed by the Covenant, and that each article of the draft be systematically checked against the provisions of the Covenant"[457]. This recommendation has never been fully implemented. The Cameroon constitution vaguely refers of these Covenant rights in its preamble and though the preamble is considered an integral part of the constitution, the details about these rights have been left to secondary legislation.

While its second periodic report focused on explaining the nature of its legal framework for civil and political rights, its third periodic report that was due in 1995 but submitted two years later, focused on the recommendations and critics of the concluding observations of the second periodic report. In this report, Cameroon stressed the importance of the independence of the NCHRF and its unique responsibilities in receiving and investigating human rights violations and referring such findings to the president[458]. The problem with this approach lies in the fact that the very executive branch that receives recommendations from the NCHRF is both the main authority responsible for violating personal integrity rights and the guarantor of the existence of the NCHRF. The lack of independence of the NCHRF has been a great source of concerned to the HRC as shall be seen in subsequent List of Issues Prior to reporting and concluding observations of subsequent periodic reports.

Cameroon's third periodic report also dealt with the right to liberty and security of persons, the humane treatment of persons deprived of their liberty and the right to a fair trial. As raised in

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[456] Human Rights Committee, Concluding Observations of second Periodic Report of Cameroon, U.N. Doc. CCPR/C/79/Add.33(1994) para 17 at 3

[457] Ibid

[458] Human Rights Committee, Consideration of Reports Submitted by states parties under Article 40 of the Covenant: Third Periodic Report of Cameroon, U.N. Doc. CCPR/C/102/Add.2 (1997) para 5 at 3

the concluding observations of the second periodic report, the Human Rights Committee expressed its concerns about the detention of men and women, minors and adults and convicted and non-convicted persons in the same cells[459]. Cameroon responded that

'with regards to infrastructure, police stations do not have enough lockups, which are cramped and unhealthy and provide no separation between men, women and minors. Most of them were built during the colonial period for up to 50 persons, but they now house a prison population that is far beyond their capacity'[460].

Cameroon has always complaint of the lack of resources. It is a pattern that will be analysed in a more detail in the consideration of subsequent reports in violation of its obligations under article 10 of the Covenant and the Mandela Rule.

4. CONSIDERATION OF CAMEROON'S FOURTH PERIODIC REPORT

Cameroon's fourth periodic report was considered at a time of serious human rights challenges in the country and a seismic institutional change which saw the introduction of a new constitution which brought in significant constitutional changes. These changes have been dealt with in chapters 3 and 4

The massive anti-government demonstrations of 2008 and 2009 that led to the death of hundreds and the detention and torture of hundreds more have been considered all through this study. Cameroon's fourth periodic report was concluded like most other reports with a Concluding Observations which formed the basis of its fifth periodic report. Cameroon's fourth periodic report was supplemented by 11 civil society reports including those Redress Trust and Amnesty International. These civil society reports addressed issues of impunity, prison conditions, gay and lesbian rights and even implementation of the views of the Committee.

Since its accession to the Covenant, Cameroon has submitted five reports and its attachment to the spirit of article 40 of the Covenant is expressed by the HRC in its fourth Periodic Report as of great importance. After the consideration of its initial, first, second and third periodic reports in section 3, the subsequent analysis is based on Cameroon's fourth periodic report by the HRC which took place at its 103rd session that held in October 2009 and submitted under its

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[459] Concluding Observation of second periodic report, supra note 436 para. 22

[460] Ibid para 27

obligation in accordance with article 40(1a, b) of the Covenant and its fifth periodic report submitted in 2016. This analysis reviews the fourth periodic report and the way its Concluding Observations were taken into consideration to give effect to its obligation under articles 2(3), 7, 9, 10 and 14 in the fifth report.

The approach of this analysis follows that of the Committee with the consideration of specific aspects of state compliance regime beginning with its institutional framework. Also, important to note that in compiling its fourth periodic report, Cameroon extensively dealt with the Committee's concerns and recommendations raised in the concluding observations after the third periodic report.

On the Committee's specific concern about extrajudicial executions by security officers and a what it perceived as a culture of impunity that has led to the death of persons under custody Cameroon responded that;

The fight against impunity is a major concern of the Cameroonian Government. This fight focuses on almost all cases of human rights violations including extrajudicial killings, torture and other inhuman and degrading treatment especially where such violations were perpetrated by agents of the state or state authorities. Judicial and administrative sanctions are meted out on prison administration personnel, policemen, gendarme officers, other civil servants and traditional rulers when they are found guilty of such violations.

Cameroon then cited several cases where disciplinary measures have been taken against security personnel. Some of these cases are dealt with below in consideration of individual articles of the Covenant.

4.1 THE LEGAL AND INSTITUTIONAL FRAMEWORK

At the conclusion of the consideration Cameroon's Fourth Periodic Report, the Committee concluded that "since the last report, significant progress has been made in Cameroon to improve on the normative and institutional framework for the promotion and protection of the

human rights contained in the Covenant"[461]. On some of the specific merits of Cameroon's submission, and specifically on its legal framework, the Committee noted that some changes in the domestic laws 'enacted in recent years have progressively strengthened and enhanced the protection of rights in the constitution...and bringing Cameroon's legal system in line with its international obligation under the treaty. Cameroon's report outlined the constitutional guarantees of the state's obligations under the Covenant as discussed in Chapter 5. Cameroon stated its commitment to the respect of human rights in general and the Covenant rights in particular. This commitment it argued is reflected in both the constitutional safeguards which proclaimed its commitment to human rights through national legislation which protect civil and political rights. This commitment is emphasised in the 1996 Constitution as amended by Law No. 2008/1 of 14 April 2008[462] with the preamble as discussed in chapter 4 being an integral part of the constitution and proclaiming the attachment of the people of Cameroon to the right to fair trial, guarantee of freedom and security of each individual and other rights.

On the specific legal framework, the report outlined several national instruments enacted in recent years which have progressively strengthened and enhanced the rights and freedoms enshrined in the Constitution.[463] On the institutional framework for the promotion and protection of these rights as laid down by the constitution, these institutions comprise democratic political institutions, an independent judiciary, a Constitutional Council and a national human rights institution with reinforced prerogatives. These legal and institutional frameworks are critical in supporting the domestic protection of citizens from torture, inhuman and degrading treatment and ensuring that those whose rights are violated can seek and receive a remedy from such violations.

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[461]Human Rights Committee, Consideration of Reports Submitted by states parties under Article 40 of the Covenant: Third Periodic Report of Cameroon U.N. Doc. CCPR/C/CMR/4 (2008) p. 9 para. 11.

[462] Ibid p.10 para. 11

[463] Ibid p. 12 para. 16

4.2 THE IMPLEMENTATION OF OBLIGATIONS UNDER INDIVIDUAL ARTICLES

While the implementation of individual rights is dealt with in the next chapter, the state Reporting mechanism also offers a significant opportunity to present the state's views on how its obligations under these rights are given effect to in a practical way. The most fundamental state responsibility is the establishment of the institutional and legal frameworks to conform to international standards for the protection and promotion of human rights to all its citizens and all those within its jurisdiction. As noted earlier, these institutions are deficient in the scope and approach to fulfilling their obligations as both guarantors of these rights and a check on the tyranny of the state.

In its argument on article 7, Cameroon cited several cases in which evidence obtained through torture were not considered in court. Of importance are The People vs. Tanfack Julienne and Kamdem Robert,[464]and The People vs Mengue Junette and Djessa Jean Dennis[465]cases. The Committee concluded on the subject of torture that 'the above cases, and many others, illustrate that the state of Cameroon stands against the use of torture in police investigations.' Despite this positive conclusion, an alternative report by the NGOs, Federation de l'action de Chretien pour l'abolition de la Torture (FIACAT), and Action Against Torture (ACAT) concluded that, '...during the events of late February 2008, many individuals were subjected to torture. Those responsible for law and order used violence to arrest several people in the streets and swoops.'[466]

These conclusions were also reflected in the concluding observations of the 2014 Committee Against Torture report that stated that, '…torture seemed to be a prevalent practice in Cameroon and expressed concerns at reports that this situation still exists. It is troubled by the sharp contradictions between consistent allegations of serious violations of the Convention and

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[464] The people vs. Tanfack Julienne and Kamdem Robert judgment No. 69- No.69/00 (21 September 2000).

[465] The People vs Mengue Junette and Djessa Jean Dennis Judgment No. 182/COR (24 February 2005).

[466] FIACAT/ACAT supra note 447

the information provided by the state party.'[467] The Committee declared its serious concerns about "reports of the systematic use of torture in police and gendarmerie stations after arrest; and the continued existence of extreme overcrowding in Cameroon's prisons, in which living, and hygiene conditions would appear to endanger the health and lives of prisoners and are tantamount to inhuman and degrading treatment"[468].

In a 2006 visit to Cameroon, the special rapporteur on torture, Manfred Novak investigated the implementation of the recommendations of the previous visit in 1999 by the late Sir Nigel Rodley and concluded that;

a recommendation that Cameroon makes a public denunciation of torture and also issue an internal memo that states that any public official found guilty of any in act of ill-treatment or torture or who condones it will immediately be dismissed and prosecuted has never been done. s Such a public denunciation should demonstrate the countries commitment to its obligations[469].

While the government provided information attesting to disciplinary measures taken against employees who engaged in or condoned torture, the special rapporteur indicated in his report that NGO reports about such disciplinary measures are either rare or non-existent and that authors of such acts do so with impunity.[470]Also, on the recommendation that the government provides sufficient funds and an independent commission of inquiry to investigate acts of torture, the special rapporteur's 2006 visit establish through NGO reports that any such commission will be compromised by excessive executive intrusion and influence on other branches of government.[471]

On the respect of article 9 of the Covenant which guarantees the right to liberty and security of persons the Committee cited the preamble of Cameroon's constitution which upholds that,

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[467] Committee Against Torture, concluding observations of reports submitted by Cameroon under article 19 of the Convention, 31st session para.4 at 2, U.N. Doc. CAT/C/CR/31/6 (2014)

[468] Ibid para 4 (a and b)

[469] Report of the Special Rapporteur on Torture: Follow up to the recommendations made by the Special Rapporteur, 62nd Session, para 58-59 at 12, U.N. Doc E/CN.4/2006/6/Add.2 (2006)

[470] Ibid para 65-66 at 14

[471] Ibid para.80 and 81

"freedom and security shall be guaranteed to everyone, subject to respect for the rights of others and the higher interests of the state' as a positive tone in this area. The Committee also noted that habeas corpus"[472] is guaranteed under sections 584 to 588 of Cameroon's Penal Code, even as it cited the decision in Nyo Wakai and 172 others v. The People, the administrative authorities in charge of law and order,[473] in illustrating that, cases of habeas corpus abound. The Committee further noted that remand in custody, according to Cameroon's Penal Code shall be legal if expressly authorised by the state Council' and such shall not be ordered according to section 119(4) on Saturdays, Sundays and public holidays.

On the guarantees against illegal and arbitrary arrest, Cameroon submitted that the "training and monitoring of detentions are measures taken to ensure the effective enforcement of the guarantees contained in the Criminal procedure code against illegal and arbitrary arrest"[474]. While it claimed that sanctions are meted against violations against the right to freedom and security, it also stated that the commission to consider such claims for arbitrary detentions is not operational.

The Committee also frowned at the fact that under article 2 of Law No. 90/024 (19 December 1990), provincial governors and the minister of territorial administration can extend the detention of detainees indefinitely and called on Cameroon to bring its laws in compliance with article 9 paras 3 and 4 of the Covenant. The fact that persons detained under executive order cannot appeal the decisions or make any application to habeas corpus is a significant violation of the obligation of Cameroon under the Covenant. In Cameroon, administrative detentions by a senior divisional or divisional officer can last for 15 days renewable once for another 15 days.

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[472] Habeas corpus is an essential process in ensuring that accused persons have the chance to challenge the legality of their detention or merits of their accusation in a court of law.

[473]Nyo Wakai and 172 Others v The People, the administrative authorities in charge of law and order was a case in 1992 concerning the arrest and transfer of Justice Nyo Wakai and 172 members of the opposition Social Democratic Front from Bamenda to Yaounde where they were held for almost two months without charge or trial.

[474] Human Rights Committee Cameroon fourth periodic report in CCPR/C/CMR/4 p.21 section G para. 1.1

Any extension will need explicit authorisation from the Governor or the Minister of Territorial administration which is still executive organs. Such detentions have given rise to issues under article 10 of the Covenant.

On the respect of the obligation to treat persons in detention with humanity under article 10(1), Cameroon argued that

> measures are taken to ensure compliance with the provisions of the CPC by both the judicial and penitentiary authorities 'mastering the provisions of the CPC is the central concern of the annual meeting of Heads of Court of Appeal which allows an evaluation of its application and discussions on the difficulties of its implementation[475]

It outlined a series of measures it has taken to ensure a) that the sanitation situation in its detention centres meets some basic minimum standards. For example, the building of one borehole in each of the ten prisons in the country. When one considers the number of persons under detention at every one moment across prisons in Cameroon, one borehole does not solve the problem of the lack of descent and hygienic condition under which prisoners live. In almost all the prisons and detention centres, prisoners still used buckets placed in their living quarters to defecate.[476]

On the respect of the right to fair trial as grounded in article 14 of the Covenant, the Committee cited a vague reference to the constitution of Cameroon which states that "the law shall ensure the right of every person to a fair hearing before the courts" and other sections of judicial organisation as testimony to the state's commitment to fair trial. Judicial guarantees by the constitution are undermined by article 37(3) of the same Constitution of the state that vests the guarantee of judicial independence in the hands of the president of the republic who is also vested with enormous executive powers to appoint and dismiss judges without any legislative oversight. The US state Department 2007 report[477] gives more clarity on the enormity of presidential powers.

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[475] Ibid p.21 section G para. 2.1

[476] See Akwanga v Cameroon in communication 1813/2008 dealt with in the next chapter

[477] He is empowered to name and dismiss cabinet members, judges, generals, provincial governors, prefects, sub-prefects, and heads of Cameroon's parastatal (about 100 state-

The positive tone of the Committee's observation reflects the constructive dialogue approach which is also a reflection of Chayes and Chayes 'managing' compliance approach. Jane Connors describes this "constructive dialogue managing compliance approach as non-contentious and non-adversarial…and no open accusations of human rights violation"[478]. It is this non-adversarial concluding observation that sets the tone and content of the next report. The Committee has no stated rule on how reports should be prepared other than a porous general guideline guaranteed under what according to the Committee supersedes and overrides every previous guideline. Chapter 7 invariably shows that the constructive dialogue approach to questioning Cameroon's commitment in upholding its obligation under the Covenant, especially with a convention riddled with 'exceptional clauses', numerous and consistent patterns of systemic violations as proved by its own special rapporteurs, Amnesty International and other state reports and a constitutional tyranny vested in one person and run by decrees, is flawed. This is seen in the Concluding Observations of the Committee which forms the basis of the fifth periodic report.

5. CONSIDERATION OF CAMEROON'S FIFTH PERIODIC REPORT

In 2016, the Human Rights Committee considered Cameroon's fifth Periodic Report pursuant to article 40 of the Covenant. The report, initially due for 2013, like most of its previous reports was submitted three years late. In the report, Cameroon stated that the innovations since the presentation of the fourth Periodic Report consist in setting up an Inter-Ministerial Committee chaired by the Secretary General at the Prime Minister's Office, to monitor the implementation of recommendations and decisions taken by the international and regional Human Rights promotion and protection mechanisms. Another innovation since the fourth Periodic Report has been the setting up of the Senate. The role of the Senate is important because it represents the regions and the customary practices relevant to the protection of human rights. Like the national assembly, its primary mandate is to debate legislation adopted at the national for the

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controlled) firms, obligate or disburse expenditures, approve or veto regulations, declare states of emergency, and appropriate and spend profits of parastatal firms.

[478]Bayefsky 2000 supra note 412 p.6

purposes of passing the bill, amending it or rejecting all or part of the bill.[479]As discussed in the previous chapter, the Senate has become another rubber stamp institution and an extension of the executive.

The Concluding Observations of Cameroon's fourth Periodic Report forms the basis of its fifth periodic report and the basis of this analysis which focuses on the specific Covenant articles under consideration in this research.

5.1 Implementation of obligations under article 2(3)

An effective remedy for human rights violation is an essential element in any rights protection regime. The normative framework for the provision of a remedy for human rights violations is defined under article 2(3) of the Covenant. In the case of the violation of the Covenant, states are obliged to ensure that: 1) victims have effective remedy, 2) victims' right to have their claims determined by a competent judiciary, administrative or legislative authorities or any other competent authority is respected, and 3) the competent authorities enforce such remedies. The justiciability of rights has increasingly granted courts the powers to strike down legislation that infringes on the ability of citizens to enjoy their rights. It may take the form of a review of administrative or legislative acts. The former involves the review by the courts of administrative actions in the determination of their conformity with the law.[480]Judicial review of acts of the administration and especially the executive in an autocratic country like Cameroon is particularly important, considering that the executive is the primary institution that causes legislation to be enacted and the most powerful institution that has always ensured its selective execution. Landau argues that competitive authoritarian regimes tend to possess democratic-looking constitutions with structural features such as the separation of powers but take simple measures to neutralize the value of those checks.[481]These perceived democratic institutions and procedures mask a harsh reality that can be seen in the way the process of effective remedy is achieved. Dworkin argues that "democracy requires that the power of

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[479] Constitution of Cameroon, article 30(3a, b and c)

[480] David Law, "Judicial Independence" in Badie, Berg-Schlosser and Morlino (eds) 'International Encyclopaedia of Political Science" (2011) 5 SP 1372.

[481] Landau supra note 219 p.212.

elected officials be checked by individual rights and the responsibility to decide when those rights have been infringed is not one that can sensibly be assigned to the officials whose power is supposed to be limited"[482].

Beyond being vested with the powers[483] to declare rights abusive legislation unlawful, the courts can also provide remedies as required under article 2(3) of the Covenant. This is a firm prescription of the Covenant: anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful,[484]and article 9(5) continues to argue that anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation[485]. Consequently, the courts can conclusively determine whether an administrative act that violates the Covenant rights is consistent with the law or not. It can, therefore, move to declare such acts unlawful. Its jurisdiction ends in the determination of the lawfulness of administrative acts and not the constitutionality of the law; this is left to the Constitutional Council already discussed earlier.

While the preamble of the Cameroon constitution outlines and entrenches certain rights, it is silent on the concept of effective remedy as outlined in article 2(3) of the Covenant. The absence of any constitutional provision constitutes a breach of good faith in compliance with its obligation to ensure that victims of violations are compensated, and those responsible brought to justice. Despite the silence of the constitution on issues of remedy for violation of human rights generally, this guarantee is entrenched in Cameroon's Criminal procedure code (CPC).[486] It clearly outlines rules on the compensation of persons whose rights under article 10

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[482] Ronald Dworkin, "Constitutionalism and Democracy" (1995) 3 European Journal of Philosophy 2, 10.

[483] See section 2 (2) and (3) of law No. 2006/022 of December 2006 to lay down the organisation and functioning of administrative courts.

[484] Covenant supra note1 article 9(4).

[485] See Mukong v Cameroon No. 458/1991 discussed in Chapter 7.

[486] CPC, article 236 and 237

have been violated.[487] Subsection 1 of the CPC allows for, "any person who has been illegally detained may, when the proceedings end in a no case ruling or an acquittal which has become final, obtain compensation if he proves that he has actually suffered injury of a serious nature as a result of such the detention". In subsection 3, the Code clarifies the authority in charge of such compensation and how the defaulting individuals or departments shall be held accountable. Victims of violation of article 9 of the Covenant are supposed to benefit from compensation under very stringent conditions as defined in section 236(2) a and b of the CPC. Cameroon has in certain situations demonstrated its compliance with this section in many cases, including in Mukong v Cameroon. It submitted in its fourth periodic review to the HRC that it had "…compensated Albert Mukong adequately[488]. The Committee was concerned about the delays in ensuring effective remedies and appropriate compensation for violations of Covenant rights in compliance with the views adopted by the Committee. It further recommended that:

'…the state party should take appropriate measures, including training of law enforcement personnel, to ensure effective implementation of guarantees set out in the Criminal procedure code and to ensure that persons subjected to illegal and arbitrary detention are able to report such violations and are afforded effective judicial redress and compensation. The state party should ensure that the claims commission set up under article 237 of the Code of Criminal Procedure become operational without delay'[489].

The Penal Code also stipulates that, any person who violates individual freedoms may be prosecuted for false arrest[490] and oppression[491]. Furthermore, the trial court may award damages to victims who file civil actions. Despite these provisions, in practice, the very security and intelligence agencies highly reputable for violation of these rights are rarely prosecuted. The US state Department's 2011 country report on human rights practices emphasises this point as follows: "abuses by security forces were subject to internal

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[487] Law Nr. 2005 of 27 July 2005 on the Criminal procedure code; section 236

[488] Human Rights Committee, recommendation 18, U.N. Doc. CCPR/C/CMR/4 para. 229 p.78.

[489] Human Rights Committee, Concluding Observations of Cameroon's fourth Periodic Report CCPR/C/CMR/CO/4 p.4 para 19.

[490] Penal Code of Cameroon, section 291.

[491] Ibid section 140.

disciplinary investigations and criminal prosecution by the Ministry of Justice, but this rarely occurred. The government generally neither investigated nor punished effectively those who committed abuses"[492].

In a letter written by Cameroon's Minister of Justice, Laurent Esso, and addressed to the Secretary General at the Presidency about implementing the recommendations of human rights treaty bodies, the former addressed the recommendations of the Concluding Observations of the fourth periodic report. In the letter, the Minister of Justice indicated that in Mukong v Cameroon, there has been 'an equitable satisfaction'. Other cases previously dealt with by the Committee according to the Minister's letter have also been handled. In Gorji v Cameroon, the letter indicated that 'negotiations have been concluded and it is simply left to disburse the amount that has been decided by the President of the Republic.'[493] In Njaru v Cameroon, Cameroon offered a compensation package of 40 million FCFA which was rejected by Mr. Njaru[494].

In the jurisprudence of the HRC, for a remedy to be effective, it must not only be available, but it must also be adequate. A remedy in the case of violation of article 9 would require restitution of liberty and possible reparation of harm caused during periods of detention. The need to ensure that such infractions do not occur again is vital to the realisation of Covenant rights. In its General Comment on effective remedy, the Committee states that:

…the purposes of the Covenant would be defeated without an obligation integral to article 2 to take measures to prevent a recurrence of a violation of the Covenant. Accordingly, it has been a frequent practice of the Committee in cases under the Optional Protocol to include in its Views the need for measures, beyond a victim-specific remedy, to be taken to avoid recurrence

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[492] state Department, Bureau of Democracy, Human Rights and Labour, Country Report of Human Rights Practices: https://www. state.gov/documents/organization/277223.pdf accessed 13.05.18.

[493] Ibid.

[494] Chapter 6 deals with these cases in detail

of the type of violation in question. Such measures may require changes in the state party's laws or practices.[495]

The deficiency in Cameroon's approach to the implementation of its obligation in guaranteeing effective remedy is its limited application of that concept and the extensive delay associated with actual compensation of victims, amending of laws or even punishing those responsible for violations. Cameroon's record at effective remedy has been focused on the financial compensation aspect of remedy. In the *Mukong case* the Committee urged the state party to grant Mukong appropriate compensation for the treatment he was subjected to; to investigate his allegations of ill-treatment in detention; to respect his rights under article 19 of the Covenant; and to ensure that similar violations do not occur in the future. Mukong received a compensation package of 200,000 US dollars after article 19 had internationalised the case for many years. Mukong was never provided with any other assistance associated with his mental or physical suffering. He died a few years later without effective remedy being totally fulfilled by Cameroon. According to a 2017 Redress Trust submission to the Human Rights Committee during its 121st session on the failure of Cameroon to implement the Committee's views under individual communications, as of 2017, 13 years after Mukong's death, the follow-up dialogue is ongoing[496].

