

## **The Right to Liberty and Security of Persons Under Human Rights Law: Relevance of its Recognition in Respecting International Human Right Prescription in Cameroon**

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### **Abstract**

*Respecting human rights has been the initiative and responsibility of the State in guaranteeing the respect of the right of everyone. In it, in this juncture and lane, this article seeks to express the concept that the right to liberty and security of persons postulated in relevant human rights instruments has given tasks to the State of Cameroon in guaranteeing the right by thwarting their defilements which in return will posture a hostile effect on the important human rights of those living in the territory when issues of liberty and security are concerned. This article also signposts that the request for this right by Cameroon will go a long way in imitating the various legal mechanisms put in place by both international and national law. The State of Cameroon has initiated several efforts in ensuring that the human rights of all should be protected without any aspect of violations by the various law enforcement officers. Even though with all the putting into place of the various human rights instruments in protecting and ensuring a person's security rights, the human rights situation and condition in the country continue to be precarious and devastating as most of those persons who are presumed of crime commission are experiencing horrible living conditions. With all these in place, it becomes worrisome and questionable as the position of the state of Cameroon when dealing with the human rights situation especially those related to the guarantee and security of persons. The rate of violations of this fundamental human right is increasing and alarming pushing lots of embarrassment as to the recognition and enforcement of human rights. It is therefore at this lane that the State of Cameroon has to engage its commitment to respect its responsibility when it comes to human rights protection and security of persons.*

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### **Introduction**

It is a stated principle that Cameroon as a state of law has enacted various credible principles and continues claiming to be an actor in the enforcement and preservation of fundamental human rights. The State has enacted and ratified several human instruments ranging from the Universal Declaration of Human Rights 1948, the African Charter on Human and People's Rights, the International Covenant on Civil and Political Rights 1966, and other human rights dispositions. At the national level, the country has put into place a constitution that in any given

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country is considered the highest law of every State. The main agenda here is putting into place the Penal Code of 1967 which was amended in 2016 in which the right to liberty and security is a fundamental right of those presumed criminals.

It is a stated fact that the Constitution is clear when dealing with the protection and preservation of the right in ensuring the liberty and security of persons. The Constitution is open to the various provisions that «...we constitute one and the same Nation, bound by the same destiny, and assert our firm, determination to build the country on the foundation of the ethics of network, justice, and progress ... [...] ... while maintaining peaceful and brotherly relations with the other nations of the World, in accordance with the principles enshrined in the Charter of the United Nations ...». We believe that as a state of law which have ratified a series of human right instruments and which are out to portray democracy and liberty, the rule remains that every arrest and detention of persons must be carried out under the confines and prescription stipulated by the law. Under no circumstances should someone be deprived of his or her liberty in the name of the crime committed<sup>2</sup> as everyone should be treated humanely even when the said person has been accused of committing a crime.<sup>3</sup> The rule is clear and authentic here that the preservation of the life of everyone will, and will continue to be the responsibility of every State operating under the umbrella of law in ensuring that everyone irrespective of status, race, or nationality should be treated with lots of integrity when meting out treatment on the said person. The treatment should be done in accordance with the provision and prescription stipulated under the various human rights instruments to which Cameroon has been a signatory. Cameroon as a party to human right instruments especially that of the International Covenant on Civil and Political Rights must do everything within its power to prohibit arbitrary arrest, and ensures that those arrested should be informed at the time of arrest of the reasons for their arrest and the charges placed against them in accordance to Article 9 of the Covenant which is very imperative when handling issues of human right. It is therefore and will always be the responsibility of the State of Cameroon to ensure that anyone charged with a criminal offence "*shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release.*"

<sup>4</sup> This right concerned is relevant and applicable at every twinkling and gives everyone the right to contest their detention condition if they believe it is illegitimate or groundless, and have not complied with the due process of the law.

