

A MANUAL ON

**ACCESS TO JUSTICE
AND THE RIGHT TO
A FAIR TRIAL**

**FOR HUMAN RIGHTS DEFENDERS
IN CAMEROON**

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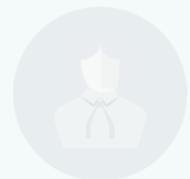
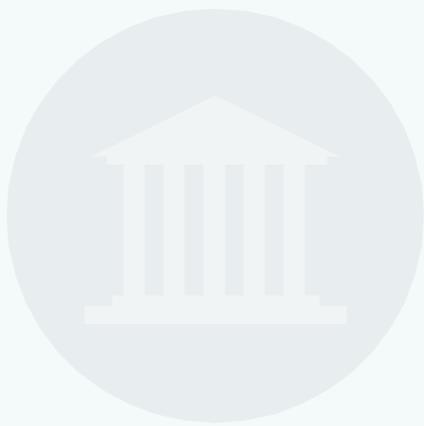


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PREFACE



Barrister Akonteh Clifford Niba

Barrister Akonteh is the National Co-ordinator for the Movement for Democracy, Development and Transparency (MDDT) Cameroon. He is also the Managing Partner for Poubom and Partner's Law Firm, a 2018 Mandela Washington Fellow, Former Chairperson of the Mandela Washington Fellow West African Regional Advisory Board and Current Mandela Washington Fellow Cameroon President.

Access to justice is a crucial process for all-natural and artificial persons seeking the protection of their fundamental human rights within the ambit of adjectival and substantial rules of law. It does not suffice to have access to justice nowadays, but it complete access to justice demands a fair trial proceeding through/in total adherence to procedural rights and the rule of law.

Fair trial is that key component of access to justice that stands out to ensure effective enforcement of human rights instruments in the Republic of Cameroon.

This initiative draws its inspiration from the ongoing Anglophone Crisis which for over four years has catalyzed human rights abuse and violations with recurrent arrest and prosecution of Human Rights Defenders. Thus, with the support of the ABA Center for Human Rights, Justice Defenders Program, MDDT Cameroon in a bid to improve legal literacy on HRD's rights to a fair trial, has developed this manual outlining the national and international legal framework on the guaranteeing

procedural rights and enforcement mechanisms that are in place for fair redress and justice.

MDDT Cameroon is a non-profit, apolitical organization duly registered in 2001 in conformity with the 1990 Law on Freedom of Association. The organization focuses on Human Rights, Democracy, and Peace. It runs a legal clinic (MDDT Legal Clinic) manned by 15 young solicitors and advocates of the Cameroon Bar. The MDDT legal clinic, in preparing this manual, held interviews and roundtable discussions with seasoned judges, senior advocates, Cameroon BAR Council members, and renowned Human Rights Defenders (HRDs). The professionals were able to identify the lacunae in procedural rights guarantees in Cameroon, particularly from the time of the arrest to the time of execution of judgments.

MDDT will therefore disseminate this manual to educate state and non-state actors in the defense of Human Rights as it relates to the Right to a Fair Trial and Due Process.

FOREWORD

“To serve the needs of not only the human rights defenders”



By Justice Lebong Morfaw épouse Chibilli

Justice Lebong Morfaw épouse CHIBILI is a Cameroonian Magistrate with over 24 years of experience as State Counsel and judge in the courts of the Republic of Cameroon. She currently serves as Advocate General at the Court of Appeal of the South West Region of Cameroon.

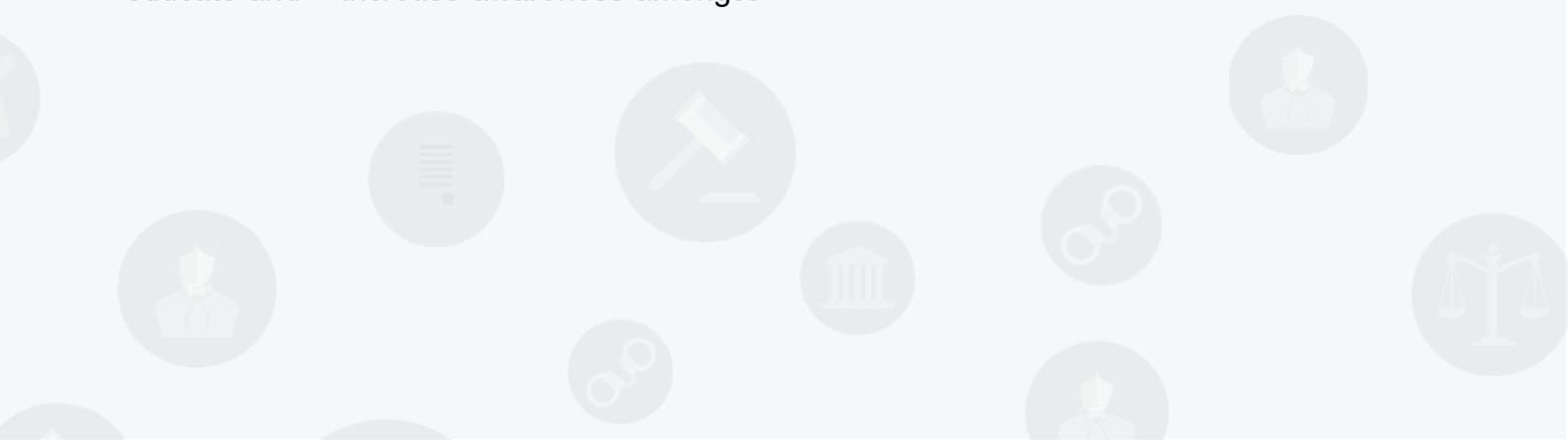
Cameroon, its two English-speaking regions in particular, have been experiencing socio-political instability and violence.

