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**FACULTY OF LAWS AND
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DEPARTMENT OF ENGLISH LAW

**A CRITICAL APPRAISAL OF THE ENFORCEMENT OF HUMAN
RIGHTS BY JUDICIAL POLICE OFFICERS IN CAMEROON**

By

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CERTIFICATION

This is to certify that this research project, entitled “A CRITICAL APPRAISAL OF THE ENFORCEMENT OF HUMAN RIGHTS BY JUDICIAL POLICE OFFICERS IN CAMEROON”, was carried out by NKAMWAH PHROBERT LIMEN (SM16P225) and submitted to the Department of English Law, Faculty of Laws and Political Sciences, University of Buea in partial fulfillment of the requirement for award of a Master’s of Laws (LL.M) in International Law, August 2019

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DEDICATION

This research work is dedicated to my wife Quinta Koffi Limen,

And to all human rights activists in Cameroon

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ABSTRACT

This study sets out to appraise the enforcement of human rights by judicial police officer in Cameroon. Cameroon a member of the United Nations and African Union had signed and ratified numerous international treaties and conventions. However the duty to respect human rights is not only incumbent on the State but equally to every citizen of Cameroon, reasons why the law identifies certain deviant behaviors that could infringe on others human rights and sanctions same in the Penal Code. The Penal Code however doesn't indicate how criminal procedures must be carried out by the officials who are charged with the duties to enforce same. That is the reasons why a harmonized Criminal Procedure Code was adopted in 2005 by law number 2005/7 of 27 July 2005 which was applicable from 2006. This thesis addresses the role played by the judicial police officers in Cameroon with a critical appraisal of the respect and enforcement of the human rights of the citizens during criminal investigations, execution of warrants and other related duties on behalf of the Legal Department. There have been wide spread complaints of human rights violations by judicial police officers in Cameroon for various reasons ranging from corruption, poor training and misconstruction of the provisions of the law. With the use of a qualitative methodology and methods like content analysis of both primary and secondary sources of the law this study examines the compliance in the enforcement of human rights by the judicial police officers in Cameroon. In essence, it adopts an analytical approach in the interpretation of relevant statutes at the regional and international, interviews and opinion from a sample group, the following research objectives which are listed in the research questions were answered with the conclusion that not only should the control mechanisms put in place be rendered more effective and efficient, but equally that the judicial police officers should be properly trained in order to respect the provisions of the laws patterning to the enforcement of human rights in Cameroon. This thesis thus critical examines the activities of the Judicial Police officers in Cameroon, brings out its weaknesses and makes valid recommendations on how to improve the enforcement of human right in Cameroon.

KEY WORDS

Enforcement, Human Rights, Judicial Police officer.

Enforcement: the act or process of compelling compliance with the law, mandate, command, decree, or agreement.

Human Rights: defines human rights as ‘the freedom, immunities, and benefits that, according to modern values (especially at international level), all human beings should be able to claim as a matter of right in the society in which they live.

Judicial Police Officer: Persons trained and entrusted to perform the following duties; Receiving complaints and carry out investigations, serve and execute court processes, execute warrants, conduct arrest.

LIST OF ABBREVIATIONS

ACHPR:	African Charter on Human and Peoples Rights/African Commission on Human and Peoples Rights
CPC :	Criminal Procedure Code
ED :	Edition
ICCPR:	International Covenant on Civil and Political Rights
ICESCR:	International Covenant on Economic, Social and cultural Rights
OAU:	Organization of African Unity
PG:	Procureur General/ Attorney General
UN:	United Nations Criminal Procedure Code
UNGA:	United Nations General Assembly
NACC:	Cameroon Anticorruption Commission

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CHAPTER ONE

GENERAL INTRODUCTION

INTRODUCTION

Cameroon is an African state where the promotion and protection of human rights are ingrained as constitutional principles. In addition to ratified international human rights treaties that have been incorporated by the Constitution as part of Cameroonian law there are several other municipal legislation having human rights flavor.

In the domain of criminal law, the Criminal Procedure Code contains numerous provisions of human rights and Judicial Police Officers are empowered to enforce them in the performance of their duties. Judicial Police Officers are a distinct branch of the Police force mandated with investigation of crimes and are under the control and supervision of the Legal Department.

This chapter establishes the background to the study, statement of the problem, discusses the objectives of the research and the research questions to be answered, and the methodology to be adopted. It also examines the significance of the study, the justification for the research and the conceptual and theoretical framework.

1.1 BACKGROUND TO THE STUDY

Cameroon is a country situated in the heart of the African continent. With a total land area of 475,440 square kilometers, it is located in the Central Africa sub region bordering the Atlantic Ocean, Equatorial Guinea, Gabon and the Republic of Congo to the South, Central African Republic and Chad to the east, Lake Chad to the north and Nigeria to the west. The population of 21,340,702 million (2018)

is made up of an extraordinary diversity of about 250 tribes speaking at least 280 different indigenous languages.

English and French languages are constitutionally¹ recognized as the official languages because these are some of the colonial remnants.

Republic of Cameroon is a member of the United Nations and the African Union. In 1948 the United Nation General Assembly adopted the Universal Declaration of Human Rights (UDHR) and for the first time in history, it was officially and globally stated that all human beings have the same fundamental rights, irrespective of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

The Republic of Cameroon as member of the African Union and United Nations has ratified a number of human rights instruments some of which include the African Charter of Human and Peoples Right², African Charter on the Rights and Welfare of the Child³, African Charter on the Rights and Welfare of the Child⁴, Convention on the Elimination of all forms of discrimination against women⁵, International covenant on civil and political rights⁶, International Covenant on Economic, Social and Cultural Rights⁷, United Nation Convention against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment⁸. The Republic of Cameroon adheres by virtue of the Preamble of its 1996 Constitution to respect and enforce Human Rights as it is enshrined in the Universal Declaration of

¹Part 1 articles 1-3 of the 1996 Cameroon Constitution

²Ratified on 23/07/1987

³ Ratified on 16/09/1992

⁴ Ratified on 16/09/1992

⁵ Ratified on 9/5/1999

⁶Ratified on 19/12/1986

⁷Ratified on 27/6/1984

⁸ Ratified on 19/12/1986

Human Rights of 1948⁹, and in all other treaties and conventions which they have signed and duly ratified.

However, the respect for human right is not only incumbent on the State alone; it is also the duty of the citizens to respect the rights of others. There is a famous adage that '*where your rights end, mine begins*'. The state as duty bearers for the respect and enforcement of human rights had to put in place legal mechanisms to curb deviant behaviors that infringe on the rights of others. To be in legality, such deviant behaviors like infringement to right of life, right to own property, right to security, right to freedom etc. has to be sanctioned in accordance to the penal code which defines offenses and their sanctions.

But for anyone to be tried, the State Counsel must bring sufficient proofs establishing the offense and the offender. It is for this reason that the special unit called the Judicial Police has been conferred the duty to investigate offences, identify the offenders and collect sufficient proofs to be used in courts since the burden of proof lies on the party that initiates criminal actions.

The first national judicial police was created in 1907 by Georges Clemenceau acting as Minister of the Interior, and Célestin Hennion. Before that, the police were local forces, and had trouble coping with new large gangs acting on broader areas, using cars and railways to move (while police had bicycle or horses)

First attested in English in the early 15th century, initially in a range of senses encompassing '(public) policy; state; public order', the word police comes from Middle French police ('public order, administration, government'), in turn from Latin politia, which is the Latinisation of the Greek (politeia).

⁹On the 10th of December 1948 The U.N General Assembly adopted the UDHR in its Resolution 217 at the Palais de Chaillot in Paris, France this historic document and was adopted

In civil law systems, it is common for judicial police to be a separate police structure from internal affairs police structure, but they can overlap in duties and competences.

The most important difference is that the judicial police typically report to the judicial branch of government or to the justice ministry or department of the executive branch, and "normal" police, such as the gendarmerie, typically report to the ministry of internal affairs of the executive branch. Typical duties performed by the judicial police are administering and securing administration offices of the judicial branch, courts and prisons, providing physical security to judicial officials such as judges, criminal investigators and prosecutors, transportation of defendants and prisoners between courts, jails and law enforcement offices and other duties linked to enforcement of criminal law¹⁰.

To safeguard the human rights of its citizens, the State of Cameroon passed and enacted two laws. These are Law number 65-LF-24 of 12 November 1965 referred to as the Penal Code which was later amended and modified by Law number 2016/007 of July 2016 with its decree of application number 2006/319 of 12 July 2016 and Law number 2005-7 of 27 July 2005 on the Criminal Procedure Code. These two laws constitute the criminal law legal instruments of the Republic Cameroon.

A proper respect and implementation of these two codes necessitates that some investigations are done by the legal departments headed by the State prosecutor (the State Counsel) of the place where the offence was committed, or the place where the suspects were arrested or at the place of residence of the suspect¹¹. It is only after such investigations that the suspects can be sent for in courts with

¹⁰ Central Directorate of the Judicial Police <https://en.wikipedia.org> site visited on 10th September 2019 at 11:42 am.

¹¹ Section 294 of the Cameroon Criminal Procedure Code

sufficient proofs to have committed the offence for which he is charged and to have had the intention of committing same. It is a general principle in criminal law that the act must be accompanied by the intention of committing an offence for there to be criminal responsibility, and this is highlighted in Section 74(2) of Criminal Procedure Code¹² of Cameroon (hereinafter referred to CPC)

The investigations to be carried out by the legal department are delegated to this special unit called the Judicial Police which is different from other police forces like the Mobile Wing Police, territorial surveillance, Police of Police and Rapid intervention units.

It was therefore important for the State of Cameroon to put in place special laws governing procedure in criminal law and whose respect is obligatory; thus any violations of this code either attracts partial or complete nullity of the procedure¹³ and attracts both disciplinary and legal sanctions against the Judicial Police Officer who in the exercise of his duty violates the procedure and human rights of the suspects. It is on this premise that this thesis investigates the role of the Judicial Police Officer.

The Criminal Procedure Code of Cameroon considers the following persons as judicial police officer: Officers and non-commissioned officers of the gendarmerie¹⁴;

Gendarmes in charge even in an acting capacity of a gendarmerie brigade or gendarmerie post¹⁵; Superintendents of police¹⁶; Deputy Superintendent of police¹⁷;

¹² Law N. 2005/7 of July 2005

¹³ Sections 3 and 4 of the CPC

¹⁴ Section 79(a) of the CPC

¹⁵ Section 79(b) of the CPC

¹⁶ Section 79(c) of the CPC

¹⁷ Section 79(d) of the CPC

Gendarmes and inspectors of police who have passed the judicial police officer's examination and taken the oath¹⁸; Public servants even if they are temporarily performing the function of head of an external service of the National Security¹⁹. More so, public servants and other public employees who have been assigned judicial police duties by special instruments shall discharge those duties under the conditions and within the limits fixed by the instruments.

Judicial police officer is any of the above mentioned persons who carries out the following functions: investigation of offences, collecting evidence, identifying offenders and accomplices and bringing them before the Legal Department, executing rogatory commissions of judicial authorities; serving out court processes; executing warrants and court decisions²⁰. Their role in the exercise of justice and investigations is the subject of articles 78 to 91 of the Cameroon Criminal Procedure Code of 2006. Officers and non-commissioned officers of the gendarmerie, gendarmes in charge even in an acting capacity of a gendarmerie brigade or gendarmerie post, superintendents of police, deputy superintendents of police, gendarmes and inspectors of police who have passed the judicial police officer's examination and taken oath, public servants even if they are temporarily performing the functions of head of an external services of the National Security, public servants and other public employees who have been assigned judicial police duties by special instruments shall discharge those duties under the conditions and within the limit fixed by the said instruments. Gendarmes who are not judicial police officers, police inspectors and constables shall have the status of judicial police agents; they shall assist judicial police officers in the performance of their duties and shall report to their superior officers of all offences which have come to

¹⁸ Section 79(e) of the CPC

¹⁹ Section 79(f) of the CPC

²⁰ Section 82 of the CPC

their knowledge; judicial police agents shall have no authority to take decisions to remand in police custody ;²¹ Judicial police officers shall receive complaints and reports against persons and shall make preliminary investigations according to the conditions provided for in sections 116 to 120 of the CPC. In cases of felonies and misdemeanors committed *flagrant delicto*, they shall exercise the powers conferred on them by sections 104 -115 of the Criminal Procedure Code.

The enforcement of human rights in Cameroon by the judicial police is a very sensitive issue because they deal directly with the population and their reports after investigations are used as evidence by the State Prosecutor in Court. By virtue of Part II of the Criminal Procedure Code, the Judicial Police officer is entrusted to perform the following duties, namely, Investigations, Serve and execute court processes²², Execute Warrants²³, Conduct arrest,²⁴ Receiving complaints and carry out investigations.

The Criminal Procedure Code prescribed three modes of commencing criminal matters in the Court of First Instance including²⁵: by a committal order by an Examining Magistrate, an order by the Inquiry Control Chambers, by direct summons or by application of the procedure relating to offences committed *flagrant delicto*. We see that in all these modes of commencement typical to the Court of First Instance, the judicial police have a vital role to play, and susceptible to infringe on the rights of the suspect either ignorantly, or otherwise motivated by desires extraneous to the law such as bribery and corruption. With the exception of Direct Summonses, it is obligatory for all criminal matters to be investigated by either a judicial police officer or judicial officer. It is worth noting that the State

²¹ Section 79 of the CPC

²²Section 11(2) of the CPC

²³Sections 15,16, 22 ;24 of the CPC

²⁴Section 30 of the CPC

²⁵Section 290and 291 of the CPC

Counsel²⁶ supervises the actions of judicial police officers who at the end of the investigations forward the police report for the appreciation and direction of the State Counsel. The Procureur General²⁷ with recommendations of the State counsel is mandated to allocate yearly marks for the performance of every Judicial Police officer.

Judicial police officers in the course of performing their duties are under obligation to implement and respect human rights. Some of these fundamental rights include: right to liberty, right to caution, fair trial, right to freedom from torture, cruel, inhumane or degrading treatment, right to equal protection before the law, right to life, right to highest attainable standard of physical and mental health, and right to a healthy environment, to name a few.

The purpose of such investigations is to limit the number of frivolous actions that are brought to court for trials, thus only the files of suspects properly investigated and for which some proofs are gathered against them are brought to court for a full trial. It is in this vain that the CPC empowers the judicial police officers who are placed under the supervision of the State Counsel²⁸ to carry out such investigations.

1.2 STATEMENT OF THE PROBLEM

It has been observed unfortunately that regardless of the provisions of the CPC for the guarantee of human rights, and the efforts of the Cameroonian government to implement same, there are still wide spread complaints of human rights violations by the judicial police officers who are entrusted with some very sensitive and important duties such as carrying out investigations under the control of the Legal

²⁶ A magistrate who is the prosecutor in the Legal Department of either the high court or court of First Instance

²⁷ A magistrate who heads the legal department of the Court of Appeal and head of all the State Counsel within his jurisdiction which is the Region.

²⁸Section 78 of the CPC

Department. Despite their responsibility to assist in the protection of human rights in the furtherance of their duties, there are reports to suggest judicial police officers occasionally violate the human rights of alleged criminals. Such rights include the Right to caution, Right to bail, Right to inform one's family or access of a lawyer to the person arrested, Right to humane treatment, Right to be assisted by a counsel, Right to fair hearing during investigations, Humane treatment during investigations etc. as prescribed by the CPC.

There is a serious problem in the application of the Criminal Procedure Code in the light and spirit of the legislators who voted this law for the unique purpose of enforcing the respect of human rights during the process of criminal investigations and trials.

There are some accusations that the legal department and other institutions mandated to control the actions of the judicial police officers are ineffective and inefficient, reasons why there are persistent violations of human rights by the Judicial Police officers. Some of the reasons of such ineffectiveness and inefficiency include: negligence of the legal department, corruption and tribalism. The Legal Department fails to visit the police cells on regular bases to be able to control the judicial police officer, at times it is even the Legal Department that push the judicial officer to violated rights of some alleged suspects because they have received bribes from the complainant and what to satisfy them. Equally tribalism has worsened the situation where the Legal Department instruct that the suspect should be poorly treated and most especially during weekends just to please someone from his tribe. More also some of our magistrates not only were they poorly trained in school, but they got into those institutions through bribery. There are equally indications that government's efforts to curb these abuses have failed, and some believe that the government is even an accomplice or is partly

responsible for the abuse and violations of human rights by judicial police officers in Cameroon, either directly like in the case of the arrested Anglophones and leaders of opposition political parties such as Professor Maurice Kamto, Albert Ndongang, and Barrister Michelle Ndoki. Some of these suspects were arrested after 6pm and in private residence without any warrant of arrest as prescribed by the Criminal Procedure Code.

Such an action by the State undermines the rights of the suspects which are contrary to the provisions of the CPC. These individuals were arrested after 6 pm which is wrong and the judicial officers entered the residence of Albert Dzungang without a warrant of arrest. Even if they had a warrant of arrest, it was procedurally wrong to arrest them after 6pm. The State which is supposed to sanction others for such violations turns to encourage the judicial officers to persist in such violations of human rights.

