



Public Policy Briefings

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WATER FOR ALL – HOW HELPFUL IS OUR JUDICIAL SYSTEM?

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Access to safe drinking water is a fundamental human right enshrined in the Constitution of Cameroon. The judicial system is part of the national strategy to supply every home with clean water. The system operates with courts, trained personnel and budgets all over the national territory. But, getting the expected responsiveness and accountability in the system remains difficult, if not impossible, due to inconsistencies, complacency and repugnant rules! In this policy briefing paper, we use our test case before the courts in Kumba, Cameroon, to: (1) illustrate challenges in the judicial system; (2) seek clarifications from authorities; and, (3) generate debate on the role of the judiciary in efforts to get water and other vital utility services to everybody without delay.

1. BACKGROUND

Less than twenty percent of the population has access to pipe borne water in Cameroon. For many in the country, water from taps is still not safe to drink and its supply is neither secure nor reliable. All appear compelled to rely on wells and streams of doubtful quality. Water borne diseases have become rampant; the economy continues in crises; and, poverty and misery are on the rise. Yet efforts to hold those responsible to account continue to face formidable obstacles. Cameroon has become one of the most corrupt countries in the world.

This comes after about fifty (50) years of political independence, when the Constitution and related codes have been in force. One of the constitutional objectives has been to guarantee adequate supplies of safe drinking water to all citizens without discrimination. The Constitution provides for a unitary state with three arms of government (the executive, Parliament and the judiciary) to assist society to achieve its mandated objectives. Cameroon society is diverse, linguistically and

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culturally. It now has a population of about eighteen (18) million, with several political parties, and groups including a variety of media outlets, businesses and non-governmental organisations.

To meet the constitutional objective for water supply, the executive has been pursuing a two-prong approach – one for urban centres, and the other for suburban and rural areas. In urban centres, responsibility for pipe borne water supply is delegated to a national water corporation, Societe National des Eaux du Cameroun (SNEC), now, Camerounaise des Eaux (CE). Suburban and rural areas are allowed to fend for themselves. These executive policy ideas have received parliamentary endorsements granting monopoly status to SNEC or CE, although efforts are on the way to privatise the corporation. However, whether nationalised or privatised, the company is required by law to serve the public on a contractual basis. When differences emerge in the contractual arrangements, the judiciary is there to help resolve or adjudicate in the dispute(s) as well as enforce the contract.

The judiciary operates all over the national territory with courts (First Instance, High Courts and Appeal Courts), trained personnel (various categories) and budgets. However, reactions of the judiciary to contractual disputes are far from helping litigants reach reasonable settlements. Seizing the attention of the judiciary involves enormous delays, careless treatment of files, trading of vested interests and high costs. When matters are finally lodged with the judiciary, they tend to suffer repeated adjournments, magistrates and judges habitually descend into the arena of conflict, and decisions are often not based on relevant facts and law.

With all the foregoing, it becomes difficult, if not impossible, to get responsiveness and accountability in contractual matters between citizens (individuals or corporate), and between citizens and the state or government. These problems are further illustrated in the handling of our test case before the courts in Kumba, Cameroon. Hence the need to seek clarifications from authorities, and generate

debate on the role of the judiciary in efforts to get safe pipe borne water and other vital utility services to everybody without delay.

2. TEST CASE BEFORE THE COURTS IN KUMBA, CAMEROON

In Suit No: CFIK/11/2008, between Mbwoge Daniel Mbong (Plaintiff) and the National Water Corporation (SNEC) or (CE) (Defendants), of 04/04/08, Plaintiff sued Defendants for the tort of negligence, breach of contract and unjust enrichment. The Plaintiff contended that Defendants have been generally negligent, billing him arbitrarily, inattentive and unresponsive to his complaints, penalising him for complaining, and using their monopoly power to exploit him as consumer.

