

# Guilty Without Trial: Assessing the due Process Rights of Suspects under the Cameroonian Criminal Law and Procedure

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**Abstract:** *An inefficient criminal justice process damages the credibility of the justice system and arguably weakens the rule of law. Protecting the rights of individuals subjected to criminal proceedings is an essential element of the rule of law. International instruments on human rights reiterate the need for everyone to be presumed innocent until proven guilty in the course of trial and the importance and central role of this presumption is recognized by legal systems throughout the world. Cameroon is considered to follow the monist approach to applying international law. This means that all international treaties on Human Rights which have been approved, duly ratified, and published by Cameroon, become part of the national law. This article focuses on the framework for the protection of persons at the initial stage of the criminal process and raises the question whether a person might be found guilty of an offence even without being tried? This article equally examines the problematic enforcement of the rights of suspects in Cameroon. It offers a critical review of that right by assessing its compatibility with international standards. It finds that, although the Cameroonian Criminal Procedure Code has strived to respect these fundamental human right treaties, its application nationally is not absolute. In light of that assessment, the paper seeks to identify the impediments to the effective enforcement of the right and to recommend the most effective and feasible mechanisms for developing a robust enforcement framework for the protection and promotion of the rights of suspects in Cameroon.*

**Keywords:** Guilty without trial, suspect, due process, justice system, rights, criminal procedure

## 1. Introduction

Can a person be held guilty for an offence without being tried before a competent court? What fate does the Cameroonian criminal law and procedure hold for persons suspected of having committed or participated in the commission of an offence? To what extent do the provisions in Cameroon comply with international standards with regards to the rights of suspects? Cameroon, like many other countries, has ratified a number of human rights instruments like the Universal Declaration of Human Rights of 10 December 1948<sup>1</sup>, the African Charter on Human and People's Rights<sup>2</sup>, the International Covenant on Civil and Political Rights<sup>3</sup> which engage the responsibility of the state to protect and promote the procedural rights guaranteed in them.

Management of criminal cases is a delicate exercise, for it is highly connected with human rights especially at the initial

stage of the criminal process: investigation, arrest and detention. The attitude of the public towards crime also leads to psychological embarrassment with possible long-term social, economic and psychological problems.<sup>4</sup> It is based on this premise that any investigation, arrest and detention should be done in compliance with the provisions of the law.<sup>5</sup>

While society needs the protection of the police, it is equally important to protect society from the police.<sup>6</sup> Arbitrary arrests and searches, imprisonment without trial, forced confessions, beating and torture, secret trials, tainted witnesses, excessive punishments, and other human rights violations are too common throughout Cameroon and the world at large.<sup>7</sup> Thus, Law No. 2005 of 27 July 2005 on the Criminal Procedure Code (CPC) of Cameroon has provided much protection to arrestees and detainees, and fundamental human rights (HR) safeguards for justice to prevail. The

<sup>1</sup>It states respectively that "everyone has the right to life, liberty and security of person;" and "no one shall be subjected to arbitrary arrest, detention or exile".

<sup>2</sup>Adopted on the 21<sup>st</sup> October 1986, Article 6 provides that "every individual shall have the right to liberty to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.

<sup>3</sup> Adopted in 1966, article 9(1) provides that "everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest and detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law".

<sup>4</sup>Fonkwe J.Fongang and Eware Ashu. (2019), "Cameroon Criminal Procedure and Practice in Action", *Édition Veritas*, Douala.

<sup>5</sup>Rodrick Ndi (2019), Reflection on Police Power of Arrest, Detention and the Treatment of Suspects under the Cameroonian Criminal Procedure Code and Extra-National Laws: Human Rights Digest. *National Journal of Criminal Law*. 2(1): 4-12p:

<sup>6</sup> Rodrick Ndi (2019), What Profile for the Judicial Police Officers in Cameroon? National Colloquium paper on the theme: "La Justice Penal au Cameroun: le droit, l'application et l'accessibilité", *Nouveaux Droits de l'Homme*, held on the 11 and 12 of December 2019 at Yaoundé-Cameroon, 1-20p.

<sup>7</sup>Rodrick Ndi, (2019), "Reflection on Police Power of Arrest, Detention and Treatment of Suspects under the Cameroonian Criminal Procedure Code and Extra National Laws: Human Rights Digest". *Op.cit*, 4-12p.

prevalent rate at which persons allegedly suspected of committing or participating in the commission of offence remains a nightmare in Cameroon and the world at large. Protecting the human rights of individuals subjected to criminal proceedings is an essential element of the rule of law. Proper protection of rights is vital to strengthen the trust of citizens in the criminal justice system.<sup>8</sup> The protection of suspected persons remains invariably in the interest of all civilized systems of law.