Despite the efforts put in place by the Government, as well as a sound domestic legal framework, reports of these human rights Abuses continue. Men and women of the press as well as human rights defenders have been and continue to be targeted.

The present manual which intends to educate and increase awareness amongst

human rights defenders could not have come at any other time more appropriate than under the current circumstances.

It is therefore hoped that the said manual will go a long way to serve the needs of not only the human rights defenders, but investigating judicial police officers as well and fulfilling our larger goals.



“Access to Justice” is a noble purpose, dressed in beggar’s rags”



By Barrister Ebah Ntoko Justice

Barrister Ebah Ntoko Justice is a Cameroonian advocate, solicitor and notary, with over 25 years experience in legal practice. He is the founder of the Justice Law Firm and is currently serving a second term as Bar Council Member at the Cameroon Bar Association.

“Access to Justice” is a noble purpose, dressed in beggar’s rags. It is about finding enough money some place, somehow, to pay lawyers to represent poor people in court cases. It could be defined to mean the legal right of every individual to have his or her grievance determined on the merits through an independent judiciary system. In this regard, the issue of access to

justice arises due to the imbalance between the poor and rich.

Therefore access to justice entails the necessity to make justice available for the underprivileged; it is the mechanisms that

the law has put in place to deliver access to justice for the poor: the possibility for them to be judged; represented in court, and in the end have a fair trial. The concept of a fair trial is protected under international human rights law and is enshrined in the constitutions of many states including Cameroon. A fair hearing means that an individual will have an opportunity to present evidence to support his or her case and discover what evidence exists against him or her.



THE CAMEROON JUSTICE SYSTEM



By Barrister Legenju Vitalise Nkemngong

Barrister Legenju is the former State Counsel of the Gambia, Barrister and solicitor of the Supreme Courts of the Gambia and Cameroon. He is the Regional President of the Cameroon National Youth Council SWR and Executive Director of the Alliance for Social Justice and Development.

For a better assimilation and direction by this manual, it is primordial for the reader to understand the Cameroon Justice system whose peculiarity lies in the fact that it is an upshot of two legal systems (The Common Law inherited from the former British Cameroon and the Civil Law inherited from the Former French Cameroon).

The Cameroonian Legal system comprises of both a common law judicial system and a civil law judicial system. In civil matters, the Common Law system is applicable in the former British Trusteeship, former

Southern Cameroons now the South West and North West Regions of the Republic of Cameroon popularly referred to as Anglophone Cameroon. On the other hand, former French Trusteeship, and now popularly known as French Cameroon covering eight (08) regions out of the ten (10) in Cameroon apply strictly the Civil Law Judicial System.

It is important to note some peculiarities and differences between the Civil and the Common Law judicial systems. The main feature in a Civil Law system is that Laws are written in a group,

codified, and not defined by judges. Civil Law is a set of legal ideas and systems that have been derived from Justinian's law. Civil Law considers legislation the only source of law and the court system is not bound by judicial precedents. Judges have very limited authority in interpreting the law. The court system is less confrontational, with lawyers having very limited oral submissions to make. The Judge is the law lord and is less flexible with regards to the interpretation of the law.

The Common system on the other hand mostly consists of case-based law and relies

mainly on precedence. The Court sessions are more oral and adversarial, with lawyers having a major role in guiding the judges in the interpretation of the law. Judges are very flexible with interpretation of the law with guided submissions of lawyers. Within the Common Law Legal System, the legal principle of binding precedence is very much alive such that Judges of Lower Courts are to a greater extent bound by Judgments (Interpretations and Positions of the law interpreted and pronounced by superior Courts).

However, it is worth noting that as regards the application of criminal law, Cameroon functions under a harmonized system, strictly guided by the Criminal Procedure Code (CPC) and the Penal Code amongst other pieces of legislations. The CPC is the main mandatory legal document that spells out procedures in criminal matters within the national territory and likewise the Penal Code which classifies and lays down criminal offences punishable under the Cameroonian legal system. There are however other special legislations with regards special courts in respect of criminal matters such as the Military Tribunal etc.

The trial and procedural rights enshrined in this manual are therefore of uniform application in both the common law and civil law jurisdictions of the Republic of Cameroon.

“Justice in the life and conduct of the state is possible only as first it resides in the hearts and souls of the citizens”

- Plato

DEFINITION OF KEY TERMS

I) Access

This is a permission, liberty, or ability to enter approach, communicate with, and otherwise make use of available resources. (dictionary.findlaw.com). Cambridge Advanced Learner's Dictionary 3RDEdition (page8) stipulates that access can also be seen as a method or possibility of getting to our goals or objectives.

II) Justice

Justice is a concept of moral rightness based on ethics, rationality, law, natural law, fairness, religion, and or equity. Simplicita, justice is the result of the fair and proper administration of law.

III) Access to Justice

It is the ability of any person, regardless of their income, to use the legal system to advocate for his/herself as well as his/her interests.

IV) Rights

A right is a title or an interest in something or privilege recognized by law. It can also be a claim recognized and delimited by law to secure a claim. , 'Rights' can also be seen as an aggregate of the capacities, powers, liberties, and privileges by which a claim is secured.

V) Human Rights

These are inherent rights that human beings possess by their humanity. Examples include the right to life, right to education, and right to a fair hearing and fair trial. Human rights are moral claims made by humans in society and are universal, inalienable, inherent, and legally protected. Dr. Sone Patience, HOD-Common Law-University of Buea - Cameroon states that, *'human rights are common to all humans all over the world; they cannot be taken away by will and are protected by laws both at the international and national scenes, respectively'*.