Plaintiff is a subscriber No: 080309190290204, to Defendants' pipe borne water supply services in Kumba, since 28/10/1998. Defendants have been supplying Plaintiff water through Metre No: 08812810, being the property of the Defendants for which Plaintiff pays rents. In the month of April 2007, Plaintiff lodged a complaint with the Defendants for over billing (paying more than he actually consumes) but the Defendants gave no attention to the plaint. Instead, Defendants imposed a late bill payment penalty of 4,590 FCFA, which Plaintiff paid in addition to the monthly bill he was complaining about. Upon close examination of his past bills, Plaintiff also noticed that since January 2006, Defendants have been making him pay for water not consumed. This notwithstanding, Plaintiff continued to pay his bills on time to avoid late payment penalties and disconnections. However, in February 2008, Defendants billed Plaintiff to pay the sum of 42,601 FCFA though no such quantity of water was consumed. Plaintiff requested Defendants to rectify his bill. Defendants did not respond. Plaintiff's solicitor also intervened, demanding rectification of his bill, to no avail. Plaintiff then decided to seek redress through the courts.

Plaintiff's file was prepared by his counsel, and taken to the registry of the court for filing. It reached the Registrar-in-Chief, Ms. Apongwa Nji Elizabeth, on 04/04/08. She

requested down payments of a filing fee of 28,400 FCFA and a deposit of 50,000 FCFA. She finally accepted 28,400 FCFA as filing fee, and 20,000 FCFA as deposit for stamp duty, on 10/04/08. The Statement of Claim from the court was ready for service and Defendants were duly served same on 14/04/08. The court issued a hearing notice on 24/04/08, which was duly served on Defendants the same day, for them to appear in court on 29/04/08 for hearing. Hearing notices, Plaintiff and his counsel were told, usually cost 2,000 FCFA. But, because of the apparent public importance of this particular suit and the serious payment justification pressure that came with it, the Clerk of Court, Mr. Samuel Nkenfack, waived the fee.

Following service of Statement of Claim on Defendants on 14/04/08, Defendants, on 18/04/08, disconnected Plaintiff by removing his metre without notice and thereby denying him water. Upon service of hearing notice on Defendants to appear in court on 29/04/08, Defendants suddenly returned Plaintiff's metre and reconnected his water supply on 28/04/08, a day before the hearing, after illegally denying him water for ten (10) consecutive days. On the day of the hearing, the court did not sit. Matters on the cause list of that day, 29/04/08, were adjourned to 10/06/08. On this date, Plaintiff was present, Defendants were absent. Plaintiff informed the court, orally, that Defendants have been perpetuating and intensifying their breach of duty towards him, occasioning additional losses, inconveniences and hardships. To help recompense these, Plaintiff applied to amend his Statement of Claim. The court advised Plaintiff to put his application in writing. A new date was taken for 17/06/08, on which date, the court did not sit. Another date was taken for 24/06/08, when Plaintiff was again present and Defendants were absent, but matter did not appear on cause list.

The matter eventually came up for hearing on 01/07/08. Plaintiff was present, Defendants were absent. Plaintiff tendered his amended Statement of Claim and argued, based on his new Statement of Claim, that costs be paid to him to assuage his time, expenses, and for Defendants' contempt of court. Also, that the

case be transferred to the High Court as a matter of procedure, citing the procedural law in force as stated in Essays on Civil Proceedings, for magistrate's courts, by Obi-Okoye (1986) paragraph 291, that: "*A Judge may at anytime or at any stage before final judgement transfer a cause or matter entirely or for the purposes of any particular part thereof from the Magistrate's Court where it is pending to another Magistrate's Court or to the High Court. The transfer shall be by formal order under the hand of the judge and seal of the court.*" But the presiding judge, Magistrate Monekosso Francis Lobe, without referring to any law, ignored Plaintiff's plea for costs, declared himself incompetent to transfer the matter to the High Court, and threw it out of court!

As we write, Plaintiff's water supply has been disconnected again and his metre removed by Defendants since 23/07/08, after the matter was thrown out of court. Plaintiff has refilled the suit in the Meme High Court, Kumba, where it is pending hearing.