The term criminal justice process includes all proceedings and virtually everything that happens from the time a person is suspected of committing a crime, through the prosecution, until the case is over. This includes formal arrest, preliminary hearings, grand jury indictments, arraignment and trial. In each of these stage, there are safeguards to protect persons involved. All human beings have the right to enjoy respect for their liberty and security. The Cameroon Criminal Procedure Code<sup>9</sup> has provided much protection to suspect.

The aim of this paper therefore is to give an answer to the question of whether rules protecting suspects under the Cameroon criminal proceedings meet the human rights standards provided by international human rights instruments ratified by Cameroon. This article identifies and appraises the framework for the protection of persons in contact with the police, that is, at the initial stage of the criminal process. It examines Cameroon system of treatment of suspects. It also looks at situation in which a person might be considered guilty of an offence even without being tried before a competent court. However, before having an examination of the above issues, it is imperative to have an understanding of who is a suspect, a defendant and an accused for the purpose of this article.

## 2. Suspect, defendant and an accused distinguished

### 2.1. A Suspect

When a crime is committed, usually there are two sides, the victim, who is affected as a result of the criminal act, and the suspect who is said to have carried out the act. After police investigation and if the person is arrested, he is called a suspect. "A suspect is a person alleged or suspected to be involved in a crime." The Cameroon Criminal Procedure Code (CCPC) considers a suspect as, a person against whom there exist any information or clue which tends to establish that he may have committed an offence or participated in its commission.<sup>10</sup> For there to be justice, it is important to note here that a suspect is not a criminal, and thus, should be treated accordingly. Evidence has shown that most judicial police officers as they arrest a suspect, they take him or her for an offender, which is not the case. They are presumed

innocent until proven guilty by a competent tribunal.<sup>11</sup> The essence of this is for justice to reign in Cameroon.

### 2.2. Defendant

In Cameroon, a defendant is considered as any suspect whom an Examining Magistrate notifies that he is presumed henceforth either as the offender, co-offender, or as an accomplice.<sup>12</sup> Still, at this level, the defendant is supposed to be presumed innocent until his guilt has been determined by a court with competence to do so.

### 2.3. An accused

Under the CPC of Cameroon, Preliminary Inquiries are, save for contrary legal provisions, obligatory in cases of felonies, and optional for misdemeanours and simple offences.<sup>13</sup> The PI is in fact a continuation of the investigation phase of criminal proceedings commenced either by the Judicial Police officer or by the State Counsel. The purpose of the inquiry is to ascertain whether there is sufficient evidence to justify the trial of the defendant or to find out if the defendant has a prima facie case to answer.<sup>14</sup> If at the end of the inquiry it is established that there is sufficient evidence to commit the person for his trial, then he shall be sent to court for trial so as to establish his guilt or innocence. When a suspect is charged, then that person becomes an accused. By the provisions of the CPC of Cameroon, an accused person shall be a person who must appear before the trial court to answer to the charge(s) brought against him whether in respect of a simple offence, a misdemeanour or a felony.<sup>15</sup>

### 2.4. Understanding the notion of "guilty without trial"

In criminal law, guilty is the state of being responsible for the commission of an offence. A person is guilty for violating a law, if a court says so. The determination that one has committed an offence is made by a court of law.<sup>16</sup> Justice can only be done if the right procedure is followed in the application of substantive law.<sup>17</sup> Once an allegation is made that a crime has been committed, a specific procedure must be followed in order to determine the guilt or innocence. To say the least, there is a police investigation that might result in an arrest. Upon arrest, the suspect might be taking to the police station for questioning. He might be granted a bail when a written statement has been recorded. If at the end of the investigation, it is established that there is a case against the suspect, a charge is drafted and filed in court.<sup>18</sup> The suspect is then served a summons to appear in court for trial. For the purpose of fair justice, the law makes it obligatory from the initial stage of the criminal process for anybody suspected of committing

<sup>11</sup> Rodrick Ndi (2019), What Profile for the Judicial Police Officers in Cameroon? *Op.cit*, pp. 1-20.

<sup>12</sup> Section 9 (2) of the 2005 CPC.

<sup>13</sup> *Ibid.* Section 142.

<sup>14</sup> Lloyd Lombard (2013), "Preliminary Inquiry Handbook", Thomson Reuters Canada Limited.

<sup>15</sup> *Ibid.* Section 9 (3).

<sup>16</sup> See the Preamble of the Cameroon Constitution of 2008, revised.

<sup>17</sup> Ade Akwo Catherine Mbone. (2009) "A Textbook on Criminology and Penology". First Edition, Gospel Press, Nkwen, Bamenda. P. 46.

<sup>18</sup> *Ibid.*

<sup>8</sup>FRA - European Union Agency for Fundamental Rights: Rights of suspected and accused persons across the EU: translation, interpretation and information.

<sup>9</sup> Herein referred to as Law No. 2005/007 of 27 July 2005.

