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The Right to Inform and the 1990 Press Law in Cameroon

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Abstract

This article examines the objectives of the 1990 press law in Cameroon — and the substantial changes it wrought for pressmen who until 1966 were regulated by either common law in Anglophone Cameroon or civil law in Francophone Cameroon. It also examines the extent to which the objectives have been attained and the major defects of the law.

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Le Droit d'Informer et la Loi sur la Presse de 1990 au Cameroun

par Ewumbue-Monono Churchill

Résumé

Ce document examine les objectifs de la loi sur la presse de 1990 au Cameroun, et les changements substantiels qu'elle a occasionnés pour les hommes de la presse qui, jusqu'en 1966, operait soit sous le droit coutumier au Cameroun anglophone, ou sous le droit civil au Cameroun francophone. Il analyse également dans quelle mesure les objectifs ont été atteints et les déficiences majeures de cette loi.

Introduction

The history of press laws in Cameroon is closely related to the country's political history and its development of a bijural system based on the common law in Anglophone Cameroon and the civil law in Francophone Cameroon. Until 1966 when the first press law was enacted, pressmen in Francophone Cameroon were regulated by different laws from those of Anglophone Cameroon.

In the Francophone sector, the main law in force was the French law on press freedom of July 29, 1881 which was introduced in the mandated territory in 1923 and amended in 1936. On attaining a self-governing status, the French Cameroon Assembly adopted the 1881 law as Law No. 55–35 of May 27, 1959. It was this instrument which regulated the press in Francophone Cameroon until 1966.

In the Anglophone sector, the sources of press law could stretch as far back as 1662 with the Licensing Act in Britain. But the law which affected the practice of journalism in the area was the Nigerian Newspaper Ordinance No. 10, of 1903, modelled after the Sierra Leonean press law of 1857.[1] The 1903 law was further amended by the Newspaper Ordinance No. 40 of 1917, the Newspaper Ordinance No. 26, 1941 and the Eastern Nigerian Law of 1955. By the time the Nigerian Newspaper Ordinance was enacted, Southern Cameroon was operating as an autonomous region but it was only after unification in 1961 that the West Cameroon Newspaper Ordinance was passed to govern the establishment of newspapers.

With unification, the practice of vetting and censorship provided in the 1959 French Cameroon law was extended to Anglophone Cameroon under the instructions of the then Minister of Territorial Administration. This practice was decried by Anglophone Cameroon journalists as unconstitutional since the 1959 Law was signed prior to unification. The heights of these protests was in mid-1966.[2] The rejection of the 1959 Law in West Cameroon on grounds of unconstitutionality was a serious embarrassment to the Federal government which prompted its hasty adaptation as Law No. 66/LF/13 of December 21, 1966 by the Federal Assembly. Since its inception, the 1966 press law has been amended five times notably by Decree No. 69/LF/13 of November 1969; Decree No. 73/6 of December 1973; Decree No. 76/27 of December 14, 1976; Decree No. 80/18 of July 14, 1980, and Decree No. 81/244 of June 22, 1981.

The major feature of the 1966 press law and its subsequent amendments was its elaborate system of control which involved administrative, financial, and territorial surveillance. It was based on a "preventive press" ideology where ownership of a press organ was

scrutinized and emphasis laid on pre-publication control by the administrative authorities. Less regard was given to judicial control of the press in matters of libel and defamation. Moreover, the spirit of the law was essentially repressive which showed in its prescription for heavy imprisonment sentences whenever its provisions were violated.[3] The 1966 law was essentially a newspaper law which excluded radio journalists from actionable offences committed under common law as concepts such as "publisher," and "printer" could not be extended to the Director or Chief of Station of a radio station.[4] With the introduction of television in 1985, Law No. 87/19 of December 17, 1987 on audio-visual communication was also enacted to regulate the functioning of television in Cameroon. The spirit of this law was to make the television a public service utility; it did not envisage the privatisation of this medium and the responsibilities of the television journalist in the event of administrative and judicial control. Also, it did not show the specific liabilities for newsmen in the radio or television establishment. On December 19, 1990, the government scrapped the 1966 Law and its subsequent amendments like the 1987 Law and replaced it with Law No. 90/052 related to the freedom of mass communications.