There is no known record of anyone having been prosecuted for the torture, illegal deprivation of liberty and inhuman and degrading treatment. The structural conditions that made Mukong's arrest and incarceration possible remain in place as is shown in Akwanga v Cameroon and subsequent cases. The conditions of detention have remained the same. While some of the laws have changed, the practice has remained virtually the same as has been shown in subsequent cases since Mukong's arrest and incarceration.

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[495]Human Rights Committee, General Comment 31, Nature of the General Legal Obligation on states parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004) para. 17.

[496] Human Rights Committee, submission of Redress Trust (2017); also see UN. Doc. CCPR/C/119/3 p. 34 for 2017 follow up on the Committees views

5.2 IMPLEMENTATION OF OBLIGATIONS UNDER ARTICLE 7

The constitution of Cameroon seeks to adequately protect the inherent dignity of the human person through the prohibition of torture, cruel, inhuman or degrading treatment. In the preambular section of its constitution, the right to the protection of the physical integrity of a person is guaranteed as part of the general guarantee of the right to life. It states that, 'every person has a right to life, to physical and moral integrity and humane treatment in all circumstances. Under no circumstances shall any person be subjected to torture, to cruel, inhuman or degrading treatment.'[497] The inviolability of the human body and the protection of individuals from torture and other cruel, inhuman and degrading treatment, as outlined in the preamble, is given additional accent through secondary law.

Once it internalised the Covenant, it amended its Penal Code (PC) in line with the Covenant's obligation to criminalise violations of these rights and it promulgated law No. 97/009 of 10 January 1997 to modify certain provisions of the Code by revising former sections 132 and 133 relating to torture to meet up with international standards. It is on this basis that the definition of torture as per its Penal Code fully reflects that coded in article 1 of the Convention Against Torture (CAT)[498]. As per the PC,

> Torture shall mean any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the investigation of a public official or with his express or tacit consent on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or putting pressure on him or a third person, or for any other motive based on any form of discrimination whatsoever. It shall not include pain or suffering arising from, inherent in, or incidental to lawful sanctions[499]

Torture is specifically criminalised according to section 277 of its Penal Code. The CPC also forbids the inhuman treatment of detainees by proscribing any acts of "physical or mental constraints, or torture"[500]. Even without the explicit codification within the CPC, the pyramid

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[497] Constitution of Cameroon, preamble

[498] Penal Code of Cameroon section 277(5).

[499] Ibid section 277 3(5)

[500] Criminal procedure code Section 122(2) of CPC.

of the hierarchy of norms grants constitutional provisions superior status over other legislative enactments. The Cameroon Criminal procedure code and Penal Code forbid the use of torture and all other acts that violate human dignity and personal integrity. A subsequent amendment of the Penal Code criminalises certain acts which should constitute a violation of the integrity of the person. The new Penal Code, as amended, supplements certain old provisions with more clarity and robustness. Section 277(3) states: '(1) Whoever involuntarily causes death by torture shall be punished with life imprisonment.[501] (2) Where, as a result of torture the victim is permanently deprived of the use of the whole or any part of a limb, organ or sense, the punishment shall be for from ten to twenty years. (3) Where torture results in illness or industrial disablement of more than 30 days, the punishment shall be imprisonment for from five to ten years and a fine of from 100,000 to 1,000,000 francs. (4) Where torture leads to illness or incapacity to work for up to thirty days or pain or psychological or mental illness, the punishment shall be imprisonment for from 2 (two) to 5 (five) years and a fine of from 50,000 to 200,000 francs.

In its 2016 submission to the Committee Against Torture, Cameroon argued in para 1(6) and 1(7) that the definition of torture introduced in the criminal procedure code article 132 bis is consistent with that in article 1 and 4 of CAT and submits in para. 7 that the 'legislator has introduced penalties proportional to the seriousness of the acts committed'[502]

It submitted that 'in accordance with the Convention Against Torture and Other Cruel, Inhuman or degrading treatment or punishment, Cameroon has established torture as an offence under Act No. 97-009 of 10 January 1997'. In its annex 1 to its report Cameroon presented the details of the law discussed and adopted by its National Assembly and promulgated into law by the President. In its article 132(1) for example, anyone who causes death by torture is sentenced to life imprisonment.

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[501] New Penal Code.

[502] Convention Against Torture and other Cruel Inhuman and Degrading Treatment, List of issues prior to submission of the fifth periodic report of Cameroon para 1 at 1, U.N. Doc. CAT/C/CMR/QPR/5 (2015)

The Penal Code also rejects any justification of torture based on exceptional circumstances such as a state of war, internal political instability or any other public emergency. [503] The courts and other competent authorities effectively apply the provisions mentioned above. For instance, section 277 (a) (7) is reflected in the decision of the Supreme Court of Cameroon in judgment No. 4 of 7 October 1969 wherein the court stated that,

> state agents or civil servants cannot invoke orders from their superiors as justification or excuse; similarly, an accused may not invoke the orders of his employer to justify an offence, where such facts are established, they do not absolve the accused and personal acts are not expunged unless it was a case of force majeure.

Preliminary inquiries in cases of torture are carried out by the examining magistrate who is a magistrate of the bench. This is an innovation brought by the CPC. At the close of the inquiry, where the examining magistrate finds that the facts constitute an act of torture, he makes a committal order forwarding the case before the competent court for trial. Whenever the court finds that torture has been perpetrated, it punishes the offender accordingly.[504] 'Any individual, or any agent of the state, culpable of such acts, either on their own initiative, or on instruction, will be punished in accordance with the law'. This is a grey area in Cameroon's penal law when we square the actions of state security agents, administrators and top law enforcement officials who have acted with impunity on the population and instead received rewards in terms of promotion. The case is true of Oben Peter Ashu who, as Divisional Officer for Ndu subdivision, oversaw the rape and torture of dozens of women during months of anti-government demonstrations. Despite international outcry, he was promoted to the position of Governor of the South West Region. Mr. Oben Peter Ashu died in 2015 without ever having been charged or tried[505].

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[503] Penal Code of Cameroon para. 6.

[504] Convention on the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1465 UNTS 85, 10 December 1984, entered into force 26 June 1987.article 27 (1), article 2(3).

[505] Francis B. Nyamnjoh and Piet Konings, "Negotiating an Anglophone identity: a study of the politics of recognition and representation in Cameroon" (Koninklijke Brill NV 2003) 133

Cameroon has also argued that Judicial and administrative sanctions are meted out on prison administrative personnel, law enforcement officers, gendarme officers, other civil servants and traditional rulers when they are found guilty of acts of impunity. In its 2010 submission under the periodic review process of the Human Rights Committee, it cited several cases of judicial actions taken against law enforcement officers including that of The People v. Police Constable Mandjek. The accused was prosecuted for torture, breach of trust, as well as grievous and simple harm. By a judgment of 30 November 2005, this matter was considered discontinued as a result of the death of the accused in the course of the proceedings[506]. In its concluding observation to Cameroon's fourth periodic report,

The Committee noted the commitment expressed by the state party to eliminate torture, including through the establishment in 2005 of a Special Division for the Control of Services to ensure "the policing of the Police". However, the Committee is deeply concerned that torture remains widespread in the state party. Reviewing information provided by the state party on disciplinary sanctions against law enforcement personnel in cases of torture, the Committee is concerned that penalties handed down in these cases are insignificant compared to the damage caused to the victims and are much weaker than those established in the Criminal Code for the crime of torture. The Committee was also concerned that victims of torture by law enforcement and prison personnel in some cases are unable to report such violations and that confessions obtained under torture are still taken into consideration during court hearings, notwithstanding the explicit provision on the inadmissibility of confessions obtained under duress under the Criminal procedure code. (arts. 7 and 10)

The Committee recommended that

The state party should ensure that (a) victims of torture, those held in detention, have easy access to mechanisms to report violations; (b) impartial and independent inquiries are carried out to address such allegations of torture and inhuman and degrading treatment; and (c)

[506] Human Rights Committee: Consideration of reports submitted by states parties under article 40 of the Covenant fourth Periodic Report p. 33 para. 124 in UN Doc. CCPR/C/CMR/4

perpetrators are appropriately punished. The punishment handed down and compensation provided to victims should be proportionate to the gravity of the crime committed.[507]

Similarly, in its concluding observation on Cameroon's fourth periodic review issued in 2010, the state party was required to ensure that victims of torture held in detention should have easy access to mechanisms to report violations. Also, to ensure that impartial and independent inquiries are carried out to address such allegations of torture and inhuman and degrading treatment, and perpetrators are appropriately punished, and the punishment handed down, and compensation provided to victims should be proportionate to the gravity of the crime committed.[508]

In its fifth periodic report following the Human Rights Committee 2010 Concluding Observations, Cameroon reported a dozen investigations of cases of torture and disciplinary actions taken against security and civilian authorities and compensation paid to victims of torture. For example, in 2012, judicial services opened five investigations which resulted in five prosecutions and one acquittal. At the National Gendarmerie, 12 law enforcement officials were investigated for torture, assault, the threat of life or arbitrary detention. In Judgment No. 42/CRIM of 13 March 2012, the Military Tribunal, Yaoundé sentenced a gendarme officer to eight years imprisonment with a fine of CFA 200,000 for torture, assault, and false arrest.[509] While these cases are significant, they fall far short in comparison to the number of victims of security officials.

Contrary to the positive tone in Cameroon's submission, the concluding observation of its report to the Convention Against Torture in the same period draws a very different conclusion. The Committee stated its concerns about credible reports from a variety of sources alleging that security forces have carried out against adults and children, extrajudicial killings, arbitrary

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[507] Human Rights Committee: Concluding Observations pursuant to it's report submitted under article 40 of the Covenant, p. 5 para. 27 UN Doc. CCPR/C/CMR/CO/4 (2010)

[508] Human Rights Committee, Concluding Observations of Cameroon's fourth periodic report UN Doc. CCPR/C/CMR/CO/4 p. 5 para. 5.

[509] Human Rights Committee, Cameroon Fifth Periodic Report in UN Doc. CCPR/C/CMR/5P p.17 para. 71.

detention, acts of torture and cruel, inhuman or degrading treatment, and violations of the right to a fair trial.[510] The Committee then asked Cameroon to take effective measures to put an end to the harassment, arbitrary arrest, torture, cruel, inhuman or degrading treatment, and death threats to which journalists and human rights defenders are exposed, and to prevent further acts of violence.[511]

Also, in its 2013 fifth periodic report submitted almost three years late, it also stated the cases of 64 police officers of all ranks who received disciplinary measures ranging from written warning to three months' suspension for torture, assault or other inhuman treatment. During the period 2012-2013, the DGSN received complaints on torture and poor treatment. Investigations resulted in the following:

• two prosecutions for torture, one of which resulted in an acquittal for want of evidence;

• 15 prosecutions for poor treatment broken down as follows: four cases of false arrest, two cases of oppression, four cases of slight harm, three cases of simple harm, and two cases of murder. 80 Police officers, be they convicted or acquitted, were punished for proved cases of torture or inadequate treatment.[512]

In its concluding observation to the 5th report, the:

Committee takes note of the state party's efforts to prosecute persons who have committed acts of torture but remains concerned about the persistence of such acts. In the context of counter-terrorism, the Committee is particularly concerned at the alleged existence of: (a) numerous cases of torture and cruel, inhuman or degrading treatment perpetrated in places of detention used by the rapid response brigade and the intelligence service, in which victims have reportedly been killed or left with severe disabilities; and (b) secret detention facilities that are not subject to oversight of any kind (arts. 2 and 7). The state party should: (a) ensure that alleged acts of torture and ill-treatment committed by agents of the state, including the rapid response brigade and the intelligence service, are thoroughly investigated, and see to it that suspected perpetrators are prosecuted and, if found guilty, duly punished, and that victims are compensated and offered rehabilitation services; (b) prohibit and punish secret detention and

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[510] Committee Against Torture, Consideration of Reports submitted by states parties under article 19 of the Convention, Concluding observations of the Committee Against Torture para 19 U.N. Doc CAT/C/CMR/CO/4 (2010)

[511] Ibid para. 18

[512] Human Rights Committee: consideration of reports submitted by states parties under article 40 of the Covenant pursuant to the optional reporting procedure, p. 17 para. 72 in U.N. doc. CCPR/C/CMR/5 (2013).

detention in unofficial facilities; and (c) establish a national mechanism for the prevention of torture[513]

Unfortunately, as it has always been the case with Cameroon, no concrete measures were ever taken to give effect to the recommendations of the Committee. In its next Concluding Observations in its 2015 periodic report submitted in 2016, the Committee found it 'regrettable that the recommendations on the use of pretrial detention and the harassment of journalists and human rights defenders, which had been identified for follow-up in the previous concluding observations, have not yet been implemented.'[514]

In its 2018 report submitted under the UPR, Cameroon emphasised its commitment against impunity to engage in disciplinary actions against those found guilty. Even as it argued that "in 2016, proceedings were brought against 175 law enforcement officers, and 14 convictions were handed down by the military courts for offences relating to the violation of the right to life and/or the right to protection from physical and mental injury"[515], the Netherlands expressed concerns at reports of discrimination, violence, torture, ill-treatment, arbitrary arrest and detention in the English-speaking regions of the state, deterioration of the overall situation of human rights, aggravated by anti-terror laws[516]. Finland was encouraging Cameroon to give access to international human rights mechanisms, including with respect to those held in detention[517] and the Committee against Torture recommended that Cameroon put an end to the practice of incommunicado detention and ensure that no one is detained in secret or

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[513] Human Rights Committee: Concluding Observations pursuant to its report submitted under article 40 of the Covenant p.5 para. 17 in UN Doc. CCPR/C/CMR/CO/5 (2017)

[514] Consideration of Reports submitted by state parties under article 19 of the Convention, Concluding observations of the Committee against Torture para 8 at 2 U.N. Doc CAT/C/CMR/COS/5/2015 (2017)

[515] National report submitted in accordance with para. 5 of the annexes to resolution 16/21 of the Human Rights Council pp 5-6, para. 25 UN Doc. A/HRC/WG.6/30/CMR/1 (2018)

[516] Human Rights Council, report of the working group on the Universal Periodic Review para 52 UN Doc. A/HRC/39/15 (2018)

[517] Ibid para. 96

unauthorized places, including unlisted military detention centres[518]. These statements and recommendations show the slow progress 34 years since Cameroon acceded to the Covenant.

5.3 Implementation of obligations under article 9

There are four critical components in article 9 which are central to its fulfilment. Apart from the negative obligation that are forbidden in section 1, the other three sections prescribe positive obligations that must be taken by states parties to ensure their fulfilment. Being informed at the time of the arrest of the reasons for the arrest; promptly brought before a judge to be tried or released, right to challenge the legality of any detention and the right to compensation for any illegal arrest or detention are four important component of article 9. These obligations have been translated into law under Cameroon's Penal and Civil Procedure Codes. Critical to the deprivation of liberty, is the right to habeas corpus which grants detained persons the right to challenge the legality of their detention.

It is also noted that most cases in which administrative detention orders have been invoked in the name of public order and national security are those that have challenged the tyrannical nature of governance. The preamble of the constitution of 18 January 1996 stipulates that 'freedom and security shall be guaranteed to each individual, subject to respect for the rights of others and the higher interests of the state. The same preamble further provides that 'no person may be prosecuted, arrested or detained except in the cases and according to the manner determined by law. The CPC defines detention as detention by the judicial police officer in disrespect of the provisions of sections 119 to 126 of this Code[519] and detention by the state counsel or the examining magistrate.[520]

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[518] Human Rights Council, working group on Universal Periodic Review reports from the office of the United Nations Commissioner for Human Rights p. 4 para. 27 UN Doc. /HRC/WG.6/30/CMR/2
(2018)

[519] CPC section 236(2a)

[520] CPC section 236(2b)

The right to habeas corpus has been codified under the Cameroon Criminal procedure code section 584-588. It provides safeguards aimed at redressing cases of illegal arrest or detention. Section 584 of the CPC states:

1. The president of the High Court of the Place of arrest or detention of a person or any other judge of the said court shall have jurisdiction to hear applications for immediate release based on grounds of illegality of arrest or detention or failure to observe the formalities provided by law 2. He shall also have jurisdiction to deal with applications filed against administrative remand measures 3. The application shall be filed either by the person arrested or detained or on his behalf by anyone else.

Also, any administrator who illegally deprives someone of his/her liberty may be punished under section 291 of the Penal Code. Section 291 provides: '(1) whoever in any manner deprives another of his liberty shall be punished with imprisonment of from five to ten years and with fine of from twenty thousand to one million francs.'

Any violation of these rights is sanctioned under the PC. Section 271 of the PC reads as follows:

"Any person who violates individual freedoms may be prosecuted for false arrest".[521] This prosecution and punishment may be made depending on the length of the deprivation. Where the deprivation of liberty lasts for more than a month; accompanied with physical and mental torture, the punishment will be for from 10 to 20 years' imprisonment.[522]

Apart from the prosecution and punishment of those who violate the premise of article 9, a remedy is also provided for in the CPC. According to Section 236(1) of the CPC, 'any person who has been illegally detained may, when the proceedings end in a no-case ruling or an acquittal which has become final, obtain compensation if he proves that he has actually suffered injury of a particularly serious nature as a result of such a detention'. The compensation according to Section 236(3) is paid by the state and recovered from the judicial police, the state counsel or examining magistrate, depending on which institution was responsible for the detention.[523]

The detention periods are determined by the length of time it takes to investigate a matter and establish evidence whether the case should proceed to trial or not. Under this system, human

[521] Section 291(1) of PC.

[522] Section 291(2a and b) of PC.

[523] CPC, section 236(3).

rights defenders and political activists have been detained for long periods while purported investigations on their alleged crimes are conducted. It is during such periods that evidence is extracted from them through torture, incommunicado detentions and other forms of rights deprivation.[524] Two cases illustrate this scenario. In June 2015, Numvi Walters and four other persons were arrested by secret agents of the government and detained at the judicial police of the town of Bamenda. They were denied access to their families and lawyers as the government conducted its secret investigations. Numvi Walters was subjected to torture and detained in isolation from the others in four different locations. A writ of habeas corpus[525] filed by their lawyers one month after their arrest and detention have never been heard because of the government's claim that the case was still under investigation. The refusal to hear this case violates the right to the presumption of innocence explicitly guaranteed by the criminal procedure code[526]. It is also an indication of the conflict of jurisdiction that continues to mar the effectiveness of the judiciary and exacerbating the clash between common and Civil Law jurisdictions. The abuse of process by the executive is indicative of its huge influence on judicial matters. Keith has argued that 'the writ of habeas corpus protects individuals against arbitrary or political imprisonment in that the government is usually required promptly to present evidence sufficient to justify holding a prisoner and to make known the charges brought against a prisoner.'[527]While highly charged political cases have seen the writ to habeas corpus overtly violated by the executive, there have been some cases concerning high profile executive officers in which habeas corpus has been granted. In Etengeneng v South West Region Governor and Anor,[528] the judge granted the right of the applicant when the respondents, the governor of the South West region and the provincial chief of national security, failed to file a counter motion challenging the writ to habeas corpus. Under its Civil Law system, the right to habeas corpus is seriously undermined by administrative detention powers of executive

[524]Akwanga v. Cameroon No. 1813/2008. Also see Numvi et al v state prosecutor.

[525] Suit No. hcmb/7crm/2015 between The People of Cameroon vs Wirngo and Vincent Jumbam and 4 others.

[526]Section 8 (1-2) of Law No. Law N°2005 of 27 July 2005 on the Criminal procedure code.

[527]Linda Camp Keith, 'Constitutional Provision for Individual Human Rights'. Are they more than mere window dressing? (2002) 55 Peer Review Quarterly 111, 117.

[528] Suit No. HCF/63M/CR/97 (1998) 1CCLR.

officers. Such powers account for the high level of pre-trial detentions and consequently overcrowded prisons which have severe implications on the way it upholds its obligations under article 10. As Sir Nigel Rodley, the late UN Special Rapporteur for torture observed, it is common knowledge that in Cameroon pre-trial detention is widely used by the executive (police and prosecuting authorities) as a form of punishment rather than for its primary goal of upholding order and security or facilitating investigations. This is disturbing and has already been justly condemned elsewhere.[529] In its fifth periodic report submitted to the Committee Against Torture, Cameroon quoted article 221 of its Criminal procedure code which states that persons placed in pretrial detention by an investigative judge must be released or referred to the competent court once the judicial investigation has been completed or the pretrial detention order has expired'

Despite the presence of a Criminal Procedure Code that spells out the obligation of the state in dealing with violations of personal integrity rights, the right to habeas corpus ensures that the criminal law does not become an arbitrary instrument of oppression in the hands of the state, and especially the executive[530]. The harmonised Criminal procedure code and the constitution have clearly stated the conditions under which anyone suspected of any crime may be arrested and detained. If such an arrest takes place, the president of the high court of the place of arrest or detention of a person or any other judge of the said court shall be competent to hear applications for immediate release on the grounds of illegality of arrest or detention or failure to observe the formalities as provided by law.[531] Habeas corpus thus presents to the victim of rights violation the opportunity to challenge the legality of both the actions and the law invoked to justify that action. While this right is spelled out and guaranteed under the CPC, amongst the tools used by Cameroon and its agents to legitimize the egregious violations of the rights to habeas corpus are the use of the judiciary, the police, gendarmes and administrators. In Wakai and 172 others v Cameroon, despite a successful challenge by the defendant of the legality of their detention, the executive branch refused to respect the court order demanding

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[529] Report of the UN Special Rapporteur submitted pursuant to UN Commission on Human Rights resolution 1998/38 in E/CN.4/2000/9/Add.2, paras. 52 and 53.

[530] Jack Donnelly and Rhoda Howard-Hassmann 1988 supra note 84, p.231.

[531] Harmonised CPC, section 584

their release. This method was also discernible in the abduction and trial of Akwanga Ebenezer in 1997 and later trial by the Military Court in Yaoundé. In Mukong v Cameroon, it was noted that the author's lawyer twice applied to the High Court of Bamenda for writs of habeas corpus, all of which were rejected on the grounds that the case was before a military tribunal and that no writ of habeas corpus lies against charges to be determined by a military tribunal.[532] The executive has constantly used administrative measures to circumvent judicial decisions and extend detention periods and has used the military court as an extension of executive power over the court system.

In its 2009 report to the Convention Against Torture, Cameroon submitted that it had taken specific measures to improve on its prison conditions by the formal introduction of action on habeas corpus or immediate release[533] and by reducing overcrowding in prisons by reducing the number of persons in pre-trial detention. It also submitted that it had taken measures through its criminal procedure law that prohibits the subjection of suspects to torture and the obligation to treat them humanely.[534]In its response to similar concerns, the Human Rights Committee argued that safeguards against illegal and arbitrary arrests provided for in the CPC are often not implemented in practice, including the time limit for legal detention.[535]

Cameroon's much-proclaimed CPC, an intercourse 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. The Code, which is said to offer an efficient, reliable and legally sound set of structured rules and guidelines to facilitate criminal proceedings, instead offers a legal straitjacket within which the parties, particularly the defence, are obliged to operate.[536]

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[532]Womah Mukong v. Cameroon, No. 458/1991, para 2.4.

[533] CPC, articles.584 to 588.

[534]Ibid article 121(2).

[535]Human Rights Committee, "Concluding Observations of the Human Rights Committee: Cameroon" (CCPR/C/CMR/CO/4, 04 August 2010) 5, para. 18.

