



E-ISSN: 2789-9500  
P-ISSN: 2789-9497  
IJCCSL 2022; 2(1): 29-35  
© 2022 IJCCSL  
www.criminallawjournal.org  
Received: 25-10-2021  
Accepted: 12-12-2021

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## The emerging constitutional rule of the right to counsel in criminal trials in Cameroon

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### Abstract

The constitutional right to counsel is a very necessary and practical one. The ordinary person accused of crime has little if any knowledge of law or experience in its application. He is ill prepared to combat the arsenal of statutes, decisions, rules of procedure, technicalities of pleading and other legal weapons at the ready disposal of the prosecutor. Without counsel, many of his elementary procedural and substantive rights may be lost irretrievably in the intricate legal maze of a criminal proceeding. In Cameroon, the right is guaranteed by the Constitution followed by other local legislations like the Criminal Procedure Code and the 2009 Legal Aid Law, all of which have reinforced the Constitutional and UN Declarations on the strict respect of the right to counsel. We concluded and suggested that the right will only be meaningful if there is effective representation at every step of the proceeding. Thus, the accused should not stand alone at any stage of the prosecution, whether formal, or informal, in court or out of court. And finally that any limitations provided by the law with respect to felonies and misdemeanors must be exercised in good faith, with care and in the interest of justice and fair hearing. Thus, the restriction should not be intended to punish nor victimize the accused.

**Keywords:** emerging constitutional rule, counsel, counsel

### 1. Introduction

Cameroon has engaged huge steps in inaugurating credible laws, all in the preservation and protection of fundamental human rights of suspects and persons standing trial under criminal law <sup>[1]</sup>. The right to counsel is one of the most important rights of a person accused of having committed a crime. It is important for obvious reasons in that most laymen know little or nothing about the law, and particularly about legal procedure. Without the assistance of counsel, most persons accused of crime are likely to have inadequate defence. In the words of Peter Anyebe <sup>[2]</sup>, “A defendant needs a lawyer as urgently as a sick man needs a doctor”.

#### **According to Samuel Dash, <sup>[3]</sup>:**

Without the assistance of counsel, the defendant is practically powerless to challenge the prosecution. It is the lesson of human experience that, even in the case of most well-intentioned prosecutors, the absence of such a challenge can result in carelessness and failure to review the evidence and properly prepare the case, which makes it easier to convict the innocent.

Thus, the development began in 1932 in *Powell v. Alabama* <sup>[4]</sup>. In that case, the Supreme Court of the United States of America ruled that the due process clause of the Fourteenth Amendment required such appointment of counsel in a state prosecution, at least in a capital case. Here, the court set aside the convictions of eight (8) black youths sentenced to death in a hastily carried-out trial without benefit of counsel.

**According to Justice Sutherland:** The court is always required to observe certain fundamental human rights associated with a hearing, and the right to the aid of counsel is of this fundamental character.

This observation was about the right to retain counsel of one's choice and at one's expense, and included an eloquent statement of the necessity of counsel. The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by a counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crimes, he is incapable, generally of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of a counsel, he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible.

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He will be seen to lack both the skill and knowledge adequately to prepare his defence.

Similarly, in 1963, the U.S Supreme Court in the case of *Gideon v. Wainwright*,<sup>[5]</sup> ruled that the Sixth Amendment, right to counsel is, “fundamental and essential to a fair trial”. It rendered it obligatory upon the states by the Fourteenth Amendment that the appointment of counsel is required for an indigent defendant in any state prosecution.

