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The Protection of the Rights of Suspects in Pre-trial Detention within the Perspective of Remand in Police Custody under the Cameroonian Legal System

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Abstract

Remand in police custody, otherwise referred to as detention, is a legally approved and circumscribed mechanism of restriction of liberty, with the view of protecting society interest threatened by the commission or omission of an offence. The criminal procedure code defines it as a measure whereby for the purpose 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. Finding a compromise between the respects of the rights of a suspect remanded in custody with societal interest has never been an easy task. To this end, the paper seeks to examine the protection of the rights of suspect as are confectioned in the criminal procedure code and its extent of implementation as we sought to respond to the main question, to what extent does the Cameroon government guarantee the respect of the rights of person remanded in police custody? To realise this paper, both doctrinal and empirical research methods were used. Empirical research consisted of field work during which data was collected. Doctrinal research involved essentially analysis of data collected with the help of documents at our disposal. The government has made efforts in respecting the rights of persons under custody but its efforts are insufficient.

Keywords: *Protection, Suspect, Remand, Human Rights, Judicial police officer, Detention, Cameroon*

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INTRODUCTION

The primordial objective of criminal law is the determination of perpetrators of offences and their sanction. In fact nothing is as irritating to public peace as impunity of offenders. They are supposed to be identified and punished, such that the social disorder so created by the offence committed is appeased [3]. Beccaria while advocating for punishment, however notes that capital punishment has never deterred man from infringing or offending the society. He was the first to overtly denounce the arbitrary notion of criminal law of his time, propagating the principle of *peine juste* (here refers to equitable sanction, which is a neighboring principle to that of equality before the law as well as the principle of the legality of crime and punishment.), the principle of the legality of crime and punishment, equality of all before the law, rising against cruel sanctions, notably torture and death penalties [1]. As such, specialists in investigation are supposed to be attributed important power to enable them effectively to carry out their function. Out of the definition of this power, springs a conflict between society's interest and individual rights. Criminal law must thus maintain an equilibrium between this dual interest of almost equal importance, sacredness and worthy of protection. The general interest of the society requires the prompt repression of offences as well as the interest of individual, which necessitate complete guarantee of his right of defence [2]. The suspects, defendants, or the accused persons occupy an important place in Cameroon criminal procedure. It is against them that the judicial machinery is deployed. The suspect must be treated with much respect, in spite of the information or clue or

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better still charges against him. It is not a question here of making things extremely easy for him because criminal procedure puts in conflict individual liberty and the need imposed by society to punish offences, an actual threat to public peace [3].

At a time when the audacity of criminals obliges the police to employ much zeal in the protection of honest citizens, their mode of operation has been a subject of overt criticism. Our endeavour among others is aimed at ensuring that in the fight against criminality, the law makers should not abdicate from their role, paramount among which features the safeguard of the rights of suspects in the course of police investigation. As Djila puts it, punishment which takes the form of repudiation of human rights can be implemented by way of remand in custody independently infringing fundamental rights [4]. Individual liberty seen as *"the state of man who is neither arrested nor detained, who enjoys the possibility of freedom of movement"*is one of the components of human dignity and a guiding principle of human rights [5]. The respect of human dignity according to the French *Conseil d'état* is a component of public policy [6]. This principle is proclaimed in the Declaration of Human rights of the 26th of August 1789 as well as in many other international legal instruments. It is proclaimed in the Cameroonian constitution enacted by law No. 90/06 of 18 January 1996. Within a purely legal context, liberty is a situation guaranteed by law within which everyone is master of himself, making use of all his faculties as it seems pleasing to him. It is within this perspective that the Cameroonian legislator intended framing the provisions as regards remand in police custody [7].

The criminal procedure code of the Republic of Cameroon which came into force on the 1st of January 2007 was promulgated into law on the 27th of July 2005 with one of its objectives of putting in conformity of the said code with the exigencies of a fair trial, as it resulted from international legal instruments of the protection of human rights. The most outstanding of such instruments include; the international covenant on civil and political rights of the 26th of December 1966, the African Charter on Human and Peoples' Rights of the 27th June 1981, the Convention against cruel inhuman or degrading treatment or torture of the 10th December 1984, the united nations conventions on the rights of the child of the 20th November 1989, texts that were integrated in the Constitutional block of the Cameroonian Constitutional of 1996.

Mahouve and Kembo observe that at the level of the evaluation of the respect of its conventional obligations, Cameroon was subject to numerous complaints before supervisory organs of the said international legal instruments entered by Cameroon. Such is the case with the United Nations commission on human rights, and the African commission on human and peoples' right, who noted in most cases the gross violation of the rights of suspects, defendants and accused to a fair trial in Cameroon [3]. Conformity thus with the exigencies of human rights was at the centre of the present code. More than a decade after its promulgation, obstacles in its implementation still persist notably as regards remand in police custody in the course of police investigation, a primordial phase of the procedure. It is against this backdrop that this research is designed, in order to analyse the said difficulties, which constitutes a contravention of the rights of suspect pertaining to remand in police custody, as well as to pave the way forward for a better protection in compliance with international legal instruments duly signed by Cameroon [8].

This research on this paper comes at a time when there is gross violation of the rights and liberties of suspects through the mechanism of remand in police custody in Cameroon. This is quite visible through the ever increasing number of abusive detentions coupled with torture, inhumane and degrading treatment as well as poor conditions of the said remand. Theoretically, this study is important in that it is geared towards ensuring the effective protection of the rights of those remanded in police custody, identifying the problems attached to the guarantee of such rights,

principal among which is the voluntary contravention by judicial police officers.

THE CONCEPTUALIZATION OF REMAND IN POLICE CUSTODY AND THE RIGHT OF SUSPECT UNDER THE CAMEROONIAN LEGAL SYSTEM

This Section of the paper examines various regimes of remand in police custody and the legal rights of persons remanded in the police custody in Cameroon.