[536]Walter Atoh M. Tchemi, "Critique on Sections of the Cameroon Criminal procedure code" (2006) 6 (9) BIJSRP 278

In its 2010 concluding observations on Cameroon's fourth periodic report, the Committee decried the lengthy pre-trial detention periods which, it argued, was in contravention of section 221 of the CPC and accounts for the high level of overcrowding observed in Cameroon's prisons. The Committee also expressed concerns that safeguards against illegal and arbitrary arrest provided for in the Criminal procedure code are often not implemented in practice, including the time limit for legal detention in police custody, and that accused persons are often not adequately informed about their rights.[537]

What has been clear about Cameroon's enforcement approach of its obligation under article 9 is the way it interprets its civil status and the administrative prerogatives in the arrest and pre-trial detentions which are not subject to any judicial oversight. A restrictive interpretation has led to arbitrary actions by overzealous political administrators. Part of section 236(1) of its Criminal procedure code reads thus: 'any person who has been illegally detained may, when the proceedings end in a no-case ruling or an acquittal which has become final…'; This means that illegal arrests can only lead to compensation if there is no ruling on the substantive reasons for the arrests.

In its 2010 concluding observation of the Committee Against Torture, the Committee expressed its deep concerns about the high number of persons held in pretrial detention – 14,265 compared with 8,931 convicted prisoners in 2009. It has also expressed concerns that the maximum period of pretrial detention provided for under article 221 of the Code of Criminal Procedure, 12 months in the case of ordinary offenses and 18 months for serious offenses, is not observed as stated in its article 2.[538] It rejected Cameroon's submission in its fourth periodic report on the provisions of its criminal procedure code on habeas corpus and recommended that the state party should revise its Code of Criminal Procedure to allow anyone with a writ of habeas corpus to be released immediately and should also activate the

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[537] Human Rights Committee, "Concluding Observations of the Human Rights Committee: Cameroon" U.N. Doc. CCPR/C/CMR/CO/4, 4 August 2010 p.5, para. 19.

[538] Committee Against Torture, consideration of Reports submitted by states parties under article 19 of the Convention, Concluding observations of the Committee against Torture para 14 U.N. Doc CAT/C/CMR/CO/4 (2010)

claims commission without delay.[539] In its fifth periodic report to the Committee Against Torture, Cameroon used the example of the case of Christophe Kamdem to illustrate its commitment to the writ of habeas corpus. Cameroon argued that Kamdem released pursuant to Ordinance No. 0011/OHC/CAB/PTGI/Mifi of 22 October 2014 when it was established that he was placed under pretrial detention for three months with appearing before a judge. A habeas corpus judge found the period of detention to be unnecessarily long[540].

Under its legal system and the Civil Law tradition which it holistically inherited from France, the presumption of innocence is fluid. There is the general tendency reflected in the way security officers treat those arrested, to presume guilt and put the burden of proof on the arrested. This approach to securitisation has led to massive overcrowding in detention centres because of thousands of pretrial detentions. These detention periods are determined by the length of time it takes to investigate a matter and establish evidence whether the case should proceed to trial. So first you are arrested, determined by law to be culpable and then detained before evidence is established to go to trial. Under such a regime of justice human rights defenders and political activists have been detained for long periods while purported investigations on their alleged crimes are conducted. It is during such periods that evidence is extracted from them through torture, incommunicado detentions and different forms of rights deprivation.[541]

Under the Common Law system that operated in Southern Cameroons, the presumption of innocence formed the cornerstone of its legal foundation. The legal implication of this rule is that pre-trial detentions become an exception regulated by law rather than the rule. Although the harmonised CPC has adopted this principle, its actual interpretation and implementation by

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[539] Committee Against Torture, consideration of reports submitted by states parties under article 19 of the Convention, Concluding Observations of the Committee Against Torture, para 13 at 3 U.N. Doc CAT/C/CMR/CO/4 (2010)

[540] Committee Against Torture, consideration of reports submitted by states parties under article 19 of the Convention Against Torture, fifth periodic report, para 36 at 7 U.N. Doc. CAT/C/CMR/5 (2016)

[541] Akwanga v Cameroon, No. 1813/2008

the magistrates and judges still hinge very much on the ascent of political interpretation of statutes. The clash of the inquisitorial and adversarial systems lends credence to Cziment's assertion that Cameroon is not a mixed system. The consequence of such interpretation is that more than half of the persons in detention are pre-trial detainees on whom the writ of habeas corpus has never been exercised. This conflict of jurisdiction formed the central argument in the preliminary submission in the Numvi et al v The People case. In their notice of objection in limine litis, the lawyers for the defendants argued inter alia 'that there is a conflict of jurisdiction given that the application for habeas corpus which was filed on behalf of the accused persons since the 25th of May 2015 is still pending adjudication before the High Court of Mezam Division'[542] The delay in hearing cases of habeas corpus has compounded the situation of those detained as thousands are kept under inhuman and degrading conditions due to overcrowding in jails caused by lengthy pre-trial detentions. This has compounded the conditions of detention of thousands of inmates resulting in the death of many. This is reflected in the Concluding Observations of Cameroons fifth periodic report. The Committee submits that:

The Committee remains concerned at reports that there have been many arbitrary arrests, made in particular by the rapid response brigade in the context of counter-terrorism. It regrets that the commission set up to examine compensation claims submitted in relation to arbitrary arrest is not yet operational, even though its members have been appointed. Further, the Committee is concerned about the excessive length of judicial proceedings and the large number of persons placed in pretrial detention (arts. 9, 10 and 14)[543].

It then recommended that

The state party should take steps to see to it that: (a) no one is arbitrarily arrested or detained and all the legal rights of detainees are respected, in compliance with articles 9 and 14 of the Covenant; (b) all cases of arbitrary arrest are investigated and those responsible are subjected to disciplinary action and/or judicial proceedings; (c) all victims of arbitrary arrest are accorded compensation by the commission set up to examine compensation claims submitted in relation

[542]The People of Cameroon v Wirngo and Vincent Jumbam and 4 others, objection in limine litis filed on August 3rd, 2015 para. 4.

[543] Human Rights Committee: Concluding Observations pursuant to its report submitted under article 40 of the Covenant p.5 para. 33 in UN Doc. CCPR/C/CMR/CO/5 (2017)

to arbitrary arrest; and (d) the provisions of the Code of Criminal Procedure on the permissible length of pretrial detention are observed[544].

In its Concluding Observations of Cameroons fourth Periodic Reporting, concerning article 9, the Committee stated that it was deeply concerned about long pre-trial detention periods which often exceed the limits set for such detention in article 221 of Cameroons Criminal procedure code and about the high number of persons held in pre-trial detention, accounting for 61 percent of the total prison population of 23,196 according to 2009 statistics.[545]

In the review of its Fifth Periodic Report, Cameroon argued that it had taken steps to reduce illegal and arbitrary arrests which have included training and monitoring of detentions undertaken to ensure the effective enforcement of the guarantees contained in the CPC against illegal and arbitrary arrests. It also argued that sanctions are imposed for violation of the rights to freedom and security. While it has also created a Committee to monitor illegal and arbitrary arrests, the Committee is yet to go operational.

Many aspects of article 9 are not fully implemented by Cameroon as has been shown in Oben Maxwell v the People, Nyo Wakai and 172 others v The People and is shown below in the Akwanga v Cameroon cases. Most of these persons were arrested and detained without fully being informed of the reasons for their arrest, were never brought promptly before a judge. Akwanga was detained incommunicado for 19 months without being brought before a judge. Oben Maxwell spent almost two years in jail before being arraigned to court. Most of them could not also challenge the legality of their detention, and in the case where it was possible as was with Nyo Wakai and 172 others, a court order ordering their release was ignored by the state, and the detainees were moved to another jurisdiction.

In the Committee's Concluding Observation on Cameroon's fifth periodic report, it expressed concerns that Cameroon's rapid intervention unit also known as BIR continue to engage in arbitrary arrests under Cameroons anti-terrorism campaign. It also regretted that despite the creation and appointment of members of the commission to establish compensation claims

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[544] Ibid para. 34

[545] Human Rights Committee: Concluding Observation of Cameroon's fourth Periodic Report in UN. Doc. CCPR/C/CMR/CO/4 p. 6 para. 20.

associated with the violation of article 9, it remains non-operational. It recommended that the state party take steps to see to it that no one is arbitrarily arrested and that all cases of arbitrary arrests are investigated, and the perpetrators are subjected to disciplinary actions or judicial proceedings. Also, and most importantly that all victims of arbitrary arrest are accorded compensation by the commission set up to examine compensation claims submitted concerning arbitrary arrest; and the provisions of the Code of Criminal Procedure on the permissible length of pretrial detention are observed[546].

5.4 Implementation of obligations under article 10(1)

All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. This compelling prescription of the Covenant is the weakest link in Cameroon's protection regime. The constitution recognises that detainees are entitled to treatment that 'upholds their dignity, their physical and mental health, and which helps their rehabilitation into society. It emphasises the cardinality of the humane treatment of detained persons, one which must be consistent with the protection of human dignity and in a way, that maintains their physical integrity.'[547] This is consistent with the minimum standard rule under international law. Despite this explicit constitutional provision, it is not matched by budgetary allocations to ensure such protections.

The relationship between articles 9 and 10 is evident in the fact that the more article 9(1) is violated, the more people populate the prisons and the more people we have in jail, the higher the risk of overcrowding, poor hygiene, poor feeding and the higher the likelihood of the contravention of their rights under article 10(1). This vicious circle is difficult to break because of a culture in Cameroon of administrative detentions which prevents habeas corpus challenge and legally justified in the name of public order.

Prisons in Cameroon have always been overcrowded, and the treatment of detainees has not met the minimum standards for the treatment of persons in detention. In its 2010 Concluding

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[546] Human Rights Committee, consideration of state party reports; Concluding Observations of fifth periodic report U.N. Doc. CCPR/C/CMR/CO/5 (2017), para. 33-34

[547] Constitution of Cameroon, preamble.

Observations on its fourth periodic report, the Committee stated that 'the state party should ensure that all persons deprived of their liberty are treated with humanity and with respect for the inherent dignity of the human person and that conditions of detention comply with the Covenant and the United Nations Standard Minimum Rules for Treatment of Prisoners. The conditions of detention have been questioned and condemned by numerous human rights reports.

In its 2009 report to the Committee Against Torture, Cameroon indicated that it had taken specific measures to improve on its prison conditions by the formal introduction of action on habeas corpus or immediate release[548] and by reducing overcrowding in prisons through the reduction of the number of persons in pre-trial detention. It also submitted that it had taken measures through its criminal procedure law by prohibiting the subjection of suspects to torture and the obligation to treat them humanely.[549] In its response to similar concerns, the Human Rights Committee retorted that safeguards against illegal and arbitrary arrests provided for in the CPC are often not implemented in practice, including the time limit for legal detention.[550]

It also argued in its 2010 submission to the Human Rights Committee that the situation of overcrowding is gradually being redressed, especially with the adoption of Law No. 2005/007 of 25 July 2005 on the CPC that came into force on 1 January 2007. The CPC, it argued, re-establishes the position of the examining magistrate who henceforth is a magistrate of the bench contrary to the system instituted by Ordinance No. 72/4 of 2 August 1972 on the Judicial Organisation of the state which conferred judicial inquiry on the legal department. These measures should have the effect of speeding up cases the submission continued.

In the same submission, it argued that the recruitment of more personnel has allowed for the redeployment of judicial staff, resulting in the prompt treatment of procedures in general and preventive detention matters. Furthermore, to curb the problem of overcrowding in the prisons and poor detention conditions, the government has taken measures to regularly transfer

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[548] Criminal procedure code articles 584 to 588.

[549] Ibid article 121(2).

[550]Human Rights Committee, "Concluding Observations of the Human Rights Committee: Cameroon" CCPR/C/CMR/CO/4, 4 August 2010) 5, para. 18.

convicts from overpopulated to less populated prisons, and to ensure the humane treatment of detainees it has engaged in the sensitisation of prison personnel on the promotion and protection of the rights of detainees by opening up to associations and non-governmental organisations which ensure human rights protection through talks, communication and presentations[551].

These measures, however, have not reduced overcrowding in prisons and detention centres. Cameroon has resorted to justification based on its economic situation. In Akwanga v Cameroon, the Committee rejected the lack of resources as enough reason to justify the condition of detention and non-segregation of detainees[552] and found a violation of articles 10(1) and (2). In a similar case, Chisala Mukunto v. Zambia,[553] the state party held that due to its economic constraints, it could be held accountable for the conditions of detention the author suffered since these were common to all prisoners and the author was not explicitly singled out.[554]

In its jurisprudence on article 10, the Committee has been consistent in arguing that the minimum standard in the treatment of persons deprived of their liberty cannot be argued away based on economic situations. Despite these assurances and changes both in policy and laws, Cameroon's prisons remain overcrowded, and detainees continue to be treated with impunity and neglect. It has argued that the lack of resources accounts for the overcrowded nature of its prisons and the inhuman way in which detainees are treated. The Committee reflected this reality again in the concluding Observation of Cameroons 5th periodic report when it submits that

The Committee is concerned to note that conditions are poor in almost all prison facilities in the state party and that this situation has apparently led to riots. Of particular concern are: (a) the very high rate of prison overcrowding; (b) deaths in detention and violence among prisoners; (c) the failure to segregate accused persons from convicted persons and to segregate

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[551] Human Rights Committee, fourth periodic Report CCPR/C/CMR/4 p.65 para. 190.

[552] Akwanga v Cameroon, No. 1813/2008

[553] Chisala Mukunto v Zambia, No. 390/1990

[554] Ibid p. 3-4.

juveniles from adults in many institutions; and (d) the difficulties encountered by families wishing to visit their relatives in prison, including the requirement to obtain permission from the military prosecutor in the case of persons sentenced by military courts (arts. 6, 7, 10 and 23)[555].

It then recommended that

The state party should: (a) continue its efforts to improve the living conditions and treatment of prisoners; (b) continue to take steps to address prison overcrowding, in keeping with the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela rules); (c) pursue its efforts to use non-custodial penalties as an alternative to deprivation of liberty; (d) take the necessary steps to separate prisoners according to age, sex and detention regime; and (e) ensure that families are routinely allowed to visit their relatives in prison[556].

The Committee further expressed its concerns with overcrowding in detention centres and prisons, as follows:

…the Committee remains concerned about the continuing problem of severe overcrowding and grossly inadequate conditions in prisons. In addition to concerns about inadequate hygiene and health conditions, inadequate rations and quality of food, and inadequate access to health care, the Committee notes that the rights of women to be separated from men, of minors to be separated from adults, and of persons in pre-trial detention to be separated from convicts are often not guaranteed. The Committee is of the view that there is a need for a stronger oversight of prison conditions and the treatment of prisoners.

In its Program to improve detention conditions and the respect of human rights (PACDET), Cameroon stated that the second phase has helped improved detention conditions at various levels and has also allowed for the rehabilitation of all 10 central prisons, as well as the extension of the central prison. It has also achieved the separation of men from women, minors from adults and convicts from those awaiting trials.

In its General Comments 21 that replaced General Comments 9,

'The Committee indicated that reports should specify what concrete measures have been taken by the competent authorities to monitor the effective application of the rules regarding the treatment of persons deprived of their liberty. state parties should include in their reports information concerning the system for supervising penitentiary establishments, the specific

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555 Human Rights Committee, "Concluding Observations pursuant to its report submitted under article 40 of the Covenant", UN Doc. CCPR/C/CMR/CO/5 (2017) para. 29

556 Ibid para 30

measures to prevent torture and cruel, inhuman or degrading treatment, and how impartial supervision is ensured'.

Despite these changes, Cameroon seems to continue in the path of inhuman and degrading treatment of detainees as stated in the 2015 Amnesty International Report:

Prison conditions remained poor: chronic overcrowding, inadequate food, limited medical care, and deplorable hygiene and sanitation. The wave of arrests of individuals suspected of supporting Boko Haram further aggravated these conditions. Maroua prison houses 1,300 detainees, more than three times its intended capacity (350), and over 40 detainees died between March and May. The population of the central prison in Yaoundé is approximately 4,100, for a maximum capacity of 2000.'[557]

The non-respect for article 10 gives rise to issues of articles 2(3) and 14 none of which has been adequately dealt with by the Cameroon state. Detainees continue to suffer indignity due to overcrowding, poor sanitation, poor feeding and even abuse by prison guards and other inmates. No one has been held accountable, and no compensation accorded any of the victims of deliberate state policy that contravenes its obligation under the Covenant.

5.5 Implementation of the obligation under article 14

Article 14 is vital in safeguarding the other rights under consideration. Although it is not a non-derogable right 'the guarantees of fair trial may never be made subject to measures of derogation that would circumvent the protection of non-derogable rights.'[558] As article 7 is also non-derogable in its entirety, no statements or confessions or, in principle, other evidence obtained in violation of this provision may be invoked as evidence in any proceedings covered by article 14.[559] In Cameroon the right to fair trial is guaranteed in both specific and general terms under the constitution and Civil Procedure Code. On a general perspective, the guarantee of the right to fair trial is entrenched in the preamble of the constitution in the following terms: 'The law shall ensure the right of every person to a fair hearing before the courts; every accused person is presumed innocent until found guilty during a hearing conducted in strict compliance with the rights of defence[560]. It is a right reflected in its Civil Procedure Code. 'Any person

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[557] Amnesty International 2015/2016 Report p. 107: https://www.amnesty.org/en/latest/research/2016/02/annual-report-201516/

[558] The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, Human Rights Quarterly, vol. 7, 1985, p.237

[559] UN Human Rights Committee, "General comment no. 32, Article 14, Right to equality before courts and tribunals and to fair trial", UN Doc. CCPR/C/GC/32 para. 6.

[560] CC, preamble.

suspected of having committed an offence shall be presumed innocent until his guilt has been legally established during a trial where he shall be given all necessary guarantees for his defence and this shall apply to every suspect, defendant and accused.'[561]

The divide between theory and practice lies in the actual protection of such explicit provisions as it is usually silent or insufficient to promote and protect fair trial in the courts as an accusatory system, which reflects the civil criminal legal structure. The right to a fair trial also remains a function of the institutions designed to ensure its respect. As far as the Cameroon constitution is concerned, judicial independence which is critical to a fair trial is guaranteed from both the legislature and executive[562] branches and the Constitutional Council[563] is empowered to review legislative and executive actions. These guarantees are quite critical to a fair trial even though Fombad argues that there exists no evidence in Francophone Africa of any president who ever referred a matter for judicial review before the Constitutional Council.[564]

The constitutional entrenchment of rights is only the first step in the realisation of a state's obligation under the Covenant; the judiciary must be able to enforce these constitutionally entrenched rights. Based on Cameroon's constitution, the guarantee of judicial independence as a restraint to executive action is questionable. A lack of independence hinders the courts and their structures in enforcing Covenant obligations. The lack of independence was evident in the Human Rights Committee report of 2011 which argued that presumption of innocence is flouted by judges and administrative detention with detainees not having the possibility of challenging the legality of their detention has become the norm.

This was the case in 2008 when about 100 people were reportedly shot and killed by security forces with over 1500 arbitrarily arrested and detained. Some were severely tortured, while others were charged and summarily tried without minimum guarantees of a fair trial as

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[561] CPC, section 8(1 and 2)

[562] CC, article 37(2).

[563] CC, article 46-47.

[564] Charles M. Fombad, "The New Cameroonian Constitutional Council in a Comparative Perspective: Progress or Retrogression"? (1998) 42 Journal of African Law 172, 180.

stipulated in its Criminal procedure code and in the Covenant. (arts. 6, 7, 9 and 14)[565]. These arbitrary actions were in contempt of the legal principle of due process and a violation of article 9 and article 9 read in conjunction with articles 6, 7 and 14 of the Covenant.

Reference should be made here again to the case of Justice Wakai and 172 others v The People in which 173 applicants were arrested during post-election violence in 1992.[566] Despite a High Court decision ordering the release of the detainees on bail, the legal department ignored the order and transferred the detainees to Yaoundé, which operates a Civil Law system.

The constitutional entrenchment of these rights and obligations accompanied by secondary legislation has created an environment of rights protection. However, there is a huge gap between these constitutional entrenchments and the actual enjoyment of these rights. This is mitigated by what the government claims are mechanisms and procedures for implementing its obligation under the Covenant. One of such mechanisms which it has highlighted is the Inter-Ministerial Committee chaired by the Secretary General at the Prime Minister's Office, set up to monitor the implementation of recommendations and/or decisions taken by the international and regional human rights promotion and protection. This Committee is particularly charged with the implementation of the Concluding Observations of the Human Rights Committee. It has also highlighted procedures for implementing the views adopted by the Human Rights Committee in both individual Communication and state reporting procedures. In this regard, the views of the Committee are sent to the different administrations concerned. Their opinions are obtained and discussed by the above-mentioned Inter-Ministerial Committee. The Committee then makes proposals on measures to be taken and monitors their implementation.

As has been demonstrated above, the constitutional protection coexists with a weak implementation approach of the obligation of the state under the Covenant. The prevalence of such a situation coupled with a weak international enforcement regime overseeing a vague and weak domestic constitutional safeguard leaves only a competent and independent judiciary in the position to play an essential role in mitigating state abuse. Beyond these institutional and

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[565]Human Rights Committee, "Concluding Observations of the Human Rights Committee: Cameroon" UN Doc. CCPR/C/CMR/CO/4, para. 18

[566] The people v. Nyo Wakai and 172 others in Judgement No. HCB/19.CRM/92

codified approaches to implementing its obligation, the judiciary also plays a vital role through specific judicial procedures in the implementation process.

In its Concluding Observations on Cameroon's 4th periodic report

The Committee is deeply concerned about reported cases of human rights violations related to the social riots which took place in February 2008, triggered by high fuel and food prices, during which reportedly more than 100 persons died, and more than 1,500 persons were arrested. The Committee regrets that, more than two years after the events, investigations were still ongoing and that the state party was not able to give a fuller account of the events. The explanation provided by the state party's delegation that security forces shot warning shots and that rioters were trampled to death as they tried to escape contrasts with NGO reports according to which the deaths were mainly attributed to excessive force applied by security forces. The Committee is concerned that the state party's delegation dismissed allegations made by NGOs of cases of torture and ill-treatment of persons who were detained during the riots and of summary trials contrary to the guarantees set out in the Criminal procedure code and in the Covenant. (arts. 6, 7, 9 and 14)[567]

The Committee then recommended that Cameroon should ensure that allegations of serious human rights violations related to the social riots in 2008, including allegations of excessive use of force by security forces, of torture and ill-treatment of persons detained, and of summary trials are adequately investigated and that perpetrators are brought to justice[568].

In its Concluding Observations on Cameroon's 5th periodic report, on the independence of the judiciary and the administration of justice, the Committee observe as follows:

The Committee remains concerned about persistent allegations of corruption and interference by the executive branch with the judiciary. Of particular concern is the fact that the independence of the judiciary is not sufficiently guaranteed in law and in practice, especially with regard to: (a) procedures for the selection of judges; (b) disciplinary measures against judges; and (c) the retention of section 64 of the Code of Criminal Procedure, which allows for intervention by the Ministry of Justice or the Attorney General to terminate criminal proceedings in certain instances. It is also concerned about: (a) reports of violations of the right to a fair trial, which have been substantiated by the opinions adopted by the Working Group on Arbitrary Detention in the cases of Paul Kingue, Christophe Désiré Bengono and Marafa Hamidou Yaya; and (b) the continued jurisdiction of military courts to try civilians, which was extended by Act No. 2017/12 of 12 July 2017 on the Code of Military Justice (para. 14)[569].