## 2. The right to counsel as an emerging constitutional rule

Moved by the constitutional protection of the right of indicted persons in the US, Cameroon as a nation could not be indifferent and being a signatory to the UN 1948 Universal Declaration of Human Rights and the 1965 African Charter on Human and People’s Rights, the concept of legal representative of one’s choice in criminal matters was adopted and incorporated in its Constitution<sup>[6]</sup>. For avoidance of repetition, both the 1948 UN Universal Declaration of Human Rights and the African Charter on Human and People’s Rights have been incorporated as provisions of the Cameroon Constitution that serves as the most supreme national legal instrument. The constitutional right to counsel and its importance was well articulated and explicitly emphasized in the case of *Canizio v. New York*<sup>[6]</sup> thus:

The constitutional right to counsel is a very necessary and practical one. The ordinary person accused of crime has little if any knowledge of law or experience in its application. He is ill prepared to combat the arsenal of statutes, decisions, rules of procedure, technicalities of pleading and other legal weapons at the ready disposal of the prosecutor. Without counsel, many of his elementary procedural and substantive rights may be lost irretrievably in the intricate legal maze of a criminal proceeding. Especially this is true of the ignorant, the indigent, the illiterate and the immature defendant.

In line with the above, the Constitution of the Republic of Cameroon, in its Article 7 (1) of the African Charter on Human and People’s Rights provides that:

Every individual shall have the right to have his cause heard. This comprises: (c) The right to defence, including the right to be defended by counsel of his choice.

On the other hand, Article 11(1) of the UN Universal Declaration of Human Rights provides thus:

Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

What is very interesting with the provisions of Article 11(1) of the UN Declaration is that, a series of rights in “penal offences” is guaranteed. This includes the right of presumption of innocence which is expressly guaranteed. Even though the right to counsel is not expressly mentioned, the implied, full and meaningful interpretation of the words “all guarantees necessary for his defence”, must include the right to counsel and the right to fair hearing in general. The denial of the right to counsel in a penal or criminal trial will thus amount to the violation or breach of the principle of fair hearing<sup>[7]</sup>.

It must be borne in mind that the guarantee of the right to counsel in criminal charges is not only an emerging constitutional rule peculiar to Cameroon alone. The rule appears to be universal. Having examined the various Amendments under the US Constitution above, we may randomly select a few countries in a bid to ascertain the extent to which the right to counsel is considered in their various

constitutions. Thus, according to Article 125 of the Constitution of the People’s Republic of China and Article 11 of the Criminal Procedure Law of 1996, Chinese citizens have the right to legal counsel in court. By this, a suspect under investigation has the right to retain a lawyer to assist in securing bail, making procedural complaints and seeking details from the police on the nature of the crime alleged.

In Ethiopia, the right to counsel is equally considered as a constitutional right under Article 20(5). It provides:

Accused persons have the right to be presented by legal counsels of their choice, and, if they do not have sufficient means to pay for it, a miscarriage of justice would result, to be provided with legal representative at state expense.

The Napoleonic Code of Criminal Instruction adopted in France in 1808 and inspired many similar Codes in Civil Law Countries, made it compulsory that the defendant should have a lawyer when tried in the Assize Court<sup>[8]</sup>. The conclusion reached here is that, all criminal defendants in France enjoy the right to counsel and the difference with Cameroon is that the right to counsel in France is extended to civil and administrative matters or to cases particularly to persons resident in France.

India on its part provides in Article 22 of its Constitution that: No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult and to be defended by a legal practitioner of his choice.

In 2011, the Supreme Court of India ruled that a court could not decide a case without a lawyer present for the defendant<sup>[9]</sup>, and mandated that a court in India must appoint a lawyer when the defendant cannot afford one<sup>[10]</sup>. From the foregoing discussion on the constitutional provisions of a few countries, it appears that the emerging constitutional right of counsel to an accused person standing trial in a criminal offence is not only peculiar to Cameroon. It is thus a human and universal constitutional right which must be upheld and preserved in the interest of the defendant who most often lacks legal knowledge in the complex issues involved in his trial.

The list of countries all over the world cannot be exhausted here. For even Canada operating a bi-jural legal system of the common and civil law respectively has equally guaranteed the right to counsel under s. 10 of the Canadian Charter of Rights and Freedoms. The section provides that, “upon arrest and detention”, the accused shall be entitled to a counsel for his defence, as well as the right to habeas corpus.