1.3 RESEARCH QUESTIONS

Based on the problems identified, the research shall aim at answering the following questions;

- What are the duties of Judicial Officers vis a vis the enforcement of human rights under the CPC?
- What are the control mechanisms put in place by the State to supervise the enforcement of human rights by Judicial Police officers and to what extent are they effective?
- Which are the rights often violated by Judicial Police Officers in the performance of their duties and reasons for such violations?

- To what extent is the government of Cameroon complement in the violation of human rights of victims by Judicial Police Officer and what are the possible recommendations to improve the status quo?

1.4 OBJECTIVES OF THE STUDY

The objectives of this research shall include general objective and specific objectives.

1.4.1 GENERAL OBJECTIVE

The general objective of this research is to provide an appraisal of the role of the judicial police officer in the enforcement of human rights in the performance of their duties.

1.4.2 SPECIFIC OBJECTIVES

The specific objectives of my research are:

- My research examines the duties of judicial police and the provisions of the Criminal Procedure code of 2005 that guarantees the respect of the rights of the suspects under police investigations,
- It identifies the mechanisms put in place by the State to control the actions of the Judicial Police Officer in the furtherance of their duties
- It evaluates the degree of compliance by Judicial Police to the respect and enforcement of human rights and the weaknesses of the control mechanisms put in place to regulate the activities of Judicial Police.
- It examines the reasons for the continuous violations of human rights by the judicial police officer, examine government efforts to fight against such violations and make recommendations.

1.5 RESEARCH METHODOLOGY

This study employs a qualitative research methodology. It adopts an in-depth content analysis of both primary and secondary sources of the law on the enforcement of human rights by the judicial police officers in Cameroon. In essence, it adopts an analytical approach in the interpretation of relevant statutes at the regional and international levels such as the Charter of the United Nations, the African Charter on Human and Peoples Rights, the International Covenant on Civil and Political Rights just to name a few. This research also collects and analyses primary data in the form of decided cases. Also, this study involves the collection and analysis of secondary sources of data, principally from text books, journals, encyclopaedias and periodicals like magazines, human rights reports, and newspapers as well as internet sources. In so doing, the University of Buea Libraries and other public libraries were used.

Though the study adopts a qualitative methodology of research, some limited interviews of some relevant stakeholders were carried out in order to get their views which may help the researcher come out with valuable suggestions that may be helpful to Cameroon.

The qualitative research approach is deemed a more adequate approach to conduct this study due to the rich available data in this domain in terms of decided cases, laws and treaties. Significant literature already exists and in connection with this study which enabled the candidate to meet up with time.

1.6 REVIEW OF LITERATURE

This study which centres on the enforcement of human rights by judicial police officers has been of great judicial precedence and academic interest as one can find multiple decisions, judgments and orders decisions of Courts, books, journals,

working papers, write-ups, manuscripts etc. in this subject on the evolution, application, analysis, criticism and appraisal of the enforcement of human rights by judicial police officers. Some of the literature reviewed includes:

Laura Enonchong²⁹ her article examines the problematic enforcement of the right to personal liberty in Cameroon. It offers a critical review of that right by assessing its compatibility with international standards endorsed by article 9 of the International Covenant on Civil and Political Rights and article 6 of the African Charter on Human and Peoples' Rights. It finds that, although a small number of provisions are not sufficiently robust to protect that right adequately, for the most part the Cameroonian provisions reflect international standards. In the light of that assessment, the article 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 right to personal liberty in Cameroon.

Hannah Moscrop³⁰ explains that the enforcement mechanisms which exist for the protection of international human rights law are simply not fit for the purpose. She however argues that much still needs to be done to foster proper enforcement of human rights.

Eban Ebai³¹ looks at the institutional framework and the procedural mechanisms involved in rendering police accountable through the criminal trial process in Cameroon. He states that the difficulties involved in getting a police agent answer for his criminal misconduct as a result of the coexistence of the civil and common-law legal systems will be of particular interest. Challenges facing the criminal trial

²⁹ LS Enonchong ;*Applying International Standards in Enforcing the Right to Personal Liberty in Cameroon: Challenges and Prospects* (Cambridge University Press) 11 November 2016

³⁰ H.Moscrop; *Enforcing International Human Rights Law; Problems and Prospects* ,April 29/2014

³¹ E. Ebai; *Criminal liability of the Police in Cameroon: Prospects and Challenges* 2011

process prior to and after the enactment of a single Criminal Procedure Code in Cameroon are also examined and recommendations offered with the view to enhancing the criminal trial of police officers in Cameroon without hampering the smooth running of their duties.

Ved Marwah³² states that the police is the largest and the most important law enforcement agency, has, no doubt, a special responsibility for the protection of human rights. But its role as a protector of human right takes a beating, when the protectors themselves are accused of violating them. Accusations against individual police officers are understandable, because no organization can totally be free from its black sheep. The question is not whether human rights violation by Judicial Police takes place or not. It is common knowledge that large scale illegalities by the police do take place in the Indian.

Abiyot Girma Tamirat³³ a lawyer in Ethiopia states that every State has the obligation to respect, protect and fulfil human rights. And police as one part of the executive organ of government has its own obligations towards human rights. These include the obligation to respect and protect human rights. And police officers have also direct and regular contact with the entire society that requires an enormous effort and patience on their part to respect and protect human right.

From the literature reviewed³⁴, it is evident that there exists a vacuum in the understanding and enforcement of human rights by Judicial Police Officers in

³² V. Marwah ; *Police and Good Governance: Promotion of Human Rights* (Indian Journal of Public Administration) Vol 44, issue 3, 1998

³³ A.G. Tamirat; *The police and human rights in Ethiopia* (Abyssinia Law)

³⁴ Internet encyclopedia of philosophy a Peered reviewed Academic Resources. General Editors James Fieser, University of Tennessee at Martin, U. S. A. Bradley Dowden, California State University, Sacramento, U. S. A : accessed on May 5, 2019

Cameroon because none of the literature reviewed took into consideration the unique nature of the legal system in Cameroon which is essentially bi jural (Civil law in Francophone regions and Common law in Anglophone regions) and the colonial influence of France and Cameroon as colonial masters. More so, some of the literature reviewed in this study are not related to Cameroon and discuss the issues pertaining to foreign jurisdictions which may not have the specificity of Cameroon. Others look at the police force as an institution in general context whereas my study only looks at a specific unit within police, which is the Judicial Police.

Furthermore, the present study is more extensive as it encompasses practical knowledge as a lawyer and theoretical concepts read from law books. This research is equally different because it deals with more recent issues owing to the fact that the CPC is recent which calls for the evaluation of the role of the Judicial Police within the framework of a new human rights flavour.

This thesis further investigates and gives more relevance to the topic in question although giving credence and acknowledging the views expounded by other writers. This thesis touches and examines salient issues like re-examining certain sections of the CPC and highlights its weakness; these are not expounded in any other article on the respect of human rights by the Judicial Police Officer in Cameroon from the year 2005 when the Criminal Procedure Code was enacted as a law. An in depth investigation is carried to see the flaws of the laws relating to this topic and the effectiveness of the mechanisms put in place by the government for its application by the Judicial Police Officer.

1.7 THEORETICAL AND CONCEPTUAL FRAMEWORK

The use of theories in this research is of primary importance as they are used essentially to explain and justify certain arguments which this study aims at making. The study on enforcement of human rights by the judicial officers is associated with a number of theories and it is conceptualised within the broad theoretical parameters on human rights of persons. The following theories have been employed in this study;

1.7.1 THE TRIPLE PRONGED THEORY

This work draws inspiration from this principle that was developed by Henry Shue in 1986³⁵ to the effect that states have the duty to protect, respect and fulfill the fundamental human rights of its citizens.³⁶ This theory expounds that human rights impose a combination of negative and positive duties on the State as far as human rights of the citizens are concerned. His view on the obligations imposed on state parties were affirmed by the Maastricht Guideline lines 1997 which dwell on the violation of economic, social and cultural rights. According to the guidelines, a breach by a state of any element of the tripartite duties will be considered a violation of that state's obligations under international human rights law. This model illustrates that human rights imposes a combination of both negative and positive duties on the state which are:

- The duty to respect: - this is to the effect that states should not directly infringe on the human rights of its citizens. The state can infringe on the human rights of its citizens through the acts of the judicial police officers, such as the right to fair trial.

³⁵H. Shue , *Basic Rights; Subsistence, Affluence and US Foreign Policy* (Princeton University Press, 1980)

³⁶ Affirmed by the Maastricht Guideline on the Violence of Economic, Social and Cultural Rights 1997

- The duty to protect: - it is to the effect that states should take all positive measures to ensure that third parties like the judicial police officer in the discharge of their duties do not infringe on the human rights of its citizens.
- The duty to fulfill: - this requires that states should take measures towards the realization of the human rights of their citizens. These measures can be administrative, financial, legislative or judicial all in a bid to ensure that the rights of its citizens are enforced. This theory emphasizes the fact that the states are the duty bearers in the protection of human rights of their citizens.

This theory characterises human rights as a universal guarantees protecting individuals and groups against actions and omissions that may affect their freedom and human dignity, inalienable and legally protected rights of a citizen. A research based on human rights framework stresses the fact that legitimacy of the State is based on the notion that it shall respect, protect and fulfil the human rights of persons.

This theory is very relevant and related to this study because the judicial police constitute an arm of the state which by virtue of this theory has a triple duty that is to respect, protect and fulfil the human right of its citizens. State responsibility towards the rights of persons emanates from this theory.

1.7.2 THE NATURAL LAW THEORY

This theory was developed by Thomas Aquinas³⁷ and focuses on the overlap between natural law, moral and legal theories. The term "natural law" is ambiguous. It refers to a type of moral theory, as well as to a type of legal theory, but the core claims of the two kinds of theories are logically independent. It does

³⁷Internet encyclopedia of philosophy, a Peered reviewed Academic Resources. General Editors James Fieser, *University of Tennessee at Martin*, U. S. A. Bradley Dowden, *California State University, Sacramento*, U. S. A

not refer to the laws of nature, the laws that science aims to describe. According to natural law moral theory, the moral standards that govern human behavior are, in some sense, objectively derived from the nature of human beings and the nature of the world. While being logically independent of natural law legal theory, the two theories intersect. However, the bulk of the thesis will focus on natural law legal theory.

According to natural law legal theory, the authority of legal standards necessarily derives, at least in part, from considerations having to do with the moral merit of those standards. There are a number of different kinds of natural law legal theories, differing from each other with respect to the role that morality plays in determining the authority of legal norms. The conceptual jurisprudence of John Austin provides a set of necessary and sufficient conditions for the existence of law that distinguishes law from non-law in every possible world. Classical natural law theory such as the theory of Thomas Aquinas focuses on the overlap between natural law, moral and legal theories.

Similarly, the neo-naturalism of John Finnis is a development of classical natural law theory. In contrast, the procedural naturalism of Lon L. Fuller is a rejection of the conceptual naturalist idea that there are necessary *substantive* moral constraints on the content of law. Lastly, Ronald Dworkin's theory is a response and critique of legal positivism. All of these theories subscribe to one or more basic tenets of natural law legal theory and are important to its development and influence.

As Finnis aptly notes, natural law theory recognizes that law's 'source-based character' is a fundamental and primary element in 'law's capacity to advance the common good, to secure human rights, or to govern with integrity'. It addresses

many fundamental issues which legal positivism hardly bothers to address. Nature and Definition of Human Rights: Human rights are a special sort of inalienable moral entitlement. They attach to all persons equally, by virtue of their humanity, irrespective of race, nationality, or membership of any particular social group.

We cannot write on human rights of persons without saying how those rights accrued. This theory is therefore very relevant to this work because it gives an insight into human rights, its characteristics and origin which the States have to enforce.

1.7.3 HUMAN RIGHTS BASED THEORY

While there's no universal recipe for a human rights-based approach, United Nations agencies have nonetheless agreed on a number of essential attributes. As development policies and programs are formulated, the main objective should be to fulfill human rights. A human rights-based approach identifies rights holders and their entitlements and corresponding duty-bearers and their obligations, and works towards strengthening the capacities of rights-holders to make their claims and of duty-bearers to meet their obligations.

Principles and standards derived from international human rights treaties should guide all development cooperation and programming in all sectors and in all phases of the programming process. Practical illustration of a human rights-based approach: rights-holder and duty -bearer capacity-building. A recent example from Malawi provides an excellent illustration of the rights-based approach, particularly because it linked village level rights education and activism with Government-level legal advocacy. In this way, the campaign worked with (a) duty-bearers, to

ensure that the necessary rights were enshrined legally at national and local levels; and (b) rights-holders, to inform them of what rights they had, how those rights related to their food security and how they could go about claiming those rights.

This theory is very relevant and related to this study because we cannot write on human rights without using the human rights-based approach which identifies rights holders and their entitlements and, corresponding duty-bearers and their obligations. This theory, therefore, brings to light the human rights of citizens and the responsibility of the State which is the subject matter of this work.

A ‘Human Rights Based Approach’ is about empowering people to know and claim their rights and increasing the ability and accountability of individuals and institutions who are responsible for respecting, protecting and fulfilling rights. This means giving people greater opportunities to participate in shaping the decisions that impact on their human rights. It also means increasing the ability of those with responsibility for fulfilling rights to recognize and know how to respect those rights, and make sure they can be held to account. A human rights based approach is about ensuring that both the standards and the principles of human rights are integrated into policymaking as well as the day to day running of organizations. This approach acknowledges that it is not only people who use services whose rights are to be promoted and upheld, but staff, representatives and communities too.

1.8 JUSTIFICATION FOR THE STUDY

This study becomes very important and crucial in recent times in Cameroon mindful of the application of Law Number 2005/7 of 27 July 2005 which is a harmonized Criminal Procedure Code, and Law number 2016/007 of 12 July

2016, and considering the fact that there are many complaints filed against Judicial Police Officers for human Rights abuses in the exercise of their functions as investigators. These complaints to the government led to the creation of a free telephone hotlines such as: hotline number 1500 to denounce violations perpetrated by police officers while 1501 to denounce Gendarme officers who are considered by the Cameroon Criminal Procedure Code³⁸ as Judicial Police Officers. One would not be wrong to state emphatically that the application and understanding of the Cameroon Criminal Procedure Code is wanting. It is held that the current Anglophone crisis turned into violence due to gross violations of human rights perpetrated by the Judicial Police officers in the South West and North West Regions of Cameroon.

This thesis would dwell on the importance of human rights in the contemporary world and the need to protect them. Thus, since the tasks of the judicial police in Cameroon in conformity with the CPC, is among others to protect and enhance human rights, this study intends to look at the applicable legislation to throw additional light on the need to protect human rights. Owing to the fact that human rights are inherent and inalienable fundamental rights attached to every individual without discrimination as to race, sex or religion, their protection, promotion, respect and enforcement are of paramount importance.

Considering the fact that the government of Cameroon has taken a firm engagement to respect, promote and enforce same, it becomes of great essence to research on the respect and implementation of human rights by judicial police officers in Cameroon

Considering that we have observed gross violations of these rights by Judicial Police officers in Cameroon either due to poor training, misinterpretation of the

³⁸Articles 78 to 126 of the CPC

law or for personal gains, it becomes important and necessary to research in this domain in order to identify those lapses and make some valid proposals that will improve the degree of respect of human rights by the Judicial police officers.

1.9 SIGNIFICANCE OF THE STUDY

This research is essential in that it highlights the weaknesses and lapses of the laws, institutions, and mechanisms put in place by the State for the enforcement of human rights by judicial police officers in Cameroon. The outcome of this research will be beneficial in that, it gives thorough elucidation on the duties of judicial police officer in Cameroon. From an academic point of view, legal scholars will benefit from this work in that it will serve as a point of reference to those who will undertake further research in this area of the law. It will also be beneficial to international human rights students, for it will widen their knowledge, scope and perspectives on human rights and its enforcement mechanisms.

1.10 LIMITATIONS AND DELIMITATIONS OF THE STUDY

This researcher will first examine the delimitations and then the limitations of the study.

1.10.1 DELIMITATION OR SCOPE OF THE STUDY

The scope of this thesis is limited to the respect of human rights by the Judicial Police Officer in Cameroon and not the other police forces like the traffic police, Interpol or special intervention units. It examines their functions and the application of the Penal Code and Criminal Procedure Code of Cameroon.

This research work is restricted to the application of the CPC in the Republic of Cameroon. The CPC is a harmonised code applicable in the entire Republic of Cameroon and this research work is limited to this geographical scope.

However relevant information on the enforcement of human rights in other parts of the world was used to elucidate the state of human rights protections in Cameroon.

1.10.2 LIMITATIONS

Enforcement of human rights as an obligation of every State is so broad and involves many stakeholders and groups of persons or institutions susceptible to violate them. It is therefore imperative to conduct interviews, focus group discussions, acquire materials and identifies some victims, all these necessitated movements and finances which was not very easy to obtain. There were equally some difficulties to access written materials due to non-disclosure of facts by the judicial police commissioners, some administrative authorities and victims themselves for fear of subsequent repression.