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[567] Concluding Observation supra note 566 para 18

[568] Ibid

[569] Human Rights Committee, "Concluding Observations pursuant to its report submitted under article 40 of the Covenant" UN Doc. CCPR/C/CMR/CO/5 para. 37

The Committee then recommended that Cameroon

Should take all necessary measures to safeguard the independence of the judiciary in law and in practice and, in particular, to: (a) eliminate all forms of interference by the executive branch in the judiciary and effectively investigate allegations of such acts; (b) intensify its efforts to combat corruption in the judicial system and to prosecute and punish perpetrators, including judges who may be complicit therein; (c) consider reviewing the composition and functioning of the Judicial Service Commission to ensure the impartiality of the justice system; and (d) reform its legislative framework to ensure that civilians cannot be tried by military courts[570].

Concerning the jurisdiction of military tribunals on civilians, the Human Rights Committee in its view in many cases[571] has challenged the veracity and competence of the military tribunal in handling civilian cases. In its Fifth Periodic Report, Cameroon argued that

'Since the review of the last Periodic Report, the jurisdiction of Military Tribunals resulting from Law No. 2008/15 of 29 December 2008 relating to military justice and establishing the rules of procedure applicable before military tribunals has not changed. Military Tribunals in Cameroon are neither court martials nor courts of exception. They are courts of special jurisdiction. Therefore, about jurisdiction rationale personae, military tribunals have jurisdiction over offences committed by both the military, as well as civilians'[572].

The implementation of article 14 is mostly dependent on the independence of the judiciary which, as has been shown already, is largely absent. The judiciary is mainly under executive control and thus works to protect executive actions by civilian and security officials.

As was earlier stated in this chapter, the purpose of the reporting procedure amongst others is to ensure that states parties undertake a comprehensive review of national legislation, administrative rules, and procedures to assure conformity with the Covenant. This chapter has analysed this procedure as a method of implementation of the obligation under the Covenant as the primary mode of interaction between a state party, the Human Rights Committee and other relevant domestic and international actors. The constructive dialogue strengthens such an interaction both at the stage of preparing reports at the domestic level, defending this report at the Committee level and making a follow up of its Concluding Observations. Cameroon has

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[570] Ibid para 38

[571] Akwanga v Cameroon in Communication 1813/2008; also see Mukong v Cameroon in Communication No. 458/1991 and Gorji v Cameroon in communication 1134/2002

[572] Human Rights Committee, "Cameroon Fifth Periodic Report" UN Doc. CCPR/C/CMR/5P para. 71.

not been punctual in the submission of its report as was seen in its initial report submitted three years late and the delay in submitting its fifth Periodic Report. Apart from the delay, the quality and scope of Cameroon's fourth and fifth periodic reports did not provide the detailed steps it was taking to strengthen the legal and institutional framework that ensures the implementation of its obligations under the Covenant. It has also fallen short in guaranteeing the independence of domestic institutions relevant in preparing such reports and ensuring the follow-up implementation of the Committees Concluding Observations. The constitutional framework is void of details on rights protection which is left to secondary legislation from the executive to clarify. This executive intrusion has had a adverse effect on the adequate protection of citizens from torture, illegal administrative action in the detention of citizens.

In the Concluding Observation of its fifth periodic report, the Committee stated that it was

'…concerned at reports that the Commission is not perceived as a fully independent body and, in particular, about: (a) the process for selecting its members, which is not inclusive or transparent; (b) the fact that the Commission's membership includes members of Parliament and senators, who have voting rights; and (c) reports that the Commission's funding is limited and its access to certain places of detention is restricted .'[573]

It recommended that Cameroon should: (a) review Act No. 2004/016 of 22 July 2004 to ensure that the process for selecting and appointing the Commission's members is transparent and independent and to include a provision on the conflict-of-interest rules that apply to those members.

If commitment to the Covenant is to have a genuine impact in the protection of human rights the reporting process as the sole obligatory instrument of monitoring effectiveness of domestic implementation regime must be taken seriously both in the quality of reports submitted and the respect of the deadlines in submitting such reports. According to the Human Rights Instruments report of 2017, as at 1 March 2017, 36 of the 196 states parties to different international treaties were fully compliant with their reporting obligations under the relevant international human rights treaties and protocols. That was equivalent to 18 percent of states

[573] Human Rights Committee, "Concluding Observations on fifth periodic report on Cameroon" U.N. Doc. CCPR/C/CMR/5 para 7

parties.[574] Cameroon has two overdue reports with one being an initial report under the Convention on the Right of the Child and one overdue periodic report under the Convention Against Torture. According to the same instrument, the noncompliance rate of the Covenant stands at 36% while that of CAT is 40%. Cameroon has a high rate of untimely compliance with the Covenant with an average delay of three years in the submission of reports.

At this rate of untimely compliance coupled with the low quality of the report submitted, the process of periodic review cannot be an adequate method of monitoring the implementation of Cameroon's obligation under the Covenant.

[574] International Human Rights Instruments, Compliance by states parties with their reporting obligations to international human rights treaty bodies; UN Doc. HRI/MC/2017/2 para. 6

CHAPTER 6

IMPLEMENTATION OF STATE PARTY'S OBLIGATION UNDER THE INDIVIDUAL COMMUNICATION PROCEDURE

1. INTRODUCTION

The development of the international human rights regime under both the UN and regional systems has crystallised into binding obligations and the creation of treaty bodies that monitor the implementation of state party obligations. The shift in emphasis from theory to practice and from the mere existence of international obligations to a focus in actual compliance means implementation and accountability are given more value than ratification and accession. These aspects are increasingly being strengthened by a shift in focus from the state as the principal actor to the individual once considered a peripheral actor. In sum, the result is a steady penetration of the international system by individuals. Still, this access is designed by traditional international actors and therefore has serious structural limitations. Under autocracies, the individual is limited by the very design of the state as a tool of the executive as discussed in Chapter 2. Apart from standing and justiciability requirements contained in the text of the Covenant, the very nature and design of the Human Rights Committee as the main body that oversees the implementation of state obligation under the Individual Complaint mechanism challenges the efficacy of the entire implementation regime.

Before the individual became a vital actor and had legal personality under international law, International law was the exclusive preserve of states as the only legal subject recognised as adjudicators. states treated cases of individuals based on article 2(7) of the UN Charter as matters of domestic jurisdiction. Individuals and even corporate bodies have been recognised as possessing 'legal personality'. An entity has legal personality if it has direct international right and responsibility and can be heard and prosecuted in a national tribunal or any other international forum of adjudication for effective remedy except for the International Court of

Justice (ICJ)[575]. This is due to the recognition of the unique status of individuals as potential targets of state or state-sponsored retaliation or repression.

The individual as a subject under international law was strengthened in the Amadou Diallo case. In an unprecedented case brought by Guinea against the Democratic Republic of Congo in respect of a dispute concerning 'serious violations of international law' allegedly committed 'upon the person of a Guinean national'. Guinea submitted that its national Mr. Ahmadou Sadio Diallo, a businessman, was unjustly imprisoned by the authorities of the Democratic Republic of the Congo, after being resident in that state for thirty-two (32) years, despoiled of his sizable investments, businesses, movable and immovable property, and bank accounts, and then expelled.[576] While the DRC challenged the standing of Guinea's legal right to initiate the proceedings, the ICJ conceded Guinea's standing with regards to the protection of Mr. Diallo's rights as an individual.

This case strengthened the premise that international rules apply both to states, individuals and corporate bodies and their behaviours.

The Individual complaint mechanism guaranteed under the Optional Protocol of the Covenant[577]has become an instrument that strengthens the individual against the state-centric approach to human rights protection. It is not contained in its main body; instead, it is in the Optional Protocol of the Covenant and binding on state parties upon ratification and ascension. As stated in Chapter 1, Cameroon acceded to the Covenant and Optional Protocol in 1984 and had since been faced with numerous individual complaints from persons claiming a violation of their rights under Covenant articles 2(3), 7, 9, 10(1),14 and others.

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[575] Statute of the International Court of Justice, Article 34 http://legal.un.org/avl/pdf/ha/sicj/icj_statute_e.pdf accessed 24 May 2016.

[576] Ahmadou Sadio Diallo case (Republic of Guinea v. Democratic Republic of Congo) preliminary objections, judgement, I.C.J. Reports 2007, p. 582, 586

[577] Optional Protocol to the International Covenant on Civil and Political Rights Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 23 March 1976

By enabling individuals to bring formal complaints alleging state abuse, Cole argues, the Optional Protocol illuminates the long shadow that sometimes falls between the idea and the reality of human rights.[578] Also, as Donnelly argues, the Optional Protocol provides a genuine, if limited an instance of international monitoring, which, in at least a few cases, has altered state practice.[579]

Despite this access given to individuals, as a principle under international law that reinforces the concept of sovereignty and harmonises the international and domestic jurisdictions, exhaustion of domestic remedies is central to maintaining the balance between the domestic and international jurisdictions and reinforcing the role of the state as the primary guarantor of human rights. The exhaustion of domestic remedies requirements is critical for access to the Human Rights Committee. On the other hand, under an autocratic system like Cameroon, access to justice is hampered at the domestic level by executive interference and at the level of the Human Rights Committee by unnecessary delays which increase the backlog of cases.

In the former, the Committee has frequently argued that availability of remedy alone is not enough but that they must also be effective. So in cases of the absence of effectiveness, the Committee has always declared complaints as admissible to enable the substantive examination of the claims of the complainants. This is discussed below in the cases of Akwanga, Mukong, Gorji and others. In the latter, the backlog of cases speaks of the slowness of the process. It takes the Committee an average of 2.5 years to deal with an individual case. It took 3 years for the Committee to deal with Akwanga v Cameroon in Communication 1813/2008 and it has taken 7 years and the state party is yet to respect the views of the Committee; In Mukong v Cameroon in Communication 458/1991, it took 3 years for the Committee to adopt its views and it took another 8 years for Mukong to receive financial compensation.

On the other hand, the quasi-judicial nature of the Committee makes it a weak institution in the overall oversight scheme. It lacks the enforcement power of an ordinary state judiciary relying

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[578] Wade M. Cole, 'When All Else Fails: International Adjudication of Human Rights Abuse Claims 1976-1999' (2006) 84 Social Forces 4.

[579] Jack Donnelly, "International Human Rights: A Regime Analysis". (1986) 40 International Organisation 599-642, 611.

on the goodwill of the state in complying with their obligations and its views. These two structural limitations have cast much doubt on the effectiveness of the individual complaint mechanism as far as an oppressive system with no domestic accountability system is concerned.

As this chapter shows, although the individual communication mechanism under the Optional Protocol of the Covenant is instrumental in altering the relationship between the state and the individual, there still exists a wide gap between theory and practice as far as procedural and substantive aspects associated with this procedure is concerned. The most important aspect of this procedure lies in the individual being able to hold a state accountable for its domestic infractions. Even though monetary compensation and other forms of remedy are crucial elements in this process, the overriding consideration lies in the individual's ability to jump jurisdiction and to hold their state accountable. This novelty in international law is yet to alter the way Cameroon implements its obligations under the considered rights and obligations.

Chapter 5 has considered one aspect of the implementation process of the Covenant. The reporting process has mainly been focused on the regularity rather than the quality of the reports and implementation of the CO issued after each session. With special reference to the five articles under the Covenant, this chapter focuses on another procedure of implementation that gives individuals the possibility to challenge state actions at the international level due to the failure of national authorities and domestic legal systems to vindicate their rights. This chapter examines how Cameroon implements its obligation to the Covenant using the individual complaint procedure as an implementation technique. Through this examination, it is possible to observe how Cameroon interprets and fulfils its obligation to the complainant under the different procedural and substantive stages of the mechanism.

Part 1 describes the individual complaint mechanism established under the Optional Protocol of the Covenant and discusses the justiciability requirements of the Covenant. Article 2 of the Protocol stipulates that individuals aggrieved by states must first exhaust all possible domestic remedies before petitioning the HRC. Once a communication is filed, the HRC determines its admissibility, assesses its merits, affords the claimant protection (if deemed necessary), and renders a decision catalogue as the views of the Committee. In addition to the domestic recourse provision, the HRC also considers the personal, territorial, temporal, and procedural jurisdiction of a case when evaluating its admissibility.

Part II reviews and analyses all of the cases filed against Cameroon since its accession with a more detailed and comprehensive analysis of communication 1813/2008. Communication 1813/2008 deals with all the articles of the covenant considered in this thesis and reflects in content and procedure all the other cases brought against Cameroon since its accession. It captures in a specific way the underlying problems of implementation face by Cameroon. This section explores the substantive arguments by Cameroon concerning articles 2(3), 7, 9, 10(1) and 14, intending to understand how it interprets and implements its obligation to these rights as established under the Covenant

Part III reviews the views of the Committee

Part IV analyses the implementation of those the views in terms of remedy. Inherent in the notion of a remedy is the idea that it offers the complainant a timely and practical solution. It might also impact the laws and attitude of domestic jurisdiction in a positive way[580].

2. BACKGROUND OF INDIVIDUAL COMMUNICATION UNDER THE COVENANT

The purpose of an individual complaint mechanism within a human rights treaty is to allow an individual, or the individual's representative, or, in some circumstances, a group of individuals to complain to the treaty Committee regarding alleged violations of the human rights contained within the terms of the treaty.[581]Violations of Covenant provisions automatically generate state obligations under article 2(2) which a state party is obliged to respect. Once a victim has exhausted all domestic remedies in ensuring their rights are respected, they can then take a case to the Human Rights Committee as the last instance of adjudication of their rights under the Covenant.

For a complaint to be considered against a country, the country must be a state party to the Covenant, accept the competence of the Committee to receive and consider Communication

[580] Martinus Nijhoff (1993) quoted in Bayefsky 2000:142 supra note 412

[581] Alexandra R. Harrington, 'Don't Mind the Gap. The rise of the individual complaint mechanism within international human rights treaties' (2012) 22 Duke Journal of Comparative and International Law 153, 157.

from and individuals subject to its jurisdiction.[582] A state party to the Covenant that becomes a party to the Protocol recognizes the competence of the Committee to receive and consider Communication from individuals subject to its jurisdiction who claim to be victims of a violation by that state party of any of the rights set forth in the Covenant.[583] The Committee shall receive no communication if it concerns a state party to the Covenant which is not a party to the Protocol. Such complaints from individuals who claim that any of their rights enumerated in the Covenant have been violated and who have exhausted all available domestic remedies are submitted as a written communication to the Committee for consideration.[584] Under the terms of the Covenant Protocol, jurisdiction to consider complaints from individuals who assert that they have been victims of violations of human rights guaranteed under the Covenant is vested in the Human Rights Committee.[585] It considers the personal, territorial, temporal, and procedural jurisdiction of a case when evaluating its admissibility. Once the Committee deals with the issue of admissibility, it then proceeds to evaluate the claims merits. The Committee authoritatively determines whether there has been a violation, and the state concerned has an obligation to give effect to the treaty body's finding(s); it can also issue interim measures in urgent cases to preserve a situation until they make a final decision on the matter[586]. This interim measure will stay in place until the decision is made; decisions of human rights treaty bodies can go beyond the circumstances of the individual case and provide proactive guidelines to prevent a similar violation occurring in the future.

An important advantage of submitting a complaint to the Committee is that, once a state party has made the relevant declaration under the treaty, it should comply with its obligations under that treaty, including the obligation to provide an effective remedy for breaches of the treaty. This is an essential determinant in a states' commitment to its obligation, and this procedure provides a clear implementation avenue for the state to demonstrate that. While implementation

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[582] Optional Protocol to ICCPR supra note 578, art. 1.

[583] Ibid

[584] Ibid article 2

[585] Harrington 2012 supra note 582 p.159.

[586] Kandem v Cameroon No. 2325/2013

of the Committee's views has been problematic, the entire process provides an important interactional medium between the state on the one hand and the Committee and complainant on the other. As examined below, implementation of the Committee's views also takes a life of its own as this phase of interaction equally generates necessary procedural and substantive issues which can help alter the behaviour of the state and even its laws.

3. EXHAUSTION OF DOMESTIC REMEDIES

The primacy of the state as the principal guarantor of human rights means that before complaints are filed to the Committee, attempts must have been made to seek redress at the domestic level. This is a key procedural requirement that reinforces the state-centric approach to human rights protection. Domestic judicial procedures are viewed as more accessible and more efficient at resolving a claim. The exhaustion of domestic remedies that are available and giving rise to the complaint is a vital admissibility criterion for anyone or any group with standing to file a complaint to the Committee. It requires the use of all available domestic procedures to seek redress about the violations of Covenant rights and protection from future human rights violations and to obtain justice for past abuses. Local remedies can range from making a case in court to lodging a complaint with local police and getting a satisfactory redress consistent with international standards.

In its jurisprudence, the Committee has emphasised that remedy must not only be available and sufficient but must be effective. Cesare calls such a statement vague. "The considerable statutory vagueness of the domestic remedies admissibility criterion has, thus, left international human rights bodies with a large area in which to manoeuvre"[587]. Yet beyond simply being available and effective McGoldrick in emphasising the approach of the HRC argued that, the general approach of the Committee has been that a communication would not be considered inadmissible for failure to exhaust domestic remedies unless the state party gave details of the

[587] Romano PR Cesare, "The Rule of Prior Exhaustion of Domestic Remedies: Theory and Practice in International Human Rights Procedures" in N. Boschiero et al. (eds.), International Courts and the Development of International Law (Asser Press 2013)565

particular remedies available in the circumstances of the case[588]. This basically means that the burden of proof whether a remedy was exhausted does not only lie with the author of a communication but also with the state party. In P.L. v Germany, the Committee stated that authors must also avail themselves of all other judicial remedies, including constitutional complaints in order to fulfil the requirement of exhaustion of all available domestic remedies, insofar as such remedies appear to be effective in the given case and are de facto available to the author.[589] The Committee has also stated that failure to seize the relevant jurisdiction would amount to a violation of the rules of procedures. In declaring inadmissible Kandem v Cameroon, the Committee referred to its jurisprudence in communication No. 1511/2006 where it stated that "although it is not necessary to exhaust domestic remedies when they have no chance of being successful, merely doubting their effectiveness does not absolve the author of a communication from the obligation to exhaust those remedies"[590]. On the other hand, in reference to para 3b Nowak emphasises that the availability of a domestic procedure is not enough; all persons who avail themselves of a corresponding remedy have a right to a decision by that competent domestic authority[591].

The availability of remedial possibilities as a prerequisite to any complaint cuts across different human rights regimes at both regional or international levels. The African Commission on Human and Peoples Rights (ACHPR) system to which Cameroon is also a signatory has also stated that within the meaning of Article 56(5) of the African Charter, local remedies must be 'available, effective and sufficient.' The Commission clarified the meaning of these criteria as follows: A remedy is considered available if the petitioner can pursue it without impediment, it is deemed effective if it offers a prospect of success, and it is found sufficient if it can redress the complaint.

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[588] Dominic McGoldrick, 'The Human Rights Committee: Its role in the development of the International Covenant on Civil and Political Rights' (Clarendon Press-Oxford 1991) 188

[589] P.L. v. Germany No. 1003/200, para 6.5

[590], Kamdem v Cameroon, No. 2325/2013 para 8.4

[591] Manfred Novak, "UN Covenant on Civil and Political Rights; CCPR Commentary (Kehl am Rheien 1993)58

In the Jawara case, the Commission emphasised that the existence of a local remedy must be sufficiently specific, not only in theory but also in practice, failing which it will lack the requisite accessibility.[592] In Mbiankeu Geneviève v. Cameroon, the Commission was of the view that remedies can exist legally and in practice without necessarily being accessible to a complainant. There is, therefore, the need to make a distinction between the existence and availability of local remedies.[593] The considerable statutory vagueness of the domestic remedies admissibility criterion has, thus, left international human rights bodies with a large area in which to manoeuvre.[594] Such vagueness has given the Committee the chance to elaborate over the years on the exact scope of the rule and, even more so, on its exceptions, resulting in a sizeable amount of jurisprudence.[595]

On the question of the exhaustion of domestic remedies as required by article 5(2) of the protocol, Cameroon argued that Akwanga did not engage any internal procedures before approaching the international institution.[596] In his response, Akwanga argued that during his arrest and incarceration, the Social Democratic Front (SDF) political party and other non-governmental organizations like Amnesty International petitioned for his release but all of the petitions were ignored. He also submitted that because he escaped from jail, he can't return to the country to exhaust domestic remedies[597] and that a pending arrest warrant as indicated in the state's preliminary submission will also mean that he will have to be immediately arrested and detained under the same inhuman and degrading condition which he has complained about

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[592] Jawara v. The Gambia, No. 147/95-149/96 para 31

[593], Mbiankeu Geneviève v. Cameroon No. 389/10 para 52

[594] Optional Protocol supra note 578 article 5(b).

[595]Romano PR Cesare, "The Rule of Exhaustion of Domestic Remedies", in Boschiero, N.; Scovazzi, T.; Pitea, C.; Ragni, C. (Eds.), 'International Courts and the Development of International Law: Essays in Honor of Judge Tullio Treves' (2013) TMC Asser pp. 555-566, 565.

[596] http://www.redress.org/Cameroons_response_July_2009.pdf para 19 (translated version of its French deposition was done by Redress).

[597]Ibid p.5 para. 14.

with the likelihood of facing the same procedural hurdles which he has explained prevented him from being able to prepare for his defense at the military tribunal effectively. He also argued that while in detention, one of his defense lawyers who was part of his defense team during his trial at the military court in 1999, Barrister Nkafu, submitted that it is procedurally challenging to complain about torture and other ill-treatment suffered in detention in Cameroon. In his initial submission, Akwanga argued that Nkafu has set out the theoretical procedure for somebody to follow to complain about torture and other abuses suffered in detention and how it gets nowhere whether it is brought while the person is still in detention or afterward.[598]Apart from the procedural difficulties associated with gaining access to the actual courts, inadequate laws or the absence thereof, institutional barriers, the credibility of the courts also remains in doubt because of their lack of independence. These situations are highlighted by a May 2009 African Commission on Human and People's Rights ruling, in communication 266/03 brought by Dr. Gumne Ngwang of SCAPO for himself and the Southern Cameroons. In this case, the Commission amongst others recommended that Cameroon should reform its Higher Judicial Council, by ensuring that it is composed of personalities other than the President of the Republic, the Minister for Justice and other members of the Executive Branch.'[599]

The Human Rights Committee in its jurisprudence on the question of the exhaustion of domestic remedies held that the requirement does not apply where the remedy in question will be ineffective.[600] In defending the availability of such remedies, Cameroon argued that,

the author could have brought an application to the competent criminal court ('tribunal répressif compétent') on the basis of article 132b of the Criminal Code to complain about the torture he had suffered, or on the basis of article 332 et seq. of the Code of Criminal Procedure to request that the proceedings be annulled because of the absence of an interpreter and of generally fair trial guarantees'.[601]

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[598]Ibid p. 5 para. 15.

[599]Gumne et. al v Cameroon No.266/203, para. 215 (1) (vii).

[600]Kamdem v Cameroon No. 2325/2013

[601]Akwanga v Cameroon, No. 1813/2008, p. 8

In his response, Akwanga argued that the state party's assertion that he did not engage any domestic procedures is incorrect and contradicts the state party's previous assertion that he had lodged an appeal in which a decision was finally handed down in 2005. Cameroon had argued in its observation to Akwanga's response to its initial deposition that Akwanga's appeal to the Supreme Court in 1999 challenging the initial verdict of the military tribunal was rejected. It further stated that according to article 427 of the Criminal procedure code, Akwanga had a right of appeal. Cameroons' contention is that Akwanga failed to exhaust all available domestic remedies. Akwanga's objection here ties up with the jurisprudence of the Human Rights Committee that while there might exist possible remedies, they are not effective as demonstrated by the six-year delay in his appeal and the difficulties associated with accessing the courts.