The law has been hailed as a landmark in some quarters and greeted with cautious optimism in others. The present article attempts to examine the following three major questions arising from the law:

1. What were the objectives of the new law and to what extent were they attained?
2. What were the substantial changes brought about by the new law?
3. What were the major defects of the present law?

Objectives and Spirit of the 1990 Press Law

The drafting of the 1990 press law was done within the context of a politically charged environment in Cameroon and was motivated by four main considerations: political, professional, economic and international.

At the political level, there was the clamour for greater democracy and liberalization of the political system. The pressure generated from outside, gathered momentum in Cameroon between March and June 1990 with demands for the release of political activists like Yondo Black and Djeukam Tchameni Dominique Jean; the pro-democracy demonstrations in Bamenda on May 26; the publication of the pastoral letter of the Bishops of Cameroon; the formation of political parties;

the Human Rights campaigns launched by the Cameroon Bar Association; and CPDM party congress of June 1990.

The first reaction to these pressures was the president's announcement of his intentions to reinforce press freedom in the country during his speech of June 28, 1990 at the CPDM party congress. On July 20, 1990, he created an 11-man Commission on Civil Liberties headed by Jean Foumane Akame, a former appeal Court Chief Justice, Chancellor of the University and Minister of Territorial Administration.[5]

At the professional level, there was pressure from newsmen of the private press for greater freedom of expression. Of particular importance were the criticism by *Le Messager*, *Le Combattant* and *Cameroon Post* of the obnoxious 1966 press law. In the official media, the law also came under heavy criticism from *Cameroon Calling*, a weekly radio programme of news analysis and commentary. As the political situation became more tense, many journalists were blamed for hiding the truth: a situation which surfaced on June 11, 1990 when Cardinal Tumi criticized the official press for their disinformation campaigns. In an effort to save face with the public, the journalists of the official press started agitating for more freedom and independent reporting. Some like Boh Herbert and Nkengfack Ofege resigned from their posts as editors for political and economic affairs while others like Zacharie Ngniman and Antoine-Marie Ngono, the editor-in-chief and political editor for the radio news departments respectively, forwarded open protest letters to the Minister of Information and Culture.[6] The crusade for a more liberal press system took international dimensions, with the activities of non-governmental organizations such as *Les Journalistes Sans Frontier*, a French association of newsmen fighting for press freedom; Article 19, a British organization with same purposes, Index on Censorship and Amnesty International. The intensification of the activities of these media organizations sent signals to the administration that time was running out. To institute breaks on this movement for greater press freedom in the private press and independence in the official press, the government policy changed from that of censorship to that of promoting responsible journalism by reminding newsmen of their obligations within the new political dispensation. After the June 28, 1990 speech by the president, the 1966 press law was no longer relevant and was rarely used. Press censorship was minimized and the courts started assuming the functions of control.[7]

At the economic level, the press law came at a time of deep economic crisis when privatisation and the encouragement of liberal professions like journalism were regarded as solutions, the reason being that a

simplification of requirements to establish news organs like newspapers, radio and television stations could create employment for the growing number of graduates.

Finally, the international environment perpetuated the changes in the press law. Apart from the pressures of the foreign NGOs, there were pressures from western countries such as France and the United States to tie economic assistance to the democratization process. President Francois Mitterand's message during the Franco-African Summit that "There could be no development without democracy" was therefore well understood in Yaoundé. The U.S Assistant Secretary for African Affairs, Herman Cohen, also reiterated this position by stressing that future American aid to African countries would be linked to Human Rights records. Events in Eastern Europe and other African countries were easily digested by the people who reinforced their clamour for a more liberal press system.

