

**INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES**
[ISSN 2581-5369]

Volume 4 | Issue 2
2021

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Ensuring the Right to Liberty and Security of Person: An Application or Nightmare in Respecting Human Right Standard in Cameroon

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ABSTRACT

This article seeks to highlight the fact that the right to liberty and security of persons articulated in relevant human right and criminal law dispositions has given responsibilities to the State of Cameroon in ensuring the protection of this right by preventing their violations which in return will posed an adverse effect on the fundamental human of those living in the territory when issues of liberty and security is concerned. This article also indicates that the application of this right by Cameroon will go a long way in conforming with the dispositions and provision put in place by International Standard guaranteeing and safeguarding the protection and implementation of this right by Cameroon. Issues of human right protection has been the sole responsibility of the government of Cameroon as they enacts credible laws and institutions in ensuring the proper implementation of this right through its law enforcement officers who has shown laudable efforts in seeing that this right is guaranteed and secured. Even though with these efforts put in place, protection has continue to be considered as a nightmare as violations of this fundamental right provoked lots of questioning as to the place this right occupied in the human right platform? The question one need to be asking is in determining the role of the Cameroon government in ensuring that security of persons during the criminal proceedings should be respected? And in case of violations, what measures has been used in ensuring this fundamental human right of those in detention. Answering these questions will be of great concern as it will be able in maintaining the primary objective of the law, that of acquiring and maintaining Justice at all levels of the criminal proceedings.

Keywords: *Ensuring Right to Liberty and Security, Cameroon, Nightmare, Human Right*

I. INTRODUCTION

Starting our study, it should be noted that Cameroon (officially the Republic of Cameroon) is a country in Central Africa. The scientific interest regarding investigating the issue of securing the right to liberty and security of person in the field of criminal justice is caused by the

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specifics of the legal systems of this country. The law in Africa is a diverse mix of common law, customary law, civil law and religious law systems. Africa is the second largest continent and has 56 countries contained in it.

As noted in the Preamble of the Constitution of the Republic of Cameroon: «...we constitute one and the same Nation, bound by the, same destiny, and assert our firm, determination to build the Cameroonian Fatherland on the basis of the ideals of fraternity, 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 ...». At the same time, according to international human rights organizations reports (Cameroon Country Report, 2012), Cameroon is not a democracy, but at best a hybrid regime with many authoritarian features. The main reason for this is that the ruling elite in Cameroon are not committed to democratic institutions. Deficiencies in participation, the rule of law, efficiency, the inclusion of population groups and social justice precludes the country from being considered democratic. Decades of authoritarian rule have proven that the government is not committed to substantial democratization of the political scene. Although most actors in Cameroon agree that democracy are the goals of reform.³ International human rights law proscribes arbitrary arrest and detention. This situation has made Cameroon as a party to the International Covenant on Civil and Political Rights to prohibits arbitrary arrest, and providing that those arrested shall be informed at the time of arrest of the reasons for their arrest and of any charges against them in accordance to Article 9 of the Covenant. The State of Cameroon ensures 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."⁴ This right concerned is applicable at all times and gives individuals the right to challenge their detention if they believe it is unlawful or unfounded, and have not comply with the due process of the law.

Thus, the above facts testify the relevance of the chosen topic of the article, since in the practical activity of the state of Cameroon where often cases of violation of the right to liberty and security of person are regularly experienced. In addition, an important area of the judiciary activity is to apply the positive experience of foreign countries in terms of not only individual protection of human rights and freedoms, but also the division of competences between

³ Bertelsmann Stiftung "Bertelsmann transformation index 2012: Cameroon country report" (2012), available at <https://www.bti-project.org/fileadmin/files/BTI/Downloads/Reports/2012/pdf/BTI_2012_Cameroon.pdf> (accessed 18 March 2020).

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

International human right dispensations and national authorities. The decisive factor is that the democratic foundations enshrined and guaranteed by various international legal instruments are expanding in the Cameroonain human right system. In particular, among the fundamental and inalienable rights of every person is the right to liberty and security of person, thus, the problem of ensuring it is under constant review by scholars, human rights defenders and practitioners. This issue is particularly acute regarding the legal certainty of the restrictions of the said right in criminal proceedings, where interference with the sphere of human rights and freedoms is connected with the application of coercive measures.

(A) The Place of Cameroon Legal Dispositions in the Protection of the Right to Liberty and Security

It is interesting to understand with lots of appetising falido that Cameroon in it's human right recognition has ratified a plausible barometric international legal instruments in the field of protecting of human rights and freedoms, thereby committing itself in ensuring the fundamental rights and freedoms guaranteed by the relevant international instruments, including the right to liberty and security of person.