In his preliminary submission, Akwanga also argued that in the exhaustion of domestic remedy where a complainant has no prospect of success, access to domestic remedy alone does not constitute an effective remedy and that there is no precedence that the Penal Code of the respondent has ever been invoked successfully to litigate against the state. In order to exhaust domestic remedy within the spirit of article 5 (2) (b), one needs to have access to those remedies. In this specific case, Akwanga was detained for two years and denied access to a court of law. In addition, he was constantly tortured and was traumatized by the death of many of those detained with him. He was interrogated without a legal representative and the withdrawal of one of his lead counsels in protest against an unfair and prejudiced judicial process that provided Akwanga no legal aid and treated his dossier in French when he spoke no French, meant the exhaustion of domestic remedies was a near impossibility. Akwanga also argued that even if domestic remedies were accessible and effective, he is unable to return to the country to seize it because of the threat of arrest, imprisonment and/or torture. It is a claim substantiated by Cameroon's action when in its 2009 response to Akwanga's submission it argued that « … le requérant est conscient de sa qualité de condamné, recherché suivant un mandat d'arrêt, lequel devrait être exécuté s'il revient au Cameroon, sans ignorer que son extradition pourait être demandée pour qu'il vienne purger sa peine… »[602]

[602]Cameroon's original response to the HRC 2009 as translated by Redress Trust supra note 597 p.6

Cameroon cited several other cases that were dismissed by the Committee for lack of the exhaustion of domestic remedy. Two of the communications cited were Castro v Colombia,[603]and Khan v Canada.[604] The two cases illustrate cases with two different domestic jurisdictions. While Colombia is relatively unstable and politically polarizing, Canada is relatively stable and democratic, and both countries have established rules for the alteration of power. In Castro v Colombia, the complainant failed to seize the relevant domestic institutions for remedy because he believed they would be ineffective. In dismissing the case, the Committee argued that the author of the communication 'does not deny that judicial remedies offered in the ordinary labour courts were available to him, nor does he explain why such a remedy would have been ineffective in his case. These doubts about the effectiveness of judicial remedies do not absolve an author from exhausting them.'[605] In Khan v Canada, the state party argued successfully that the complainant failed to avail himself to the fullest of the domestic remedies available to him and in cases where he did, he failed to raise or present evidence which was subsequently presented to the Committee[606]. Unlike in Castro, despite Akwanga's believe that the remedies available were ineffective, he tried to exhaust the readily available domestic remedies Akwanga argued that while remedy was available in his case, it was not effective as exemplified by his unheard appeal at the Supreme Court and problems of access.

Cameroon further argued that the complainant was empowered by relevant provisions of its Criminal procedure code to appeal against his claim of torture which it argued is suppressed by article 132(b) of its CPC of the law No.97/009 of 10 January 1997 or an appeal to have his conviction overturned in accordance with article 332 of its CPC which was applicable then. It also dismissed the argument advanced by Akwanga that the inability to be visited by a lawyer impeded any legal procedure he could have engaged against the state party for acts of torture or unfair trial. Cameroon submitted in response that, '... rather than putting these moments of

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[603] Castro v Colombia, No. 1103/2003

[604], Khan v Canada 1302/2004

[605] Castro supra note 604 para. 6.3.

[606] Khan supra note 605 para 4.7

supervised freedom to use and have his injuries recorded and engage the applicable procedures, the complainant escaped from the Hospital to Nigeria.[607]

On the failure to exhaust domestic remedy, the Committee concluded that:

'… during the author's detention from 24 March 1997 to 9 July 2003, he was allegedly held incommunicado, a fact that the state party has refuted with the general statement that no instructions had been given to the competent authorities to refuse visits to the author. In the present case, the Committee considers that the remedy under the Code of Criminal Procedure was de facto not available to the author.'[608]

The Human Rights Committee has concluded admissible similar communication when the authors have argued that it was impossible for them to exhaust domestic remedies especially because of procedural bottlenecks or the ineffectiveness of the procedure. In the case of Gorji-Dinka v Cameroon, the HRC.

'... takes note of the author's argument that, following his escape from house arrest in 1988, he was not in a position to seek redress at the domestic level, as a person who was wanted in Cameroon. In the light of its jurisprudence that article 5, para. 2 (b), of the Optional Protocol does not require resort to remedies which objectively have no prospect of success, and in the absence of any indication by the state party that the author could have availed himself of effective remedies, the Committee is satisfied that the author has sufficiently demonstrated the ineffectiveness and unavailability of domestic remedies in his particular case.'[609]

ln dismissing the state party's objection to the failure to exhaust domestic remedy in Mukong v Cameroon, the Committee argued,

'…that the state party had merely listed *in abstracto* the existence of several remedies without relating them to the circumstances of the case, and without showing how they might provide effective redress in the circumstances of the case. This applied in particular to the period of detention from 26 February to 23 March 1990, when the author was allegedly held incommunicado and subjected to threats. The Committee concluded that in the circumstances, it could not be held against the author if he did not petition the courts after his release and that, in the absence of further information from the state party, there was no further effective domestic remedy to exhaust.'[610]

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[607] Cameroon's submission 2009 supra note 597

[608] Akwanga v Cameroon No. 1813/2008 para. 6.4

[609] Gorji v Cameroon, No. 1134/2002, para. 4.11.

[610]Mukong v. Cameroon, No. 458/1991 21 para. 5.1.

In the same communication, the Committee further stated that it is uncontested that the case which the state party itself considers relevant to the author's situation has been pending before the Supreme Court of Cameroon for over 12 years. In the circumstances, the Committee questioned the relevance of the jurisprudence and court decisions invoked by the state party for the author's particular case. [611] In conclusion, the Committee found that, "for purposes of admissibility, the author has sufficiently substantiated his claims under articles 7, 9, 10 and 14, of the Covenant and therefore proceeds to its consideration of the merits"[612]

In Titiahonjo v Cameroon, the author claims that because her husband's detention involved the executive and the military, she could not sue, or act domestically, as required under article 5, para. 2(b), of the Optional Protocol.[613] While Cameroon failed to cooperate with the Committee on the said Communication, the Committee concluded that the author filed a complaint on behalf of her husband and that the state prosecutor's order to release her husband was never implemented. And that in the absence of any other pertinent information from the state party, the Committee decided to proceed with considering the communication under article 5, para. 2(b) of the Optional Protocol.[614]

In Mukong v Cameroon, Mukong argued that, 'there is no domestic remedy for him to exhaust and that he should be deemed to have complied with the requirements of article 5 para 2b.'[615] He argued that there was no domestic procedure through which he could challenge the incompatibility of domestic law with international human rights standard; further explaining that fundamental human rights are only guaranteed in the preamble of Cameroon's constitution which was not considered an integral part of the constitution. It should be known that following the 1996 amendment of the Cameroon constitution, the preamble is now an integral part of the constitution and both the civil procedure codes and the criminal code has criminalised acts

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[611] Ibid para. 8.3.

[612] Akwanga v Cameroon, No.1813/2008 para.6.5

[613] Titiahonjo v Cameroon, No. 1126/2003.

[614]Ibid para. 5.3.

[615] Mukong v Cameroon, No. 458/1991 para 2.6

inconsistent with the Cameroons obligation under the Covenant. Mukong alleges a violation of articles 7, 9, 12(4), 14(1) and 19 of the Covenant.

In Engo v Cameroon, in November 2005, Cameroon challenged the admissibility of the communication on the grounds that the delay experienced in the author's case has been due to 'numerous pleas and release applications, which have acted as a brake on the proceedings and caused considerable delays'[616].

On its part, the Committee stated that the author has substantiated his claims under articles 9, 10 and 14 sufficiently for the purposes of admissibility and therefore declares them admissible

These views highlight the gap between theory and practice in Cameroon's interpretation and implementation of its obligation. It also shows Cameroon's focus on procedural rather than substantive commitment. The availability of institutions to protect these rights alone does not translate into their protection and enjoyment. Domestic remedies must not only be available, but they must also be accessible and effective. Also, as has been shown above, in most cases they are not available, and even where they are, they are not effective.

Another conditionality in submitting a complaint is the notion of victimhood. In this case, the individual who claims to be a victim must sufficiently substantiate that they are a victim by the state party to any of the rights states set forth in the Covenant. It continues that usually the communication should be submitted by the individual himself or by his representative…when the victim is unable to submit the application himself.[617] The Committee can receive a complaint from anyone who 'claims to be a victim(s) of a violation by that state party of any of the rights set forth in the Covenant.'[618] The Committee's Rules of procedure permits complaints from the representative of an alleged victim,[619]even when it considers as more 'effective' when actual victims get direct access to the Committee. This was emphasised in Antonaccio v Uruguay when a request from the victim's wife for her husband who was detained

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[616] Ibid para 4.1

[617] Human Rights Committee, rules of procedure, rule 90(1b) U.N. Doc. CCPR/C/3/Rev.3 (1994)

[618] Optional Protocol supra note 578, article 1.

[619] Human Rights Committee, Rule 96(b).

incommunicado to be given the right to submit the communication himself.[620] In another situation, a complaint can be brought by a representative of a victim with a written consent in the form of a 'power of attorney'. In some circumstances, a victim is simply unable to submit or authorise the submission of a complaint. For example, the victim may be dead or in incommunicado detention. In this case, a close family connection will normally suffice. This was the case in Titiahonjo v Cameroon, in which the deceased wife brought a complaint against the state party for 'arbitrary arrest and death in custody, inhuman and degrading condition of detention,' amongst others.[621]

A complaint cannot also be submitted under conditions of anonymity[622] 'or what the Committee considers to be an abuse of procedure and incompatible with the provisions of the Covenant.'[623] It cannot also be pending before another international body or be the subject of a settlement as determined by an international body.[624]These requirements and others are tested below in Communication 1813.

4. INDIVIDUAL COMPLAINTS AGAINST CAMEROON SINCE ACCESSION

This section reviews all the complaints submitted at the Human Rights Committee against Cameroon and pays detailed emphasis to communication 1813/2008. This specific communication captures the processes presented in the other chapters and exposes both the domestic and international limitations of Cameroon's approach to implementing its obligations under the Covenant rights herein considered. It also captures in a specific way and consistent with all other previous complaints, the states party's interpretive doctrine in both its positive and negative obligation under articles 2(3), 7, 9, 10(1) and 14. Since it acceded the Covenant, Cameroon has had to deal with a dozen or more complaints. It has failed to respond to most of the communication, instead of allowing the Committee to handle both the procedural and

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[620] Antonaccio v Uruguay, No. 63/1979 para 2.6

[621] Bondonga v. Democratic No.1483/2006, also see Titiahonjo v Cameroon No. 1126/2003

[622]Optional Protocol, supra note 578 article 3.

[623] Ibid

[624] Ibid art 5(a).

substantive aspects of the complaints. These complaints have shed light on Cameroon's domestic legal and institutional framework and most especially on how it interprets and implements its obligations under articles 2(3), 7, 9, 10(1) and 14.

4.1. REVIEW OF COMPLAINTS SUBMITTED AGAINST CAMEROON

According to the Human Rights Committee data base, 11 complaints have been filed against Cameroon since its accession to the Covenant and its Optional Protocol in 1984. Considering the massive human rights violation by the state party, one would safely say that very few Cameroonians are informed about the Covenant and the possibilities it presents through its Optional Protocol to victims of domestic rights violation to engage with the Committee. So why are there very few communications from a country classified as autocratic, repressive and engages in systematic violence? There are many reasons why this is the case, but three reasons stand out. Executive control of governance apparatus means that the very system that tortures, engages in illegal deprivation of liberty, subject people to inhuman and degrading treatment is the very system that is expected to adjudicate the wrongfulness of these acts. As earlier stated, the government can effectively prevent the accusers from having access to such information through denial of their presence or through hiding such information or the accusers and government interests are at variance.[625] This brings us to the second problem. The population is not aware of these opportunities. The government has also failed in its role of disseminating information that should educate the population on their rights and procedures available to them to ensure these rights are protected. The few who are aware lack the expertise to submit individual communications without passing through costly lawyers on corrupt domestic NGO's. Most of the cases which have been taken to the HRC has been done so by foreign NGOs. The absence of success stories also leaves much to be desired as the governments delaying tactics in implementing the views of the Committee has also discourage both victims and litigants to seize on the Committee's jurisdiction.

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[625] Lupu supra note 131 p.475; In Mukong v Cameroon, the Committee stated that, the burden of proof cannot rest alone with the author of a communication, especially considering that the author and the state party do not always have equal access to the evidence and that frequently the state party alone has access to the relevant information; para. 9.2

4.1.1. COMMUNICATION 458/1991, MUKONG V CAMEROON

The first complaint against Cameroon was filed seven years after the treaty entered into force for the state party. In communication 458/1991, the author complaint that he was arrested for granting a BBC interview critical of the government. Also, while under detention following his arrest in June of 1988, he was subjected to cruel inhuman and degrading treatment. He was detained with common criminals in a cell without windows and was not allowed to wear his cloths. He was released 9 months later after falling ill but rearrested in February 1990 and detained without access to a lawyer or his family members. Albert Mukong claimed that he was intimidated and subjected to mental torture and physically assaulted by prison guards.

Cameroon accepted that Mukong was arrested but justified the arrest on the basis that Mukong's interview over the BBC was subversive and an 'intoxication to national and international public opinion'.

On the question of admissibility, Cameroon argued that Mukong failed to initiate judicial proceedings against those responsible for his treatment. The Committee declared the communication admissible on the basis that by merely stating the availability of remedies in an abstract form without relating the availability to Mukong's claim does not make the remedies accessible.

On the merits, the Committee found Cameroon in breach of article 7 for the combination of incommunicado detention, a threat of torture and for particularly singling out Mukong for cruel inhuman and degrading treatment; article 9(1) for arbitrary detention and article 19 for curtailment of the right to freedom of expression. The Committee urged the state party to provide Mukong with an effective remedy including appropriate compensation and the investigation of his ill-treatment in detention.

4.1.2 COMMUNICATION 630/1995, ABDOULAYE MAZOU V CAMEROON

Abdoulaye Mazou,[626] a second-grade magistrate in Yaoundé was arrested and charged with sheltering his brother who took part in an attempted coup d'état in April 1984. The military tribunal sentenced him to five years imprisonment, and three years later, a presidential decree

[626] Mazou v Cameroon, No. 630/1995

removed him from his job. Following his release in 1990, he was placed under house arrest and only released a year after. Despite his released, and despite all judicial attempt to get back his job, he was not re-instated in his job until 1998. He asked the Committee to find Cameroon in breach of its obligation under article 2(3), 14 and 25(c) of the Covenant.

Cameroon never contested the admissibility of the communication and the Committee declared the communication partially admissible. It declared inadmissible the claim under article 14 because the author failed to provide evidence when he brought a complaint to the ministry of justice and thus the Committee found this to be inconsistent with the principle of the exhaustion of domestic remedies.

On the merits, the Committee recognised that by the time of its views the author of the communication had been re-instated as a second-class judge and retroactively paid his salary. The author confirmed this in reaction to the state party's comment on the merits. However, the author argued that the state party had an obligation to pay damages for injuries suffered from the wrongful dismissal. The Committee thereby found the state party in breach of article 2(3) and requested the state party to ensure that the author of the communication is provided with an effective remedy.

4.1.3 COMMUNICATION 1134/2002, FONGUM GORJI DINKA V CAMEROON

Fongum Gorji Dinka was the former president of the Cameroon Bar Association. He claimed that

his detention from 8 October 1981 to 7 October 1982 and from 31 May 1985 to 3 February 1986, as well as his subsequent house arrest from 7 February 1986 to 28 March 1988, were arbitrary and in breach of article 9, para. 1, of the Covenant. The conditions of detention and the ill-treatment suffered during the second detention period amounted to violations of articles 7 and 10, para. 1, while the fact that he was initially kept with a group of murder convicts at the BMM headquarters, upon his re-arrest on 9 June 1985, violated article 10, para. 2 (a). He further claims that the restriction on his movement during house arrest and his current de facto prohibition from leaving and entering his country amount to a breach of article 12 of the Covenant[627].

Cameroon failed to submit to the Committee information on both the admissibility and merits of the communication. Concerning admissibility, the Committee considered that the author had

[627]Gorji v Cameroon, No. 1134/2002 para 3.2

made attempts to avail himself of domestic remedies which were neither available and where available were not effective. It declared its incompetence in considering claims of the violations of article 1 of the Covenant and declared that part of the communication inadmissible. It also declared inadmissible ratione temporis the part of the claim of the violation of article 9(1) starting the events occurred before the Covenant into force in Cameroon and that the author has provided no evidence to show that the injury he suffered then continued after the Covenant came into force in 1984. The Committee also declared inadmissible for lack of substantiation the authors claim under article 2 the failure of the state party to provide him with compensation for unlawful detention in 1981-1982. The Committee declared admissible issues arising under articles 7, 9(1), 10 (1, 2a), 12 and 25(b)

On the merits, the Committee declared that Gorji's detention between May 1985 and February of 1986 was lawful but failed to meet the reasonableness and necessity test and thus arbitrary in violation of article 9(1) of the Covenant. The Committee also found a violation of article 10(1) for detention in a wet, dirty cell without a bed, table or any sanitary facilities and article 10(2) for detention with hardened criminals.

Acting under article 5(4) of the Optional Protocol of the Covenant, the Committee found Cameroon's actions in breach of articles 9(1), 10(1,2a) and required the provision of effective remedy under article 2(3), including appropriate compensation and to take measures to avoid similar violations in the future.

4.1.4 COMMUNICATION 1353/2005, AFUSON PHILIP NJARU V CAMEROON

Philip Afuson Njaru was a journalist, and well-known human rights advocate in Cameroon. Since 1997, he claimed to have been a victim of systematic acts of persecution by various agents of the state.

He claimed to have been assaulted and beaten to unconsciousness by elements of the Brigade mixed mobile. Njaru also accused the state party of unlawful and arbitrary arrest and cruel inhuman and degrading treatment while in detention. The state party failed to cooperate with the Committee.

On the subject of admissibility, the Committee noted

…that the state party has not contested the admissibility of any of the claims raised. In addition, it notes the information and evidence provided by the author on the complaints made to several different bodies, none of which, it would appear, have been investigated. Accordingly, the

Committee considers that it is not precluded from considering the communication by the requirements of article 5, para. 2 (b), of the Optional Protocol'[628]

On the merits, the Committee found a violation of article 7 alone and in conjunction with article 2(3) of the Covenant based on the detailed submission of evidence of alleged physical and mental torture which were not contested by the state party. It also found a violation of article 9 alone and in conjunction with article 2(3) for three arrests without a warrant and without being informed of the reasons of arrest.

The Committee then concluded that;

The Committee is of the view that the author is entitled, under article 2, para. 3(a), of the Covenant, to an effective remedy. The state party is under an obligation to take effective measures to ensure that: (a) criminal proceedings are initiated seeking the prompt prosecution and conviction of the persons responsible for the author's arrest and ill-treatment; (b) the author is protected from threats and/or intimidation from members of the security forces; and (c) he is granted effective reparation including full compensation. The state party is under an obligation to ensure that similar violations do not occur in the future'[629]

4.1.5 COMMUNICATION 1397/2005, PIERRE DÉSIRÉ ENGO V CAMEROON

Pierre Désiré Engo was a former director of Cameroon's National social security fund (CNPS) who was arrested in 1999 and charged for corruption, fraud, favouritism and attempted misappropriation of funds. He went through five different trials and was sentenced to 15 years imprisonment. Engo submitted

'that his right to liberty and security of person (article 9 of the Covenant) has been violated. He contends that he was arrested without a warrant and was arbitrarily detained in poor conditions, in violation of article 10, para. 1, of the Covenant, and without being informed of the charges against him in the various cases'[630].

Engo further contended that his right to fair trial under article 14 para 2 and 3(a)(b)(c)

About the exhaustion of domestic remedies, Engo submitted four different applications between 1999 and 2001 to both the minister of justice and the state prosecutor for release pending trial and to complain about the unreasonable delay in his proceedings and the length of time spent in pretrial detention. According to Engo's complaint to the Committee, none of

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[628] Njaru v Cameroon, No. 1353/2005, para 5.2

[629] Ibid para.9

[630] Pierre Desire Engo v. Cameroon, No. 1397/2005 para.3.1

these submissions ever received any response from the state party. Consequently, as he argued, 'all domestic remedies have been exhausted.'[631].

In considering the merits of the complaint, the Committee based its views on the written submission of both parties. On the violation of article 9, the Committee rejected the authors claim of arbitrary detention and argued that 'the author was placed under a detention warrant on 3 September 1999, following a complaint accompanied by the lodging of an application for criminal indemnification, the initiation of a judicial inquiry and questioning'[632] and thus considered that 'the author was therefore deprived of his liberty on grounds and in accordance with the procedure set out in the law'[633]. It however considered a violation of article 9(3) because the author was detained from 1999 until 2006 before an initial judgment was handed down after his first trial. The Committee therefore considered a seven-year detention without any judgment as unnecessarily long. The Committee also found a violation of article 9(2) for the state party's failure to promptly inform the author of all the charges against him. Article 10(1) requires that all detained persons shall be treated with humanity and with respect to their inherent dignity. For failure to provide the author with appropriate medical care 'appropriate to the author's condition' despite his request is deemed to have been in breach of the premise of article 10(1). The Committee also found a violation of article 14(2) because the state party's media had already been publishing articles portraying the author as guilty violated the presumption of innocence guaranteed under the Covenant. The Committee also found a violation of article 14(4) for a delay of several months for the author to be informed of the charges against him and to be provided access to the case files.

The Committee found a violation of article 9, paragraphs 2 and 3, article 10, para. 1, and article 14, paragraphs. 2 and 3 (a), (b), (c) and (d), of the Covenant and required the state party to provide effective remedy including the provision of adequate ophthalmological treatment to the author.

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[631] Ibid para.3.8 at 7

[632] Ibid para. 7.2

[633] Ibid

4.1.6 COMMUNICATION NO. 1962/2010, S.N.A V CAMEROON

SNA was a journalist who was arrested on three separate occasions, subjected to torture and detained under conditions that could amount to cruel inhuman and degrading treatment. While covering an event on October 1, 2001, he was arrested without a warrant by gendarme officers who tortured, stripped and threw him into an unventilated cell, where he remained for more than 24 hours without food or access to a lawyer. During one such detention in 2001, he slept on a cold cement floor that smelled strongly of faeces and urine because detainees urinated and defecated directly on the floor'[634]. On 30 December 2006, he was transferred to the criminal investigation service, where he was held with a dozen other detainees. He was held in prison, in conditions that he characterized as inhuman, until 3 January 2007. During his detention, he was not given any blankets or sheets and slept directly on the floor.

The author considered that the state party has violated his rights under articles 1, 7, 9, 10, 17 and 23 of the Covenant.

On the subject of the exhaustion of domestic remedies, the author claimed to have reported these violations of his rights to the National Commission on Human Rights and Freedoms, which was unable to obtain compensation. As he considered that the judiciary was merely an extension of the executive branch and was therefore not independent of it, the author did not bring the matter before the courts.

The Committee declared the communication inadmissible for failure in the exhaustion of domestic remedy arguing that although 'it has recognized in its jurisprudence that it is not necessary to exhaust domestic remedies when they have no chance of being successful, merely doubting their effectiveness does not absolve the author of a communication from the obligation to exhaust those remedies'[635].