An Overview of the Regime of Remand in Police Custody

Remand in police custody is exercised within the context of police investigation and for the purpose of the manifestation of the truth, in the case of the commission of an offence under Section 218 of the Criminal Procedure Code provides that remand in custody shall be an exceptional measure which shall not be ordered except in the case of a misdemeanor or a felony. It shall be necessary for the preservation of evidence, the maintenance of public order, protection of life and property or to ensure the appearance of an accused before the examining magistrate or court. The provisions of sections 118-125 of the Criminal Procedure Code, spell out the regime of remand in police custody by clearly stating its definition, conditions, or better still modalities of execution as well as the rights of the suspect remanded in police custody. Remand in custody as seen by Djila [4] consist of detaining an individual against his or her will in the cells of the police or gendarme units for surveillance, which infringes individual liberty. This restrictive measure of liberty, which though indispensable in some circumstances according to her must be practically made use of, such that it should not be considered as a banal instrument of procedure but as a grievous act which must remain exceptional [9]. It is with this in mind that the Cameroonian legislator within the context of Section 118 of the Criminal Procedure Code legally framed this measure with guarantees, defining it as a police 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. It further states that except in cases of felony or misdemeanour committed flagrante delicto and unless strong corroborative evidence exists against him, a person with a known place of abode may not be remanded in police custody.

Common or Classical Regime

This regime lays down the criteria and conditions for a classical remand in police custody. It provides that it's a police measure executed in the course of police investigation and for the purpose of the establishment of the truth. It further emphasizes that it can only be executed where there exist "strong corroborative evidence". While observing that the said notion of strong corroborative evidence has not been defined by the legislator, Mahouve and Kembo define the same through a related term "s*oupcons plausible"* as used by the European Commission on Human Rights as "the existence of elements or Information, liable of persuading an objective observer that the suspect may have committed the offence.

A classical remand in police custody limits the measure to "cases of felony or misdemeanour committed *flagrante delicto*" defined in Section 103 of the Criminal Procedure Code to writ: sub (1) states that felonies and misdemeanor are deemed to be committed flagrante delicto when they are in the course of being committed or when they have just been committed, (2) shall also be classified as felonies or misdemeanor committed flagrante delicto when; (a) after the commission of the offence the suspect is pursued by public clamor; (b) soon after the commission of the offence the suspect is caught in the possession of an Article or shows a sign or trace which tends to suggest that he took part in the commission of the felony or misdemeanor, (3) There shall equally be flagrante delicto where a person requests the state counsel or a judicial police officer to investigate a felony or misdemeanor committed in a house which he occupies, or over which he has charge). This is perhaps because of the freshness of the evidence which facilitates the establishment of the truth.

The exceptionality of remand in police custody can as well be seen in the restriction or prohibition of the said measure as regards "a person with a known place of abode" which have as goal ensuring the appearance of the suspect. It is an important element that can be used to trace a suspect who has jumped bail. In fact, as regards remand in police custody, *flagrante delicto* offences are the principle and non-flagrante delicto offences the exception. The notion of "a known place of abode" which has not been defined by the legislator is not only delicate but poses a serious difficulty. Should it be assimilated to the notion of domicile of civil law, which is the place where someone is principally established? An author terms it "*rigoriste",* indicating that the notion of known place of abode poses a practical problem, considering the fact that urbanization in the Cameroonian setting is anarchical and does not facilitate the tracing of a suspect subject of investigation, the raison d'être of the notion. Emmanuel [7] after an interview of a judicial police officer observes that practically, judicial police officers always consider the profession exercised, matrimonial situation. A person, who enjoys a social status considered respectable by judicial police officers, who is married and has children, will easily, be granted bail, unlike a bachelor without employment. This flaw created by the absence of a clear-cut or precise definition of the aforementioned term has led to a haphazard application left at the whims and caprices of judicial police officers, who define same depending on the circumstances, the interest at stake and above all almost always for their benefit.

That notwithstanding Article 9 of the Covenant on Civil and Political Rights, while emphasizing on the principle of liberty made it clear that everyone has the right to liberty and security of person. No one shall be subject to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law and summarily spells out the rights of suspect, specifying as well and more importantly the duration of any measures of restriction of liberty. As per Section 9(3) of CCPC, anyone arrested or detained on a criminal charge shall be brought before a judge or other officer authorize by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. If interpreted *stricto-sensu,* this provision is irrefutably intended to limit the duration of remand in police custody. To this regard, the duration of this measure has been fixed at 48 hours (2days) renewable once as per Section 119(2) (a) of the CCPC. According to Djakba, it is not different from what prevailed in the former law notably the "code d'instruction criminelle" passively noting that it does not offer any advantage to the suspect comparatively. The duration of 48 hours can, however, be extended exceptionally with the written approval of the state counsel twice (specifically 8days). This is an unfortunate extension, considering the humanitarian and liberal context of the present code and the fact that the said extension is largely beyond the promptness evoked by the international covenant on civil and political rights. In the French positive law on the contrary, the duration has been reduced to 24 hours renewable once for offences other than terrorism in the course of which the duration can be extended up to and not more than 4days [7]. This already deplorable situation is further compounded by extension with regards to distance. According to the provisions of Section 120(1) and (2) of the Criminal Procedure Code, for every 50 kilometres between the place of arrest and the police station or the gendarmerie cell, the extension shall be 24hours [10].

The aforementioned analysis constitutes the regime of remand in custody as well as its constitutive elements. Besides the common or classical regime, there exist other notions related to remand in police custody, referred to as special remand in custody, distinguished from remand in prison custody, worth evoking as well, to avoid any confusion while bringing out the complexity of the notion that most often infringes on the same rights that the legislator sought to avail.

Special Remand in Police Custody

As mentioned here above by Emmanuel [7], there are other notions which are like remand in police custody executed by judicial police officer in the course of police investigation or

during routine controls, with almost similar characteristics, but with some peculiarities that differentiate them from same [11]. Related notion of remand in custody include, detention of Section 104(4) of the criminal procedure code, detention for the purpose of verification of identity as per Section 32 CPC, detention for the purpose of control or verification of situation as per Section 86 CPC, as well as detention within the context of the execution of a bench warrant ordered by an examining magistrate out of the jurisdiction. To the aforementioned can be added administrative remand in custody, as well as remand ordered by the military court in the course of investigations for offences that fall within the jurisdiction of the Military Tribunal and more especially as pertains to the offence of terrorism.

