

# **SUPREME COURT OF CAMEROON**



## **ALLOCUTION OF THE CHIEF JUSTICE OF THE SUPREME COURT OF CAMEROON**

**(SOLEMN REOPENING OF THE SUPREME COURT)**

***Daniel MEKOBÉ SONE***

22 February 2023

**The President of the Senate**

**The Honourable President of National Assembly**

**The President of the Economic and Social Council**

**The Prime Minister, Head of Government**

**The President of the Constitutional Council**

**The Minister State, Minister of Justice, Keeper of the Seals**

**Honourable Ministers of State**

**Honourable Ministers**

**Minister Delegates and Secretaries of State**

**Members of the Diplomatic Corps and representatives of  
International Organisations**

**The President of the Bar Association**

**The President of the Association of Sheriff Bailiffs**

**The President of the National Association of Notaries Public**

**Distinguished Senior officials**

**The Governor of the Centre Region**

**The Mayor of Yaoundé City**

**Distinguished Judicial and Legal officers**

**Dear Lawyers,**

**Ladies and Gentlemen,**

The Supreme Court is grateful you have accepted, in spite your busy and delicate schedules to honour its invitation with your distinguished presence, at this solemn reopening of the Supreme Court.

**Excellencies, Ladies and Gentlemen,**

This year we have willingly chosen to share with you, an anxiety provoking theme for our society and our citizens: *“Cameroonian justice confronted with the rise of Information technology and communication.”*

The development of Information and Communication Technologies (Internet, digital, computer, digitalisation)<sup>(1)</sup> considerably shambles the life of our citizens and businesses.

Nowadays, an illiterate is no longer someone who cannot read or write, but rather anyone who does not master the usage of computer tools.

Cameroonian justice is not side-lined from these evolving technologies. It is confronted with the computerised revolution, ranging from digital deployment, the advent of GPS and electronic payment methods, just to mention the most recurrent.

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<sup>(1)</sup> ALAUZEN (M), « L'Etat plateforme et l'identification numérique des usagers », In Revue Réseaux n°213, 2019, pp 211- 239

BOME EKALLE (M) La dématérialisation de l'administration publique camerounaise, Dissertation Master 2, University of Douala 2020

Justice should adapt to these new technologies and provide appropriate solutions to increasingly complex disputes emerging in our country.

Technologies seem to evolve faster than laws. Is the law late in relation to the exponential growth of technologies? Is Cameroonian justice efficiently confronting the development of cyber criminality?

To illustrate our discussions, we have chosen to explore some judicial aspects where the new technologies are gradually gaining ground and directly or indirectly invite justice into metamorphosis.

In civil matters, the computerisation of the civil status registry is an essential mission conferred on the Nation Civil Status Bureau (BUNEC)<sup>(2)</sup>.

Soon, Civil Status registries signed by Presidents of the Courts before they can be used in civil status centres and Councils will be a far off memory. Hence, will it be easy to save electronic files without running the risk of manipulation of data?

The judicial inspections in civil status centres to search for irregularities in the counter foil of civil status acts will comply to a new system.

In addition, in civil matters, several divorce procedures brought before courts generally originated from information discovered in telephones or computers of spouses.

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<sup>(2)</sup> National Civil Status Registration Office: Date of creation 2013 by Decree No 2013/031 of 13 February 2013 of the President of the Republic.

A public establishment in charge of the supervising, controlling, regulating and evaluating the national civil status system.

The judge has to deal with the transcription or the registration; these proofs have to be particularly controlled in civil matters, because there is a risk of tampered communication or images.

In commercial matters, registration at the trade registry and real estate credit has been computerised. The registration done at the competent Court of First Instance is transferred to the national file in Yaoundé, then to the regional file based at Common Court of Justice and Arbitration in Abidjan by electronic means.<sup>(3)</sup>

In the same vein, electronic commerce controlled in Cameroon by Law No 2010-021 of 21 December 2010 submitted to justice the appreciation of the signature and the implementation of the electronic contract.

Section 10 of Law No 2010/021 of 21 December 2010 provides that:  
***“The regime of written contracts shall, apply in electronic contracts in terms of consent, their legal effect, validity, and implementation, except for the following contract:***

- - ***contracts which create or transfer rights over immovable property, except for renting rights”.***

We clearly notice that litigations generated by electronic commerce have some specificities<sup>4</sup>

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<sup>(3)</sup> CISSÉ Abdoullah and DIALLO Boubacar, « L’informatisation du registre de commerce et du crédit mobilier et des fichiers connexes », Droit et Patrimoine n°201, 2011, page 62.

