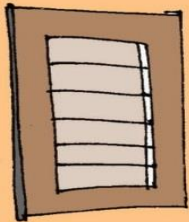




# MANUAL ON HUMAN RIGHTS, INDIGENOUS PEOPLES' RIGHTS, AND GOOD PRACTICES APPLICABLE DURING ANTI-POACHING OPERATIONS



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# Preface

The Implementation of biodiversity protection programmes and projects raises a number of issues related to the fundamental rights of stakeholders, because of their divergent interests. Mindful of its commitments to sustainable development, the State is obliged to meet the basic needs of its people by making sustainable use of all the biodiversity resources while preserving the development potential of future generations. This manual on human rights, indigenous peoples' rights and good practices applicable during anti-poaching operations is primarily intended for the training of eco-guards. It is a tool for the awareness raising of rangers on human rights issues as a goal of any initiative to preserve biodiversity, the risks related to the non-respect of the suspect's rights in anti-poaching operations, the rights of the local living around communities protected areas, including those of indigenous peoples whose lifestyles are intimately linked to their environment.

This manual clarifies the rights and obligations of the stakeholders and the risks to which each party is exposed by acting outside the legal and regulatory framework. In this manual, emphasis has been placed on the mandatory provisions of the Criminal Procedure Code, which should be respected by rangers to preserve the validity of their wildlife offence reports, as well as the penalties to which they are exposed. This particularly when they resort to torture in order to obtain confessions from the suspects of poaching, even if they are caught *flagrante delicto* in the act of killing game that belong to protected species.

Emphasis has also been laid on the specific rights accorded to indigenous peoples and local communities living near protected areas. The latter will understand by consulting this manual that belonging to an indigenous population does not confer judicial immunity or a license to exterminate endangered species. It is highly desirable that all stakeholders find through this Handbook the effective instrument for the promotion and protection of human rights in the implementation of programmes and projects that protect the rich biodiversity of the Congo Basin, in which Cameroon is located.

***The Chairman of the National  
Commission on Human Rights  
and Freedoms***

***Dr CHEMUTA Divine BANDA***

## Abbreviations and acronyms

<b>JPO:</b>	Judicial Police Agents;
<b>UNGA:</b>	United Nations General Assembly;
<b>ACHPR:</b>	African Charter on Human and Peoples' Rights;
<b>ICJ:</b>	International Court of Justice;
<b>ECHR:</b>	European Court of Human Rights;
<b>NCHRF:</b>	National Commission on Human Rights and Freedoms
<b>CPC:</b>	Criminal Procedure Code;
<b>CITES:</b>	Convention on International Trade in Endangered Species;
<b>UNDRIP:</b>	United Nation Declaration on the Rights of Indigenous Peoples;
<b>UDHR:</b>	Universal Declaration of Human Rights
<b>ECOSOC:</b>	Economic and Social Council of the United Nations;
<b>CF:</b>	Community Forest;
<b>MINFOF:</b>	Ministry of Forestry and Wildlife
<b>MINAS:</b>	Ministry of Social Affairs and the Family;
<b>JPO:</b>	Judicial Police Officer;
<b>JPOSJ:</b>	Judicial Police Officer having special jurisdiction;
<b>ICCPR:</b>	International Covenant on Civil and Political Rights;
<b>ROA:</b>	Regional Office for Africa;
<b>UFA:</b>	Forest Management Unit
<b>WWF:</b>	World Wild Fund for Nature;
<b>WCP:</b>	Wildlife Crime Programme for Central Africa;
<b>ZCI:</b>	Zones of Cynegetic Interest;
<b>CMZCI:</b>	Community Managed Zones of Cynegetic Interest;

# Introduction

Since its accession to international sovereignty, Cameroon has ratified the main legal instruments for the protection of human rights at the international and regional levels and complies with most of the non-binding texts in this field. These include the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966, the International Convention on the Elimination of All Forms of Discrimination Against Women of 1979, the United Nations Convention against Torture of 1984, the United Nations Convention on the Rights of the Child of 1989, the African Charter on Human and Peoples' Rights of 1981, the 1948 Universal Declaration of Human Rights, the 2007 Declaration of the United Nations General Assembly on the Rights of Indigenous Peoples.

