International Journal of Law
www.lawjournals.org
ISSN: 2455-2194
Received: 27-05-2021, Accepted: 11-06-2021, Published: 26-06-2021
Volume 7, Issue 3, 2021, Page No. 217-225

Some measures of compassion towards the offender under Cameroonian criminal law

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Abstract
A crime is an act or omission which under any written law is deemed to be such, thus attracting punishment. When the culpability of an accused is established by a court after due process, he is convicted and sentenced. This sentence is considered as a punishment and is aimed either at reformation, deterrence, rehabilitation or retribution. In the process of determining whether the accused is guilty or not and ultimately when found guilty, he goes through multiple hardships characterized principally by loss of liberty. The Cameroonian criminal law with its manifested intention to guarantee human rights at all stages of the criminal trial has made an attempt to reduce the hardship which certain criminal measures may have on the offender which the author describes as compassionate measures. This article makes an attempt to expose, with a view of analyzing the efficiency of some of these compassionate measures at pre-trial, trial and post-trial phases of the criminal process.

Keywords: compassion, offender and Cameroonian criminal law

Introduction

When a wrong is committed redress can either be sought by a civil or a criminal Action. Generally in a civil action, what the plaintiff is seeking for is compensation [1], that is, to be put in the position he would have been in if the wrong had not been committed [2]. He is seeking for compensatory damages (in very rare cases will the courts award punitive damages in situations of civil wrongs) [3]. Punitive damages are those whose objective is to punish the defendant for his wrongful conduct. What is at stake in a civil action is the property of the defendant-part of his estate. In a criminal action, prosecution is aimed at punishment and generally punishment will take the form of freedom deprivation, that is, loss of liberty-imprisonment. This is generally hard to bear. At times when this is done, the prisoner loses some of his basic rights, such as parental authority, right to hold public office, right to vote etc.

Conscious of these difficulties, the criminal law of most countries enshrines provisions which are compassionate vis-a-vis the offender. Compassion is a feeling of wanting to help someone who is in trouble, a sympathetic consciousness of others' distress together with a desire to alleviate it [4]. Some of these compassionate measures are seen during the pre-trial and the trial phases; others are at the post- trial phase. There are some which are meant to relieve directly the stress of the offender while others are aimed at appeasing the society and the offender benefits indirectly.

The focus of this article is to highlight and comment on some of the compassionate measures found in the Cameroonian penal legislation with the intention of assessing their efficiency.

I-Compassionate measures during the pre-trial and trial phases

When someone is alleged to have committed an offence, in order to establish whether he is guilty or not, he must be subjected to due process [5]. Due process actions will be found during pre -trial and trial phases in a criminal action. A pre-trial phase relates to the period before a judicial trial. That is a trial done by a court which is competent to hear and determine the facts in issue. During this phase there are actions to be taken by the judicial police officers [6], the State Counsel [7], and the Examining Magistrates [8] aimed at ferreting the truth in order to determine whether the accused should be prosecuted or not. In the first place when a complaint [9] or information [10] is lodged, the suspect may be remanded in police custody or in prison pending investigation. According to S.119 (2) of the CCPC, the time allowed for remand in police custody must not exceed 48 hours renewable once. This period may exceptionally be extended twice with the written approval of the State Counsel. S.119 (4) of the CCPC prohibits remand in police custody on Saturdays, Sundays or public holidays, except in cases of felonies, and misdemeanors committed *flagrante delicto*. S. 221 (1) of the CCPC of the CCPC states that remand in prison must specify the period of validity which must not exceed 18 months in the case of a felony and 12 months in the case of a misdemeanour. These are measures which deprive the offender of his freedom of movement and obviously this is accompanied by other deprivations. For somebody who at this stage in the criminal process is presumed innocent until his guilt is proven [11], this can be very traumatizing.

In the face of this, the State Counsel may exercise his prosecutorial discretion, he may grant bail just as the Examining Magistrate may do, the Minister of Justice and Keeper of the Seals may authorize the *Procureur Général* (PG) [12] to enter a *nolle Prosequi*, and this could be done for reasons relating to the maintenance of public order and social cohesion or the reimbursement of the *corpus delicti* by the suspect, the defendant or the accused. It is important to note that suspect, defendant and accused in the Criminal procedure literature in Cameroon have different significance. According to S. 9(1) of the CCPC, a *suspect* shall be a person against whom there exists any information

or clue which tends to establish that he may have committed an offence or participated in its commission.

S. 9(2) of CCPC states that *the defendant* shall be any suspect whom an Examining Magistrate notifies that he is presumed henceforth either as the offender, co-offender, or as an accomplice. By virtue of S. 9(3) of CCPC *an accused* person shall be a person who must appear before the trial court to answer to the charge brought against him whether in respect of a simple offence, a misdemeanour or a felony.

1. Prosecutorial discretion

The Public Prosecutors in Cameroon are the watchdogs of the society responsible among other things to ensure that criminal offences are detected and their perpetrators punished. Complaints and information relating to alleged commission of offences are addressed to them. They exercise what is known as prosecutorial discretion. This means that when a complaint is lodged against an alleged offender by the victim or information given to the prosecutor by a third party relating to the commission of an offence, the prosecutor may decide to prosecute or not. They are multiple factors which may explain their decision not to prosecute in some cases. One of such factors is an expression of leniency towards an alleged offender known for good conduct in the community. Should the Prosecutor exercise his discretion not to prosecute in a situation where investigations have been opened in relation to the complaint or information and the alleged offended was under detention, he or she will have to be released. However prosecutorial discretion must be exercised in a very transparent manner. In order to achieve this S.141(c) of the Cameroonian Criminal Procedure Code (CCPC) states that: "*A State Counsel before whom a criminal matter has been brought may decide to close the matter and inform the complainant of his decision. A copy of the decision closing the file shall be forwarded to the Procureur Général at the Court of Appeal within a month*".