<sup>10</sup>Section 9 (1) CPC.

an offence to be presumed innocent until proven guilty in the course of trial. It is fundamental principle in the criminal process which holds that "no person shall be considered guilty until finally convicted by a court."<sup>19</sup> At the initial contact between the suspect and the police, which is normally on arrest, the Cameroon Criminal Procedure Code makes it mandatory for the police officer effecting the arrest to disclose his identity, informs the suspect the reasons for his arrest<sup>20</sup> except in cases of offences committed *flagrant delicto*,<sup>21</sup> prohibits any bodily or psychological harm to be inflicted on the person arrested,<sup>22</sup> contact his family, obtain legal advice, make arrangement for his defence, consult a doctor and receive medical treatment and take necessary steps to obtain his release.<sup>23</sup>

The non-respect of the above mentioned process will lead to a miscarriage of justice and will automatically translate into the fact that the suspect has already been found guilty without trial.

### 2.5. Found guilty without trial: arrest flagrant delicto

The Cameroonian legislator through the CPC, made provisions for the means of rapid reaction to arrest offenders immediately the offence is committed. In Cameroon, the police have the power to arrest any person caught in the act of committing what appears to be a criminal offence (in *flagrant delicto*). Committing an illegal act in flagrance justifies both the right of the state to promptly intervene, and the necessity of special rules for their prosecution and trial, taking into account the specific features of such facts, the profound negative social impact, the need to restore confidence to litigants and to discourage similar behaviours in the future.

From the etymological point of view, the term "*flagrante*" derives from the Latin verb *flagro*, - are, which means "burning" or "hot"; in that sense, the term "*flagrance*" means catching the perpetrator in the heat of action or immediately after committing it. The notion of *flagrante delicto* is widely accepted as permitting an individual caught committing an act which could constitute a crime to be temporarily deprived of their liberty and handed over to the appropriate authorities. The Cameroon Criminal Procedure not only retains the provision for arrest in the act of committing an offence but also reiterates the provision relating to detention immediately after a crime is committed.

Under the Criminal Procedure Code, a crime is flagrant if it is in the course of being committed or when it has just been committed. These are cases where a suspect is caught red-handed, when after the commission of the offence, the suspect is pursued by public clamour,<sup>24</sup> or found with the

*corpusdelicti*,<sup>25</sup> thereby insinuating that he may be the author or accomplice of an offence which has just been committed. It also ensues where the immediate effects of an offence could still be felt or seen. Examples are bloodstains on the dress of the suspect or a smoking gun found with the suspect.

If an arrest is made, it is considered legal on the broad assumption that the person when arrested has in their possession some object related to the crime or if the police have information that credibly supports the presumption that the person was involved in the offence.<sup>26</sup>

However, even when an offence is committed *flagrante delicto* justifying the commission of an offence and imputing the blame, the law has made special provisions with respect to *flagrante delicto* investigation. It makes it mandatory for a preliminary inquiry to be conducted for offence committed *flagrante delicto* and for their eventual trial before the court.

### 3. Contents of the rights of suspects under the Cameroonian criminal law and procedure

Management of criminal cases is a delicate exercise, for it is highly connected with human rights. For example, arrest and investigation limit the right to movement, privacy and corporal integrity of the suspect. The attitude of the public towards crime also leads to psychological embarrassment with possible long-term social, economic and psychological problems. It is based on this premise that any investigation, arrest and detention should be done in compliances with the provisions of the law. In order to protect the rights of suspects in Cameroon, the legislator provided for several rules to be observed from investigation of the offence, arrest of the suspect and at police custody and detention.

#### 3.1. Arrest

An arrest occurs when the police takes a person into custody and deprive that person of freedom for allegedly committing a criminal act.<sup>27</sup> An arrest by the Cameroon Criminal Procedure Code consist of apprehending a person for the purpose of bringing him without delay before the authority prescribed by law or by the warrant.<sup>28</sup> The Code makes it mandatory for the Judicial Police Officer or any other person lawfully authorised to arrest the suspect to disclose his identity and the reasons why the person is being arrested and even allow a third party to accompany the person in order to ascertain the place to which he is being detained. It prescribes thus:

<sup>19</sup>Nah Thomas. F., (2007), "The Protection of the Maxim Innocent until Proven Guilty by the Cameroon Criminal Procedure Code" in Ewang Sone A et al. in Readings in the Cameroon Criminal Procedure Code, *Presses Universitaires d'Afrique* Yaoundé. Pp.233.

<sup>20</sup> Rodrick Ndi (2019), What Profile for the Judicial Police Officers in Cameroon? *Op.cit.*, 1-20p.

<sup>21</sup> Section 32 of the Criminal Procedure Code (CPC).

<sup>22</sup> *Ibid.* Section 30(4).

<sup>23</sup> *Ibid.* Section 37.

<sup>24</sup> Section 103 (2).

