SELINUS UNIVERSITY
OF SCIENCES AND LITERATURE

A STUDY ON THE PROTECTION OF THE RIGHTS OF PRETRIAL DETAINEES UNDER INTERNATIONAL LAW: THE CASE OF FUNDONG, BOYO DIVISION, NORTHWEST OF CAMEROON

By Mukete Tahle Itoe

Supervised by
Dr. Salvatore Fava PhD

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CHAPTER 1
INTRODUCTION

1.1 Background:

The protection of the rights of pre-trial detainees is based on the principle of presumption of innocence. According to this legal principle, an individual is considered innocent unless proven guilty in a public trial at which he has had all the guarantees necessary for his defence (UN, 2020).

The principle is expressed by its Latin Maxim *'ei incumbit probation qui dicit, non qui negat'* or the burden of proof is on the person who affirms, not on one who denies. This is a cardinal universal legal principle that prevents and uncovers violations of the detainee's fundamental rights and allows the detainee to be released if the arrest or detention violates his rights (ACHPR, 2003).

Embedded in the general category of human rights, the principle of presumption of innocence falls within the norms that describe certain standards of human behavior. In international law, these standards are also regularly and systematically protected as natural and legal rights. These natural and legal rights or human rights through guaranteeing life, liberty, equality, and security, protect people against abuse by those who are more powerful. As a corollary, there is therefore the right to recognition as a person before the law, as well as equality under the same law (ACHPR, 2003; UN, 2020).

In order to make the most minimal use of detention during the process of criminal investigation, equality under the same law is a mandatory obligation for strict compliance with international human rights standards for pretrial detainees. According to Boone et al (2018), by enhancing the possibilities to apply alternative measures, there is a need of reducing the use of pre-trial detention only as '*Ultima Ratio'* or as a last resort.

1.2 Statement of the Problem

Millions of accused persons worldwide are effectively punished before being tried because they are held in pre-trial detention facilities. Pre-trial detainees routinely experience worse conditions than sentenced prisoners, thus it is literally worse being a pre-trial detainee than being convicted. This is because, pre-trial detention does not solely harm individuals, families, and communities, it also wastes financial and human resources, hence undermining the rule of law. Although legally entitled to be considered innocent and released pending trial, many accused persons are instead held in pre-trial detention, where they are subjected to torture, exposed to life-threatening diseases, victimized by violence, and pressured for bribes (Schonteich, 2008; Domingo and Denney, 2013).

The arbitrary and excessive use of pretrial detention is a massive and widely ignored pattern of human rights abuse that annually affects an estimated 15 million persons across the globe (Walmsley, 2008, van Kalmthout et al., 2009). This right is broadly accepted in theory, but so commonly violated in practice thus making it the most overlooked human rights crisis of our time. The trend also raises an indication of discriminatory processes in the global criminal justice system (Veen, 2011).

Cameroon is amongst the first ten countries in the world with a very high rate of pre-trial detainees compared to her prison population (PRI, 2021**)** and thus the need for such a study.

1.3 Scope of the Study

This study covers an in-depth and a broader understanding of the international protection mechanisms accorded pre-trial detainees but with the jurisdiction of Fundong in Cameroon as a case study. It examines the impact and application of these international protection mechanisms on the human rights of pre-trial detainees from the Cameroon perspective. In addition, while examining alternative implementation strategies to the overuse of pre-trial detention measures, the present

study will provide organizational and management challenges encountered by various stakeholders of Cameroon's criminal justice system.

1.4 Description of Study Area

The study was carried out in Boyo divisionin the northwest region of Cameroon, figure 1. Boyo division covers an estimated 1557.5 $km^{2,}$, located between 6°09-6°17 North and 10°16-10°20 East. The division is made up of four subdivision including, Fundong,Njinikom, Belo and Bum. Temperature ranges from 15°C to 38°C with mean annual rainfall stands at 2400 mm and humidity of 82%. Exhibiting a typical Cameroonian humid tropical climate with two seasons (rainy season from march to November, and dry season from November to February. Boyo division has an estimated population of about 128425 total population for a population density of about 82 inhabitants per km^2. Characterized by a wide diversity in biogeography, climate, vegetation and soils, the local population mainly depends on agriculture for their livelihoods. Meanwhile, the Mbororos and Fulanis are Muslims and mainly cattle rearers who have settled around the division because of fertile grazing lands.

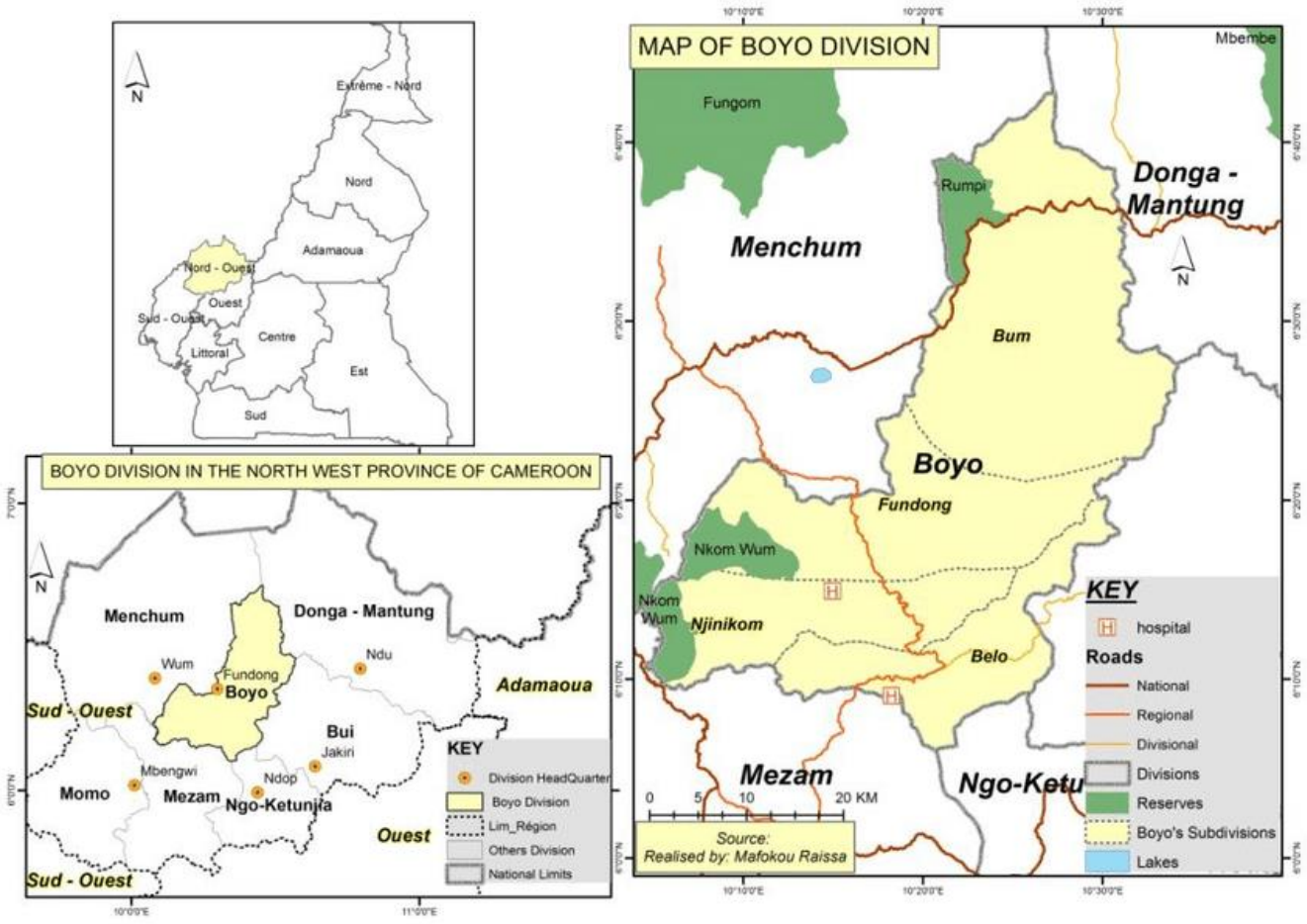

Figure 1: Map showing Boyo Division, North West Region of Cameroon.

Sourced from: Avana-Tientcheu, M., Sime, C., Tsobou, R & Tchoundjeu, Z (2019). Diversity, Ethnobotanical Potential and Sustainability Assessment of Plants Used by Traditional Healers to Treat Cancer in Boyo Division, North-West Region, Cameroon. European Journal of Medicinal Plants 27(3): 1-22.

1.5 Purpose and Objectives:

The present study provides an in-depth analysis and understanding of Cameroon's existing legal framework vis-a-vis international standards in relation to the protection of the rights of pre-trial detainees and its consequences on the application of criminal justice procedures.

The specific objectives of the study are:

- To examine the various rights of pre-trial detainees from the period of arrest to the level of the trial judge.
- To determine the effectiveness afforded by the Cameroonian criminal justice system in the enforcement of the rights of pre-trial detainees as enshrined in international law.
- To identify violations of the right to liberty and the right to a fair trial as well as the security of persons.
- To ascertain the determinants and assess the effectiveness of these determinants in Cameroon's compliance with the international legal framework in the protection of the rights of pre-trial detainees.
- Assess the impact of pre-trial detention on a detainee's fundamental human rights through the creation of a just, fair, and trusted criminal justice system.
- To identify the available redress mechanisms and sanctions for the violations of the rights of pretrial detainees under Cameroonian criminal law.
- Examine how alternative methods such as bail can better influence policy in the design of new service delivery models which address the overuse of pre-trial detention measures in Cameroon.

1.6 Content of the study

The study captures the concepts of the international legal framework governing the protection of the rights of pre-trial detainees as applied in Cameroon. It also examines the impact on the human rights of pre-trial detainees and provides an in-depth and broader understanding of the available protection mechanisms and elaborates on the organizational challenges encountered by the various stakeholders of the Cameroonian criminal justice system.

1.7 Significance of the Study

The study highlights the importance of compliance by the Cameroonian criminal justice system with the international framework for the protection of the rights of pre-trial detainees.

The study further articulates the fact that, although Cameroon's legal system makes provision for all the rules governing pre-trial detention, compliance can only be increased, attained, and sustained through stronger enforcement strategies.

Additionally, in order to clarify and streamline the laws governing pre-trial detention in Cameroon, this study explores the gaps and limitations in the application of existing laws and safeguards.

Finally, the work is useful to society, policymakers, researchers, and other stakeholders by bringing into the limelight the realities of the over-use of pre-trial detention measures in Cameroon and the measures to ensure their limited use.

1.8 Research Questions and Methodology

i) The main research question is:

Are the rights of pre-trial detainees effectively protected and safeguarded?

ii) Specific Research questions:

- Who are the different actors charged with the protection of the rights of pre-trial detainees?
- Pre-trial detainees benefit from what rights at various stages of the criminal justice system?
- Are there any sanctions in case of violations of these rights?

Due to the absence of viable data to capture and effectively describe the actual situation of the rights of pre-trial detention in Cameroon, the methodology used is a combination of field experiences through open-ended interviews, and semi-

structured questionnaires and a broad review of published scientific literature performed using Google Scholar, ResearchGate, Web of Science and Semantic Scholar.

1.9 Structure of the study

This study is divided into 6 chapters.

Chapter 1 introduces the study and highlights the background, the problem statement, research methodology, the objectives of the study, content, scope, and structure.

Chapter 2 examines the international legal framework and key reference points on the protection of the rights of pre-trial detainees including the presumption of innocence and the loss of liberty.

As a corollary, Chapter 3 focuses on the international legal standards in safeguarding the rights of pre-trial detentions. Examples of the positive and negative implementation by Judicial Bodies, Case law, and other instances of the application of these standards are discussed.

In Chapter 4, there is an in-depth presentation and analysis of the protection of the rights of pretrial detainees under the Cameroon criminal justice system with an emphasis on the town of Fundong. Chapter 5 makes an overview of the shortcomings vis-a-vis the implementation of the international legal framework. Finally, Chapter 6 focuses on recommendations and perspectives for the better protection of the rights of pre-trial detainees in Fundong in particular and Cameroon in general.

CHAPTER 2
INTERNATIONAL LEGAL FRAMEWORK ON PRE-TRIAL DETENTION

2.1 An Overview

Around the globe, the number of un-convicted persons in prison and other detention centers is on the rise. It is estimated that in the course of a year approximately 10 million people pass through pre-trial detention. This raises several questions particularly related to human rights issues and pre-trial criminal investigation procedures such as the right to liberty and the presumption of innocence. More so, they generate procedural guarantees that restrict the possibility to take someone into detention, while the right to humane treatment and the prohibition of torture and ill-treatment significantly regulates the minimum conditions of such detention (van Kempen, 2012).

2.2 The Concept of Pre-trial Detention

Pre-trial detention (PTD) is the situation where someone, in connection with an alleged offence, has been deprived of their liberty following a judicial or another legal process but is not yet definitely sentenced.

Most often after an arrest, the person is usually in one of the following stages of the criminal justice process:

1) the *pre-court* stage where the decision has been made to proceed with the case, and further investigations are in progress or a court hearing is awaited;
2) the *court stage* where the court process (involving a determination of guilt and/or sentence) is ongoing
3) the *convicted* un-sentenced stage where the person has been convicted at court but not yet sentenced and

4) the *awaiting final sentence* stage where a provisional sentence has been passed, but the definitive sentence is subject to an appeal process (Heard and Fair, 2019).

This criminal justice process is to ensure the prevention of certain risks such as the commission of any further criminal activity, unlawful interference with the process of investigation, as well as to allay any possibilities of the individual absconding**.** These detentions can therefore be justified on the basis of legitimate public interest (ECtHR, 2005; Martufi, 2020).