Exceptional Remand in Police Custody for Simple Offences

Any officer or agent of the judicial police may in a public place or a place open to the public and subject to the provisions of Section 82(3) of the CPC, arrest the author of a simple offence who either refuses to disclose his identity or discloses an identity suspected to be false and where necessary detain him for not longer than 24hours as per Section 32 of CCPC. Under normal circumstances, the commission of a simple offence under Section 21(1) of the Penal Code, due to its nature does not give room to either arrest or detention (a simple offence shall mean an offence punishable with imprisonment for up to 10 (ten) days or with fine of up to 25000 (twenty-five) FCFA). A judicial police officer faced with such an offender has two options; either he request the payment of the fine fixed by law and depending on the category of the offence as laid down by regulation as per Section 362 to 370 of the penal code or he makes a report to be forwarded to the Legal Department on the grounds of which the offender may likely be prosecuted.

The principle of individuality of offences commands that prosecuted persons must be rigorously identified in order to avoid any confusion [12]. As such, inability to identify an offender due to his refusal as well as an identity suspected to be false, gives room for detention though it is a simple offence. Such a detention is, however, limited in duration (24 hours). He can only be remanded in police custody beyond this duration if in the course of interrogation another offence of a gravity that warrants remand is discovered. It is like remand in custody for verification of identity even though the conditions under which the said measures are taken are not the same.

Remand in Police Custody for Verification of Identity and Situation

Judicial police officers shall be empowered to check the identity and situation of any suspected person in accordance with the provisions of Section 32 of the CCPC and where necessary may detain him in special police custody for not longer than 24 hours as per Section 86(1) of the CCPC. The hypothesis presented in the provision of the aforecited Section is one of a people intercepted by judicial police authorities, who cannot justify his identity or who refuse to justify same. He is thus, remanded in custody for a proper investigation on his identity and his situation within a remand period that must not exceed 24 hours. Such a remand if not justified by other legal causes must cease failure of which the judicial police officer or agent can be prosecuted for false arrest as per Section 291of the Penal code.

Remand in Custody by Assimilation

In the course of the execution of a bench warrant out of the jurisdiction of a court, the regime applied to the concerned suspect in case of transfer is that of remand in police custody. Such is equally the case where in the course of hearing of a witness in the course of rogatory commission, a judicial police officer remands the said witness for a period of 48 hours, after finding out that he is likely to be charged as co-offender or an accomplice to the offence which is subject of the rogatory commission. This duration which can be renewed with the written approval of the State Counsel can only be executed in compliance to the provisions of Section 119 of the CCPC. This Section requires that the suspect be informed of the ground of suspicion and invited to give an explanation with mention made in the police report. It should, however, be noted that the duration of remand is more

extensive when it comes to administrative remand in custody (*garde à vue* administrative)

Administrative Remand in Custody (Garde à vue Administrative)

According to Kitio, remand in custody under the provisions of Section 2(4) of law No. 90/054 of 19 December 1990, drifts from the common or classical regime of judicial remand in custody, even though it is applied to a notion of criminal law "grand banditisme", defined as;

"L'activité des bandits, ceux-ci étant des malfaiteurs dangereux, des brigands ou des hommes sans scrupules ; le grande banditisme selon ce dictionnaire est l'ensemble des actions répréhensible" [13] or ; *«L'ensemble d'action criminelles commises dans une région; c'est la criminalité. Le bandit est donc l'individu qui se livre à des actions criminelles. C'est un individu malhonnête et sans scrupule»* [14].

Remand in custody in this context has as objective the fight against "grand banditisme" although crime is unavoidably inseparable with justice. As such, this remand was supposed to be ordered by judicial police officers in compliance with the provision of sections 118 to 124 of the CCPC. The legislator within the scope of administrative remand has made provisions for a much longer duration of remand, 15 days renewable for an unlimited duration and without any clear-cut conditions or prior authorisation to such extension or prolongation. As regards the authority vested with jurisdiction to take such measures the above cited articles accord same to administrative authorities who include the minister of territorial administration, governors, senior divisional officers, divisional officers, district heads and even certain chief of services [15].

The enlargement of the authorising personalities leaves us with the impression that the law on the maintenance of order under normal circumstances is more rigorous than the law applied during exceptional circumstances. Commenting on this, an author observes that administrative detention has always been an arm in the hands of administrative authorities to punish whoever infringes their rules. The purpose of such measures according to the said author is most often far from corresponding with the preoccupations of the legislator. According to this author the use of insulting language against an administrative authority and most especially the president of the Republic, though not within the context of armed or highway robberies are motives for administrative remand. Such is equally the case with peaceful manifestations and the refusal to execute a written or verbal order of an administrative authority. In addition to this, Kitio cites the example of a call by a citizen for the candidature of Owona Nguini for the 2018 presidential election that led to his remand by the governor of the Central Region for "trouble à l'ordre public et incitation à la rebellion" (Affaire MP C/Patrice Sohna, reported in the journal *Kalara*, in its No.137 edition of the 29 February 2016, p.1.). Due to the lack of precision of the law, measures of administrative remand in custody are executed both within penitentiary structures and in the police or gendarmerie cells. This measure escapes from the control and supervision of both the judicial police officers and state counsel respectively, originally vested with the power to remand in custody.

The Recognition by the Legislator of the Rights of Suspect Remanded in Police Custody

Cameroon in its conception of the Criminal Procedure Code adequately took into consideration its conventional engagements as regards the respect of human rights contained in the various international legal instruments to which she is signatory. The good fate of the lawmaker is quite visible as regards remand in custody in the course of which the rights of the suspect have been reinforced. Such inherent rights are examining below.