2. Prescription of prosecution

Prescription manifests itself in the Cameroon criminal law in the form of either prescription of prosecution or prescription of sentences, but at the pre-trial phase we are interested in prescription of prosecution.

Prescription of prosecution is governed by S.65 of the CCPC. Sub-section 1 indicates that prescription shall be the barring of prosecution following the failure to commence action within the prescribed limitation period. As a guideline it further directs that a felony must be prosecuted within 10 years, misdemeanors within 3 years and a simple offence within 1year from the date of commission of the offence. S.21 of the CPC defines a felony, a misdemeanor, and a simple offence. It states that a felony is an offence punishable with death or with loss of liberty for a maximum of more than ten years. A misdemeanor is an offence punishable with loss of liberty or with fine, where the loss of liberty may be for more than ten days but not for more than ten years, and the fine more than twenty-five thousand francs. A simple offence is an offence punishable with imprisonment for up to ten days or with fine of up to twenty- five thousand francs. For the calculation of the period for prescription, time begins to run from when the last ingredient of the offence was committed. This is unlike other systems where time does not run against the State as the prosecuting authority. Under English law the general rule is that: *nemo tempus occurit regis* meaning "*time does not run against the crown*". So criminal actions will not be time barred except the law provides for periods within which an action must be brought for specific offences. S.65 (6) of the CCPC indicates that in the case of prosecution for several related offences the delay for prescription to be taken into account shall be that of the offence with the most severe punishment. In relation to civil claims emanating from an offence S.75 (2) provides that they shall be barred after 30years. Time limit for instituting criminal action shall be suspended by any *de jure* or *de facto* bars which may prevent the commencement of criminal action [13]. Prescription of prosecution as a compassionate measure can be explained in terms of the danger which the offender may face in a situation of prosecution of staled allegations with the accompanying difficulties of reconstituting and presenting evidence.

3. Bail

Release on bail is crucial to the alleged offender as the consequences of pre-trial detention are extremely harsh and unforgiving. If the right of bail is denied to the accused it would mean that though he is presumed to be innocent till his guilt is proven beyond reasonable doubt yet he would be subjected to the psychological and physical deprivation of jail life. Most people who have been to jailed end up losing their jobs and become social outcast [14]. The Cameroonian legislator is very conscious of the hardship which the detention of the alleged offender can cause during pre-trial and at times trial phases in criminal proceedings. As a result provisions are available establishing the right to bail under certain circumstances for the alleged offender. The Cameroonian Criminal Procedure Code provides for bailable and non-bailable offences. Bailable offences are those for which bail can be granted while non-bailable offences are those for which bail cannot be granted. By virtue of S.224 (2) of the CCPC persons charged with felonies punishable with life imprisonment or death cannot benefit from the provisions relating to bail contained in S. 224(1). That Section indicates that any person lawfully remanded in custody may be granted bail on condition that he fulfills one of the conditions referred to in S. 246(g), in particular to ensure his appearance either before the judicial police or any judicial authority. The CCPC provides for two types of bail, namely self-bail or unconditional bail and conditional bail.

a. Self-bail or unconditional bail

This bail is granted without any obligation on the part of the alleged offender to fulfill any condition. It is governed by S. 222 of the CCPC. It provides in its sub-section (1) that the Examining Magistrate may at any time before the close of the preliminary inquiry, and of his own motion, withdraw the remand warrant and grant bail. S. 222(2) states that where bail is not granted as of right, or by the Examining Magistrate of his own motion, it may be granted on the application of the defendant or his counsel and after the submission of the State Counsel when the defendant enters into a recognizance to appear before the Examining Magistrate wherever convened and undertakes to inform the latter of his movements.

The role of the Examining Magistrate in a criminal action is to conduct preliminary inquiry. Preliminary inquiry within the Cameroonian context is obligatory in cases of felonies

and optional in cases of Misdemeanors and simple offences [15]. Preliminary inquiry seeks to determine whether there is sufficient evidence to prosecute the defendant [16]. In this procedure, the CCPC directs the Examining Magistrates to the fact that once they run to the conclusion that they are done with the process of ferreting the truth from the defendant, and there is no reason to continue to keep him in custody, he should be granted bail. The initiative for the decision to grant bail under this circumstance may come directly from the Examining Magistrate himself or from the defendant or his Counsel, after the submission of the State Counsel.

b. Conditional bail

This is bail that is granted on condition that the alleged offender fulfills certain requirements. This type of bail is governed by S. 224 of the CCPC. This section provides that any person lawfully remanded may be granted bail on condition that he fulfils one of the conditions referred to in S. 246(g). The conditions aim at ensuring particularly his appearance either before the judicial police or any judicial authority. As earlier indicated persons charged with felonies punishable with life imprisonment or death cannot benefit from this type of bail. The CCPC in Section 246 empowers the Examining Magistrate to subject the defendant by a ruling to judicial supervision or replace such measure, where the defendant is in detention with one or more of the obligations provided for in Sections 41 and 42 of the Penal code. In order to ensure the appearance of the defendant, he may also by virtue of the provisions of S. 246(g) order him:

-either to deposit a sum of money, the amount and conditions of payment of which shall be fixed by the Examining Magistrate taking into consideration the resources of the defendant;-or provide one or more sureties in accordance with the provisions of section 224 et seq.