### **Assessing the Place of Cameroon Legal Dispositions in the Protection of the Right to Liberty and Security**

It is captivating in sympathetic with lots of appetising settings that Cameroon in its human rights appreciation has consented to a plausible atmospheric international legal instrument in

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<sup>2</sup> This situation is in line with that provided by article 9 of the Universal Declaration of Human Right 1948 which provide that no one under no circumstances should be subjected to arbitrary arrest, detention, or exile.

<sup>3</sup> This situation is clear as Section 9 of the Cameroon Criminal Procedure Code of 2005 is clear when it provides that everyone is presumed to be innocent until proven guilty. That no one should be tortured and inhumanely treated.

<sup>4</sup> International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976), 999 UNTS 171, Article 9

the field of defending human rights and freedoms, thereby promising itself in ensuring the necessary rights and freedoms guaranteed by the relevant universal instruments, including the right to liberty and safety of the person.

As a state of law bind by relevant legal dispositions with the constitution considered as the groundnorm of its legal stamina and foundation, enormous efforts have been meted by the country in ensuring this fundamental right. A praiseworthy ingenuity is recognised in its preamble by providing that;

*“every person has the right to life, physical and moral integrity and to humane conduct in every circumstance. That under no circumstances shall someone be subject to torture, inhumane and degrading treatment”.*<sup>5</sup>

This beautiful country’s constitution continues in all its ramifications in granting audience by affirming the attachment of the people of Cameroon to the fundamental freedoms enshrined in the Universal Declaration of Human Rights, the Charter of the United Nations, and the African Charter on Human and Peoples’ Rights, and all duly ratified international conventions relating thereto. Article 45 of the Constitution provides that;

*“duly approved or ratified treaties and international agreements shall, following their publication, override national laws, provided the other party implements the said treaty or agreement”*<sup>6</sup>

The country’s Constitution of 2 June 1972, revised by Law no 96/06 of 18 January 1996, interdicts torture and cruel, cold-hearted or degrading chastisement and treatment in conformism with the Covenant on Civil and Political Right which provide that;

*“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.”*<sup>7</sup>

The ban on imperiling a suspect to torture and the responsibility of treating him benevolently are also treasured in Article 121(2) of the Code of Criminal Procedure. Even with the reality of these laws put in place, security forces still torture, shattered, hassle, and otherwise abuse citizens, prisoners, and detainees, although there are fewer such cases than in previous years. Protracted pre-trial confinement is still a serious problem. It is of great germaneness that Article 221 of the Criminal Procedure Code 2005 offers the time limit for detention awaiting an inquiry which cannot exceed six months and can only be extended by a directive from a judge giving grounds by 12 months for serious crimes and six months for lesser crimes. When this time limit expires, the accused must be released immediately. Cameroon’s Constitution,<sup>8</sup> Penal Code,<sup>9</sup> and even the Criminal Procedure Code<sup>10</sup> forbid the use of torture and other treatment that

<sup>5</sup> Law no.96/06 of 18 January 1996 to amend the Constitution of 2nd June 1972. Article 65 of this Constitution is to the effect that the preamble is an integral part of the constitution.

<sup>6</sup> It should, however, be noted that the international protection of Human Rights has adopted the idea of diplomatic immunity which should water down the provisions of article 45.

<sup>7</sup> Article 7 of the International Covenant on Civil and Political Right 1966.

<sup>8</sup> Cameroon's Constitution of 1972 with Amendments through 2008.

<sup>9</sup> Journal Officiel de la République du Cameroun, Code Pénal Loi n° 67/LF/1 12 Juin 1967.