VI) Human Rights Defenders

A human rights defender (HRD) as per Article 5 of the Declaration of Human Rights Defenders states that *'anyone, professional (for example, UN officials, NGO's professionals, lawyers, journalists) and non-professional (e.g. activists, scholars, leaders of social organizations, indigenous leaders, volunteers, etc.) who works for the promotion and protection of human rights or who carries out human rights activities even on an occasional basis is considered to be a human rights defender'*.

The categorization of Human Rights Defenders can be a person or group of persons working to promote human rights, ranging from an inter- governmental organizations based in the world's largest cities to individuals within their local communities. Defenders can be of any gender, of varying ages, from any race, and all sorts of profession or religious background. It is important to note that HRDs are not only found within NGOs and INGOs but in some instances, could be government officials, civil servants, journalists, lawyers, Trade unionists, students, police officers, or members of the private sector. The most obvious HRDs are those whose daily work

involves the promotion and protection of human rights, for example, human rights lawyers, journalists, civil society activists, state agencies, human rights commissions, etc.

VII) Trial

This is the judicial examination and determination of acts and legal issues arising between parties into a civil or criminal case. It can also be the coming together of parties to a dispute to present information (in the form of evidence) in a tribunal or a formal setting with the authority to adjudicate claims or disputes.

VIII) Fair Trial

This relates to a court (legal) proceeding conducted fairly, justly and with procedural regularity by an impartial judge or adjudicator and in which, based on evidence and rule of law pronounces an impartial verdict.

IX) The Rule of Law

The rule of law is the durable mechanisms, processes, practices, institutions, norms, and community commitments that support equality of all citizens before the law, transparency, and accountability; secures a non-arbitrary form of government and more generally prevents the arbitrary use of power.

X) Manual

A manual is a hand written or typed document that may be produced for the purpose of introducing, inter alia, information or data in relation or in connection to knowledge an organization intends to disseminate to the public or affiliated groups regarding a particular topic in a particular field of activity.

UN-CHARTER
 PENAL CODE CAMEROON ACHPR
 UDHR CONSTITUTION
 CRIMINAL ICCPR
 PROCEDURE CODE

SECTION ONE

1.0 GENERAL INTRODUCTION

Access to justice is an essential component of the rule of law and of fundamental relevance to the respect, promotion, and protection of human rights. When a right is violated or damage suffered, its remedy comes through the rule of law. Hence, only the availability of effective judicial remedies can resolve human rights abuses and violations.

A legal system must be independent, accessible, and respect the right to a fair trial to remain credible and respectable to the citizenry of a state, it. For justice to be done, any suspect, accused person, or defendant must be accorded a transparent, public, and Fair trial as enshrined in international and domestic legal instruments to be outlined in this manual. Human Rights Defenders (HRDs) play a critical role in the promotion and protection of human rights, leaving them exposed and needing further protection by both state and non-state actors. With the recurrence of socio-political hostilities, international and non-international conflicts, Africa and the World at large are bound to record more incidents of human rights violations against human rights defenders . Cameroon is not an exception: The Oxford Human Rights Hub Report on *“The Human Rights Abuses in the Cameroon Anglophone Crisis”* demonstrates that the ongoing crisis between the English-Speaking Regions of Cameroon and the rest of the country has fueled human rights abuses and violations, including extra-judicial killings, torture, and destruction of property, fair trial violations, and inhumane or degrading conditions of detention.

The Cameroonian Justice System:

For a better assimilation of this manual, it is primordial for the reader to understand the Cameroonian Justice system whose peculiarity lies in the fact that it is a dual legal system.

These violations breach both Cameroonian national laws and international human rights laws that bind the Cameroonian government.

There is, therefore, an urgent need for human rights activism to resolve these ongoing violations, especially in the English regions of Cameroon where primary actors are leading perpetrators. One can imagine the pressing need for HRDs to engage in rigorous advocacy and protection measures. In the last years, however, such efforts by HRDs have led to their arbitrary arrest either due to a breach of professional ethics against them or an infringement on the rule of law.

According to Amnesty International, there is a conscious attempt to harass and silence

human rights defenders in Cameroon. HRDs, therefore, need legal remedies and fair trials for justice to be served both for themselves and for the people they serve. The subsequent sections of this manual will expatiate on applicable national and international legal instruments on the right to a fair trial, trial procedures, and various rights accorded by the law to suspects, accused persons, and defendants.

The content of this manual will focus mainly on the procedural rights and mandatory judicial Procedures necessary to qualify a trial as fair.



*“The true measure of the justice of a system
is the amount of protection it guarantees to the weakest”*

Aung San Suu Kyi

SECTION TWO

2.0 LEGAL INSTRUMENTS GOVERNING ACCESS TO JUSTICE AND THE RIGHT TO FAIR TRIAL

2.1 INTERNATIONAL LEGAL INSTRUMENTS

THE UNIVERSAL DECLARATION OF HUMAN RIGHTS - 1948

The Universal Declaration of Human Rights recognizes the inherent dignity of each member of the human race's equal and inalienable in rights. Such rights are the foundation of freedom, justice, and peace in the world.

Article 8: Right to be treated fair by the courts

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted to him by the constitution or by law.

Article 10: Right to trial

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 any criminal charge against him.