In effect the Cameroonian legislator provides a mechanism that can permit the alleged offender to accede to liberty even after detention while the investigation or trial is still going on.

4. Recognizance

Except in the case of minors, this measure is applicable without any offence having yet been committed. For the measure to be applicable, the behavior of the person in question should leave no doubt of his intention to commit an offence. Mere apprehension no matter how serious is not enough for this measure to be applicable. The Cameroonian Penal Code (CPC) in its S. 46(1) provides that any person who by his conduct or by his utterances shall have exhibited an unambiguous intention to commit an offence which may disturb the public peace may be required by the President of the District Court to enter into a recognizance with or without solvent sureties in such sum as may be therein fixed to refrain from commission of any offence of the like nature for the duration of the period therein specified. The sum shall be fixed having regard to the resources of the person bound over.

The period of recognizance is fixed by Section 47 of the Penal Code. That Section provides that where the person required to enter into the recognizance is a habitual offender, the period of recognizance may extend to 3 (three) years, but shall not otherwise exceed (one) 1 year. That is to say for non-habitual offenders the period should not exceed a year.

Recognizances on behalf of minors are entered on their behalf by their parents. Unlike recognizance by adults which could be entered without any offence having been committed that of minors can only be done when an offence has been committed by the minor. S. 48 of the CPC indicates that where a person under the age of 18 (eighteen) shall have committed any act defined as an offence, the President of the District Court may require his parents, guardians or person responsible under customary law to enter into the recognizance described by S. 46, to be forfeited if the said person shall commit any similar act within the space of 1 (one) year unless the obligor shall prove that he took reasonable steps to avoid the minors committing the offence.

Where a person required to enter into a recognizance does not do so, or fails to find the sureties required, he may be immediately taken into custody until he shall have complied with the order; but such custody may not exceed the period for which the recognizance was required. Except under S.48, the obligations described in S. 42(1) and 2 may be substituted for custody [17].

Upon conviction of an offence covered by the recognizance the District Court shall without prejudice to any penalty incurred for the offence order forfeiture of the sum therein fixed. Payment of the said sum shall be enforced as against the person bound over in like manner as if it were a fine, and as against the sureties by any civil process. Recognizance thus permits an individual who is a threat to public order to retain his liberty on condition that his threats do not materialize.

5. Restitution of the *corpus delicti* in exchange of freedom

The general principle under Cameroon criminal law as laid down in S.94(1) of the CPC is that an attempt to commit an offence is punishable in like manner as the complete commission of the offence. In 2011 Cameroon established a Special Criminal Court to hear and determine matters where the loss amounts to at least 50 million cfa francs relating to misappropriation of public property and other related offences provided for in the penal code and international conventions ratified by it [18].The Cameroonian legislator in order to encourage the restitution of the *corpus delicti* in the above mentioned offences for which the court is competent has departed from this general criminal law principle and provides a possibility of stopping prosecution in cases where it is highly probable that the accused committed the offence if he restitutes the *corpus delicti*. This is provided for by Decree No.2013/288 of 04 September 2013 fixing the modalities for the restitution of misappropriated funds. By virtue of Article 2 of the said decree, the initiative to restitute the *corpus delicti* may emanate from the accused himself or his legal representative.

From the provisions of Article 3(1) of Decree No.2013/288, in the case where the restitution of the *corpus delicti* is done before the committal order of the Examining Magistrate or the Inquiry Control Chamber [19], the *Procureur Général* of the Special Criminal Court may, subject to the authorization by the Minister in Charge of Justice, enter a *nolle prosequi* against the proceedings. Article 3(2) of the Decree of 04 September 2013 states that where the restitution is effected after committal to the trial court, the *Procureur Général* of the Special Criminal Court may subject to the authorization by the Minister in Charge of Justice enter a *nolle prosequi*

prior to any judgment on the merits and the court seized shall pronounce the forfeitures under S.30 of the Penal Code [20] and note same in the criminal record of the accused.

The restitution could be done in cash or in kind. As indicated by Article 4(2) of Decree No.2013/288, it is in cash when the accused restitutes the totality of the sum imputed on him or restitutes the value of the immovable or movable property dissipated in cash. Article 4(3) states that it is in kind when the accused restitutes movable or immovable property whose value corresponds to the sum imputed on him.

Restitution in cash is done by the payment of the totality of the amount imputed on the accused into the public treasury, evidenced by a receipt. The receipt of payment is handed to the authority before whom prove of restitution in cash is required. This is done either at the Chambers of the *Procureur Général* of the Special Criminal Court or to the President of the Special Criminal Court or at the hearing of this Court. Prove of restitution could also be presented during Police investigation or during Preliminary inquiry.

Article 7 of the Decree on restitution provides that when the proof of restitution is presented at the phase of Police investigation, the *Judicial Police officer* will have to record it. The record expressly mentioning the application of the accused for the proceeding against him to be stopped accompanied with the receipt of payment of the sum imputed on him, is transmitted to the *Procureur Général* of the Special Criminal Court within a maximum period of 72 hours. The *Procureur Général* transmits the records with a copy of the receipt of payment, with his opinion to the Minister in Charge of Justice within the delay period mentioned above.