As a state of law bind by relevant legal dispositions with the constitution considered as the grundnorm of it's legal stamina and foundation, enormous efforts has been meted by the country in ensuring this fundamental right. A laudable initiative is recognised in its preamble by providing that;

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

This beautiful country 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”⁶

⁵ 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.

⁶ It should, however, be noted that the international protection of Human Rights has adopted the idea of diplomatic

The country Constitution of 2 June 1972, revised by Law no 96/06 of 18 January 1996, bans torture and cruel, inhuman or degrading punishment and treatment in conformity 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 ”*⁷.

The ban on subjecting a suspect to torture and the obligation of treating him humanely are also enshrined in Article 121(2) of the Code of Criminal Procedure. Even though with the existence of these laws put in place, security forces still torture, beat, harass, and otherwise abuse citizens, prisoners, and detainees, although there are fewer such cases than in previous years. Prolonged pre-trial detention is still a serious problem. It is of great relevance that Article 221 of Criminal Procedure Code 2005 provide the time limit for detention pending an investigation which cannot exceed six months and can only be extended by an order from a judge giving grounds by 12 months for serious crimes and six months for lesser crimes. When this time limit expires, the suspect must immediately be released.

The Cameroon’s Constitution⁸, Penal Code⁹, and even the Criminal Procedure Code¹⁰ has forbids the use of torture and other treatment that violates human dignity and integrity. This same situation complements the Convention against Torture where it is to the effect that a State must;

*“take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. ”*¹¹

That authority in charge of implement this right must regularly oversee interrogation practices and procedures with the aim of preventing torture.¹² The convention further states that States party have to conduct a prompt and impartial investigation, and where there is reasonable ground in believing that an act of torture has been committed in any territory under its jurisdiction, it is the responsibility of such State in taking the necessary measures so as in prohibiting this.¹³ In enforcing this Convention of Torture, Cameroon’s Constitution provides

immunity which should water down the provisions of article 45.

⁷ Article 7 of the International Covenant on Civil and Political Right 1966.

⁸ Cameroon's Constitution of 1972 with Amendments through 2008.

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

¹⁰ Law n°2005 of 27 July 2005 on the Criminal Procedure Code, Cameroon.

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

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

¹³ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 12

that;

“under no circumstances shall any person be subjected to torture, to cruel, inhumane or degrading treatment.”¹⁴

Cameroon’s penal code criminalizes the use of torture¹⁵ in inducing a person to confess to an offense or to offer statements or related information.¹⁶ In this regard, there is that necessity that aspect of implementing security should be of fundamental interest to law enforcement officers of the country. There is that need in ensuring security and safety of everyone irrespective of the crime committed. Committing a crime by someone does not in any way deprived the person of his or her fundamental human right, and such right should be exercised in respecting the said person dignity, integrity and personal security. Making provision of the law as to security of person in all aspects of life is one thing, ensuring that this security should be guaranteed to the latter is another, and it is the responsibility of the Cameroon State in making sure that person's under detention, pre-trial, and even trial should be treated with some respect in conformity with the relevant human right instruments and national dispositions that the country has accepted in implementing.

Understanding the ratification of international instruments in the field of protection of human rights and freedoms has really posed a positive impact on the improvement of national legislation in Cameroon.. First of all, this is proved by the provisions of the Constitution of Cameroon to which the relevant requirements on ensuring the right to liberty and security of person have been applied. And this is important, since it is the responsibility of the Constitution of any country in determining the regulatory path of development and life of it's society. Therefore, when interpreting and applying a particular provision of the Constitution, on the basis of a particular situation, state bodies and officials have no right to violate the normal life and development of society.

Therefore, the above constitutional provisions meet the requirements set out in international legal acts regarding the possible restriction of the right to liberty and security of person. Therefore, it should be understood that the right to liberty and security of person is not absolute, as it may be restricted in the manner prescribed by law. And this is not a violation of the requirements of international legal acts, which allow cases of lawful restriction of the said law.

¹⁴ Cameroon's Constitution of 1972 with Amendments through 2008

¹⁵ *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.

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

It doesn't mean that this fundamental human right as to liberty and security should not be violated in any circumstance in the name of maintaining human right of the person in question. It is a beautiful scenario and platform in ensuring human right protection at all stages of the criminal proceedings, beautiful. What about the situation where this liberty threatens the security and sovereignty of the Cameroon state, I do believe the situation will never be the same in ensuring such a respect. It is the responsibility of every State in ensuring that it's security and sovereignty should be protected at all levels of protection, under no circumstances should this be sacrificed. The concept of liberty should not be treated as it stands when such liberty contravenes state security, public policy and even the standard of a democratic society as the state in question.