<sup>10</sup> Law n°2005 of 27 July 2005 on the Criminal Procedure Code, Cameroon

violates human dignity and integrity. This same position supplements the Convention against Torture where it is to the effect that a State must;

*“take operative legislative, administrative, judicial or other actions to prevent acts of torture in any territory under its jurisdiction.”*<sup>11</sup>

The authority in charge of executing this right must recurrently supervise interrogation practices and procedures with the aim of preventing torture.<sup>12</sup> The Convention further states that States’ party has to mien a quick and detached investigation, and where there is sensible pulverized in trusting that an act of torture has been dedicated in any territory under its jurisdiction, it is the obligation of such State in taking the required actions so as in prohibiting this.<sup>13</sup> In enforcing this Convention of Torture, Cameroon’s Constitution offers that;

*“Under no statuses shall any person be subjected to torture, to cruel, inhumane or degrading treatment.”*<sup>14</sup>

Cameroon’s penal code criminalizes the use of torture<sup>15</sup> in inducing a person to confess to an offense or to offer statements or related information.<sup>16</sup> In this respect, there is that inevitability that aspect of instigating safekeeping should be of fundamental interest to law execution officers of the country. There is a need in ensuring the security and welfare of everyone unrelatedly to the crime committed. Committing a crime by someone does not in any way destitute the person of his or her fundamental human right, and such right should be exercised in respecting the said person’s dignity, integrity, and personal security. Making endowment of the law as to the security of a person in all aspects of life is one thing, ensuring that this security should be assured to the latter is another, and it is the duty of the Cameroon State in making sure that persons under detention, pre-trial, and even trial should be preserved with some respect in conformity with the relevant human right instruments and national temperaments that the country has accepted in effecting.

Accepting the confirmation of international instruments in the field of protection of human rights and freedoms has actually posed a positive impression on the upgrading of national legislation in Cameroon. First of all, this is proved by the necessities of the Constitution of Cameroon to which the relevant requirements on ensuring the right to liberty and security of persons have been functional. And this is important since it is the responsibility of the Constitution of any country in determining the controlling path of development and life of its society. Therefore, when inferring and smearing a particular provision of the Constitution, on

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<sup>11</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 2(1).

<sup>12</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 11.

<sup>13</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 12

<sup>14</sup> Cameroon's Constitution of 1972 with Amendments through 2008

<sup>15</sup> NYO WAKAI and 172 others vs. The People, the administrative authorities responsible for the maintenance of law and order proceeded to arrest persons suspected of being involved in the destruction of property and other criminal acts committed during public manifestations, which led to the state of emergency in the North West Province in October 1992.

<sup>16</sup> Journal Officiel de la République du Cameroun, Code Pénal Loi n°67/LF/1 12 Juin 196.

the basis of a particular situation, state bodies, and officials do not have any right to violate the normal life and development of society.

Therefore, the above legitimate provisions meet the checks set out in internationally authorized Acts regarding the possible restriction of the right to liberty and security of a person. Therefore, it should be agreed that the right to liberty and security of a person is not complete, as it may be constrained in the manner prescribed by law. And this does not violate the requirements of International Legal Acts, which allow cases of lawful restriction of the said law. It doesn't mean that this fundamental human right related to liberty and security should not be violated in any circumstance in the name of maintaining the human right of the person in question. It is an attractive set-up and podium for ensuring human rights fortification at all stages of the criminal proceedings, gorgeous. What about the position where this liberty portends the security and sovereignty of the Cameroon state? I do believe the status quo will never be similar in ensuring such respect. It is the obligation of every State in ensuring that its security and sovereignty should be protected at all levels of security, under no conditions should this be sacrificed. The concept of liberty should not be canned as it stands when such liberty breaches state security, public policy, and even the standard of an autonomous society as the state in question.

### **Questioning the Detention Condition in Ensuring Detainees' Security**

It is the place of every constitution of a country in ensuring that its constitutional provisions should be respected by seeing to that it is in meet up with the requests of international legal actions to promise the right to liberty and security of person, namely:

In every detention environment, there is always that need in ensuring that those who are detained should be safeguarded and secured. This has been the laudable great so far, the criminal atmosphere in Cameroon has been working towards its realization. Section 263 of the Cameroon Criminal Procedure Code provides that:

"1) Any person who has been illegally detained may, when the proceedings end in a no-case ruling or an acquittal which has become final, obtain compensation if he proves that he has actually suffered injury of a particularly serious nature as a result of such detention.