When the proof of restitution in cash by virtue of Article 8 of the above Decree is presented to the *Examining Magistrate* he will record it and indicate the application of the accused for proceeding against him to be stopped. This record accompanied with the receipt of payment is transmitted to *Procureur Général* of the Special Criminal Court within a maximum period of 72 hours. The *Procureur Général* transmits the records with a copy of the receipt of payment, with his opinion to the Minister in Charge of Justice within the delay period mentioned above.

When the proof of restitution is furnished to the *Procureur Général* of the Special Criminal Court, Article 9 of the Decree states that he will record it and indicate the application of the accused for proceeding against him to be stopped. The record and the copy of the payment receipt, including his opinion are transmitted to the Minister in charge of Justice within a maximum period of 72 hours.

By the provisions of Article 10(1) of the decree under discussion when the proof of restitution is presented to the *President of the Special Criminal Court* in his office, he will record it and indicate the application of the accused for proceeding against him to be stopped. This record accompanied with the receipt of payment is transmitted to the *Procureur Général* of the Special Criminal Court within a maximum period of 72 hours.

The *Procureur Général* transmits the records with a copy of the receipt of payment, with his opinion to the Minister in charge of Justice within the delay period mentioned above.

When the proof of restitution in cash and the application for proceeding to be stopped is done at the hearing of the Special Criminal Court, the President of the collegial bench will mention this in the record. The extract of the record and the payment receipt will have to be transmitted to the *Procureur Général* within a maximum period of 72 hours. The *Procureur Général* transmits the records with a copy of the receipt of payment, with his opinion to the Minister in charge of Justice within the delay period mentioned above.

In case of a proposition for restitution in kind, the offer is made exclusively to the *Procureur Général* of the Special Criminal Court. This is so provided in Article 11(1) of the above decree. The *Procureur Général* of the Special Criminal Court will record this, indicating the application of the accused for proceedings to be stopped against him. A copy of the record and proof of the material existence of the property are transmitted by the *Procureur Général* to the Minister in Charge of Justice within a maximum duration of 72 hours. The Minister in Charge of Justice will then seize the competent administration for evaluation of the property *movable or immovable* offered for restitution within a period fixed by him. The cost involved in the evaluation and the remuneration of the experts *(frais d'expertise et honoraries)* shall be borne by the accused. Restitution in kind is evidenced by a record produced by the competent administration in the presence of the accused and a Magistrate of the Legal department. The said record and all other useful documents shall be handed to the *Procureur Général* of the Special Criminal Court.

After evaluation the Minister in charge of Justice transmits the documents related thereto to the *Procureur Général* of the Criminal Court for him to notify the accused. The *Procureur Général* will transmit copies of the records related to the evaluation, with his opinion to the Minister in Charge of Justice within a maximum period of 72 hours.

These possibilities of restitution and *nolle prosequi* are today offered to a defendant or an accused that misappropriates less than 50 million cfa francs and has to be tried in other ordinary law courts. In this case the Judicial Police Officers, the State Counsels, the Examining Magistrates, the Presidents of the Courts of First Instance, the Presidents of the High Courts, and the *Procureur Général* of the Appeal Courts shall respectively be seised.

6. *Nolle Prosequi*

The Criminal Law of Cameroon provides a mechanism which gives powers to the Minister in charge of Justice for certain reasons to order for the discontinuation of criminal proceedings at any stage before judgment is delivered by the court of law. This power is contained in the CPCC and the Decree of September 2013 on the restitution of the *corpus delicti* in cases of corruption and embezzlement. This power can be exercised by the Minister of Justice if and only if judgment in a case has not been pronounced by the Court. Once judgment has been rendered his power to discontinue proceedings is extinct and opens the way for presidential pardon or clemency if need be. Article 64(1) of the CCPC states that the *Procureur Général* of a Court of Appeal may by express authority of the Minister in Charge of Justice enter *a nolle prosequi* at any stage before judgment on the merits is delivered, if such proceeding could seriously imperil social interest or public order. Once this is done, the Examining Magistrate or the court shall record the fact of discontinuance of the criminal action, and order if need be, the cancellation of any warrant against the suspect of the accused. Questions have been asked as to whether *nolle prosequi* does not leave a victim unprotected? In order to address this worry, the CCPC empowers the Examining

Magistrate or the Court to continue with the matter for the purpose of determining the civil claim. However the discontinuance of the criminal proceedings shall be without prejudice to their reinstitution when this becomes necessary. It will therefore mean that the successful entry of a *nolle prosequi* discharges but not does not acquit the alleged offender.

The power to enter a *nolle prosequi* is also accorded to the Minister of Justice by virtue of the September 2013 Decree on the restitution of the *corpus delicti* in cases of corruption and misappropriation of funds. As said before, this is to encourage those who have been accused of corruption and misappropriation of funds to restitute proceeds obtained from such illegal acts. Once they proceed to restitute within the procedure provided by law, the minister of Justice may order for the entry of a *nolle prosequi*.

The immediate consequence of a successful entry of a nolle prosequi for an alleged offended who is in police or prison custody is that he will be released and he will thus regain his liberty of free movement.

