

SUPREME COURT OF CAMEROON



ALLOCUTION OF THE CHIEF JUSTICE OF THE SUPREME COURT OF CAMEROON

(SOLEMN REOPENING COURT SESSION)

Justice Daniel MEKOBE SONE

21 February 2024

The Honourable President of the Senate;

The Honourable Speaker of the National Assembly;

The President of the Economic and Social Council;

The Honourable Prime Minister, Head of government;

The President of the Constitutional Counsel;

Your Excellency, Minister of State, Minister of Justice keeper of the seals;

Your Excellencies, Ladies and Gentlemen, Ministers;

Your Excellencies, Ladies and Gentlemen, Minister delegates and Secretaries of State;

Ambassadors and Representatives of International Organisations.

The Supreme Court rejoices at your distinguished presence in this place and expresses its immense gratitude for your renewed honour.

The Mayor of the Yaounde city Council;

Dear Judicial and Legal officers;

The President of the Bar Association;

The President of the National Association of Bailiffs;

The President of the National Council of Notary Publics;

Distinguished Registrars-in-chief;

Dear lawyers;

Ladies and Gentlemen in your respective grades and titles.

Pursuant to the provisions of Section 33 of Law No 2006/016 of 29 December 2006 to lay down the organisation and functioning of the Supreme Court, the Solemn reopening holds this day 21 February 2024 in the court hall of the Supreme Court.

In the event of this ceremony rooted in the legal traditions, the Supreme Court shares with its guest and members of the judicial corps a reflection themed; **“the role of Justice in the consolidation of the rule of law in Cameroon”**.

The issue of the role of the judiciary in the state mechanism has given rise to abundant judicial literature in Cameroon.¹

Justice being a public service, has always generated particular attention for citizens as well as for the state.

Justice is at the centre of some reputable cases, sometimes it is hailed, sometimes criticized, wrongly or rightly.

Under the revised constitution of 18 January 1996, justice became a power² it was subjected to more expectations for its role in the reinforcement of the rule of law in Cameroon.

What should we understand by the rule of law?

¹ JADE, Cameroun: Droit humaine en milieu carcéral au Cameroun

- Soup et Twengembo, la justice Camerounaise et ses institutions, Recueil des textes PUA, Yaounde, 2008

- BIPOUM WOUM (J-M), la representation de l'Etat en justice. RCD No 28, 19884, P.17

R.S, les Institution judiciare au Cameroun, Douala Macacos 2005

² The Constitution of the Republic of Cameroon, special edition of the General Secretariat of the National Assembly, November 2018, CHAPTER V.

Professor Serge GUINCHARD in his glossary of legal terms defines this concept as follows:

“ A State where all political and administrative authorities, central and local, act in effective compliance with the rules of law in force and in which all individuals also benefit from public liberties, procedural and jurisdictional guarantees”. ⁽³⁾

The rule of law requires a multitude of requirements:

- Respect of hierarchy of norms ;⁽⁴⁾
- Equality before the law ;⁽⁵⁾
- Separation of executive, legislative and judicial power ;⁽⁶⁾
- Protection of law and freedom ;⁽⁷⁾
- Procedural and jurisdictional guarantees ;⁽⁸⁾
- Fair trial ;⁽⁹⁾
- Regulation of climate matters ;⁽¹⁰⁾
- Protection of public property and general interest ;⁽¹¹⁾
- Fight against corruption and related offences ;⁽¹²⁾
- Protection of the environment ;⁽¹³⁾

To mention a few.

(3) GUINCHARD (Serge) and Thierry DEBARD, Glossary of legal terms, DALLOZ, Paris, 21st edition 2014 p.405.

(4) Confer Preamble of the constitution.

(5) Confer Preamble of the constitution.

(6) Article 37 of the constitution.

(7) Confer Preamble of the constitution.

(8) Articles 37 & 38 of the constitution.

(9) Preamble of the constitution.

(10) Doing Business report, 2023.

(11) Confer 2011 law revised in 2012 setting up Special Criminal Court.

(12) Confer CONAC 2022 report on the state of corruption in Cameroon.

(13) Confer COP28, held in Morocco on global warming.

Some of these requirements are found in the preamble of the revised constitution of 18 January 1996 ⁽¹⁴⁾ which states:

« We, the people of Cameroon,

Declare that the human person, without distinction as to race, religion, sex or belief, possesses inalienable and sacred rights.

Affirm our attachment to the fundamental freedoms enshrined in the Universal Declaration of Human Rights, the Charter of United Nations and the African Charter on Human and Peoples' Rights, and all duly ratified international conventions relating thereto, ».

All these indispensable requirements and principles in the rule of law are being implemented by the judicial institution.

Article 37 of the constitution in this regard provides:

« (1) Justice shall be administered in the territory of the Republic in the name of the people of Cameroon.

(2) Judicial power shall be exercised by the Supreme Court, Courts of Appeal and Tribunals. The Judicial Power shall be independent of the executive and legislative powers ».