## 3. Reasons for Right to counsel

### 3.1. The requirement of fair hearing or trial

One of the essential declarations made in the preamble of the 1996 Constitution of Cameroon is that “...the law shall ensure the right of every person to a fair hearing before the courts...” The requirement of fair trial or hearing remains the corner stone of Cameroon’s criminal process. In practice, all criminal cases in Cameroon are cases initiated by the state at Magistrate and High Courts by state counsels. A fair trial or hearing therefore demands that accused persons should also be legally represented by counsels in such situations, including situations where the criminal cases have been appealed either to the Courts of Appeal or to the Supreme Court. The principle of fair hearing was extensively discussed in the Nigerian classical case of *Awolowo v. Minister of Internal Affairs*<sup>[11]</sup>. In that case, the court inter alia, held that the principle of fair trial was breached when the accused was refused the right to be defended by a counsel of his choice. It

is interesting to note that the counsel in that case though a foreigner was qualified to practice in Nigeria, held an international passport and fulfilled all the immigration rules yet he was refused entry into Nigeria and thus could not defend his client. The accused was thus tried and convicted. On appeal, it was held that the Nigerian constitutional right<sup>[11]</sup> of counsel of one's choice and the principle of fair hearing were breached and the conviction was set aside. On the strength of the holding of the court, we may humbly submit that the denial of counsel at any given stage, the right to defend his client amounts to breach of fair trial.

It must equally be noted that, another rule of fair hearing worth noting is that justice must not only be done but it must be seen to be done. This rule must be observed by the courts and once observed, it must go a long way to strength the right to counsel. Inherent in this rule are two principles of English law: (1) that one who decides must hear the two parties to the dispute (*audi alteram partem*) and (2) that there should be no evidence of bias, so that one should not be a judge in one's own cause (*nemo iudex in causa sua*). If for any reason, these two principles are not adhered to, it is for the court to declare that there has not been a fair hearing or trial. Thus, the denial of the right to counsel is an evidence of bias.

The right to fair hearing is covered under the Due Process Clause of the American Constitution and the Supreme Court there has used this to strike down not only legislation but also acts which in the opinion of the court were unreasonable, arbitrary or unnecessary and arbitrary interference with the right of the individual to his personal liberty including the right to counsel of one's choice<sup>[12]</sup>.

### 3.2. The low literacy level of suspects and ignorance of criminal procedure rules

The low literacy level of suspects, their ignorance of the rules of criminal procedure and evidence further justify the right to counsel. The ignorant and illiterate status of the accused persons was for example, responsible for the setting aside of the convictions of 8 boys in *Powell v. Alabama*<sup>[13]</sup>. Consequently, there is a compelling need in Cameroon to ensure legal representation of persons standing trial, because of the so many who are poor and ignorant, who may suffer unwarranted invasion of rights without realizing it<sup>[14]</sup>. For obvious reasons, most laymen know little or nothing about the law, and particularly about legal procedure. Without the assistance of counsel, most persons accused of crimes are likely to have inadequate defence. A defendant needs a lawyer as urgently as a sick man needs a doctor.

### 3.3. Adoption of the adversary accusatorial trial process

Unlike French inquisitorial trial process where the judges play an active and investigative role, the adversary accusatorial trial process adopted from the common law system by Anglophone Cameroon by virtue of her colonial heritage stands out as the prominent justification for the recognition of the right to counsel under Cameroon's criminal process. The hallmark of this system is that it foists the burden of proving the guilt of the accused person beyond all reasonable doubt on the prosecution<sup>[15]</sup>. The new Criminal Procedure Code of Cameroon<sup>[16]</sup> appears to have harmonized the situation and the position now is that of the accusatorial system which insists on fair trial, the presumption of innocence as well as the right to counsel of one's choice<sup>[17]</sup>.

In the light of the foregoing, the adversarial system limits our judges to being passive, attentive but neutral listeners and

umpires. Oputa J.S.C.,<sup>[18]</sup> examining a similar situation in Nigeria justified the right to counsel thus:

We operate the adversary system. The major feature of this system is the passive and inactive role of judges in the prosecution of cases in courts. The system emphasizes the active role of the counsel for the prosecution and for the defence.