7. Suspension of Sentence

This measure deals with the modifications to which sentence is liable at the moment when it is passed**.** A suspended sentence means a sentence suspended when passed. This simply means that the judgment carries a sentence, but the court suspends its enforcement**.** Suspension of sentence may apply equally to loss of liberty and to fines. Suspended sentence in Cameroon is governed by S. 54 of the CPC. This section provides that subject to any contrary provision of law, upon conviction for a felony or misdemeanour of an offender not previously sentenced to imprisonment, or where after such sentence his conviction has been expunged, the court may, for reasons to be recorded in the judgment, suspend for a period of from 3(three) to 5(five) years or less, or for fine not imposed under S. 92(2) of the code [21]. Such suspension however will not affect any accessory penalty [22] or preventive measure [23] resulting from the conviction.

The Code also provides that where within the period so fixed, calculated from the date when the judgment becomes final, the offender commits a further felony or misdemeanor for which he is sentenced to imprisonment and where such sentence is not suspended on probation, both sentences shall be served consecutively, that which has been suspended under this section being served first. Should the convict be of good conduct within the period of suspension the expiry of the said period shall produce the effects of rehabilitation provided for in the CCPC [24]. That is his conviction shall be expunged. The decision to suspend a sentence is at first revocable, though later becoming irrevocable. The explanation given to this is that if the convict benefits from a suspended sentence and does not demonstrate good conduct within the period required he will serve the penalty imposed, but if he is of good conduct after expiry of the period the conviction is expunged.

The mechanism of suspension of sentence provided by the Cameroonian legislator in the CPC has a very humane character especially as far as first offenders are concerned. It is a sword of damocles hanging over their heads. While providing them a benefit of liberty, it also tries to ensure conduct control in the future.

8. Benefits from mitigating circumstances

Mitigating or extenuating circumstances are conditions and factors that do not excuse or justify an offence, but that are taken into consideration when considering the consequences of the legal and moral culpability of the guilty party [25]. Mitigating circumstances are weighed during sentencing against their opposing aggravating factors which increase the moral and offensive nature of the crime in question [26]. The CPC provides that the benefit of mitigating circumstances may be given, for reasons to be recorded in the Judgment, save where they are by law expressly excluded [27]. Contrary to defences whether absolute (resulting in irresponsibility) or partial resulting in (diminished responsibility) which are set forth in the Code and which are of right, mitigating circumstances are not catalogued and are in the discretion of the court. Section 93 of the CPC however contains an outline of what most usually constitutes mitigating circumstances [28]. The CPC provides a guideline for the attitude of judges when sentencing in the face of mitigating circumstances. This depends on whether the offence is felonious on the one hand or a misdemeanour or simple offence on the other hand. With regards to trials relating to felony the code provides that upon a finding of mitigating circumstances in favour of any person convicted, the sentence may be reduced to not less than ten years loss of liberty if the offence be punishable with death, to not less than five years if it be punishable with loss of liberty for life, and to not less than one year in any other case [29]. In the event where the penalty is reduced to ten years or less the court may add a fine of up to two million francs [30]. Upon a finding of mitigating circumstances after conviction of misdemeanor or simple offence, the court may reduce to five days any sentence of loss of liberty and any sentence of fine to one franc, and may pass sentence of one such penalty only [31]. The CPC in S.92(2) provides that in the event where the offence is by law punishable with loss of liberty only, the court may substitute a fine of up to one million francs for misdemeanour or up to twenty-five thousand francs for simple offence. Mitigating circumstances where available therefore plays a very important role in reducing the full measure of punishment which the offender would have endured in their absence.

II- Post -trial measures

After due process has been administered and the evidence demonstrates beyond any reasonable doubt that the accused has committed the offence he will be convicted and sentenced. The sentence may be a mixture of principal and accessory penalties coupled with preventive measures. This opens a very difficult moment for the convict. His liberty of free movement may be curtailed and he could be under a heavy burden to pay a fine. After sentence and provided the matter becomes *res judicata*, some factors may intervene to alleviate the hardship which the convict may have to endure as a consequence of the verdict. These factors may present themselves in different forms such as presidential pardon; the effect of the principal penalty remaining unenforced (prescription of sentences); considerations for exoneration based on status of persons in situation of imprisonment for non- payment of fines; expungement of the conviction by the good conduct of the convict within the period of a suspended sentence, rehabilitation and amnesty.

1. Pardon

In Cameroon the power to pardon is bestowed as a republican tradition on the President of the Republic by Article 8(7) of the Constitution. This constitution provides that the President of the Republic shall exercise the right of clemency after consultation with the Higher Judicial Council [32]. In the exercise of the right of clemency the President of the Republic is subject to no rules. The CPC for the purpose of clarity defines the word "*pardon*" within the criminal context, for the purpose of application of the presidential power of clemency. It defines pardon as the commutation or remission in whole or part and with or without conditions, of a penalty or preventive measure or of the obligations of a probation order [33]. Commutation refers to the substitution of one penalty for another. Remission is the reduction of the term of a penalty without varying its nature. Remission may be partial or total. It is worth noting that both commutation and remission may be subject to conditions of which the President of the Republic is the sole judge. In case of breach of such condition, the sanction would be the automatic lapse of the grant of pardon. The power to pardon bestowed on the President of the Republic by the constitution could be criticized on the grounds that it opens a vent for executive encroachment into the judiciary. The machinery put in place to counter this criticism is the fact that the right of pardon is exercised by the President of the Republic after consultation with the High Judicial Council. The Higher Judicial Council is an organ put in place by the constitution to assist the President of the Republic in the process of appointment of Magistrate and disciplinary action against judicial and legal officers [34]. This organ is composed of representatives of the legislative, executive and judiciary organs. The Presidential decision on pardon is therefore arrived at after concertation between all the organs of government. Consequently the argument on encroachment by the President into judiciary action falls. It is a purely compassionate measure designed to alleviate the hardship of the sentence on the convict. For a convict to benefit from a presidential pardon the process of litigation must have come to an end. His matter must not be pending before any jurisdiction. Even a matter on appeal disqualifies a convict from the grace of presidential pardon. When it comes to reducing the prison population, the power of pardon is frequently used as a vital mechanism of mercy, tempering the harsh and inequitable effects of the criminal legal system.