<sup>25</sup> *Ibid.*

<sup>26</sup> Spanish original: "*que hagapresumirfundadamente que intervinoen el mismo*". Amnesty International: Arbitrary detentions by police in Mexico: False suspicions. Available online at [www.amnesty.at/media/1203/amnesty-international-false-suspicious](http://www.amnesty.at/media/1203/amnesty-international-false-suspicious). (Accessed 27 September 2020).

<sup>27</sup> Larry J. Siegel. (1995) "Criminology". Third Edition, *West Publishing Company*, St Paul New York, Los Angeles San Francisco. P. 395.

<sup>28</sup> Section 30(1) of the Criminal Procedure Code of Cameroon.

*“Except in the case of a felony or misdemeanour committed flagrante delicto, the person effecting the arrest shall disclose his identity and inform the person to be arrested of the reason for the said arrest, and where necessary, allow a third person to accompany the person arrested in order to ascertain the place to which he is being detained”.*<sup>29</sup>

However, the case of *D. S. Oyebowale V. Company Commander of Gendarmerie for Fako*<sup>30</sup> contradicts this fundamental rights of suspects guaranteed by our Code of Criminal Procedure. On 11 June 2009 the applicant, a Nigerian sailor, was arrested on the high seas en route to Cameroon by one Mr. Leyi Prosper, the Company Commander of the Gendarmerie Company of Fako Division, Cameroon. There was no apparent reason for his arrest, neither were any charges read to him at the time of the arrest. He was later taken to Cameroon and detained at the Gendarmerie Brigade in Limbe. Even at this time, he was not made aware of the reasons for his arrest and detention. The applicant requested release on medical grounds due to his deteriorating health but the respondent refused to grant that request.

Furthermore, ordinarily an arrest is effected by simply ordering the person to be arrested to follow the judicial police officer to the police station or any other specific legal place of investigation or detention. In other words, unless the person to be arrested offers some physical resistance the arresting officer should not use any force in effecting the arrest.<sup>31</sup>

In general, an arrest can only be carried out with the backing of an arrest warrant duly signed by a competent authority. However, in cases of felonies and misdemeanours committed, any person witnessing such commission can carry out the arrest without a warrant.<sup>32</sup> Again, in the further attempt to protect an arrested person, the Cameroon Criminal Procedure Code states that upon arrest of a suspect, no bodily or psychological harm shall be cause on him or her.<sup>33</sup>

### 3.2. Police custody and detention

After arrest, the suspect is taken to police custody.<sup>34</sup> It follows that after taking the arrested person in custody, investigations have to be conducted to determine whether such a person should be released or remanded in custody. Of course, the decision to release or remand in custody would ultimately depend on the statements recorded from other arrested persons and from potential witnesses.<sup>35</sup> The purpose of police custody is to carry further investigation and gather more information related to the offence. Here, when the

police officer intends to remand the suspect in question, the Law makes it mandatory for the suspect to be informed of the grounds for the suspicion and invite him to give and explanation he deems necessary.<sup>36</sup>

To protect the liberty of arrested persons, the Cameroon Criminal Procedure Code specifically regulates the period and time limits of remand in custody or police custody before the suspect must be released or charged with an offence. Central to the operation of the time limits is the role of the custody officer at the police station and the requirement that the arrested person should normally be questioned only at a police station.<sup>37</sup> Once a person is brought to a police station after arrest, time limits restrict the period of detention without charge. Under the Cameroon Criminal Procedure Code, the time allowed for remand in custody shall not exceed forty-eight hours, renewable once. This period may, with the written approval of the State Counsel, be exceptional extended twice, while given reasons for such extension.<sup>38</sup> However, the period of remand in police custody shall not be extended solely for the purpose of recording the statement of a witness.

Accordingly, the period of remand in police custody shall be extended, where applicable, having regards to the distance between the place of arrest and the police station or the gendarmerie brigade where such remand has to be effected.<sup>39</sup> The extension shall be 24 hours for every 50 kilometres. The period of police custody shall start to run from the time the suspect presents himself or is brought to the police station or gendarmerie brigade. Except in cases of felonies or misdemeanours committed flagrante delicto, remand in police custody shall not be ordered on Saturday, Sundays or public holidays. However, where the remand in police custody has commenced on Friday or on the eve of a public holiday, it may be extended as provided in section 119(2).

It will have been noted that after the forty-eight hours' renewable once, a person cannot be detained further unless the offence is a "serious arrestable offence", the investigation is being conducted diligently and expeditiously, and further detention is necessary to enable evidence to be secured or preserved, or obtained through questioning. A serious arrestable offence involves any of the following: one that causes serious harm to the security of the state or to public order, serious interference with the administration of justice or with the investigation of offence or of a particular offence; the death of any person; serious injury to any person etc.