From these reasons, it could be seen that the 1990 press law was hatched within the context of political and professional agitation. This consequently determined the objectives and spirit of the law. At a political level, it sought to create a forum to permit the expression of diverse opinions while at the professional level it was aimed at creating responsible journalism. But how far were these objectives satisfied?

Changes Brought About by the New Press Law

The first major change brought by the 1990 press law was the affirmation of the right to publish by simplifying and eliminating the constraining administrative and financial requirements for setting up a press organ.

In terms of administrative requirements, the 1966 law had over eight documents to be filed before the processing of the application to set up a newspaper. In the 1990 law, the requirements are basically those of identification. In the 1966 law, the administrative control was moral (purpose of the newspaper, non-conviction certificate, etc.) while in the 1990 law it is professional (the names of three journalists on the editorial board). The law also relaxes the judicial constraints engrained in the 1917 law which required newspaper proprietors to "make, swear and sign an affidavit" containing the correct, true and real names, addresses of the owners and printers to facilitate subsequent criminal and civil proceedings. Unlike the 1966 law which prescribed the right to publish upon "authorization" from the Minister of Territorial Administration, the 1990 law, has limited it to a "declaration" from the person wishing to set up the newspaper.

The new law also scrapped the financial requirement which impaired the right to publish. Under the 1981 law, the prospective proprietors

had to state their sources of finance and have a bank attestation of CFA.F500,000, while under the 1917 law there was a 250 pounds deposit.

The second major innovation is the extension of the concept of mass communications to cover both the print (newspaper, periodical, magazine, bill-postings and pamphlets) and the audio-visual (radio and TV) media. This contrasts with the 1966 and 1917 laws which were essentially newspaper laws while the 1987 law was audiovisual. It also covers the different branches of media institutions and professions (printing, publishing, foreign press, booksellers and journalists). It differentiates between the public service functions of the audiovisual and the private functions as well as between the press as an institution and the journalist as a professional. As an institution, the press has specific rights and obligations; the rights are spelt out in Section One of the law while the obligations are contained in Sections 18–21 and Chapter 10. On the other hand, the rights of journalists are contained in Sections 49–51 while their obligations are in Articles 47–48 in Chapter 11.

Thirdly, the new law has gone beyond the 1966 law in that it has provided a clear definition of a press organ in Article 5, 1 as "Any newspaper, periodical, magazine, or pamphlet intended to communicate opinions, ideas, thoughts, current or social events and which is published at regular intervals." In the 1966 law, only a newspaper enterprise was defined in Article 16, creating a vacuum as to what amounted to a newspaper itself.

Fourthly, the law makes provisions for the functions of the press in a multi-party political system and lays down the rules for fair political campaigns in Sections 54 and 58 related to the exercise of the right to reply. It also prescribes access to airtime to all political parties in public radio and TV stations (Section 41, 1) and announces the creation of a National Communication Board similar to the National Communication Council set up in 1974.

Fifth is the institution of a comprehensive control system. Under the 1990 law, the judiciary is associated with pre-publication censorship (Sections 13–14) which requires that copies of newspapers be submitted to the state counsel two hours prior to publication and appeals could be made to the presiding magistrate on arbitrary censorship. In addition, two copies of each foreign paper must be deposited with the Minister of Justice not less than 24 hours prior to circulation (Section 23). Only the state counsel, on the authorization of the judge, can order the search of the premises of news organs (Section 51). The Judiciary also intervenes to execute penalties and determine liability as prescribed in Sections 60–87.

The second control machinery is administrative which involves three ministries: Information and Culture, Territorial Administration, and External Relations. Control by the Ministry of Information and Culture is restricted to filing four copies of the newspaper with the Department of National Archives after publication (Section 15) and two copies with the Communications Department (Section 16). It also has the responsibility of checking on a quarterly basis the number of copies in circulation (Section 18). On the other hand, control by the Ministries of Territorial Administration and External Relations are prior to circulation. In the former case, two copies of the dummies must be deposited two hours before (Section 14) while in the latter case, the foreign press must deposit two copies 24 hours before circulation (Section 23). The Ministry of Territorial Administration issues receipt upon declaration by a publisher (Section 7, 2), may seize or ban newspapers (Section 17, 1) and designates places for bill posting (Section 34).