However, these commitments to human rights have not altered Cameroon's determination to protect the environment in general and the conservation of natural resources in particular through adhesion and ratification of an important number of instruments governing the conservation and sustainable management of these resources. Among these legal instruments, mention may be made of the 1971 Ramsar Convention on Wetlands, the 1973 Washington Convention relating to International Trade in Endangered Species of Wild Flora and Fauna (CITES) the Bonn Convention of 1979, the 1972 Stockholm Declaration on Environment and Sustainable Development, the 1992 Rio Convention on Biological Diversity. There are still many other texts and declarations dealing with the sustainable use of natural resources in order to meet the needs of present generations without compromising the ability of future generations to meet their own needs.

These commitments that affect the sustainable management of natural resources and the protection of human rights are sufficiently reiterated in the Constitution of 18 January 1996 and in relevant texts such as the 1994 Forestry and Wildlife Law, the 1996 framework law on the Environment and the 2005 Criminal Procedure Code.

Unfortunately, the current context is marked by the resurgence of serious wildlife crime in Central Africa in general and in Cameroon in particular, where hundreds of rare and emblematic species, particularly

elephants are illicitly slaughtered each year for their products and especially ivory. Public authorities responded to this situation with repressive actions carried out by the administrations in charge of ensuring the rule of law in this area through prevention and fair punishment of wildlife offences while striving to respect the human rights of offenders.

However, some actions of law enforcement officers in this context sometimes display acts of intolerance and excessive zeal or even violence towards communities and individuals, in total disregard for the need to respect their fundamental rights. As a result, the communities and their members perceive natural resource conservation initiatives as manoeuvres aimed at depriving them of all sources of income and thus any means of subsistence. Hence the lack of cooperation with and support to the authorities in this matter.

Concisely, it appears that these two imperatives of safeguarding biodiversity and ensuring respect for human rights may seem contradictory. Yet, the goal of conservation is the development of present generations through the sustainable use of resources taking into consideration future generations. Some concerns then arise on how does the State that ensure the sustainable management of natural resources takes into account and actually achieves respect for human rights as provided for in the main international and regional legal instruments for the protection of human rights. The concrete question is how to reconcile the legality and legitimacy of actions to combat wildlife crime and guarantee human dignity in the conservation of natural resources in general and the national wildlife heritage in particular.

The aim of this manual, which is in fact a checklist for law enforcement officers in anti-poaching operations, is to assist them in exercising their prerogatives as judicial police officers. The manual addresses, in turns, aspects such as the proclamation of the rights of the suspect in the actions of repression of wildlife crime during his questioning, arrest and custody, taking due account of the specificity of indigenous peoples due to their vulnerability (Part I). It also deals with the regime and mechanisms of sanctions that apply to law enforcement officers in the event of infringement of the conventional and legal provisions for the protection of human rights, even if they are poachers or wildlife traffickers (Part I)



## **PART I.**

### **Enunciation of the suspect's rights in anti-poaching operations**

The law sets out rights related to the person of the suspect within the context of the fight against poaching. Some of these rights are attributed to him simply by virtue of his status as a human being. Other rights are linked to his legal status of suspect or accused. In any case, all these rights are made up of the so-called "inviolable" rights on the one hand and, the so-called "supervised" rights, on the other hand . The accused person also enjoys procedural rights otherwise called fundamental judicial guarantees.

Indigenous peoples benefit from additional guarantees related to their vulnerability.