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS - 1966

The International Covenant on Civil and Political Rights 1966 firmly establishes the fact that human beings should enjoy civil and political freedom as well as freedom from fear, and that this can only be achieved if conditions are created whereby everyone may enjoy civil, political, economic, social and cultural rights.

Article 9:

1. Everyone has the right to liberty and the security of a person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officers authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, so that the court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.
5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Article 10:

All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

Article 14

- a. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a law suit, everyone shall be entitled to a fair and public hearing by a competent, independent, and impartial tribunal established by law. Everyone charged with a criminal offense shall have the right to be presumed innocent until proved guilty according to the law.
- b. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees ,in full equality:
- c. To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him:
- d. To have adequate time and facilities for the preparation of his defense and to communicate with counsel of his choosing;
- e. To be tried without undue delay;
- f. To be tried in his presence, and to defend himself in person or through legal assistance of his choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
- g. To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
- h. To have the free assistance of an interpreter if he cannot understand or speak the language used in court;
- i. Not to be compelled to testify against himself or to confess guilt.

AFRICAN CHARTER ON HUMAN AND PEOPLE'S RIGHTS - 1981

Reaffirms adherence to the basic principles of humanity and establishes firm conviction of rights and freedom, taking into account the importance attached to these rights and freedom in Africa.

Article 3:

1. Every individual shall be equal before the law
2. Every individual shall be entitled to equal protection of the law.

Article 4:

A Human being is inviolable. Every human being shall be entitled to respect to of his life and his integrity of his person. No man shall be arbitrarily deprived of his right.

Article 6:

Every individual shall have the right to liberty and security for his person. No man shall be deprived of his freedom except for reasons and conditions previously laid down by the law in particular no one shall be arbitrarily arrested or detained.

Article 7:

1. Every individual shall have the right to have his cause heard. This comprises of ;

- a) The right to an appeal to the competent national organs against acts of violation his fundamental as recognized and guarantee by conventions, laws, regulations and customs in force.
- b) The right to be presumed innocent until proven guilty by a competent court or tribunal;
- c) The right to defense, including the right to be defended by a counsel of his choice;
- d) The right to be tried within a reasonable time by an impartial court or tribunal.
- e) No one may be condemned for an act or omission which did not legally constitute a legally punishable offence at the time the offence was committed. No penalty may be inflicted for an offense for which no penalty was made at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed punishment is personal and cannot be imposed only on the offender.

2.2 NATIONAL LEGAL INSTRUMENTS

CAMEROON'S CONSTITUTION OF 1996 (AS AMENDED)

The Constitution of Cameroon in its preamble affirms and declares that every human person, without distinction as to race, religion, sex or belief, possesses inalienable and sacred rights. These rights are guarded by this Constitution.

Preamble (Paragraph 10)

The law shall ensure the right of every person to a fair hearing before the courts.

Preamble (Paragraph 11)

Every accused person is presumed innocent until found guilty during a hearing conducted in strict compliance with the rights of defense.

LAW NO. 2005/007 OF 27TH JULY 2005 ON THE CRIMINAL PROCEDURE CODE

This is the law regulating court processes and proceedings in the adjudication of criminal offenses. Enshrined in the CPC are procedural rights (See Section 3 of the Manual).

LAW NO. 2016/007 OF 12TH JULY 2016 ON THE PENAL CODE.

It embodies the classification of criminal offenses, various offenses, and their punishment and fines.

LAW NO. 2006/015 OF 29TH DECEMBER 2006 ON JUDICIAL ORGANIZATION OF THE COURTS (AS AMENDED)

This contains the organizational and administrative structure of the various courts, competencies, and jurisdictions.

Customary Courts:

Found in each district of the country. Handles civil matters, customary marriages, inter-tribal conflicts, polygamous issues, divorce and inheritance, and matters up to 69000frs.

Court of First Instance:

Found in every sub-division of Cameroon. It has jurisdiction to hear civil, criminal, and labour matters and also tries simple offenses and related misdemeanors with damages of fine charged not more than 10.000.000frs.

High Court:

Found in every division of the country. Handles cases which have damages of above 10.000.000frs. It also issues prohibitions, mandamus, and habeas corpus; restraining excesses and abuses by public offices.

Court of Appeal:

Located in every region of the country. It tries cases of customary law courts, the courts of First Instance where judgment is considered unsatisfactory by either party. After reviewing the case, it either passes a new judgment or maintains the original.

Supreme Court:

Located in Yaoundé. It tries unsatisfactory cases decided by the court of appeal, then either provides a remedy or remands it for rehearing at the appeals court. It also handles administrative cases and ensures that judgments of the lower courts conform with the law, it ensures that case law is unified and that law and customs are rightfully interpreted.

SPECIAL COURTS:

Law No2008-015 of 2 December 2008 establishing the Military Court.

Established in each region of Cameroon. They have competence to try theft committed by the use of firearms, offenses committed by military members in a military establishment or in the exercise of their duties, offenses committed by civilians in a military establishment that causes damage to military equipment or the physical integrity of a military member, offenses relating to the purchase, sale, production or possession of military apparel.

Law No.2012/011 of 16th July 2012 establishing the Special Criminal Court.

Has competence to hear and determine matters where loss amounts to at least 50.000.000FCFA, relating to misappropriation of public funds and other similar offenses provided by the Penal Code and International Conventions ratified by Cameroon.

Law NO.2009/004 of 14th April 2009 on Legal Aid

This law contains provisions to assist legally, persons whose resources are inadequate, to supporting them in having their rights enforced by a court or to follow up the enforcement of any writ or process of execution previously obtained without such legal aid.