### 3.4. Lack of the basic knowledge in forensic law

Accused persons in Cameroon whether literate or illiterate, most often lack the basic knowledge in forensic law. Consequently, they are hardly able to effectively defend themselves. Even if the accused is trained in forensic law, it is doubtful if he can completely and dispassionately defend himself under the criminal process. What is more, there are many lawyers who cannot defend themselves just as the doctor who has a sickness may not be the best healer of himself<sup>[19]</sup>. In this regard, even a lawyer standing criminal trial needs the assistance of a counsel.

The foregoing reasons, therefore, are few of the various reasons why an accused must have a right to counsel in Cameroon's criminal process. Thus, a complete and balanced discussion is required and this involves the exposition of the legislative position under the criminal process.

## 4. Scope of the right to counsel under criminal law

### 4.1. The Criminal Procedure Code<sup>[20]</sup>

According to s. 170

1. The Examining Magistrate shall inform the defendant during his first appearance that he is now before an Examining Magistrate and shall not thereafter be heard by the police or the gendarmerie on the same facts except by rogatory commission and that if the inquiry confirms the charges preferred against him, he shall be committed for trial before the competent court.

2. The Examining Magistrate shall in addition inform the defendant that:

- a) he is free to reserve his statement
- b) he has the choice to prepare his defence either without counsel or with Assistance of one or more counsels;
- c) where he is represented by more than one counsel, he shall give the name and address of one of them to whom all summonses and processes shall be addressed;
- d) where he cannot immediately brief counsel, he shall be free to do so at any time before the close of the inquiry.

3. Where the defendant immediately briefs one or more counsel, the Examining Magistrate shall state the names and addresses of such counsel as well as the address of the one on whom all documents of the inquiry and summonses shall be served.

4. Where the defendant who has briefed counsel manifests his intention to make a statement immediately in the absence of his counsel, the Examining Magistrate shall simply record the statement without asking him questions concerning his criminal responsibility.

While s. 172 (1) provides that: Counsel for the defendant shall have the right to defend his client whenever he appears before the Examining Magistrate.

The provisions of the Criminal Procedure Code have not however been exhausted. But from the partial provisions of sections 170 and 172, it is very clear that right to counsel in Cameroon is not only a constitutional right. It is equally a criminal procedure right which must be upheld and implemented to the fullest at all times by Examining

Magistrate in Cameroon. Thus, the non-respect of this fundamental right to counsel will provide a good ground for appeal where the defendant is convicted.

Five salient points are discernable from the foregoing provisions of the Criminal Procedure Code:

- (1) That, the right to counsel is that of the defendant's choice. This implies that the counsel or counsels shall be lawyer(s) of the defendant's choice or wish. He definitely cannot be imposed a counsel. This position is different from that provided under the Legal Aid Law where the state furnishes the defendant with a counsel not necessarily one of his choice.
- (2) That the accused must be adequately informed of this right by the Examining Magistrate. Thus, the conciliation of information as to the right amounts to a gross violation of s. 170 (2) (b) with attendant consequences.
- (2) That where the defendant cannot secure the services of a counsel of his choice at the beginning of the suit, room is still opened for him to do so before the close of the case.
- (3) That no questions shall be asked by the Examining Magistrate as per any statements made by the defendant in the absence of his counsel where it is established that he had already briefed one for his defence.
- (4) Finally, the counsel must be a qualified lawyer and equally called to the Cameroonian Bar Association or qualified to practice in Cameroon in accordance with the enabling laws in force.

#### 4.2. The Legal Aid Law

In recognition of the inequality to the provision on the right to counsel, a Legal Aid Scheme was introduced in Cameroon in 2009 to provide aid to accused persons facing trial for the offences specified in the law governing the scheme <sup>[21]</sup>. According to s. 7 of the Legal Aid Law, legal aid Commissions shall be set up at all levels of courts in Cameroon and this includes the Courts of First Instance, the High Courts, Military Tribunals, Courts of Appeal and Supreme Court. The effect of the criminal legal aid is that the costs incurred in conducting the defence are paid not by the accused himself but by the state. Thus, according to s. 3 of the legal aid law:

Legal aid shall enable the beneficiary to obtain either the court judgment or the enforcement of the latter, with no prior payment of all or part of the costs which he ought to have paid.