Every modern criminal justice system makes use of some form of pre-trial detention, keeping suspected offenders awaiting trial or to complete their trial. Hence, pre-trial detention is a universal practice where States and formal criminal justice institutions exist in one form or another (Schonteich, 2018).

However, pre-trial detention undermines the principle of the presumption of innocence and the chance of a fair trial. It increases the risk of a confession or statement being coerced by torture or ill-treatment and 'lessens a suspect's possibilities of self or alternative defense. This is more evident when the person is poor and cannot afford the services of a defense counsel or support to obtain evidence in their favor. Hence, international legal standards require that pre-trial detention should be the exception rather than the rule (UN, 2010).

Pre-trial detention is only legitimate where there is a reasonable suspicion of the person having committed the alleged offence. It is also legitimate where detention is necessary and proportionate to prevent absconding, committing another offence and interfering with judicial procedures. The foregoing implies that pre-trial detention is not legitimate where these objectives can be achieved through other measures such as bail, seizure of travel documents or periodic reporting to public security (UN, 2010).

Nevertheless, pre-trial detention is an acceptable constraint on the liberty of suspected offenders provided a number of stipulated pre-conditions are met. These

include but are not limited to the protection against the arbitrary arrest; prompt information about the reasons for arrest and detention; prompt registration of the arrest including precise information about the reasons; the identity of the law enforcement officials and the place of detention; prompt access to a Judge; habeas corpus; trial without delay; presumption of innocence; separation of pre-trial detainees from convicted prisoners; regular review of the legality of pre-trial detention, and access to independent doctors and family visits (Schonteich, 2018)

These pre-conditions protect arrestees and remand prisoners from torture and other ill-treatment as well as other rights violations.

2.3 The Applicable International Legal Framework

From an international legal framework prism, there exists no single international instrument that regulates and sets out all the human rights standards regarding pre-trial detention of persons. In addition, the existing international and regional standards have so far not been unified under a universal and comprehensive set of norms (Riva, 2015).

It, therefore, becomes incumbent on domestic authorities to interrogate whether less restrictive measures than pre-trial detention can secure the attendance of defendants at trial. Moreover, a State cannot assume that a defendant will abscond, tamper with evidence, or obstruct the investigation of the case. Any risks associated with the pre-trial release of a defendant must be investigated by the State (Ballard, 2011).

2.3.1 Mandatory Obligations under International Law

Mandatory obligations compel States under certain relevant international instruments to respect, protect, and enforce the rights of pre-trial detainees.

According to (Hausler et al., 2014) these mandatory international standards are those contained in Treaties, Conventions, and Covenants and include:

i) The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT):

By this Convention, *torture is any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or third person information or a confession.* Furthermore, torture also aims at punishing the individual for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person. It is also for any reason based on discrimination of any kind when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity (CAT, 2019).

ii) The International Convention on the Elimination of all Forms of Racial Discrimination (CERD)

It acknowledges that all human beings are equal before the law and are entitled to equal protection of the law (Keane, 2020). On the other hand, *racial discrimination refers to any distinction, exclusion, restriction, or preference based on race, colour, descent, or national or ethnic origin. Thus, racial discrimination has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise of human rights and fundamental freedoms in the political, economic, social, and cultural domain of life*.

iii) The International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

This Convention posits that State parties to international human rights law, have the obligation to ensure the equal right of men and women (CEDAW, 2019).

iv) The International Convention for the Protection of All Persons from Enforced Disappearance (ICPED). It encapsulates the situation of enforced disappearance

such as the arrest, detention, abduction, or any other form of deprivation of liberty by agents of the State or by persons or groups of persons (ICPED, 2006).

v)The Convention on the Rights of Persons with Disabilities (CRPD)

The Convention urges State Parties to respect the inherent dignity and worth of persons with disability. This makes it obligatory for States to undertake, ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability. States should also take into account the protection and promotion of the rights of persons with disabilities in all policies and programs (CRPD, 2006).

vi) The International Covenant on Civil and Political Rights (ICCPR)

Article 9(1) of the ICCPR re-iterates the rights of pre-trial detainees and states that: "no *one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law*" (ICCPR, 1966)

2.3.2 Non-Binding International Instruments

There are also many relevant non-binding instruments for the protection of the rights of pre-trial detainees. These include:

i) The Universal Declaration of Human Rights (UDHR)

In article 9, it provides that:

"No one shall be subjected to arbitrary arrest, detention, or exile. And in the same vein, no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment (Gjelten, 2018).

ii) The United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules).

It spells out guidelines to promote the use of non-custodial measures and the minimum safeguards for persons subject to alternatives to imprisonment.

iii) The United Nations Standard Minimum Rules for the Treatment of Prisoners

This sets out safeguards for untried prisoners to be kept separate from convicted prisoners. Also, that in every place where persons are imprisoned, there shall be kept a bound registration book with numbered pages in which shall be entered in respect of each prisoner received his identity, the reasons for his commitment and authority thereof, day and hour of his admission and release. Therefore, no person shall be received in a penitentiary institution without a valid commitment order of which the details shall have been previously entered in the register (UNCHR, 2012).

iv) The Code of Conduct for Law Enforcement Officials

The Code makes it obligatory for all law enforcement officials to respect and protect human dignity and maintain and uphold the human rights of all persons in the performance of their duty.

v) The Basic Principles on the Role of Lawyers

Its special safeguards in criminal justice entreat governments to ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer. This in any case should not be later than forty-eight hours from the time of arrest or detention. Therefore, all arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by, and to communicate and consult with a lawyer, without delay, interception ,or censorship, and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials (UN Secretariat, 1990).

vi) The Declaration on the protection of All Persons from Enforced Disappearances

This engages States to ensure that any person deprived of liberty shall be held in an officially recognized place of detention and, in conformity with national law (UNED, 1992).

vii) The Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary, and Summary Executions

It entreats governments to ensure strict control over all officials responsible for the apprehension, arrest, detention, custody, and imprisonment of individuals (UNESC, 1989).

viii) The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials

This prohibits the use of force or firearms by law enforcement officials, in their relations with persons in custody or detention, except in self- defence or in the defence of others against the immediate threat of death or serious injury, or when strictly necessary to prevent the escape of a person in custody or detention or to save a life (UN, 1990).

ix) The Guidelines on the Role of Prosecutors

It entreats States to ensure that Prosecutors shall, in accordance with the law, perform their duties fairly, consistently, and expeditiously, and respect and protect human dignity and uphold human rights, thus contributing to ensuring due process and the smooth functioning of the criminal justice system (UNCHR, 2020).

x) The United Nations Body of Principles for the Protection of all Persons under any Form of Detention or Imprisonment (*Body of Principles on Detention)*

This applies to all persons under any form of detention or imprisonment in the criminal justice system. Under Principle *1*, *All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person* (UNCHR, 2012). Principle 2, states *that arrest,*

detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law and by competent officials or persons authorized for that purpose. Most importantly, Principle 8 makes it mandatory that *persons in detention shall be subject to treatment appropriate to their unconvicted status*. Principle 12 institutes the standard to record the reasons for the arrest of the suspect, the time of arrest, and transfer to another place of custody, the identity of the law enforcement officials as well as information about the place of custody. Accordingly, they shall, whenever possible, be kept separate from imprisoned persons (UNCHR, 2012).

2.3.3 Binding Regional Instruments on Pre-trial detention.

Generally, international and regional human rights instruments are explicit as to the limited circumstances under which pre-trial detention is permissible. Below are some examples:

i) The European Convention of Human Rights (ECHR)

According to article 5(1) of the Convention, in criminal proceedings following the first appearance before a judicial officer, detention shall only be permitted when it is reasonably necessary to prevent further offences or flight. Hence, a person may only be remanded in custody if there are substantial reasons for believing that, if released, the individual would either abscond, commit a serious offence, interfere with the course of justice, or pose a serious threat to public order (CoE, 2006).

ii) The Arab Charter on Human Rights

As per the Charter, everyone has the right to liberty and security as a person. Therefore, no one shall be subjected to arbitrary arrest, search or detention without a legal warrant (Arab Charter, 2004).

iii) The African Charter on Peoples' and Human Rights (ACHPR)

In article 6, the Charter forbids any arbitrary arrest and detention of persons.

iv) The Inter-American Convention

The same is echoed in Article 4 of the Inter -American Convention by prohibiting arbitrary arrest and detention.

2.3.4 Non-Binding Regional Instruments

There exist a number of non-binding regional Instruments for the protection of the rights of pre-trial detainees. These include:

i) Guidelines on the Conditions of Arrest, Police Custody, and Pre-Trial Detention in Africa
ii) Principles and Guidelines on the Right to Fair and Legal Assistance in Africa
iii) The Robben Island Guidelines for the Prohibition and Prevention of Torture
iv) The Inter-American Commission on Human Rights

The Commission uses the term *preventive detention* to describe pre-trial detention. Here, preventive detention shall only be applied within the strictly necessary limits to ensure that the person will not impede the efficient development of the investigations nor will evade justice, provided that the competent authority examines the facts and demonstrates that the aforesaid requirements have been met in the concrete case (IACHR, 2013).

v) The African Commission of Peoples and Human Rights

It states that unless there is sufficient evidence that deems it necessary to prevent a person arrested on a criminal charge from fleeing, interfering with witnesses or, posing a clear and serious risk to others, States must ensure that they are not kept in custody pending their trial (ACHPR, 2003).

However, according to the American Bar Association (ABA, 2010), the significant overlap between international and regional human rights instruments suggests that pre-trial detention can only be justified when used to prevent the accused from absconding, committing a serious offence, or interfering with the administration of justice. Therefore, all these standards are considered s*oft law* which creates a web of

regulatory standards to which States should comply wherever possible (UNCHR, 2020).

2.4 The Principle of Presumption of Innocence (PoI)

Underlying the legal consideration of the applicability of pre-trial detention is the principle of the presumption of innocence. It is universally recognized as a key principle in the administration of criminal justice (Stumer, 2010). This presumption is also known as *a human right* (Ho, 2012), and a fundamental principle of procedural fairness in criminal law that aims at securing the right result by protecting against wrongful conviction (Ashworth, 2013).

As per this legal principle, an individual is considered innocent unless proven guilty in a public trial at which he has had all the guarantees necessary for his defence (Ashworth and Horder, 2013; UN, 2020).

The principle is expressed by its Latin Maxim *ei incumbit probation qui dicit, non qui negat* or the burden of proof is on the person who affirms, not on one who denies. The principle of the presumption of innocence is the starting point of any analysis regarding the rights and treatment afforded to persons held in pre-trial detention. This fundamental right implies that when deprivation of liberty is necessary during the course of judicial proceedings, the legal presumption is that the defendant is innocent (IACHR, 2001).

The presumption of innocence is perhaps the most elemental of all the judicial guarantees in the context of criminal proceedings, as expressly enshrined without any reservation or exception in binding international human rights instruments. Thus, everyone charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law. Also, persons not yet convicted of the crime of which they have been accused are guaranteed the right to *separate treatment appropriate to their status as un-convicted persons*.

2.4.1 International and Regional Binding Instruments on the principle of Presumption of Innocence

i) The Convention on the Rights of the Child (CRC)

It stipulates that every child alleged or accused of having infringed the penal law has the right to be presumed innocent until proven guilty according to the law (CRC, 1989).

ii) The European Convention on Human Rights (ECHR)

It states that everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

iii) The European Charter of Fundamental Rights

It reiterates that everyone who has been charged shall be presumed innocent until proven guilty according to the law (EU Charter, 2000).

iv) The African Charter on Human and Peoples' Rights.

Everyone has the right to be presumed innocent until proven guilty by a competent court (ACHPR,1990)

v) The American Convention on Human Rights

It espouses that every person accused of a criminal offence has the right to be presumed innocent so long as his guilt has not been proven according to the law (ACHPR, 2003).".

vi) The Statute of the International Criminal Court

It provides that everyone shall be presumed innocent until proven guilty before the Court in accordance with the applicable law (ICC,1989).

vii) The Arab Charter on Human Rights

It also underscores that everyone charged with a criminal offence shall be presumed innocent until proved guilty by a final judgment rendered according to the law (Arab Charter, 2004).

viii) The International Covenant on Civil and Political Rights (ICCPR)

Article 14(2) of the 1966 International Covenant on Civil and Political Rights provides: *"Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law".*

2.4.2 Non- Binding International and Regional Instruments on the Principle of the presumption of Innocence

i) The Universal Declaration of Human Rights (UDHR)

It provides in article 11 *that everyone charged with a penal offence has the right to be presumed innocent until proven guilty according to the law in a public trial at which he has had all the guarantees necessary for his defence*.

ii) The Standard Minimum Rules for the Treatment of Prisoners

It has reiterated that un-convicted prisoners are presumed to be innocent and shall be treated as such.

iii) The Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment

It states that a detained person suspected of or *charged with a criminal offence shall be presumed innocent and shall be treated as such until proven guilty according to the law in a public trial at which he has had all the guarantees necessary for his defence (*UNCHR, 2012*).*

v) The European Prison Rules

It also reiterates that "no one shall de be deprived of liberty save as a measure of last resort and in accordance with a procedure prescribed by law" (EPR, 2006).

vi) The African Union Rules (AU)

The AU Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa (the Luanda Guidelines) sets out States' obligations to respect Peoples' right to liberty, and security (ACHPR, 2017)

2.5 The Right to a Fair Trial

2.5.1: **The concept of a fair trial**

In addition to the principle of presumption of innocence, there is the right to a fair trial which is a fundamental human right. It protects and guarantees the rights of pre-trial detainees by affording an equal opportunity for parties to present their claims before a competent Court for hearing and determination (Takam, 2021).