*Images containing the sign       refer to prohibited practices, while those containing the sign  refer to good practices.*

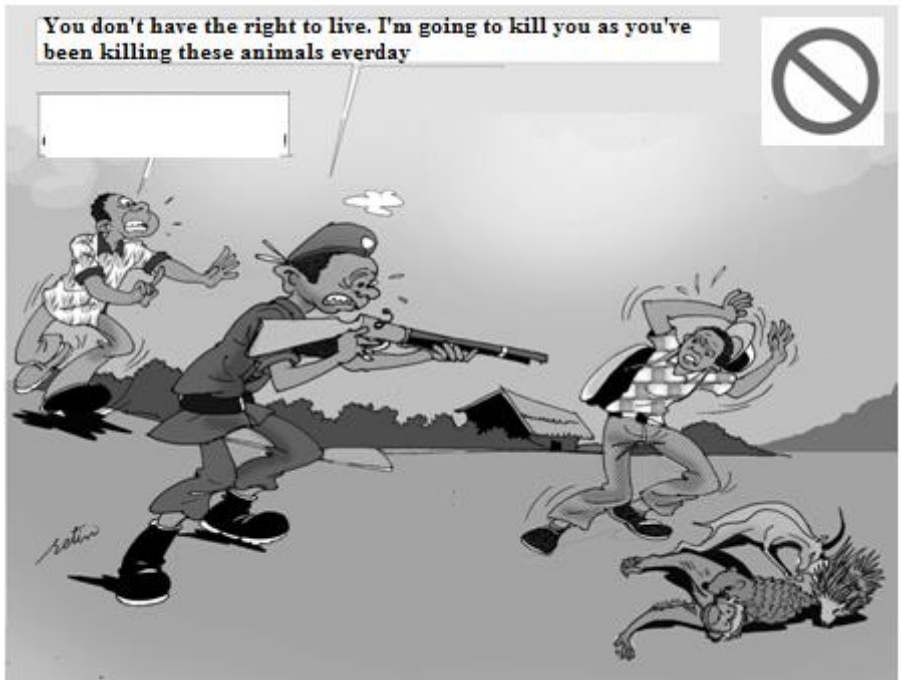


# Chapter 1: Inviolable rights

Inviolable rights are untouchable. They are not subject to any limitation, not even by public authorities and even less so by, judicial police officers having special jurisdiction (JPOSJ), despite the often-difficult conditions linked to the context of the fight against poaching.

## 1. The right to life

The right to life should be understood simply as the right not to harm the life of the suspect under any circumstances. It thus includes the prohibition to kill the suspect through any form of homicide, mortal blows, murder or assassination.



This right is enshrined, inter alia, in:

- Article 3 of the Universal Declaration of Human Rights (UDHR) of 1948;
- Article 6 of the International Covenant on Civil and Political Rights of 1966;
- Article 4 of the African Charter on Human and Peoples' Rights of

1981;

- The Preamble to the Constitution of 18 January 1996: "Every person has a right to life, to physical and moral integrity".

The right to life implies **the prohibition of extra-legal executions**, which is the act of taking the life of an offender in an arbitrary and summary manner, that is to say, outside the framework provided by the law on the execution of death penalties, where provided, and the necessities of self-defence. In this sense, the order of a superior and any exceptional circumstances cannot justify such a measure.

See Principle 3 of Resolution 1989/65 of 24 May 1989 of the United Nations Economic and Social Council<sup>1</sup>.

See also Section 83 of the Penal Code of 12 July 2016;

## **2. The right to physical and moral integrity**

The right to physical and moral integrity refers:

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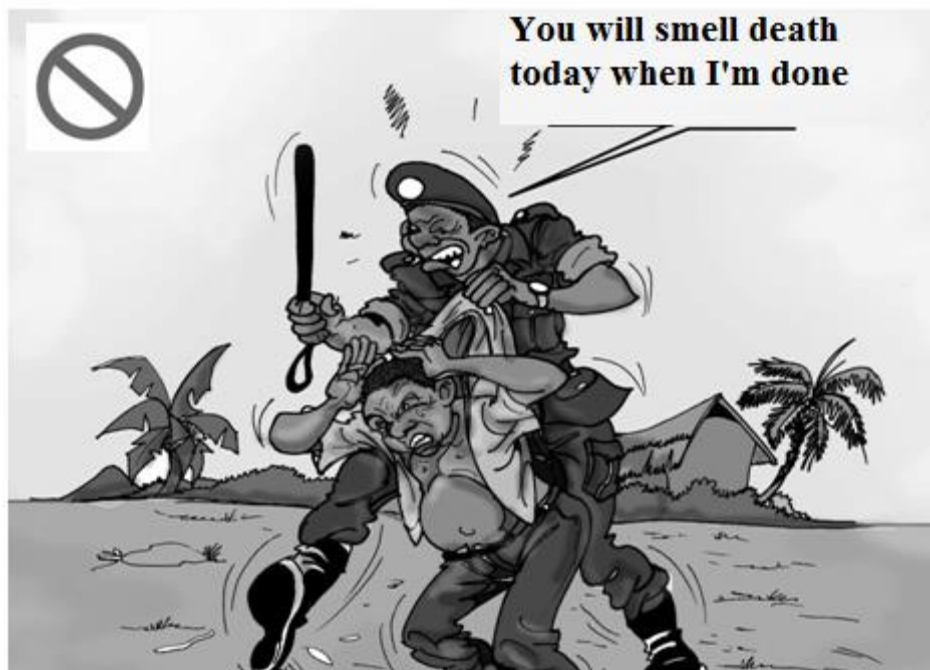
<sup>1</sup> United Nations Economic and Social Council: Resolution 1989/65 of 24 May 1989 on principles relating to the effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions,

• Especially to a **general prohibition**, that of undermining, in any way whatsoever, the physical and moral integrity of the accused. Speaking of physical and moral integrity is to act according to the famous maxim, that even

when caught in the net of police authorities, the suspect is entitled to an intact body and spirit. This is the prohibition to harm using violence a part of the suspect's body or any natural faculty of his/hers.



1



- In addition, to the special prohibition of torture, understood as:  
"Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity."

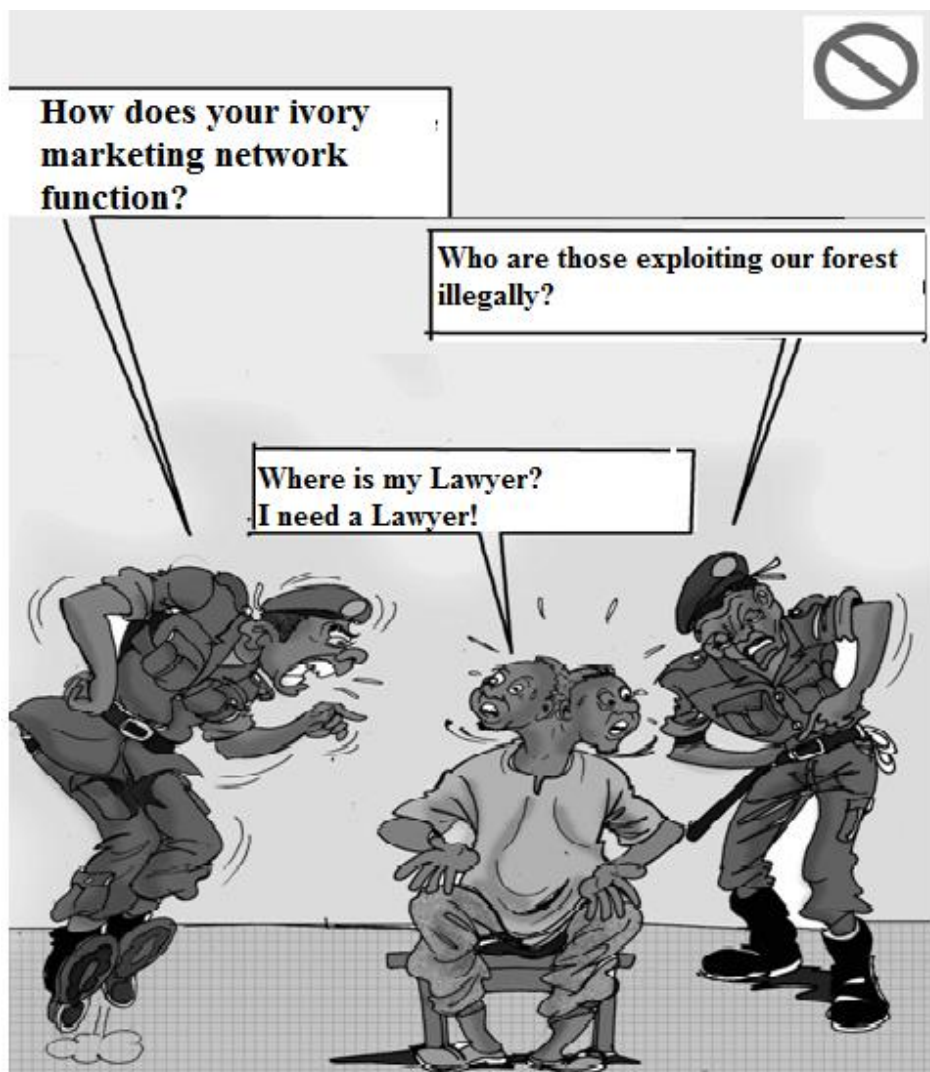
The right to physical and moral integrity thus set forth is expressly provided for by:

- Article 7 of ICCPR, "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment";
- The UN Convention against Torture of 10 December 1984;
- Section 277 (3) bis of the Cameroon Penal Code of 2016.

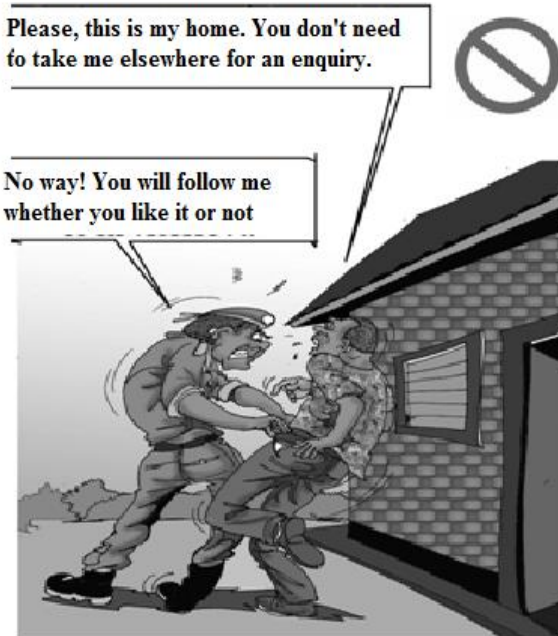
**Note:** The right to physical integrity must not be confused with the **prohibition of any physical restraint on the recalcitrant offender** to oblige him to comply with the lawful and legitimate orders of the judicial

police officer within the framework of a police investigation. However, if such a constraint is necessary, it should be exercised in proportion to the resistance of the recalcitrant offender.

## Chapter 2: Supervised rights



These rights are certainly fundamental rights, but their exercise may be subject to restrictions. Such restrictions fall within the domain of the law and can only be conceived in strict compliance with the legal framework. For example, the right of movement may be subject to restrictions (1) just like the right to the respect of private and family life (2) and the right to property. The JPO must be able to comply with these limitations and only those limitations.



**Article 9 (1),** ICCPR, "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on the grounds and in accordance with such procedure as are established by law".

### **1. Conditions of restriction of the freedom of movement**

In accordance with article 9 of the International Covenant on Civil and Political Rights, "No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law". It follows that the restriction of this freedom through arrest or detention in police custody can only take place within the framework provided by law.

**a) Legal framework of the arrest of the accused: under what conditions should a poacher be arrested?**

**Legal definition:** "An arrest shall consist of apprehending a person for the purpose of bringing him without delay before the authority prescribed by law or by the warrant". (Section 30 (1) of the Criminal Procedure Code).