4.1.7 COMMUNICATION 2388/2014 ERIK PAUL KINGUE V CAMEROON

Kingue was the elected Mayor of the Municipality of Njombe-Penja. On the 28 February 2008, he was suspended from his position by the government of Cameroon 'irregularities in the

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[634] SNA v Cameroon, No. 1962/2010 para 2.2

[635] Ibid para. 6.4

management of public funds' and arrested the same day by a contingent of the rapid response battalion and the gendarmerie. He was taken to prison and detained for more than 20 days under 'in inhuman and degrading conditions that included placement in a solitary confinement cell. He was also required to sleep on a bare wet floor without the ability to communicate with family members, a lawyer or a doctor. He was also bound and shackled and subjected to regular insults and physical threats.' [636] The author was tried the first time and sentenced to 10 years imprisonment. He was acquitted on appeal 9 months later. In a second case, the author was prosecuted for 'unlawful assemblies, gatherings and demonstrations, conspiracy to block and obstruct public thoroughfares, and aiding and abetting gang looting'[637]. He was sentenced to 6 years imprisonment, but the judgement was annulled on appeal at the supreme court. The third trial for misappropriation of funds saw the author received a life sentence, but the supreme court once more annulled the decision. Following these cases, the author applied to the administrative authorities as required by law for compensation for five years of pretrial detention and subsequent acquittal. The author complained that the administrative authorities have never responded to him. Based on this the author stated as grounds for his communication a violation of articles 2 (3) and 9 (5) of the Covenant. The author assessed the injury for such violations at 10.815 million dollars.[638]

The state party argued that the author's arrest was based on

'lawful grounds, in conformity with due process of law and in recognition of the guarantees set forth in article 9 of the Covenant for persons deprived of their liberty. In accordance with the foregoing, the author was informed of the reasons for his detention and was brought promptly before the trial court, which issued its judgment without undue delay'.

In considering the admissibility of this communication, the Committee took into consideration the fact that the state party failed to comment on the admissibility of the communication and consequently based its decision on the argument of the author when he argued that;

'that domestic remedies have been exhausted because there is no effective remedy to repair the injury that he suffered as a victim of arbitrary arrest and detention. The compensation commission created for this purpose under the Code of Criminal Procedure has reportedly not

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[636] Eric Kingue v Cameroon, No. 2388/2014, para 2.3

[637] Ibid para 2.7

[638] Ibid para 3.2

yet been set up, and recourse to the administrative courts would be pointless since settled case law excludes from the jurisdiction of these courts issues of compensation for injury attributable to the functioning of the public justice system and since a subsequently adopted law confirms this exclusion'[639].

The Committee found a violation of article 9 (1), (3) and (5) for unlawful and arbitrary arrest and detention, failure to be brought promptly before a judge and tried within a reasonable time and failure by the state party to pay compensation for unlawful arrest and detention.

4.1.8 COMMUNICATION 2764/2016, ZOGO ANDELA AND ACHILLE BENOIT ZOGO V CAMEROON

The author of the communication, Mr. Benoit Zogo is the son of the victim. His father, Andela Zogo was the Chairman of the National Maritime Leasing Corporation of Cameroon. He was accused of failing to fulfil a contractual agreement between National Maritime Leasing Corporation (SCLM) and the autonomous sinking fund of Cameroon. According to the author's submission,

'Mr. Zogo Andela was accused of the fraudulent withholding of property belonging to the state of Cameroon, following the misappropriation of 20 ships acquired by the state at a cost of 30 billion CFA francs. He was reportedly also charged with failure to pay the Treasury the proceeds of the use of the above-mentioned trawlers, for whose management he was responsible'[640].

On the 29 March 2011, he was arrested at his home in Douala and transferred to Yaounde where he was arraigned the following day at the Mfoundi High Court. He was charged and detained initially for six months and extended two times consecutively. Before the end of his legal detention, he challenged both the jurisdiction of the court based on the lack of jurisdiction ratione loci and ratione materiae and the statutes of limitation applicable in the case. The Cameroon Criminal procedure code requires that a court shall have jurisdiction over a case when it is: (a) The court of the place of commission of the offence; or (b) The court of the place of residence of the accused; or (c) The court of the place of arrest of the accused.'[641] He argued that the events occurred in 1996 while preliminary investigations began 12 years later in 2008. Under Cameroonian law, the statute of limitations is 10 years. His appeal was rejected and a

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[639] Ibid para 6.3

[640]Gervais Zogo and Achille Benoit Zogo v Cameroon, No. 2764/2016 para.2.2

[641] Cameroon, Criminal procedure code, article 294

subsequent appeal at the Supreme Court has never been heard. A writ to habeas corpus appeal following the expiry of his legal detention period of 18 months was also rejected. Five years after his remand custody and investigated, he has not been tried. The author further complaint that the father's health situation has deteriorated since his incarceration and has been denied medical attention and care since 2013.

The author therefore claims a violation by Cameroon of his father's rights under articles 2 (3); 7; 9 (1), (3), (4) and (5); 11; 14 (1), (2), (3) (c) and (5); 15 (1); 16; and 26 of the Covenant. The Optional Protocol entered into force for the state party on 27 September 1984.

The state party challenged the admissibility of the communication arguing that the author had not exhausted domestic remedies and questioned the validity of the authors' claims.

The Committee declared inadmissible the authors' claim under articles 2(3), 7, 9(5) and 11 and declared admissible the authors claims under articles 9(1)(2)(3) and (4) and 14(1)(2)

On the merits of the communication, the Committee 'is of the view that the facts before it disclosed a violation by the state party of article 9 (1), (2), (3) and (4) and of article 14 (3) (c) of the Covenant in the case of Mr. Zogo Andela'[642].

5 COMMUNICATION 1813/2008, EBENEZER AKWANGA V. CAMEROON

Ebenezer Akwanga seized the Committee in 2008 through the London-based NGO, Redress Trust,[643] to consider his complaint against the state of Cameroon. Ebenezer Akwanga's complaint and the response of Cameroon forms the basis of this in-depth analysis.

The first part investigates the question of the exhaustion of domestic remedy. This lays the foundation for understanding how the merits phase of the communication is argued. The next section analyses the substantive part of the communication involving the victim's complaint, the responses of the state party, the views of the Committee and how the views are implemented by the state party.

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[642] Gervais Zogo and Achille Benoit Zogo v Cameroon supra note 641 para 8

[643]Redress Trust, London based Non-Governmental Organisation that helps torture survivors obtain justice and reparation www.redress.org

5.1 BACKGROUND OF THE CASE

Ebenezer Akwanga was born on 18 November 1970 in the town of Tiko in the territory of the former British Southern Cameroons. He is married, and a father of three children all currently reside in the United states of America. He was enrolled at the University of Buea in 1993 and in 1994 became the first Students Union president of the University. He was expelled from the University in 1994 after organizing and leading a student's strike action against an increase in tuition fees. In 1995, Akwanga and others formed the Southern Cameroons Youth League (SCYL)[644] of which he became the chairman. In 1997 he was arrested in the city of Jakiri, 300 kilometers away from Cameroon's capital of Yaoundé, alongside Julius Ngu Ndi,[645] and almost 300 others. They were all transported from their places of arrest within the common-law system to Yaoundé where Civil Law is practiced. In 2008, he solicited the services of the London-based non-governmental organization, Redress Trust, to file a complaint to the HRC alleging a violation of the complainant's rights under articles 7, 9, 10, and 14 of the Covenant.

5.2 CLAIMS OF THE COMMUNICATION

Akwanga made the following claims: that (i) On 24 March 1997, he was arrested in Jakiri by a group of uniformed and plain clothed security officers of Cameroon, (ii) during his arrest he was assaulted with the booth of a gun which left a hole in his chin and knocked him unconscious, (iii) at the Jakiri gendarmerie station he was doused with stinking water and beaten on the soles of his feet with a new machete, (iv) subsequently he was stripped naked in front of female officers who fondled his penis, (v) he was forced to dance barefoot on sharp sand, singing 'Biya before God', (vi) the security officers dropped hot molten plastic on his bare body which have left his body with indelible scars, (vii) he was denied water and

[644]The SCYL was founded on the 28 May 1995 as a Youth Movement campaigning for the right to self-determination of Southern Cameroons, www.southerncameroonsyouthleague.org.

[645]Julius Ngu was also sentenced to 20 years in prison. He died in jail in 2006 due to torture; http://unpo.org/article/11059 also see: Amnesty International, Amnesty International Report 2006 - Cameroon, 23 May 2006, available at: http://www.refworld.org/docid/447ff7a311.html [accessed 12 September 2018]

medication during the early days of his arrest, (viii) he was detained in overcrowded and unhygienic conditions with hardened criminals, (ix) he was poorly fed, (x) he was kept incommunicado for 18 months, (xi) he was interrogated for long periods of time while standing, (xii) he was assaulted by hardened criminals on the instruction of the state security agents (xiii) he was put through a kangaroo military trial process in which he was denied proper representation, and tried in a language (French) he did not understand, (xiv) his prison condition, torture, cruel and degrading treatment resulted in him having partial paralysis and constant diarrheal and optic problems. Despite all of this, he was denied proper medical care.

Akwanga alleged that all of this amounted to:

1. Torture or cruel inhuman or degrading treatment and punishment which are a violation of article 7 of the Covenant which prohibits torture and other cruel treatment.
2. Violation of the right to security of persons in contravention of article 9 of the ICCPR.
3. Violation of the right to the protection of inherent dignity in contravention of article 10.
4. Violation of his right to fair trial in contravention of article 14.

In the light of all the above, Akwanga requested the HRC to:

1. Declare that Cameroon had violated articles 7, 9, 10 and 14 of the Covenant.
2. Recommend that Cameroon adopts all necessary action to:

a) Fully investigate the circumstances of the torture or ill treatment...and to take appropriate measures against those responsible for that treatment.
b) Adopt measures to ensure that Akwanga receives full and adequate compensation for the harm he has suffered (Complainant 2008).

5.3 Fulfilling Procedural Obligations

This section begins with the procedural requirements as outlined by the Optional Protocol of the Covenant and rule 93 of the rules of procedure of the Human Rights Committee. This lays out the requirements that must be fulfilled before someone claiming to be a victim of the actions of a state party files a complaint to the Committee. Both the Covenant and Optional Protocol came into force on 27 September 1984 and by this act, Cameroon recognizes the

competence of the Human Rights Committee to receive and consider Communication from individuals who claim to be victims of violations of their rights under the Covenant.[646]

The protocol also requires complainants to fulfil specific basic procedural requirements amongst which and most importantly is the exhaustion of all domestic remedies. This procedure expresses the subsidiarity of the international mechanism to the primacy of the state in the protection of the rights as outlined in the Covenant. The principle of 'subsidiarity' is a principle under European law that gives priority to domestic jurisdiction in the adjudication of the claims of human rights violation including criminal liability. International arbitration is designed to complement national jurisdiction. This is taken seriously by the HRC. There is, however, some flexibility in the interpretation of this rule as is shown in the analysis below.

The communication by Akwanga alleges crimes that occurred[647] after the respondent had ratified the Covenant. The alleged crimes also occurred within the administrative jurisdiction as determined by article 1 of the Optional Protocol. Akwanga fulfils the premise of article 3 of the protocol as he has submitted a non-anonymous communication and the language used in the original communication as submitted by Redress is anything other than an *'abuse of the right of submission.'*

Based on Akwanga's submission, Cameroon raised two procedural objections to admissibility based on article 5 of the Optional Protocol. Cameroon cited article 5(2)[648] to object based on para. a) whether the individual has exhausted all available domestic remedies and b) the same matter is not being examined under another procedure of international investigation or settlement.

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[646]Optional Protocol of the Covenant,supra note 578 article 1.

[647]Akwanga was arrested on 24 March 1997 and escaped in 2003. This implies the alleged violations occurred during this period long after the Cameroon had acceded to the ICCPR.

[648]Article 5(2) reads; The Committee shall not consider any communication from an individual unless it has ascertained that.

5.4 LITI PENDITI

In submitting that he is working in accordance with article 5 (2) (a) of the protocol, Akwanga stated that 'this complaint is not being examined (and has never been examined) by another procedure of international investigation and settlement and thus complies with the requirement under article 5(2)(a) of the Optional Protocol.'[649] Article 5(2) (a) precludes the admissibility of claims that are concurrently being handled by another international jurisdiction comparable to the HRC. In its submission of July 2009, Cameroon argues that Akwanga's lawyer had filed a case on his behalf and 17 others in the African Commission on Human and People's Rights in 2004. Cameroon thus argues that the ACHPR is a quasi-judicial international body of adjudication and so comparable to the HRC. It cited Kollar vs. Austria,[650]which was rejected by the HRC based on the rule of 'Ratione Temporis.' In examining the Kollar case, it is observed that the communication was rejected subject to an Austrian reservation on article 5(2) (a) of the OP on its accession. The reservation spelt out that

On the understanding that, further to the provisions of article 5 (2) of the Protocol, the Committee provided for in Article 28 of the Covenant shall not consider any communication from an individual unless it has been ascertained that the same matter has not been examined by the European Commission on Human Rights established by the European Convention for the Protection of Human Rights and Fundamental Freedoms[651].

It must be noted that Kollar's application to the European Commission was declared inadmissible on both procedural and merits grounds. The Committee then decided that another competent jurisdiction has thus considered the case. Cameroon, on the other hand, has made no such reservations concerning the Covenant or it Optional Protocol. In essence, the connotation the of 'same matter' as defined by article 5(2) (a) of the OP was given clarity in

[649] Akwanga's first submission, 20 June 2008 in www.redress.org/case-docket/akwanga-v-cameroon p.5 para. 19.

[650] Kollar v Austria, No. 989/2001

[651] Ibid para 1.2

the Fanali v Italy case.[652]The Committee stated that the principle of the 'same matter' had to be understood as '...including the same claim, concerning the same individual and submitted by him or someone else who has the standing to act on his behalf...'[653].In the Fanalli, the co-defendant of Mr. Fanalli had filed a complaint at the European Commission of human rights which involved the same issues raised by Fanalli at the Human Rights Committee.

Cameroon argued that on 25 November 2006, during the Commission's 40th session, the case was heard; however, a decision remains pending.[654]Akwanga rejected this claim by arguing that

…he is not aware of any complaint submitted on his behalf to the African Commission on Human and People's Rights. He notes that he never authorized any lawyer to submit such a complaint. He further notes that the state party has not submitted any documentation in this regard and that the alleged complaint is not available in the public domain.'[655]

Cameroon dismissed Akwanga's defence and restated its claim by citing a statement made by a certain Lawyer Titanji at the African Commission on Human and People's Rights (ACHPR). Akwanga responded by arguing that the statement at the 40th session of the Commission was

'...apparent that, the case is concerned with torture and other cruel, inhuman or degrading treatment that the plaintiffs were subjected to during their arrest or detention in March and April 1997 as well as violations of the right to a fair trial during the proceedings conducted against them and the trial before the Yaoundé military tribunal.'

Cameroon further asserted that the similar nature of both communication (HRC and ACHPR) suggest that the case is being currently handled at the ACHPR. Writing on the merits of this argument, Akwanga restated that since his arrest and detention in 1997 until the response by the state party to his allegations, he has never given any power of attorney to any individual except Redress to act on his behalf at any regional or international jurisdiction against Cameroon. He then argued that '...in the absence of the state party producing a copy of any

[652]Fanali vs. Italy, No. 75/80

[653] Ibid p. 163 para 7.2

[654] Akwanga v Cameroon No. 1813/2008, para. 4.2.

[655] Ibid p. 9 para. 5.2.

power of attorney or equivalent document in this regard that grants Titanji the authority to act on his behalf, the exception should be dismissed.'[656].

Akwanga proceeded to argue that lawyer Titanji had no power of attorney or his consent to act on his behalf. The failure of Cameroon to produce any evidence to the contrary or any detail reference that can be corroborated by investigation leaves a massive loophole in its claim. Secondly, even if the claim submitted by Lawyer Titanji included 'the same claim', in the absence of a power of attorney, he will lack the 'standing' to act on Akwanga's behalf, and the ACHPR could not have seized on the issue.

The Committee rejected Cameroon's request for the case to be dismissed on the ground of Liti penditis restating its jurisprudence that the Optional Protocol cannot be so interpreted so as to imply that an unrelated third party, acting without the knowledge and consent of the alleged victim, can preclude the latter from having access to the Human Rights Committee.[657]With the rejection of Cameroon's objections on admissibility, the Committee proceeded to consider the merits of the case.

5.5 ON THE SUBJECT OF TORTURE AS IN ARTICLE 7

Cameroon dismissed Akwanga's claim that he has been tortured and argued that the state's investigations (of the alleged acts of the complainant) led to the following findings;

'...deaths, grievous bodily harm, and important material damages were carried out in observance with the rules in place at the time on criminal procedure. It was in no way arbitrary in regard to the legislative procedure that was in place to fight against the use of torture by police officers or the jurisprudence.'[658]

It cited Kouidis v. Greece[659] to argue that it was up to the state which oversaw the investigation of Akwanga's infractions to decide the manner of carrying out an investigation as far as the

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[656]Akwanga's follow-up submission, 22 September 2009.

[657]Akwanga v Cameroon, No, 1813/2008 para. 6.3.

[658] Cameroon's initial response to Akwanga's submission in www.redress.org/Cameroons_response_July_2009.pdf para. 51 accessed on 22 May 2016.

[659] Kouidis v Greece, No. 1070/2002

process was not arbitrary. In this case, Kouidis challenged the evidence presented by Greece which led to his conviction and argued that the state should have interviewed his landlord to corroborate their claim of having found drugs in his house. On the other hand, Akwanga accused Cameroon of having used torture and other forms of ill-treatment to extract confessions from him. The way in which Cameroon conducted itself in the investigation was arbitrary in scope and thus the Kouidis v Greece argument cannot be invoked to justify its approach.

It further contended that because torture and cruel, inhuman treatment are penal offenses, the burden of proof lies with Akwanga. In this claim, Cameroon failed to recognise the fact that because torture has attained a peremptory norm status under international law, the onus is *not* only on Akwanga to prove that he was tortured while in the custody of the state but as the HRC had previously determined, the state has a duty to show that the allegations are false. Cameroon also asserts that in the absence of evidence presented by Akwanga proving that he was tortured, it could not be found guilty of unsubstantiated allegations. It dismissed the medical certificate presented by Akwanga, stating that it was only established after his escape from jail and that the medical certificate was issued by a Nigerian doctor who stated that Akwanga was diagnosed with stomach ulcer and diabetes which it claims has nothing to do with torture.[660]Apart from the medical reports submitted by Akwanga to support the allegations of torture, his predicament as a victim of torture was a subject of numerous publications by groups like Amnesty International, Trauma Centre,[661]the Human Rights Defence Group (HRDG),[662] and other NGOs. Most of these reports indicated that Akwanga and many of his fellow inmates, a good number of whom later died in jail, were tortured and Akwanga, in particular, suffered from partial paralysis due to torture. He also developed visual problems which were directly related to the conditions under which he was detained. It must also be noted that the approach of the HRC on the standard and burden of proof is initially on the complainant but at the

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[660] Cameroon's initial response supra note 659, para. 55.

[661]The Trauma Centre Yaoundé is an NGO that deals with victims of torture and that was instrumental in Akwanga's care while in jail.

[662]The HRDG was founded by late Albert Mukong as one of the first NGOs specialized in public education on civil and political rights.

admissibility phase, the complainant must merely provide sufficient evidence to constitute a prima facie case. This has been done by Akwanga. In its jurisprudence and specifically in the de Bouton v Uruguay case, the Committee argued that 'a refutation by a state party of these allegations in general terms is not sufficient.[663]

Cameroon also stated in its 2009 response to the HRC that it was thanks to the cooperation and confessions of Akwanga that the government was able to uncover and stopped his violent plans and to retrieve stolen explosives and the names of his accomplices. This cooperation could only have been obtained through torture, and the confessions obtained through such methods constituted degrading treatment since it was against Akwanga's 'will and conscience.' Apart from the oral submission and medical evidence of torture presented by Akwanga, the gorge on his chin still visible 19 years after the report presented in Jeune Afrique Economie (JAE),[664] of 1-14 September 1997 which stated on page 84 that information was extracted from Akwanga '*de façon musclée' (through forceful methods)* only added to mounting evidence that Cameroon employed torture to gather the evidence it used to try and convict Akwanga. This 'façon musclée' is the kind of cooperation which Cameroon referred to in its 2009 response to the Committee.

In the jurisprudence of several treaty bodies, torture may be considered a combination of many methods or a single method practiced over a sustained period. Sometimes a singular technique applied alone without persistence even when it constitutes 'severe pain' (CAT) or mere 'pain' (IACHR) might not amount to torture but persistent application in combination with other similar techniques reaches the level of aggravated pain that reaches the point of insanity, and that could be seen as torture. Beatings on the soles of his feet and incessant blows which of

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[663]De Bouton v Uruguay No. R.9/37 p.143

[664]Jeune Afrique Economie (1997) JAE 14 September 1997 p.84. It should be noted that the authoritative nature of this statement is supported by the fact that the Publisher of this Paper Blaise Pascal Talla accompanied by the then Delegate of National Security Former Governor of the North West province Bell Luc Rene visited the detainees while locked up in Yaoundé. His paper will then run two exclusive editions about the supposed independence plot with detailed information only an insider could have access to.

course left no visible scars, no skin lesions or permanent recognizable marks except the marks left by melting plastic would constitute nothing other than torture. Cameroon may argue that none of those techniques amounted to the level of severe pain referred to in the CAT definition of torture. It is also worth considering the decision of the European Commission on Human Rights in the Ireland v. UK case that dismissed the allegation of torture based on similar arguments. On the other hand, if Akwanga was subjected to beatings alone, this argument would not still be acceptable under the HRC jurisprudence. Nonetheless, the persistence and combination of the acts from gun-booting, dancing barefoot on sharp sand (excruciating pain) and singing 'Biya before God' (degrading treatment and against his will and conscience) should make these acts amount to torture.

Akwanga also alleged acts of gross humiliation like being stripped naked and female gendarmes fondling his penis, which all amount to degrading treatment; his transportation to Yaoundé during which he was chained on both legs and arms, forced to lie on his back throughout the journey of close to 300 kilometers; and denied water,[665] will all amount to inhuman treatment which Cameroon has not answered in its response. If torture can then be viewed as degrading and inhuman treatment perpetrated to achieve a purpose which Cameroon admitted was to foil the plot, then it would be argued beyond reasonable doubt that Cameroon acted in violation of article 7 of the Covenant.

Cameroon contested Akwanga's claim that it bears full responsibility for the treatment he received from other inmates while in custody. It, however, admitted that while Akwanga was in detention in the Mfou prison, he was subjected to torture by other inmates but invoked the redundant argument of the vertical nature of human rights and public authority argument to attempt to absolve itself from responsibility. Apart from the negative obligation imposed by international law on states not to torture, it also imposes positive obligation on these states to exercise 'due diligence' in ensuring that those within their jurisdiction are not subjected to torture even by non- state actors. In its General comment 20 on of article 7, the Covenant

[665] Akwanga Jr. Ebenezer, 'Smiling through hardship' (New World Media 2004) p. 102.

stressed that in the case of torture, the principle of 'due diligence' obliges states to protect everyone through legislation[666].

Cameroon failed in recognizing that any act that was based on negligence does fall within article 1 of the CAT definition of torture as intentional. It is true that CAT provides that torture must be inflicted by or at the instigation of or with the consent or acquiescence of a public official or person acting in official capacity (article 1), but failure to act to stop torture could be seen as acquiescence. For all persons deprived of their liberty, the prohibition of treatment contrary to article 7 is supplemented by the positive requirement of article 10 (1) of the Covenant that they shall be treated with humanity and with respect for their inherent dignity. Cameroon acquiesced to the fact that Akwanga was tortured by other inmates when they heard of what he did, and this torture occurred in an institution it controls and should, therefore, bear full responsibility for the security of all persons detained in its institutions. The HRC in the cases Dias v Angola,[667] and Delgado Paez v Colombia,[668] observed in the latter that the Colombian authorities had not taken steps to ensure his '… right to security of person', and in the former that Mr. Dias' right to the security of person was violated since it was the Angolan authorities themselves who were alleged to be the sources of the threats he faced.