Depriving an individual of his liberty is one of the most severe sanctions that can be imposed on someone. In this light, the decision to do so must not be taken lightly and must have a solid, legitimate basis (Dragan, 2013). Hence, courts are entitled to leverage protective mechanisms against abuses and miscarriage of justice. The right to a fair trial, therefore, represents one of such measures for an objective, evidence-based and rigorous examination of cases as a condition *sine qua non* to separate the guilty and convicted from the innocent. Any such unfair processes can considerably diminish the credibility and the public trust in the judiciary (Fair Trials International, 2013).

Also known as '*due process'* (McDermott, 2013), the right to a fair trial comprises the following 'universally recognized elements':

- the right to an independent and impartial tribunal;
- the right to a public trial;
- the right to an expeditious trial;
- the right to the presumption of innocence and freedom from self-incrimination;
- the right to challenge the evidence of the prosecution and to present evidence in one's defence;
- the right to be informed of the case against you;
- the right to appeal, and finally,

- ❖ the right to be able effectively to present one's arguments (Trechsel, 1997)

However, the right to a fair trial must be differentiated and made distinct from the theoretical concept of 'fairness' referred to by legal scholars in order to answer questions of natural justice, equality, non-discrimination, and the equitable distribution of wealth (Sen, 2009).

In criminal proceedings, the right to a fair trial, therefore, consists of and includes the whole process as determined under criminal material law and procedural law (Daci, 2008).

2.5.2 International and Regional Binding Instruments on the right to a fair Trial.

i) International Covenant on Civil and Political Rights (ICCPR)

Article 14(1) of the ICCPR obliges states to exercise the right to a fair and public hearing by a competent, independent, and impartial tribunal established by law.

ii) European Convention of Human Rights (ECHR)

In article 6, the Convention entreats the European States to afford everyone a standing trial for a criminal charge fair and public hearing within a reasonable time by an independent and impartial tribunal established by law (Council of Europe, 2010)

iii) African Charter

Under Article 7(1) of the African Charter, every individual has the right to be tried within a reasonable time by an impartial Court or Tribunal.

2.5.3 Non-Binding International and Regional Instruments on the right to Fair trial.

i) Universal Declaration of Human Rights (UDHR)

Article 10 of the Declaration provides that:

'Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him"

ii) African Union (AU)

The AU Guidelines and Principles on the Right to a Fair Trial and Legal Assistance also reiterates the quintessence of a fair and public hearing by a legally constituted, competent, independent, and impartial judicial body in the determination of the rights and obligations of persons (ACHPR, 1999)

CHAPTER 3
IMPLEMENTATION OF INTERNATIONAL STANDARDS AND SAFEGUARDS ON PRE-TRIAL DETENTION

3.1 An Overview

Generally, international law protects the rights of persons deprived of their liberty, for them to be treated humanely and with respect for the inherent dignity of the person as discerned from the International Instruments.

Using various international and regional instruments, this chapter examines how international protection accorded pre-trial detainees is interpreted, and applied. The main procedural safeguards to be observed in order to protect the rights of persons deprived of their liberty are captured, examined and analyzed.

It further considers regional human rights instruments such as the African Charter on Human and Peoples' Rights (ACHPR), the American Convention on Human Rights (ACHR), the Arab Charter on Human Rights (ACHR), and the European Convention on Human Rights (ECHR) and the interpretation they give on the rights of pre-trial detainees. Also, other relevant 'soft law' guidelines and standards , as well as derogations on the protection of the rights of pre-trial detainees, are considered, particularly the *Guidelines on the Conditions of Arrest, Police Custody and Pre-trial Detention in Africa (Luanda Guidelines)*, the *European Prison Rules*, and *the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa*.

Cases of the African Commission of Human and Peoples' Rights (ACmHPR), the European Court of Human Rights, and the Inter- American Court of Human Rights (IACHR) are cited, including key observations concluded by some relevant UN quasi-judicial Institutions on the protection of the rights of pre-trial detainees.

3.2 The Presumption of Innocence

The status and interpretation of the presumption of innocence under international law makes it the entry point to all standards on pre-trial detention (Riva, 2015)

This fundamental right implies that when deprivation of liberty is necessary during the course of judicial proceedings, the legal presumption is that the defendant is innocent (IACHR, 2001).

In this regard, the European Court of Human Rights (ECtHR) has held that this principle is violated for instance, "*if a judicial decision concerning a person charged with a criminal offence reflects an opinion that he is guilty before he has been proved guilty according to law"* or where there is a pointer *"suggesting that the Court regards the accused as guilty*".

A potential breach of this fundamental human right has been echoed by Amnesty International based on the *"negative public campaign by US officials at the highest levels"* to undermine the right of *Julian Paul Assange*, the Wikileaks Publisher, to be presumed innocent if extradited to the USA to stand trial on charges of espionage (AI, 2022).

However, the principle of presumption of innocence is not violated when authorities inform the public of the name of a suspect and that the person has been arrested or has made a confession, as long as the person is not publicly declared guilty.

3.3. Prohibition of Arbitrary Arrest

According to the United Nations:

"*An arrest is the act of taking a person into custody under the authority of the law*" (UN, 2020)

Also, by compulsion of another kind and includes the period from the moment he is placed under restraint up to the time he is brought before an authority competent to order his continued custody or to release him (Bekele et al., 2015).

The arrest is therefore arbitrary if it was carried out "without any legal grounds" or "contrary to law" or pursuant to a law which was in itself "unjust", or "incompatible with the dignity of the human person", or "incompatible with the respect for the right to liberty and security of persons" (Bekele et al., 2015). Similarly, the Center for Justice and Accountability (CJA) describes the arbitrary arrest as *the arrest and deprivation of liberty of a person outside of the confines of nationally recognized laws or international standards*. Therefore, the powers of arrest are solely limited to grounds that are established by law and in conditions that are appropriate, just, predictable and in accord with due process **(**Edwards, 2013; CJA, 2020).

Hence, it has been held by the Human Rights Committee that an individual cannot be arrested or detained on grounds that are not clearly established in domestic law.

And that, nobody can be deprived of his liberty in violation of a procedure established by law. The committee thus strongly condemned the force diversion and landing of a civilian flight in Minsk on May 23, 2021, endangering aversion safety and the arbitrary arrest and detention by Belarusian Authorities of an independent journalist, *RAMA PRATASEVICH*, and his partner on board, and the extraction of force confession. (HRC 2021)

In the same light, the African Commission on Human and Peoples' Rights (ACmHPR) has held that the detention of some individuals for more than three years without charges was "*an arbitrary deprivation of their liberty*".

Furthermore, a law that authorizes the detention without any charge for three months is not compatible with the right not to be arbitrarily detained.

However, it has been held by the European Court of Human Rights (ECtHR) that the arrest of *Alexei Navalny*, a Russian opposition leader on the strength of an arrest

warrant did not constitute a violation of his right under international law (ECtHR, 2018). However, the arrest of a human rights defender in Saudi Arabia, *Loujain Al-Hathloul* has been held as arbitrary and which violates Article 14(2) of the Arab Charter on Human Rights (AI, 2018).

3.4. Right to be Informed of the Reasons for Arrest

According to Article 9(2) of the International Covenant on Civil and Political Rights (ICCPR), it is the duty of the officer making the arrest to inform the arrested person the reasons for their arrest at the time of arrest and must be promptly informed of any charges against them. This safeguard has been given a broad interpretation by the European Court of Human Rights (ECtHR) by stating that:

"*Any person arrested must be told, in simple, non-technical language that he can understand, the essential legal and factual grounds for his arrest, so as to be able, if he sees fit, to apply to a Court to challenge its lawfulness"*.

The particular circumstances of each case must be taken into consideration to determine whether or not there has been a violation of article 9(2) of the ICCPR (Enonchong, 2016).

In this light, the African Commission on Human and Peoples' Rights (ACmHPR) has held that any arrested person "*shall be informed at the time of arrest, in a language which they understand of the reason for their arrest and shall be informed promptly of any charges against them"*.

3.5 Access to Counsel

International standards make it mandatory for all persons arrested and detained to have the right to Counsel, including legal assistance if they cannot afford a Lawyer. The right to access to Counsel for detainees should be prompt and regular, with initial contact within 24 hours of detention for the release of the detainee either by

bail or using the *Habeas Corpus* procedure or to prepare their defence (HRC, 1992). The role of Counsel here is to guarantee that people would not testify against themselves involuntarily (Giter et al., 2012).

Hence, the European Court of Human Rights (ECtHR) has held that the rights of the defence "*will in principle be irretrievably prejudiced when incriminating statements made during police interrogation without access to a lawyer are used for a conviction"*.

This position has been re-iterated by the United States Supreme Court (USSC) that: "*the prosecution may not use statements made as a result of questioning initiated by authorities after a person has been taken into custody or otherwise deprived of his or her freedom of action in any significant way, unless it demonstrates the use of procedural safeguards effective for securing the privilege against self-incrimination."*.

However, where the interrogation is conducted without the presence of counsel and a statement is taken, the prosecution has the burden to demonstrate that the defendant knowingly and intelligently waived his or her right to counsel. In such cases, the constitutional rights of the detainee would not have been violated to obtain any confession.

3.6 Judicial Control of Arrest and Detention Conditions

The broad requirement for the control of arrest and detention conditions as defined under article 9(3) of the ICCPR comprises three main aspects: the prompt presentation before, and access to a Judicial Authority; the length of pre-trial detention, and finally, the right to temporary release (Bail) and to challenge any arbitrary arrest or detention.

3.6.1 Prompt access to Judicial Authorities

The interpretation given to this safeguard as enshrined in Article 9(3) of the International Covenant on Civil and Political Rights (ICCPR), envisages a *'prompt'* presentation of the person arrested before a judicial authority. Accordingly, the requirement to promptly present the person before a Judge or any other Judicial officer is for the person's initial examination after his arrest or detention and is distinct and different from proceedings to determine the lawfulness of the person's detention (Sieghart, 1983).

It has also been held that the individual must not have been formally charged, before being entitled to be brought before a Judge (Rodley, 2009). The Human Rights Committee (HRC) has given its jurisprudence to the effect that four days after the arrest of the person without being presented to a judicial authority and without access to Counsel amounts to a violation of the person's right under Article 9(3) of the ICCPR.

3.6.2 Length of Pre-Trial Detention

The interpretation given to this safeguard is that the period of pre-trial detention should not be excessive and should only be resorted to in exceptional circumstances as per article 9(3) of the ICCPR. However, what constitutes a reasonable time is determined on the merits of each case (Smith, 2010). It has thus been held that a period of pre- trial detention amounting to three years will constitute a breach of the safeguard under article 9(3) of the ICCPR.

The African Commission on Human and Peoples' Rights has given a more restrictive interpretation of article 9(3) of the ICCPR by stating that a period of three months pre-trial detention violates the person's rights under international law.

3.6.3 Right to Temporary Release and to Challenge Arbitrary Detention (Use of Habeas Corpus)

Any person deprived of his liberty is entitled to be granted temporary release through the mechanism of bail with or without a surety following the principle of the presumption of innocence (Riva, 2015). Hence, the Human Rights Committee has stated that bail should be granted, except in situations where the likelihood exists that the accused would abscond or destroy evidence, influence witnesses or flee from the jurisdiction of the State party (HRC, 1993).

As a corollary, under the *Habeas Corpus* procedure as enshrined in article 9(4) of the ICCPR, the arrested or detained person has the right to seize the competent court without delay. This is in order for the lawfulness of his arrest or detention to be determined, and for an order of his immediate release if the arrest or detention is unlawful. This is a fundamental safeguard against arbitrary detention, and States are not permitted to limit or remove this right under any circumstances. Without this right, detainees are at risk of abuse of authority, ill-treatment and other rights violations (Edwards, 2013).

3.7 Prohibition of Torture and Ill-treatment

The interpretation of this safeguard on the prohibition of torture and ill-treatment of pre-trial detainees under international law is legion, strict, and absolute, with no allowance for any derogations.

For instance, it has been held by the Supreme Court of Eswatini that the 13 years it took for the prosecution to begin the trial is "*a form of torture*", for the accused in the matter. This is reiterated in the *Asange case* supra, that any form of solitary confinement would amount to torture and ill-treatment under international law (AI, 2022).

Another major step to guarantee and safeguard the right of pre-trial detainees to prevent and uphold the anti-torture provision is the practice and obligation to exclude and reject any evidence obtained by torture during the trial of the accused person.

3.8 Right to a Fair Trial

The procedural safeguard of the right to a fair trial in the protection of the rights of pre-trial detainees is most expansive and most complicated of all human rights protected under international law, for it applies both to administrative and judicial proceedings to which they are relevant (Curtis, 2003).

The right applies from the moment when an application has been lodged until the final execution of a Court judgment (Daci, 2006). As such, the African Commission on Human and Peoples' Rights (ACmHPR) has held that as part of fair trial safeguards, any arrested person "*shall be informed at the time of arrest, in a language which they understand of the reason for their arrest and shall be informed promptly of any charges against them"* (ACmHPR, 2000).

One key element under the right to a fair trial is the independence of the tribunal, both as an institution and the individual judges. Hence, when Judges fail to act in the face of flagrant human rights violations, the Human Rights Committee's interpretation is that there is lack of adequate independence of the judiciary (HRC, 2005).

Another area of concern under the right to a fair trial is that of civilians who stand trial before military tribunals. In this regard, the European Court of Human Rights (ECtHR) has held that:

"States have to justify the recourse to military courts in each case and that they should be an 'exception' and respect minimum guarantees of fairness, impartiality, competence and independence".