The third control machinery is economic and deals with information related to the number in circulation and advertisement rates (Section 19–21), the publication of shares and balance sheets of publishing houses (Section 29 and 45) and the restriction of the number of newspapers to be published by private publishers to three (Section 27).

In addition, there are the professional control systems which oblige the press organ to publish a list of its permanent staff (Section 18, 1), and the control exercised by the National Communication Board in Sections 36, 39 and 48.

Of greater importance to freedom of the press is the fact that the 1990 law has suppressed all repressive sentences by eliminating internments and advocating the payment of fines in cases of infractions and crimes committed in the course of the practice of the profession. All the penalties in Sections 60–73 prescribe only the payments of fines as punishment contrasting it with the 1881, 1917 and the 1966 laws. However, inspite of the law's liberal provisions, it still has a series of shortcomings which might call for further revamping.

Major Defects of the New Press Law

The first problem with the 1990 press law is structural. The law embraces many issues which have rendered the structure defective. The division into the laws affecting written communication, audiovisual communication, journalists and offences is too broad. Because of the specificity of the various means of mass communication, the trend the world over is to enact laws related to the different branches such as the newspaper law, the radio law, the television law and the cinema

laws. By integrating all of these laws, much room is not given to evoke the specific problems related to the different mass communication channels. The clear example is the imbalance in the laws affecting these channels. While the laws on the print media are spread over 31 sections (32%), those on audiovisual are only 10 (9%), and those affecting journalists spread over only 6 sections. This imbalance has made the 1990 law essentially a print law, inspite of its attempt to break away from that tradition.

The second shortcoming lies in its restrictive classification of the means of mass communications into the print (newspapers, periodicals, magazines, pamphlets, books and bill posting) and the audiovisual (radio and television) media. Such classification omits other mass communication channels like photography, the cinema, paintings, mobile advertisement vans, and folk media like songs, dances and drama.

Thirdly, the law is based on the false assumption that the Judiciary in Cameroon is independent. In practice, the Judiciary has political and administrative functions. The State Counsel, for instance, who is responsible for the pre-publication control in Section 13 and for opening criminal proceedings, is effectively the head of the Judicial Police in Cameroon. Moreover, the law does not protect the courts from the undue influence of pressmen. In the series of offences prescribed by Part IV, no mention is made of contempt of court resulting from malicious reports made by pressmen. The principle engrained in leading common law cases like R.V. Evening Standard (1924) and R.V. Gray (1900) was introduced to Cameroon by the 1916 Nigerian Criminal Code in its Section 13. Since then cases like Rex V. Thomas H. Johnson (1925), Rex V. Ernest Okoli and others (1926), and Rex. V. the Service Press (1952) and Re Onagoruwa (1979) have confirmed this principle. Under the Cameroonian penal code, contempt of court was incorporated as prejudicial comment (Section 169) and forbidden publications (Section 198). Section 169 stipulates:

> Whoever refers publicly to any judicial proceedings not yet terminated by final judgment in a manner liable to influence, whether intentionally or not, the opinion of any person or against any party, shall be punished with an imprisonment for 15 days to three months and a fine from CFA.F10,000–100,000.

Even with this provision, prejudicial comment does not protect the judges specifically from coming under undue press influence. The leading Cameroonian case on prejudicial comment has been The People V. S. N. Dukuba (*New Standard*), J.F. Gwellem (*Cameroon Times*), Tataw Obenson (*Cameroon Outlook*) and S.P. Liga (*Cameroon Telegraph*) in

1969. With the coming of multi-party politics, the Judiciary should be protected from "trial by the media."

The law on contempt in Cameroon has been designed to protect public figures such as the president and his vice, foreign heads of state and accredited diplomats (Section 153 of the penal code) and the constituted corps including the Judiciary, Armed Forces, and public administrators on duty, members of government, parliamentarians or civil servants (Section 154 of the penal code). The most important case on contempt of the president is that of The People V. Celestin Monga, Pius Njawe of *Le Messager* (1991) while that of contempt on a constituted corps remains The People. V. Sam Nuvalla Fonkem, Jonny MacViban and Ebssiy Ngum (1987) on contempt of the parliamentarians, and The People V. Yai Martin, Gwellem J. and SN Tita (1970) on the Armed Forces.