The Right of Presumption of Innocence

The right of presumption of innocence is an emanation of doctrines notably Cesare Beccaria in his work "Traité des delits et des peines", 1764 as well as Section 11(1) of the Universal Declaration of Human Rights 1948, wherein it is stipulated that; "everyone charged with a penal offence has the right to be presumed innocent until proved guilty

according to law, in a public trial at which he has had all the guarantees necessary for his defense. This legal instrument has been copied by other international or regional texts such as the International Covenant on Civil and Political Rights in its Article 14(2), Article 7(1) of the African Charter on Human and Peoples' Rights, Article 8(2) of the American convention on Human Rights as well as Article 6(2) of the European convention on Human Rights which all provide inter alia that everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law. A more concrete guarantee of the said right is provided for in the preamble of the Constitution of Cameroon in the following words "every accused person is presumed innocent until found guilty during a hearing conducted in strict compliance with the right of defence". Constructed finely to suit our context, Section 8 of the CCPC states that "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 necessary guarantees for his defense. This right which applies to the suspect, defendant, and accused, is constructed not only to protect individual rights notably the reputation of the suspect [16] but is a principle according to which the burden of proof is on the prosecution. As Montesquieu put it "*quand l'innocence des citoyens n'est pas assurée, la liberté ne l'est pas non plus"*. Fortunately, this right is guaranteed to suspects remanded in police custody by the provision of Section 8 of the CCPC. The importance of this right was highlighted by the African commission on Human and Peoples' Rights in the case of Abdoulaye Mazou C/Etat de Cameroun wherein the commission ruled that a remand based solely on the suspicion that an individual may be at the origin of an offence constitutes a violation of the right to the presumption of innocence. The commission is still to arrive at such a conclusion as regards failure to inform suspects of their rights prior to their remand [3].

The Right to Information

As per Section 116(3) of CCPC, the right to information of a suspect as regulated by the legislator can be situated at two levels. Initially, as soon as investigations are opened, the judicial police officer must under the penalty of sanction, inform the suspect of: His right to counsel and his right to remain silent, with mention of same made in the police report. However, subsequently in the course of investigation, Section 119(1) CCPC provides that where a judicial police officer intends to remand a suspect in custody, he shall inform him of the grounds of suspicion against him and invite him to give any explanation he deems necessary, with mention made in the police report as well. The information to the suspect of the decision to put him under police custody is of primordial importance for two reasons: firstly, it infringes on individual liberty, that is, freedom of movement and secondly, any explanation given by the suspect before such a remand is liable of clarifying some doubts and changing his fate. If the explanation given clarifies the strong corroborative evidence that existed, he may probably be dispensed for remand in police custody.

The Right to Medical Examination

The right to medical examination is provided for in the provision of Section 123 of the CCPC. As per this provision, Sub (1) provides that the person remanded in police custody may at any moment be examined by a medical officer appointed by the state counsel, of his own motion. Such medical officer may be assisted by another chosen by the person on remand at his expense. Sub (2) proceeds that the state counsel may order such medical examination at the request of the person concerned, his lawyer, or a member of his family. Such medical examination will be carried out within 24 hours after the request. Sub (3) states that at the end of custody, it shall be obligatory to medically examine the suspect at his expense and by a doctor of his choice on condition that either the suspect himself, his counsel or family members so request. In all cases he shall be informed of his discretion and finally Sub (4) provides that the report of the commissioned medical officer shall be put in the suspect's case file and a copy thereof given to him. It may be counter signed by the medical officer chosen by the person so remanded who may where necessary endorse it with his view.

According to Mahouve and Kembo, this

measure permits the verification of the health situation of the suspect at the beginning, in the course of investigation and at the end. This measure permits an evaluation of the quality of treatment given to a suspect, who can serve as grounds for allegation of torture or poor treatment in the police cell. The attribution of the prerogative to the State Counsel, however, poses a problem as regards the right to a fair trial, because the State Counsel is a party to the investigation as well as to the proceedings wherein, he is a principal party. This worry has been addressed by the legislator who has given the suspect's counsel as well as members of his family, the possibility of requesting a medical examination coupled with the possibility of choosing a medical officer to assist in such check-up with the right to countersign the report and making observations. Despite its importance, the right to medical examination happens to be among the least used rights by suspects remanded in police custody in the course of investigation. The right of family members to apply for medical examination can only be made possible if the said family members are given access to pay regular visits to the suspect under police custody and if not, the reverse is true.

The Right to Visits

The right to a fair trial, through access to justice warrants that every suspect, defendant or accused, be given the opportunity to prepare and present his defence under acceptable conditions, receive material as well as moral support from family members and others. Such rights are stipulated in Section 116(3) of the CCPC. As regards counsel more particularly, this right can only be practically implemented if counsel chosen by a suspect is given access to a suspect remanded in police custody. It is within this context that Section 122(3) of CCPC was conceived and states inter alia that "the person remanded in police custody may at anytime within the period of detention and during working hours, be visited by his counsel, members of his family and by any other person following up his treatment while in detention." Such visits are limited within the duration of working hours [3]. It gives family members the opportunity to take care of the upkeep of suspects notably, by supplementing their feeding which is the prerogative of the state but ironically, lack of apathy and financial resources to support such obligation remain the order of the day by the stat [3].

The Right to Feeding

Feeding is among the rights to which the suspect remanded in police custody is a beneficiary, considering its importance to human existence. This right is made possible by the provisions of Section 122(4) of the CCPC, which provides as follows: "the state shall be responsible for feeding persons remanded in police custody. However, such persons shall have the right to receive from members of their families or from their friends the means of subsistence and other necessaries". While it engages state responsibility fully, it equally makes provisions for supplementary sources, which have become the main source in the absence of state subvention to police and Gendarmerie units to this effect. Unfortunately, information received from suspects in the work of [3], and field observations, we noticed that the main source of feeding was from friends and family members as well as benevolent individuals and groups. The non-provision of food to suspects as provided for by the CCPC during our interview with the commissioner was attributed to the non-provision of funds by the state to this regard.

The Right to be treated with Humane and Freedom from Torture

The absence of subvention does not, however, stop judicial police officers from treating suspects remanded in custody with humanity. The prohibition against torture, cruel, inhumane or degrading treatment as stipulated in Article 5 of the universal declaration of Human Rights, Article 7 of the International Covenant on Civil and Political Rights and Section 5 of the African Charter on Human and Peoples' Rights is a fundamental right which the suspect benefits from in the course of police investigation. The Cameroonian legislator while penalising torture as per Section 132 of the penal code, has as well guaranteed the respect of the moral and physical integrity of a suspect remanded in custody in the provisions of Section 122(2) of

the CCPC in the following words; "the suspect shall not be subjected to any physical or mental constraints or to torture…", it goes further by adding to the list the following elements not provided for by international instruments such as " ….threats, or any pressure whatsoever, or deceit, insidious manoeuvre, false proposals, prolonged questioning, hypnosis, the administration of drugs or to any other, method which is likely to compromise or limit his freedom of action or decision or his memory or sense of judgment". The aforementioned right can only be properly ensured to the benefit of the suspect in the presence of counsel. Far from the treatment, we observed that the conditions of detention were far from been humane. At times more than 20 detainees irrespective of age could be found in the about 2/3.5mq dark cell, with just two small holes for ventilation and communication, defecating and urinating in buckets provided for that purpose under the watchful eyes of all others.