However, the *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa* guarantees the rights of pre-trial civilian detainees not to be tried by military tribunals. Many of such trials have been held by the African Commission of Human and Peoples' Rights as being in violation of the right to fair trial.

The issue of public hearing is also an important aspect in the right to a fair trial. This procedural safeguard pre-supposes that the trial is open to the public. In this connection, information must be made available to the public as to the time, date and venue of the trial, including sufficient facilities for the attendance by interested members of the public, failing which, it will amount to a violation of the right to fair trial.

Finally, there is the concept of "*equality of arms*" which is embodied in the right to a fair trial. This safeguard ensures that both parties have an equal position as to the procedure at the trial and that both parties are in an equal position to make and present their case during the course of the proceedings.

It is therefore a violation of the right to a fair trial when "*one party is denied access to key and relevant documents contained in the casefile"*.

When the judgment is seen as "*extensively unforeseeably construed to the detriment of the accused*".

CHAPTER 4

THE PROTECTION OF THE RIGHTS OF PRE-TRIAL DETAINEES UNDER CAMEROONIAN LAW

4.1 An Overview:

This chapter examines the main laws, and institutions that protect the rights of pre-trial detainees in Cameroon. Generally, there are several laws, Regulations, Circulars, and Manuals of Operations that regulate the protection of the rights of pre-trial detainees (Agbor, 2017). However, recourse is made to mainly the Constitution of Cameroon (GOC, 1996), the Penal Code and the Criminal Procedure Code (GOC, 2005).

4.1.1 The Cameroon Constitution

The Constitution clearly spells out the legal framework for the promotion and protection of human rights in Cameroon. The Preamble of the Constitution declares the attachment of the people of Cameroon to some key universal principles and values to wit; that

"*All persons shall have equal rights and obligations; freedom and security shall be guaranteed each individual, subject to respect for the rights of others and the higher interests of the State; the prohibition of any command or arbitrary order; the right to move about freely; the home and privacy of correspondence is inviolate; the principle that offences and related punishments shall be pre-determined by law and individual security*".

4.1.2 The Cameroon Penal Code

Section 2 (1) of the Cameroon Penal Code makes provision for the application of international law in criminal matters. It provides that: "*This Code and every*

provision of criminal law shall be subject to the rules of international law and to all treaties duly promulgated and published."

4.1.3 The Criminal Procedure Code (CPC)

In 2005, a harmonized criminal procedure code bringing the two sub systems of Common and Civil laws together, was adopted to facilitate and expediate criminal proceedings in Cameroon. This is Law No. 2005/007 of the 27th of July 2005 which came into force on the 1st of January, 2007 and it protects the liberty of persons (Tchemi, 2016; Pascal, 2022).

4.2 Definition of a Pre-trial Detainee under Cameroonian Criminal law

Cameroonian Criminal law defines a pre- trial detainee as a 'suspect' when arrested and detained by an investigating judicial police officer; a 'defendant' when under the custody of an Examining Magistrate, a 'suspect' when detained by the State Counsel, and an 'accused person' when before the trial Magistrate (Fongang et al., 2019).

At each stage of the criminal procedure, be it a suspect, defendant or accused, the rights of the pre-trial detainee are accordingly shaped. The rights of the pre-trial detainees under Cameroonian law will therefore be examined as per each stage of the procedure.

4.2.1 The Judicial Police Officer

The Police are a state institution, operating under national authority and within national sovereignty. They operate in a centralized system, organized at a regional level and divided into a judicial or a uniformed agency (Osse, 2012).

The police function is often much broader than mere law enforcement. It is generally accepted that the functions of police encompass: prevention and detection of crime, law enforcement and the provision of assistance to the public (Rover, 1998).

In Cameroon, according to Section 79 of the Criminal Procedure Code, the duties of an investigating judicial police are conferred on judicial police officers, judicial police agents and all other persons who discharge certain law enforcement functions

4.2.2 Functions, Duties and Responsibilities

The Cameroon Criminal Procedure Code has assigned judicial police officers with the functions of primarily carrying out criminal investigations, collecting evidence, identifying offenders and accomplices and bringing them before the competent authority. They also execute rogatory commissions of judicial authorities, serve Court processes, execute warrants and Court decisions.

The judicial police officer receives instructions directly from the State Counsel.

In addition, the judicial police officers are empowered to check the identity and situation of any suspicious persons, and where necessary, may detain the person for a period of not more than twenty-four hours and search or cause the suspect to be searched.

Under Section 118 of the CPC, police custody is defined as: "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*|" In essence, the circumstances under which the judicial police officer may remand a suspect in custody are provided for in Sub section 2 which states that:

"*Except in case of a felony or a misdemeanour committed flagrante delicto, and unless strong corroborative evidence exists against him, a person with a well-known place of abode may not be remanded in police custody*".

In addition, under certain circumstances as prescribed by law, the judicial police officer may carry out acts out of his territorial jurisdiction, provided that he informs the competent State Counsel.

Finally, at the close of the investigation, the judicial police officer forwards the original and a copy of the report on the investigation to the competent State Counsel. An inventory shall be made of all the items and objects seized, placed under seal and deposited at the State Counsel's Chambers.

In the course of carrying out their duties, suspects thus lose their right to liberty, temporarily or indefinitely, depending on the case, at the moment of the arrest (Fair Trials International, 2013).

4.3 The rights of the Pretrial Detainee during Judicial Police Investigation

This sub section, examines the main and fundamental rights available to persons arrested and detained by the judicial police officer during criminal investigation as provided for in the Cameroon Criminal Procedure Code.

4.3.1 The right to be Informed.

The judicial police officer is duty bound to immediately inform the suspect of the allegations against him, his fundamental right to remain silent, and the right to Counsel. This also applies when the person arrested is ignorant of the law.

Equally, the judicial police officer must immediately inform the suspect about the legal charge or allegations levelled against him. This should be done in the language the suspect understands or with the assistance of an interpreter.

However, there exists an exceptional situation when the person is arrested while committing the alleged offence (***in flagrant delicto***). The judicial police officer is still bound to inform the person about the reason of his arrest and the offence alleged

to be committed. This is because the suspect benefits from the presumption of innocence.

4.3.2 The Right to a Humane Treatment and Freedom from Torture

Section 122 (1)(a) of the CPC provides that any suspect remanded in custody of the police shall be treated humanely, both morally and materially. In other words, physical or mental constraints, torture, violence, threats or pressure whatsoever which is likely to compromise or limit the person's freedom of action or decision, his memory or sense of judgment is absolutely forbidden. The suspect must have a clean environment, a descent room, and all available apparels to make life comfortable for him during his detention**.**

As per Section 277-3 (5) of the Cameroon Penal Code torture is defined torture as: " *any act by which acute pain or suffering , either physical, mental, or psychological, is intentionally inflicted to a person by a public servant, a traditional leader or any other person acting in the course of duties either at his own instigation or with his express or implied consent, in order to obtain information, or confessions from that person or from another, to punish her for an act that she or any other person has committed, or is presumed to have committed, to intimidate or overawe her or any other person, or for any other motive based on any discrimination*."

In its Sub section 6, the Penal Code adds that: "*No exceptional circumstances, whatever they are, whether a state of war or threat of war, internal political stability or state of exception, may be invoked to justify torture*"

4.3.3 Presumption of Innocence

Under Cameroonian law, the principle of the presumption of innocence has constitutional value. According to the preamble of the 1996 Constitution: "Everyone

is presumed innocent until proven guilty in a trial conducted in strict compliance with the rights of the defence' (GOC, 1996).

This principle is re-affirmed by Section 8 of the Criminal Procedure Code (CPC) which states that: "*Any person suspected of having committed an offence shall be presumed innocent until proven guilty at a trial at which he is afforded all the guarantees necessary for his defence. The presumption of innocence applies to the suspect, the defendant and the accused*"

Another standard that protects the presumption of innocence in Cameroon, is that the burden of proof lies on the Prosecution to establish the guilt of the suspect.

4.3.4 Right to Counsel

It is the duty of the judicial police officer to inform any person arrested and detained in police custody of his right to seek Counsel and shall effectively assist the suspect to secure a Lawyer of his choice, at the expense of the suspect.

The role of Counsel at this stage is basically advisory and a companion, making sure the rights of the suspect are not violated, such as the respect of time limits of detention, recording of statements from the suspect, and the calling of relevant witnesses (Fongang et al., 2019).

4.3.5 Duration of Detention

The Cameroonian Criminal Procedure Code makes it mandatory for any suspect arrested and detained by the judicial police officer to be brought before the competent State Counsel at most 48 hours after his arrest.

In cases where the person is arrested on the strength of a warrant of arrest, the law provides for the same time limit of 48 hours for the arrested person to be presented before, and interrogated by the officer that issued the warrant for the arrest.

4.3.6 Right to Temporary Release (Bail)

In the course of the investigation, the judicial police officer has the powers to grant temporary release to a detained suspect where the alleged offence to have been committed is either a misdemeanor or a simple offence.

4.3.7 Right to Medical Care and Family Visit

Persons under judicial police custody have a right to physical and mental health and to be consulted and treated by a medical officer of their choice, and at their expense when they take ill. The Medical Doctor, supra, may be assisted by a colleague designated by the competent State Counsel.

4.4 The Legal Department (State Counsel's Chambers)

At the close of the investigations, the judicial police officer conducts the suspect with the case file to the Chambers of the competent State Counsel.

4.4.1 Structure of the Legal Department

In the administration of criminal justice, States have bodies that are charged with public prosecution. In Cameroon, the body charged with the duties and responsibility of public prosecution is known as the Legal Department and it is headed by the State Counsel.

The Legal Department is attached to all the Courts as defined in the various Instruments creating the Court. It is the public prosecutor in all matters, and is governed by the rules of indivisibility and hierarchical subordination. Any judicial act performed by any Magistrate of the Legal Department is presumed to be done in the name of the entire Department.

4.4.2 Functions of the Legal Department

The functions of the Legal Department in the criminal justice system are well defined by the Criminal Procedure Code. It coordinates the search of offences, institutes and carries out prosecutions, and issues any warrants necessary for the institution and prosecution of criminal action.

The Legal Department is present during all stages of criminal investigations, the pre-trial phase, at the preliminary inquiry, the trial, and post- trial phase (Fongang et al., 2019).

As regards its powers of investigation, Section 78 (1) of the Criminal Procedure Code states that: *"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 who judicial police duties are assigned by law".*

This is re-iterated by Section 137 (1) of the same Criminal Procedure Code which provides that:

"*The State Counsel shall direct and control the operations of the officers and agents of the judicial police*."

And under Sub section 3, *the State Counsel may at any time and place act as a judicial police officer.*

As a corollary to the powers of investigation, the State Counsel sets into motion the machinery of criminal justice in the prosecution of criminal matters. He orders for parties to be summoned before the Courts, executes bench warrants, assembles evidence against accused persons, and makes submissions in Court at the end of the hearing for conviction or of the discharge and acquittal of the accused.

In the execution of Court decisions, Section 545 (2) of the Criminal Procedure Code states that:

"A bench or remand warrant or a decision granting bail or any other Court order shall be immediately executed at the instance of the Legal Department, which shall forward them directly to the authorities responsible for their execution".

4.5 The Rights of the pre-trial detainee before the State Counsel

This section explores the main rights accorded pre-trial detainees by the Cameroonian Criminal Code at the level of the State Counsel.

4.5.1 The Presumption of Innocence

The suspect is presumed innocent until found guilty by a competent and impartial Court where the person has been tried with enough safeguard for his defence. The pre-trial detainee is still a suspect and shall be treated as such until he is convicted by a competent Court.

4.5.2 The Right to Bail

The suspect has the right to be granted bail except the law provides otherwise. Bail is a constitutional right and at every stage of the criminal procedure, it is a safeguard and guarantee for the defence.

4.5.3 The Right to Counsel

The suspect brought before the State Counsel has the right to be assisted by Counsel inter alia, to properly prepare for his defence, if the matter is eventually sent to Court. Counsel may also be useful before the State Counsel in securing the release of the suspect on bail. These are constitutional safeguards to forestall any violations of the rights of the suspect.

4.5.4 The Right to Remain Silent

The suspect has the right to remain silent and make a statement only in Court. This is a necessary safeguard against self-incrimination and extortion of a declaration from the suspect which may be prejudicial against the suspect in Court.

4.6 The Examining Magistrate

As earlier noted, the criminal justice process in Cameroon passes through three major stages: the stage of judicial police investigation under the supervision of the State Counsel, the Preliminary Inquiry (PI) stage by the Examining Magistrate, and the trial stage by the competent Court. While the first and last stages are well known to the public, the second stage is completely strange and new to the users of judicial services in Cameroon (Fongang, et al., 2019).

According to Section 142 (3) of the Criminal Procedure Code (CPC) the Examining Magistrate is a Judicial Officer on the Bench charged with the duties to search for ingredients pointing to the link between the defendant and the offences alleged to have been committed.

On the other hand, the Examining Magistrate also has the duty to bring out ingredients to show that the defendant did not commit the alleged offence to warrant the defendant to stand trial in Court.

4.6.1 Scope

In the course of his duties, the Examining Magistrate carries out criminal investigation by way of a *preliminary inquiry*. The law makes it mandatory for the Examining Magistrate to carry out preliminary inquiry in cases of felonies committed by adults and minors as well as misdemeanors committed by minors without adult accomplices.

4.6.2 Method of Seizing the Examining Magistrate

The Examining Magistrate is called upon to carry out preliminary inquiry each time he is seized by the State Counsel. The judicial act by which the State Counsel seizes the Examining Magistrate is called a '*holding charge'*. It is accompanied by the report of the investigating judicial police officer.