SECTION THREE

3.0 THE RIGHT TO FAIR TRIAL AND LEGAL PROCEDURES

In law, a fair trial is realized when a party goes through an impartial legal proceeding divided into pre-trial, trial and post trial procedure. This Section will mainly focus on procedures and procedural rights in Criminal Proceedings.

It is worth noting that ignorance of the law, substantive or procedural, is not a defence, hence litigants and HRDs must master the laws regulating not only their profession but also trial procedures, possible legal redress, and the various rights accorded by the international and national legal regimes. This knowledge is especially important considering their exposure to potential victimization.

Anyone who is a victim of an act deemed criminal has the right to submit a complaint regarding the person or persons suspected of Perpetrating the alleged criminal act.

Anyone who is alleged to have committed an act qualified as criminal shall be entitled to an investigation and trial to ascertain his or her culpability under the law.

The principle text governing the procedures for filing a complaint, initiating an investigation, and conducting a trial is the Criminal Procedure Code (CPC).

EQUALITY ACCESS
 RIGHT IMPARTIALITY
 FAIR TO REPRESENTATION
 EQUITY TRIAL
 FREEDOM TRANSPARENCY

3.1 KNOWING YOUR RIGHTS AND PROCEDURES AS AN ACCUSED PERSON

An accused person is an individual accused to have allegedly committed a crime. Anyone with a complaint against him before a legal department or judicial investigator at the level of the state council, is presumed innocent and regarded only as a suspect pending trial by a competent tribunal.



Complaints and Investigation

Where complaints can be lodged

Criminal complaints can be lodged at any of the investigating departments mentioned below. Section 83 CPC.

- The Police (all units)
- The Gendarmerie Brigades
- The Gendarmerie Legion
- The Police De Police (when Police officers are suspects)

Those persons qualified by law as judicial police officers or police agents as per S.78, 81 of the CPC, can carry out investigations on their own initiative or by instruction of the Legal Department. S.116 (1)

- A criminal complaint can also be lodged at the Legal Department or State Counsels' Chambers. S.135 (1)(a)
- Complaints are made either orally or in written form and without charge. S.134(4) (b).

- A complaint can be made by a third-party on behalf of a victim. In such a case it is considered as information but treated in like manner as a complaint. S135 (4) (a).
- Judicial Police Officers are charged to investigate complaints received, collect evidence, identify offenders and accomplices and present them before the Legal Department. S.82.

A) Searches, Arrests and Custody during Investigation at the Police Unit or Gendarmerie:

Upon the receipt of a complaint against a suspect, a Judicial Police Officer (JPO) may question anyone whose statement may lead to discovery of the truth.

- A suspect may be summoned for investigation. If he fails to appear, JPO may upon a writ of *habeas corpus* issued by the State Council. arrest the suspect and first present him to the state council.S.92(1)

- He may be instructed by the State Counsel to put him under investigation and make a statement from him. The suspect should be either released immediately by the S.C. or detained in custody upon the instruction by the state council depending on the severity of the allegation.

In the event an offense is committed in flagrante delicto (misdemeanor or felony); the GPO must immediately inform the state council. In this regard, the SC is competent to investigate unless he or she decides otherwise. S.111

The SC identifies and interrogates suspects. He orders searches and seizures when necessary. Criminal proceedings may only be instituted after a preliminary inquiry has been conducted by the Examining Magistrate. S.112-114

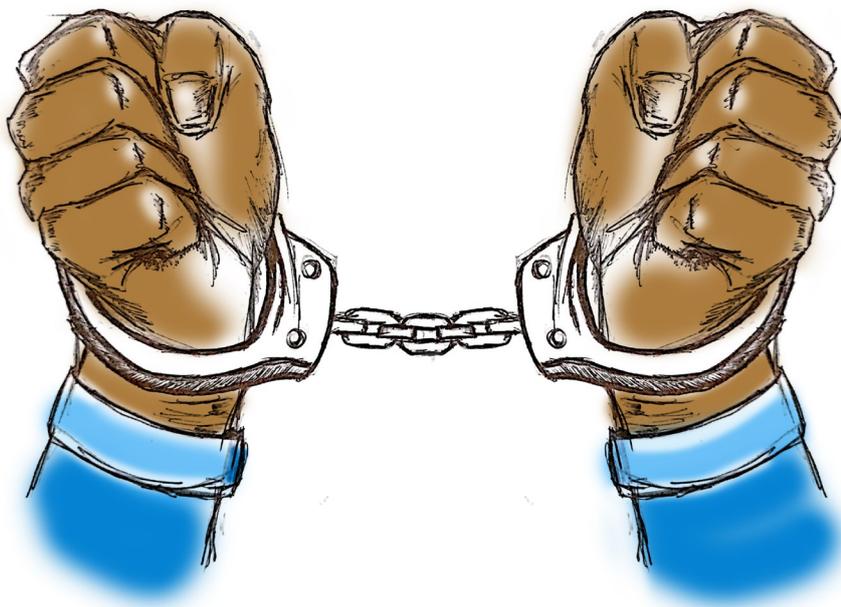
i) Searches

If necessary, competent investigators shall conduct searches and seizures in the offices of advocates and other persons bound by professional secrecy. But the person concerned and a representative of his

professional organization shall also be present. Failure to comply with these provisions shall render the search null and void.S.106-107

ii) Arrests

- Any person who is to be arrested on suspicion of having committed an offence has the right to know the identity of the person effecting the arrest; (except in offenses committed Flagrante Delicto) and the right to be accompanied by a third party to ascertain the place of his detention. S.31
- The JPO should inform the state counsel daily regarding detainees in police custody, including details of names, dates of arrest, alleged offense, and duration of Custody. S.33.
- No bodily or psychological harm shall be inflicted on persons arrested.S.30(4)
- Persons arrested may be searched and items found on them taken away and kept in safe custody except necessary clothing,



which detained individuals may keep, and an inventory made of all seized items that is to be signed by the GPO, suspect, and witness.