The Right to Counsel and Visits

The right to counsel is provided for in Article 14(3) (d) of the International Covenant on Civil and Political Rights, Article 7(1) (c) of the African Charter on Human and Peoples' Rights, and Article 8(2) (d) of American Convention on Human Rights. Even if the presence of counsel at the level of police investigation is aimed at ensuring the regularity of the procedure, the legislator highlights the importance of such a presence when he provides that "...as soon as investigations are opened, the judicial police officer must under the penalty of sanction, inform the suspect of his right to counsel." The right is of such importance that the penalty for its violation is nullity as provided in Section 3 of the CCPC. Even if counsel cannot proceed with examination and cross examination, his presence during interrogation is dissuasive and prevents the judicial police officers from making use of unorthodox means to extort evidence [17]. With regards to visits, the law restricted visiting hours between 8a.m. and 6p.m. in practice, the rights to visit is highly violated in Cameroon as seen on the field where suspects or detainees are being deprived of seeing their relatives or their councils as their fundamental rights. The respect of rights provided by legal instruments can only be guaranteed and its effectiveness ensured if and only if a good control mechanism is put in place.

AUTHORITIES EMPOWERED TO REMAND AND TO CONTROL THE REGULARITY OF REMAND IN POLICE CUSTODY

One of the key phases in a criminal proceeding during which the rights of suspects are more likely to be violated, and with grievous consequences, is the police investigation phase and more especially by way of remand in police custody. Such consequences, as raised by Landry who according to him some of the upsetting effects of remand include the disruption of work and leisure, impossibility to return home for breakfast or launch as well as the obligation to pass the night in a cell [18]. A necessity reiterated by the European Commission on Human Rights [19], as cited by Mahouve and Kembo in the following words:
"Seul une prompte intervention judiciaire peut effectivement conduire à la détection et à la prévention de mauvais traitement qui risquent d'être infligé aux personnes détenues".

The European Commission on Human Rights stated that only a prompt judicial intervention can effectively lead to the discovery and prevention of poor treatment being inflicted on persons remanded in police custody. To this end, the criminal procedure code has provided for a hierarchical control that can be carried out by the State counsel as well as superior judicial police officers from superior units, by the persons remanded as well as by judicial measures as seen below.

Authorities Empowered to Remand in Police Custody in Cameroon

As regards the authorities vested with the powers to remand in police custody, the criminal procedure code has maintained the power of judicial police officers in case of offences committed flagrante delicto, a power that has been extended to the state counsel who can order a remand in police custody as well. Exceptionally, the examining magistrate can as well remand in police custody.

Judicial Police Officers as Authorities Empowered to Remand

As per the provision of Section 79 of the CCPC, the following shall have the status of judicial police officers:

(a) Officers and non-commissioned officers of the gendarmerie;
(b) Gendarmerie in charge even in an acting capacity of a gendarmerie brigade or gendarmerie post;
(c) Superintendent of police;
(d) Deputy superintendent of police;
(e) Gendarmes and inspectors of police who have passed the judicial police examination and taken the oath; and
(f) Public servants even if they are temporally performing the functions of head of external service of national security are among other things responsible for investigation of offences, collecting of evidence, identifying offenders and accomplices and bringing them before the legal department.

Mahouve and Kembo notice that under the "code d'instruction criminelle" remand in police custody was regulated only in the cases of offences committed flagrant delicto. They further explain that remand in police custody was the sole prerogative of the judicial police officers, who could solicit the authorisation of the state counsel only for the purpose of extension, a practice that was extended to cover the cases of non-flagrant offences as well. Under the CCPC, the provisions of Section 118-126 are quite instructive. The prerogative of the judicial police officers to order remand in police custody has been limited to the cases of offences committed flagrant delicto as defined in the provisions of Section 103 of the said code. It should however be noted that except in cases of flagrante delicto as explained hitherto, all the other hypothesis of remand is within the jurisdiction of the state counsel

Jurisdiction of the State Counsel as Regards Remand in Police Custody

At a time when the role of the legal department (the legal department shall as provided for in this Section , comprise the magistrates in the legal department of the Supreme Court, of the Court of Appeal, of the High Court and of the court of first Instance) as regards the restriction of individual liberty is under serious scrutiny on the international scene, an author noted that such measure(remand in police and prison custody at the request of the legal department) are not only hostile to the right to a fair trial but illogical as well [20]. That notwithstanding, the legal department under Section 127(2) of the CCPC has been accorded extensive powers as regards remand in police custody, contrary to the formal provisions of the "code d'instruction criminelle", wherein, the initiative of remand was the sole prerogative of the judicial police officer, with the state counsel's intervention limited only to extension. As such, under the CCPC, remand by judicial police officers has been limited to cases of offences committed flagrante delicto. According to Landry, all other cases of remand are subject to the authorisation of the State Counsel. Such is the case with non-flagrant offences define as he noted that investigations carried out in the case of non-flagrante offences are initiated by the State Counsel and executed by Judicial police officers under his control, prior to prosecution by way of direct summons as in the course of which a judicial police notices that the conditions of a known place of abode and the gravity of the offence is not met. Such is equally the case with the extension of remand initially authorised by judicial police officers at expiration.

While exhausting the exorbitant power of the State Counsel as regards remand in custody, Landry is of the opinion that Section 111 of the CCPC is a solution to the bad faith and inertia of judicial police officers as it made it clear that in the case of felony committed flagrante delicto, the state counsel shall be competent to carry out investigation. When the state counsel arrives at the scene of the commission of the offence, the powers of the judicial police officer to carry out the investigation shall cease immediately, unless the said State Council decides otherwise. In the absence of precision on the procedure of extension by the legislator, divergent views from legal luminaries persist.