Legal aid is granted on application to natural persons whose resources are inadequate to have their rights enforced by a court or to follow up the enforcement of any writ or process of execution previously obtained without such legal aid <sup>[22]</sup>. Such natural persons have generally been described as persons with inadequate resources <sup>[23]</sup>. The equally cherished aspect of the legal aid scheme in Cameroon is that it is also extended to corporate bodies, as a special measure <sup>[24]</sup>.

##### 4.2.1. Withdrawal of legal aid

We must observe that legal aid in Cameroon is not an absolute right in the sense that it may be withdrawn where the conditions that led to its being granted change. According to s. 44, legal aid may be withdrawn in the following circumstances:

- In the event that the person who has received legal aid acquires resources deemed sufficient;
- Where the person who has received legal aid is found to have influenced the decision of the Commission through

a false declaration.

From the provisions of s. 44 above, it is discernable that, once there is an improvement in the income of the defendant, legal aid is immediately withdrawn. This is immaterial whether or not the trial has not been concluded by the court. There must of course be ample proof of the fact that the defendant's income has improved. But the difficult question which we may not be able to answer here is where the legal aid is withdrawn because of an improvement in the defendant's financial position but shortly afterwards, he runs again into financial difficulties. The Legal Aid Law is silent on this and the issue might only be resolved through the discretion of the Commission. Very important is the fact that the decision to withdraw legal aid must be reasoned and the person receiving legal aid must, beforehand, be summoned to give verbal or written explanations <sup>[25]</sup>.

#### 5. Stages at which counsel may be required

##### 5.1. Pretrial stage

In the U.S.A. under the Sixth Amendment, counsel is required for an indigent defendant not only at the trial itself, but also at certain proceedings before and after trial itself. Counsel is equally required at a police lineup, preliminary hearing; arraignment (pleading stage) sentencing or appeal <sup>[26]</sup>. The situation in Cameroon appears to be similar to that of the United States. That is, the right to counsel practically is during pretrial and during trial. During pretrial, any person who is arrested or detained shall have the right to remain silent, avoid answering any question until after consultation with a legal practitioner or any person of his own choice. This pretrial right to counsel in Cameroon is amply provided in s. 170 (2) (a) of the Criminal Procedure Code. It provides that: *"The Examining Magistrate shall in addition inform the defendant that he is free to reserve his statement"*. The right to reserve his statement here refers to the right to remain silent during pretrial (during police custody for instance) and avoid answering any questions put to him until he consults a lawyer of his choice.

From the foregoing, the right to counsel becomes operative immediately upon arrest and continues during the period of detention. This signifies the fact that an arrestee may lawfully refuse investigation until he has consulted his counsel. This will definitely protect him from making any statement that may be incriminating against him in view of the provisions of sections 27 to 37 of the Evidence Ordinance, which allow the court to admit the confessional statement of accused persons where such was made freely and voluntarily. However, these confessional statements are obtained from accused persons immediately upon arrest and without any opportunity to talk to any counsel whether of his choice or not. Although words of caution are administered, there is no indication that in Cameroon the police or gendarmes always inform suspects that they have the right to consult with counsel of their choice before making their statements.

Allegations of torture often inflicted by the police and gendarmes during interrogation are common but where such unorthodox practices are proved, the statements will be inadmissible. This is clearly stated in s. 28 of the Evidence Ordinance. The section provides:

A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the court to have been caused by any inducement, threat or promise having reference to the charge against the accused person.



It has been observed that the duty to caution accused persons in Cameroon of the right to remain silent until consultation with a lawyer of their choice by the police and gendarmes is simply an administrative duty and practice and lacks the force of law. Our constitutional provisions are inadequate in so far as they do not place a duty on the forces of law and order to specifically inform the suspect of his right to counsel during custodial investigation. Thus, there is a dying need to enact a law that will make it mandatory for a police officer or a gendarme officer for instance, to caution the accused person and remind him of his right to silence once it is certain that he will be charged.