However, these limitations did not affect the overall quality of this thesis because I persisted in getting the necessary information and also took the courage to visit the Anglophone regions regardless of the risk involved due to the current crisis.

1.11 CONCEPTUAL DEFINITION OF KEY TERMS

1.11.1 HUMAN RIGHTS

*Black's Law Dictionary*³⁹ defines human rights as 'the freedom, immunities, and benefits that, according to modern values (especially at international level), all human beings should be able to claim as a matter of right in the society in which they live.

³⁹ B. A. Garner, *Black's law Dictionary* (ninth edition) page 809

The United Nations through the Universal Declaration of Human Rights defines human rights in its articles one and two as; ‘all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty’ and in its preamble states that ‘Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,’

Human Rights, in this context are “universal moral rights; something which all men everywhere, at all times ought to have, something of which no one may be deprived without grave affront of justice, something which is owing to every human being simply because he is human”. The term “Human Rights” indicates both the nature and source: they are rights one has simply because one is a human being. If a right is determined to be a human right, it is general and universal in character, equally possessed by all human beings. All human beings should enjoy human rights because of the mere fact that they are human beings. Human rights are held by all people and all human beings without distinction as to race, colour, sex, language, religion, nationality, ethnic origin, family or social status, or political or other convictions. The very specificity of the concept of “human rights” is that they belong to the individual in his or her quality as a human being, who cannot be deprived of their substance in any circumstances; these rights are thus

intrinsic to the human condition. The fact that human rights originate in the unique nature of the human being means that they should be subjected to effective legal protection at the national and international levels.

1.11.2 ENFORCEMENT

The Black's Law Dictionary defines enforcement as the act or process of compelling compliance with the law, mandate, command, decree, or agreement⁴⁰. This would mean to make strong and to compel observance of a law and regulation⁴¹. It therefore refers to the various mechanisms by which the Judicial Police officers are compelled to respect human rights in their daily duty as law enforcement officers and auxiliary of the State Counsel.

1.11.3 CRITICAL APPRAISAL

As a verb, critique means to review or examine something critically. As a noun, a critique is that review or examination, like an art essay or a book report. The French version of this word is spelled the same (meaning "the art of criticism") and came from the Greek kritike tekhnē ("the critical art"). *The Black's Law dictionary*⁴² defines appraisal as "the determination of what constitutes a fair price, valuation; estimation of worth 2) the report of such a determination"

Webster's II New Riverside dictionary defines critical as "tending to judge harshly and adversely 2) marked by careful and exact judgment and evaluation).⁴³

1.12 SYNOPSIS OF THE CHAPTER

This study is divided into five principal chapters. Chapter one which is the general introduction of the study comprises the background to the study, the statement

⁴⁰ B. A. Garner, *Black's law Dictionary* (ninth edition) page 608

⁴¹ B. A. Garner, *Black's law Dictionary* (ninth edition) page 1398

⁴² B. A. Garner, *Black's law Dictionary* (ninth edition) page 117

⁴³ Webster II New Riverside dictionary page 238

problem, the research questions, the research objectives, the research methodology, the literature review, justification of the study, significance of the study, the theoretical framework, scope of the study, the conceptual definition of key terms and the synopsis of the chapters.

The second chapter deals with the duties of the Judicial Police Officer and the provisions of the CPC that guarantees the respect of human rights by the Judicial Police Officer in the exercise of their duties.

The third chapter treats the control mechanisms put in place to supervise and control the activities of the judicial police officers.

The fourth chapter deals with an evaluation of the compliance of the CPC by the Judicial Police Officer and the effectiveness of the various control mechanisms and the last chapter deals with summary of its findings, conclusion and recommendations.

CHAPTER TWO

JUDICIAL POLICE OFFICER IN CAMEROON: OVERVIEW OF CONCEPT AND SCOPE OF DUTIES

2.0. INTRODUCTION

Judicial Police is a branch of the Police force entrusted with the investigation of crimes and work under the supervision of Legal Department. The word ‘police’ evolved from the Latin word ‘politia’ and in Cameroon, the Police force is a branch of the executive and constitute of officials with distinct specialization. There are road traffic officials, secret service and intelligence officials, administrative officials, and also officials responsible for investigations of crimes and who work hand in gloves with the judiciary branch of government. A judicial police officer may be an officer or non-commissioned officer of the gendarmerie, superintendent of police and assistant superintendent of police and many other individuals so designated by the CPC.

The role of the judicial police officer is provided in the CPC and includes among others investigation of offences, collection of evidence, identification of offenders and accomplices etc. In the furtherance of their duties, judicial police officers are entrusted to comply with specific provisions of the CPC, most of which have human rights flavour. This chapter discusses the notion of judicial police in Cameroon, the officials entrusted to perform the role of judicial police officers, and

the duties of these officials. In so doing, the chapter addresses the first research question of this thesis as well as the first specific objective of the research.

2.1 THE CONCEPT OF JUDICIAL POLICE OFFICER UNDER CAMEROON LAW

To start with, the etymology of the word “police” is derived from the Latin word “politia” which is the latinisation of the Greek word “politeia”, meaning "citizenship, administration, civil polity". In ancient Greece, the term “polissoos”, referred to a person who was "guarding a city". *Black's Law dictionary*⁴⁴ broadly defines the word police as the governmental department charged with the preservation of public order, the promotion of public safety, and the prevention and detection of crime. Encarta dictionary on its part defines the word police as a civil organization whose members are given special legal powers by the government and whose task is to maintain public order and to solve and prevent crimes.

There are the various divisions of police in Cameroon; traffic wardens, intelligence officers, road accidents officer and the rapid intervention units. The traffic wardens are charged with the control circulations on the highway, the intelligence police gather information for security of the state and combat crimes before their commission. The road accidents police are specialised in drawing up accident reports and send the file to the State Counsel for subsequent prosecution in court. The rapid intervention unit is charged with the responsibility to intervene during the commission of an offense and arrest the situation; we equally have the judicial police which are our concern in this thesis. The difference between the judicial police to the others is that they are specialised in investigating criminal matters on behalf of the legal department.

⁴⁴ B. A. Garner, *Black's law Dictionary* (ninth edition) page 1276

The Criminal Procedure Code of Cameroon considers the following persons as judicial police officer:

- Officers and non-commissioned officers of the gendarmerie⁴⁵;
- Gendarmes in charge even in an acting capacity of a gendarmerie brigade or gendarmerie post⁴⁶;
- Superintendents of police⁴⁷;
- Deputy superintendent of police⁴⁸;
- Gendarmes and inspectors of police who have passed the judicial police officer's examination and taken the oath⁴⁹;
- Public servants even if they are temporarily performing the function of head of an external service of the National Security⁵⁰.

More so, public servants and other public employees who have been assigned judicial police duties by special instruments shall be in charge of those duties under the conditions and within the limits fixed by the instruments.

2.2 DUTIES AND TASKS OF THE JUDICIAL POLICE OFFICERS

A Judicial police officer is any person who carries out the following functions: investigation of offences, collecting evidence, identifying offenders and accomplices and bringing them before the Legal Department, executing rogatory

⁴⁵ Section 79(a) of the CPC

⁴⁶ Section 79(b) of the CPC

⁴⁷ Section 79(c) of the CPC

⁴⁸ Section 79(d) of the CPC

⁴⁹ Section 79(e) of the CPC

⁵⁰ Section 79(f) of the CPC

commissions of judicial authorities; serving out court processes; executing warrants and court decisions⁵¹. I shall treat each of these functions in turn:

➤ **Investigation of offences**

Their role in the exercise of justice and investigations is the subject of articles 78 to 91 of the Cameroon Criminal Procedure code of 2006. Officers and noncommissioned officers of the gendarmerie, Gendarmes who are not judicial police officers, police inspectors and constables shall have the status of judicial police agents, and they shall assist judicial police officers in the performance of their duties and shall report to their superior officers of all offences which have come to their knowledge; judicial police agents shall have no authority to take decisions to remand in police custody ; ⁵² Judicial police officers shall receive complaints and reports against persons and shall make preliminary investigations according to the conditions provided for in sections 116 to 120 of the CPC. In cases of felonies and misdemeanors committed *flagrant delicto*, they shall exercise the powers conferred on them by sections 104 -115 of the Criminal Procedure Code.

Thus it is the duty of the judicial police officer to open up inquiries of an offense committed, during which he will listen to everyone who can either identify as a witness the author of the crime and the exact nature of the offence. The purpose of such investigations is to gather sufficient proofs against a suspect who shall be presented to the State Counsel. It is a very important process in criminal litigations.

➤ **Collection of evidence**

In carrying out investigations, the Judicial Police Officer shall collect any facts and objects that the legal department will use as proofs for the prosecution of accused

⁵¹ Section 82 of the CPC

⁵² Section 79 of the CPC

persons in court, it could be a confession from the suspect, statements from witnesses or some documents to support the charges.

The burden of proof shall lie upon the party who institutes a criminal action except where otherwise provided by the law; an offense might be established by any means of proof.⁵³ In the process of collecting of evidence, the judicial police if not controlled might use certain methods which might violate the human rights of the suspects.

➤ **Identification of offenders and accomplices**

The Judicial Police seized by way of denunciation shall open investigations against an unknown suspect and have the responsibility to identify the offenders and accomplices. Offenders are the individuals who actually initiated and carried out the commission of an offence while accomplices are those who assisted them in any of the stages of committing the offense. It is the role of the judicial police to identify each party and their criminal responsibility. In the performance of these duties, the Judicial Police officer can easily violate the human rights of the suspects.

➤ **Bringing suspects before the legal department**

The duties of the judicial police shall be performed under the supervision of the State Counsel.⁵⁴ At the end of every investigation, the Judicial Police Officer shall forward to the State Counsel his reports and the suspect if he or she was remanded in custody. The State Counsel shall then study the reports and if there are sufficient proofs against the suspect, the State Counsel shall forward the matter in court for

⁵³ Burden of proof Section 307 CPC

⁵⁴ Section 78(1) CPC

trials. Thus the Judicial Police Officer performs this task and is susceptible to violate the human rights of suspects.

➤ **Executing rogatory commissions of judicial authorities**

The examining magistrate may give a rogatory commission to any other examining magistrate and subject to provisions of Section 152 to a Judicial Police Officer to carry out any acts of the inquiry.⁵⁵ Rogatory commission refers to the delegation of powers by the magistrate to a judicial police officer to carry out investigations on some aspects of a matter under preliminary inquiries. Thus, the judicial officer, such as the Examining Magistrate charged with the preliminary inquiries can by way of rogatory commission delegate some powers to the judicial police officers to work on their behalf.

➤ **Serving out court processes**

The judicial police are also empowered to serve court processes such as executing warrants and court decisions⁵⁶. Warrants are an order given to the judicial police officer to either search a person or place for to obtain proofs. The judicial police officers are charged with the duty of receiving court processes and serve or execute them as instructed by the legal department of the Courts.

➤ **Maintaining peace and order**

Peace and order is an essential ingredient in maintaining economic development, social order and political stability. A condition of peace and order facilitates the growth of investments, generates more employment opportunities and attracts more tourists. The Police typically are responsible for maintaining public order and safety, enforcing the law, and preventing, detecting, and investigating criminal

⁵⁵ Section 191(1) CPC

⁵⁶ Section 82 of the CPC

activities. It is therefore evident from the duties and functions of the Judicial Police Officer that they have direct contacts daily with the citizens.

In fulfilling those duties mentioned above, judicial police officers are expected to respect and protect the human rights of the persons under their control. We shall examine the legal bases which impose on the Judicial Police Officers the duty to respect and enforced human rights in Cameroon.

2.3 LEGAL JUSTIFICATIONS FOR THE RESPECT OF HUMAN RIGHT IN CAMEROON

The Republic of Cameroon by virtue of the Preamble of the 1996 Constitution adheres to respect and enforcement of human rights as it is enshrined in the Universal Declaration of Human rights of 1948. In furtherance to its commitment to human rights the Preamble of the 1996 Constitution of Cameroon provides numerous human rights standards which the State is expected to uphold vis a vis the human rights of its citizens. For instance the preamble emphatically states that the people of Cameroon “*declare that the human person, without distinction as to race, religion, sex or belief, possesses inalienable and sacred rights; Affirm our attachment 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, in particular, to the following principles:*

- *All persons shall have equal rights and obligations. The State shall provide all its citizens with the conditions necessary for their development;*
- *The State shall ensure the protection of minorities and shall preserve the rights of indigenous populations in accordance with the law;*

- *freedom and security shall be guaranteed to each individual, subject to respect for the rights of others and the higher interests of the State;*
- *Every person shall have the right to settle in any place and to move about freely, subject to the statutory provisions concerning public law and order, security and tranquility;*
- *The home is inviolate. No search may be conducted except by virtue of the law;*
- *The privacy of all correspondence is inviolate. No interference may be allowed except by virtue of decisions emanating from the Judicial Power;*
- *No person may be compelled to do what the law does not prescribe;*
- *No person may be prosecuted, arrested or detained except in the cases and according to the manner determined by law;*
- *The law may not have retrospective effect. No person may be judged and punished, except by virtue of a law enacted and published before the offence committed;*
- *The law shall ensure the right of every person to a fair hearing before the courts;*
- *Every accused person is presumed innocent until found guilty during a hearing conducted in strict compliance with the rights of defense;*
- *Every person has a right to life, to physical and moral integrity and to humane treatment in all circumstances. Under no circumstances shall any person be subjected to torture, to cruel, inhumane or degrading treatment;*
- *No person shall be harassed on grounds of his origin, religious, philosophical or political opinions or beliefs, subject to respect for public policy”;*

Most of these principles enshrined in the Preamble of the Constitution are derived from international human rights law and therefore have become constitutional principles in the country. By virtue of their constitutional foundation they are

superior norms that must be observed and respected at all times. In addition to the principles established in the preamble to the constitution, article 45 of the 1996 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. Some of these international treaties and conventions include; the African Charter of Human and Peoples Right⁵⁷, African Charter on the Rights and Welfare of the Child⁵⁸, Convention on the Elimination of all forms of discrimination against women⁵⁹, International Covenant on Civil and Political Rights⁶⁰, International Covenant on Economic, Social and Cultural Rights⁶¹, United Nation Convention against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment⁶².

It should be surmised that the human rights commitment of the State of Cameroon is more in line with its commitment to enforcing and fulfilling the respect of human rights in compliance with the triple pronged theory, the natural law theory and the human rights based theory.

The three theories early mentioned have a significant bearing on the respect and enforcement of human rights of persons by the State. The triple pronged theory characterises human rights as a universal guarantees protecting individuals and groups against actions and omissions that may affect their freedom and human dignity, inalienable and legally protected rights a citizen. A research based on human right framework stresses the fact that legitimacy of the State is based on the notion that it shall respect, protect and fulfil the human rights of persons. This theory is very relevant and related to this study because the judicial police

⁵⁷Ratified on 23/07/1987

⁵⁸ Ratified on 16/09/1992

⁵⁹ Ratified on 9/5/1999

⁶⁰Ratified on 19/12/1986

⁶¹ Ratified on 27/6/1984

⁶² Ratified on 19/12/1986

constitute an arm of the state which by virtue of this theory has a triple duty that is to respect, protect and fulfil the human right of its citizens. State responsibility towards the rights of person emanates from this theory.

Natural law theory recognizes that law's 'source-based character' is a fundamental and primary element in 'law's capacity to advance the common good, to secure human rights, or to govern with integrity'. It addresses many fundamental issues which legal positivism hardly bothers to address. It holds that Human Rights are a special sort of inalienable moral entitlement. They are attached to all persons equally, by virtue of their humanity, irrespective of race, nationality, or membership of any particular social group.

The 'Human Rights Based Approach' is about empowering people to know and claim their rights and increasing the ability and accountability of individuals and institutions who are responsible for respecting, protecting and fulfilling rights. This means giving people greater opportunities to participate in shaping the decisions that impact on their human rights. It also means increasing the ability of those with responsibility for fulfilling rights to recognize and know how to respect those rights, and make sure they can be held to account for all these. A human rights based approach is about ensuring that both the standards and the principles of human rights are integrated into policymaking as well as the day to day running of organizations. This approach acknowledges that it is not only people who use services whose rights are to be promoted and upheld, but staff, representatives and communities too. All these three theories constitute the bases of this research work. The triple pronged and human rights based theories establish the responsibilities of the government of Cameroon to respect and fulfill human rights of persons which are defined and supported by the natural law theory, and in fulfillment of these

theories, the judicial police officers are expected to respect and promote human rights of persons under their control.

2.4 SOME PROVISIONS OF THE CPC AIM AT ENHANCING THE ENFORCEMENT OF HUMAN RIGHTS

We shall herein examine the provisions of Criminal Procedure for the respect and enforcement of human rights of the suspects who are under police investigations before trial in courts. Most of these rights are enshrined in international treaties ratified by Cameroon including: African Charter on the Rights and Welfare of the Child, Convention on the Elimination of all forms of discrimination against women, International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, United Nation Convention against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment. These rights include amongst others: right to caution and counsel, right to inhumane treatment without torture, right to bail, Rights during execution of warrants, rights during police custody. I shall treat each in turn.