While Emmanuel [7] thinks that extension is carried out by the competent state counsel when the suspect has been brought before him by the mechanism of "soit fait retour", which returns the suspect to the cell for complementary information, within a specified duration. On the contrary Landry, in his

capacity as State Prosecutor, holds that authorisation of extension can be given in writing, after seizure, either by "message" or by correspondence wherein the facts motivating the extension are presented. He emphasizes that practically the authorisation given in writing consist in the inscription "accord" on the said message or correspondence. It should be noted however that irrespective of who orders remand in police custody, the code has guaranteed the rights of suspects while in custody as discussed above.

Authorities Empowered to Control Regularity of Remand in Police Custody in Cameroon

This Section of the paper analyzes the various organs empowered to control the regularity of remand in police custody in Cameroon.

Control of Remand in Police Custody by the Legal Department

The control of the regularity of remand in police custody as provided for in the CCPC is regulated by the provision of Section 78(1), which provides that the duties of the judicial police shall be performed under the supervision of the State Counsel as read with Section 137 which provides in its Sub (1) that the state counsel shall direct and control the operations of the officers and agents of the judicial police, (2) He may, at any time visit the police post of gendarmerie brigade in order to verify the conditions of persons in custody provided for in Section 124(3). In the course of such control, the persons whose release he orders of his own motion or by virtue of an order of habeas corpus, must immediately be set free, under pain of prosecution for unlawful detention against the judicial police officer in charge of the police post or gendarmerie brigade where the custody takes place. The control which can be carried out at any time in a police investigation unit concerns both ordinary remand as well as administrative remand. While in some legal departments, ordinary cell controls are organised, supplementary controls can be carried out as well after a denunciation from a litigant. Practically, cell controls are mostly carried out by Deputy State Counsel, who verifies among others the remanding authorities who under Section 118 of the CCPC, must be judicial police officers and in the case of administrative remand who according to Kitio include; the governor, divisional officers, chief of services, and chief of bureau [21]. They equally control the nature of the offence that motivated the remand, the nature of the investigation (flagrant or not) and the duration of remand. As per Section 123 (3) of CCPC, this control is initially done by way of registers held at the units as well as daily remand statistics; subsequently he proceeds with the physical control of detainees, confronting them with the information contained in the register. In case of irregularities or abnormalities of a very serious nature, suspects can be released instantly as well as those whose release has been ordered by way of habeas corpus.

The passage of the State Counsel or his deputy is materialised by the signing of the register of remand in police custody and a joint signing of the cell control sheet with the head of the unit controlled [26]. According to Keubou, cell control can equally be carried out by the Procureur General of the Court of Appeal, in his capacity as the hierarchical superior of the State Counsel and who according to Section 134(2) (a) of the CCPC, supervises the activities of the judicial police officers within his jurisdiction. It is our opinion that such controls can be carried out by the State Counsel on the instruction of the Procureur General who must not necessarily do it personally. Emmanuel [7], however, notes that in his capacity of hierarchical superior, the State Counsel is judge and party, found in the delicate situation wherein he controls himself, making self sanction not only difficult but illusory as well. This assertion is confirmed by Djila [4] and [3] who cites with nodding approval of the Kribi case in Ordinance No.1/HC/PTGI/Kribi of 13 February 2009, wherein the State Counsel did not only condone an irregular remand in police custody from the 30 of January to the 13 of July 2009, but vehemently refused to execute a release order obtained by way of habeas corpus. That notwithstanding the option of hierarchical

control of judicial police officers is not rolled out.

Hierarchical Control by the Judicial Police

According to Kitio, the direct hierarchy of judicial police officers can as well proceed with control of regularity of remand in police custody, citing as an example the case of a commissioner of a central police station who can proceed to the control of the public security units within his area of competence. The regional delegate for national security can as well carry out surprised or announced controls of police units within his jurisdiction at the national level. It is governed by Article 12(1) of Decree No. 2002/003 of 4 January 2002 on the organization of the General Delegation of National Security, which confines the duty to the general inspection. However, such controls are more recurrent within the gendarmerie wherein hierarchy proceeds regularly with cell controls or inspections. Such controls are destined to ensure respect of the duration of remand in police custody as well as the conduct of investigation. This activity is organized by Article 6 of decree No. 2001/181 of 25 July 2001 on the organization of the National Gendarmerie. The aforementioned author opines that such measures can as well help in reducing abuse in the course of police custody, observing that when such measures are announced, judicial police officers always precipitate in emptying their cells in order to avoid problems.

A disgruntled suspect can as well engage control measures against remand in police custody.

Control of the Regularity of Remand by Suspect

The legislator has given the suspect the possibility of controlling the regularity of remand in custody by way of the writ of habeas corpus before the High court by virtue of Section 584 of the CCPC. The said Section enumerates the following as grounds for such application: Illegality of arrest or detention or failure to observe the formalities provided for by law. The president of the High Court who has been given the jurisdiction to hear such matters can as well entertain similar matters as regards administrative remand. He is seized by way of application filed either by the person arrested or detained or on his behalf by his counsel. The possibility given to the suspect to control the irregular remand in custody is reinforced by legal measures.

Judicial Control of Remand in Police Custody (Nullity)

This control is provided for by the provisions of Section 124 of the CCPC which state inter-alia that:

1) The judicial police officer shall mention in his report the reasons for remanding the suspect in police custody, the length of time within which he was subjected to questioning, the interval of rest during questioning, the day and hour when he was either released or brought before the state counsel;
2) The suspect shall sign the said entries and, in the manner, prescribed in Section 90(3), (4), (5) and (7) of the CCPC; where he refuses to sign the judicial police officer shall mention that fact in his report.
3) These entries shall be made in a special register kept in all judicial police stations where suspects may be remanded. The said register shall be submitted to the state counsel for inspection and control.
4) The non-observation of this Section shall lead to the nullity of the police report. The nullity within the context of this Section which is visibly prejudicial to the rights of defense is sanctioned by absolute nullity as provided for in Section 3 of the CCPC. The said nullity cannot be overlooked and can be raised at any stage of the criminal procedure and by any party. The legislator has not left out the author of such a violation who must not be allowed to go free.