However, under the same Code, any person can also seize the competent Examining Magistrate directly whenever they have suffered pecuniary loss resulting from felonies or misdemeanors. Under this procedure, the Examining Magistrate is seized by an individual through '*a complaint with Civil Claim*'.

4.6.3 Competencies of the Examining Magistrate

In the discharge of his duties, the Examining Magistrate has three main competences:

- **Competence *ratione materiae* (material competence).**

This concerns the type of offences that are subject to a preliminary inquiry.

Under Section 142 of the CPC, the material competence is provided as follows:

a) *Preliminary inquiries shall be obligatory in cases of felonies unless otherwise provided by law*

b) *They shall be discretionary in cases of misdemeanor and simple offences*.

Section 700 of the CPC makes it mandatory for a preliminary inquiry to be carried out for all felonies and misdemeanors committed by persons below the age of 18.

- **Competence *ratione loci*** (Place of commission of offence).

This refers to the place of commission of the alleged offence.

In the exercise of criminal jurisdiction, the general rule has been set out in Section 294 of the CPC that:

a) '*A Court shall have jurisdiction over a case when it: a) the Court of the place of the commission of the offence;*

b) the Court of the place of residence of the accused, or C) the Court of the place of arrest of the accused."

- **Competence *ratione personae*** (status of persons)

Competence *ratione personae* refers to *the persons against whom a preliminary inquiry shall be conducted, including issues of immunity, special procedures and others*.

4.7 Duties of the Examining Magistrate

As a Magistrate of the Bench, the Examining Magistrate enjoys his independence. He is therefore guided only by the law and his conscience in the exercise of his duties. These duties include Impartiality, Confidentiality, and Diligence

4.7.1 Impartiality

In the course of the preliminary inquiry, the Examining Magistrate acts in like manner as a judicial police officer, by the search of evidence and to ascertain whether or not the alleged offence has been committed by the defendant. This is governed by Section 151 (2) of the CPC which provides that: "*The investigation of the Examining Magistrate shall be directed to the search for ingredients favourable or unfavourable to the defendant."*

4.7.2 Confidentiality

The Criminal Procedure Code expressly states that the preliminary inquiry shall be carried out in the Chambers of the Examining Magistrate. The secrecy of the proceedings is well articulated in Section 154 of the Code to the effect that:

'*Preliminary inquiry shall be secret. And that anyone participating in the proceedings shall be bound by professional secrecy, subject to the penalties provided for in Section 310 of the Penal Code'.*

4.7.3 Diligence

In carrying out the preliminary inquiry, the Examining Magistrate is guided by diligence. This imposes on him the duty to be prompt and to avoid unnecessary delay. The objective is to make sure the defendant does not suffer untold hardship especially if the defendant is in remand custody. The preliminary inquiry must therefore be conducted within a reasonable time limit to avoid an abuse of due process.

4.8 Powers of the Examining Magistrate

In carrying out of the preliminary investigation (PI), the Cameroon Criminal Procedure Code has given certain powers to the Examining Magistrate which may be summarized as follows:

4.8.1 Orders and Warrants

The Examining Magistrate has the powers to issue summonses, bench warrants, remand warrants, production warrants, and search warrants. These are all Court processes and written documents by which the Examining Magistrate issues to either secure the appearance of persons before him, or remand the person in custody, and finally, for the search and seizure of material items used for the commission of the alleged offence or procured during the commission of the alleged offence.

4.8.2 Place and Time of the Preliminary Inquiry

The Cameroon Criminal Procedure Code also gives the Examining Magistrate extensive powers to decide where and when to carry out any preliminary inquiry. Traditionally, he conducts the inquiry in Chambers or *in camera*.

However, under Section 177 of the same Code, the Examining Magistrate may

"Visit any area within his jurisdiction to carry out all measures of investigation necessary for the discovery of the truth, and in particular conduct searches and seizure

Under Subsection 2, the Examining Magistrate *may also visit areas outside his jurisdiction after having notified the State Counsel of the area concerned".*

4.9 Rights of the Pre-Trial Detainee before the Examining Magistrate

In this section, a look at the provision of the Criminal Procedure Code as concerns the main rights accorded defendants at the instance of the Examining Magistrate is performed.

4.9.1 Presumption of Innocence

Section 8 of the CPC is clear on this. It provides that:

a) *Any person suspected of having committed an offence shall be presumed innocent until his guilt has been legally established in the course of a trial where he shall be given all necessary guarantees for his defence*

b*) The presumption of innocence shall apply to every suspect, defendant and accused*

It is thus clear from the above provision that the defendant is presumed innocent before the Examining Magistrate until the defendant is convicted by the trial Court.

4.9.2 Right to be Notified

According to Section 167 of the CPC, whenever a defendant appears before the Examining Magistrate for the first time, the latter is obliged to fill the *preliminary inquiry charge sheet* on which he ascertains the identity of the defendant, then informs him of the charge or charges proffered against him as well as the provisions of the law alleged to have been violated by the defendant.

Under Section 170 (2) of the CPC, the Examining Magistrate is bound to inform the defendant of his rights that:

(a) he is free to reserve his statement

(b) he has the choice to prepare his defence either without counsel or with the assistance of one or more counsel

(c) where he is represented by more than one counsel, he shall give the name and address of one of them to whom all summonses and other processes shall be addressed

(d) where he cannot immediately brief counsel, he shall be free to do so at any time before the close of the inquiry.

Equally, Section 700 (4) of the CPC provides that where the defendant is a minor, the Examining Magistrate shall inform his parents, guardians or custodians that legal proceedings have been initiated against the minor.

4.9.3 Right to Counsel

As per Section 167 of the CPC, it is mandatory for the Examining Magistrate to inform the defendant that he is free to seek the services of one or more legal Counsels or that he may proceed without one. The Examining Magistrate is bound to mention the name of the Counsel and / or the choice of the defendant in the Preliminary Inquiry charge sheet or record book.

4.9.4 Right to Bail

Under the Cameroonian criminal procedure code, the defendant has a right to bail at the instance of the Examining Magistrate *suo moto* or upon application of the defendant or his Counsel except where expressly prohibited by law. The application for bail must be forwarded to the State Counsel for his submissions. The Examining Magistrate, shall, by a reasoned ruling, upon receipt of the State Counsel's

submission, grant bail to the defendant by an act called '*order for bail'*. The bail granted may be with or without surety, depending on the nature of the offence, the social status of the defendant, or whether the defendant is a minor.

4.10 The Trial Court

At the close of the criminal investigations, the parties are heard in a trial Court.

Definition of a Trial Court:

Section 288(1) of the Criminal Procedure Code (CPC) defines a trial Court as:

a) '*a legal body responsible for hearing and determining any matter brought before it in compliance with the law and where applicable, pronouncing the penalty or measure provided for by law'*.

b) *Jurisdiction in Criminal matters*

In Cameroon, the Courts vested with original jurisdiction to hear and determine criminal law cases and thereby having a direct bearing on the rights of pre-trial detainees are:

- Court of First Instance,
- High Court,
- Military Tribunal, and the Special Criminal Court.

The first two are Courts of ordinary jurisdiction, while the last two are Courts of special jurisdiction (Fongang et al., 2019)

c) *Jurisdiction to entertain cases*

According to Section 294 of the CPC, the Court shall have jurisdiction over cases when it is:

- the Court of the place of the commission of the alleged offence,
- the Court of the place of the residence of the accused person, or
- the Court of the place of arrest of the accused person

4.10.1 Court of First Instance

In the trial of criminal matters, the territorial jurisdiction of the Court of First Instance is the Sub-Division. However, its territorial jurisdiction may exceed more than one Sub-Division. The Court sits at the chief town of the Sub-Division.

In terms of material competence, the Court of First Instance has jurisdiction in criminal matters:

- to hear and determine offences classified as misdemeanors or simple offences,
- to hear applications for bail of persons detained or charged with criminal offences within its jurisdiction,
- to try felonies committed by minors without adult co-offenders or accessories.

4.10.2 The High Court

The High Court has territorial jurisdiction which covers an administrative Division. The seat of the High Court is at the chief town of the Division. The High Court has competence in criminal matters to entertain cases related to:

- Felonies and related misdemeanors,
- hear and determine applications for the bail of persons detained or charged with offences within its jurisdiction,
- entertain applications for the immediate release **(Habeas Corpus**) of persons illegally detained.

4.10.3 The Military Tribunal

The Military Tribunal is set up in each regional headquarters. Its jurisdiction covers exclusively to try and determine:

- military offences and war crimes,
- crimes against humanity and genocide,
- offences related to acts of terrorism and the security of the State,

- armed robbery,
- offences committed by servicemen, with or without civilian co-offenders or accomplices in a military establishment or in the course of their duties.

4.10.4 The Special Criminal Court

The Special Criminal Court is set up in the capital town of Cameroon with a mandate to:

"Hear and determine matters, where the loss amounts to at least 50 million CFA Francs relating to misappropriation of public property and other related offences provided for in the Penal Code and International Conventions ratified by Cameroon".

4.10.5 The Rights of the Pre-Trial Detainee before the Courts

Below, the main rights of pre-trial detainees when undergoing criminal trial before a competent Court in Cameroon are highlighted These rights include but are not limited to:

i) Equality before the law

The right to equality before the law relates to the equal treatment of persons in the application and enforcement of the law. At the level of the trial Court, it means that all persons shall be treated in like manner, following laid down procedure of fairness, equity and due process.

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ii) Right to be informed of the charges

Any person brought before the Court for trial by way of a charge or an indictment must be promptly informed about the charges and offences he is alleged to have committed. This is known as the **'arraignment'** of the accused.

iii) Right to Plea

In the course of the trial, once arraigned by the trial Judge, it is mandatory for the accused to plead either guilty or not guilty. The plea determines the mode of continuation of the trial. Where the accused pleads guilty, the trial Judge shall proceed to a Ruling on his plea of guilty and to the sentencing of the accused. In cases where the accused pleads not guilty, the trial will continue by calling witnesses to testify against the accused.

iv) Presumption of Innocence

According to the preamble of the 1996 Constitution:

*Everyone is presumed innocent until proven guilty in a trial conducted in strict compliance with the rights of the defence (*GOC, 1996).

This principle is re-affirmed by Section 8 of the Criminal Procedure Code (CPC) which succinctly states that:

1) *Any person suspected of having committed an offence shall be presumed innocent until his guilt has been legally established in the course of a trial where he shall be given all necessary guarantees for his defence*
2) *The presumption of innocence shall apply to every suspect, defendant and accused.*

The principle of the presumption of innocence is also captured in Section 307 of the CPC where it provides that: "the *burden of proof shall lie upon the party who institutes a criminal action."*

And Section 310(1) reaffirms the principle by stating that: *The Judge shall be guided in his decision only by the law and his conscience.*

Subsection 2 adds that: *"His decision shall not be influenced either by public rumour or by his personal knowledge of the facts of the case (3) His decision shall be based only on the evidence adduced during the hearing"*

v) The Right to Counsel

At the stage of the trial, the accused has the right to be assisted by any Counsel of his choice and at his expense. However, where the accused is being tried for a felony punishable with the death sentence or with life imprisonment, the trial Judge is bound to assign any Counsel to the accused if he does not have one. In this case, the fees of the Counsel shall be borne by the State.

vi) Right to be Present during the Trial

Under Section 340 (2) of the CPC, the trial Judge is obliged to readily adjourn a matter whenever an accused who was duly served in person is absent, save there is a tangible reason for the absence.

However, Section 350 of the same Code, makes it possible for the accused to apply to be tried in absentia if the offence for which the accused stands trial is punishable with a fine or with a term of imprisonment equal to or less than two years.

vii) Temporary Release (Right to Bail).

In the course of the trial, the trial Judge has discretionary powers to grant bail where the alleged offence is a misdemeanor and felonies not punishable with life imprisonment or death. Cases under these categories necessitates the trial Judge to consider factors such as the gravity of the offence, the possibility of escape, the personality of the accused, the colour of his office and the severity of the punishment.

Generally, bail is granted under Cameroon law against a guarantee or a surety, who undertakes to produce the person when so requested.

Another alternative is self-bail, accorded to persons of known repute, high social standing in society such as retired civil servants.

In cases of simple offences, bail is as of right. The accused shall under no circumstances be remanded in prison custody.

However, under Cameroon criminal law, there is an exception to the right to bail, where the accused is charged with a felony, that is, offences that carry a life imprisonment or death sentence.

viii) Habeas Corpus

Key to the administration of criminal justice is the Writ of Habeas Corpus. It is both a fundamental right under the Cameroon criminal justice system and a remedy. It is available to the accused for illegal confinement. The High Court has the competence and jurisdiction to issue the writ of Habeas Corpus to demand for the immediate and unconditional release of persons illegally detained by either judicial police officers, the Examining Magistrate, the Legal Department or administrative authorities.

ix) Right to a Fair Trial

Under the Cameroonian criminal justice system as enshrined in the criminal procedure code, the principle of the right to a fair trial entails the right to be presumed innocent, the respect for the rights of the defence, and the principle of equality of arms as well as for the trial to respect reasonable time limits.

x) Right to be Tried in a Language Understood by the Accused

The right to be tried in a language understood by the accused is a fundamental right of the accused and is provided for by Section 354 of the CPC. The law makes provision for the appointment of an interpreter at the expense of the public treasury.

xi) Right to Appeal

Any accused person who is unsatisfied with the decision of the Court has the right to file an appeal to the relevant appeal Court within a period of ten days from the date of pronouncement of the decision.

xii) Right to Recusal

Where there is a conflict of interest or enough reasons to expose the partiality of a trial Judge, the accused has the right to file for his recusal. Reasons for such recusal may be based on blood and family relationships, economic interest, participation in previous proceedings, and an acquaintance with one of the parties.