2.4.1 Right to Caution and Counsel

The right to remain silence and the right to counsel are fundamental human rights and the subject matter of Section 116(3) of the CPC which is in consonance with article 14 of the ICCPR.

This right falls under the right of fair hearing which is enshrined in International Covenant on Civil and Political Rights and states as follows “In the determination of any criminal charge against him, or of his rights and obligations in a suit at law,

everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law⁶³,” thus, a trial that is conducted fairly, justly, and with procedural regularity. The preamble of the 1996 Cameroon Constitution further upholds the right to fair hearing.

In the CPC in conformity with ICCPR and the Constitution, it is stated that “Judicial police officers and agents shall carry out investigations either on their own initiative or on the instructions of the State Counsel. The originals of the Police case files shall be forwarded to the State Counsel without delay. As soon as investigations are opened, the judicial police officer shall, under the penalty of nullity, inform the suspect of his right to counsel and his right to remain silent. Mention of this information shall be made in the report”⁶⁴.

Thus this right to caution and right to counsel is a fundamental right of person and it is clearly protected by the provisions of the CPC. Our concern therefore is to examine if this right is respected and enforced by the judicial police officers in Cameroon.

To properly evaluate its enforcement of the right to caution and counsel, there are many cases reported in the Northern Regions of Cameroon where persons suspected of belonging to Boko Haram are summarily executed. The case of Sisiko Ayuk Tabe and 9 others against the State of Cameroon is a typical example of such violations. In this case the suspects charged with terrorism and crime against the State of Cameroon arrested in Nigeria and taken to the Gendarmes headquarters in Yaoundé where they were detained for many months without having access to their lawyers until such a time that these lawyers of his seized the MFOUNDI High Court of Yaoundé for habeas corpus.

⁶³ Article 14 ICCPR

⁶⁴ Section 116 of the CPC

2.4.2 Right to Humane Treatment and Against Torture

This fundamental human right is well articulated in Section 122 of the CPC which states that; *“the suspect shall immediately be informed of the allegations against him, and shall be treated humanely both morally and materially. He shall be given reasonable time to rest fully in the course of the investigation. The period of rest shall be mentioned in the police report. 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, prolonged questioning, hypnosis, the administration of drugs or to any other method which is likely to compromise or limit his freedom of action or decision, or his memory or sense of judgment. 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 by any other person following up his treatment while in detention. The State shall be responsible for feeding persons remanded in police custody. However, such persons shall have the right to receive from members of their families or from their friends the means of subsistence and other necessities. The person remanded in police custody may, at any moment, be examined by a medical officer appointed by the State Counsel of his own motion. Such medical officer may be assisted by another chosen by the person on remand at his own expense. The State Counsel may also order such medical examination at the request of the person concerned, his lawyer or a member of his family. Such medical examination shall be carried out within twenty-four hours after the request. At the end of the police custody, it shall be obligatory to medically examine the suspect at his expense and by a doctor of his choice, on condition that either the suspect himself, his counsel or his family members so request. In all cases he shall be informed of this discretion. The report of the commissioned medical officer shall be put in the*

suspect's case file and a copy thereof given to him. It may be counter-signed by the medical officer chosen by the person so remanded who may, where necessary, endorse it with his view”.

This is in consonance with and in consonance with Article 7 of the ICCPR states 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”*.⁶⁵

Such is equally affirmed in the United Nation Convention against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment and in the Preamble of the 1996 Constitution of Cameroon. Therefore the right to humane treatment and torture is a fundamental right of persons for which the State is duty bound to respect and enforced.

Our concern shall be to see of the rights like good police cells, feeding, clothing, medical attention, no torture and any other form of human treatment is respected by the judicial police officer in Cameroon. The answer to these questions shall be obtained through interviews and visit to some of the police cells.

2.4.3 The right to bail

Bail is the conditional and provisional release of a suspect, defendant or accused who is under police custody for the purpose of investigations.

The right to bail emanates from the right of presumption of innocence and the right to freedom. This right is guaranteed by the provisions of Sections 218, 224 and 246(g) of the CPC. Section 218 states inter alia that; *“Remand in custody shall be*

⁶⁵Article 7 of the ICCPR

an exceptional measure which shall not be ordered except in the case of a misdemeanor or a felony.

It shall be necessary for the preservation of evidence, the maintenance of public order, protection of life and property, or to ensure the appearance of an accused before the Examining Magistrate or the court. Provided that a person with a known place of abode shall not be remanded in custody except in the case of a felony⁶⁶. Any person lawfully remanded in custody may be granted bail on condition that he fulfils one of the conditions referred to in section 246 (g), in particular to ensure his appearance either before the judicial police or any judicial authority.

The provisions of sub-section (1) above shall not apply to persons charged with felonies punishable with life imprisonment or death⁶⁷. Application for the bail may be made, as the case may be to the judicial police officer, to the State Counsel, to the Examining Magistrate or to the court seized of the matter⁶⁸.

When the applicant presents several sureties for bail, the recognizance entered into by them may be taken separately⁶⁹, in order to ensure his appearance he shall. A suspect seeking bail 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 sections 224,⁷⁰ there are two types of bail, self-bail⁷¹ and conditional bail”.⁷²

⁶⁶ Section 218(1) of the CPC

⁶⁷ Section 224 (1) and (2) of the CPC

⁶⁸ Section 225 of the CPC

⁶⁹ Section 226 of the CPC

⁷⁰ Section 246(g) of the CPC

⁷¹ Section 222(1) of the CPC

⁷² Section 224(1) of the CPC

This right is further emphasized in the Preamble of the 1996 Cameroon Constitution under the right of freedom. The right to bail emanates from the right of presumption of innocence which is a fundamental right of persons as enshrined in article 14 (2) of ICCPR which stipulates that; *“Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law”*.

Article 9 of the ICCPR states that; *“Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law”*.

From the cited provisions of the CPC it is evident that the only instance where bail is not accepted is when charged with felonies punishable with life imprisonment or death. The case of Manka Nchotu Vs. Fomou Mohamed and many others where bail was refused to be granted by the judicial police officer in Douala for a misdemeanor calls for attention.

2.4.4 Rights of the suspect during execution of warrants

We shall examine the provisions of the CPC in the execution of search and arrest warrants and thereafter evaluate if they are executed in conformity of the law and in respect of the rights of the suspects.

2.4.4 (1) Search warrants

The CPC provides that; *Searches and seizures shall be carried out by judicial police officers who possess search warrants. However, he may act without a search warrant in cases of a felony or a misdemeanour committed flagrante delicto. Any search or seizure shall be carried out in the presence of the occupant*

*of the place and the person in possession of the objects to be seized, or in case of their absence, their representatives, as well as two witnesses chosen from among the persons or neighbors present*⁷³.

*In the absence of a search warrant, searches, and seizures of exhibits may be carried out only with the consent of the occupant or of the person in possession of the objects to be seized. The consent shall be a written declaration signed by the person concerned, and if he cannot sign he shall make a thumb-print at the bottom of the declaration. The consent of the person concerned shall be valid only if he had been informed beforehand by the judicial police officer of his right to object to the search*⁷⁴. *No search may be conducted on a private house and premises between six (6) p.m. and six (6) a.m. However, a search already begun may continue after six (6) p.m. on the authorization of the State Counsel. In case of impossibility of getting in touch with the State Counsel, the judicial police officer may exceptionally continue with the search after 6 p.m. and shall, without delay, keep the State Counsel informed*⁷⁵. *Failure to comply with the provisions of sections 93 to 99 shall render the search and seizure null and void*⁷⁶. *However, where the search has been declared null and void, the articles seized in the course thereof may be admitted as exhibits if they are not contested. Bodily search shall be carried out only by a person of the same sex as the suspect and in all cases the person to be searched shall first of all be informed of the reasons for the search.*⁷⁷

The respect of human dignity during searches is an enforcement of human right as prescribed in conformity with the provisions of article 7 of the ICCPR which stipulates that “*No one shall be subjected to torture or to cruel, inhuman or*

⁷³ Section 93(1) and (2) of the CPC

⁷⁴ Section 94(1), (2) and (3) of the CPC

⁷⁵ Section 94(1), (2), and (3) of the CPC

⁷⁶ Section 100 of the CPC

⁷⁷ Section 87(2) and (4) of the CPC

*degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation”.*⁷⁸Such is equally affirmed in the United Nation Convention against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment and in the Preamble of the 1996 Constitution of Cameroon. Thus such a violation constitutes a human right violation.

2.4.4(2) Warrant of arrest

There are some human rights guaranteed in the CPC in the event of execution of either a search warrant or a warrant of arrest. The CPC stipulates that “*An arrest shall consist of apprehending a person for the purpose of bringing him without delay before the authority prescribed by law or by the warrant. A judicial police officer, agent of judicial police or any officer of the forces of law and order effecting an arrest, shall order the person to be arrested to follow him and, in the event of refusal, he shall use reasonable force, necessary to arrest the person. Any person may in case of a felony or misdemeanor committed flagrante delicto as defined in section 103, arrest the author of such an offence*”⁷⁹.

Any person arrested shall be given reasonable facilities in particular to be in contact with his family, obtain legal advice, make arrangements for his defense, consult a doctor and receive medical treatment and take necessary steps to obtain his release on bail. No bodily or psychological harm shall be caused to the person arrested.

Except in the case of a felony or misdemeanor 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

⁷⁸Article 7 of the ICCPR

⁷⁹ Section 30 (1), (2) and (3) of the CPC

person to accompany the person arrested in order to ascertain the place to which he is being detained”⁸⁰.

These provisions are in consonance with article 7 of the ICCPR stipulates 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”⁸¹*

Such is equally affirmed in the United Nation Convention against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment and in the Preamble of the 1996 Constitution of Cameroon. Therefore if warrants are not executed in conformity with the treaties and the CPC provisions it is in breach of the human right of person.

We have established under the above treated rights that in all the stages of investigations the suspect presumed innocent and have the right to be treated humanely. Article 7 of the ICCPR stipulates 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”⁸²*

Therefore the right to humane treatment and against torture is a fundamental right of persons for which the State is duty bound to respect and enforced. Our concern herein is to examine if in the execution of the various warrants the judicial police respect the fundamental human right of treating the suspects are prescribed by the law.

2.4.5 Remanded in custody

⁸⁰ Section 31 of the CPC

⁸¹Article 7 ICCPR

⁸²Article 7 ICCPR

Remand in custody means deprivation of the right to freedom. This right is so fundamental that its violation must be under serious checks. This right to freedom and liberty has been protected in the CPC which provides that; The CPC stipulates that *“Police custody shall be a measure whereby, for purposes of criminal investigation and the establishment of the truth, a suspect is detained in a judicial police cell, wherein he remains for a limited period available to and under the responsibility of a judicial police officer.*

Except in case of a felony or a misdemeanor committed flagrante delicto, and unless strong corroborative evidence exists against him, a person with a known place of abode may not be remanded in police custody. Save in the cases provided for in sub-sections (1) and (2) above, no person may be remanded in police custody for the purpose of criminal investigation without the written approval of the State Counsel. Mention of this approval shall be made in the police report⁸³.

Where a judicial police officer intends to remand a suspect in police custody, he shall inform him of the grounds for the suspicion and invite him to give any explanation he deems necessary. Mention of these formalities shall be made in the police report.

The time allowed for remand in custody shall not exceed forty-eight (48) hours, renewable once. This period may, with the written approval of the State Counsel, be exceptionally extended twice. Reasons shall be given for each extension. However, the period of remand in police custody shall not be extended solely for the purpose of recording the statement of a witness, except in cases of felonies or misdemeanors committed flagrante delicto, remand in police custody shall not be ordered on Saturdays, Sundays or public holidays. However, where the remand in

⁸³ Section 118(1)(2)(3) and (4) of the CPC

police custody has commenced on a Friday or on the eve of a public holiday, it may be extended as provided for in sub-section (2)⁸⁴.

Notwithstanding the provisions of section 119 (2), the period of remand in police custody shall be extended, where applicable, having regard to the distance between the place of arrest and the police station or the gendarmerie brigade where such remand has to be effected. The extension shall be twenty-four (24) hours for every fifty (50) kilometers. Mention of this fact shall be made on the report of arrest⁸⁵.

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. The time of his arrival at the station shall be mentioned in the station diary and in the police report⁸⁶. The suspect shall immediately be informed of the allegations against him, and shall be treated humanely both morally and materially. He shall be given reasonable time to rest fully in the course of the investigation. The period of rest shall be mentioned in the police report. 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, prolonged questioning, hypnosis, the administration of drugs or to any other method which is likely to compromise or limit his freedom of action or decision, or his memory or sense of judgment.

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 by any other person following up his treatment while in detention⁸⁷. The State shall be

⁸⁴ Section 119 of the CPC

⁸⁵ Section 120 of the CPC

⁸⁶ Section 121 of the CPC

⁸⁷ Section 122(1)(2) and (3) of the CPC

responsible for feeding persons remanded in police custody. However, such persons shall have the right to receive from members of their families or from their friends the means of subsistence and other necessities. Whoever violates or fails to comply with the provisions of this section or prevents their compliance with, shall be liable to prosecution without prejudice, where necessary, to disciplinary sanctions⁸⁸.

The person remanded in police custody may, at any moment, be examined by a medical officer appointed by the State Counsel of his own motion. Such medical officer may be assisted by another chosen by the person on remand at his own expense. The State Counsel may also order such medical examination at the request of the person concerned⁸⁹”.

The aforementioned provisions of the CPC are in line with articles 9, 10 and 14 of the ICCPR stipulates inter alia that; “Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human persons. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law”.

⁸⁸ Section 122(4) and (5) of the CPC

⁸⁹ Section 123 (1) and (2) of the CPC

We shall herein examine if remands in custody is in conformity with the fundamental rights of persons as prescribed by the ICCPR and CPC. This is very relevant and related to this work because we are going to evaluate if the judicial police officer respects and enforces the human rights of suspects under detention. We will evaluate if they are treated humanely. The answer to this question is very important in this thesis.

We have properly examined some of the provisions of the CPC which guarantee the human rights of the suspects under investigation by the Judicial Police; we shall proceed to the various control mechanisms and sanctions for violations.

CHAPTER THREE

REGULATING THE DUTIES OF THE JUDICIAL POLICE: CONTROL MECHANISMS AND CORRESPONDING SANCTION

3.0 INTRODUCTION

This chapter which addresses the third research question and the third specific objective fundamentally examines the various mechanisms put in place by the State to supervise the activities of judicial police and the sanctions for non-compliance. This is in conformity with the State responsibility to respect and enforce human rights. The triple pronged and Human Right Based theory constitutes the theoretical framework of this chapter.

The State in consonance with the preamble of the ICCPR and in compliance with Part II article 2 of the ICCPR have put in place some mechanisms in the CPC to control the activities of judicial police officers and the Penal Code to sanction any derogation which constitutes human rights violations. We shall first examine the control mechanisms and later the sanctions for non-compliance.

3.1 CONTROL MECHANISMS

The Cameroonian government has created some institutions to control and supervise, others to denounce, and the court to sanction human rights violations of the Judicial Police. These institutions include: The legal Department and the Procureur General, the State Counsel, various heads of judicial police units, Human Rights Commissions and Civil Societies, Ancillary and other Integrated Organs of Control and the Courts for sanctions to name a few. I shall treat them in turns.

3.1.1 The Legal Department

The legal department is a component of the court, charged with the responsibility of prosecuting on behalf of the State accused persons for the commission of an offense. It is also charged with the duty of carrying out investigations which are to be executed by the judicial police under their direct supervision.

The legal department is made up of magistrates and headed by the State Counsel. All the Courts in Cameroon from the Supreme Court, High Court and Courts of First Instance have corresponding legal departments charged with the prosecution of suspects and accused persons.

The Legal Department shall, as provided for in this section, comprise the magistrates in the Legal Department of the Supreme Court, the Court of Appeal, the High Court and the Court of First Instance. The Legal Department of the Supreme Court shall comprise the Procureur General at the said Court and all the magistrates of the said Legal Department. Its jurisdiction shall be that of the Supreme Court.

The Legal Department of the Court of Appeal shall comprise the Procureur General at the said Court and all the magistrates of the said Legal Department. Its jurisdiction shall be that of the Court of Appeal. The Legal Department of the High Court shall comprise the State Counsel and all the magistrates of the said Legal Department. Its jurisdiction shall be that of the High Court.

The Legal Department of the Court of First Instance shall comprise the State Counsel and the Magistrates of the said Legal Department. Its jurisdiction shall be that of the Court of First Instance.

The magistrates of the Legal Department of the Supreme Court, Court of Appeal, High Court and Court of First Instance shall under the control, direction and authority of the Heads of the said Legal Departments, exercise the powers conferred by the law on the Procureur General at the Supreme Court, the Procureur General at the Court of Appeal and the State Counsel respectively. I shall now discuss the crucial role played by officials that man these institutions.