Control of Regularity by Punishment of Defaulting Judicial Police Officers

Paragraph 4 of Section 124 of the CCPC states that non-observation of the provisions of the said Section shall lead to the nullity of the police report as well as all subsequent acts, without prejudice to disciplinary sanction against the judicial police officer concerned. While emphasizing that the sanction evoked here is specific to infringement of liberty, notably criminal sanctions, Mahouve and Kembo added that such sanctions linked with

irregularity, which can vitiate a procedure of remand in police custody, must be arbitrary. They note that Section 291 of the penal code punishes false arrest with an imprisonment term of from five to ten years and with a fine of from twenty thousand francs to one million FCFA. The offence is aggravated where the deprivation last for more than a month, or where it is accompanied with physical or mental torture or where the arrest is affected with the aid of a forged order or from a public authority or of a uniform unlawfully worn, or pretending an appointment not held. Whatever the case, the practical implementation of remand in police custody, be it in the police or gendarmerie cells, in application of the provisions of the criminal procedure code, is of primordial interest to us.

CONSTRAINTS TO ENSURE COMPLIANCE WITH REMAND IN POLICE CUSTODY PROCEDURE IN CAMEROON

While admitting that the respect of the rights of persons remanded in police custody was far from satisfactory, we observed that the unsatisfactory mark stemmed from structural institutional, instrumental as well as implementation obstacles. Such impediments for the purpose of our study will be classified into internal and external challenges.

Internal Challenges to the Respect of the Right of Persons Remanded in Police Custody

Internal obstacles refer to obstacles created by the Judicial Police Officer (JPO) that impedes the respect of the rights of persons remanded in custody. The internal challenges to the respect of the rights of persons remanded in police custody are caused by the lack of proper mastery of the provision of the code as pertains to remand in custody, laxity by the hierarchy in control missions aimed at ensuring respect, corruption which has been deeply rooted in most sectors of the administration.

Reticence of JPO's towards the CCPC

Reticence has been observed as one of the causes of the non-respect of the rights of the suspect remanded in custody. Prior to the adoption of the CCPC which humanitarian in nature is, the JPO under the "code d'instruction criminelle" had exorbitant powers in the conduct of investigations, be it through the flagrante delicto procedure or by way of investigations commenced by way of complaint. With the coming in of the CCPC, which dissected the attributes hitherto recognized only to the JPO into two, giving a greater part of it to the State Counsel, the powers of the JPO to remand has been limited only to cases of offences committed flagrante delicto and conditioned as well. The old habit of the old procedure manifested by remand on the initiative of JPO in flagrant violation of the provisions of Section 118 Sub 2 and 3 of the CCPC has been difficult to do away with. Resistance has taken a more violent form in some cases resulting to the assaulting and locking up of State counsels who attempt to check excesses. Such was the case of Affaire MP et Olama Hubert c/Six policiers, TGI, judgment No. 122/crim. 2007 at the third district police station. [3] posits that at times the reticence has taken the form of outright resistance of court decisions obtained by way of habeas corpus ordering the immediate release of persons illegally remanded as was the case in "Ordinance" No. 1/HC/PTGI/KRIBI of the 13th of February 2009 as cited by Djila [4] (In this case the elements of the public security station Kribi utterly refused to liberate the alternate member of parliament of the Ocean Division, remanded in custody for the 30th of January to the 13th of January 2009). This reticence can be attributed not only to the old habit that dies hard but to the absence of mastery of the procedure due to the absence of continuous training to this regard.

The Absence of Mastery of the Code in General

From our findings for instance, at the Dschang central police station and other field observations by [3] in Edea, we observed with much consternation the reticence put up by the elements of the said unit with regards to the application of some provisions of the code, violating in passing the rights of the suspect. Such was the case with the ordering of remand in almost all offences irrespective of the gravity and nature of the offence. We concluded that the reticence observed was not only due to the procurement of undue gain but

was justified by the lack of mastery of the provisions of the code, especially as regards the notion of remand in custody and the rights of the suspect attached thereto. We were surprised that with the institution of cell control, violations as regards exceeding the maximum duration of remand still existed. More surprised that it was common knowledge that most abusive remands were carried out during the weekends, with no records to this regard. Little or nothing has been done to eradicate such practices. This situation would have been salvaged if there was a rigid control of the activities of the elements especially as regards the respect of the rights of suspects remanded in custody.

Corruption with Respect to the Rights of Suspects Remanded in Police Custody

It is common knowledge that over the years, the customs department, the taxation departments and the judiciary have been indexed as the most corrupt departments. Within the judiciary, the police have always been pointed as corrupt. The corruption is manifested not only by the harassments of transporters on our highway but in the course of investigations as well. A practical case is the practice of illegal detention which is not only caused by reticence, is justified by the desire to reap some financial benefits from same. It is evident that the ordering of remand in offences such as non-possession of identity cards is motivated by the egocentric desire of the JPO which is none other than the extortion of sums of money.

Far from being internal, the causes of the violation of the rights of suspects remanded in police custody are external as well.

External Challenges to the Respect of the Rights of Suspects Remanded in Custody

The violation of the rights of suspects remanded in police custody can equally be ascribed to factors independent of their will. Such is the case with the lack of adequate infrastructure, the absence of feeding, the absence of medical examination, etc.

The Absence of Adequate Infrastructure

Infrastructure plays a non-negligible role in the respect of the rights of suspects remanded in custody. The respect of the right to physical integrity entails not only that suspects should be remanded in structures which respect a minimum of comfort, but that gender and age should be respected as well [3]. To this end, Section 704(1) of CCPC out rightly prohibits the remand of minors of 12 to 14 years of age except in cases of capital murder. Where such measures are unavoidable, it must be executed in a borstal institute or in the case of remand in prison custody, in a special Section of the prison meant for the detention of minors as per Section 706 of CCPC. The second paragraph of this Section emphasises on a separation between the minors and adults. By extension, one would have expected same treatment as regards the separation of minors and adults at the level of preliminary investigation. To our greatest dismay, not only are minors detained in the same cell, the said cell had a much-reduced space as well. Most cells lacked basic facilities such as toilets. Detainees spent 8 days in custody without taking a single bath, defecating and urinating in buckets in the same cell at times when others are eating. Such treatment was not only dehumanizing but equally fell below the minimum standard of human dignity as propounded by the criminal procedure code and international humans' right instruments [3].