2. Prescription of sentences

Prescription of sentences is governed by article 67 of the Cameroonian Penal Code. This section provides that: where a principal penalty has remained unenforced for the following periods after judgment has become final, neither it nor any accessory penalty or preventive measure accompanying it may any longer be enforced:

a. For felony: 20 (twenty) years;
b. For misdemeanor and simple offence tried with misdemeanour 5(five) years;
c. For any other simple offences: 2(two) years.

It also provides that prescription shall be suspended while enforcement of the sentence is prevented by any consideration of law or of fact apart from the offenders will. Time shall begin to run again on the intervention of an enforcement measure taken before the completion of the period. A person convicted in default may no longer appear to serve his sentence after prescription.

The compassion expressed by this measure can be explained by the possibility which time factor can play in reforming the alleged offender. Time may cause a positive change in his character and there would be no need submitting him to the harshness of a criminal sanction.

3. Compassion towards categories of person in relation with imprisonment in default of payment of fines

One of the objectives of the Criminal Procedure Code of Cameroon is to facilitate the recovery of fines as soon as judgment is delivered. To achieve this goal it provided a system of imprisonment in default of payment of fine, that is, if the convict cannot pay his fine, it is converted to an imprisonment term which he will have to serve [35]. Impecuniousity of the convict is therefore not a defence for non-payment of fines.

However the code provides three measures to alleviate the trouble which comes with the non-payment of fines:

Firstly, S.560(1) of the CCPC provides that, the convict who completes the execution of its imprisonment warrant and cannot pay his fines may be granted bail after furnishing a surety guaranteeing payment of the pecuniary sentence within a period of two months from the day following the signing of the recognizance by the surety;

Secondly, S.565 of the CCPC indicates that pregnant women, persons who are less than 18 years and more than 60 years of age may not be imprisoned in default of payment of their fines [36].

Thirdly, S566 of the CCPC states that an order of imprisonment in default shall not be executed simultaneously against husband and wife even for the recovery of sums relating to different sentences.

These measures give to the Criminal Procedure Code as far as this issue is concerned a humanitarian outlook.

4. Expungement of the conviction

The direct consequence of a conviction of an accused is a sentence. Sentence can take many forms including loss of privileges, house arrest, community service, probation, fines and imprisonment. Expungement of a conviction is a mechanism which has the effect with few exceptions of putting the offender back in the position which he would have occupied if he had never been convicted. When an expungement is effective the criminal record of the convict is cleared; the sentence no longer counts as a previous conviction; preventive confinement are dropped and the potency of the conviction to serve as a disqualification for suspended sentence is destroyed. Expungement may be produced by expiry of the term fixed for suspension of sentence, by rehabilitation or by amnesty.

A. Expungement by expiry of term fixed for suspension of sentence

As explained above, after the trial and conviction of the accused, the court may run to the conclusion that the accused has hitherto been of good conduct and will decide to suspend the sentence it passes. If within the period for which the sentence is suspended, the convict is of good conduct, the expiry of that period will produce the effect of rehabilitation, which is expungement.

B-Rehabilitation

Rehabilitation as provided for in S.69 (1) of the CPC is a measure which, unless otherwise provided by law, expunges a conviction for felony or misdemeanour. It puts an end to any accessory penalty and to any preventive measure except to confinement in a health institution and closure of an establishment. As provided for under S.69 (2) of the CPC where a person has been convicted more than once, rehabilitation shall apply to all the convictions. Rehabilitation shall be of right or by court judgment. In order to qualify for rehabilitation, whether by lapse of time or by court order, the offender must have served any principal penalty of loss of liberty and paid all fines, subject to any remissions and to prescription.

1. Rehabilitation as of right

Rehabilitation as of right is offered to an offender who must show a complete absence of conviction during the time prescribed by law. Sentences of fine only and conviction for simple offences cannot be a bar to rehabilitation as of right. According to S. 70(1) of the CPC any offender who has not had any further sentence of imprisonment for felony or misdemeanor shall as of right be rehabilitated upon expiry of the following periods: five (5) years, for a sentence of fine; ten (10) years for a single sentence of imprisonment of up to six months; fifteen (15) years for a single sentence of up to two years; twenty (20) years for a single sentence of up to five years.

Section 70(4) of the CPC prescribes the point from which these times are to be calculated. The said periods shall run, in the case of a sentence of fine, from the date of payment or of prescription,and in the case of loss of liberty, from the date of expiry of the sentence, taking into consideration any remission or prescription.

Even with two or more convictions rehabilitation is still possible, but the time is longer: two convictions whose sentence are current count as a single conviction but in the case of a single sentence of more than five years, or several sentences totaling more than two years, rehabilitation by lapse of time is no longer available. It can be granted only by order of the court.