CHAPTER 5

THE ABUSE OF THE RIGHTS OF PRE-TRIAL DETAINEES IN CAMEROON

5.1 An Overview:

Cameroon is a signatory to and has ratified various Treaties and Conventions relating to international standards and safeguards on the protection of the rights of pre-trial detainees. This justifies the application of these standards and safeguards by the Cameroonian criminal justice system and they form part of the corpus of human rights legislation in the country.

However, Cameroon is one of the top ten countries in Africa and the first in Central Africa that has the highest number of pre-trial detainees with a record 58.1% out of the total prison population (UNCHR, 2020; ICPS, 2021).

This chapter demonstrates how the Cameroonian criminal justice system derogates from its international legal commitments vis-à-vis the protection mechanisms accorded pre-trial detainees. The derogations examined are those that provide adequate safeguards against arbitrary arrest and detention, the protection of individual liberty, and the guarantee of a fair trial.

5.2 Arbitrary Arrest and Illegal Detention

As a means to forestall criticism of the incumbent regime, law enforcement officials in Cameroon violate their obligations under international law by systematically and arbitrarily arresting and detaining civilians, especially journalists, human rights activists, and members of opposition parties (Dicklitch, 2002).

Accordingly, the Human Rights Committee has held that the rights of a suspect are violated when he is arrested and detained without an arrest warrant, and he is neither charged nor informed of the reason for his arrest (HRC, 2007).

To further lend more credence to the abuse of the rights of pre-trial detainees, law enforcement and administrative authorities randomly take English-speaking citizens into custody without informing them of the charges against them and without giving them access to legal procedures to challenge the legality of their detention (CAT, 2017).

In its Opinion adopted by the *Working Group on Arbitrary Detention* at its Eighty-seventh session, the deprivation of liberty of *Amadou Vamoulke,* the former General Manager of the Cameroon Radio and Television Corporation (CRVT) for six years without trial is arbitrary and thus violates article 9 and 14 of the ICCPR. In addition, the Working Group expressed concern about the more than 500 people reportedly arrested after opposition-led protests on 22 September 2018 with over 200 still in detention (HRC, 2020).

In a report by the German State-owned Television Station *DeutchWelle*, a German citizen, Wilfred Siewe, was arbitrarily arrested and detained in the Yaoundé maximum security prison where he spent nearly two years without trial (DW, 2020).

In a similar report by Amnesty International, the arrest and detention of *Rebecca Enonchong*, a prominent Tech entrepreneur on the 9th of August 2021, by the Cameroon Gendarmes without a warrant of arrest was arbitrary (AI, 2021; CNN, 2021).

The right to personal liberty thus continues to be violated with *impunity* in Cameroon (CPJ, 2011), as marked, inter alia, by *numerous cases of continued arbitrary arrests and detention, often holding persons for prolonged periods without charge or trial and at times incommunicado* (USSD, 2020).

By *Communication No.266/03* in the case of *Kevin Mgwanga Gunme et al / Cameroon*, the *African Commission* held that the Government of Cameroon violated Article 6 of the African Charter for having arrested 14 individuals, detained for days, sometimes for months without trial before being released. And that:

"*….no State Party to the Charter should avoid its responsibility by recourse to the limitations and "claw back" clauses in the Charter …The Charter cannot be used to justify violations of sections of it. The Charter must be interpreted holistically and all clauses must reinforce each other. The purpose or effect of any limitation must also be examined, as the limitation of the right cannot be used to subvert from the popular will, as such cannot be used to limit the responsibilities of State Parties in terms of the Charter" (*ACHPR, 2003).

In Suit *No. HCB/023C/2012, The People of Cameroon vs Kichah Pascal &1 Other, unreported,* the High Court of Boyo holden at Fundong made use of the *Writ of Habeas Corpus* to order for the immediate release of the suspects who were arbitrarily arrested and detained for 17 days by a Judicial Police officer without an arrest warrant.

The same High Court of Boyo Division holden at Fundong in the case of *The People of Cameroon vs Sali Fridolin, (suit No. HCB/126C/2015)* held that the arrest and detention of a pregnant woman for 6 days without a warrant of arrest violated her right to liberty and ordered for her immediate release.

5.3 Prolonged Pre-trial Detention

Although Section 221 of Cameroon's Criminal Procedure Code provides for a maximum of eighteen months of pre-trial detention, it often takes several years for a majority of detainees to appear before a Judge (Yanou, 2009).

In *Communication No.416/12, the African Commission* opined that the Government of Cameroon violated Article 6, 7(1)(b), and 7(1) (d) of the African Charter for the prolonged detention of close to seven (07) years without trial of *Jean Marie Atangana Mebara* whereas the maximum detention period is eighteen (18) months (ACHPR, 2012).

In addition, *Law No. 90/054 of the 19th of December 1990* on the Maintenance of law and Order gives administrative authorities the power to order a person's detention for a renewable period of fifteen days to fight banditry**.** This measure of pre-trial detention by the administrative authorities is used as a means of punishment of civilians instead of the maintenance of law and order, considering that the law does not limit the number of times the extension can be made (Enonchong, 2003). Furthermore, and according to the *2022 Bertelsmann Transformation Index*, it is common for the government to arbitrarily detain hundreds of people and hold them for long periods in administrative detention (Bertelsmann Stiftung, 2022).

Cases of unfair and prolonged pre-trial detentions have constantly been raised by the Human Rights Committee for instance, in *Engo v.Cameroon (*HRC, 2009), where the accused was kept in pre-trial detention for seven years or as in *Akwanga v.Cameroon* (HRC, 2011), where the suspect was detained for two and a half years without any information about the reasons for his arrest.

The case of *Mukong v.Cameroon(1994*) also highlights the unfair use of pre-trial detention in Cameroon. The Human Rights Committee held that failing to inform the suspect about the reasons for his arrest and to bring him promptly before a Judge amounted to a violation of the suspect's rights under article 9 of the ICCPR (HRC, 1994). And that in *Gorji-Dinka v. Cameroon (2005)* the character of the remand of the suspect was both '*unnecessary and unreasonable'* (HRC, 2005).

In the case of *Sali Magaji & 1 Or v. The People (2016*) the High Court of Boyo Division holden at Fundong ruled that keeping the suspects in custody for a period longer than the maximum sentence of the offence amounted to a violation of their constitutional right to liberty.

Accordingly, the situation of lengthy pre-trial detentions in Cameroon is '*endemic*' **(**Freedom House, 2010).

5.4 Torture and Ill-treatment

The *Human Rights Watch* report on 2019 events notes that: "*there was widespread use of incommunicado detention and torture of persons by the military on mere suspicion of their participation or aid to the separatist movement. The torture methods used include severe beatings and near-drowning, as well as other ill-treatment to force suspects to confess to crimes or to humiliate and punish them*" (HRW, 2020).

In yet another report released by *Amnesty International* in March 2022, it has been documented that: *"more than 1,000 Anglophone people arrested between 2016 and 2021 about the Anglophone crisis are behind bars in at least 10 prisons across the country, including 650 in Buea, 280 in Yaoundé, 181 in Douala, and 101 in Bafoussam. Many of them were held incommunicado and suffered torture and other ill-treatment, including beatings and lashes, deprivation of food and water for days, mock drownings, and forced extraction of fingernails. Dozens have been arbitrarily detained"* (AI, 2022).

Furthermore, the *Human Rights Committee* held in the case of *Mbongo Akwanga v. Cameroon* (2011) that: "in *light of the information provided to the Committee and, in particular, the detailed allegations of torture suffered by the author and the impact on his health shown by the three medical certificates submitted, the Committee concludes that the State party has violated article 7 of the ICCPR*" (HRC, 2011).

In the case *of Alhaji Musa v. The People of Cameroon* (2016), the Boyo High Court holden at Fundong held that the 'pulling of the hair' of the suspect without his consent while under police custody awaiting trial amounted to torture within the meaning of Section 277-3(5) of the Cameroonian Penal Code.

In yet another case, the Boyo High Court holden at Fundong held in Suit No. *HCB/005c/2016, The People of Cameroon v. Tufoin Dieudonne* (2016) that the

detention of the accused in a chamber in the dark for four (04) days, incommunicado, without the opportunity of being visited by his family was torture and ill-treatment.

5.5 Violation of the Presumption of innocence

The *African Commission of Human and Peoples' Rights* has opined that the goal of the right to be presumed innocent is to avoid passing judgment on a suspect before a ruling is issued by the competent court. In other words, it is a matter of refraining from influencing the decision of the trial court. Hence, where a Minister of Justice who has direct links with the judicial and prosecuting authorities and the Minister of Communication who speaks officially on behalf of the Government make statements against a suspect who was still awaiting a trial that he 'is not innocent' of embezzlement, it violates his rights under art. 7(1)(b) of the Charter (ACHPR, 2012). The Courts have been active in denouncing the violation of the principle of the presumption of innocence. For instance, in the *locus classicus* case of *The People Vs Nya Henry and 04 others, (2005)* it was held that the accused person's constitutional rights to the presumption of innocence had been breached when the Public Prosecutor refused to carry out a Court order to release the said accused person on bail.

In his Ruling the Learned Judge, *Bea Abegnego Kalla*, J, as he then was, outlined as follows: That: *"Our constitution in its preamble provides: Every accused person is presumed innocent until found guilty during a hearing conducted in strict compliance with the rights of defense'. This presumption of innocence, in my considered opinion, is a matter of fact and law. By law, I understand it to mean it should be provided by the legislation of the system in question, and this has been taken care of as quoted above by our constitution. But the factual situation is whether the department in charge of public prosecution has treated the people as such. I have heard from the Counsel for the department, from the clerk of the Court, and the*

defendants themselves that they were not released after the Court order as a result of instructions from the Procureur General of the North West Province, the highest officer I know to be in charge of public prosecutions in the province…. The question then is whether these persons who have been charged before me have been presumed innocent? My answer to that question is that, by refusing to carry out the order of the Court releasing them on bail, these people have been brought before me as people presumed guilty that I may convict. This makes me conclude that the constitutional right of the accused of presumption of innocence has been violated".

A similar situation arose in the case of *Dr. Luma et 18 others v. The People (2005)* where the court, in granting bail to the accused persons, held that by detaining the accused persons for three weeks without charge, the prosecutor had infringed their human rights to the presumption of innocence and fair trial.

The Court of First Instance Fundong in the case of *The People v. Bouba Gagari (2014)* stood by a similar position by holding that the Prosecuting Counsel violated the accused right of the presumption of innocence by keeping him in custody for three (03) days after having been granted bail by the Court.

5.7 Denial of Access to Counsel

There are numerous documented reports of lawyers being denied access to their clients during the pre-trial and trial process, and the lawyers themselves face threats of violence for defending their clients' legal rights **(**University of Oxford, 2019).

Human Rights Watch reports that lawyers of the Cameroon Bar Council decided to stage a five-day strike in the year 2019 because of a *systematic denial of access* to their clients in detention facilities across the country. The lawyers were also protesting public authorities' alleged refusal to acknowledge or respond to their various written requests, the prolonged and unlawful detention of their clients, and the extraction of confessions under torture. The lawyers further claim that they are

'*continuously being threatened, arrested and detained* while trying to do their work (HRW, 2019).

The *African Commission of Human and Peoples' Rights* has held that the authorities in Cameroon violated the *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa* when lawyers were only able to have access to the investigation file five (5) months following the detention of their client, *Jean Marie Atangana Mebara*, a former Secretary-General at the Presidency and former Minister of Higher Education (ACHPR, 2012).

In the case of *Ngam Emmanuel v. The People (2017)* the Boyo High Court holden at Fundong ruled that, by refusing to take down the name of the defence Counsel and to allow him to appear for the defendant during the course of a preliminary inquiry, the Examining Magistrate violated the defendant's right to Counsel under Section 417 of the Cameroon Penal Code.

The issue of the right to Counsel came up for determination again in the case of *The People v. Vumoh Tegah Eugene (2018*), the Boyo Court of First Instance holden at Fundong held that by refusing a Lawyer to enter a legal appearance for the accused person as an '*amicus curia',* it violated his right to Counsel.

5.7 Unfair Trial

During its last fifth periodic review, The *Human Rights Committee* has in its 2017 *Concluding Observations* note the practice of unfair trials where at *least 362 persons were tried for terrorism before military courts*' (CAT, 2017). The Committee had earlier raised its concern about the jurisdiction of *'military courts over civilians'*, overcrowding, inadequate medical care, and food in prisons (UNGA, 2018).

The *African Commission* has held that trying the accused persons who were not military personnel (civilians) by the Military tribunal amounts to a violation of their right to a fair trial under Article 7(1)(b) of the African Charter. And the same

violation is endorsed where the accused persons are tried in a language they did not understand, without the help of interpreters (ACHPR, 2003).

In the case of *Pagnoulle (on behalf of Mazou) v. Cameroon, via Communication No.39/90 (2000)*, the African Commission held that two (2) years of proceedings without any trial and without being given any reason for the delay constituted a violation of the right to be tried within a reasonable time (ACHPR, 1997).

The UN Working Group on Arbitrary Detention was quick to add in the case of *Michel Thierry Atangana Abega v. Cameroon* that: "*when the violation of the right to a fair trial is of such gravity, it gives the deprivation of liberty an arbitrary character, especially where there is the lack of legal grounds for detention"* (HRC, 2013).

Furthermore, a UN General Assembly Summary of Stakeholders submissions on Cameroon's *Universal Periodic Review* noted that: '*the English language is excluded in courts and that anglophone detainees are not informed of the charges for which they were accused*" (UNGA, 2018).