As a general rule, as soon as practicable, after the suspect arrives at the station and the custody record has been opened, the custody officer must have to consider the sufficiency of the evidence. If there is at any point sufficient evidence to charge the suspect, the suspect should be

<sup>29</sup> *Ibid*, section 31.

<sup>30</sup> Suit No. HCF/0040/HB/09(unreported)).

<sup>31</sup> *Ibid*. Section 30(2).

<sup>32</sup> *Ibid*. Section 31.

<sup>33</sup> *Ibid*. Section 30(4).

<sup>34</sup> Larry J. Siegel. (1995) "Criminology". *Op.cit*, p. 295.

<sup>35</sup> Tantoh-Azuh Chrysanthus (2007). "Due process in criminal trial", in Ewang Sone A et al in Readings in the Cameroon Criminal Procedure Code, *Presses Universitaires d'Afrique Yaoundé*. P. 137.

<sup>36</sup> Section 119(1)(a) CPC.

<sup>37</sup> Jason Williams, (1997) "*Civil and Criminal Procedure: The conduct of litigation in the courts of England and Wales*", London, Sweet & Maxwell. P. 361.

<sup>38</sup> Section 119(2) of the CPC.

<sup>39</sup> *Ibid*. Section 120.

charged without delay, or released (possibly on bail). Under the New Criminal Procedure Code, bail can be unconditional (self-bail)<sup>40</sup> or conditional.<sup>41</sup> The unconditional bail is the situation where the examining magistrate, at any time before the close of the Preliminary Inquiry (PI) and of his own motion, withdraws the remand warrant and grants bail. In addition to bail being granted as of right or by the initiative of the examining magistrate, it may also be granted on the application of the accused or his counsel. But this would have to be done after the submission of the State Counsel and when the accused enters into a recognizance to appear before the examining magistrate whenever convened and undertakes to inform the latter of his movements. On the other hand, conditional bail is the situation where a person lawfully remanded is granted bail because he fulfils one of the conditions outlined in section 246 (g) of the CPC of Cameroon. That is;

*“- Either deposit a sum of money, the amount and conditions of payment of which shall be fixed by the examining magistrate, taking into consideration the resources of the defendant;  
Or provide one or more sureties in accordance with the provisions of Section 224 and following”*

Conditional bail can also be granted by the judicial police officer under Section 21 of the New Code. This is when a warrant of arrest contains an endorsement that the person to be arrested shall be released if he fulfils the conditions listed in the warrant. In such a situation, the endorsement shall specify, apart from the magistrate before whom or the court before which the person to be arrested is to appear:

*“- Either the number of sureties, if any, and the amount by which they bind themselves to pay in the case of non-appearance;  
Or the amount of security to be deposited by the person to be arrested”*

When such an endorsement is made, the JPO shall release the person if he fulfils the conditions laid down by law.<sup>42</sup>

A further due process rights of suspected protected by the Cameroon criminal police code is the right not to be subjected to any physical or mental constraints upon arrest and detention. The code provides that the suspect shall not be subjected to any physical or mental constraints, or to torture, violence, threats or any pressure whatsoever, or to deceit, insidious manoeuvres, false proposals, prolong questioning, hypnosis, the administration of drugs or any other method which is likely to compromise or limit his freedom of action or decision, or his memory or sense of judgment.<sup>43</sup> Also, the person on remand may at any time within the period of detention and during working hours, be visited by his counsel, members of his family and be examined by a medical officer when falls sick.<sup>44</sup>This is to

ensure fair treatment as many detainees have gone to jail in perfect health, but have come out the worst of patients.<sup>45</sup>

The prohibition against torture upon arrest and during detention of the suspect is a fundamental human right of all suspects provided by International Human Rights Instruments to protect and maintain the integrity of persons. It is one of the few absolute human rights which must be respected. The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984 defines torture as:

*“any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”*

Article 6 of the African Charter on Human and Peoples' Rights provides that:

*“Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.”*

The International Covenant on Civil and Political Rights (ICCPR), in its Article 7 is also to the effect that *“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”*

Adhering to these international human rights treaties, the Cameroon Criminal Procedure Code<sup>46</sup> forbids the torture and other treatment that violates human dignity and integrity.

However, despite these prohibitions, there continued to be gross violation of this fundamental due process rights of suspects in Cameroon where suspected persons are arrested without following due process, tortured before taken to the police custody, subjected under inhumane condition while in police custody. The case of *D. S. Oyebowale V. Company Commander of Gendarmerie for Fako* above is a typical example. On 11 June 2009 the applicant, a Nigerian sailor, was arrested on the high seas en route to Cameroon by one

<sup>40</sup> Section 222 of the CPC.

<sup>41</sup> *Ibid*, Sections 224-235, 346 (g), 397 (1).

<sup>42</sup> *Ibid*, Section 21(1) of the CCPC.

<sup>43</sup> *Ibid*, Section 122(2).

<sup>44</sup> *Ibid*, Section 123(1).