By extending the law of contempt to professional groups, the law encourages the principle of group defamation in Cameroon but Section 78, 1 makes it personal. This implies that, for proceedings for offences under Section 153 to commence, the principal party (president, vice president and diplomats) must complain as individuals. The case of Augustin Ngom Jua V. Gorji Dinka in 1969 is exemplary. The former was Prime Minister of West Cameroon but opened an action for defamation against Gorji Dinka as an individual not as somebody protected by Section 153.

Fourthly, the issue of responsibility for libel is not well defined. The law is silent on who is liable in cases of reproduced libellous material. It does not also state precisely whether the publisher and editor could be joint *tortfeasors* if they were not present on the day the libellous article was published. The problem of measuring responsibility for libel, too, has not taken into consideration the production process in each medium. In the R.V. Zik case, the responsibility was placed jointly and severally on the writer, the person who authorized the publication, the editor, the person who inserted the article, the printer and the publisher. Section 74 of the 1990 law holds liable only publishers, editors, authors and printers. In the audiovisual media, it is the station manager, editor, and managers of recording or broadcasting companies. The technicians and producers who also participate in the news-making process are exempted. Moreover, the problem of whether the administrative authorities who censure or edit the publications should be arraigned as evoked by Gorji Dinka in The People V. Yai Martin and others, was not resolved by the law.

Fifthly, the law has also fallen short of its objective of creating a competitive political system based on fair media exposure. Section 41, 1 confirms the principle of access to airtime by all political parties but does not stipulate whether it would be equal or proportional. Finally,

the law is silent on other issues of media law like plagiarism, obscene publication and seditious libel. It is also vague in its concept of "conflict with principles of public policy" expressed in Sections 14, 17 and 51 which need more definition.

Conclusion

This paper has examined the reasons for the 1990 press law in Cameroon and showed what has actually changed. The law was basically geared at instituting a press regime that could function better in a more liberal political system. The law-makers were not driven by the necessity to improve the administration of justice on media related issues. However, the law has made major strides in affirming the individual's right to publish.

The loopholes manifested are a result of the fact that the instrument was hurriedly drawn up and was used in calming the tempers which rose with the clamour for democratic reforms in the country between July and November 1990. The law was thus conceived to meet a political agenda.

The 1990 press law was conceived basically as a public law to regulate order in the society and protect the state and republican institutions. Its main objective was to suppress the media whenever the latter was in "conflict with the principles of public policy." Apart from the fact that such principles of public policy were not clearly defined, the law undermines the rights of the individual to reinforce that of the state. However, the law is not conclusive as it makes provisions for modification by either the National Communications Board or other law-making organs. Although the 1990 press law would definitely open a new chapter in the country's press history, the hope for a free press regime lies not with the law itself but with its subsequent amendments.

Notes

1. Omu, Fred. (1978). "The New Era and the Abortive Press Law of 1857." In McGarry, Georgia, (Ed.). *Reaction and Protest in the West African Press.* Cambridge, Cambridge University Press.
2. See Ewumbue-Monono Churchill (1985). "Law and the Media in Cameroon: the Effects of Media Laws on the Practice of Journalism in Anglophone Cameroon, 1917–1985." Unpublished Document, p.4.
3. See "Press Censorship", *Cameroon Star*, Friday June 24, 1966 and "In Defence of Press Freedom", *Cameroon Star*, August 15, 1966.
4. Ewumbue-Monono, *op. cit*, p.8.
5. *Ibid.*, p.15.
6. See *Cameroon Tribune* No. 4714, September 5, 1990.
7. *Ibid.*