2. Rehabilitation by court

The law provides for the possibility of any offender to apply to the Court for rehabilitation.

The length of time fixed to qualify for application for rehabilitation in Court is mandatory. Rehabilitation may only be applied for after 5 (five) years in the case of a conviction for felony and after 3 (three) years in the case of a conviction for misdemeanour. These time-limits shall run from the date following the day of release in the case of a sentence to loss of liberty, or payment in the case of a fine. The time-limit prescribed in subsection (2) above shall be doubled in case of persons with a previous conviction. These periods start from the same point as in the case of rehabilitation by lapse of time and must expire before the application is filed. The jurisdiction to entertain the application for rehabilitation will be the High Court.

The members of the deceased family may obtain the moral satisfaction offered them by section 72 to apply for rehabilitation. Where the deceased has already lodged an application before his death it is open to the legal department to prosecute it; but the department is not bound to do so and the family would therefore be well advised to ascertain its intentions. In the case of death of the applicant, any application for rehabilitation already filed may be continued by the Legal Department.

C. Amnesty

Amnesty is a decision by a government to forgive people who have committed particular illegal acts or crimes, and not to punish them. In Cameroon its foundation is constructed by the Constitution. Amnesty is granted by law and expunges the conviction from the moment of its promulgation. In this light, S.73(1) of the CPC indicates that without prejudice to any civil right, an amnesty shall expunge a conviction and shall put an end to the enforcement of all penalties, whether principal or accessory, and of all preventive measures pronounced in consequence of the conviction, save confinement in a health institution and closure of an establishment. Once an amnesty law has been adopted and promulgated, the immediate effect will be to bar the commencement or continuation of any prosecution. This is as a result of the fact that the outward and visible sign of an amnesty is that prosecution is barred based on the fact that the act amnestied ceases to be an offence.

However, while the offender draws certain benefits from an amnesty law, it is still incumbent on him to fulfill some of the obligations imposed by the sentence or loss certain privileges if the law does not say the contrary. For example: amnesty law will not relieve him from the liability for any expenses due to the treasury in respect of a conviction which has become final [37]; it shall not affect the right of the treasury to sums already collected in satisfaction of expenses, fines or confiscation [38]; it shall by itself neither restore to any decoration nor restore to any order forfeited [39]; it shall not of itself restore to any public service, employment or office, and shall give no right to restoration to the position in a public service which, but for the conviction, would have been attained [40].

In the case of an amnesty, the beneficiary still conserves his right to a review of his case. It must not deprive him of the opportunity to establish his innocence in fact.

Conclusion

The struggle against crime could be elevated as the manifest function of criminal law. It fulfills this by tracking and punishing offenders in order to establish social cohesion and deter others from involving themselves in criminal conduct. At the same time apart from criminal systems which embrace the death penalty, punishment aims at reforming the offender. When deterrence as a goal has been achieved and the offender reformed, there is need to inject a dose of humane actions into the criminal machinery in the form of human rights considerations. Human rights considerations have as objective the protection of the dignity of the human being. It is with this in mind that the author understands the preoccupation of the Cameroonian legislators with regards to compassionate measures they have injected into the criminal law system to alleviate the plight of the suspects, the defenders, the accused persons and the convicts. They are laudable measures and we can only encourage their implementation. Criminal actors who benefit from them may pay back by reintegrating themselves in the society with a pledge to avoid recidivism.

References

1. See, Section 59(3) of the Criminal Procedure Code of Cameroon (CPCC). See also, Keubou Phillipe, *Précis de Procédure Pénale Camerounaise*, Presses Universitaires d'Afrique, Yaoundé, 2010, 91-101.
2. See, Burrows A.S., *Remedies for Torts and Breach of Contract*, 1987, London, Butterworths, p.16. In *Robinson v. Harman* (1848)1Exch 850 at 855 Parke B said, " The rule of common law is that where a party sustains a loss by reason of a breach of contract he is, so far as money can do it, to be placed in the same situation with respect to damages as if the contract has been performed." Lord Blackburn's Statement in *Livingstone v. Rawyards Coal Co*., (1880) 5 App Cas 25 at 39, is probably the most cited tort authority on this. He said that the measure of damages was: "*that sum of money which will put the party who has been injured, or who has suffered, in the same position as he would have been in if he had not sustained the wrong for which he is now getting his compensation or reparation*".
3. As laid down in *Addis v. Gramophone Co* Ltd, [1909] AC 488, punitive damages are not awarded for breach of contract. However they could be awarded for torts. See Lord Devlin's Judgment in *Rookes v. Barnard* [1964] AC 1129 for situations in which punitive damages can be awarded for torts.
4. Merriam-Webster Dictionary available at htts://www.merriam-webter.com visited on 02 /06/2021.
5. Due process is based on the *principles of fundamental fairness* which advocates the idea that legal procedures are required to be followed in proceedings.
6. This is the body in charge of Police Investigations. In this light they are responsible for: Investigating of offences, collecting evidence, identifying offenders and accomplices and bringing them before the Legal Department; executing rogatory commissions of Judicial Authorities; serving court processes and executing warrants and Court decisions. See. S. 82 of the C.P.C.
7. This is the Head of the Legal Department, the organ responsible for criminal prosecution in Cameroon.
8. This is the officer in charge of conducting Preliminary Inquiry within the court system in Cameroon.
9. Where a written or oral report against an alleged offender is made by the victim of the offence to the State Counsel, it is considered as a complaint. See, S. 135 (4)(a) of the CCPC.
10. Where a written or oral report against an alleged offender is made by a third party to the State Counsel it is considered as information. See again S. 135 (4)(a) of the CCPC.
11. See, S. 8 of the CPCC, which states that any person suspected of having committed an offence shall be presumed innocent until his guilt has been legally established in the course of a trial where he shall be given all necessary guarantees for his defence. This principle is also enshrined in the preamble of the Cameroonian Constitution.
12. This is the Head of the Legal Department of the Regional Courts of Appeal, the Special Criminal Court, and the Supreme Court in Cameroon.
13. *See,* S. 68 (1) of the CCPC. It shall be considered as *de jure bars* where: a) there is an interlocutory plea against the judgment being given; b) there is parliamentary immunity; c) a fiat to prosecute is being awaited; d) an appeal to the Supreme Court has been lodged; and e) there is a conflict of jurisdiction. See S.68 (2) of the CCPC.