<sup>(4)</sup> Justine DIFFO : Droit des activités économiques et du commerce électronique, Harmattan 2011

Besides, regarding methods of payment regulated by Order No **03/CEMAC of 21 December 2016** on the systems, means and incidents of payment (cheques, withdrawal cards, credit and payment), the CEMAC legislator urges the judge to order prohibitions against perpetrators of these offences as supplementary sanction. It requires State Counsels to quarterly forward to the Central Bank, the list of convicted persons for the constitution of the risk file.

We are not very certain that in courts, this legal provision is strictly respected.

Pertaining to commercial companies, the dematerialisation of fixed assets is henceforth required for public limited companies, joint stock companies and simplified joint-stock company.

This is based upon :

- **Article 744** of the Uniform Act on Commercial Companies and the Economic Interest Group.
- **Law No 2014/007 of 23 April 2014** to lay down the modalities for dematerialisation of securities in Cameroon.
- **Decree No 2014/3763/PM of 17 November 2014** to lay down the conditions for the application of **Law No 2014/007** mentioned here above.

The competent body acting as the central deposit of securities is the Autonomous Sinking Fund.

Some Notaries public are unable to part with their atavism and behave like the dematerialisation of securities is ineffective; consequently shareholders loose of rights to dematerialise securities, or the forceful liquidation of the rights related to the said securities.

Disputes which arise from dematerialisation require good mastery of instruments for proper management.

In land matters, the use of the “Global Positioning System” abbreviated GPS to identify land owners in large cities is not always satisfactory. Sometimes the coordinates of the land title punched into system point towards a water body which will have been registered.

This shows the limits of the system. The system was poorly informed, or the system reveals the inconsistency of civil servants and technicians in land affairs. How can we, with the GPS, have two land titles established for the same building?

If the GPS cannot be used to identify a building without contest, there is a real problem, and the expertise becomes questionable. Using this hypothesis, the judge can be embarrassed in the quest for the manifestation of judicial truth.

Consequently, we note that these new technologies impact the life of law and justice in our country. Meanwhile, three aspects need to be particularly scrutinised: cybercriminality, cryptocurrency and abusive liberty on social networks.

## **Excellencies, Ladies and Gentlemen.**

Cybercriminality can be defined as the use of computer systems and networks in general, and the Internet in particular, to commit criminal or legally proscribed actions.

This criminality is difficult to understand as it takes various forms and is not confined by precise boundaries. A distinction can be made between purely cyber offences and ordinary law offences, which are facilitated by information and communication technologies.

Some examples of cyber offences are the following:

- Introduction of viruses into an information or payment system
- Fraudulent access to a communication network or information system
- Fraudulent access and tampering with data
- Personal data breaches
- Counterfeiting and forgery of electronic cards
- Breaches of automated data processing systems in payment systems

Offences under ordinary law include:

- Aggravated misappropriation,
- The dissemination of images violating bodily integrity
- The production, transfer and dissemination of pornographic or severely offensive messages to a child, through electronic communication or an information system



- Spreading of fake news
- Private indecency
- Contempt of race or religion
- Dissemination or transfer of obscene images
- Blackmail
- Defamation
- False report
- Public insults

The Cameroonian legislator provided for in Law No 2010/012 of 21 December 2010 relating to cybersecurity and cybercriminality in Cameroon, the procedure to apply in the prosecution of cybercriminals. This Law is combined with the provisions of the Criminal Procedure Code, which provides that:

**Section 49:** *“Notwithstanding the provisions of the Criminal Procedure Code, in case of crimes or offences provided for hereunder, criminal investigation officers may intercept, record or transcribe any electronic communication”.*

**Section 50:** *“In the event of encoding, compressing or ciphering of data transmitted by electronic communication networks or electronic communication service providers, clear corresponding interceptions shall be provided to the services that requested them”.*

**Section 51:** *“The personnel of electronic communication network operators or electronic communication service providers shall be bound to secrecy for any requests they receive”.*

According to **Section 53** searches and seizures may be carried out in the context of cybercriminality prosecutions.

For security reasons, the State Counsel may instruct the destruction of copies of seized data.