- Upon release, all seized items not to be used as exhibits shall be returned to the suspect and a report attesting to this fact containing his signature, that of the JPO and a witness, is made and filed.S.35

iii) Interrogation of persons under arrest

Upon commencement of the investigation, suspects have the following rights:

- To be informed of their right to counsel
- To remain silent N.B: failure to disclose these rights shall render the proceedings a nullity. S.116
- He must be informed of the allegations against him and shall be treated humanely regarding both his physical and psychological well-being.
- Persons in police detention have the right to be visited during working hours by their counsel, family members, and any person inquiring into the conditions of their confinement where necessary. S122(3)
- To be in custody by the State of Cameroon and to receive means of subsistence from their families and friends.S.122(4)
- During interrogations, the suspect is entitled to a reasonable period of rest, and these periods must be logged in a police report, giving details as to the exact length time which the suspect received rest. S.122(1) and S.124(1)
- Not to be subjected to any form of mental or physical compulsion, torture, violence, threats or any other form of coercion, trickery, insidious devices, false suggestions, prolonged questioning, hypnosis, the administration of drugs or any other procedure the nature of which is to compromise or reduce the individual's liberty of action or decision-making, or altering his memory or perception. S.122(2)
- Any JPO who fails to comply or violates the provisions of this section shall be liable to criminal prosecution without prejudice to disciplinary sanctions.S.122(5) and S.90
- A suspect in police custody has the right to medical examination upon request either by himself or by state counsel. Regardless of the source, the state counsel is required to coordinate the examination with a medical doctor.S.123(1)(2)
- Medical examination is obligatory at the end of police custody. This exam is to be carried out by a medical doctor of the suspect's choice and at the expense of the suspect, if his family or counsel so requested. The suspect shall be informed of this right. The medical officer's report shall be a part of the case file and a copy shall be given to the suspect. S123(3)(4)
- A suspect may dictate his statement to the investigator to write or write it down himself. At the end of the statement, he has to sign it as should the investigator and an interpreter if one was used. The suspect also has the right to initial each sheet of the report and all erasures, alterations, and interlineations. If there be an interpreter, he must also do the same. Any erasures, alterations, or interlineations not initialed shall be inadmissible. S.90

- A suspect asked to sign a report or statement register has the right to make any necessary reservation before signing it. The reservations shall be explicit and unambiguous. S.90

iv) Remanding to Police Custody

- JPO has the power to remand a suspect in police custody for 48 hours, renewable once. This period may only be extended under exceptional circumstances twice and only by written approval of the State Counsel and approval must be reasoned and must not be extended solely to record a statement from a witness.S.119
- No suspect shall be arrested and remanded into police custody on Saturdays, Sundays, and public holidays except in the cases of offenses committed in flagrante delicto S.119(4)
- In the case of a simple offense, a police officer can arrest a suspect who refuses to disclose his identity or reports a false identity. Such detention shall last no longer than 24 hours.

Bail

- A suspect with a known place of abode shall be released on bail at the close of the investigation if he fulfills one of the conditions mentioned under S.246 (g).
- If he has no known residence or cannot fulfill any of the conditions mentioned under
- 246(g), he shall be taken before the State Counsel. S.117
- Also, in case of a misdemeanor or felony committed in flagrante delicto, he shall be presented before the State Counsel.



B. Proceedings at the Legal Department

A suspect presented before the State Counsel could either be;

- Interrogated immediately for a misdemeanor committed in flagrante delicto, remanded to custody-awaiting-trial pending his appearance before the court on the next hearing date for proceedings related to any offences committed in flagrante delicto or,
- Granted bail and summoned to appear in court on the next hearing date.
- For felonies committed in flagrante delicto, the State Counsel immediately refers a holding charge to the Examining Magistrate and the suspect is immediately presented. S. 143. The State Counsel has no power to remand in awaiting trial.
- Before the Examining Magistrate, the defendant is charged and his rights to defend himself are explained to him. S.167 and 170. A violation of these sections shall lead to an absolute nullity of the criminal proceedings.
- He may be temporarily released on bail or remanded while the preliminary inquiry is conducted.
- The defendant is mandatorily given 5 days to prepare his defence before the commencement of the preliminary inquiry, with the exception of cases of felonies or misdemeanors committed in flagrante delicto.S.174 (3)
- The Defendant has the right to request the President of the court to replace an Examining Magistrate for the proper administration of justice.
- The Defendant has the right to remain silent and reserve his defense for the trial court. S.172(5)

***“Injustice
anywhere is a
threat to
justice
everywhere”***

Martin Luther King Jr

SECTION FOUR

4.0 IMPROVING THE EFFECTIVE IMPLEMENTATION OF LEGAL PROCEEDINGS

4.1 ARREST AND PRELIMINARY INVESTIGATION PHASE

A) Positives

Analysis of collected data demonstrates:

- More than 70% flagrante delicto cases show the judicial police officer complying with the obligation to inform the State Prosecutor.
- 95% of complaints are filed free of charge since the reform of the Criminal Procedure Code
- The possibility of compensation for people who suffered unlawful detentions.