2) Illegal detention within the context in subsection (1) above shall mean:

a) detention by the Judicial Police Officer in disrespect of the provisions of sections 119 to 126 of this Code;

b) detention by the State Counsel or the Examining Magistrate in disrespect of the provisions of sections 218 to 235, 258, and 262 of this Code.

3) 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 general and acceptable principle is that any person deprived of his or her liberty retains human rights and fundamental freedoms,<sup>17</sup> except for restrictions required by the very fact of their imprisonment. Section 122 of the Cameroonian Criminal Procedure Code also provides that "*the suspect shall be treated humanely both morally and materially.*"<sup>18</sup> To this effect, it is

<sup>17</sup> UN Basic Principles for the Treatment of Prisoners, Principle 5.

<sup>18</sup> 31 Cameroon's Criminal Procedure Code, Law n°2005 of 27 July, Section 122.

an obligation therefore the responsibility of the State of Cameroon should ensure the right to the highest attainable standard of physical and mental health <sup>19</sup> to everyone, including those persons in custody. It is therefore the duty of the Cameroon government in partnership with the law enforcement officers to captivate all the measures so that prisoners or those in detention should not be destitute of their freedom. These persons in question should have access to chunks and services that satisfy their basic needs, including adequate and appropriate food, washing and sanitary facilities, and communication with others. The right accommodates States parties to take fitting actions in response to death pressures against persons in the public sphere, and more generally to protect individuals from predictable threats to life or bodily. With all these put in place and most of the time the State of Cameroon has not to maintain this typical put in place, one starts by posturing some interrogations or questioning whether there exists fair trial when issues of such nature transpire, and how it has been handgrip by the Cameroon State? This aspect of a fair trial is stretched to everyone when those in pre-trial or detention.

The rule and principle remain that there is no doubt that when dealing with criminal justice, the rights and freedoms of a person may be subject to considerable restrictions and the right to liberty and security of a person is no exemption. It is rightly jagged out that, no matter how great the power of social stimulus is as a legal conviction, as long as there is a right, there is a need to apply state bullying to persons who do not wish to abide by legal rules.<sup>20</sup> That is why, in order to ensure an authentic imposition of personal freedom and restrict the security of a person, criminal limiting apparatuses should be hallowed in criminal procedural legislation.

### **Ensuring and Legitimising a Person's Right to Security as provided for by Cameroonian Criminal Procedural Law**

Cameroon criminal procedural bustle is governed by a solitary methodical normative document, the Criminal Procedure Code. The current Criminal Procedure Code was adopted in 2005 and entered into force in 2007,<sup>21</sup> harmonizing the criminal procedural law of the Anglophone and Francophone regions. It was predictable that the Criminal Procedure Code (CPC) would balance existing legislation, and crier a new era for, the protection of human rights. However, Cameroon's record on human rights protection relics poor and, in particular, the right to personal liberty continues to be despoiled with latitude.<sup>22</sup>

As for the provision of the Criminal Procedure Code, the rule provides that its ideology was based on the priority of the protection of the individual, protection of rights, freedoms and legitimate interests of participants in criminal proceedings. Familiarizing the current CPC of Cameroon, the legislator tried to personify the inexpensive process in the best conceivable way, where the defense and trial are given equal rights to gather evidence, defend their own position in court, etc. In order to assure and ensure the declared general principles of criminal proceedings, the basic requirements on which all criminal procedural activity should be based, have been introduced to the CPC of Cameroon. The principle is to guarantee the right to liberty and sanctuary of a person as spelled out in Article 221 of the code. The organized scrutiny of

<sup>19</sup> International Covenant on Economic Social and Cultural Rights, Article 12 and ACHPR, Article 16.

<sup>20</sup> P. S. Elkind. Interpretation and application of the rules of criminal procedure law. Moscow: Judicial Literature. (1967). 192 p.

<sup>21</sup> Law No 2005/007 of 27 July 2005 on the Criminal Procedure Code.