Article 38 of the constitution states:

(14) According to article 65 of the constitution, the Preamble is part of the constitution. « The preamble shall be part and parcel of this constitution » and make up what Louis FAVOREU calls the « the block of the constitution

1. « The Supreme Court shall be the highest court of the State in legal and administrative matters as well as in the appraisal of accounts».

To these we have to include the following laws¹⁵:

- Law No 2006/016 of 29 December 2006 to lay down the Organization and Functioning of the Supreme Court.
- Law No 2006/015 of 29 December 2006 on Judicial Organisation.
- Law No 2008/015 of 29 December 2008 on the Organization of Military Justice.
- Law No 2011/028 of 14 December 2011 to set up a Special Criminal Court amended by law No 2012/011 of 16 July 2012.
- Law No 2006/022 of 29 December 2006 to lay down the Organisation and Functioning of Administrative Courts.

Considering these judicial instruments, we can expect efficient management of the numerous litigations which are arise and flourish before the various courts in our country. We should say with Ulpian: *“rendering justice is to grant everyone what he or she deserves, without jeopardising public interest.”*

Despite efforts deployed to administer justice, judicial institutions remain at the centre of citizens, business men, companies and investors concern.

¹⁵ laws on the organization governing several courts in Cameroun.

General assessment of justice by public opinion is sometimes very severe. ⁽¹⁶⁾

François SARDA regarding this matter wrote:

“Public opinion is poorly informed in legal matters. It is in default, ignorance of structures and procedures, it is also confused with the role of the magistrates of the Legal Department and those of the Bench; it does not know how judgements are drafted and delivered.

... this opinion is also poorly informed by abuse when regarding some generally scandalous matter, it learns of the details, errors, irregularities... »

It also maintains that justice is not fast, that it is unfair and that it is not independent.

The different economic sectors believe that it does not provide a conducive environment for business to flourish.

The various « **Doing Business Reports** » regularly label the Cameroonian judicial system as an obstacle to business development. ⁽¹⁷⁾

More so, they attempt to question the merits of justice as a regulatory organ in social life.

⁽¹⁶⁾ Hubert HAENEL et Jean ARTHUIS. Justice Sinistrée : Démocratie en danger, Economica, Paris 1991 P.8

⁽¹⁷⁾ The report presented, each year, indicators

- Doing Business classification 2022 in Africa
- Doing Business Classification 2023 in Africa

We are witnessing, a rise of private justice and mob justice where the law of Talion reigns: “**an eye for an eye, a tooth for a tooth**”, where “**the jungle law reigns**”, or “**the might is right**” as in “**the sheep and the lamb**” of Fables of La Fountain. ⁽¹⁸⁾

This is an unacceptable drift in the rule of law, even though it expresses a discontentment of its authors faced with the flaws of an institution.

Excellencies, Ladies and Gentlemen.

The criticisms labelled against judicial institutions are not entirely unfounded.

Maybe litigants too severely appraise the judicial system. However, some malfunctions of the judicial system are within the jurisdictions and judicial corps.

Litigants do not believe in the objectivity of judges. They constantly question their impartiality and their independence. ⁽¹⁹⁾ They assume that they are subject to different forms of pressure.

They accuse examining judges of not sufficiently measuring the impact of depriving citizens of their liberty. They invoke **Section 218 (1)** of the Criminal Procedure Code which provides: « **Remand in custody shall be an exceptional measure which shall not be ordered except in the case of a misdemeanour or a felony. It shall be necessary for the preservation of evidence, the maintenance of public order,**

⁽¹⁸⁾ La Fontaine, the Fables, the Sheep and the Lamb, P. 62

⁽¹⁹⁾ Faugeron Claude, Justice et opinion publique, l'ère du Soupçon, Revue Pouvoir n° 16, P.89

protection of life and property, or to ensure the appearance of an accused before the Examining Magistrate or the court.

Provided that a person with a known place of abode shall not be remanded in custody except in the case of a felony. ».

Judges of the Legal Department are subjected to the hierarchical subordination. But among them, some develop the desire for independence.

They are accused of very easily depriving citizens of their liberty, even in civil matters. Some seem to have been transformed into agents of debt recovery.

We have to sadly note, the role played by some judicial auxiliary in the loss of confidence by citizens in judicial institutions.

At the first place, Court Registrars, who are the driving force within the courts, are said to be the "lungs of justice". Unfortunately some of them are often at the helm of judicial bottlenecks.²⁰

Secondly, we are concerned by the task of the judicial police which are of prime importance to the functioning of the judicial machine.

If some judicial police officers are excellent in the practice of the jobs, there are also others who work in an unconscious manner and do not respect the fundamental rules governing temporary detention, interrogations, search, execution of warrants and court decisions.

²⁰ it is said that Court registrars are the "lungs" of justice.

Staff of penitentiary administration manage temporal or long deprivations of liberty. All irregularities in the penitentiary are echoed on the audience in criminal matters or judicial information. Here there is also cohabitation between conscious agents, lax and irresponsible agents.