3.1.2 The Procureur General at the Court Of Appeal

The Procureur General at the Court of Appeal shall ensure that the criminal law is applied throughout the jurisdiction of the Court of Appeal. He shall have authority over all the magistrates of the Legal Department within his jurisdiction. He shall, in the exercise of his functions, have the right to call directly on the forces of the law and order⁹⁰.

He shall supervise the activities of the judicial police officers and agents working within the jurisdiction of the Court of Appeal; shall submit half yearly reports to the Minister in charge of Justice on their activities and conduct; may direct them to obtain any information which he deems useful for the proper administration of Justice; shall evaluate the work and give marks to each judicial police officer within his jurisdiction; Shall forward his appreciation and the marks given to the judicial police officer concerned, to the head of his service of origin⁹¹.

From the above provisions, the Procureur General has the powers to control the activities of the judicial police officer in such a way that the officer will be dissuaded to violate the human rights of the suspects. His power is enlarged furthermore because the Procureur General controls all the State Counsel within his jurisdiction which is the region. These State Counsel have as duties not only to

⁹⁰ Section 133 (1-3) of the CPC

⁹¹ Section 134 (2) a, b, c,d,e, of the CPC

directly supervise investigations and visit the police cells, they are obliged to give daily report of the activities of the judicial police officers to their boss the Procureur General. With this function, the Procureur General has a direct control on the actions of the judicial police officers and can identify violations of human rights and sanction the defaulters.

3.1.3 The State Counsel

The State Counsel shall direct and control the operations of the officers and agents of the judicial police. He may, at any time, visit the police post or the gendarmerie brigade in order to verify the conditions of persons in custody provided for in section 124 (3). In the course of such control, the persons whose release he orders of his own motion or by virtue of an order of habeas corpus, must immediately be set free, under pain of prosecution for unlawful detention against the judicial police officers in charge of the police post or gendarmerie brigade where the custody takes place. The State Counsel may, at any time and place act as a judicial police officer.⁹²

The duties of the judicial police shall be performed under the supervision of the State Counsel by judicial police officers, judicial police agents and all other civil servants or persons to whom judicial police duties are assigned by law⁹³. In this capacity, the persons referred to in the preceding they shall be auxiliaries of the State Counsel.

The Judicial police shall be responsible for: investigating of offences, collecting evidence, identifying offenders and accomplices and bringing them before the Legal Department⁹⁴; The Judicial Police Officer shall receive instructions from the

⁹² Section 137 (1,2,3) of the CPC

⁹³ Section 127(1-7) of the CPC

⁹⁴ Section 82 of the CPC

State Counsel to carry out all investigations or any additional investigation which he considers necessary. The State Counsel may stop any judicial police officer from continuing with the investigation. In such a case, he shall inform that officer's immediate superior of his reason for doing so⁹⁵.

A non-military judicial police officer may investigate offences provided for in the provisions of the Military Justice Court when no military judicial police officer is available. In such a case, he shall forward the case-file to the Ministry in charge of Military Justice⁹⁶. The judicial police officer shall without delay inform the State Counsel of the offences of which he has knowledge. At the close of the investigations, he shall forward directly to the State Counsel the original and a copy of his report as well as all other relevant documents.

An inventory shall be made of all the objects seized. They shall then be placed under seal and deposited with the Legal Department. A copy of the report on the seizure shall be given to the person who had possession of the objects⁹⁷. The police report shall state; the date and time when each phase of investigations started and ended; the full name and the status of the investigator; where necessary, the authorization referred to in section 88 (2). Each sheet of the original of the report or of the statement registered shall bear the signature of the investigator; a judicial police officer informed of a felony committed *flagrante delicto* shall immediately inform the State Counsel of it⁹⁸.

In the case of a felony committed *flagrante delicto*, the State Counsel shall be competent to carry out the investigation. When the State Counsel arrives at the scene where the offence was committed,, the powers of the judicial police officer

⁹⁵ Section 83(4) and (5)

⁹⁶ Section 85 of the CPC

⁹⁷ Section 89(1)(2)(3) of the CPC

⁹⁸ Section 104(1) of the CPC

to carry out the investigation shall cease immediately unless the said State Counsel decides otherwise⁹⁹. A suspect arrested flagrante delicto shall be brought by the judicial police officer before the State Counsel who shall proceed to check his identity, interrogate him summarily and if he decides to prosecute shall place him under temporary detention or release him on bail with or without sureties¹⁰⁰.

Judicial Police officers and agents shall carry out investigations either on their own initiative or on the instructions of the State Counsel. The originals of the Police case files shall be forwarded to the State Counsel without delay¹⁰¹. Save in the cases provided for in sub-sections (1) and (2) of Section 118, no person may be remanded in police custody for the purpose of criminal investigation without the written approval of the State Counsel¹⁰². The time allowed for remand in custody shall not exceed forty-eight (48) hours, renewable once. This period may, with the written approval of the State Counsel, be exceptionally extended twice. Reasons shall be given for each extension¹⁰³.

It is worth mentioning that the legal department of the military tribunal controls the Judicial Police Officers for matter which they have assigned them to investigate.

3.1.4 The Commissioners and Commanders

The judicial police officers are placed under the direct control of the head of their units. The commissioner of police heads the police posts or stations otherwise known by its French acronym *Commissariat* while the armed forces under the direct control of the brigade Commander who heads the brigade.

⁹⁹ Section 111 of the CPC

¹⁰⁰ Section 114(1) of the CPC

¹⁰¹ Section 116(1)(2) of the CPC

¹⁰² Section 188(3) of the CPC

¹⁰³ Section 119(2) a,b,c of the CPC

The Commissioners and Commanders are equally under the control of the Central Police Commissioners and at the apex of the region under the Delegate of public security who too is directly controlled by the Presidency of the Republic through the Director General of Police. The brigade commandants are under the Compagnie¹⁰⁴ commanders who are equally controlled by the Legion Commanders at the apex of the region who too are under the direct control of the Presidency of the Republic through the Generals and the minister of defense.

From the above setup, the State places the first responsibilities on the commissioners of police and the brigade commanders of the armed forces to control and supervise the actions of their elements, reasons why in theory and as per the law, no one can be summoned or detained in the police or military units without the permission of the head of units. The heads of these units see into it that the process of investigations are properly carried out in conformity with the laws protecting the rights of the citizens and any violation is sanctioned by nullity of the entire procedure¹⁰⁵. Failure by any heads of units to control their elements attracts disciplinary sanctions from the hierarchy.

3.2 ANCILLARY AND OTHER INTEGRATED ORGANS OF CONTROL

The Cameroon government has equally created some parallel and integrated services within the judicial police system to sanction officers for violations of human rights perpetrated by them. Such services include the police of police which is empowered to investigate police officers and send their findings to the hierarchy when, they receive complaints from victims of human rights violation. Because of the inaccessibility of his department, the Cameroon government in 2018 opened a hotline 1500 open to any victim of police violations and it is free of charge. This

¹⁰⁴ Commands all the brigades in a sub division

¹⁰⁵ Section 3(1) of the CPC

hotline has permitted the hierarchy of Police to deal instantly with such cases. The government later opened a free call hotline for the arm forces 1501 and has succeeded in remedying and preventing police violations.

The National Anti-corruption Commission (NACC) is another important institution established by Decree No. 2006/088 on March 11, 2006 by the President of Cameroon. Members of NACC were appointed on March 15, 2007. The NACC is a public independent body which comes under the direct supervision of the Head of State. Its mission is to monitor and evaluate the effective implementation of the government's anti-corruption program. NACC has a central structure with branches in almost all ministries.

NACC has a coordinating and regulatory role in relation to the national anti-corruption policy framework in Cameroon. It has investigating capacities and has a mandate to gather and analyze allegations and information about corrupt practices. The findings of a NACC inquiry can ultimately lead to disciplinary or legal proceedings. It is evident that one of the major reasons of violations of human rights by judicial police officers is bribery and corruption which fall under the purview of NACC.

Another very important department created by the Cameroon government is the SEMIL (military security) which receives complaints from the public and investigates offences committed by the military judicial officers under the supervision of the military State Prosecutor. It plays the same role as the Police of Police.

These services or departments are empowered by the State to investigation and forward files of judicial police officers for sanctions or trials.

3. 3 HUMAN RIGHT COMMISSIONS AND CIVIL SOCIETY

These are generally observatory institutions created to act as watch dogs of the activities of the State and other stake holders like the Judicial Police for the respect of human rights. It is different from the aforementioned institutions which are mandated to control and supervise the activities of the Judicial Police. Some of these organs include: The National Commission on Human Rights and Freedom, Civil Societies and Non-Governmental Organizations to name a few. We shall hereby treat them in turns.

3.3.1 The National Commission on Human Rights and Freedom

This principal organ is charged with the duty to observe, protect and promote human rights in Cameroon. The National Commission on Human Rights and Freedoms is an independent institution for consultation, monitoring, evaluation, dialogue, concerted action, promotion and protection in the domain of human rights.

The Commission was first created by Presidential Decree No 99-1459, and later by law No.2004/016 of 8/11/2004 as a law. Amongst other duties, the Commission receives denunciations of human rights violations, conducts inquiries and inspects penitentiary establishments, popularizes human rights instruments, liaises with NGOs and proposes measures to the authorities in area of human rights.

To enhance its activities and to obtain its objectives, regional offices were created in the ten regions of Cameroon though under the supervision of the Head Office in Yaoundé. These regional offices carry out the activities set forth in the objectives of the Commission though with very limited powers since the best they can do is to

denounce the situation. The current head of the National human rights commission and freedom in Cameroon is Dr. Chemota Divine.

However it was observed that this Commission was ineffective reasons why the government on the 03 July 2019 tabled a Bill to parliament relating to the establishment, organization, and functioning of the Cameroon Human Rights Commission. However the government is under serious criticisms from the Network of Human Rights Defenders of the Central African region (REDHAC), Centre for Human Rights and Democracy in Africa, and Centre for Law and Public Policy, all civil society organizations that have noted with deep concern, the tabling before Parliament of a “Bill”, without prior consultation with key actors in the promotion and protection of human rights in the country.¹⁰⁶ This calls into question the will of the Government to involve these stakeholders in the important task of revamping the current National Commission on Human Rights and Freedoms (NCHRF).

3.3.2 Civil Society and Non-Governmental Organizations

Cameroon’s developmental civil society organizations (CSOs) and non-governmental organizations (NGOs) are active in the areas of human rights. Some of these organizations are; the Network of Human Rights Defenders of the Central African region (REDHAC), Centre for Human Rights and Democracy in Africa, and Centre for Law and Public Policy, all civil society organizations. They act as observers for the respect of human rights and have been seen denouncing its violations.

¹⁰⁶<https://www.chrda.org/chrda-redhac-and-three-other-csos-react-to-a-bill-by-the-government-to-establish-a-new-cameroon-human-rights-commission/>

These institutions act as watchdogs and give important information to all stakeholders of the human rights situations in Cameroon. They receive complaints and carry out preliminary investigations and inform the State Counsel of the abuses.

These institutions are very important in every modern society which aspires to enforce human rights. Judicial police officers are aware that such institutions keep an eye on their activities. From their indications, the government can ameliorate its services and be able to evaluate the enforcement of human rights by judicial police officers.

3.4 PUNITIVE INSTITUTIONS AND SANCTIONS

The success of any law lies in its enforcement. The State therefore has the duty to create special institutions and empower to judge and punish offenders. Such is the case with the non-respect of the laws protecting the rights of persons. The State has created the Courts be it civil or military to punish judicial police officers for violations of human rights. Let us examine the court and some of the sanctions meted for violations of human rights of persons.

3.4.1 The Courts and Sanctions

With the exception of direct sanctions of the judicial police officers by the Delegate general of Police or the Secretary of State for defense with approval of the Head of State who is the commander in chief of the police and armed forces, the courts remain the sole constituent body charged with the dispensation of law. That is, the courts constitute that institution that is empowered to sanction the judicial police officers.

It is well known that by Presidential decree some judicial police officers were demoted, suspended, transferred or outrightly dismissed from their services.

Our focal point here is the court as an institution put in place for the respect of human rights by the judicial police officers in Cameroon. Unlike the other institutions already cited which are more of supervisory and observatory authorities, the court on the other hand punishes such violations. Both the civil courts and military courts have competence to hear and sanction Judicial Police Officers who have violated the human rights provisions as enshrined in the Penal Code. Some of these offenses are: Active Corruption¹⁰⁷, failure to protect private rights¹⁰⁸, unintentional killing and harm,¹⁰⁹ false arrest,¹¹⁰ forced labor,¹¹¹ simple threats¹¹², conditional threats¹¹³, blackmail¹¹⁴, invasion of residence¹¹⁵ false report¹¹⁶, extortion of disposition or signature.¹¹⁷

The peculiarity of the aforementioned offences is that they are all human rights oriented. It deals with the rights of persons and sanctions its violators. Active corruption leads to the violation of the rights of the under privileged and it is against the right of fair hearing and presumption of innocence, failure to protect private rights is the violation to the duty to enforce human rights, unintentional killing and harm punishes the violation of the right to life, forced labour punishes

¹⁰⁷Section 134 Penal Code

¹⁰⁸Section 146 Penal Code

¹⁰⁹Section 289: (1) Penal Code

¹¹⁰Section 291: (1) Penal Code

¹¹¹Section 292 Penal Code

¹¹²Section 301 Penal Code

¹¹³Section 302:(1) Penal Code

¹¹⁴Section 303: (1) Penal Code

¹¹⁵Section 299: (1) Penal Code

¹¹⁶Section 304: (1) Penal Code

¹¹⁷Section 308: (1) Penal Code

those who violate the right of freedom, indeed the violations of any of the offences listed above constitutes a violation of human rights of persons.

The aforementioned offences are mostly committed by judicial police officers while exercising their duties and there seeks to punish anyone if those rights are violated.

It is very important to note that there are other administrative organs within the Police and Gendarmes that penalized officials of the corps that violate human rights or act in a manner that impact on the reputation of the organ.

There is the Police of Police which is a special unit charged with the duty to receive complaints against police officers as a whole and Judicial Police Officers in particular.

There is the SEMIL (Military Security) which is charged with the duty to receive complaints against military personnel's.

However their role is simply to carry out the investigations and sent their findings to the State Counsel and the authorities of the officers. They cannot on their own punish the Judicial Police Officers who violates the rights of suspects. It is from their investigations that the Delegate General of Police or the secretary of State for defense or the President of the Republic proceeds in sanctioning the Judicial Police officers proven to have violated human rights. The file forwarded to the State Counsel is sent to the courts for trial and sanctions as will be elucidated in the following chapter.

CHAPTER FOUR

ENFORCEMENT OF HUMAN RIGHTS BY JUDICIAL POLICE OFFICERS IN CAMEROON: THE SOCIAL REALITY

4.0. INTRODUCTION

Despite the provisions of the CPC, read alongside the relevant provisions of ratified international human rights treaties, that established standards and mechanisms to be employed by judicial police officers in the execution of their duties, in reality there are indications to suggest that these standards are often flouted almost with impunity. Several examples throughout the national territory confirms that the right to freedom and liberty of the citizens, the right to bail and humane treatment etc are usually violated by judicial police officers which render the implementation and respect of most these rights imperiled.

This chapter evaluates the social reality of the role of judicial police officers in Cameroon albeit demonstrating the huge gap between legislation and the social reality of the role of judicial officers. By doing so, the chapter inadvertently respond to specific objective number three and implications research question 3 – how effective are the mechanisms put in place to control the role of judicial police officers.

It further evaluates the control mechanisms put in place by the Cameroon government for the enforcement of human rights by the judicial police officer, which are the same mechanisms that were identified in the works of Laura Enonchong, Hannah Moscrop, Ebai Eban, Ved Marwah and Abiyot Girma Tamirat. The two first authors of Cameroon Nationality recognized that there are still

violations and partly blame the controls institutions. The Situation isn't much different in India and Ethiopia as indicated in the works of Ved Marwah and Abiyot Girma Tamirat. However from the work of Hannah Moscrop it is evident that the standards of the respect of human rights by judicial police officers is higher in France and Europe though there are still some lapses.

We shall evoke the relevance of the triple pronged and human rights base theories in this chapter because it imposes the duty of the State for the enforcement of human rights. We shall preoccupy ourselves with the degree of enforcement of the following human rights which are; the right to liberty, the right to humane treatment, the right to fair hearing, and the right to life.

4.1 RIGHT TO FREEDOM AND LIBERTY

As we have seen earlier, the right to liberty is well spelt in the Article 9 of the ICCPR which disposes that; *“Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him. Anyone arrested or detained on a criminal charge 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. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide*

without delay on the lawfulness of his detention and order his release if the detention is not lawful. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation”.