3. CHALLENGES IN THE JUDICIAL SYSTEM

Dealing with the judicial system in Cameroon involves a great variety of challenges, especially when the issues have to do with fundamental human rights and freedoms such as water for all. The challenges faced include inconsistencies, complacency and repugnant rules, as seen in the foregoing case.

3.1 INCONSISTENCIES

At the Registry, Plaintiff and his counsel were told, in writing, that a deposit fee of 50,000 FCFA was required. But, only 20,000 FCFA was eventually accepted as deposit for "stamp duty". Hearing notices were also said to cost 2,000 FCFA each. But, the said fee was waived.

In Court, hearing dates are taken but courts do not always sit, and suits do not always appear on cause list. In the foregoing suit, for example, out of five hearing dates that were taken, the court did not sit in two, and the case did not appear on the cause list in one.

Established rules are meant to guide judiciary personnel in their decision making. But arbitrary conduct appears widespread in the judiciary. In the instant case, although the rules are clear on award of costs and transfer of cases from one court to another, the presiding magistrate ignored the rules.

3.2 COMPLACENCY

Judicial personnel at the registry were, on several occasions, warned by Plaintiff and his counsel that this particular suit was a test case, intended to show the usefulness of the judiciary in expediting and exercising fairness in handling utility matters, by letting the public have every detail about the proceedings of the case in a transparent and timely manner. From the outset, press conferences have been regularly organised and releases issued, bringing continuing public attention to proceedings and developments in the case. All senior judiciary personnel in Kumba have also been invited at various times to attend special public education events such as seminars and workshops, on the *Rule of Law in Utility Services*, informed by proceedings and developments in the instant case. But few have taken the invitations seriously and appeared ready to learn.

All the foregoing notwithstanding, the Registrar-in-Chief insisted on the payment of a deposit for stamp duty as part of filing cost without reference to any particular rule, issued a note under her hand and seal for the amount (50,000 FCFA) she was asking, and another note (again under her hand and seal) for the amount (20,000 FCFA) she finally accepted. Meanwhile the Court Clerk in the same Registry seemed to respond to the warnings by waiving the purported hearing notice fee of 2,000 FCFA.

Also, a date was taken (17/06/08) for Plaintiff's matter to appear on the cause list of 24/06/08. On that day, Plaintiff and his counsel were in court, Defendants were not, but the matter did not appear on cause list. Plaintiff's counsel raised the issue with Clerk of Court, who was apologetic. Counsel wasn't satisfied. He decided to complain before the

presiding magistrate in open court as to why his matter was not on the cause list of the day and whether it could be included as is often the practice. The Magistrate rebuffed counsel saying his Court Clerks were pretty busy; that he would be stopping the practice of updating the cause list with matters left out; and that even when dates are agreed at the Registry as before, litigants and their counsels should henceforth verify with the Registry whether their matter features on the cause list of the day before coming to court.

3.3 REPUGNANT RULES

Turning to the judiciary to seek redress for something as vital as water in human life involves great inconveniences, hardships and immense financial sacrifices in Cameroon. These scare many from seeking justice when they have legitimate utility service complaints, giving the services a kind of immunity from prosecution. This is a reason why several utility services in Cameroon appear in no hurry to respond adequately to customer demands.

In the instant case, the difficulties have included harassments and paying of unjustified consumption bills, denial of pipe borne water supply services, meeting mounting court costs (filing fees, deposits, Bailiff service of writs and locus visits, transport costs for to and fro movements, etc), suffered delays and repeated adjournments, Defendants refusing to come to court and no decisions taken against them, magistrate's apparent insensitivity towards Plaintiff's plight and eventual dismissal of the case in defiance of the law.

These injustices appear justified by Section 8 of Law No. 2006/015 of 29 December 2006 on Judicial Organisation in Cameroon, which states that: "*Justice shall be administered free of charge subject only to the fiscal provisions concerning stamp duty and registration and those concerning the reproduction of the records of proceedings for appeals. Statutory fees and expenses of counsel and other auxiliaries' of justice, the cost of prosecution and the execution of court decisions shall be advanced by the party for whose benefit they*

are incurred. They shall be borne finally by the party who loses the action, except where there is a contrary reasoned decision of the court.”