(B) Questioning the Detention Condition in Ensuring Detainees Security

Thus, we see that the constitutional provisions of every country especially that of Cameroon is in meeting the requirements of international legal acts to guarantee the right to liberty and security of person, namely:

In a normal detention environment, there is the need to always ensure that right of those detained are being safeguarded and secured. This has been the laudable effort so far the criminal atmosphere in Cameroon has been working towards it's 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 freedoms¹⁷, 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."¹⁸ To this effect, it is an obligation that the State of Cameroon should ensure the right to the highest attainable standard of physical and mental health¹⁹ to everyone, including those persons in custody. It is therefore the responsibility of the Cameroon government in collaboration with the law enforcement officers in taking all the measures so that prisoners or those in detention should not be deprived of their liberty. These persons in question should have access to necessities and services that satisfy their basic needs, including adequate and appropriate food, washing and sanitary facilities, and communication with others. The government has ensures that all inmates are provided with free and adequate medical care in conformity with international standards.

The right to security of person must protect individuals against intentional infliction of bodily or mental injury, regardless of whether the victim is detained or non-detained, and when officials of States parties violate this right by inflicting unjustifiably bodily injury, sanctions must be meted on them. The right obliges States parties to take appropriate measures in response to death threats against persons in the public sphere, and more generally to protect individuals from foreseeable threats to life or bodily. With all these put in place and most of the time the State of Cameroon has not uphold this standard put in place, one starts in posing some queries or question whether there exist fair trial when issues of such nature occurs and how it has been handle by the Cameroon State. This aspect of fair trial is extended to everyone when those in pre-trial or detention.

There is no doubt that in the field of criminal justice, the rights and freedoms of a person may be subject to considerable restrictions and the right to liberty and security of person is no exception. And as the well-known scientist-proceduralist P. S. Elkind rightly pointed out, no matter how great the power of social influence as a legal conviction, as long as there is a right, there is a need to apply state coercion to persons who do not wish to abide by legal rules²⁰. That is why, in order to ensure a legitimate intrusion into personal freedom and restrict the security of person, criminal restrictive mechanisms should be enshrined in criminal procedural legislation.

¹⁷ UN Basic Principles for the Treatment of Prisoners, Principle 5.

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

¹⁹ International Covenant on Economic Social and Cultural Rights, Article 12 and ACHPR, Article 16.

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

II. GUARANTEES AND LEGITIMATE CONDITIONS FOR RESTRICTION OF PERSON RIGHT PROVIDED FOR BY CAMEROON IN CRIMINAL PROCEDURAL LAW

Cameroon criminal procedural activity is governed by a single systematic normative document, the Criminal Procedure Code. The current Criminal Procedure Code was adopted in 2005 and entered into force in 2007²¹, harmonizing the criminal procedural law of the Anglophone and Francophone regions. It was expected that the Criminal Procedure Code (CPC) would complement existing legislation on, and herald a new era for, the protection of human rights. However, Cameroon's record on human rights protection remains poor and, in particular, the right to personal liberty continues to be violated with impunity.²²

As for the CPC of Cameroon is concerned, 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. Introducing the current CPC of Cameroon the legislator tried to embody the competitive process in the best possible way, where the defense and prosecution are given equal rights to gather evidence, defend their own position in court, etc. In order to guarantee and ensure the mentioned 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. One of these principles is to ensure the right to liberty and security of person as spelled out in Article 221 of the code. The systematic analysis of 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 person.

(A) Legitimizing the Restriction as to the Right to Security and Liberty under Cameroonian Law

The constitution in its preamble prohibits arbitrary arrest and detention and provides the possibility of those arrested arbitrarily to challenge the lawfulness in 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 committing a felony or misdemeanour, the officials undertaking the arrest shall disclose their identity and inform the person arrested of the reason. If this is fail to be done, then will qualify the said act as illegal and void. The Code also provides 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 reasonable access to contact their family,

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

²² See Laura-Stella Enonchong, at 390.

obtain legal advice, and arrange for their defence. The law provides that any person who has been illegally detained by the police, the state counsel, or the examining magistrate may receive compensation. On several occasions the government did not respect these provisions. The situation has really become worrisome and devastating when the police, gendarmes, military soldiers, and government authorities are reportedly continuing to arrest and detain persons arbitrarily, often holding them for prolonged periods without charge or trial and at times incommunicado. There are several reports and cases that police or gendarmes arrested persons without warrants on circumstantial evidence alone, often following instructions from influential persons to settle personal scores.