This right is further affirmed in the Preamble of the 1996 Cameroon Constitution *“freedom and security shall be guaranteed to each individual, subject to respect for the rights of others and the higher interests of the State”* and goes further to take the engagement *“the State shall guarantee all citizens of either sex the rights and freedoms set forth in the Preamble of the Constitution.”*

Equally the CPC in its sections 218, 224 and 246(g) provides the possibility of obtaining bail which is temporal liberty pending prosecution. It is therefore obvious that Cameroon has put in place good legislations and mechanisms to enhance the protection of the right to freedom and liberty in conformity with ratified treaties on the respect of human rights.

The application of this implies that, there shall be no arbitrary arrests, there shall be granting of bail to suspects who are presumed innocent and under certain conditions, and that the time limit for which a suspect could be held under police custody is respected. We shall treat each of the sub heading and evaluate its enforcement by the judicial police officer.

4.1.1 Prohibition of arbitrary arrest

The standard for effecting an arrest is provided under section 30 of the CPC. It states: *“An arrest shall consist of apprehending a person for the purpose of bringing him without delay before the authority prescribed by law or by the warrant. A judicial police officer, agent of judicial police or any officer of the forces of law and order effecting an arrest, shall order the person to be arrested to follow him and, in the event of refusal, he shall use reasonable force, necessary to*

arrest the person. Any person may in case of a felony or misdemeanor committed flagrante delicto as defined in section 103, arrest the author of such an offence. No bodily or psychological harm shall be caused to the person arrested”

Section 31 of the same law goes further to state that “Except in the case of a felony or misdemeanor 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 as 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”.

Upon the completion of the arrest the law further provides that “Any person arrested shall be given reasonable facilities in particular to be in contact with his family, obtain legal advice, make arrangements for his defense, consult a doctor and receive medical treatment and take necessary steps to obtain his release on bail.”¹¹⁸

These provisions established the standard for any arrest effected by a judicial police officer and also the corresponding right of the victim which should be complied with at any time. In reality, these procedures are rarely complied with as I shall now demonstrate.

From reports, personal observations, and the results obtained from interviews with Barrister Nfumfor Nico Halle, Njilla Njistic, Abeng Roland, Muluh Jude Khan, all practicing lawyers in Douala and Buea, it was established that judicial police officers proceed to arrest individuals without any warrant of arrest. It was observed that these violations are predominant in the civil law jurisdiction where judicial police officers often claim to have the powers to issue an “Avis de recherché” or a “convocation de reception” than in the Common Law Jurisdictions. It suffices for

¹¹⁸ Section 37 of the CPC

the complainant to influence unduly the judicial police officer, perhaps in the form of bribe in order to have an extra accelerated procedure in breach of the provisions of the CPC that provide that only the State Counsel can issue a warrant and provided the suspect had failed to honour three summonses to appear before the state Counsel. In the case of Manka Nchotu V. Fomou Mohamed, the Judicial Police Officer of the Regional gendarmerie Douala issued an “avis de recherché” against the suspect and proceeded to her arrest.

She was arrested and after taking her statement she was remanded in custody and was only released two days after by the intervention of the State Counsel. It is observed that many Cameroonians are victims of this type of arrest which is a violation of the right to liberty and freedom. However the CPC sanctions such violations and states as follows: *“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 serious nature as result of such detention. 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 fault¹¹⁹. The compensation provided for under section 236 is awarded at first instance by the decision of a Commission¹²⁰. 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.*

¹¹⁹ Section 236 of the CPC

¹²⁰ Section 237 of the CPC

It is reported that in the early hours of July 10, police and gendarmes conducted a cordon-and-search operation in the neighborhoods of Ndobbo at Bonaberi in the Douala IV Subdivision, Littoral Region, arrested dozens and detained those found in possession of, or consuming, narcotics.

On July 26, police conducted a similar operation in the neighborhood of Biyem Assi in Yaounde 6th Subdivision. They searched houses, requested residents to produce receipts for appliances found in their possession and in some cases confiscating those for which the occupants could not produce receipts, and arrested dozens of individuals.

In both cases security forces detained citizens without national identity cards until their identities could be established. The areas in question have a high concentration of Anglophones, and most of the individuals arrested in the July 10 and 26 incidents were Anglophones.

On September 28 police and gendarmes conducted raids in various neighborhoods in Yaoundé. Police raided neighborhoods with heavy Anglophone populations, setting up temporary checkpoints and requesting citizens to provide identification. Some individuals were required to enter a security vehicle and were brought to local police stations, where their identities were verified once more before being released.¹²¹ All these incidents denote the violation of the right of freedom and liberty.

Another area of gross violation is in regards to the time allowed for remand in custody which is 48 hours, renewable twice, however, suspects have been held without charge for a period of 15 days, renewable indefinitely. Amnesty International considers that such a long period of police custody violates

¹²¹ Reports on Human Rights Practices for 2018 United States Department of State • Bureau of Democracy, Human Rights and Labor individuals,

international standards, and increases the risk of other human rights violations, including torture and ill-treatment.

4.1.2 Right to Bail

Bail is a right to freedom and liberty backed by other fundamental human rights which is that of presumption of innocence until proven guilty in a law court. Bail in this context is a provisional or temporary liberty granted to a suspect who is under police investigations. This right to liberty in the fulfillment of certain conditions is evident in the CPC.

Application for the bail may be made, as the case may be to the judicial police officer, to the State Counsel, to the Examining Magistrate or to the court seized of the matter¹²². When the applicant presents several sureties for bail, the recognizance entered into by them may be taken separately¹²³. In order to ensure his appearance he shall: 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 sections 224 and following¹²⁴;

It is evident from the above that the CPC provide the right to bail to all and shall not apply only to persons charged with felonies punishable with life imprisonment or death. Thus even those who are charged of crimes (felony) can be granted bail provided the offence for which they are charged is not punishable by life imprisonment or death. This section of the CPC is misrepresented and misconstrued by the judicial police officers in Cameroon to read as if bail is not granted for felonies.

¹²² Section 225 of the CPC

¹²³ Section 226 of the CPC

¹²⁴ Section 246(g) of the CPC

It has been reported like in the cases of the militants of the Cameroon Renaissance Movement (MRC), persons arrested in relation to the Anglophone problem and the cases listed supra, that the right to bail which is right to freedom and liberty is constantly violated by judicial police officers especially those of the civil law extraction who never knew of such rights until 2005 when the harmonized CPC came into existence. It is worth mentioning that before the coming of the CPC the English speaking Cameroonians, influenced by the Common Law with human guarantees had been practicing the system of granting of bail as contrary to the Francophones who were influenced by the Civil law with less human rights guarantee. Granting of bail is a very strange concept in the French speaking Cameroon.

While the application of this human right of persons is hindered in the Common Law jurisdiction of Cameroon due to the transfer of police and judicial officers of the civil law extraction to the English speaking Regions, the application is very timid in the French Regions due to their mentality and the quest for bribes. This is one of the major causes that sparked off the Anglophone crisis in Cameroon.

The Anglophones who were disgruntled with the transfer of judicial officers to the English Regions who came with the mentality of the French Regions and the disregards for the common law left them with no option than to take to the streets in protest. It is observed that many Cameroonians still don't enjoy the right to bail which is a right of freedom and liberty as enshrined in the ICCPR, the Preamble of the Cameroon Constitution and the CPC.

4.2. RIGHT TO HUMANE TREATMENT AND AGAINST TORTURE

Any person deprived of his or her liberty retains human rights and fundamental freedoms. Cameroon is under the obligation to ensure the right to the highest

attainable standard of physical and mental health to everyone, including people in custody.

This obligation also entails that the government needs to ensure that those deprived of their liberty 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 also needs to ensure that all inmates are provided with free and adequate medical care in conformity with international standards, such as set out in the Body of Principles for the Protection of all Persons under any Form of Detention or Imprisonment.

Cameroon is a party to three international treaties that prohibit torture, as well as cruel, inhuman or degrading treatment: the Convention against Torture (CAT), the ICCPR, and the ACHPR. Moreover, Cameroon's Constitution, Penal Code, and Criminal Procedure Code forbid the use of torture and other treatment that violates human dignity and integrity. Under the CAT, a state party must "take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction." Among other measures, this requires the Cameroonian authorities to regularly oversee interrogation practices and procedures with the aim of preventing torture. Furthermore, the CAT requires a state party to conduct a prompt and impartial investigation "wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction". A state must also ensure that a victim of torture "obtains redress and has an enforceable right to fair and adequate compensation". Cameroon's own Constitution provides that "under no circumstances shall any person be subjected to torture, to cruel, inhuman or degrading treatment," while

Cameroon's Penal Code criminalizes the use of torture to induce a person to confess to an offence or to offer statements or related information.

Our concern herein is to evaluate if in the execution of their duties the judicial police respect the fundamental human right of treating the suspects as prescribed by the law. We shall examine the right of feeding in the police custody, the period for detention, the rights of the suspects in custody, the cells and conditions inside the cells, the manner of executing warrants and the method of collecting information during investigations; is it free or by torture?

To begin with, the police cells in Cameroon are very dirty and poorly ventilated. The police enjoy locking up suspects and use it as blackmail. Most of the detainees actually sleep on bare floors and only with their pants. The government doesn't provide food to the detainees. There have been some recorded cases of torture and death in police custody. Some of these cases include: The case of Ibrahim Bello which is used in this study as a reference point. In this matter, the 17 year-old boy who had been suspected of attempted robbery, was apprehended by a mob of youngsters and taken to the Ombessa police station, where he endured such bodily harm that resulted in the loss of his limb and one of his hands. From the conclusions of the commission, the suspect was taken to the Ombessa public security police station on Saturday 5th February 2017, after escaping mob justice. He was then charged with a robbery attempt on a vehicle belonging to Mr. Fomadjou.

He was detained at the police station from 5th to 7th February 2017. The suspected attempted break from custody was handcuffed on the left hand while the other handcuff was placed high up on the window lock with another handcuff, this was done by the chief of post police officer Bikoue Ndzie Joel Cyrille. The more the

suspect shakes, the more the handcuffs tightened and the flesh got swollen to the point of swallowing the handcuff.

The deputy state Counsel of Bafia Courts who visited that police station on Monday 6th February 2019 at 1:15 pm, during the custody of the concerned, mentioned in the daily register the Mr. Ibrahim Bello should be referred to the State Counsel's office for further investigations. Despite the orders from the Prosecutor, the head of the police post instead extended the period of remand in custody, keeping the suspect handcuffed throughout his stay and despite his health condition which kept deteriorating. At a point, the chief of post tried to remove the handcuffs, but the key of the handcuff got broken in the course of trying to open it. The chief of post later abandoned the unfortunate man on the roadside, unable to walk, because of his many injuries on both feet and hands¹²⁵.

The case of *LEVODO family V. Regional Delegation of judicial Police and Legal Department of Court of First Instance of Yaoundé- Centre Administratif*; reported on the 4 February 2016 alleging that the victim Mr. Eyebe Levodo Jean Francois was taken in by police on Saturday 30 January, 2016 to answer on a matter of theft of a tablet (IPAD) belonging to a commissioner at Monatele police station.

He was later transferred and remanded in custody at the Regional Police Delegation for the Center Region (DRPJC), the family found him there the same day he was transferred in a deplorable state, with wounds all over his body. He told his sister that he had been electrocuted on the head and threatened with a machete placed on his neck, in a bid to extort a confession on the allegations against him. The following day the sister came to visit him and found him handcuffed, lips

¹²⁵ NCHRF, *Report of the state of human right in Cameroon* (2017) Page 10 and 11

swollen, and his neck tied with a plastic that obstructed his speech, he was completely unconscious.

He was transferred to the legal department on 4 February, unknown to the family. The victim, who seemed to have lost his mental faculties, only moved his body on the floor, no longer able to walk upright and despite all his parents did for the victim to gain access to health care, the State Counsel did not accept, and the suspect finally died of his wounds.¹²⁶

Equally, there are reported cases of torture and inhumane treatment of suspects during the execution of either a search warrant or an arrest warrant.

The CPC provides that; *Searches and seizures shall be carried out by judicial police officers who possess search warrants. However, he may act without a search warrant in cases of a felony or a misdemeanor committed flagrante delicto. Any search or seizure shall be carried out in the presence of the occupant of the place and the person in possession of the objects to be seized, or in case of their absence, their representatives, as well as two witnesses chosen from among the persons or neighbors present*¹²⁷. Such is equally affirmed in the United Nation Convention against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment and in the Preamble of the 1996 Constitution of Cameroon. Thus such a violation constitutes a human right violation.

The CPC stipulates that *“An arrest shall consist of apprehending a person for the purpose of bringing him without delay before the authority prescribed by law or by the warrant. A judicial police officer, agent of judicial police or any officer of the forces of law and order effecting an arrest, shall order the person to be arrested to follow him and, in the event of refusal, he shall use reasonable force, necessary to*

¹²⁶ NCHRF, *Report of the state of human right in Cameroon* (2017) Page 21

¹²⁷ Section 93(1) and (2) of the CPC

*arrest the person. Any person may in case of a felony or misdemeanor committed flagrante delicto as defined in section 103, arrest the author of such an offence*¹²⁸. *Any person arrested shall be given reasonable facilities in particular to be in contact with his family, obtain legal advice, make arrangements for his defense, consult a doctor and receive medical treatment and take necessary steps to obtain his release on bail.*

*No bodily or psychological harm shall be caused to the person arrested. Except in the case of a felony or misdemeanor 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”*¹²⁹. *These provisions are in consonance with article 7 of the ICCPR stipulates 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”.*¹³⁰ The incident below gives a true picture of how arrest is done in Cameroon;

In February 2008 the Douala antiriot police arrested, beat, dragged on the floor, and stripped naked Aicha Ngo Eheg, a human rights activist with "Cri des Femmes," a Douala-based human rights group. Ngo Eheg, along with other demonstrators, had gathered in the Douala neighborhood of Bepanda to march against constitutional reform. According to Ngo Eheg's public statement, the police targeted her because she tried to stop them from harassing a young demonstrator.

¹²⁸ Section 30 (1), (2) and (3) of the CPC

¹²⁹ Section 31 of the CPC

¹³⁰ Article 7 of the ICCPR

At year's end, Ngo Eheg had not decided whether to file a complaint against the police. There are no available updates on this matter¹³¹.

Information received from former detainees, detainees' families, lawyers, and other sources have described a wide variety of methods of torture used both at BIR and DGRE-run detention facilities and other facilities run by the Cameroonian security forces. The most common methods include: beatings with various objects, holding painful stress positions for hours or even days, various forms of suspension, and drowning. Victims reported that some methods of torture were often used in combination, for example holding a stress position while being tied up, blindfolded, beaten, or subjected to psychological torture, often with increasing levels of pain. Testimonies by former detainees also reveal that detention conditions, especially in BIR-run detention facilities, were so poor that they amounted to cruel, inhuman and degrading treatment¹³².

4.2.1 Beatings

In almost all cases documented, former detainees were subjected to some form of beatings, both being kicked and punched as well as being beaten with various objects, most commonly wooden sticks or iron bars, the flat part of a machete and electric cables. Djibrill (not his real name), a man who was held in Salak at the end of 2015, described the beatings he endured: *“At Salak, they beat me constantly for four days. They tied my hands and feet behind my back with a rope they use to hold cows. After two days, the rope broke and they replaced it with plastic handcuffs. Many people beat me, and everyone had some sort of tool, including chains, batons and electric cables, while some kicked me with their army boots and*

¹³¹NGO REPORT *On the implementation of the ICCPR* (Replies to the List of Issues CCPR/C/CMR/Q4) 2010

¹³² Amnesty International, *Cameroon's secret torture chambers: human rights violations and war crimes in the fight against boko haram* Amnesty International (index number AFR 17/6536) 20 July 20017

slapped me a lot. After a while I could not hear anything because my ears were ringing so much. I arrived at the DGRE in Yaoundé so weak that they decided to treat me before questioning me, because I couldn't hear anything."

Other instruments of torture that have been described to Amnesty International include belts, whips, chains, gun butts, truncheons, broom and door handles, and other hard objects. Before being beaten, former detainees reported that they were often stripped, their hands and feet restrained and their head or eyes covered.

Moussa (not his real name) from Nigeria who was arrested in Cameroon in late 2013 told Amnesty International: *"I spent at least 23 months at the DGRE in Yaoundé, held in secret. I came to know every type of torture there and I was constantly chained up by my hands and feet. They beat me all the time with sticks or whatever else they had at hand, broom handles or cables. They beat my body with everything. Often they made us sleep together in the toilets to punish us. Sometimes they tied me to my bed forcing me to stand for 24 hours and my feet swelled up. They beat me so much that I had the feeling that I could no longer feel any pain because I was so used to it"*¹³³.

The case of *LEVODO family V. Regional Delegation of judicial Police and Legal Department of Court of First Instance of Yaoundé- Centre Administratif (supra)* and the cases of the Anglophones arrested in Douala and Yaoundé above cited affirms the violations of the rights of freedom and liberty perpetrated by the judicial police officers.