Similar violations of the right to a fair trial were reported by *Human Rights Watch* in September 2019 when ten leaders of the separatist movement passed through a trial '*which was conducted in French without adequate translation though the defendants were entitled to a trial in English, their mother tongue and an official language in Cameroon and it took place after serious violations of the defendants' rights in detention. Defence lawyers accused the judges of bias and withdrew from the proceedings after the main military judge threatened them with arrest for raising objections"* (HRW, 2019).

In the same vein, the US State Department report for 2019 events in Cameroon noted that:

"The *constitution and law provide for the right to a fair and public trial without undue delay, and the defendant is presumed innocent. Authorities did not always*

respect the law. Pretrial suspects were frequently held in the same quarters as convicted criminals. Defendants have the right to be present and to consult with an attorney of their choice, but in many cases, the government did not respect this right, restricting access to lawyers, particularly in cases of individuals suspected of complicity with Boko Haram, Anglophone separatists or political opponents." (USSD, 2020).

In judgment *No. 178/P of 13 May 1993*, in the case of *Angoh Aloysius Ebefi v. The People & Ngankam Rigobert* (1993), the Cameroon Supreme Court quashed the decision of the Littoral Court of Appeal for having failed to provide an interpreter at the disposal of the accused person during the trial, thereby violating his right to a fair trial.

This position was echoed by the Boyo High Court holden at Fundong in *Suit no. HCB/289c/2018, The People v. Ndam Peter Njang* (2018), where the trial judge held that by imposing the English language on the accused who had indicated through his lawyer that he did not understand the imposed language and having failed to provide an interpreter as provided by Section 354 of the CPC, the accused right to a fair trial was violated.

CHAPTER 6
GENERAL CONCLUSIONS

6.1 Causes for the abuse of pre-trial detentions

In the previous chapter, a detailed analysis of some major derogations from the implementation of international standards and safeguards in the protection of the rights of pre-trial detainees in Cameroon was undertaken.

The present chapter will proffer the main causes of the abuse of pre-trial detention, possible available remedies for violations, and perspectives in the form of recommendations for a better application of the international standards and safeguards in Cameroon's criminal justice system.

In the field of studies on pre-trial detentions worldwide, many theories have been developed for the reasons for the excessive over-use of pre-trial detentions. These theories are applied to our findings in Cameron. There exist a trend of disregard and disrespect for the available *legal framework* by the main actors in the criminal justice system. For instance, Section *118 et seq* of the *CPC* makes it mandatory for the judicial police officer to detain an individual for a maximum time limit of 48 hours, renewable once and in exceptional cases with the written approval of the State Counsel.

In the same vein, Section 122 of the CPC sets down that the suspect shall immediately be informed of the allegations brought against him, and that he shall be treated humanely both morally and materially. The same section dictates that the suspect shall not be subjected to any physical or mental constraint or to torture and may at any time be visited by Counsel and members of his family.

Another area of disrespect of the legal framework concerns that of remand in custody. Section 221 of the CPC provides that the period of remand in custody shall not exceed 6 months, renewable thrice, making a total of 18 months by various

judicial authorities within the criminal justice system. The regime of *bail* is another area of dysfunction. According to Section 222 of the CPC, the Examining Magistrate: *"may, at any time before the close of the preliminary inquiry, and of his own motion, withdraw the remand and grant bail"* or bail may be granted "*on the application of the defendant or his Counsel and after the submission of the State Counsel, when the defendant enters into a recognizance to appear before the Examining Magistrate wherever convened and undertakes to inform the latter of his movements*".

Section 224 of the same Code imposes conditions to be fulfilled by anyone in lawful custody on remand in order to be admitted to or to be granted bail, to ensure his appearance. These include but are not limited to the deposit of an amount of money, or to make available sureties.

Recourse is also made to Law *no. 2009/004 to organize Legal Aid* in Cameroon, which allows those who cannot afford legal assistance from independent Lawyers to apply for free legal aid for representation by Counsel in courts in their defence. Section 19 of the law, supra, enumerates the list of documents to be attached to an application under the legal aid regime. The actual situation looks very complicated for most of the '*poor' detainees awaiting trial who cannot afford it or whose families are far from the relevant jurisdictions where they are detained.* And as the United States Department of State reports indicate, lawyers often refuse to defend the poorest clients because of inadequate government compensation.

However, *Advocates for Human Rights* observes that the practice is most often than not, at variance and not in tandem with the legal framework. Judges rarely grant bail pending trial and even when bail is granted, its conditions are often hard to meet for the detainees. There is a long-standing nexus between human rights culture and the enforcement of human rights in every given community as this shape the attitude of rights holders and duty bearers.

The above theory fits squarely with the situation in Cameroon dominated, from time immemorial, by a political culture rooted in attitudes about executive ascendancy, deference for authority, and lack of public information on human rights obligations. In general terms, public authorities disregard and disrespect human rights due to their expectation of deference from the public and the lack of public awareness of the rights they possess and enforcement mechanisms. The result is numerous human rights violations. This has shaped the formation of a negative attitude towards human rights, buttressed by a long tradition of police arbitrariness. The constitution of Cameroon provides that the judiciary is a' *power*', independent from the executive and the legislature. However, in practice the situation is different. There is a lack of judicial independence. The independence of the judiciary is guaranteed by the executive as the President of the Republic, who doubles as the head of the executive has unilateral powers to control judicial tenure through appointments, promotions, and discipline.

In addition, there is no *Consolidated Fund* at the disposal of the Judiciary, as their salaries are paid by the executive. This lack of judicial autonomy continues to exacerbate disrespect for the rule of law, and the consolidation of a culture of disrespect for human rights since most judges fear potential retribution from the executive in taking decisions against human rights violations by state authorities.

Corruption in the criminal justice system can be described as *"the misuse of public or private position for direct or indirect personal gain*. Corruption has been identified as one of the major factors in the global over-use of pre-trial detention, especially in countries where police officers, prosecutors, and judges are underpaid, and might look at the stages of arrest, investigation, police custody, and detention on remand as a chance to generate income.

6.2 Research Output

The present study has highlighted the long-time problem of the domestic application of international law. After a thorough analysis, we recognize that there is a '*great lacuna'* in the application of Cameroon's law with existing international law in the protection of the rights of pre-trial detainees, marked inter alia, by the excessive use of pre-trial detention.

Secondly, the study has also revealed the main actors and institutions responsible for the administration of criminal justice in Cameroon and their various competencies.

Finally, it has demonstrated that a number of reforms are critical for the better respect of the rights of pre-trial detainees. The combined efforts of all the main actors as well as the citizens will nurture and sustain a culture of human rights in the country.

6.3 Policy Implications

The rights of detainees in Cameroon are handicapped by numerous challenges linked either directly or indirectly to law enforcement and governance. Moreso, despite the inadequate resources, pre-trial detention activities are disrupted from the conceptual stage by corrupt law enforcement, administrative, and judicial officials.

From this perspective, this study will aid the government of Cameroon in strengthening of sanctions imposed by the law in Cameroon for the violation of the rights of pre-trial detainees.

It may also reinforce local standards through Nullity as provided by Section 3(1) of the CPC to the sanction '*absolute nullity'* in case of infringement of any rule of criminal procedure when it is prejudicial to the rights of the defence and secondly when it is contrary to public policy.

This study will push the government to strengthen the development and application of Section 224 as read with Section 225 and 246(g) of the CPC which provides for

the grant of bail to persons under remand custody. This ought to be a great remedy for the abuse of the rights of pre-trial detainees available to judges. They are urged to be more proactive in the domestic application of international standards

Finally, this study may probably push the government to clarify the rights of pre-trial detainees. Under Section 584 of the CPC, the High Court has the power to make use of the Writ of Habeas Corpus to order the immediate release of any person who is illegally detained and to ascertain the regularity of persons detained by the investigating judicial police officer. This will justify making and realizing in case of the violation of the rights of a pre-trial detainee, Section 236 of the CPC which makes provision for compensation to every person who can prove to the court that he has actually suffered serious injury as a result of the illegal and unlawful detention.

In addition, this study will go a long way to push the government to apply Section 221(2) of the CPC which provides that any Magistrate who keeps a detainee in prison custody longer than the period of validity of the remand warrant is liable for disciplinary sanction. The disciplinary sanctions are found in *Law No.95/048 of the 8th of March 1995* as amended by *Decree No. 2000/310 of the 3rd of November 2000* on the Rules and Regulations Governing the Status of Judicial and Legal Personnel. These include but are not limited to warning, reprimand, cancelation from promotion, reduction of grade, demotion, or dismissal.

As a corollary, disciplinary sanctions against judicial police officers who violate the rights of pre-trial detainees are found in *Decree No. 2012/546 of 19th November 2012* to institute the Code of Ethics for Officers of the National Corps. The sanctions include a warning, demotion, and reduction by one or more incremental positions, and removal from office.

6.4 Recommendations

The government of Cameroon needs to adopt a *holistic* approach to reforms that will go a long way to harness and enhance the effective protection of the rights of pre-trial detainees as enshrined in international law. There is an absolute necessity and need to urgently make constitutional safeguards for the independence of the judiciary to be effective. An independent judiciary vested with real powers will eventually be well positioned to implement the law without fear or favor, void of executive interference.

One of the problems in the application of the criminal law is the absence of well-trained personnel in the police, the judiciary, and the prison sector. The key to reforms, therefore, entails the continuous training of the main actors involved in the criminal justice system. By so doing, these officers will be regularly updated, educated, and informed about new techniques which allow them to shift from the '*culture of detention'*

Another area of reform that is highly recommended envisages the repel of old and archaic legislation which is at variance with the right to personal liberty. One such issue concerns the access by citizens to the Constitutional Council to challenge the overriding influence of the executive power. It will go a long way to allow the Council to develop compatibility criteria and monitor the domestic application of international law to ascertain compliance with the respect for the rights of pre-trial detainees.

Several victims of violations do not know their rights. Human rights education is recommended for ordinary citizens about their rights and available redress mechanisms. With acquired education and knowledge, citizens will be better placed to denounce violations, and thereby contribute to enhancing a human rights culture with a long-term goal of strengthening the rule of law

Decree No.90/1459 of 8 November 1990, as amended, to create the National Commission of Human Rights requires the Structure to submit its reports to the Minister of Justice and to request the presence of prosecution authorities during their visits to detention facilities. It is therefore clear that the Commission relies heavily on the executive arm of government which seriously undermines its work. The Commission should be strengthened by giving same an independent *modus operandi,* in terms of funding, personnel, and management. Also, it will make more sense to the ordinary man if the Commission creates and set up offices at the grassroots level. In this manner, they can liaise with existing human rights organizations on the ground to effectively co-operate and carry out massive human rights education for social change.

CHAPTER 7

REFERENCES

ABA (2010). American Bar Association. The Rule of law Initiative. Handbook of International Standards on Pre-Trial Procedure. Available at https://biblioteca.cejamericas.org/bitstream/handle/2015/1325/ABA_handbook_of international_standards_on_pretrial_detention_procedure_2010.pdf?sequence=1&isAllowed=y. Retrieved 15th December 2020.

ACHPR (2003). African Commission on Human and Peoples' Rights. Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa. Available at https://www.achpr.org/legalinstruments/detail?id=38. Retrieved 11th September 2020.

ACHPR (2018). African Commission on Human and People's Rights. Civil Society Access to International Oversight Bodies. Available at https://ijrcenter.org/wp-content/uploads/2018/10/Civil-Society-Access-ACHPR-2018.pdf. Retrieved 11th January 2021.

Agbor, A (2017). Prosecuting the offense of Misappropriation of Public Funds: An Insight into Cameroon's Special Criminal Court. PER / PELJ 2017(20). http://dx.doi.org/10.17159/1727-3781/2017/v20n0a770

Arab Charter (2004). Arab Charter on Human Rights. League of Arab States. Available at http://hrlibrary.umn.edu/instree/loas2005.html. Retrieved 11th September 2020.

Ashworth, A and Horder, J (2013). Principles of Criminal Law. Oxford University Press 2013, 71pp

Ballard, C (2011). Research Report on Remand Detention in South Africa: An Overview of the Current law and proposals for Reform, Cape Town, South Africa, Civil Society Prison Reform Initiative. Available at https://acjr.org.za/resource-centre/South%20Africa%20Ballard.pdf. Retrieved 5th January 2021.

Bekele, D., Dufka, C and Thompson, F (2015). State of Fear Arbitrary Arrests, Torture, and Killings. Available at https://www.hrw.org/report/2015/09/16/state-fear/arbitrary-arrests-torture-and-killings. Retrieved 3rd February 2021.

Bertelsmann Stiftung (2022). Bertelsmann Transformation Index 2022: Cameroon country report (2022). p.14 Available at: https://www.bti-project.org/fileadmin/api/content/en/dowmloads/reports/country_report_2022_CMR.pdf. Retrieved 23rd June, 2022.

Boone, M., Lindeman, J and Jacobs, P (2018). Towards Pre-trial Detention as Ultima Ratio: 2nd Dutch National Report on Expert Interviews (2018). Utrecht University Repository. Available at .http://dspace.library.uu.nl/handle/1874/362896. Retrieved 15th November 2020.

Cameroon Penal Code (2006), The Government of Cameroon, The Cameroon Penal Code, Available at: https://wipolex-res.wipo.int/edocs/lexdocs/laws/en/cm/cm014en.html Accessed 21 April 2021

CAT (2019). Convention against Torture and Other Cruel, Inhuman or Degrading Treatment. Available at https://www.equalityhumanrights.com/en/our-human-rights-work/monitoring-and-promoting-un-treaties/convention-against-torture-and-other. Retrieved 31st January 2021.