It follows that, except where otherwise provided by law, an arrest may be conducted only by virtue of a warrant. Indeed, if the arrest is not conducted on the basis of a warrant, the suspect can be apprehended only in case of **flagrante delicto** and **control of identity**.

**• Arrest under a warrant**

A judicial warrant is a written instrument by which a magistrate or court orders:



- The appearance or conduct of an individual before him or her;
- The pre-trial detention of an accused person or a witness suspected of disrupting the search for evidence;



- The imprisonment of a convicted person;
- The search for objects that were used for the commission of an offence or that constitute the result thereof.

From the foregoing list, it may be noted that in order to make an arrest, in the context of a preliminary inquiry, a warrant of arrest is required. It is the order given to the judicial police officers to lead immediately to the issuer of the warrant the person designated therein.

The author shall be, as the case may be, the State Counsel or the Examining Magistrate.

#### • Arrest without a warrant

Apart from the power given to the judicial police officer to apprehend "An offender who refuses to decline his or her identity or gives an identity deemed false", may be arrested without any warrant in case of a crime or flagrante delicto. This possibility can take place in three cases:



- The officer, the judicial police officer or the law enforcement officer may proceed to an arrest in case of flagrante delicto. Even if this is not written in the code, it can be deduced because, if any individual can arrest a culprit, the judicial police officer is better placed to do so a fortiori;
- "By any magistrate who witnesses a crime or flagrante delicto". The warrant may be ordered verbally or in writing provided the magistrate declines his identity, quality and duty;
- "Any individual may, in the case of a crime or flagrante delicto (...) arrest its perpetrator".

It remains true that "no harm shall be done to the physical and moral integrity of the apprehended person".

**b) Supervision of the suspect's custody: under what conditions should custody be practised?**

Some conditions relate to the process of custody while others relate to its substance.

- **In relation to the substance:**

**In the case of a preliminary investigation**, police custody is ordered as a result of a negative condition: the absence of a known residence. In other words, if the suspect shows proof of a residence, he or she can not, in principle, be held in custody. It is necessary here to distinguish between the domicile, a broader notion in law, and residence, defined as the "place where a person is actually found".

**In the case of an investigation of a flagrante delicto offence**, the fact that the suspect has a known residence is not sufficient to exclude him/her from custody. The CPC, however, requires that there should be clues of such seriousness and concordance against the suspect that there is no alternative for the judicial police than to place him in police custody.

**Apart from these situations**, the State Counsel in accordance with Section 118 (3) must expressly authorize any measure of police custody. Applicable text:

Section 118 (2), CPC: "Except in case of a felony or a 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".

**In relation to the process, three (03) questions should be asked:**

**Who can order a person to be held in custody?** Only the JPO may decide to place a person in police custody, even though the State Counsel can do so in exceptional cases.

**How long can the measure of deprivation of liberty referred to as custody last?** "The time allowed for remand in custody shall not exceed forty-eight (48) hours, renewable once." and, "This period may, with the written approval of the State Counsel, be exceptionally extended twice."

**How is the duration calculated?** The period of police custody shall start to run from the time the suspect presents himself or is brought to the police station or gendarmerie brigade. The time of his arrival at the station shall be mentioned in the station diary and in the police report." What about the time between the arrest and the time of arrival at the police station or gendarmerie brigade? The law only takes this into consideration in cases where the city of the place of arrest is different from that of custody.

Police custody poses definite problems when it has to be implemented far away from the police station or gendarmerie brigade. The issue of starting point arises especially in cases where the suspect is arrested and spends a long time before reaching the police station or the gendarmerie brigade. In this case, can he be considered as held in custody or not?

**What does the law say?**

"Section 120 - (1) Notwithstanding the provisions of Section 119 (2), the period of remand in police custody shall be extended, where applicable, having regard to the distance between the place of arrest and the police station or the gendarmerie brigade where such remand has to be effected. The extension shall be twenty-four (24) hours for every fifty (50) kilometres.

