

Access to Justice: Emerging issues and challenges in Justice Administration – Case study – Cameroon.

ABSTRACT:

Access to Justice in Africa will be facilitated where the administration of justice is embodied in a setting with a genuine separation of powers. This paper will attempt to examine the emerging issues and challenges in the administration of justice in Africa with Cameroon as a case study. We shall also, offer suggestions to solve these challenges.

In an ideal situation where there is a true separation of powers, the judiciary should be able to control the excesses of the executive and legislature when they recklessly jump their constitutional boundaries. This instills confidence in the system and encourages ordinary citizens to fearlessly seek redress from the courts.

In Cameroon, we have a judiciary that by the legislative act is intentionally placed under the tutelage of the executive which executive by party rule controls the legislature. With such a carefully crafted democratic dictatorship, access to justice becomes a far cry to potential victims of the powerful.

CHALLENGES.

We have identified some challenges in access to justice in Africa as follows.

- Excessive and overbearing executive powers over the judiciary
- Powerful political personalities
- Prisons jam-packed with non-convicts.
- Lack of information
- Bad laws and
- Corruption

Suggestions

Access to justice is a fundamental core value in the administration of justice which gives the population belief in the system. For this reason, it is the duty of every actor in the field to ensure that this right is not only protected but perpetually available. To cure the lacunae created by the emerging and

existing challenges to exercise this right, we shall put forth the following suggestions to ameliorate the African situation.

- 1- Enforcing strict separation of powers in the constitution and in governance
- 2- Prisons should be meant for prisoners (convicts).
- 3- Put up a vigorous fight against corruption in the judiciary.
- 4- Create government-funded community centres for legal information.
- 5- Lawyers should give hours for pro bono service and community services in legal assistance.

Conclusion

Legislation that clearly separates powers, the will to create a favorable environment for the free flow of information, and lawyers' will to forgo honorarium and assist the weak, will go a long way to curbing the challenges to access to justice in the administration of justice.

Keywords: Access, Administration, Justice, Separation, Powers

Presentation:

Access to Justice in Africa will be facilitated if the administration of justice is carried out in a setting with genuine separation of powers. This paper attempts to examine the emerging issues and challenges in the administration of justice in Africa, with Cameroon as a case study. We have also proposed some solutions to these challenges.

In an ideal situation where there is a true separation of powers, the Judiciary should be able to control the excesses of the Executive and Legislature when they recklessly jump their constitutional boundaries. This instills confidence in the system and encourages ordinary citizens to fearlessly seek redress from the courts.

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- 1- Excessive and overbearing executive powers over the Judiciary.

In Cameroon, judicial appointments, promotions, demotions, transfers, and sanctioning of administrators of justice are placed under an organ called the “Higher Judicial Council” viz Law No. 89/016 of 28th July 1989 as modified by Law No. 82/14 of 26th November 1982 on the organization and functioning of the Higher Judicial Council.

Going by Section 1 of the law supra, the council is headed by His Excellency the Head of State and has as Vice President the Minister in charge of Justice who is an appointee of the Head of State. Some magistrates/judges have taken to placing the effigy of the Head of State on the wall directly behind their seat with the image staring menacingly at the judge and litigants sitting in court. Justice in this case seems to be rendered in the name of the Head of State rather than in the name of the people, as prescribed by law. The presiding judge looks completely fragilized and compromised in these circumstances. Section 10 states that the independence of the judiciary is guaranteed by the President of the republic.

2- Powerful political personalities

In a typical traditional African setting, the people are ruled and governed by chiefs, the Obas, Sultans, Lamidos, Fons, Ozo, The AmaXhosa, The AmaZulu. These are very powerful and highly respected personalities in their community. In modern times we see the growth of another category of persons who use their political clout to influence the administration and access to justice. These are the local party leaders, mostly of the ruling party.

3- Prisons jam-packed with non-convicts.

The Fako Lawyers Association (FAKLA) in collaboration with the Human Rights Commission in Cameroon carried out a census in a local prison in 2013. The major findings were that 75% of the persons in prison were awaiting trial. The African Commission on Human and Peoples Rights has defined pre-trial detention as torture. Some persons outlive the term of imprisonment for the alleged offense committed awaiting trial. This is a worrying development with ordinary citizens not readily getting access to justice.

4- Lack of information

For the populace to have reliable access to justice, there must be clearly defined and protected access to information. Legal issues are complex and technical. However, they invariably affect the living conditions and well-being of the population ranging from health, education, housing, and in some cases basic survival. To be able to exploit the laws, users should be first and foremost aware of their existence, then, avenues to seek redress. This is a tall order for most Africans and Cameroonians who have no established official channel where a compendium of all existing laws can be readily consulted.

5- Bad laws

The common man is confronted with a myriad of laws that are subject to varied interpretations, thereby hindering access to justice. This is further complicated by a number of these legislations. The implementation tends to make things more difficult than the help it was intended to be by the lawmakers. This author will cite Law No. 2009/004 of 14th April 2009 on Legal Aid in Cameroon. Also, S.236 of Law No. 2005/007 of 27th July 2005 as subsequently amended talks of compensation for illegal detention. Going by the provisions of these instruments, a successful applicant will invariably need the services of an attorney to successfully navigate through the legal swamp.

6- Corruption.

Corruption in the administration of justice is not limited to the exchange of funds, which is comparable to goods sold over the counter. There is an emerging trend of magistrates and judges artificially creating a Demi-God

status for themselves. There is just no respect for the time employed by litigants seeking justice. Some of their unwelcome practices include inexplicably long adjournments, pompous interference with proceedings in a bit to show off, and arriving at the court late without the courtesy of any apology or simply staying away with no explanations.

Suggestions

Access to justice is a fundamental core value in the administration of justice which gives the population belief in the system. For this reason, it is the duty of every actor in the field to ensure that this right is not only protected but perpetually available. To cure the lacunae created by the emerging and existing challenges to exercise this right, we shall put forth the following suggestions to ameliorate the African situation.

6- Enforcing strict separation of powers in the constitution and in governance

We need the political will of African leaders to see this through. There is always the temptation for African leaders to use/misuse the constitution to confer enormous powers in the hands of the President. If avoided, the judiciary will gain her independence and thus facilitate access to justice.

7- Prisons should be meant for prisoners (convicts).

The current trend of African prisons being crowded with persons awaiting trial should be urgently reversed. Prisons should be left for convicts.

8- Put up a vigorous fight against corruption in the judiciary.

The fight against corruption in the Judiciary should begin with lawyers. We should stop being vectors in the hands of unscrupulous litigants who want legal victory at all costs. Promotions, demotions, transfers, and discipline in the judiciary should be managed by an independent commission. We are aware that some countries already practice this. They should be encouraged to continuously improve.

9- Create government-funded community centers for legal information.

Information is power as the saying goes. Lawyers and the court are known to say, "Ignorance of the law is no excuse"...ignorantia juris non excusat. To avoid constantly referencing this Latin maxim, African governments should

create or support community centers that disseminate legal information for free to the residents. These centers could be encouraged to prepare pamphlets and flyers educating the people on some basic rights.

- 10- Lawyers should give hours for pro bono service and community services in legal assistance.

This paper calls on us, members of the African Bar Association and all legal practitioners to devote some minimum time for pro bono services to their community. This can be regulated and put into law.

Conclusion

Legislation that clearly separates powers, the will to create a favorable environment for the free flow of information, and lawyers willing to forgo honorarium and assist the weak, will go a long way to facilitate access to justice.

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