<sup>22</sup> See Laura-Stella Enonchong, at 390.

this article shows that it complies with the above constitutional norms and requirements of international legal acts, which guarantee the right to liberty and security of a person.

### **Legitimizing the Restriction to the Right to Security and Liberty under Cameroonian Law**

The constitution in its preface disallows arbitrary arrest and detention and provides the prospect of those arrested illogically to challenge the impartiality in the court of an arrest or detention. The Cameroon Criminal Procedure code in its Section 118(2) is to the effect that, except in the case of an individual discovered in the act of compelling a felony or misdemeanor, the official's responsibility for the arrest shall disclose their identity and inform the person arrested of the reason. If this fails to be done, then will qualify the said act as illegal and void. The Code also delivers that persons arrested on a warrant shall be brought immediately before the examining magistrate or the president of the trial court who issued the warrant and that the accused persons shall be given judicious access to contact their family, obtain legal advice, and arrange for their defence. The law provides that any person who has been dishonestly detained by the police, the state counsel, or the examining magistrate may receive compensation. On several occasions, the government did not respect these requirements. The situation has really become irritating and demoralizing when the police, gendarmes, military soldiers, and government authorities are seemingly continuing to arrest and detain persons capriciously, often holding them for prolonged periods without charge or trial and at times not in contact. There are several reports and cases that police or gendarmes arrested persons without warrants on incidental evidence alone, often following instructions from dominant persons to settle personal grooves.

The United Nations Principles on the treatment of Prisoners has delivered in its principle that;

*“All prisoners shall be pickled with the respect due to their intrinsic dignity and value as human beings”*<sup>23</sup>

This is not the case for the freedom of prisoners in Cameroonian prisons. Prisoners in the country are found in ramshackle, colonial-era slammers, where the number of inmates is as much as five times the proposed capacity. The general rule is that when matters of prisoners are concerned, and for the sake of security, there should be dispersed wards for men, women, and children. The case becomes perilous as authorities often held detainees in pre-trial detention and condemned prisoners together. In many prisons, privies were unknown more than common pits. In most of the cases, women and children are theoretical to benefit from better living conditions which include value-added toilet lavatories and less crowded living quarters. The women in most of the prison centres in Cameroon are not taken care of, most of them are exposed to lingering diseases that affect their safety and security.

Even when in detention, the law requires that everyone should be in ownership of quality food, access to potable water, sanitation, heating; ventilation, lighting, and medical care where inadequate.<sup>24</sup> As a result of this, those in detention illness always experienced serious illnesses such as malnutrition, tuberculosis, bronchitis, malaria, hepatitis, scabies, and numerous other

<sup>23</sup> Basic Principles for the Treatment of Prisoners Adopted and proclaimed by General Assembly resolution 45/111 of 14 December 1990, principle 1

<sup>24</sup> Article 12 of the International Covenant on Economic, Social and Cultural Right 1966, it is Article 12 stipulate that heathy life is extended to food, safety, nutrition and other healthy conditions.

untreated conditions, including infections, parasites, dehydration, and lots of others. What about the situation of abuses met? There is physical mishandling by prison guards on prisoners; even cases of sexual violence on women are encountered.

### **Accessing the Violations of This Fundamental Right in Cameroon**

In order to certify the judicious restriction of the right to liberty and security of a person at the legislative level, the grounds, purpose, and procedure of the apposite measure during which the interference with that right may take place must be clearly stated, as well as effective securities for the control and verification of the lawfulness of the actions of competent bodies. First of all, it concerns judicial control.

### **Accessing the Detention and Arbitrarily Conditions of those Arrested**

Notwithstanding the commitments made by the Cameroonian authorities to respect national law and international human rights standards in their operations, the evidence witness is that arbitrary arrests and detentions continue on a large scale in Cameroon, and even the basic legal safeguards relating to arrest and detention are rarely respected. This arbitrary arrest means that hundreds of people have been deprived of their liberty without any evidence that they have committed a crime. Even those found in detention have also been made to live in overcrowded and unhygienic conditions, which have seriously posed a threat to their health.