<sup>45</sup> Ade Akwo Catherine Mbone (2007), “A Bird’s Eye View of the Cameroon Criminal Procedure Code”, in Ewang Sone A. et al. in Readings in the Cameroon Criminal Procedure Code, *Presses Universitaires d’Afrique* Yaoundé. P.42.

<sup>46</sup> Law No. 2005/007 of 27 July 2005 on the Cameroon Criminal Procedure Code.

Mr. Leyi Prosper, the Company Commander of the Gendarmerie Company of Fako Division, Cameroon. There was no apparent reason for his arrest, neither were any charges read to him at the time of the arrest. He was later taken to Cameroon and detained at the Gendarmerie Brigade in Limbe. Even at this time, he was not made aware of the reasons for his arrest and detention. While in detention, his boat was abandoned on the shores where it was dilapidating and was being looted. The applicant requested release on medical grounds due to his deteriorating health but the respondent refused to grant that request. On the 3<sup>rd</sup> of July 2009, the applicant applied to the State Counsel in Limbe for release on bail.<sup>47</sup> This process was again hindered by the refusal of the respondent to report to the State Counsel for a bail hearing. On 08 July, the applicant filed a motion on notice in the High Court of Buea for an order of habeas corpus under Section 584 of the CPC and Section 18(2) (b) of the Judicial Organization Ordinance, for the determination of the legality of his detention. Pursuant to Section 585 (3) of the CPC, the court issued an order for the respondent to produce the applicant in court on 23 July, together with the documents authorizing his arrest. This order was flouted by the respondent who failed to release the applicant or to produce him in court as ordered. On 04 August, upon hearing counsel for the applicant and the State Counsel, a High Court judge, ordered the immediate release of the detainee under Section 585(4) and 586(2) of the CPC. However, the respondent again refused to obey this order. The applicant was kept in detention until 20 August when he was released on bail. This release on bail was clearly in violation of the court order which had mandated his immediate and unconditional release. The judge's decision ordering the immediate release of the applicant was well founded in law. The applicant was arrested without a warrant at a time when there was no apparent cause to suspect him of criminal activities. He was not made aware of the reason(s) for his arrest, neither were any charges brought against him when he was subsequently detained. The respondent was in breach of Sections 30-31, and 119 of the CPC, which consequently rendered the arrest and detention unlawful. Moreover, the respondent failed, in the first instance to appear in court to advance reasons for his decision to arrest and detain the applicant despite having been duly served a court order and in the second instance, failed to immediately release the applicant pursuant to the court's order.

From the above case, the failure of Company Commander of Gendarmerie for Fako to inform Mr. D. S. Oyebowale (the suspect) the reasons for his arrest, subject him under inhumane conditions, failure to release him on medical grounds due to his deteriorating health contradicts the due process rights of every suspect as per the provisions of the Cameroon Criminal Procedure Code. This translates into the idea that the suspect was already considered guilty by the Company Commander of Gendarmerie for Fako without trial. The Cameroon Criminal Procedure Code makes it mandatory for every suspected person to be presumed innocent until his guilt has been legally established in the course of a trial where he shall be given all necessary

guarantees for his defence.<sup>48</sup> The situation of the case above reflects the recent case in America which portrays the gross violation of the basic due process rights of suspects. The law gives everyone the right to be presumed innocent until proven guilty during trial. It equally prohibits any form of arbitrary arrest and ill - treatment during arrest and detention. Contrary to the provisions of International Human Rights instrument prohibiting arbitrary arrest and torture, on May 2020, George Floyd, a 46 year-old black American, was killed in Minneapolis, Minnesota, during an arrest for allegedly using a counterfeit bill.<sup>49</sup> Without proof of guilt, the victim George Floyd was hand cuffed and pinned to the ground by Dereck Chauvin, a police man. On the video that went viral on social media, the police officer was seen using his kneel to pin the victim on his neck and the victim was heard repeatedly saying "I cannot breathe" and finally gave up the ghost.

#### 4. Nullity of irregular acts done against a suspect and compensation

This section shall bring out the effects of irregular acts perpetrated against the suspects and the compensation available to sections.

##### 4.1. Consequences for irregularities

The Criminal Procedure Code sanctions with nullity all reports and acts done in violation of the rights of the suspect and sometimes, the acts subsequent to the irregular act. This is the fate reserved for interrogation reports where the purpose of the police custody, the time of commencement and completion of the interrogations, as well as the period of rest are not mentioned.<sup>50</sup> The same fate is reserved for investigation reports where the suspect was not informed of his right to counsel and to remain silence.<sup>51</sup> As concerns the respect of the irregularity of police custody, the CPC has provided for habeas corpus proceedings whereby the authority keeping the person in detention is summoned before the president of the High Court to justify the regularity of the detention, failure of which the person detained shall be released.<sup>52</sup>

##### 4.2. Compensation for unlawful arrest, detention and inhumane treatment

When a police officer arrest and detain a person or suspect illegally, the suspect has the right to demand for compensation for illegal detention.<sup>53</sup> The Criminal Procedure Code has made provision for compensation in case of unlawful arrest and detention. Unlawful detention is defined differently in international, regional and domestic procedural

<sup>48</sup> Section 8 CPC.