### 5.2. Right to counsel during trial

According to s. 170 (2) (b) of the Criminal Procedure Code, *“the Examining Magistrate shall in addition inform the defendant that he has the choice to prepare his defence either without counsel or with the assistance of one or more counsels”*.

The period of time when the right to counsel under the above provision is available to the suspect would be at trial, starting from arraignment. This right is, however, not realizable by most accused persons because of their poor financial status which is contrary to constitutional provisions.

We must however note that for this right to be meaningful there must be effective representation by counsel. This implies that the lawyer must be ready, willing and able to function effectively. Thus, an ineffective counsel is likely to do considerable harm to his client, since the client will rely on him for advice and assistance to no avail. The difficulty is that a counsel's “effectiveness” is hard to measure with any degree of precision under many circumstances, but as a rule, a counsel becomes recognized as being ineffective only after he has demonstrated incompetence in representing his client, and consequently after his client has been harmed by him. However, effectiveness cannot be measured according to a “win or lose” standard<sup>[27]</sup>.

Effective representative was highlighted in the Nigerian case of *Okoduwa v. The State*<sup>[28]</sup> where an accused person on trial for murder had only the assistance of two newly qualified counsels that had just graduated from school were assigned to him by the court. It was held that such a representative was undoubtedly ineffective. In the same vein, the effectiveness of a counsel who became disinterested half way through trial because of uncertainty as to the payment of his professional fees was questionable and sufficient to have a conviction set aside<sup>[29]</sup>.

Countries like United States of America have equally made elaborate provisions to ensure effective representation depending on the offence charged. Accordingly, the United States of American Appeals Court adopted the following standard of counsel effectiveness: *“That a defendant is entitled to the reasonably competent assistance of an attorney acting as his diligent conscientious advocate”*<sup>[30]</sup>.

The general agreement whether in Cameroon or in the United States is that effective representation means that a defendant is entitled to the aid of a counsel at every step of the proceedings. In the words of Justice Sutherland, the defendant's right to the assistance of counsel is not merely pro forma, but implies a right to “effective aid”<sup>[31]</sup>. This implies a right to have a reasonably competent lawyer acting on his behalf. Thus, incompetency as opposed to effective representation must be so great that the whole trial was a “mockery of justice”.

### 6. Limitations to the right of counsel

The Cameroonian Criminal Procedure Code particularly in s. 170 (2) and (5) has amply provided for the right of counsel of one's choice. But the right appears to be limited and can even be ignored and denied in certain circumstances. The limitations of the right appear to be provided in s. 174 (3) of the same Code thus:

However, the provisions of s. 170 (2) and (5) shall not apply in the case of felony and misdemeanor committed flagrante delicto and in all urgent cases, notably where relevant evidence may disappear or a witness may die. The Examining Magistrate shall in all such cases, from the first appearance of the defendant, proceed to charge and interrogate the defendant even against the latter's wish. He may also proceed to confrontations which he deems necessary. The report shall mention the reason for the urgency.

The provisions of s. 174 (3) are very clear. By these provisions, the denial of the right of counsel of one's choice must not be arbitrarily. Where a relevant and material witness in the case is about to die for instance, the court could speed up the trial even in the absence of a lawyer representing the defendant. The same is also true where relevant evidence is likely to disappear. Felonies and misdemeanors committed flagrante delicto may also limit the defendant's right of counsel of his choice. All of this must be done in the interest of justice and the most important aspect of it is that the judge must justify the reasons for the denial of the right and the justification must fall in line with the provisions of s. 174 (3) of the Criminal Procedure Code, failure of which may lead to setting aside the conviction.