### **Evaluating the Prison Conditions in Ensuring Criminal Securities**

The country's prison conditions in most cases are considered to be harsh and even life-threatening. The aspect of overcrowding in these prisons remains a significant problem, especially in major urban centres. The United Nations Principles on the treatment of Prisoners have provided that;

*“All prisoners shall be treated with the respect due to their inherent dignity and value as human beings”*<sup>25</sup>

This situation is actually quite dissimilar when amplifying and evaluating the case of the liberty of prisoners in Cameroonian prisons. Prisoners in Cameroon prisons are found in dilapidated, colonial-era prisons, where the number of inmates is as much as five times the intended capacity. The general rule is that when matters of prisoners are concerned, and for the sake of security, there should be separate wards for men, women, and children. The situation is even more upsetting and atrocious as authorities often held detainees in pre-trial detention and convicted prisoners together. The Cameroon Criminal Procedure code in its Section 118(2) is to the effect that, except in the case of an individual discovered in the act of committing a felony or misdemeanour, the officials undertaking the arrest shall disclose their identity and inform the person arrested of the reason. If this fails to be done, then will qualify the said act as illegal and void.<sup>26</sup> The Code also provides that persons arrested on a warrant shall be brought proximately before the examining magistrate or the president of the trial court who issued the

<sup>25</sup> Basic Principles for the Treatment of Prisoners Adopted and proclaimed by General Assembly resolution 45/111 of 14 December 1990, principle 1

<sup>26</sup> Amnesty International Report, RIGHT CAUSE, WRONG MEANS: HUMAN RIGHTS VIOLATED AND JUSTICE DENIED IN CAMEROON'S FIGHT AGAINST BOKO HARAM, p.22



warrant and that the accused persons shall be given realistic contact to contact their family, obtain legal advice, and arrange for their defence.

### **The Position of Illegal Detention Constituting a Violation of Fundamental Human Rights**

The law in all its ramifications is to the opinion that any person who has been illegally detained by the police, the state counsel, or the examining magistrate receives compensation. Section 30 of the Criminal Procedure Code has lots in stimulating by providing that there should be "*no bodily or psychological harm shall be caused to the person arrested.*"<sup>27</sup> This situation is regarded arbitrary arrest and handling is appalling for we experienced a significant number of cases in which both international human rights ideals and national laws were violated in relation to arbitrary arrest and detention. The report of Amnesty International of 2014 is to the effect that between 2014 and September 2015, more than 1,000 people had been arrested on misgiving of supporting Boko Haram, through the use of 'cordon-and-search' operations leading to the arrests of dozens and in one case, hundreds of people at a time, often based on little or no evidence and without arrest warrants.<sup>28</sup>

### **Conclusion**

From all the assignments and prominence, it can be debated that the meddling and restriction of human rights and freedoms would be a desecration of necessities provided under the Cameroon Constitution and the Criminal Procedure Code. The main peculiarities here is that the main problem with the laws of Cameroon in the aspect of ensuring the security of persons lies in the fact there exist continuous abuses of the requests of the various legal tempers indorsed in terms of protecting the right to liberty and security of person are the deficiencies of the legislative and the case-law, which lead to the detention and holding in custody of a person without a properly authorized base.

The priority one has to address is that these issues of security are the responsibility of the State of Cameroon which they have to respect in conformity with the requirements reputable in relevant human right temperaments, and even extends the practice of the African Court on Human Right concerning the right to liberty and security of the person by the pre-trial investigation bodies, prosecutors and judges.

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<sup>27</sup> Cameroon Criminal Procedure Code Law n°2005 of 27 July 2005, Section 30

<sup>28</sup> Amnesty International Report, RIGHT CAUSE, WRONG MEANS: HUMAN RIGHTS VIOLATED AND JUSTICE DENIED IN CAMEROON'S FIGHT AGAINST BOKO HARAM, p.19S