4.2.2 Incommunicado and secret detention

¹³³ Amnesty International, *Cameroon's secret torture chambers: human rights violations and war crimes in the fight against boko haram* Amnesty International (index number AFR 17/6536) 20 July 20017

All persons deprived of their liberty have the right to communicate with the outside world, especially with their families, lawyers, medical professionals and other third parties. Although the right to communicate with the outside world might sometimes be reasonably restricted, the denial of this right may amount to incommunicado detention, which violates the right to liberty and the right not to be subjected to torture or other ill-treatment.

According to Section 122 of the Cameroonian Criminal Procedure Code, while in detention people may at any time be visited by their counsel, members of their family, and any other person following their treatment while in detention. According to international human rights standards, people deprived of their liberty must be held only in a place of detention that is officially recognized. Cameroon's Criminal Procedure Code also states that for police custody, a suspect shall be detained "in a judicial police cell wherein he remains for a limited period available to and under the responsibility of a judicial police officer"

4.3. RIGHT TO LIFE: Death in custody

When people are deprived of their liberty, responsibility for their fate rests with the detaining authorities, who must guarantee the physical integrity of each detainee. State responsibility for deaths in custody arises not only when state actors perpetrate abuses on prisoners that result in death, but also when the state does not respect its obligation to protect the rights of detainees, for instance when prisoners die from poor prison conditions or a lack of medical treatment.

When a person dies in custody, a prompt, impartial, independent investigation must be conducted regardless of the presumed cause of death. The standards contained in the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions recall the obligation to ensure

“thorough, prompt and impartial investigations” into suspected unnatural deaths. Such investigations should collect evidence, conduct an autopsy and collect witness statements to ascertain the cause, manner and time of death and ensure those responsible are held accountable¹³⁴. We shall use some reported cases to ascertain this violation:

In the case of Youssoufa Daouda V. BIR on alleged torture and violation of right to life. This occurred in Ngan-Ha Sub Division, Adamawa Region. Mr. Youssoufa Daouda filed a complaint on 30 May 2016 at the Adamawa Regional Branch of the commission, to denounce torture and violations of the right to life inflicted on two young men in Kandi village, Nga-Ha Sub-division¹³⁵.

The *LEVODO family V. Regional Delegation of judicial Police and Legal Department of Court of First Instance of Yaoundé- Centre Administratif* (supra) is another case where there was the violation of the right to life by judicial police officers.

In July 2018, Human Rights Watch reported that, during government operations in 12 villages in the Northwest and Southwest Regions between January and April, government security forces shot and killed more than a dozen civilians, including at least seven persons with intellectual or developmental disabilities who had difficulty fleeing.

On May 25 2018, in Menka-Pinyin, Santa Subdivision of the Northwest Region, elements of the Gendarmerie, the 51st Motorized Infantry Brigade, and the Special Operations Group of the National Police carried out a raid on a location believed to harbor Anglophone activists, killing 27 persons, according to official sources.

¹³⁴ Amnesty International, *Cameroon's secret torture chambers: human rights violations and war crimes in the fight against boko haram* Amnesty International (index number AFR 17/6536) 20 July 20017

¹³⁵ NCHRF *report on the state of human right in Cameroon in 2016*, page 20

Government security forces were widely believed to be responsible for disappearances of suspected Anglophone separatists, with reports of bodies dumped far from the site of killings to make identification difficult. According to credible nongovernmental organizations (NGOs), the government did not readily account for some of the activists arrested in connection with the Anglophone crisis¹³⁶.

4.4. RIGHT TO FAIR HEARING: Right to caution and counsel

This right falls under the right of fair hearing which is enshrined in International Covenant on Civil and Political Rights and states as follows “In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law”.

The preamble of the 1996 Cameroon Constitution further upholds the right to fair hearing as a fundamental human right.

There were credible reports that authorities held some suspects in the Anglophone crisis for long periods without notifying them of the charges. For example, authorities detained Sisiku AyukTabe, the president of the Anglophone separatist movement, and 46 others incommunicado and without official charge for close to six months. The suspects were arrested in Nigeria on January 5 2018 and extradited to Cameroon on January 25 2018. Defense lawyers considered the arrest and extradition illegal and filed an application for immediate release with the Mfoundi High Court in Yaounde.

¹³⁶ Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2018 United States Department of State*

On August 30, the judge dismissed the application on procedural grounds. The court eventually heard the case on November 1 and delivered a verdict denying the release of Sisiku AyukTabe and the nine other leaders of the Anglophone separatist movement¹³⁷.

4.5 ASSESSMENT OF THE ROLE OF THE RELEVANT CONTROL MECHANISMS OF JUDICIAL POLICE OFFICERS

We shall in this sub heading evaluate the efficiency and effectiveness of the control and sanction mechanisms put in place by the government. Some of these institutions include; the Procureur general of the court of appeal, the State Counsel, the commissioners and commanders, human rights commission, CONAC, Police of Police, special integration units and the courts.

4.5.1 The Procureur General of the Court Of Appeal

The Procureur general is a magistrate in the legal department of the court of appeal; he is the chief prosecutor of the region. He not only controls the actions of the State Counsel within his jurisdiction but equally controls the judicial police officers within his jurisdiction.

Within the ambit of the CPC, the Procureur General supervises the activities of the judicial police officers and agents working within the jurisdiction of the Court of Appeal; he submits half yearly reports to the Minister in charge of Justice on their activities and conduct; he may direct the judicial officer to obtain any information which he deems useful for the proper administration of Justice; he evaluates the

¹³⁷ Bureau of Democracy, *Reports on Human Rights Practices for 2018 United States Department of State*: (<https://cm.usembassy.gov/wp-content/uploads/sites/240/2018Human-rights-report-Cameroon.pdf>)

work and give marks to each judicial police officer within his jurisdiction; and he forwards his appreciation and the marks given to the judicial police officer concerned, to the head of his service of origin¹³⁸.

From the above duties, it is obvious that the office of the Procureur General herein after referred to as the PG is empowered not only to control and supervise, but equally assist in either their professional advancement or sanctions through his yearly recommendations and evaluations. The issue here is to examine how effective is the office of the Procureur General and the reasons of the persistent violations of human rights by judicial police. Some of the reasons for his inefficiency include: Accessibility, attitude and lack of information, and unreliable State Counsel and fear of denunciation.

4.5.1.1 Accessibility

The seat of the PG is at the Regional Capital and he is always very busy and guarded by security officers who usually do not allow litigants or victims granted audience.

The Judicial Police Officers operate even in the sub divisions which are far away from the PG, the distance and cost for any victim of human rights violation by the Judicial Police officer to meet him is very costly and constitute a barrier.

Even when the victims brave the distance and cost, they still have the difficulty to being granted audience because the PG is either too busy or they are simply refused to be granted audience by the security officers guarding the PG.

In this atmosphere, control over judicial police officers who are far away from the seat of the PG becomes difficult and thus an open door for the persistent violations of the rights of persons by the judicial police officer. The PG therefore relies on the

¹³⁸ Section 134(2) a, b,c,d,and e. of the CPC

information from the office of the State Counsel who heads the legal departments at the sub division who in most occasions are accomplices to the violations perpetrated by the judicial police officers.

4.5.1.2 Attitude of some Procureur General

The PG is a high ranking magistrate and the chief prosecutor of the Region. Most of them have enjoyed powers and authorities that have transformed most of them to very arrogant and snobbish persons. Most of the PG especially those of the Civil Law extraction of Cameroon carry themselves as demi Gods and make it difficult for anyone to come and give them necessary information about the activities of the judicial officers which he is supposed to control and supervise. This is one of the reasons accounting for the inefficiency of this institution.

4.5.1.3 Unreliable State Counsel and fear of denunciation

The Counsel is the head of the legal departments in the Divisions or Subdivisions. He is under the control of the PG and is obliged to give daily reports to the PG on the state of affairs within his jurisdiction and the judicial police officer.

He is therefore a kind of bridge between the litigants and the PG. the PG relies on him for information on the activities of the judicial police. However it has been observed that most of the State Counsel are very corrupt and instead encourage judicial police officers to violate rights.

Equally, victims of such violations are afraid to denounce the judicial police officer for fear that it will expose them to more abuses. These are some of the reasons which have made the office of the PG not able to curb the persistent violations of rights of persons by judicial police officers.

The case of *LEVODO family V. Regional Delegation of judicial Police and Legal Department of Court of First Instance of Yaoundé- Centre Administratif*;

establishes the complicity of a State Counsel in the violation of the rights of life of a suspect.

It was reported on the 4 February 2016 alleging that the victim Mr. EYEBE LEVODO Jean Francois was taken in by police on Saturday 30 January, 2016 to answer on a matter of theft of a tablet (IPAD) belonging to a commissioner at Monatele police station.

He was later transferred and remanded in custody at the Regional Police Delegation for the Center Region (DRPJC), the family found him there the same day he was transferred in a deplorable state, with wounds all over his body. He told the sister that he had been electrocuted on the head and threatened with a machete placed on his neck, in a bid to extort a confession on the allegations against him. The following day the sister came to visit him and found him handcuffed, lips swollen, and his neck tied with a plastic that obstructed his speech, he was completely unconscious. He was transferred to the legal department on 4 February, unknown to the family.

The victim, who seemed to have lost his mental faculties, only moved his body on the floor, no longer able to walk upright and despite all the parents did for the victim to gain access to health care, the state counsel did not accept, and the suspect finally died of his wounds.¹³⁹

4.5.2 The State Counsel

The State Counsel is a magistrate at the legal department of either the High Court or the Court of First Instance. He is the State prosecutor and performs the following duties as an institution to control and supervise the duties of the judicial police within his jurisdiction; *The State Counsel shall direct and control the*

¹³⁹ NCHRF, *Report on the state of human right in Cameroon 2016*, page 21

operations of the officers and agents of the judicial police. He may, at any time, visit the police post or the gendarmerie brigade in order to verify the conditions of persons in custody provided for in section 124 (3). In the course of such control, the persons whose release he orders of his own motion or by virtue of an order of habeas corpus, must immediately be set free, under pain of prosecution for unlawful detention against the judicial police officers in charge of the police post or gendarmerie brigade where the custody takes place¹⁴⁰. The original of case files concerning offences committed within his jurisdiction and triable by the ordinary law courts, shall be sent to the State Counsel¹⁴¹.

We see from the above provisions of the CPC that the State Counsel have a more direct control over the judicial police officers than even the PG. He can stop any kind of violations and have the right to visit police cells. It is however worrisome that there is persistent violations of human rights of suspects. Through interviews and personal observations as a practicing lawyer, it was established that following factors are the reasons for the inefficiency of the State Counsel as a control mechanism; corruption, attitude and abuse of function, accessibility, disobedience by judicial police officers and gross negligence. The case of *LEVODO family V. Regional Delegation of judicial Police and Legal Department of Court of First Instance of Yaoundé- Centre Administratif*; illustrates the ineffective of the control of the State Counsel. The suspect was transferred to the legal department unknown to the family. The victim, who seemed to have lost his mental faculties, only moved his body on the floor, no longer able to walk upright and despite all the parents did for the victim to gain access to health care, the State Counsel did not

¹⁴⁰ Section 137 of the CPC

¹⁴¹ Section 139 of the CPC

accept either to grant him bail or provide medical assistance, and the suspect finally died of his wounds.¹⁴²

4.5.2.1 Corruption of State Counsel

It is no news to any Cameroonian that the office of the State Counsel is like a market place where justice is being sold or bought. Most of the State Counsels remain very indifferent to the activities of the judicial police officers because they actually benefit from the fallout which in nature violates the rights of persons.

How do we explain that there are persons detained in judicial police cells for more than the prescribed duration, or that suspects are undressed before being locked up in a cell without the knowledge of the State Counsel who is supposed to visit those units on daily bases.

It is common to hear that someone saying he is going to motivate the State Counsel to lock the other up or a young pretty lady saying “my boyfriend, the State Counsel is going to lock you if you dare with me”. Most State Counsels have acted as accomplices to the judicial police to the extent that the judicial police seem to disrespect him or start acting as his agent. Corruption has greatly affected the efficiency of the State Counsel as a control and supervisory institution to the activities of judicial police.

4.5.2.2 Attitude and abuse of function

It has been observed that most of the State Counsels who were trained in the National School of Administration and Magistracy (ENAM), are plagued with a very serious attitude problem. They seem to be indifferent to human suffering and feel too big and important at time to visit the police or gendarme station.

¹⁴² NCHRF, *Report on the state of human right in Cameroon 2016* page 21

Most of them are very rude which rather scare away victims of human right violations to come up to them and complain. Some of them go as far as abusing their functions, this was one on the major reason that the Common Law lawyers requested for some of their transfer away from the Anglophone regions. This factor contributes enormously for the failure of the State Counsel to control and supervise the activities of the judicial police officers, and they take advantage of the situation.

4.5.2.3 Accessibility of state counsel and disobedience of the officers

Like the PG, most State Counsels are very inaccessible. As a lawyer, I never had the opportunity of meeting the first State Counsel of the Bonaberi Court of First Instance regardless of the fact that we are close collaborators and work for the common interest of justice. A comparative view indicates that, State Counsels of the Common Law extraction are more accessible than their colleagues of the Civil Law extraction.

Many litigants of Bonaberi have observed that the current State Counsel Justice Forbang Leslie of the Common Law extraction is more open and receptive as opposed to the former who is from the civil law extraction. Same goes with all legal departments in the Anglophone regions where the State Counsels are more accessible than those of the French speaking regions. This situation makes it difficult for anyone to denounce the abuses meted by the judicial officer and constitute reason for the failure of the State Counsel.

As if not enough, bribery and complicity have rendered some judicial police officers to think they are untouchable. Some State Counsels have lost so much of their personality to a point where they now represent nothing to some judicial police officers.

4.5.3 Heads of units and integrated institutions

Files for investigations or for execution are not addressed directly to the judicial police officer who carries the investigations or its execution, they are addressed either by the complainant themselves or the State Counsel to the head of the unit intending to investigate or execute.

The Brigade Commanders, Compangie Commanders or the Regional commander of the Gendarmerie are the heads of the gendarmerie units while the commissioners are the heads of the police units.

The mission is assigned directly to these heads of units who choose from their elements the office to conduct the investigations or execute the court processes. They are the immediate persons charged with the control of the judicial police officers in their units. They are charged with the responsibility to see that their subordinates exercise their duties in respect of the laws and in respect of the procedure laid down in the CPC. They are directly answerable to the State Counsel and jointly responsible for violations committed in their units. This is the first major control mechanisms put in place by the government for the enforcement human rights by the judicial police officers in Cameroon.

However, it has been observed that there is still wide spread violations of the rights of persons in those units and at times with the complicity of the heads of units and the State counsel either for personal gains or out of poor training. It is known that the judicial police officers are trained but at times one is embarrassed with the way they interpret the provisions of the CPC. Of recent, many units' heads had been dismissed or sanctioned otherwise for violations reported either by human rights commissions or victims themselves. The cases below portray how ineffective some heads of service are:

LEVODO family V. Regional Delegation of judicial Police and Legal Department of Court of First Instance of Yaoundé- Centre Administratif; reported on the 4 February 2016 alleging that the victim Mr. EYEBE LEVODO Jean Francois was taken in by police on Saturday 30 January, 2016 to answer on a matter of theft of a tablet (IPAD) belonging to a commissioner at Monatele police station. He was later transferred and remanded in custody at the Regional Police Delegation for the Center Region (DRPJC), the family found him there the same day he was transferred in a deplorable state, with wounds all over his body. He told the sister that he had been electrocuted on the head and threatened with a machete placed on his neck, in a bid to extort a confession on the allegations against him. The following day the sister came to visit him and found him handcuffed, lips swollen, and his neck tied with a plastic that obstructed his speech, he was completely unconscious. He was transferred to the legal department on 4 February, unknown to the family. The victim, who seemed to have lost his mental faculties, only moved his body on the floor, no longer able to walk upright and despite all the parents did for the victim to gain access to health care, the State Counsel did not accept, and the suspect finally died of his wounds.¹⁴³

IBRAHIM BELLO affair

In this matter, the 17 year-old boy who had been suspected of attempted robbery, was apprehended by a mob of youngsters and taken to the Ombessa police station, where he endured such bodily harm that resulted in the loss of his limb and one of his hands.

From the conclusions of the commission, the suspect was taken to the Ombessa public security police station on Saturday 5th February 2017, after escaping mob

¹⁴³ NCHRF, *Report on the state of human right in Cameroon 2016*, page 21

justice. He was then charged with a robbery attempt on a vehicle belonging to Mr. FOMADJOU.

He was detained at the police station from 5th to 7th February 2017. The suspected attempted break from custody was handcuffed on the left hand while the other handcuff was placed high up on the window lock with another handcuff, this was done by the chief of post police officer BIKOUE NDZIE Joel Cyrille. The more the suspect shakes, the more the handcuffs tightened and the flesh got swollen to the point of swallowing the handcuff.

The deputy State Counsel of Bafia Court of first instance who visited that police station on Monday 6th February 2019 at 1:15 pm, during the custody of the concerned, mentioned in the daily register that Mr. Ibrahim Bello should be referred to the State Counsel's chambers for further investigations. Despite the orders from the Prosecutor, the head of the police post instead extended the period of remand in custody, keeping the suspect handcuffed throughout his stay despite his health condition which kept deteriorating. At a point, the chief of post tried to remove the handcuffs, but the key of the handcuff got broken in the course of trying to open it. The chief of post later abandoned the unfortunate man on the roadside, unable to walk, because of his many injuries on both feet and hands¹⁴⁴.