The Failure of the State to meet up with its Feeding Obligation towards Detainees awaiting trail

Feeding is one of the essential and fundamental needs of every human being, whose supply must not be suspended in case of remand in custody. It is in line with this reasoning that the CCPC in its humanising perspective made the provision of feeding to suspects an obligation of the state as per Section 122 of the said Code. This provision, however, authorises friends, relatives to supplement the said supply. Unfortunately, this laudable legislative act is still to be concretised by a modification of the budget of the police or the gendarmerie to meet up with the obligation. While on the field, we noticed that feeding was the sole prerogative of friends, family members and well-wishers. Detainees without relatives or friends were left at the mercy of good will Cameroonians and co-

detainees. Some could go for days without eating [3].

The Absence of Medical Examination

The rights to medical examination of persons remanded in custody has as objective among others to ensure the quality of treatment reserved for persons remanded in custody, considering the fact that by virtue of the provisions of Section 122 of CCPC, suspects are supposed to be treated humanely. The law provides that persons remanded in custody may at any moment be examined by a medical officer appointed by the state counsel of his own motion. Paragraph 4 of the same provision makes it obligatory for medical examination to be carried out at the end of remand but curiously this provision makes the person remanded liable for the expenses of the examination. For a measure which is so fundamental, since it helps in evaluating the quality of treatment given to persons remanded in custody, one would have expected that it be done systematically and at the expense of the state. The absence of this measure which constitutes a violation of the rights of suspects makes it very difficult for persons remanded in police custody to show evidence of degrading and inhuman treatment as in the case of torture.

The Controversial Role of the State Counsel in the Control of Regularity

As aforementioned, the State Counsel is at the same time one of the authorities endowed with the power of ordering the remand in custody of persons. At the same time, he has been vested with the powers to control the regularity of same, coupled to with the fact that he is a party to the procedure [23]. In his capacity of hierarchical superior as per Section 78(2) of the CCPC, the State Counsel becomes at the same time judge and party. He is placed in the delicate position where he must control himself. According to Emmanuel [7], no matter his great capacities and human qualities, such a control renders auto-sanction very difficult and even illusory. Another author in the same line of reasoning thinks that considering the implication of the State Counsel in the work of the JPO, it was necessary to oust him from the control of regularity, proposing that the said control would have been better off with the examining magistrate, who is more independent than the former [24].The pertinence of the observation of these authors was evident in the Kribi case cited above, wherein the state counsel connived with JPOs, to obstruct the execution of "Ordinance" No. 1/HC/PTGI/KRIBI of the 13th of February 2009 ordering the immediate release of one Mbonga Mauger by way of habeas corpus[25].

The Absence of the National commission of Human Rights and NGO's

The National Commission on Human Rights created by Decree No. 90/1459 of 8th November 1990 has as main mission the defence and promotion of human rights [26]. Article 2 of the decree cited above, gives it the possibility of proceeding with investigations in all places where persons are remanded, proceeding with interrogation and confrontation. The proper implementation of this text would have considerably contributed to the protection of the rights of suspects in the course of investigations [27]. On the field, its role and that of other NGO's assigned the same mission is almost absent despite the grievous violations registered daily and nationwide [28].

CONCLUSION AND RECOMMENDATIONS

Conclusively, it should be said that on the 27th day of July 2005 Cameroon adopted law No. 2005/007 on the CCPC. This text while assembling dispersed legislation on criminal procedure, sought to conform to international legislation duly ratified by Cameroon in the domain of human rights. Among the rights sought to be protected by the Cameroonian legislator was the rights to a fair trial which include among others, the right to the presumption of innocence, the right to equality before the law, the right to information and the right to counsel, the right to be treated with humanity and freedom from torture, the right to be tried without undue delay or within a reasonable time, the right to defend oneself in person or through representative, etc.

The foregoing sections have identified and discussed the major challenges on police custody in Cameroon. It is commonly said that the identification of a problem is a step

towards solving the same. Our work will be incomplete and of little essence if after citing the various challenges faced by persons remanded in custody in violation to their rights, no solutions are proposed, or recommendations made. Recognizing these dilemmas, this Section of the paper proffers some robust recommendations for policy makers to consider as they attempt to advance the protection of human rights in Cameroon and the world in general.

To begin with, the imprecise expression of "known place of abode" should not only be properly defined and precise but should be tailored as well to suit our legal context.

Secondly, there is need to re-examine the duration of remand to suit the context of its adoption. To our mind the promptness of Article 9(3) of the covenant on civil and political rights of all arrest and detention as well as bringing of such persons before judicial authorities, does no rhyme with the duration as fixed by our legislators. We, therefore, recommend that not only should the duration be made human rights friendly, but the dispersed texts on remand should be harmonised as well, gaining inspiration from the French experience and interpretation of promptness. The existence of such texts without implementation is of no effect.

Moreover, we recommend the supervisory authorities, which are the legal department and the hierarchy of the police to work in synergy. This synergy should be geared towards reinforcing control measures put in place by the organization of weekly cell controls and systematic control during the weekends. This is to ensure that remand is limited to the cases and conditions provided for by law and to encourage professionalism in the legal system.

Furthermore, the state should make provisions in the budgets of the various stakeholders to respectively ensure the execution of the measures provided for by the legislator with regards to feeding, adequate infrastructures and medication to the benefit of persons remanded in police custody.

Also, we recommend that an independent, neutral, and impartial body be put in place to control the excesses of the State Counsel as well as the mechanism of "so it fait retour" not provided for by the legislator but inspired from the former legislation, used by most State Counsels to unduly and indefinitely prolong the duration of remand in custody. This measure which constitutes an instrument of violation of the rights of persons remanded in police custody needs to be regulated by lawmaker either making it human rights friendly or prohibits it *ab innitiu.*

Furthermore, we recommend that trainings and seminars be frequently organised to actors on the ground such that the good practices that comply with the standards fixed by the CCPC be transmitted to young officers, while enhancing mastery as well. We equally recommend as a measure of limiting abuse, a frank collaboration between the JPO's, the Legal Department and the bench for the interest of the respect of the right of suspects. However, effective and efficient implementation of the aforementioned recommendations by all the relevant stakeholders will certainly go a long way to ameliorate and guarantee human right protection and respects of persons remanded in police custody in Cameroon and the globe at large.

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