### 7. Conclusion

The right of a person being tried for a crime to be represented by counsel trained in law has been recognized in Cameroon from the time of colonial administration till date. However the right is not widely enjoyed as expected as a reasonable percentage of the accused persons tried before the Cameroonian courts are not defended by counsels. Some of the reasons that account for this are that: (1) most accused persons are actually not granted access to contact a lawyer by the state. (2) Most accused persons lack the financial resources to engage lawyers for their trials. (3) The state does not readily respect the 2009 Legal Aid Law by providing accused persons free of charge with lawyers when standing trial in criminal matters. Even the lawyers who ought to have assisted in this respect are very reluctant as they most often are not promptly and readily paid their legal fees. This in effect means that the entrenchment of counsel of the choice of the accused and the provision of counsel by the state is really more of a dream at a certain point.

In a bid to improve and ensure respect of the right by nations, the United Nations decided to make the right to counsel universal through the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, approved “Basic Principles on the Role of Lawyers”. In that document under the heading “Special Safeguards in Criminal Justice Matter”, the following principles were stated:

- (1) Governments shall ensure that all persons are immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence.
- (2) Any such persons who do not have a lawyer shall, in all

cases in which the interest of justice so require, be entitled to have a lawyer of experience and competence commensurate with the nature of the offence assigned to them in order to provide effective legal assistance without payment.

- (3) Government shall further ensure that all persons arrested or detained with or without a criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention.
- (4) All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality.

These principles as already stated are universal and ought to be adhered to in Cameroon. In order to make the right to counsel to be effective, the scope of this constitutional right has been expanded by the legislation of the legal aid law in Cameroon and the provisions of the right to counsel in the Criminal Procedure Code respectively. To further make the right to counsel more effective, in every situation where an individual is faced with the possible deprivation of his liberty whether at the pretrial or post trial stage of the proceedings, legal representative is absolutely imperative. Thus, in the words of an Indian court<sup>[34]</sup>: “Legal Aid is really nothing else but equal justice in action (and) ... is intended to (extend) justice to the common man”.

## 8. Recommendations

### 8. 1. Obligation on the part of police officers of the need to informing accused persons of the right to counsel

The absence of defence lawyers during pretrial and trial periods in Cameroon is sometimes due to ignorance on the part of defendants who most often are not aware of the right to remain silent until consultation with a person of one's choice including a lawyer. Judicial policemen and gendarme officers involved in judicial proceedings in Cameroon have often concealed this piece of vital information, while information extorted from accused persons through duress and coercion. Accused persons make confessional statements particularly during police custody without their lawyers nor appreciate the implications of the statements they are making. In this light, we suggest that government must ensure that all accused persons are immediately informed by the police and gendarme officers of the right to be assisted by a lawyer of their own choice upon arrest, detention or when charged with the criminal offence.

### 8. 2. The exercise of the provisions s. 174 (3) of the Criminal Procedure Code must be done with care and caution

Section 174 (3) provides that the examining magistrate may refuse to grant an accused person the right of counsel where he has committed a felony or a misdemeanor flagrante delicto. This is a limitation which must not be abused. The denial by the examining magistrate should not serve as a form of punishment or victimization. The interest of justice must be paramount. Thus, the denial should only be considered where either the accused or a vital witness is about to die or that a delay in the prosecution of the accused is likely to impede justice. In the absence of these exceptions, all conditions linked to the right to counsel must be respected in a bid to ensure a fair hearing.

### 8. 3. The accused must not be involved in any false declaration

The legal aid law forbids a defendant from making any false statements as per his financial position for the purpose of being provided with a lawyer for his defence by the state free of charge. The consequences are that, where the defendant makes a false declaration, the lawyer may be withdrawn upon discovery of the true state of affairs. Thus, in order to benefit under the legal aid law, the defendant must be prudent, wise and cautious and provide only accurate statements as per his financial position.