<sup>49</sup> BBC News May 30, 2020. Available at Killing of George Floyd- Wikipedia (Accessed 20/09/2020).

<sup>50</sup> Section 122(1) (c) CPC.

<sup>51</sup> Ibid. Section 116(4)

<sup>52</sup> Fonkwe J. Fongang and Eware Ashu. (2019), "Cameroon Criminal Procedure and Practice in Action", *Édition Veritas*, Douala. P.63.

<sup>53</sup> Rodrick Ndi, (2019) "Reflection on Police Power of Arrest, Detention and Treatment of Suspects under the Cameroonian Criminal Procedure Code and Extra National Laws: Human Rights Digest". *Op.cit*, 4-21p.

<sup>47</sup> Sections 224(1) and 225 CPC.

legislation. There is no universal or common definition of “unlawful detention” in comparative law.<sup>54</sup> In this study, I have considered that a detention is unlawful if it contravenes any provisions of Cameroonian or international laws. Section 236 of the Cameroon Criminal Procedure Code considers unlawful or illegal detention by referring to detention by the judicial police officer in disrespect of Sections 119 to 126 of the Code, detention by the State Counsel or the Examining Magistrate in disrespect of the provisions of Sections 218 to 235, 258 and 262 of the Code.

Where there is damage, there should be a repair.<sup>55</sup> An arbitrary arrest would expose the police officer to a civil suit for unlawful arrest and detention.<sup>56</sup> Thus, when a person is arrested illegally and detained, it is not enough for him to be released only; there should be compensation for the arbitrary arrest and detention. The ICCPR states that, everyone who has been the victim of unlawful arrest or detention shall have an enforcement right to compensation.<sup>57</sup>

The Code provides clearly in Section 236 (1) that any person who has been illegally detained, may when the proceeding end in a no-case ruling or acquittal which has become final, obtain compensation if he proves that he has actually suffered injury of a serious nature as a result of such detention.

Concerning punishment for false arrest, Section 291 of the PC stipulates that:

- 1) “(1) whoever in any manner deprives another of his liberty shall be punished with imprisonment for from 5 (five) to 10 (ten) years and with fine of from CFAF 20,000 (twenty thousand) to CFAF 1000,000 (one million),
- 2) (2) the punishment shall be imprisonment for from 10 (ten) to 20 (twenty) years in any of the following cases:
  - a) Where the deprivation of liberty lasts for more than a month; or, b) Where it is accompanied with physical or mental torture; or, c) Where the arrest is effected with the aid of a forged order from a public authority or a uniform unlawfully worn, or pretending an appointment not held”.<sup>58</sup>

Any person who has been arrested or detained against the law shall have an enforceable right to compensation, for

<sup>54</sup> Van Kempen, P.H.P.H.M.C., (2012), “Pre-trial Detention. Human Rights, Criminal Procedural Law, and Penitentiary Law, Comparative law” - Detention avantjgement. Droits de l’homme, droit de la procédure pénale et droit pénitentiaire, droit comparé (International Penal and Penitentiary Foundation, 44) p. 7.

<sup>55</sup> Rodrick Ndi, (2019) “Reflection on Police Power of Arrest, Detention and Treatment of Suspects under the Cameroonian Criminal Procedure Code and Extra National Laws: Human Rights Digest”. *Op.cit*, p. 4-21.

<sup>56</sup> Starmer & Christou (2005), “Human Rights Manual and Sourcebook for Africa”. The British Institute of International and Comparative Law Bar Human Rights Committee of England and Wales, (BIICL), at 762.

<sup>57</sup> Article 9 (5) of the ICCPR, Article 5 (5) of the ECHR and also the case of *MonjaJaona v Madagascar* (1985).

<sup>58</sup> Rodrick Ndi (2019), what profile for the judicial police officers? *Op.cit*, 1-20p.

wrongful arrest and/or for false imprisonment, when the right process for arrest or detention has not been respected.<sup>59</sup>

The compensation shall be paid by the State which may recover same from the judicial police officer, the State Counsel or the Examining Magistrate at fault. The compensation is awarded at first instance by the decision of a commission.<sup>60</sup> When the action is against a magistrate, the Commission shall be composed of the:

- a) President: A judge of the Supreme Court;
- b) Members:
  - Two Court of Appeal Magistrates;
  - A representative of the Ministry in charge of Higher State Control;
  - A representative of the Ministry in charge of the Public Service;
  - A representative of the Ministry of Finance;
  - A member of parliament designated by the Bureau of the National Assembly;
  - The President of the Bar Council or his representative.