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

*“All prisoners shall be treated with the respect due to their inherent dignity and value as human beings”*²³

This is not the case of the liberty of prisoner in the Cameroonian prisons. Prisoners in the country 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 case becomes precarious as authorities often held detainees in pre-trial detention and convicted prisoners together. In many prisons toilets were nothing more than common pits. In most of the cases, women and children are supposed to benefit from better living conditions which include improved toilet facilities and less crowded living quarters. The women in most of the prison centres in Cameroon are not taking care of, most of them are exposed to protracted diseases which affects their safety and security.

Even when in detention, the law requires that everyone should be in possession of quality food, access to potable water, sanitation, heating; ventilation, lighting, and medical care where inadequate²⁴. As a result of this, those in detention condition always experienced serious illnesses such as malnutrition, tuberculosis, bronchitis, malaria, hepatitis, scabies, and numerous other untreated conditions, including infections, parasites, dehydration, and lots of others. What about the situation of abuses encountered. There is physical abuse by prison guards on prisoners; even cases of sexual violence on women are encountered.

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

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

III. ACCESSING THE VIOLATIONS OF THIS FUNDAMENTAL RIGHT IN CAMEROON

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

(A) Accessing the Detention and Arbitrarily Conditions of those Arrested

Despite 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, pose a threat to their health.

(B) Evaluating the Prison Conditions in Ensuring Criminal Securities

The country 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 centers. The United Nations Principles on the treatment of Prisoners has provided in its principle one that;

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

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

diseases which affects their safety and security. The case of arbitrary arrest and detention is more precarious and devastating. The constitution in its preamble prohibits arbitrary arrest and detention and provides the possibility of those arrested arbitrarily to challenge the lawfulness in 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 committing a felony or misdemeanour, the officials undertaking the arrest shall disclose their identity and inform the person arrested of the reason. If this is fail to be done, then will qualified the said act as illegal and void²⁶. The Code also provides 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 reasonable access to contact their family, obtain legal advice, and arrange for their defence.

(C) The grounds and platform of illegal detention, a violation of fundamental human right.

The law provides that any person who has been illegally detained by the police, the state counsel, or the examining magistrate may receive compensation. On several occasions the government did not respect these provisions. The situation has really become worrisome and devastating when the police, gendarmes, military soldiers, and government authorities are reportedly continuing to arrest and detain persons arbitrarily, often holding them for prolonged periods without charge or trial and at times incommunicado. There are several reports and cases that police or gendarmes arrested persons without warrants on circumstantial evidence alone, often following instructions from influential persons to settle personal scores. Whether at the International, Regional, or National, the State of Cameroon is obliged to ensure that those who are arrested immediately should be informed of the reasons for the arrest and any charges brought against them must be qualified with an access to a lawyer of their choice, before promptly brought before a judicial body on the basis of a reasonable information that the person is presumed of committing the crime in question. In most instances as spelled out the country Criminal Procedure Code, criminal acts must reflect international and regional standards, although the anti-terror law promulgated in December 2014 allows suspects to be held without charge for a period of 15 days, renewable indefinitely, which would exceed international standards regarding the length of detention prior to being brought before a judicial body.⁷³ **Section 30** of the Criminal Procedure Code has lots in stimulating by providing that there

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

should be "*no bodily or psychological harm shall be caused to the person arrested.*"²⁷ This situation regarded to arbitrary arrest and treatment is appalling for we experienced a significant number of cases in which both international human rights standards and national law 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 suspicion of supporting Boko Haram, including 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.²⁸ .

IV. CONCLUSION

Summarizing the study, it can be argued that the interference and restriction of human rights and freedoms would be violation of requirements provided under the Cameroon Constitution and the Criminal Procedure Code. At present, the main problem with the laws of Cameroon in aspect of ensuring the security of persons lies in the fact there exist continuous violations of the requirements of the various legal dispositions enacted in terms of protecting the right to liberty and security of person are the shortcomings of the legislative and the case-law, which lead to the detention and holding in custody of a person without proper legal basis.

The primary and priority way one can address these issues is that the State of Cameroon should be able in complying and conforming with their current criminal procedural legislations in conformity with the requirements established in relevant human right dispositions, and even extends the practice of the African Court on Human Right regarding the right to liberty and security of person by the pre-trial investigation bodies, prosecutors and judges.

²⁷ Cameroon Criminal Procedure Code Law n°2005 of 27 July 2005, Section 30

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