Equally in March 2018 authorities opened an investigation into the case of taxi driver Jean Nga Mvondo, who died a few hours after the Ngousso gendarmerie brigade in Yaounde. In March 23 2018, the secretary of state in charge of the National Gendarmerie (SED) relieved the brigade commander of his duties.

In July 24, the minister delegate for defense announced that the gendarmerie in Bamenda, Northwest Region, arrested first class soldier Mbita Arthur and referred

¹⁴⁴ NCHRF, *Report of the state of human right in Cameroon 2017*, page 10 and 11

him to the office of the Bamenda military court prosecutor. The minister also promised to take disciplinary action against the soldier in accordance with the law. Mbita Arthur allegedly raped a female victim on July 23. These are all evidences that some of the heads of units are violators themselves¹⁴⁵.

4.5.4 Human Right Commission, Civil Society and NACC

They are non-repressive institutions either created by the government or permitted to operate in Cameroon. Their role is mainly informative. They receive reports from the public, verify them and report to the government. The National Human rights and freedom commission and some other human rights civil societies do publish yearly reports on the human right situation in Cameroon.

It is observed that in recent years many of these reports including that of Transparency International decry the frequent violations of human rights by the judicial police officers in Cameroon.

National commission on human Rights and Freedoms in Cameroon, indicated in its “report on the state of human rights in Cameroon in 2016” and that of 2017, presented some cases of human rights violations perpetrated by judicial police officers. Some of the cases include:

Yousoufa Daouda versus BIR, *LEVODO family V. Regional Delegation of judicial Police and Legal Department of Court of First Instance of Yaoundé-Centre Administratif*; IBRAHIM BELLO affair at the Ombessa police station, where he endured such bodily harm that resulted in the loss of his limb and one of his hands, and MARIGOT Jordi, at the Yokadouma, alleged torture as the

¹⁴⁵ Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2018*.

suspected cause of the death of MAHAMADOU LAWAL, a suspect in detention at the Yokadouma Gendarmerie Brigade¹⁴⁶.

From the above cited cases, it is evident that the commissions for human rights and freedom in association with some civil societies actually perform their duties to receive reports and inform the State. However, they cannot go beyond this function, and this makes them powerless to change the situation.

4.5.5 The Courts

Apart from the disciplinary actions taken by the President of the Republic to revoke some judicial officers like were the cases of the revocation of Commissioner ELLA Georges of the Douala 5th District police station and Commissioner Helen Essoka Dina of Fako in South west Region on June 2, 2014 was sanctioned for acts of indiscipline¹⁴⁷ other human right violations.

Equally, the Delegate general of police does sanction judicial police officers as seen in the cases of: Olivier Villot Ehongo. On November 15th 2009, a second grade police officer and second deputy to the public security commissioner of Bafia, Mbam, and Inoubou Division, Center Region were suspended. Ehongo was suspended for three months, pending disciplinary and legal actions. On September 11 2009, Emmanuel Edou, the DGSN appointed on June 30, suspended Second Grade Police Officer Michel Bekolo Angoula of the special police precinct of Kadey Division, East Region, and Police Inspector Vally Ghislain Mvondo Mbia of the Department of Border Police, for three months without pay for indiscipline and extortion of money.

¹⁴⁶ NCHRF, *Report of the State of human right in Cameroon 2017*, pages 12 and 13

¹⁴⁷<http://cameroon-concord.com/local/police-commissioner-helen-essoka-calls-on-biya-to-investigate-south-west-governor-and-co>

On February 13 2009, a police officer from Douala 1 Central Police arbitrarily arrested dozens of young women in the streets of Akwa and Bonanjo neighborhoods, alleging that the women were prostitutes. Some of the women were prostitutes, but many were simply walking down the street. On February 17, police released all the women. On January 14 2009, Mebe Ngo'o suspended police officer Charles Bernard Atangana Fono, the assistant to the special commissioner for Nyong and So'o Division, Center Region, for three months without pay for extortion of money. Legal action was pending at year's end. Also on January 14 2009, Mebe Ngo'o suspended Police Inspector Martin Merimee Loh of the Mbanga, Littoral Region, and police officer Joel Medou Obam, for extortion of money and indiscipline. Legal actions were pending at year's end¹⁴⁸.

Presidential decree¹⁴⁹ The Head of State Paul Biya on Thursday On the 11th April 2019 sacked the Police Commissioner of the Public Security post in Meyomessala, Dja and Lobo Division of the South Region¹⁵⁰.

The Police Commissioner for Limbe, Lawrence Tang Enow, who was suspected of shooting a taxi driver to death on April 7 2005, has been dismissed. A Presidential decree signed on Wednesday, April 13 2005, relieved Tang of his functions, replacing him with Senior Superintendent, Aloysius Alemnge, hitherto Inspector General at the Delegation for National Security, Yaoundé. Tang's dismissal came just a day after the Delegate General for National Security, Edgar Alain Mebe Ngo'o, signed a communiqué suspending him and four other police officers in the Centre Province for a period of three months without salaries¹⁵¹.

¹⁴⁸NGO REPORT, *On the implementation of the ICCPR (CCPR/C/CMR/Q4)2010*

¹⁴⁹ On line sourcehttps://www.postnewsline.com/2005/04/stronglimbe_pol.htm

However the courts remain one of the strongest institutions to punish judicial Officers accused of human rights violations for those offenses which have been cited above.

The court doesn't directly control the activities of the judicial officers but plays a major role in dissuading future violations by the sanctioning of those who have been declared guilty. However, the courts in Cameroon are equally facing serious criticisms for either delays or prolonged trials or being corrupt.

Prolonged pretrial detention is still a serious problem. According to Article 221 of Criminal Procedure Code (2005) the time limit for detention pending an investigation 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 the time limits expire, the suspect must immediately be released.

However, the National Commission on Human Rights and Freedoms' report released in 2009 but covering 2008 also, noted that 62% of inmates were pretrial detainees. The report also indicated that the longest time a detainee had been in pretrial detention was nine years. In October 2009 government statistics showed that 62.48% of the 24,000 inmates held in the country were awaiting trial.

The Code of Criminal Procedure requires police and gendarmes to obtain an arrest warrant except when a person is caught in the act of committing a crime, but the police often do not respect this requirement in practice. The law provides that detainees must be brought promptly before a magistrate, but this frequently does not occur. 21 Article 119 (2) of the Code of Criminal Procedure

However, the judiciary remains subject to executive influence, and corruption and inefficiency remains a serious problem. The court system is subordinate to the

Ministry of Justice. The constitution names the president as "first magistrate," thus "chief" of the judiciary and the theoretical arbiter of any sanctions against the judiciary.

The constitution specifies that the president is the guarantor of the legal system's independence. However, the judiciary shows modest signs of growing independence. For example, in September, the Supreme Court confirmed an earlier ruling against the Ministry of Culture and found illegal the minister's decision to dissolve the Cameroon Music Corporation. On March 29, the president signed a decree that dismissed Jean Baptiste Peyembouo, a second grade magistrate, from the judicial and legal service for dereliction of duty¹⁵².

In practice, however, the Minister seldom (except in flagrant crimes) decides that high ranking police officers and those with the status of law officers should be prosecuted. This explains why generally the officers who appear in courts in Cameroon to face criminal charges are almost always those in the lower ranks of the corps; (Motion No. HCB/12m/78 delivered by Justice Ekor Tarh V.P on Tuesday, 5th September 1978). Most of the agents in the higher ranks who commit offences are hardly ever prosecuted.

The case of Peter Baseh and 9 others Vs. the Commissioner of B.M.M. Bamenda, Aminou Buba Gagere, is a case in point. Irrespective of the fact that the judge alleged three offences against the commissioner of police; inhuman act of subjecting the detainees to unlawful castigation contrary to section 135 of the Penal Code, his contemptuous behavior in not appearing in court contrary to section 154 of the Penal Code and his refusal to obey a court's summons contrary

¹⁵²NGO REPORT *On the implementation of the ICCPR* (CCPR/C/CMR/Q4)2010

to section 173 of the penal code, he was never prosecuted, because there was no order from the Minister of Justice for his prosecution.

Also, the commander of the joint military police and Gendarmerie operation that extra judicially executed 9 youths in the Bepanda neighborhood of Douala was never prosecuted.

The decision of the court of first instance in favour of police commissioner Abuengmo John Amuh in the case of Chi Daniel Awasum versus. Abuengmo John Amuh Appeal No BCA/7/1997 Unreported attests to the fact that it is not always in the interest of the judicial system to prosecute senior police officers even when they are involved in serious criminal offences¹⁵³.

¹⁵³ B. Agozino, *African journal of Criminology and justice studies*, (Vol 4 No. 1)

CHAPTER FIVE

SUMMARY FINDING, CONCLUSION AND RECOMMENDATIONS

5.0. INTRODUCTION

Cameroon is a party to numerous international treaties, mostly of human rights flavor, that have been incorporated into its constitution by virtue of the provision of Article 45. Some of the provisions of these treaties established standard for the treatment of citizens, not least persons under police custody amongst others. In addition to these provisions of an international nature, Cameroon has promulgated a number of local legislation, amongst which is the CPC that contains supplementary provisions regulating the conduct of Judicial Police Officers. In reality, as this thesis has demonstrated, Judicial Police Officers often fall short in respect of these standards established both under municipal and international legislations.

In most cases, these officials are implicated in violating rather than protecting rights of citizens through engaging in acts including arbitrary arrests, beating of inmates and other inhumane treatment etc. Furthermore, those personalities empowered to regulate the activities of the Judicial Police have become complacent. Consequently, a need arises for reform of the system which in my opinion, and based on my research, could best be achieved through the following measures; transfer of some duties from the Judicial Police to the Legal Department, effective government supervision of Judicial Police, rigorous implementation of control mechanisms etc.

5.1. SUMMARY OF RESEARCH FINDING

Cameroon is in principle a human rights state by virtue of the several treaties it has ratified and incorporated into domestic law. These treaties are supplemented by domestic legislation including the CPC. The CPC has mandated Judicial Police officers to enforce human rights and introduced supplementary organs to regulate the activities of judicial police officers. In spite of these measures there are numerous violations of human rights by the Police such as violation to right of freedom, right to humane treatment and fair hearing etc.

The judicial police is a special police force charged with conducting investigations to obtain proofs for offence which a suspect is charged to have committed. They are attributed with some duties which deal with issues relating to human rights of the citizens and must therefore be controlled by the laws and some institutions.

However, there have been reported cases of violations of human rights of persons by judicial police in the exercise of their duties, thereby acting contrary to the human rights provisions of the Cameroon Criminal Procedure Code of 2005 which became applicable in 2006.

This study discloses that the application of the human rights provisions of the CPC by the judicial police officers in Cameroon is still very wanting. Regardless of the provisions of the CPC, there are many complaints of human right violation as evident by the cases mentioned in chapter four. It is for this reason that the Delegate General of Police sanctioned judicial police officers like Olivier Villot Ehongo, public security commissioner of Bafia, Mbam, and Inoubou Division on November 15th 2009, EHONGO a second grade police officer and second deputy to the Center Region was suspended for three months, pending disciplinary and legal actions and Michel Bekolo Angoula on September 11 2009, just to name a few.

The President of the Republic equally sanctioned some judicial officers including; Biyo'o Nkolo Georges Police Commissioner of the Public Security post in Meyomessala, Dja and Lobo Division of the South Region sacked on the 11 April 2019 and the Police Commissioner for Limbe, Lawrence Tang Enow, was sacked on the 14th of April 2005 suspected of shooting a taxi driver to death on April 7 2005. Just to name a few.

This study also demonstrates the weaknesses of the control mechanisms like the PG, State Counsel, the Courts etc. charged with the duty to supervise, control and sanction judicial police officers.

Finally, the study also exposes the weaknesses of the Cameroon government in the fight against corruption and other causes affecting the respect of the CPC towards the respect of the human rights of persons by the judicial police officers in Cameroon.

5.2. CONCLUSION

This study which presents an appraisal of the enforcement of human rights by judicial police officers in Cameroon has properly demonstrated that they still violate the rights of persons in the exercise of their duties. The case of IBRAHIM BELLO depicts the daily violations of human rights by the judicial police officers.

The study further confirms the weaknesses of the institutions like the PG, Legal Department, the Courts etc. charged with the duty to control the actions of the judicial police or sanctions same. The case of *LEVODO family V. Regional Delegation of judicial Police and Legal Department of Court of First Instance of Yaoundé- Centre Administratif*; demonstrates sufficiently the weaknesses of the

legal department which even acted in complicity with the violations of the right to life of the victim.

From the foregoing submission, it is evident in line with the triple pronged, Human Right Based and Natural Law theories that the State of Cameroon has to a greater extent fail in the duty for the respect and enforcement of human rights of persons of the judicial police in Cameroon.

The question now is if the government of Cameroon can pass another law releasing some of the human rights duties of the judicial police to another constituted body. This, however, may be the subject of further research pursuit.

5.3. RECOMMENDATIONS

From the discussions on the summary of findings highlighted, the following recommendations are necessary: transfer some duties from the judicial police officer to the legal department, there must be an effective government supervision of the judicial police officer, rigorous implementation of the control mechanisms, public sensitization and punishment for violators. We shall hereby treat in-depth each of the recommendations.

5.3.1. Transfer of some duties from the Judicial Police to the Legal Department

From examining the first research question and first specific objective, we listed the duties of the judicial police officer which included police investigations, execution of court processes, execution of warrants and the powers to remand a suspect in custody. It is observed after this study that some of their duties touch and concern certain fundamental rights that it would be preferable to be handed over to the legal department which is made up of magistrates better trained than the judicial police officers. The duty to remand in custody and the application for bail

should be assigned to the legal department. Once this is done, the judicial police will have limited powers and thus reduce the commissions of such violations of the rights of freedom.

5.3.2. Effective government supervision of Judicial Police

We identified in response to the second research question and the second specific objective some institutions like the PG, the Legal Department, the State Counsel, service heads and the courts which have been put in place by the government to supervise the actions of the judicial police officers. We observed that some of these institutions are very in effective, reasons why some judicial officers take advantage to violate the rights of persons.

There will be a drastic decrease in the rate of violations of rights of persons by judicial police officer if the government takes necessary steps to push those institutions charged with the responsibility to control the actions of the judicial police officers to properly do their job.

It was observed that the supervisory institutions do not visit the police station as recommended by the law. Their visit shall not only stop some ongoing violations, but shall equally dissuade any officer from carrying out any violations.

My recommendation here is that the government should actually watch over the duties of these institutions and make them to do their job impartially and with dignity and integrity by frequent and systematic checks. That the fight against tribalism and corruption be intensified on these institutions that are still very much lacking and wanting by creating a NACC sub offices in every judicial police unit.

5.3.3. Rigorous implementation of Control Mechanisms

This recommendation is based on findings to answer the third research question and third research objective as to the rights of persons violated by the judicial police officers and how effective these control mechanisms are.

I recommend that the control mechanisms should be reinforced, and those daily systematic checks should be done in the judicial police units and that some sensitive duties like that to remand in custody and granting of bail should be within the competence of the Legal Department except for cases of offenses committed *flagrant delicto*.

It was observed in this research work that, the judicial police officers usually refuse the granting of bail because they ask for huge sums of money as bribe. Most of the times, the suspects are remanded in custody for many days whereas if the State Counsel was rigorous in his duties, he would have arrested the situation.

5.3.4 Improved training of officers

My next and last recommendation is based on the fourth research question and fourth specific objective. It is related to the evaluation of the State mission of enforcement of human rights and State responsibility for its violations.

I recommend that the State should embark on proper training of the judicial police officers; that they State should organize routine training sessions in order to properly train the judicial police officers. It was observed that during this research that most judicial police officers are poorly trained, and because of this poor training, they tend to misconstrue the provisions of the CPC. Some of them act out of ignorance with very little knowledge of the law. The government should therefore organize regular training sessions. This will permit the judicial officers to know the rights of the suspects and be able to evaluate the consequences resulting from any violations.

5.3.5 Public sensitization and punishment for violations

Most citizens are not aware of their rights or the provisions of the CPC. They are always subjected to violations because they do not even know what is required of them. They turn to beg for what is actually theirs by right. The State can solve this problem by doing some sensitization campaigns to educate the public on their rights in front of a judicial police officer and educate the citizens on how to denounce ill practices. This sensitization campaign will reduce the number of violations since the suspects know their rights and equally know how to claim those rights.

The State should follow up that violators who have been denounced be investigated and publicly and sanctioned if found guilty. This will go a long way to improve on the respect and enforcement on human rights of persons by judicial police officers in Cameroon. If defaulters are punished publicly, they will be scared of not only the punishment but equally the humiliation of being punished. This will therefore reduce the rate of violations of human rights by judicial police officers.

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