## References

1. Senior Lecturer: University of Yaounde Ii, Soa – Faculty of Laws and Political Science, Department Of English Law – Cameroon.
2. Criminal law is a body of rules and statutes that defines conduct prohibited by the state because it threatens and harms public safety and welfare that establishes punishment to be imposed for the commission of such acts. Glanville Williams in his book, *Criminal Law* (1974), 2<sup>nd</sup> Ed. Stevens Publishers – London at P. 27, defines a crime as “A legal wrong that can be followed by a criminal proceeding which may result in punishment”.
3. “*The Right to Counsel Under the Criminal Process in Nigeria*”, Published in *New Perspectives in Law – Essays in Honour of Hon. Justice Terna Fefa Puusu Dee-Sage Nigeria Limited –Lagos Nigeria*, at. 2005, 113.
4. “The Emerging Role and Function of the Criminal Defense Lawyer”, *North Carolina Law Review* 47. 1969 April, 598-632.
5. 287 U.S. 45, 77 (1932).
6. 372 U.S. 335
7. Law No. 2008/001 of 14 April 2008 to amend and supplement some provisions of Law No. 96/6 of 18 January 1996 to amend the Constitution of 2 June 1972.
8. 327 US 82 at 87, 90 L.ED. 545, 66 S Cit. 452 (1946).
9. See the Nigerian case of *Awolowo v. Minister of internal Affairs* (1963) L.L.R. 177. In the case, the court inter alia, held that, the right to a legal practitioner (counsel) of one's choice protected by the constitution contemplates the instructions of a legal practitioner, “not under a disability of any kind”. Where an accused is not afforded sufficient time to secure the attendance of his counsel, a trial is stated as being unconstitutional. See also *Gokpa v. Police* (1961) 1 All N. L.R. 423.
10. See Article 294 of Code D' instruction Criminelle, 1808.
11. See <https://www.jurist.Org/news/2011/02/Indiasupreme-court-finds-constitutional-right-to-counsel/>.
12. Ibid
13. (1962) L. L. R. 177.
14. See 35 (2) of the Nigerian 1979 Constitution as amended. “It stipulates that: “Any person who is arrested and detained shall have the right to remain silent, and avoid answering any question until after consultation with a legal practitioner or any person of his own choice”. While s. 36(6) (a) provides thus: “Every person who is charged with a criminal offence shall be entitled to defend himself or by a legal practitioner of his own choice”.
15. See *Lochner v. New York* 198 U.S. 45 (1905).

16. 287 US 45. 77.
17. Report of theb “African Conference of the Rule of Law” at p. 79, per Taiwo Osipitan at. 1961, 140.
18. See the case of Woolmington v. D.P.P. AC. 1935, 45.
19. See Law No. 2005/007 of 27<sup>th</sup> July 2005
20. See sections 170-174 of the Criminal Procedure Code.
21. Oputa J.S.C., in Josiah v. The State (1985) 1 nwlr 123 at 140. See also Okosi v. The State (1989) 1 NWLR (Part 1000) at 642.
22. Per Idoko J. in Uzodima v. C.O.P. NCLR 325at. 1982, 327.
23. Law No. 2005/007 of 27<sup>th</sup> July 2005.
24. See Law No. 2009/4 OF 14 APRIL 2009, TO ORGANIZE LEGAL AID.
25. See s. 5(1), Ibid.
26. See sections 5 – 8 for persons entitled to benefit under the scheme, described as persons with inadequate resources.
27. See s. 5 (5), which provides: “...legal aid may, as a special measure, be granted to corporate bodies which are unable to pay their court expenses due to inadequate resources”. Corporate expenses here will be interpreted to include the inability to secure the services of a counsel in a criminal trials.
28. See s. 45.
29. United States v. Wade 388 US 218 (1926).
30. See the case of Hendrickson v. Overlade, 131 F. Supp 561 (N.D. Ind. 1955). In this case, a distinction was drawn between incompetency of lawyer who has been retained by the accused and a lawyer whose appointment to represent an indigent defendant has been made by the court.
31. (1988) NSCC at 718
32. Udofia v. The State (1998) 3 NWLR. Part 84.
33. See United States v. Decoster 487 Fed. 1197 DC Cir 1973 at 1202.
34. Powell v. Alabama 287 US 45, 71 (1932).
35. Hussainara Khartoon v. State of Bihar (1979) CR. L.J. 1036at 1055 (S.C.)