The detention of a political detainee with hardened criminals could amount to negligence or deliberate behavior which led to ill-treatment and, therefore, imputes the state's responsibility. Cameroon therefore failed in both its positive and negative obligations under the Covenant to secure and to refrain from infringing on article 7[669].

5.6 ON THE SUBJECT OF LIBERTY AND SECURITY OF PERSONS AS IN ARTICLE 9

In his deposition to the Committee, Akwanga argued that he was detained in four different places and 'was never informed at the time of his arrest of the reasons for his arrest. He was not brought promptly before a judicial body and that he was severely tortured and deprived of

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[666] Human Rights Committee, CCPR General Comment No. 20: article 7 p.3 para. 13

[667] Dias v Angola, No. 711/1996, p.114.

[668] Delgado Paez v Colombia No. 195/1985

[669] Akwanga v Cameroon, No.1813/2008 para. 7.3

his liberty for more than two years before being brought before a military court and during which time he had no opportunity to challenge any aspect of his detention.' In response, Cameroon argued that 'we attract the attention of the Committee to the fact that the SCNC is a secessionist Movement for whom all demonstrations are illegal. Akwanga cannot, therefore, claim that he was running a peaceful campaign.'[670]In a more specific note and in response to accusations of violation of article 9(2), Cameroon submits that 'Akwanga was arrested and deprived of his liberty, for reasons and procedures in conformity with the law and that not only were the reasons of his arrest explained to him, he had to explain himself.'[671]

Cameroon's response to accusations of the violation of articles 9(1)(2)(3) has been to emphasize its political position with regards to the Southern Cameroons National Council (SCNC). It is a position that has shaped Cameroon's domestic policy concerning the structure of the state, the construction, interpretation, and application of the law and the way it deals with advocates for the independence of Southern Cameroons. This type of politically couched response informs its approach to its obligation under the Covenant and goes contrary to the jurisprudence of the Committee when it states that 'arbitrariness' is not to be equated with 'against the law', but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law.[672] On the other hand, even if the SCNC is a secessionist Movement, Cameroon was still obligated to inform Akwanga at the time of his arrest or immediately after, of the specific reasons for his arrest, which it failed to do and thus acted in violation of article 9(1,2) of the Covenant. The claim by Cameroon that Akwanga knew the reasons for which he was arrested is also insufficient and presumptuous. There is also no correlation between SCNC as an illegal secessionist Movement and the right to be promptly informed of the reasons of Akwanga's arrest. By also painting Akwanga as a member of an illegal secessionist Movement whose activities are all illegal, Cameroon seems to evoke certain justifiability in its actions of illegal arrest, torture, cruel,

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[670]Ibid para. 4.5

[671] Cameroon's initial response to Akwanga's submission in www.redress.org/Cameroons_response_July_2009.pdf para 60

[672]Gorji v Cameroon No. 1134/2002

inhuman and degrading treatment and a long and tormenting two-year pre-trial deprivation of liberty during which time Akwanga was detained incommunicado for 18 months. In the Tomasi v. France's case,[673] France invited the European Court of Human Rights to take into consideration the 'particular circumstances' obtaining in Corsica at the time and what it said was the '...existence and persistence of serious indications of the guilt...' The court rejected this argument, stating that they could not justify in the case of Tomasi four years of pre-trial detention. By arbitrarily arresting Akwanga and failing to notify him of the reasons of his arrest, Cameroon acted in breach of article 9(1) and (2). By keeping him in custody for close to two years without charge or trial, it acted in breach of articles 9(3) and 9(4). By also failing to protect him from torture by other prisoners, Cameroon was in breach of article 9(1) which obliges it to the protection of the liberty and security of Akwanga.

The Committee in its views in the Akwanga case in 2011 echoed the views that

'nothing suggests that at the time of arrest, the author was informed of the reasons for his arrest, that he was ever brought before a judge or judicial officer, or that he ever was afforded the opportunity to challenge the lawfulness of his arrest or detention. In the absence of relevant state party information on these claims, the Committee considers that the facts before it indicates a violation of article 9, paras 2, 3 and 4, of the Covenant.'[674]

In the Gorji case, Cameroon failed to cooperate with the Committee. The Committee argued on the question of the allegations of violation of article 9 that remand in custody must not only be lawful but reasonable and necessary in all the circumstances. For example, to prevent flight, interference with evidence or the recurrence of crime[675] and consequently was of the view that the author's detention between 31 May 1985 and 3 February 1986 was neither reasonable nor necessary in the circumstances of the case, and thus in violation of article 9, para. 1, of the Covenant.[676]

In the Mukong case, the state party rejected accusations of the violation of article 9(2) by claiming that the complainant was never arrested but rather was detained based on a Committal

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[673]Tomasi v France ECHR series A No. 241 A para. 114.

[674]Akwanga v Cameroon, No. 1813/2008, para 7.4

[675]Gorji v Cameroon, No. 1134/2002, para 5.1

[676]Ibid

Order. It argued that there is a difference between a warrant of arrest ('mandate d'arret') and a Committal Order ('mandat de depøt'). A 'mandat de depot' is a detention order issued by administrative authorities which can cause the detention of anyone for two or more weeks without the right to the writ of habeas corpus. This response highlights the problem of Cameroon's implementation regime; one that employs narrow interpretation of its obligations to justify its decisions.

5.7 ON THE SUBJECT OF THE HUMANE TREATMENT OF PERSONS UNDER DETENTION AS IN ARTICLE 10

On the allegation by Akwanga that he was detained in an overcrowded prison infested with cockroaches and rats and that he was poorly fed, Cameroon argued that the prison conditions 'pre-existed Akwanga's detention and were not designed to inflict suffering on him'. While acknowledging the problems of detention conditions in its prisons, in particular dilapidation, overcrowding, criminality and a lack of means to finance the construction of new prisons, it further contends that it has been aware of the bad conditions of detention for many years which it has taken steps with support from foreign governments to fix. It could be argued that the poor conditions constituted part of the dehumanization process that transformed Akwanga into an object and triggered the loss of his inherent dignity which made cooperation in the extraction of confessions possible, as claimed by Cameroon. Cameroon also rejected Akwanga's accusation about poor feeding and deliberate malnourishment and blamed it on the lack of resources. This claim is at odds with the premise of the basic minimum standards for the treatment of detainees which argues that:

'the application of this rule, as a minimum, cannot be dependent on the material resources available in the state party and of course continued that this rule must be applied without distinction of any kind such as language, political or other opinion which is what the respondent claims the petitioner holds."[677]

In Griffin v Spain, the author invoked article 7 to charge the state party concerning his condition of detention in a prison which he argued was infested with rats, lice, cockroaches and

[677]Human Rights Committee, CCPR General Comment No. 21: Article 10 (Humane Treatment of Persons Deprived of Their Liberty) 10 April 1992 21, para. 4., available at: http://www.refworld.org/docid/453883fb11.html [accessed 28 January 2017]

diseases and in which there were 30 persons per cell. 'The living conditions in this prison are said to be 'worse than those depicted in the film 'Midnight Express'"'; a 500- year old prison, virtually unchanged…'[678]In its admissibility decision, the HRC noted that although the author had invoked article 7 in respect of his allegations concerning the events and conditions of the prison, it found, however, that the facts as described by the author fell rather within the scope of article 10.[679] In the case of Akwanga, apart from invoking article 7 to describe his treatment in Jakiri, Banso, Bamenda, Mfou, and Kondengui, he also clarified in the initial communication to the HRC in para. 49 of the supplementary roles of article 10 in understanding article 7. The same would be said of the case of Titiahonjo v Cameroon in which the deceased's wife alleged violation of article 7 because of a) the general conditions of detention, b) the beatings the husband was subjected to, c) the deprivation of both food and clothing in detention at the gendarmerie cell and in the Bafoussam prison.[680]Unlike in Griffin v Spain, the Committee in its views of 27 October 2007, found violations under article 7 without making any clarification whether the general conditions of detention and deprivation of food should be considered under article 10. Cameroon's argument that inmates receive food rations that 'can be supplemented by visitors' fails to conform to the minimum standard outline in General Comment 21 which dismisses any defence base on the material resources available to the state party. It also falls short of the minimum standard rules which require that 'every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served.'[681]

In Gorji v Cameroon the Committee reiterated its standard argument concerning the treatment of detainees in Cameroon. It stated that the conditions of detention did not meet the minimum standard rule because the complainant was kept in a wet and dirty cell without a bed, table or any sanitary facilities. It reiterated that persons deprived of their liberty may not be subjected

[678]Griffin v Spain No. 493/1992 decision on admissibility para 3.1

[679]Ibid para 6.3.

[680]Titiahonjo v Cameroon No. 1126/2003, para. 6.3.

[681] United Nations Standard Minimum Rules for the Treatment of Prisoners adopted in 1957, and in 2015 were revised and adopted as the Nelson Mandela Rules GA/Res/70/175, para 22(1)

to any hardship or constraint other than that resulting from the deprivation of liberty.[682] It is the same argument made by the Committee in Mukong v Cameroon. Mukong complained that because of insalubrious conditions of detention facilities, overcrowding of a cell at the First Police District of Yaoundé, deprivation of food and clothing, and death threats, his rights under article 10 was violated.

Cameroon has used the argument of underdevelopment in almost all the complaints as its defence against a violation of article 10. This textbook approach has spanned across two decades, from Mukong to Akwanga, in total disregard of the development of the jurisprudence of the Committee and even the development of the minimum standards into the Mandela rule.

5.8 ON THE SUBJECT OF FAIR TRIAL AS IN ARTICLE 14

In his complaint to the HRC, Akwanga stated that all through the process of the arrest, torture, and interrogation, he was not allowed to see a lawyer; was interrogated at odd hours of the night (sometimes at 2 a.m.) without a lawyer; was forced to stand sometimes for up to five hours during the interrogations and was threatened with death during such interrogations. It should be noted that the same materials that Cameroon admits were obtained through cooperation with interrogators and which JAE claims, quoting the Commander of the Gendarmerie Legion of Bamenda were obtained through forceful methods that constituted Cameroon's principal evidence used to convict Akwanga. Such a practice is inconsistent with the spirit of the practice outlined by CAT and article 315(2) of its CPC, which states that materials obtained through torture must be invalid in any criminal hearings. In responding to the allegation that Akwanga was tried in a language he did not understand, Cameroon cited law No. 6 of 18 January 1996 which states that '…the official languages of the Republic of Cameroon may be English and French, both languages having the same status'. It further argued that "...beyond this constitutional right and obligation... requires that every Cameroon citizen should make an effort to understand and master both official languages...'. As usual, as it failed to address the substantive claim but preferred to focus on stating and defending its inadequate Laws.

[682]Gorji v Cameroon No. 1134/2002 para 5.2.

Cameroon's claim that bilingual interpreters were provided flies in the face of the official documentation which shows that all of the interrogation reports were presented in French. In failing to provide counsel to Akwanga, it made it impossible for him to study and understand the accusations against him which unfortunately were all written in French. The conditions of detention compounded by poor feeding and poor medical conditions made a criminal proceeding which carried the death penalty as sought by Cameroon to violate the basic tenet of fairness.

It should also be noted that Akwanga was kept incommunicado for 18 months during which time a state of emergency was declared. Under the state of emergency, all legal safeguards such as the right to contact a lawyer and the outside world, the right to be brought before a judge and the right to challenge the legality of his detention before a judge was suspended. The limitations provided by trial in a military tribunal compounded issues of access to relevant evidence presented by the state party and possible transparency in the entire process. The HRC in its ruling in the Mukong case declared that the trial of civilians in military tribunals violated the tenet of fairness. The African Commission in its ruling in communication 266/2003 in declaring a violation of article 7 reached the same conclusion.[683]

The above conditions made fair trial a near impossibility. In its views, the Committee argued that:

'…the state party must demonstrate, with regard to the specific class of individuals at issue, that the regular civilian courts are unable to undertake the trials, that other alternative forms of special or high-security civilian courts are inadequate for the task and that recourse to military courts is unavoidable. The state party must further demonstrate how military courts ensure the full protection of the rights of the accused pursuant to article 14.'[684]

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[683] 'Trial by military courts does not per se constitute a violation of the right to be tried by a competent organ. What poses problem is the fact that, very often, the military tribunals are an extension of the executive, rather than the judiciary. Military tribunals are not intended to try civilians. They are established to try military personnel under laws and regulations which govern the military. (ACHPR-Com 266/03 Dr. Gumne Ngwang and others v Cameroon).

[684] Akwanga v Cameroon, No. 1813/2008 para 7.5 pp.12- 13.

The above reference to the Committee's jurisprudence cited in General Comments 32 provoked a concurring view from six Committee members. They argued that military courts should not in principle have jurisdiction to try civilians, and if that should be the case, the state party must provide under article 40 of the Covenant or in a communication under the Optional Protocol, compelling reasons or exceptional circumstances that force them to derogate from the principle. These concurring views were deemed weak from Committee member Fabian Omar who argued that in the Committee's decision on the Akwanga case, it missed a clear opportunity to declare that the trial of civilians by military courts as incompatible with article 14 of the Covenant and to correct this regressive aspect of human rights law.[685]

6 VIEWS OF THE COMMITTEE

Three years after the initial submission of the complaint, the Committee issued its views on both the admissibility and merits parts of the complaint. The Human Rights Committee acting under article 5(4) of the Optional Protocol of the Covenant is of the view that the facts before it discloses a violation of the rights of Akwanga under article 7; article 10(1)(2); article 9(2)(3)(4); and article 14. In accordance with article 2(3a) of the Covenant, Cameroon is under an obligation to provide Akwanga with an effective remedy, which should include a review of his conviction with the guarantees enshrined in the Covenant, an investigation of the alleged events and prosecution of the persons responsible, as well as an adequate reparation, including compensation.

6.1 CAMEROON'S REACTION TO THE VIEWS OF THE COMMITTEE

The views of the Committee were issued in the Akwanga case in 2011; six years have gone past with Cameroon fulfilling none of the recommendations. In February 2012, Cameroon's Justice Minister issued its observation on the views of the Committee. On the Committee's recommendation that Cameroon reviews Akwanga's conviction of 1999 following the views of the Committee on article 14, he responded that internal mechanisms permit the reexamination of sentences within the framework of the right of appeal. The minister also stated that for Akwanga to be able to appeal the decision of his sentencing, the state must first

[685]Ibid dissenting views of Fabian Omar appendic para. 3.

execute the warrant of arrest issued against him. In essence, what Cameroon is saying here concerning the Committee's recommendation to review the decision sentencing Akwanga to 20 years in jail is that he must first surrender himself to the authorities for arrest and detention. What Cameroon's response failed to capture is the aspects of the violation of article 14 which compelled the Committee to recommend a review. For example, in recalling its General Comment 32 on article 14, the Committee argues that the state party must demonstrate how military courts ensure the full protection of the rights of the accused according to article 14. Cameroon failed to demonstrate its preference of a military court over a civilian court with its safeguards of fairness and transparency. Instead, as Akwanga pointed out in his response to Cameroon's observation, its attempt to re-open the merits of the case are 'irrelevant at the implementation stage…' In the absence of any alternative procedure to implement the view of reviewing Akwanga's conviction, he argues that Cameroon thus needs to urgently take steps to change its legislation in order to comply with the Committee's views.

On the Committee's recommendation to investigate and prosecute those responsible for Akwanga's torture, Cameroon continued with the same line of argument, emphasizing procedural guarantees to appeal which can only be invoked if Akwanga was present in the country. Akwanga argued that 'an investigation, investigations into allegations that have formed the basis of the views of the Committee, must not be dependent on any further steps he takes including his physical presence in the country.

On the question of appropriate reparation and particularly compensation to Akwanga, Cameroon argued that no appropriate reparation could be offered without the prosecution and condemnation of the alleged perpetrators of the crimes against Akwanga. Akwanga argues regarding the jurisprudence of the Committee that article 2(3) requires that state parties make reparation to individuals whose Covenant rights have been violated. Without reparation to individuals whose Covenant rights have been violated, the obligation to provide an effective remedy which is central to the efficacy of article 2(3) is not discharged.

The nature of the general legal obligation requires that states should act in good faith both in their participation in the procedures under the Optional Protocol and the Covenant itself. It goes further to state that the duty to cooperate with the Committee arises from an application of the principle of good faith to the observance of all treaty obligations. Cameroon has not shown this good faith in its participation. Either it has focused on the alleged crimes that got Akwanga arrested or, as Akwanga commented on its observation of the views of the

Committee, Cameroon's observation refers to general remedies under Cameroonian law. They do not provide information about the measures taken to give effect to the Committee's views in his case. This approach ignores Cameroon's specific obligations to provide effective remedies in this case as set out in the views of the Committee.

Cameroon seems not to have fully accepted the views of the Committee and has sought to reopen the merits of the communication in the implementation phase and in so doing attacks both the integrity of the process and that of the victim. It is a pattern which it has used in most of the other communication whose views have gone in favour of the complainant. Cameroon has thus used procedural bottlenecks and innuendoes to delay and frustrate the implementation of the Committee's views. It did the same in Mukong as well as in Gorji.

Seven years since the Committee issued its views and 20 years since Akwanga was arrested and subjected to torture, inhuman and degrading treatment and punishment and 18 years since he was subjected to a kangaroo military tribunal, his abusers are yet to be brought to justice. The laws that facilitated the unjust and unfair processes remain in place, the prison conditions have not changed, and no form of compensation has been given to him.

6.2 Implementation of the views of the Committee

International law requires states to provide effective procedural remedies under domestic law to guarantee adequate reparation to victims of human rights violations. In other words, the right to reparation for torture and other human rights violations includes both the right to substantive reparations (such as compensation) and the right to effective procedural remedies to enable victims to access substantive reparations (e.g., access to civil, administrative and criminal remedies). The jurisprudence of the ECtHR clarifies in that 'a remedy must be effective in practice as well as in law, particularly in the sense that acts or omissions by national authorities must not unjustifiably hinder its exercise.'[686]

There are three important institutional requirements for the implementation of the views of the Committees. The obligation of the state to provide legislative, judicial and administrative measures for the implementation has been considered in Chapter 4. Legislative measures for

[686] Aksoy v. Turkey, 21987/93 1996) ECHR 68 (18 December 1996) para 21

the enjoyment of these rights and even the availability of a judicial remedy will be of little meaning unless the government provides the administrative measures necessary for the achievement of a right.

Seibert-Fohr examined what and when the Covenant required a particular act of implementation and he concluded that the right of individuals and corresponding obligation of the state should first and foremost become a reality in law and practice.[687] Consequently, Shelton argues that ' states must ensure that they put in place such remedial institutions and procedures to which victims of violations of human rights may have access.'[688]Article 2(3) does not only guarantee the provision of remedy but in its para. 2(3)(c), it obligates the states parties to enforce such remedial measures.

By acceding to the Covenant states accept the obligation to respect, protect and implement positive measures to give full realisation and effect to the rights outlined in the Covenant. While the state Reporting mechanism and the Individual Complaint procedure stand out as the core pillars of the Covenant implementation mechanisms, the commitment of a state in translating both its positive and negative obligations under the Covenant within the framework of the right to effective remedy is also crucial as a measure of its commitment to its obligation. The right to effective remedy which is central to this goal both at a domestic and international levels remains the central mechanism through which individuals can seek and receive redress for breach of Covenant rights. In order for remedies to be effective, they need to be enforceable.

In practice, victims face procedural and political barriers to lodge a claim, but even in those instances when their claims are successful, and they obtain a positive judgment/views, the practical enforcement of the decision can be as hard, or even harder, than the process of bringing the initial legal claim. Often there are no effective remedies in the states where the acts were committed. These crimes usually imply and often require a certain level of state involvement. To obtain justice and redress implies that the state acknowledges responsibility

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[687] Anjah Seibert-Fohr, supra note 42

[688] Dinah Shelton, 'Remedies in International Human Rights Law' (Oxford University Press, Oxford/New York, 2005).

and makes amends, but the perpetrators are often supported by the very states which should be punishing them.

The Human Rights Committee has created two follow-up procedures to monitor the implementation of state obligations under reporting procedure and individual communications procedure. Once the Committee finds a violation of any of the rights in the Covenant, it gives state party 90 days to implement the views of the Committee. The Special Rapporteur on views under the Optional Protocol to the Covenant is charged with organising a follow-up should the state party fail to meet up with the very flexible 90 days deadline. It publishes an annual report on information shared between a victim and a state party and any progress made.

The implementation rate of HRC views is generally poor. To illustrate, since the Committee started its work in its second session in 1977 until 2016, it has received 2970 communications of which 697 have been declared inadmissible, 395 discontinued or withdrawn, 542 not yet concluded and consideration concluded by the adoption of views under article 5 (4) of the Optional Protocol of 1200, in which 994 violations of the Covenant were found.[689]

In the last 34 years since accession to the Covenant and its Optional Protocol, the Human Rights Committee has found Cameroon in breach of the personal integrity rights of eight complainants and has thus requested appropriate compensation and measures to ensure that such violations do not occur again. In three of the eight cases, an investigation and prosecution of alleged perpetrators of torture were recommended. This has not happened in any of the three cases. In the case of Njaru v Cameroon, the state party argues that the conduct of investigations encountered some difficulties that hinder and render judicial proceedings against the accused almost impossible. Investigations were restricted to secondary sources (documents, witnesses) which do not provide evidence based on which court action can be instituted.

Regarding the compensation of Njaru, on the 16th December 2009, the state party 'informed the Committee that arrangements had been made to compensate the author, but despite efforts made, they had not been able to contact him'[690]. On the 25th February 2010, the author informed

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[689] Report of the Human Rights Committee, Sess. 117.-119, para 24 at 4, U.N. Doc. A/72/40 6

[690] Human Rights Committee, follow-up Progress Report on Individual communication, 99th session, 12-30 July 2010, U.N. Doc. CCPR/C/99/3

the Committee that the state party had failed to implement the views effectively. Despite an initiative taken by the National Commission on Human Rights and Freedoms (NCHRF), the author had not been provided any reparation. Two months later, a ministerial Committee of the Ministry of External Relations of Cameroon proposed a compensation package of 30.000.000 CFA (approx. 56.000 US $). The author rejected this offer and requested a compensation package of 500.000.000 CFA (approx. 930.000 US $) 'for the general and special damages he suffered because of the violations of his human rights. And that the state party pay for his medical treatment abroad; that the perpetrators are tried in court and punished according to the law; that all other threats against him by officials be promptly investigated and perpetrators be tried in court; and that the state party ensure his security.'[691]

In Engo v Cameroon, the author 'informed the Committee on 20 July 2010, that the state party had taken no action to implement the Committee's decision. However, he had been summoned continually before the Tribunal de Grande Instance relating to issues arising from the facts of his case considered by the Committee.' According to the Committee, Engo's comment was sent to Cameroon on 9 August 2010 with a reminder for comment. [692]. In 2014, according to the follow-up submission, Cameroon argued that

The author could not be released after having served a 10 year-prison sentence because of five other judicial procedures pending against him, and because he could abscond. Accordingly, the first part of the remedy cannot be implemented. The author was provided access to an ophthalmologist, as well as to external medical visits. His overall health condition is deemed satisfactory. He receives regular visits and is allowed to consult legal counsels[693]

A year later, Engo's Counsel made a further submission to clarify the state of the implementation of the views of the Committee

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[691] Ibid

[692] Human Rights Committee, Follow-up Progress Report on Individual communication, 100th session 11-29 October 2010, U.N. Doc. CCPR/C/100/3

[693] Human Rights Committee, Follow-up progress report on individual Communications, 5 September 2014, UN Doc. CCPR/C/112/R/3, p. 9

The author's Counsel submits that Cameroon failed to provide an effective remedy, or to release Mr. Engo from detention. The state party has not provided any reason for its contempt of the Committee's views. According to the author's counsel, this requires appropriate financial compensation and orders bringing the state of impunity to an end[694]

In the follow up

The state party reported that it had re-instated the author to the judiciary and that it had offered him compensation, which he refused to accept because he considered it to be inadequate.[695]

According to the records established in 2017, in 7 of the 8 cases follow up 'dialogue is ongoing' where the Committee has found a violation of the Covenant and has recommended action. In the case of Mazou, "the follow-up dialogue in the case was closed as the Committee deemed that the state party had complied with the views"[696].