Furthermore, on the approval of the State Counsel, only objects, documents and data used as evidence may be kept under seal by the criminal investigation officers.

When it appears difficult to access the data, the State Counsel, the Examining Magistrate or the Presiding Judge may request an expert to perform the technical operations of deciphering:

All these offences are subject to severe principal penalties (imprisonment and fines) and even accessory penalties (confiscation and destruction of the equipment) provided by the Law.

Even if the legislation has been provided for, it appears that Criminal investigation officers, Legal officers, Examining Magistrates as well as the Presiding Judges, do not efficiently and promptly apply those legal provisions. In addition, the complexity of qualifications is not likely to facilitate the work of the courts.

Concerning crypto-currency, in recent years, under the prism of new technologies, a virtual and atypical currency in several forms has

appeared in our economic system, namely: "Bitcoin", "Litecoin", "Dogecoin", "Namecoin".<sup>5</sup>

In our country, inexperienced people have started promoting this new currency not recognised by the central bank (BEAC). Among the clandestine financial institutions for virtual currency are the following: Mekit, Chymall, Africa, LIF, LIYEPLIMAL and especially MIDA in Yaoundé. The list is inexhaustive.

Thousands of Cameroonians have rushed to these illusionists, to the tempting, magical and chimerical promises, attracted by the bait of easy gain. However, they were rapidly uncharmed.

The Mida case<sup>6</sup> in Yaoundé and the Liyeplimal case in Douala, revealed citizens at the verge of desperation, or even agonising with the vanishing of their money. Exceedingly rich with one click, extremely poor with the next. Several billions thus vanished into thin air despite the formal notice from the Minister of Finance to cryptocurrency operators, following an alert issued by the Financial Market Supervisory Commission (CONSUMAF). The Minister of Finance warned that:

***“In the event of immediate non-compliance with these prescriptions, the government has the right to use appropriate administrative***

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<sup>5</sup> Cryptocurrency is a digital currency

<sup>6</sup> MIDA case turned out to be a huge accounting scandal

***mechanisms and refer to judicial authorities to ensure that the law is enforced".***

Centred around economic criminality with new outlines, the CPO, examining Magistrates and Presiding judges have to rely on the existing criminal qualifications (usury, counterfeit, misappropriation with call to the public, and new qualifications (money laundering, fraudulent banking activities) without substantially scraping the sacrosanct legality principle of criminal offences and penalties: “ ***nullum crimen sine lege, Nulla poena sine lege*** ”, “ ***no crime without law, no punishment without law***”.

Justice necessarily has to respond to this phenomenon that traumatises thousands of Cameroonians. This can be achieved through oppressive and non-oppressive means.

This underground financial market is dangerous for our economy if not legally regulated. Moreover, cryptocurrency has proved to be the best means for money laundering and for the financing of terrorism in the CEMAC zone.

The CEMAC rule No 01/CEMAC of 11 April 2016 on the prevention, suppression of money laundering and financing of terrorism, has clearly incriminated these behaviours and provide adequate penal sanctions. The judge has to understand them, to effectively apply them in due course.

## **Excellencies, Ladies and Gentlemen,**

Last but not the least, Cameroonian justice is confronted with abusive liberty gaining ground on social media<sup>6</sup>.

The Internet is a connection between many machines (computers, smart phones) and a worldwide computer network, configured in a standardised set of protocols for the transfer of data. It is a global system for the exchange of electronic documents.

Social networks essentially rely on all the communication opportunities given by the internet.

Several decades ago, before the advent of the Internet, Professor Roger Perrot, was worried about the interference of public opinion in the mission of judges. He wrote that: “*Public opinion expects judges to deliver judgements from the heart, but they can only deliver judgement from law*”.<sup>7</sup>

Our country is now witnessing dwell challenges: with the appearance of impunity offences perpetrated via the social media and the establishment of a form of popular and virtual tribunals.

Considering the public opinion entertained on social media, it is cautious to mention that they set themselves as real tribunals, criminal investigation officers, Examining Magistrates and Presiding Judges.

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<sup>6</sup> NDJODO (L), Preservation of public order challenged with the proliferation of media. Submissions of the Procureur General at the Supreme Court on the Solemn Reopening on 23 February 2022.  
Roger Perrot : le rôle du juge dans la société moderne, gaz. du Palais 1977

Ranging from whistle blowers to ordinary journalists and even influencers, everyone is represented.