The several rules of applications (tax codes, registry and court regulations, etc) that come from this provision of the law are resulting very high costs, for consumers with legitimate utility service complaints. They are required to advance or deposit as much as five percent (5%) of their claims in some Court Registries, pay locus visits for Bailiffs and Courts, pay Bailiff service fee, pay filing fees, etc. The expectation being that Plaintiff's expenses will be reimbursed if he is successful in his action. But where Plaintiff's matter is thrown out of court or the Defendants are impecunious, insolvent or cannot be found, Plaintiff will be required to bear the full cost, “except where there is a contrary reasoned decision of the court”.(see provision of law above). However, bringing the matter before the court again for the “contrary reasoned decision of the court” would warrant additional new costs, defeating the intention of administering justice free of charge in Cameroon.

4. NEEDED CLARIFICATIONS

With practices such as the foregoing in mind, the public is often confused as to what the right course of action should be, when they do not get the expected responsiveness and accountability from available water and other utility services. Some turn to the administration (especially Divisional Officers), others approach elected representatives or seek legal advise, for some kind of solution. But the services they get seem caught in the apparent prevailing vicious cycle of impunity that ignores the plights of citizens and public interest. In the end, many appear left to rely on their own assessments of natural justice and, on several occasions, have tended to want to vent their anger on the streets.

Questions that arise include: (i) whether the collective bargaining involved in lawmaking that empowers activities of available services, ignore citizen and public interests as a matter of policy; and, (ii) whether those raising their

voices or striking against performances of available services are merely being obstinate or doing so for the sake of it. We discuss these issues using our test case before the courts in Kumba vis-à-vis access to the judiciary, existing laws and their application.

4.1 RESTRICTING ACCESS TO THE JUDICIARY?

On one hand, the law (such as Section 8 of Law No. 2006/15 of 29 December 2006) appears to encourage people to seek redress through the judiciary. On the other hand, the same law and its various rules of application make it difficult, if not impossible, for people to have access to the judiciary. Such legal arrangements may be alright where the intention could be to prevent social breakdowns and disorder as in strike actions and matrimonial causes, but not in life and death issues like water.

In the instant case concerning water, Plaintiff encountered difficulties accessing the registry of the court and the court itself. In the registry, his costs included filing fees, deposit for stamp duty, serving of processes and locus visits, etc. Having filed his suit, taken a hearing date and served on the Defendants, his matter did not appear on the cause list of the day. This could have carried on, and on, increasing his costs and prolonging his plight. Whereas in a typical divorce case, no deposit fees are required, no locus visits are mandatory, etc., and filing fees are less than half of what the Plaintiff in our test case had to meet. And criminal and labour matters are free.

4.2 WHICH RULES APPLY?

Existing rules require the judiciary to be consistent in interpreting and applying its provisions to specific facts of specific cases all over the national territory. But, it is common experience that practice varies enormously from one jurisdiction to another and even from one registry or court to another in the same jurisdiction in Cameroon. For example, in our test case within the same jurisdiction, a deposit was requested and accepted in the Magistrates Court, but refused in the High Court. Purported hearing notice

fees were waived, and the court declined the practice of amending cause list. Inconsistencies in applying existing rules call to question the rules themselves.

4.3 WHY SHOULD JUDICIAL PERSONNEL IGNORE EXISTING RULES?

Where rules are ambiguous, judicial personnel can be excused for not knowing what the rules are about. But where existing rules are clear and judicial personnel ignore them, could it be they are poorly trained, or have ulterior motives such as incentives, directions and interferences from elsewhere, or are merely arrogant and self-serving? In our test case, for example, clear and precise procedural rules were cited in open court as laid down in *Obi-Okoye (1986)* but were ignored.