B) For Improvement

- Lodging a simple complaint leads to police custody in over 46% of cases.
- Formalities prior to arrest are poorly applied. Exemplary violations occur with the obligation to inform persons under arrest of their right to remain silent, as well as the right to call counsel.
- Arrests, except for offences committed flagrante delicto, are conducted without an arrest warrant or occur without the issuance of a summons in 23% of cases.

- In most cases recorded, the judicial police officer inflicts physical violence as well as cruel, in human, or degrading treatment during the arrest of the suspects.
- Complaints are often unduly delayed.
- Despite the recorded use of torture, it remains the referred investigatory technique among judicial police officers during preliminary investigations.

C) Unimplemented Reforms

The study focused on both the conditions and legal compliance of police regarding suspects in their custody throughout their detention.

“Justice delayed is justice denied”

William Gladstone

4.2 INVESTIGATION PHASE

a) Positives

The study found this phase to be one of the best in terms of observing citizens' rights.

b) Suggested Improvements

- Those in provisional detention face enormous challenges: Dehumanizing bunks, lack of toilet facilities, the proliferation of acknowledged as and defendants are contagious diseases, inappropriate food rationing, etc. In short, systematic non-compliance with the minimum detention rules decreed by the United Nations.
- The time limiting pre-trial detention is regularly extended illegally. This recurrent violation demonstrates the systematic dysfunction within the justice system in Cameroon. Commonly acknowledged as a cause for these extensions is the insufficient provision of human and material resources to complete timely collection of evidence in criminal investigations.



“Habeas corpus is rarely used by examining magistrates”

c) Unimplemented Reforms

- Habeas corpus is rarely used by examining magistrates. Magistrates justify this ignorance by arguing that bail is free and defendants are provisionally released based on an assumption of their ignorance.

“Justice must not only be done but must also be seen to be done”

SECTION FIVE

5.0 CHALLENGES FACED BY HUMAN RIGHTS DEFENDERS (HRDs) IN SECURING A FAIR TRIAL

The major duties HRD's have in society are monitoring activities, writing reports, and attempting to redress violations of civil, political, social, cultural, rights basic to mankind.

They also gather information on human rights violations, visiting victims, sometimes interacting with government leaders and attending trials. Human rights defenders also seek the promotion and protection of civil and political rights as well as the promotion, protection, and the realization of economic, social, and cultural rights. They address many human rights concerns, which can be as varied as summary executions, torture, arbitrary arrest and detention, female genital mutilation, discrimination, employment issues, forced evictions, and access to health care.

However, due to the bureaucratic and despotic nature of most states sheltering flagrant violation of human rights, most HRDs face major setbacks in the exercise of their duties. Some of those challenges include:

A) Opposition from government authorities

The most common resistance faced by HRDs is opposition from government



authorities. Most human rights defenders work to secure accountability for respect for legal standards. In such circumstances, they are obliged to monitor how authorities respond to situations as they arise. Since most state authorities (judges, police, and other administrative authorities) violate the law in carrying out their duties, the presence of human rights defenders is always a threat or hindrance to their activities.

Many regimes enact legislation targeting HRDs, such as limiting places for assembly or enacting broadly defined anti-terrorism legislation. The Criminalization of HRDs often results in extended periods of arbitrary detention, restrictions on foreign funding to human rights organizations, and further harassment and marginalization in their societies.

B) Victimization

HRDs are vulnerable to arbitrary arrests in their quest to get the truth. Since the aim of human rights activities is to create awareness and help victims fight for their rights, they are considered targets by authorities. The risks HRDs encounter are, among others, prison, harassment, intimidation, torture, defamation, reprisals against their associates and death.

In addition, which happens quite often, NGO offices are targeted for attacks during which files are stolen and digital material destroyed, depriving them of their working tools. HRDs are threatened through recurrent harassment and suffer torture, beatings, arbitrary arrest, detention, death threats, harassment, and defamation, as well as restriction of their freedom of movement, expression, association, and assembly. HRDs have been the victims of false accusations and unfair trials and convictions. They are also targeted with acts of intimidation and reprisals for their cooperation with the United Nations on human rights issues.

C) Access to information

Another obstacle faced by HRDs, one this manual seeks to reduce, is access to information and legal literacy. HRDs suffer from lack of adequate institutional frameworks and are therefore limited in their professional capacity. As a result, they perform their duties in an adhoc and uninformed way. Unlike the Cameroon Bar Association, which regulates the professional life of a lawyer and is enshrined in the 1990 BAR Laws, journalists and civil society activists lack an immediate authority to ensure professionalism which has exposed these HRDs to victimization.

D) Lack of Judicial Independence

The lack of total judicial independence is a major challenge for HRDs in their quest for legal redress and as a result, they lack adequate access to justice. Most cases involving HRDs are manipulated for political purposes, putting investigations and judicial officers like magistrates under pressure, preventing them from rendering much needed justice in conformity with the law.



5.1 RECOMMENDATIONS

Following several interviews conducted with some seasoned legal practitioners comprising mostly lawyers and judges, certain recommendations were made to improve on access to justice and keen adherence to and respect of fair trial rights in Cameroon. Some of these recommendations targeted the role played by key stakeholders in the protection and safeguard of human rights. Barrister Ebah Ntoko Justice expatiated greatly on these recommendations as detailed below:

1) The Cameroon government

The Cameroon government should develop a specific national mechanism governing the dissemination of legal educational documents promoting and protecting HRDs and human rights as a whole.

2) Law enforcement officers

Law enforcement officers should have more intensive trainings on the role of HRDs. Such endeavors must aim at shifting their mindsets away from considering HRDs as an opposition to the government particularly in cases where the human rights violations are pronounced against the state. Law enforcement agents must understand the operations of HRDs as auxiliary actors cooperating with the state in preventing human rights abuses.