Concerning lawyers, there is need to say that they are the auxiliaries of justice who participate the most at the court house in the practice of justice. It is a noble profession.

Grisoli, a former Bar president of Marseille wrote during his days: *“if you want to be happy for a day, get drunk, if you want to be happy for two days, get married, if you want to happy every day, be a lawyer”*²¹

Several obstacles in the smooth functioning of justice are often linked to the inertia of some lawyers, disrespect of their sermon as well as the ethics of their profession.

Regarding bailiffs, their role is fundamental in the functioning of courts.

They act at the beginning at the court case, during the court case and during the final stage in the execution of court judgments.

While the majority of bailiffs work in good faith, there are specialist in fruitless search even if the company is well known in the city; they are specialist in post notices and illegal seizure, sometimes based on extracts of the registry. The disciplinary measures provided for in the new status are meant to discipline them.

²¹ Grisoli, former Bar president of Marseille gives the advocate profession all the dimensions of nobility

Finally, notaries are public and ministerial officers in charge of drawing up authentic deeds on the lives and properties of citizens (mortgage loan agreements, real estate sale deeds, tenancy agreements, drafting of wills, setting up of companies... etc).

Obviously, the public notary is an auxiliary of justice with a heavy responsibility in society. Unfortunately, the outbreak of land disputes in Cameroon is largely due to the complacency of some notaries who are obsessed with the lure of profit.

Some notaries have become real estate agents in the denotative as well as the connotative sense; it is not an exaggeration to refer to them as **"land sellers"**.

Your Excellencies, Ladies and Gentlemen.

From the aforementioned analysis, there is an urgent need to redefine the role of the justice system, in compliance with the requirements of the rule of law.

Our fellow citizens, economic operators, businesses, national and foreign investors are thirsty for justice.

We should strive to satisfy their expectations, and justice can perform effectively if we restore the fundamental principles that govern the legal profession.

Judges, vested with the constitutional legacy of their profession, should possess the guarantees of independence, resist all forms of pressure and abide only by the law and their own conscience.

In his address to the nation on December 31, 2023, the President of the Republic and President of the Higher Judicial Council rightly reaffirmed that: **"As you rightly know, justice is one of the pillars of the rule of law. Therefore, it is essential to rule in total fairness and free from interference of any kind. I hereby assure that, as the custodian of its independence, I will pursue all necessary actions to safeguard its independence."** (22)

The President of the Republic thereby reiterated the need for an independent judiciary.

As one author once wrote, *"a free system of justice is a strong system of justice"*. (23)

We must guarantee the right to justice and offer our citizens a reassuring image to regain their trust.

All actors of the judicial sector should be aware of the frustrations of citizens and the upsurge of private justice.

If we are not vigilant, *"poorly administered justice distorts the foundations of social balance, and society crumbles"*²⁴

(22) Paul Biya, Address to the Nation, December 31, 2023. Cameroun Tribune, January 2, 2024 N0. 13012/9211 P.3

(23) François Sarda, Revue Pouvoir PUF Paris, N0. 016, P.78

(24) Pougoué (Paul Gérard), foreword to the book « accès à la justice au Cameroun », jiaz et severin, l'harmattan, Paris 2015 P.7

At the level of the Supreme Court, we must equally provide clarity and transparency in case law.

Judgments delivered in joint Divisions or joint Benches must prevail over trial courts.

Heads of Courts of Appeals, Special Criminal Courts and Administrative Courts are to set down case law on relevant aspects of law enforcement. We do not need to have as many case laws as in the Courts of Appeal.

We must put an end to judicial cacophony.

Our society expects justice to be more assertive in order to:

- Uphold social harmony in general, and combat the perpetrators of acts of terrorism in particular;
- Protect the rights and freedom of citizens challenged with social networks which has become unsocial;
- Ensure job security;
- Safeguard public wealth with the Combined Actions of Courts, the Special Criminal Court and the Audit Bench;²⁵
- To ensure the execution of court rulings, a prerequisite for the administration of justice;
- Promote the business climate in the CEMAC and OHADA communities;

(25) Anoukaha (François), the Criminal Code of July 12, 2016 and the fight against corruption in Cameroon. Les Grande Editions, Yaoundé, June 2017

- Protect widows and orphans;
- Subject the administration in general to the respect of laws with particular reference to taxes, customs, land and property administrations in their missions to comply with the laws and regulations of our country; besides, this is the purpose of the Administrative Courts.

This is how, and this is the only way, we can consolidate the role of justice as a fundamental pillar of our democracy and affirm with Charmand Boyer Georges that:

"The modern approach of justice makes it inherent to our Rule of Law, which is the Democratic State. Although it is right for judges to be aware of their duties and bear their responsibilities, citizens are also required not to abuse deliberate attacks on the Justice as a fundamental institution of a free society".²⁶

No rule of law can prevail unless justice ensures the respect of the law.

We therefore need to strengthen the role of the justice by raising awareness of all actors in the judicial chain.

Thank you for your kind attention.

(26) Georges Boyer Charmmard, les Magistrats Que sais-je PUF, 1985, P124.