When the action is against a judicial police officer, the Commission shall, in addition to the above, include a representative of the Department in charge of National Security or the Gendarmerie, as the case may be. Persons concerned are expected to seize the Commission within six (6) months from the date of the end of the illegal detention or from the date when the no case ruling or acquittal decision becomes final. Seizing the Commission shall be done by way of an application. Proceedings shall be camera.<sup>61</sup> The decisions of the Commission are subjected to appeal before the Judicial Division of the Supreme Court. The decision is considered a civil judgment.

## 5. Conclusion

The presented article discusses on the due process rights of suspects under the Cameroon Criminal Procedure Code. The point at issue is whether a person may be held guilty of an offence without being tried before a competent court; whether the commission of an offence automatically makes someone guilty of the offence? Adhering to international law standards for the protection of suspects, the Cameroon Criminal Procedure Code permits anyone suspected of committing or participated in an offence innocence until his guilt or innocence has been established before a competent court of law.<sup>62</sup> The purpose of such recognition is to ensure that people should not suffer for a crime they did not commit. The reality, of course, is that once suspicion focuses on a particular individual, the mind set of many players in the criminal justice system is that the suspect ‘is probably guilty. The Code equally permits any person effecting arrest to present himself to the suspect, present a warrant of arrest, and inform him/her of the reason for the

<sup>59</sup> Rodrick Ndi, (2019) “Reflection on Police Power of Arrest, Detention and Treatment of Suspects under the Cameroonian Criminal Procedure Code and Extra National Laws: Human Rights Digest”. *Op.cit*, p. 4-21.

<sup>60</sup> Section 237 (1) CPC.

<sup>61</sup> *Ibid*, Section 237 (7).

<sup>62</sup> *Ibid*, Section 8. See also the Preamble of the 2008 revised Constitution of Cameroon.

arrest, caution of his right to remain silent.<sup>63</sup> Except in the case of a felony or misdemeanour committed flagrante delicto, the person effecting the arrest shall disclose his identity and inform the person to be arrested of the reason for the said arrest, and where necessary, allow a third person to accompany the person arrested in order to ascertain the place to which he is being detained. Arbitrary arrests and detention in Cameroon are prohibited by the law and the Constitution. Cameroon's Constitution, Penal Code, and Criminal Procedure Code forbid the use of torture and other treatment that violates human dignity and integrity. As soon as practicable after the suspect arrives at the station and the custody record has been opened, the custody officer should consider the sufficiency of the evidence. If there is at any point sufficient evidence to charge the suspect, the suspect should be charged without delay, or released. The Code equally stipulates that a person with a known place of abode may not be remanded in police custody except in case of a felony or a misdemeanour committed flagrante delicto. However, despite these numerous guarantees and prohibitions, there continued to be gross violation of these fundamental due process rights of every suspect in Cameroon. The time allowed for remand in custody may not exceed 48 hours, renewable once, subject to the approval of the State Counsel. In exceptional cases, this period may be extended twice, on duly motivated grounds. In practice, custody periods in certain police and gendarmerie headquarters far surpass the 48-hour period provided for by law, and are neither made apparent to the State Counsel nor subject to a reasoned explanation. Worse still, such extended spells in custody are used as a pretext by judicial police officers to extort money from detainees. While in police custody, they are treated inhumanely as if already found guilty.

This paper calls on the Cameroonian authorities to put in place procedures to ensure that people are only arrested on the basis of a reasonable suspicion of having committed a crime, and are allowed immediate access to a lawyer, ensure that arrests and detentions are conducted in compliance with the rules of law and ensure all security forces are trained on and understand these norms; issue clear orders to the military, the gendarmes and the police commanders to immediately cease the use of excessive during arrest and investigation. Conduct prompt, thorough, independent and impartial investigations into all allegations of torture, and other ill-treatment of people in all places of detention, and ensure that guards, interrogators and other detention officials who are responsible for the torture and ill-treatment of suspects face disciplinary measures and criminal prosecution in fair trials before civilian courts.

Nevertheless, the Cameroon criminal Procedure Code on the whole, is very comprehensive. It portrays the State's desire to preserve basic human rights and the rule of law. Its success or failure would ultimately depend on those responsible for its application. It may not be perfect as perfection is always an utopian ideal in any human endeavour. But with experience of time, any loopholes that may surface would eventually be filled by the competent authorities. After all, it

has been wisely said that the taste of the pudding lies in eating it.<sup>64</sup>

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<sup>64</sup>Tantoh- Azuh Chrysanthus (2007). "Due process in criminal trials under the Cameroon Criminal Procedure Code" in Readings in the Cameroon Criminal Procedure Code. *Presses Universitaires d'Afrique*, Yaoundé P.149.

<sup>63</sup> For more on this, see the *Miranda Case*.



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