3) CSOs

CSOs should employ more digital innovation inhuman rights advocacy and protection. Over 60% of Cameroon's population is young, and in most cases of violations, youths engage in rights abuses as either victims or perpetrators. The most agile HRDs are young professionals whose works are guided by ICT.

4) National Commission of Human Rights and Freedoms

Liberalizing the office of the National Commission of Human Rights and Freedoms, increasing their man power and their regional and divisional outreach will greatly enhance the efforts of HRDs. Charging such a commission with the duty to ensure access, production, and dissemination of Human rights material will lighten the darkness of ignorance regarding the citizenry's rights and duties.

5) Information Access

HRDs should have free access to studies, data, reports, archives and other informational materials produced by public authorities. An easily accessible library for the public will be of great assistance.

6) Diplomatic Missions and International human rights organizations

Diplomatic Missions and International human rights organizations should intensify their collaboration with CSOs and engage more vigorously in human rights promotion and protection. For example, this Manual, which was funded by the American Bar Association Center for Human Rights Defenders, not only educates HRDs but the organization itself goes a long way to support robust foreign assistance that recognizes human rights violations and encourages human rights champions and efforts that will increase the capacities of human rights defenders. The donor community must also endeavor to invest in strengthening the Cameroon criminal justice system through trainings of law enforcement agents and judicial officers.

5.2 CONCLUSION

A National Study on Criminal Justice by the Ministry of Justice reveals that:

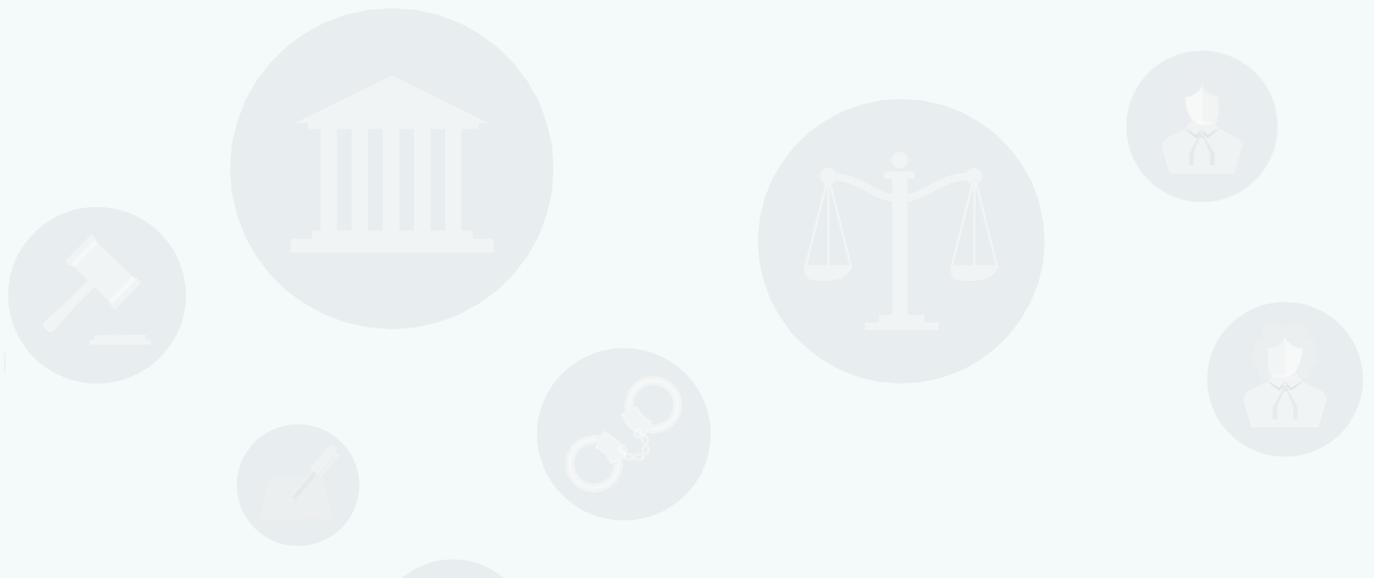
- 69% of those sampled believe that citizens do not have easy access to justice in Cameroon.
- 87% of citizens believe that the principle of justice in Cameroon is not respected.
- Only 24% of citizens know that procedural documents, such as the preliminary investigation report, are not valid if the confession was obtained under torture.
- 78.4% of citizens questioned affirmed that the practice of torture during police custody remains common in Cameroon. This practice is said to be systematic in certain specialized police and gendarmerie units.
- In over 96% of cases, the conditions of police custody are considered inhumane.
- Almost 70% of Cameroonians are not aware of the penalties incurred by judicial officers in the event of an offense committed by them.
- Around 80% of citizens are unaware of the categories of people who can benefit

from legal aid and the advantages offered by this law.

- Around 50.5% of citizens are not aware of the law on legal aid in Cameroon.
- Nearly 51% of citizens say that the current functioning of justice in Cameroon does not guarantee the protection of human rights under ratified international instruments.

Despite foundational measures such as national and international legal frameworks that have been established in Cameroon, access to justice remains a cause for concern. The right to a fair trial particularly needs more promotion and protection.

The work of HRDs, especially in conflict areas, are of paramount importance in contemporary Cameroon. Avenues and safe spaces must be created for state and non-state actors, whether acting jointly or independently, to continuously provide swift and rigorous human Rights advocacy and protection, provisions that are necessary to improve access to justice and the condition of human rights in Cameroon.



“All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”

United Nations, Charter, 1945





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We shall remain forever thankful.

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