Cameroon has focused on compensation as its principal strategy in the implementation of the views of the Committee. Of the eight cases in which the Committee has requested some form of action, it has made offers in two[697]and only in one of the eight cases has compensation been paid. [698]

In the Concluding Observations of its fifth periodic report the Committee regretted that

'…often significant delays in the implementation of its views, in particular with regard to compensation' (art. 2) and urges Cameroon to take all appropriate measures to give full effect

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[694] Human Rights Committee, Follow-up progress report on individual Communications adopted by the Committee at its 116th session (7-31 March 2016), 5 August 2016, UN Doc. CCPR/C/116/3, p. 6.

[695] Human Rights Committee, Follow-up progress report on individual Communications, 30 May 2017, CCPR/C/119/3, p.38

[696] Ibid

[697]In Njaru v Cameroon, No. 1353/2005, the author was offered 40.000 US dollars while in Gorji v Cameroon: Communication No. 1134/2002, U.N. Doc. CCPR/C/83/D/1134/2002 (2005), the author was offered 40 million CFA. Both offers were rejected.

[698], Womah Mukong v Cameroon, No.458/1991 1

to the Committee's views without undue delay and to ensure that an effective remedy is available to persons whose rights under the Covenant have been violated'[699].

Bertelsmann Institute has concluded that 'on paper, citizens enjoy the right to seek redress for alleged wrongs through administrative procedures or the legal system. However, according to an assessment by the U.S. state Department, both options involve lengthy delays, coupled with problems enforcing civil court orders due to bureaucratic inefficiency.'[700] The failure to accurately translate its commitment into compliance is also a factor of the nature of its constitutionalism which fails to provide the enabling environment for rights protection adequately. With the semantic constitution that serves to formalise the existing locus of power for the benefit of those exercising it, torture, deprivation of liberty, inhuman treatment in detention and unfair trials do not only occur because of the existence of autocratic political institutions but are also the main reasons for its erection and consolidation.

[699] Human Rights Committee, Concluding Observations on fifth periodic report on Cameroon, 3444th meeting, para 6 at 2, U.N. Doc. CCPR/C/CMR/5 (2017)

[700] Bertelsmann Institute supra note 33 p.10

CHAPTER 7

1. CONCLUSIONS

This research has focused on analyzing the implementation approaches of Cameroon's obligations under articles 2(3), 7, 9, 10 and 14 of the Covenant on Civil and Political Rights. The research has established that while Cameroon has acceded to the Covenant, and partially reformed its constitutional system to incorporate these rights, its courts and the National Commission of Human Rights and Freedoms (NCHRF) have yet to develop a consistent implementation method that is consistent with Cameroon's obligations as defined by the Covenant. The implementation approach to these Covenant articles is impaired by the nature of the political and constitutional systems, domestic institutional limitations and narrow interpretation of its obligation under the Covenant. An imperial executive and institutional limitations are the most important reasons why Cameroon's implementation regime is limited in scope and fails in its objective to fulfil its obligations under these Covenant rights. The desire to protect the executive has given rise to rules, procedures, and actions that seek purposely to shield the executive from any perils arising from its actions. These actions involve those of the police, judiciary and legislation that deal with the law and rules in a way that shields the executive from any threat and therefore compounds rights protection. Apart from the imperial executive, the structure of the judiciary is in ways that make it accountable to the executive and in particular the President, thus jeopardising its independence which is vital for the protection of these Covenant rights. These deficiencies are compounded by a restrictive mechanism for judicial review which precludes review of promulgated legislation and prevents ordinary citizens from challenging the constitutionality of oppressive laws. Consequently, emphasis on procedures consistent with limited national legislation rather than substantive steps taken to ensure the enjoyment of these rights captures its implementation approach

In reaching this general conclusion chapter three has examined the historical evolution of the political structures of Cameroon and their impact on the implementation of these Covenant rights. Cameroon's current political structure is a product of French and British colonial legacies and a reflection of the presidential imperial executive structure of the fourth French Republic. However unlike in France, Cameroon is governed by a single party with other parties

periodically co-opted to grant legitimacy to presidential authority. The political institutions that emerged from the colonial state have been dominated by a strong presidency, weak judiciary and a house of assembly entirely under the control of the executive. The imperial executive and general structural relation between the different arms of government ensures that the President shares powers with weak institutions which exist to legitimise presidential rule. Parliamentary majority is constant and achieved through fraudulent elections and a constitutional system of presidential appointments of members of parliament and entirely under the de facto or de jure control of the executive. Executive priorities mostly dictate Legislative action and thus determines the nature and scope of the protection regime of these rights. Consistent with Thompson and Boyle's argument, Cameroon is a strong state, and strong states tend to filter or pre-empt individual action including legal action at the international level just as it does at the local level.[701].

Chapter four has examined the domestic institutions and how best they are structured for the implementation of the state's obligation under the Covenant and specifically in the protection of the specific rights under consideration. The institutional design for the separation of powers continues to ensure that the executive retains excessive powers. The president exercises control through the power of appointment, promotion, transfer, discipline and remuneration of judges. Even the financing and administration of the judiciary are left in the unfettered control of the executive. It exposed the fundamental weaknesses of the domestic framework of the protection regime of these rights. Its constitutional framework is derived from its historical interaction with foreign systems which transformed its internal legal configuration, displaced customary law and imposed both common and Civil Law systems which have hardly taken root. These inadequacies have failed to enhance the protection of these rights. It would be concluded that the model of coexistence of the alien legal systems has been weak in conceptualisation and application and has been exploited by the autocratic political configuration. The adoption of institutional structures has proven to be problematic for the context of rights protection because of internal deficiencies in conceptualization and implementation. It demonstrated that while

[701] Elizabeth Heger Boyle and Melissa Thompson, "National Politics and Resort to the European Commission on Human Rights", (2001) 35(2) Law Society Review 321-344

Cameroon has ratified the Covenant and its Optional Protocol and has taken measures to ensure that its domestic protection regime is structured to protect these rights, on the other hand, at the micro level the system is based on a very weak separation of powers between the different branches of government within which the executive has the power to legislate through ordinances and control the judiciary. The constitutional structure provides a limited scope for judicial review because individuals whose rights have been violated cannot challenge the constitutionality of the law or action. The system has thus evolved into one in which power is personalised thereby creating an executive which is protected by the constitution and can prolong its lifespan through dubious constitutional amendments. Such a degree of institutional tyranny imperils the very conditions which constitutionalism seeks to prevent. The chapter has also shown the inadequacy of institutions like the NCHRF and the inter-Ministerial Committee in their role in implementing Cameroon's obligation. The lack of independence and inadequate funding are two issues that hamper the work of these institutions. One of the most significant inadequacies in the provision of an institutional framework for the implementation of its obligation has been the lack of resources deliberately to undermine independence and effectiveness

Chapter 4 analysed how the institutions discussed in chapter 4 function in the implementation of Cameroon's obligations which showed that domestic implementation of its obligations is a function of the institutions that it has put in place to support the rights protection in general and those considered herein in particular. It dealt with the impact of constitutionalism on the protection of these rights with a focus on the practices of the courts and other administrative authorities directly concerned with rights protection. It also analysed what the bijural nature of Cameroon's legal system with a political structure that supports the Civil Law over the Common Law has meant to the implementation of its obligations under these specific rights. So far, the constitution of Cameroon, secondary legislation and other institutions created to support rights protection and the implementation of its obligation under these Covenant rights have all failed woefully to limit governmental arbitrariness and thus allowed for practices that inherently imperil the protection of personal integrity rights. This was shown in the case of Wakai and 172 others v The Prosecutor. While attempts at harmonisation of the two systems to reflect contextual reality has been reflected in the Criminal procedure code, it still provides

scope for executive manipulation.[702] Access to justice and executive influence have made implementation of obligations under these rights extremely tenuous. This difficulty has pushed a few with the knowledge of the existence of an international mechanism of adjudication to seek justice outside. This has been the essence of chapters 5 and 6.

The last two chapters have dealt with two important mechanisms which the international system uses in monitoring the implementation of the obligations of states parties to the Covenant. As indicated earlier, human rights protection is the primary role of the state. However, as shown in the previous chapter, deficiencies in both the institutional framework of the state and the desire of the regime to survive has meant that the violation of these rights is a matter of choice. Chapter five has thus analysed the only obligatory mechanism in the monitoring of Covenant implementation. The reporting procedure provides an interactive framework between the government, civil society and the Human Rights Committee in what is known as part of the constructive dialogue to determine the extent to which a state implements its obligations and the obstacles it faces. The chapter did so by examining all the reports Cameroon has submitted to the Committee. While Cameroon has submitted several reports to the Committee, it has done so late making it difficult for the Committee to monitor ongoing situations and take immediate action. This has been a deliberate strategy of Cameroon to allow the persistence of violations, avoid interim measures and destroy the domestic opposition. The chapter also considered the quality of the reports and the specific approaches it uses to give effect to the Concluding Observations in its next report. The basic approach of Cameroon on how it prepares and presents its reports has been to merely list its laws and the consistency of the spirit of those laws to the Covenant. It has failed to explicitly address the specific steps it has taken to address institutional weaknesses, substantive issues of persistent rights violations and the specific steps it has taken to remedy the violations and domestic limitations to its implementation regime.

Chapter 6 investigated the implementation of its obligation under the individual communication Procedure under the Optional Protocol of the Covenant as a mechanism for the

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[702] CPC, section 64(1) provides scope for executive intervention to discontinue prosecution at any stage before the judgment is rendered. It's a power exercised by the minister of justice through the Procureur General of the Appeal Court

implementation of Cameroon's obligation under the Covenant. It examined Cameroon's interaction with the Committee in considering communication from different individuals and its approach to implementing the views of the Committee concerning the rights considered.

Cameroon relies on its legislation and institutions in domestic implementation approaches both for domestic cases and the views of the Committee. For example, in the Akwanga case and specifically in its defence on the violation of article 9, Cameroon declared that investigations to the arrest and detention of Akwanga were carried out in 'full respect of the legislation in force at the time'[703]. Chapters 4 and 5 showed clearly that both the laws and institutional framework are limited in their scope to enable Cameroon to live up to its obligations. In response and consistent with its jurisprudence,

'the Committee finds that nothing suggests that at the time of arrest, the author was informed of the reasons for his arrest, that he was ever brought before a judge or judicial officer, or that he ever was afforded the opportunity to challenge the lawfulness of his arrest or detention'

The Human Rights Committee does not take a prescriptive approach to the implementation of its views since they are not legally binding. For example, in the case of Sankara v Burkina Faso the state party was 'required to provide Ms. Sankara and her son with an effective and enforceable remedy in the form, inter alia, of official recognition of the place where Thomas Sankara is buried, and compensation for the anguish suffered by the family.'[704] On the other hand in the Akwanga, Mukong and Gorji cases, the Committee stated in its usual non prescriptive style that 'in accordance with article 2, para. 3 (a) of the Covenant, the state party is under an obligation…'[705] without the kind of emphasis injected in the Sankara case. Cameroon merely exploits the lack of such non-enforceable powers at the Committee level, the institutional limitations in its domestic constitutional order and a narrow interpretation of its obligation under articles 2(3) to delay the implementation of Committee views, payment of compensation or investigate and bring to justice those responsible for the ill-treatment and torture of these persons or review the legislation that gave rise to the violations.

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[703] Akwanga v Cameroon No.1813/2008 para 4.4

[704] Sankara v. Burkina Faso No. 1159/2003 para. 14.

[705] Akwanga v Cameroon, No. 1813/2008 para 9

The study also identified a pattern of denial and abdication of responsibility on the part of Cameroon when it comes to torture. Each time it has been accused of torture, it has argued that the onus of proof rest with the alleged victim rather than the state. Such a position has shown Cameroon's misconception of its obligation, especially of an obligation that has attained peremptory norm status under international law.

On the implementation of its obligation under article 9, the study found that deprivation of liberty is determined primarily by political exigencies overseen by the executive through dubious illegal administrative detention procedures that can order detention for long periods without court orders. The government uses these lengthy pretrial detentions as a political weapon against dissidents and political opponents. Thus, while administrative detentions are legal in Cameroon, it goes against the spirit of the Convention as in most cases detainees are unable to challenge the legality of their detention and in the few cases where they have done so and succeeded, the executive has refused court orders for their release.

Concerning the right to be treated with humanity while under detention, Cameroon has shown notoriety for poor detention conditions, feeding and general overcrowding in its detention facilities. It has tried continuously to absolve itself from the deplorable conditions of detention in which people like Akwanga found themselves, citing lack of resources in total disregard of the Committee's jurisprudence under the minimum standard rule to which every country must subscribe. It has used this argument for the past 20 years across the cases of Mukong to that of Akwanga. Because it has used salubrious prison conditions and starvation as a weapon of coercion against detainees, the study found that this is a systematic approach used by Cameroon to coerce detainees and reduce the cost of incarceration deliberately. As the study has shown, the inadequacies of these procedures render effective protection difficult. Chayes and Chayes have argued that ambiguity and indeterminacy in the text of treaties, limitations in the capacity of parties might account for the gap between ratification and compliance.[706] About the limitations in the capacity for example, the Covenant has offered in certain circumstances minimum requirements for states parties in the implementation of their obligations. This is seen in the condition of the detention of persons guaranteed under article 10(1). As has been

[706] Abraham Chayes and Antonia Handler Chayes, "On Compliance", (1993) 47 (2) International Organisation 175-205, 193

shown from the Mukong to the Akwanga cases, Cameroon has not only failed to improve on detention conditions but through deliberate political policies of administrative and lengthy pretrial detentions exacerbated the inhuman conditions of detentions.

In its desire to forestall implementation of its obligations it has also constantly narrowly interpreted its negative obligation in terms of the violation of the rights of people within its custody in violation of the obligation of the state party to protect everyone within their jurisdiction and to investigate and punish those who violate the rights of detainees. It has thus failed to implement its obligation under article 10(1) through a narrow interpretation of its obligations coupled with institutional limitations. For example, the manner of interpretation of its obligation dictates its approach of implementation as was observed in the admissibility argument in Mukong:

'…it transpires from the state party's submission that the Government's arguments relate primarily to the merits of the author's allegations - if the state party were to contend that because there are no merits in Mr. Mukong's claims, they must also be deemed inadmissible, the Committee would observe that the state party's argument reveals a misconception of the procedure under the Optional Protocol, which distinguishes clearly between formal admissibility requirements and the substance of a complainant's allegations.'[707]

On the right of fair trial, the elements of fair trial which include 'an independent and impartial judiciary, the right to counsel, the right to present a defense, a presumption of innocence, the right to appeal, the right to an interpreter, protection from ex post facto laws, a public trial, the right to have charges presented, and timeliness'[708]have been entirely absent in all of the cases considered. Even in cases where domestic courts have issued decisions in favour of victims, the government has been unable to implement those decisions; similar situation has been observed in the cases of Akwanga, Mukong, Gorji and others where government inability to implement the views of the Committee can only be attributed to both factors of limitations, inadequacies and deliberate deviation from standard practice. As observed in all the cases from Mukong to Akwanga, the victims were arrested arbitrarily, never promptly informed of the

[707]Mukong v Cameroon, views of the HRC para. 8.2.

[708] Oona A Hathaway, 'Do Human Rights Treaties Make a difference?' (2002) 111 Yale.L.J 1935, 1973-1975

reasons of their arrests, and they could not challenge the legality and information used in their trial were mostly extracted through coercion.

Chayes and Chayes again argue that treaties are effective when lawyers, voters, or activists can leverage them and when they are compatible with existing practices[709]and preferences. Rather in Cameroon, lawyers are the first victims of executive actions. In the past 58 years since Cameroon's independence, voters have never leveraged the outcome of any election. In the past 58 years there have been two presidents both of whom have never organised a free and fair election; executive appointed government delegates replace elected mayor; the executive appoints one third of the members of the Senate as a rule by executive fiat continuous unabated. Bureaucratic inadequacies reduce the capacity of the state to implement its obligations. For example, limited access to courts; poor prison conditions are as a result of such inadequacies; lack of funding to the NCHRF prevents investigations of cases of torture etc…

We live in a real world in which the 'human rights protection regime' is constructed along a statist ontology which the world prefers to frame around different notions of protection from a top down perspective. Though the concept of sovereignty that cloaks territorial control is no longer considered a static concept, the legal framing of its pre-eminence as defined by the UN Charter still revolves around the protection of political independence and territorial integrity. It may be devil's advocacy to suppose without contest that Cameroon's attitude towards the Covenant is rooted in a mundane codification regime whose success depends solely on altering the attitude of the state. That could be true if the actions of an autocratic state towards the Covenant were dictated by a singular factor whether domestic or international. As this thesis has shown, domestic as well as exogenous factors account for the attitude of Cameroon towards its obligations under the Covenant. In a nutshell, the study was able to show that the different thematic considered influenced in some way the approach to Cameroon's implementation of the rights herein considered and that the regime of implementation is also adversely affected by the structures of the domestic institutions. It is a question worth pursuing further but only through this multifaceted understanding could one have understood Cameroon's implementation regime and arrive at a normative judgement.

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[709] Wade M Cole supra note 7 p. 409

This research has offered a framework for the understanding of the gradual construction of an autocratic political regime that emerged from two diverse colonial systems and how this regime constructed a domestic constitutional order antithetical to the protection of personal integrity rights. Based on the lessons learned from this study, the research suggests a fundamental alteration of the framework for rights incorporation, interpretation and implementation and the use of international human rights norm in judicial reasoning in Cameroon in general, especially in the following specific ways.

- Proper separation of powers that ensures the independence of the judiciary to protect the integrity of the implementation process
- Cameroon must ensure that the implementation of the views of the Committee whether through the Individual Communication or state Reporting Procedures is transparent, measurable and timely
- A clear demarcation between the two legal systems inherited at independence
- Ensuring the independence of the National Commission of Human Rights and Freedoms in the areas of budget allocation and appointments
- Review of secondary legislation on administrative pretrial detentions to avoid overcrowding in prisons

The above alterations will be meaningless if the following fundamental political and structural issues that imperil the respect of these rights are not resolved:

- A robust constitutional framework. Under a democratic regime with a secure leadership, a constitutional framework that ensures the separation of powers may likely to a certain extend guarantee the respect of personal integrity rights since internal dissent is not criminalised. On the other hand, a plural autocratic system like Cameroon with insecure leaders will render even a robust constitutional order ineffective.
- Change of leadership. Courtenay and Hencken argue that politically insecure leaders, desperate to retain power, repress to control the destabilizing effects of dissent… Treaties have no effect on repression in states with insecure leaders but have a positive

effect on rights protection in states headed by secure leaders'.'[710] This insecurity has span for more than half a century and the institutions necessary to protect these rights have been shaped to protect the leadership with domestic policies tailored towards more repression. A commitment to the protection of these rights will be counterproductive to the very survival of the regime. The best constitution will still be undermined by insecure leaders not committed to the implementation of human rights. Alteration of power through free and fair elections ensures that leaders can be held accountable and will ensure that their actions are consistent with international standards of protection.

[710] Courtenay R. Conrad and Emily Hencken Ritter, 'Treaties, Tenure, and Torture: The Conflicting Domestic Effects of International Law' (2013) 75 The Journal of Politics p 397-409.

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REPUBLIQUE DU CAMEROUN
Paix- Travail – Patrie

MINISTERE DE LA JUSTICE

Direction des Droits de l'Homme
et de la Coopération Internationale

Sous-Direction des Droits de l'Homme

Chargé d'Etudes-Assistant

REPUBLIC OF CAMEROON
Peace – Work – Fatherland

MINISTRY OF JUSTICE

Department of Human Rights
and International Co-operation

Sub-Department of Human Rigths

Assistant –Research Officer

Yaoundé, le 17 SEPT 2012

N° 09408 CJ
011/043/PPE/DDHCI/MJ

Le Ministre d'Etat, Ministre de la Justice, Garde des Sceaux
The Minister of State, Minister of Justice, Keeper of the Seals

à/to

Monsieur le Ministre, Secrétaire Général
de la Présidence de la République,

-Yaoundé-

Objet : Troisième réunion du Secrétariat technique du Comité de Suivi de la Mise en œuvre des Décisions et/ou Recommandations des Mécanismes Régionaux et Internationaux des Droits de l'Homme

Réf. : Pas de correspondance antérieure

J'ai l'honneur de vous transmettre ci-joint, pour la Très Haute information du Chef de l'Etat, copie du compte rendu de la rencontre visée en objet.

Deux sujets ont été abordés au cours de cette réunion : l'état de mise en œuvre des recommandations faites au Cameroun par certains organes des traités et la préparation de l'Examen Périodique Universel.

Il en résulte que le processus d'élaboration du Rapport national du Cameroun au titre de l'Examen Périodique Universel qui aura lieu en mai 2013, est déjà entamé.

Présidence de la République
du Cameroun
SECRETARIAT GENERAL
Reçu le 01 OCT 2012
SN° 10633

Il apparaît par ailleurs que le niveau de mise en œuvre des recommandations formulées par le Comité des Droits de l'Homme des Nations Unies et la Commission Africaine des Droits de l'Homme et des Peuples à l'issue de l'examen des communications contre le Cameroun est variable : certaines recommandations ont été exécutées totalement ou partiellement. Il en est ainsi de l'octroi d'une satisfaction équitable dans la Communication Albert MUKONG, ou de la réintégration de M. Abdoulaye MAZOU dans la Magistrature.

D'autres sont en voie d'exécution. C'est le cas de la Communication GORJI DINKA où les négociations sont achevées; il ne reste plus qu'à débloquer la somme dont le montant a été fixé par la Présidence de la République. C'est aussi le cas dans la Communication des victimes des violences post-électorales de 1992 où il reste à finaliser les modalités de l'indemnisation. C'est enfin le cas de la Communication NGAPNA Ebenezer dans laquelle la Présidence de la République a prescrit l'intégration dans la Fonction Publique des auteurs de la requête.

D'autres recommandations n'ont pas été exécutées en raison soit de l'absence d'interlocuteurs (cas de la Communication Ebenezer MBONGO DEREK AKWANGA), soit des questions politiques qu'elles induisent (cas de la négociation avec le SCNC dans la Communication Kevin NGWANG GUMNE), soit enfin de l'absence de mécanismes précis de réception des décisions des organes des traités dans l'ordre interne (cas de la Communication Pierre Désiré ENGO).

Dans les communications en cours d'examen, des diligences ont été recommandées aux différentes Administrations./-

REPUBLIQUE DU CAMEROUN
REPUBLIC OF CAMEROON
PAIX-TRAVAIL-PATRIE
Ministre d'Etat
MINISTRY OF JUSTICE
MINISTERE DE LA JUSTICE

Ministre d'Etat, Ministre de la Justice, Garde des Sceaux

Laurent ESSO

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