CEDAW (2019). Convention on the Elimination of Discrimination against Women. Available at https://www.equalityhumanrights.com/en/our-human-rights-work/monitoring-and-promoting-un-treaties/convention-elimination-discrimination. Retrieved 30th January 2021.

CJA (2020). Definition of Arbitrary Arrest. Available at https://cja.org/human-rights-issues/arbitrary-detention/. Retrieved 4th February 2021.

Committee to Protect Journalists (2011). Attacks on the Press in 2011: Cameroon, 21 February 2012. Available at: https://www.cpj.org/2012/02/attacks-on-the-press-in2011-cameroon.php. Retrieved March 18, 2019.

Committee Against Torture (2017). Concluding Observations on the Fifth Periodic Review Report of Cameroon (December 18, 2017), UN Doc.CAT/C/CMR/Co/5.20 (b).

CRC (1989). Convention on the Rights of the Child. Available at https://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx. Retrieved 5th February 2021.

CRPD (2006). Convention on the Rights of Persons with Disabilities. Available at https://ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx. Retrieved 15th September 2020.

Daci, J (2008). Right to a Fair Trial Under International Human Rights Law, SEEU Review 4-2 (2008)

Dicklitch, S (2002). Failed Democratic Transition in Cameroon: a human rights explanation. (2002), 24/1 Human Rights Quarterly page 152-156.

Domingo, P and Denney, L (2013). The political economy of pre-trial detention. Open Justice Society. Available at https://www.refworld.org/pdfid/523ac3594.pdf. Retrieved 19th May 2020

Dragan, R (2013). Violations of the Right to a Fair Trial and the Right to Liberty and Security of Person in Romania. Bachelor Thesis, 2013. The Hague University of Applied Sciences, the Netherlands.

Dandurand, Y (2007). The role of prosecutors in promoting and strengthening the rule of law. Crime Law and Social Change 47(4):247-259.

Deepa, K (2020). International Human Rights Law on Enforced Disappearances (Presentation Slides) (October 31, 2020). Research Resource Network "Classroom Series: Reading Human Rights", 2020. Available at SSRN: https://ssrn.com/abstract=3722490

ECtHR (2005). European Court of Human Rights. Chamber Judgment Concerning Finland, Italy and Poland of 28th July 2005. Available at https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=003-1408309-1470425&filename=003-1408309-1470425.pdf&TID=ihgdqbxnfi. Retrieved 2nd December 2020.

Edwards, L (2013). Pre-Trial Justice in Africa: An Overview of the Use of Arrest and Detention, and Conditions of Detention, APCOF Policy Brief No.7. Available at http://apcof.org/wp-content/uploads/2016/05/No-7-Pre-Trial-Justice-in-Africa-An-Overview-of-the-Use-of-Arrest-and-Detention-and-Conditions-of-Detention_-English-Louise-Edwards-.pdf. Retrieved 11th September 2020.

Enonchong, N (2003). Human Rights Violations by the Executive: Complicity of the Judiciary in Cameroon? (2003) 47/2 Journal of African Law 665 at 273

Enonchong, L (2016). Applying International Standards in Enforcing the Right to Personal Liberty in Cameroon: Challenges and Prospects. Journal of African Law 60(3): 389-417

EU Charter (2000). European Union Charter of Fundamental Rights. Available at https://ec.europa.eu/info/aid-development-cooperation-fundamental-rights/your-rights-eu/eu-charter-fundamental-rights_en. Retrieved 17th September, 2020.

Fair Trials International (2013): The Right to a Fair Trial and International Cooperation in Criminal Matters: Article 6 ECHR and the Recovery of Assets in Grand Corruption Cases, Available at:

https://www.utrechtlawreview.org/articles/10.18352/ulr.247/galley/241/download/. Retrieved 14 June 2021

Fongang, J and A, Eware (2019). Cameroon Criminal Procedure and Practice in Action, Edition Veritas.

Freedom House (2010). Freedom in the World 2010: Cameroon. Available at: https://freedomhouse.org/report/freedom-house/2010/Cameroon#.Vem46ahwZrQ. Retrieved 11th September, 2021.

Gjelten, T (2018). Boundlessly Idealistic, Universal Declaration of Human Rights Is Still Resisted. Available at https://www.npr.org/2018/12/10/675210421/its-human-rights-day-however-its-not-universally-accepted?t=1612105945593. Retrieved 30th September 2020

GOC (1996). The Government of Cameroon. Constitution. Law No.96/06 of 18 January 1996 to amend the Constitution of 2 June 1972. Available at https://www.prc.cm/en/cameroon/constitution. Retrieved 4th February 2020

GOC (2005). The Government of Cameroon. The Cameroon Criminal Procedure Code. Available at https://www.unodc.org/res/cld/document/criminal-procedre-code_html/Cameroon_Criminal_Procedure_Code_2005.pdf. Retrieved 11th September 2020.

Hausler, K and McCorquodale (2014). Pre-trial Detention and Human Rights in the Commonwealth: Any lessons from civil law systems? British Institute of

International and Comparative Law (BIICL). Available at: https://www.researchgate.net/publication/276104808 Retrieved 8th September 2021.

Heard, C and Fair, H (2019). Pre-trial Detention and Its Overuse: Evidence from Ten Countries. Institute for Crime and Justice Policy Research (ICJPR) (2019), Birkbeck University of London. Available at: https://www.prisonstudies.org/world-prison-brief. Retrieved 2nd December, 2020.

Ho, I (2012). The Presumption of Innocence as a Human Right' in P. Roberts and J. Hunter, Criminal Evidence and Human Rights: Reimagining Common Law Procedural Traditions Hart Publishing 2012, Oxford UK 259pp.

Human Rights Watch (2019). Cameroon: Detainees Tortured. August 20, 2019, https://www,hrw.org/news/2019/08/20/cameroon-detainees-tortured. Retrieved, 27th August, 2021

IACHR (2017). Inter-American Commission on Human Rights. IACHR presents Report on Measures Aimed at Reducing the Use of Pretrial Detention. Available at https://www.oas.org/en/iachr/media_center/PReleases/2017/136.asp. Retrieved 14th September, 2020.

ICESCR (1987). International Covenant on Economic, Social and Cultural Rights. Available at https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-3&chapter=4&clang=_en. Retrieved 9th June, 2020.

ICPED (2006). International Convention for the Protection of All Persons from Enforced Disappearance. Available at https://www.ohchr.org/Documents/ProfessionalInterest/disappearance-convention.pdf. Retrieved 1st December, 2020.

ICPS, World Pre-Trial Remand Imprisonment List (Fourth Edition), 2021. Available at: www.prisonstudies.org/country/cameroon. Retrieved 5th June, 2022.

Keane, D (2020). Mapping the International Convention on the Elimination of All Forms of Racial Discrimination as a Living Instrument. Human Rights Law Review 20 (2):236–268.

Martufi, A (2020). The Purposes of Pre-trial Detention and the Quest for alternatives. European Journal of Crime, Criminal Law and Criminal Justice 28 (2)2: 153-174.

Osse, A (2012), Understanding Policing: A Resource for human rights activists, Amnesty International, Nederland

OSJI (2011). Open Society Justice Initiative. The Socioeconomic Impact of Pretrial Detention. A Global Campaign for Pretrial Justice Report. Available at https://www.justiceinitiative.org/uploads/84baf76d-0764-42db-9ddd-0106dbc5c400/socioeconomic-impact-pretrial-detention-02012011.pdf. Retrieved 11th November 2020.

Riva, M (2015). Unfair Pre-trial Detention and Corruption in the Criminal Justice System, The Case of Cameroon, (2020) 4 Global Campus Human Rights Journal,

Global Campus Europe, ISSN: 2532-1455. Available at: https://doi.org/20.500.11825/280. Retrieved 1st September ,2021

Rover, Cees s de Rover, (1998): To serve and to protect: Human rights and humanitarian law for police and security forces, International Committee of the Red Cross, Geneva, 1998, Available at: https://international-review.icrc.org/sites/default/files/S0020860400091658a.pdf

Sieghart, P (1983). The International Law of Human Rights. (Oxford University Press), Page 152-153.

Smith, R (2010). Texts and Materials on International Human Rights (2nd ed. 2010. Routledge), Page 52

Schönteich, M (2008). The Scale and Consequences of Pretrial Detention around the World. Open Justice Society Initiative Spring: 11-43.

Stumer, A (2020). The Presumption of Innocence: Evidential and Human Rights Perspective. Criminal Law Library. Hart Publishing UK, 258pp.

UN (1990). Basic Principles on the Role of Lawyers. Available at https://www.refworld.org/docid/3ddb9f034.html. Retrieved 4th October, 2020.

UN (1990). Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Available at https://www.ohchr.org/en/professionalinterest/pages/useofforceandfirearms.aspx. Retrieved 4th May, 2020.

UNHCR (2007). Principles of Medical Ethics Relevant to the Role of Health Personnel, Particularly Physicians, in the Protection of Prisoners and Detainees Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Available at http://hr-travaux.law.virginia.edu/subjects/principles-medical-ethics-relevant-role-health-personnel-particularly-physicians-protection. Retrieved 11th September 2020.

UNHRC (2008). Report of the Working Group on Arbitrary Detention: Mission to Equatorial Guinea. Available at https://www.refworld.org/docid/47fddcc92.html. Retrieved 5th February, 2021.

UN (2009). United Nations and the Rule of Law. Principles of Medical Ethics Relevant to the Role of Health Personnel, Particularly Physicians, in the Protection of Prisoners and Detainees Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Available at https://www.un.org/ruleoflaw/blog/document/principles-of-medical-ethics-relevant-to-the-role-of-health-personnel-particularly-physicians-in-the-protection-of-prisoners-and-detainees-against-torture-and-other-cruel-inhuman-or-degrading-treatmen/. Retrieved 19th May, 2020.

UN (2010). United Nations Subcommittee on Prevention of Torture (SPT), Report on Paraguay.
Available at https://atlas-oftorture.org/en/entity/1jh6myw23bbwwywi8pz5cj714i.
Retrieved 7th December 2020.

UNODC (2012). United Nations Office on Drugs and Crime. The United Nations Standard

Minimum Rules for the Treatment of Prisoners. Available at https://www.unodc.org/documents/justice-and-prison-reform/Brochure_on_the_UN_SMRs.pdf. Retrieved 4th February, 2021.

UN (2020). The UN Body of Principles for the Protection of Detained or Imprisoned Persons. Available at https://www.cambridge.org/core/journals/american-journal-of-international-law/article/abs/un-body-of-principles-for-the-protection-of-detained-or-imprisoned-persons/8F48394A27D64536D73DF02EA245CDF1. Retrieved 6th October, 2020.

UN (2020). The United Nations. Article 11(1) of the Universal Declaration of Human Rights. UN General Assembly Resolution 217 A (111) of 10th December, 1948. Available at https://www.un.org/en/universal-declaration-human-rights/. Retrieved 11th September, 2020.

UNCHR (2012). United Nations Commissioner for Human Rights. Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. Adopted by General Assembly resolution 43/173 of 9 December 1988. Available at https://www.ohchr.org/EN/ProfessionalInterest/Pages/DetentionOrImprisonment.asp. Retrieved 6th October 2020.

UNCHR (2020). United Nations Commissioner for Human Rights. Basic Principles for the Treatment of Prisoners. Adopted and proclaimed by General Assembly resolution 45/111 of 14th December 1990. Available at https://www.ohchr.org/en/professionalinterest/pages/basicprinciplestreatmentofprisoners.aspx#:~:text=Adopted%20and%20proclaimed%20by%20General,and%20value%20as%20human%20beings. Retrieved 9th March, 2020

UNESC (1989). United Nations Economic and Social Council. Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions. Available at https://www.unodc.org/documents/commissions/CCPCJ/Crime_Resolutions/1980-1989/1989/ECOSOC/Resolution_1989-65.pdf. Retrieved 5th October 2020.

United States Department of State (2020). 2020 Country Report on Human Rights Practices in Cameroon. Available at: https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/cameroon/,at 5.11. Retrieved 31st August, 2021.

University of Oxford (2019), Human Rights Abuses in the Cameroon Anglophone Crisis", https://www.ohrh.law.ox.ac.uk/wordpress/wp-content/uploads/2019/11/Cameroon-Anglophone-Crisis-Report-pdf. Retrieved 23rd May, 2022.

UN Secretariat (1990). Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990. Available at https://www.unodc.org/documents/congress/Previous_Congresses/8th_Congress_1990/028_ACONF.144.28.Rev.1_Report_Eighth_United_Nations_Congress_on_th

e_Prevention_of_Crime_and_the_Treatment_of_Offenders.pdf. Retrieved 11th November 2020.

Van Kalmthout, A., Knapen, M and Morgenstern C (eds.) (2009). Pre-trial Detention in the European Union. An Analysis of Minimum Standards in Pre-trial Detention and the Grounds for Regular Review in the Member States of the EU. Available at http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.194.274&rep=rep1&type=pdf. Retrieved 1st September, 2020.

Van Kempen, (2012). Pre-Trial Detention in National and International Law and Practice: A Comparative Synthesis and Analyses. Inters entia 2012: 3-46.

Veen, V (2011). Risk profiles of youth in pre-trial detention: a comparative study of Moroccan and Dutch male adolescents in the Netherlands. PhD Thesis 2011. Utrecht University, the Netherlands.

Walmsley, R (2008). World Pre-trial/Remand Imprisonment List: Pre-trial detainees and other remand prisoners in all five continents. London: International Centre for Prison Studies. Available at https://www.prisonstudies.org/sites/default/files/resources/downloads/wptril.pdf. Retrieved 11th September, 2020.

Yanou, M (2009). The local courts, decentralization and good governance: the case of the English-speaking provinces of Cameroon. The International Journal of Human Rights 13(5): 689-696.