5. CALL FOR DEBATE

Often in Cameroon, people have tended to focus so much on elections and change of personnel, giving little attention to discussing their issues genuinely. It is common, for example, to find petitions against state officials flying about, and people getting heated and tense in the run-up to, during and after elections, with the effect that some personnel changes result from official appointments and transfers, and winning or losing elections. Soon after the personnel change, people have tended to realise that much of the change amounts to little of what was expected, but persist in following the same route of not engaging one another in genuine dialogues to have their issues thoroughly discussed in public.

Those who have tried to have issues discussed in public have often met with harassments, delays, intimidation, arrests and detentions, and demands for bribes from state officials under pretexts of identity checks, maintenance of law and order, crime prevention, or protection of evidence in courts. Those engaged in discussing issues in public have also had to endure punitive transfers, salary stoppages, dismissals and even murder.

A result of all these has been poor consultations with, and participation of, the population in the making, implementation and

evaluation of law. This has given room to a lot of ambiguity in Cameroon law. In the absence of good law and its proper implementation, access to vital utility services such as water for all become difficult, if not impossible. This is why we are bringing our test case experience in Kumba courts before the public for discussion, to help identify or refute challenges in our utilities service system as well as generate guidelines to improve the role of the judiciary in securing justice.

5.1 IDENTIFY OR REFUTE CHALLENGES IN OUR UTILITIES SERVICE SYSTEM

Water – challenges with the National Water Corporation (CE) in our case, include: arbitrary billing (bills not reflecting consumption or readings on the water metre); latest date payment penalty; continuing charges for metre rental; long queues even to pay bills; penalising customers for complaining; refusing to respond to customer complaints; illegal denial to supply water to customers (removing metre without notice, intermittent interruption of supply without notice, etc); refusing to appear before the court.

Court Registry – issues in our case include: high filing costs; request of payment of purported deposit for stamp duty (magistrate's court); no request of payment of same (high court); waived payment of purported hearing notice fee; delays in the treatment of files; hearing dates given but matter failing to appear on cause list of the day.

Court – problems in our case include: dates given but court would not sit; repeated adjournments; plaintiff present, defendants always absent; plaintiff prayed court for costs but court gave no attention; plaintiff's counsel notified court of date taken for his matter to appear on cause list but court appeared complacent, saying court clerks are pretty busy, and refused to amend cause list; relevant law cited in court, but court ignores same, declares himself incompetent and throws the case out!

To get good utility rules and have them competently implemented, we need to have

clear understanding of the size and variety of challenges in our utility service delivery systems. This requires honest facts on the ground. They have to be assembled and assessed responsibly as well as followed-up, to verify whether existing rules serve citizens and public interests and, if not, have them amended or repealed.

5.2 HELP GENERATE GUIDELINES ON ROLE OF THE JUDICIARY IN SECURING JUSTICE

The role of the judiciary is to secure justice effectively, swiftly and at little cost, transparently. What the judiciary can achieve, however, depends on existing law and public trust.

Existing Law – in our case we find instances of: (1) repugnance in the law [Section 8 of Law No. 2006/015 of 29 December 2006 on Judicial Organisation in Cameroon, and its various rules of application]; (2) ambiguity in the law [as in purported provisions requiring payments of up to 5%, hearing notice fees, etc]; (3) ignoring clear law [Obi-Okoye (1986) paragraph 291].

Public Trust – in our case we find the law and judiciary frustrating, and jeopardising our trust. Nevertheless, we continue to keep the public informed through press conferences and various other public education campaigns. We are writing to: (1) the Registrar-in-Chief at the Magistrate’s Court for a refund of the purported deposit for stamp duty; (2) the President of the Court of First Instance, Kumba for the conduct of court in her jurisdiction; and, (3) the Honourable Minister of Justice on how our matter is being handled before the courts in Kumba. We are also continuing with the case in the Meme High Court, Kumba.

When, as we see, existing law failing, and public trust in the judiciary waning, the need for debate and reform becomes evermore necessary and urgent. This is particularly critical as water and other utilities are prime necessities. The discussions involve everybody in society, especially those in charge of policy in cabinet and parliamentary committees, within the judiciary itself, the media, and other civil society organisations.