We investigate, examine, judge and condemn depending on the chosen trend, or the pseudo-criminals and the suspects are virtually tried, vindicated and acquitted, even before the judicial proceedings are undertaken in accordance with the law.

The time of justice is not necessarily that of the public opinion, and certainly not that of the social media.

Likewise, humiliating, degrading and hateful speeches, are shamelessly and without reserve, exchanged on social media.

Meanwhile, professionals of justice, are also condemned on social media in the accomplishment of their mission.

Litigants trial their judges.

Suspects trial the investigators.

Accused persons trial their Examining Magistrates.

Lawyers, Bailiffs and Notaries are all accused.

Sometimes, we are confronted with an upsurge of private justice, inadmissible in a country governed by the Rule of Law.

Although the revised Constitution of 18 January 1996 states in its preamble that *“the freedom of communication, of expression, of the press, shall be guaranteed under the conditions fixed by law”*.

However, it should be noted that these freedoms are not without restrictions.

To this effect the President of the Republic, President of the Higher Judicial Council reiterated in his address of 31 December 2022 that: ***“Once more, I wish to make an appeal to those using social media for criminal and malicious purposes. Through their actions, particularly disinformation, defamation, and spreading hate speech, they cause distress to numerous families and often ruin lives. Clearly, they jeopardise social cohesion.”***

It should be emphasised that, the digital activity which develops and intensifies with the growth of mediums dedicated to the activity and the increasing number of web and social media users, is not a negative factor. It eases the life of honest citizens and companies.

Meanwhile, the criminal activity that results from the digital activity undermines the Rule of Law.

Our country should not be held hostage by cybercriminals. They have to be tracked down and judged by our courts, for the law to prevail.

Furthermore, his Excellency the President of the Republic sternly added in his 2022 end of year address that: ***“Such behaviour cannot be tolerated in a State of law. Those who take delight in disrupting social order, whether young or old, will answer for such conduct before the competent courts.”***<sup>8</sup>

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<sup>8</sup> The Head of State address to the Nation. Cameroun Tribune N°12760/8959 of Tuesday 03 January 2023. P.2:

To effectively fight against these deviations gaining ground on social media, criminal investigation officers and the Special Brigade have to make good use of digital tools to carry out investigations against cybercriminals and this starts with appropriate training.

### **Excellencies, Ladies and Gentlemen.**

Cameroon is a Rule of Law country. The Constitution guarantees the right to justice to all citizens.

Considering the emergence of communication technologies and subsequent excesses, the Cameroonian legal system should be more vigilant against cybercriminality, misconduct on social media which constitute offences, various forms of fraud, harassment and assaults on the honour and reputation of individuals.

Justice has the mechanism to actively fight against the inadmissible misconduct in our society. This fight against cybercriminality inevitably requires both prevention and repression.

In terms of prevention, the National Agency for Information and Communication Technologies (ANTIC) and the Ministry of Posts and Telecommunications are to be commended for their commitment in promoting the legal provisions among citizens.

Despite the legal illusion that, *“ignorance of the law is no excuse”*, it should be admitted that "no one can claim to master the entire laws".



This continuous sensitisation of citizens on the extent of their rights and penalties for offences committed via social media can greatly raise awareness among Internet users.

The National Communication Council (CNC) also has a major role to play in preventing and applying disciplinary sanctions to journalists who practice on the web.

However, the crackdown on cybercriminals and the many delinquents touring social media is an urgent matter for our country. We must admit that freedom without limits is dangerous for our society.

Therefore, we must take appropriate measures to effectively fight it:

- The existing legal instruments must be firmly implemented by the courts.
- It is important to invite the legislator to adjust our laws to the progress of technology.
- The judiciary (Judicial and Legal Officers, Court Registrars, Lawyers, Bailiffs, Notaries, Criminal Investigation officers and Experts) must be trained in the major new innovations brought about by new technologies.

If caution is not applied, our judicial system stands the risk of being completely outdated with the rapid changes in world technology, which are threatening our country.

The judicial system in this fight, should promote a sense of diligence, without being expedient and, above all, guarantee the rights of citizens.

According to the Latins, virtue lies in the middle: « *In medio stat virtus* ». <sup>9</sup>

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<sup>9</sup> Remy YANO Kodo, le Temps de la justice, in La Cour, Bulletin de la Cour Suprême du BENIN, P.41. June, 2022