    The *de facto bars* shall include the following: a) invasion of the territory by enemy forces; b) insanity of the suspect, the defendant or the accused after the commission of the offence; c) the escape of the suspect, defendant or accused; d) the enlisting of the case for hearing; e) adjournment of the case entered in the record- book; and f) the fact that a court by failing to perform an act within its jurisdiction, has prevented a party from exercising his legal rights to take action or to defend himself. See S.68 (3) of the CCPC.
14. The right to bail under Indian Criminal Laws, p.1.
15. See, S. 142 (1) & (2) of CCPC and also S. 25 (1) of the 2006 Law on Judicial Organization in Cameroon.
16. Bryan A. Garner, *Black's Law Dictionary*, 7th edn., West Group St. Paul Minn, 1999, at P. 1199, cited by Tabe (T.S.) in "A look at preliminary inquiry under Cameroon Criminal Procedure Code" in Ewang (S.A), *Readings in the Cameroon Criminal Procedure Code*, Presses Universitaires d'Afrique, Yaounde, 2007 p. 52.
17. See, S. 49 of the CPC.
18. Law No. 2011/028 of 14 December 2011 as amended by law no. 2012/011 of 16 July 2012.
19. The Inquiry Control Chamber is one of the benches of the Regional Appeal Courts in Cameroon where appeals against the decisions of the Examining Magistrates on issues relating to Preliminary Inquiries could be lodged.
20. The forfeitures applicable under S.30 of the CPC are: 1) removal and exclusion from any public service, employment or office; 2) incapacity to be a juror, assessor, expert referee or sworn expert; 3) incapacity to be guardian or committee, save of the offender's own children, or member of a family council;4) prohibition on wearing any decoration; 5) prohibition on serving in the armed forces; and 6) prohibition on keeping a school, on teaching in any educational establishment, and in general on holding any post connected with the education or care of children.
21. S.92(2) of the CPC states that: where the offence is by law punishable with loss of liberty only, the court may substitute a fine of up to one million francs for misdemeanour or up to twenty-five thousand francs for simple offence.
22. See. S. 30 and 33-35 of the CPC for examples of accessory penalties.
23. See. S. 36, 37, 40, 43 - 45 of the CPC for examples of preventive measures.
24. See, S.676.
25. Truitt Benjamin, "Mitigating Circumstances in Law: definition, meaning and examples'', Video & Lesson study.com
26. Ibid.
27. See, S. 90 of the CPC.
28. That section states that: Sentence of penalty or measure shall vary within such limits as may be prescribed or authorized by law, according to the circumstances of the offence and to the public danger which it may represent, to the circumstances of the offender and to

the likelihood of his reformation, and to the practical means of carrying out. This the court should consider in its selection of sentence.

29. See, S. 91(1) of the CPC.
30. *Ibid*, S. 91(2).
31. *Ibid*, S.92 (1).
32. The organization and functioning of the Higher Judicial Council is established by Law No.82/14 of 26 November 1982 as amended by Law No.89/16 of 28 July 1989. Its members are designated by the National Assembly, the Supreme Court and the President of the Republic.
33. See, S.66 of the CPC.
34. See, Article 37(3) of Law No.96-6 of 18 January 1996 amending the Cameroonian Constitution of 2 June 1972.
35. See, S.564(1) of the CCPC which states that: in matters of fines, the duration of imprisonment in default shall be fixed as follows: a) twenty (20) days for amounts not exceeding 10.000francs; b) forty (40) days for amounts higher than 10.000 francs but not exceeding 20.000 francs; c) three (3) months, for amounts higher than 20.000 francs but not exceeding 40.000francs; d) six (6) months, for amounts higher that 40.000 francs but not exceeding 100.000 francs; e) nine (9) months, for amounts higher than 100.000 francs but not exceeding 200.000francs; f) twelve (12) months, for amounts higher than 200.000 francs but not exceeding 400.000francs; g) eighteen (18) months for amounts higher than 400.000 francs but not exceeding 1000.000 francs; h) two (2) years, for amounts higher than1.000.000 francs but not exceeding 5.000.000francs; i) five (5) years for amounts exceeding 5.000.000francs. However Sub-section 2 indicates that in matters of damages to the civil party, the periods provided for in sub- section 1 shall be reduced by half.
36. *Ibid*, S. 565.
37. *See*, S. 73(3) of the CPC.
38. *Ibid*, S.73(4).
39. *Ibid*, S.73(5).
40. *Ibid*, S.73 (6).