About EITD Research

Research for Enterprise, Industries, Technology and Development (EITD Research) is a leading independent research and policy education institution founded in 1992. We seek solutions to pressing development concerns and assist society to take, with responsibility, opportunities offered by science in the use of technology for development via enterprise and industries. In addition to providing field services and technical support, we develop and circulate information on a wide range of issues, advocating strategies and making policy recommendations.

This policy briefing paper is part of our Cameroon Public Utilities Forum, a Public Utilities Project of EITD Research, which seeks to improve the quality, and public satisfaction with the delivery, of utility services in Cameroon. The effort: (1) monitors and appraises service delivery complaints; helping with their articulation; tabling them to appropriate authorities and following them up to ensure response effectiveness, (2) works with utility service authorities to devise and ensure implementation of complaint corrective measures, (3) enhances public awareness and understanding of utility services delivery issues inline with existing regulations, and (4) formulates and advocate policy reforms.

We are always interested in your views on and experiences with utility services. Please let us know your utility service views and experiences. For more information and to submit a complaint, visit the project website at www.cpunf.eitdr.org or contact us at any of the addresses below:

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Appeal of the EITD Research Cameroon Public Utilities Forum

Nearly fifty years after Cameroon became politically independent, the country is still to have decent useful services that people need and want to pay for. These include water, electricity, post and telecommunications, transport, security, hygiene and sanitation, health, justice, the media, etc. The poor utility services: slow the economy down; result misery for the vast majority of the population; and, remain a cause of growing public concern.

More, the services appear in no hurry to respond to customer demands and seem to enjoy a kind of immunity from prosecution. The tendency, in recent times, has been for the public to want to vent their frustrations with utility services on the streets, often in vain! This need not be the case, as Cameroon is expected to be a state of law.

The Constitution of Cameroon mandates the supply of decent utility services to everybody, without discrimination, at the least cost in the shortest possible time. Rules that prevent realisation of the Constitutional mandate are illegal, and should be identified and expunged from the legal framework. Other Policies and regulations may also be needed. They have to be properly formulated, debated, agreed and implemented. Officials exercising state power of the people of Cameroon, in Courts, Parliament, and in the Executive, must be compelled to implement the rules and policies fairly.

Join us in work to improve the quality, and public satisfaction with the delivery, of utility services in Cameroon. The following actions of the EITD Research Cameroon Public Utilities Forum (CPUF) are ongoing:

- **Test Case before the courts in Kumba, Cameroon.** Get the facts, follow developments in the case, see to it that justice is done and is seen to be done (more at www.cpunf.eitdr.org/test_case.htm).
- **Cameroon Utilities Bill/Act 2009.** The bill seeks to address utility problems we know are of interest to people like yourself, your family and other relations. We would like to table the bill in the November 2009 session of Parliament. Help us get this crucial bill right (more at www.cpunf.eitdr.org/utilities_bill_act.htm).
- **Public Education Campaign.** Help get the *Utilities for All* message out and generate debate on the issues where you live, work, study or visit in Cameroon. Don't forget the media, our elected representatives and public officials (more at www.cpunf.eitdr.org/public_education_campaign.htm).
- **Utilities Bill/Act Implementation Activities.** The agenda is that of using Community or Quarter Action Committees on a constituency by constituency basis (more at www.cpunf.eitdr.org/utilities-act-implementation.htm).
- **Utilities for All Accomplishment Follow-ups.** Get and use fact sheets of indicators for information collection and analyses in every community or quarter (more at www.cpunf.eitdr.org/utilities_accomplishment_follow-ups.htm).
- **Volunteer.** Help to rally your community or quarter to act on utilities issues facing people in the community or quarter (more at www.cpunf.eitdr.org/volunteer.htm).
- **Organise and Attend Events** (more at www.cpunf.eitdr.org/events.htm).
- **Submit Complaints** (more at www.cpunf.eitdr.org/submit_complaint.htm).
- **Donate.** Help to improve utility services and extend the services to reach everyone without discrimination. **Contact Us Today:**

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