(2) Mention of this fact shall be made in the report of arrest.

Section 121 - The period of police custody shall start to run from the time the suspect presents himself or is brought to the police station or gendarmerie brigade.

The time of his arrival at the station shall be mentioned in the station diary and in the police report".

**What to retain:**

Police custody commences as soon as the suspect is arrested, since this time is expected to be extended every 24 hours for every 50 km, which

presupposes that the period had already taken effect and the text clearly mentions the time the suspect is "led" to the station.

## 1. Conditions of restriction of the right to private and family life

### a) Legal framework of the body search

The body search is an intrusion into the privacy of the individual. However, JPOs are permitted to do this subject to Section 87 of the CPC.



The body search shall be conducted in a public place or a place open to the public on any person suspected of carrying a weapon or any other object likely to be used for the commission of an offence.

This right of search, which may extend to vehicles, passengers and luggage, may be carried out in public or in private, **if it is "carried out by a person of the same sex as the suspect."** **The suspect must first be informed of the reasons for the search and the right of the JPO to search him/her before the operation.** Secondly, the person searched **should not be subjected to any form of humiliation or vice.**

## b) Legal framework of seizures of property and house searches

**Seizure** of property is a prerogative of the special judicial police officer of the forestry and wildlife administration under section 142 of the forestry, wildlife and fisheries law. Seizure concerns wrongfully harvested products and the objects used to commit the offence.



**Conditions of section 96 of the CPC:** All articles seized shall be shown to the suspect or if he is not present, to his representative or to the person in possession of them so that he may identify them and initial them if necessary. Where he refuses to do so, mention of this fact shall be made in the report. Seized articles shall be shown to the witnesses in order that they may identify them, make an inventory of the items on the spot, described in full detail.

**Additional requirements of the Forestry Law:** Given that the CPC prescribes the sealing of the seized items in general, it is better to comply with the more precise provisions of the Forestry and Wildlife Law, which require, in the absence of an auction, that the custody of such items be entrusted to the competent technical administration.

**What about searches?** Sometimes it happens that the seizure of items may only take place when the JPO is transported to a non-public place (office, home, etc.). The latter should then resort to the prescribed search mechanism such as the police or judicial search for evidence of an offence in a person's home.



The search is a **major legal exception to the inviolability of the home**. It is subject to a search warrant, which is the order given to the judicial police officer by the State Counsel, the Examining Magistrate or the trial court, to enter any public or private place to search for and seize any object or document that was used in the commission of an offence or that appears to be the product of an offence.

Several rules have been enacted to protect the suspect during the search. They relate to the decision to conduct a search, the actors of the search, the time and the secrecy of the search.

- **The decision to "search".**

Under section 93 of the CPC, **the search may, in principle, only take place pursuant to a search warrant.** In the case of a judicial warrant, the search may be executed "at any time, including on Sundays and public holidays," "even if at the time of the search the judicial police officer does not have the warrant in his possession". Obviously, the legislator has had to claim and assert here "the public interest in the prevention and punishment of criminal offences".



However, Section 93 (2) of the CPC states that a judicial police officer **may act without a search warrant in two cases:** case of a felony or a misdemeanour committed *flagrante delicto* and with "the consent of the occupant of the place and the person in possession of the objects to be seized". The consent shall be a written declaration signed by the person concerned, and if he cannot sign, he shall make a thumbprint at the bottom of the declaration.

The consent of the person concerned shall be valid only if he had been informed beforehand by the judicial police officer of his right to object to the search.

- **Actors of the search: who is responsible for what?**

For the search to take place, the legislator requires that, in addition to the JPO, the occupant of the place, who is not necessarily the suspect, and witnesses must be present.

- **The time and secrecy of the search**

Concerning the time, searches are only permitted during the day, specifically between six (6) a.m. and six (6) p.m. Exceptionally, following the authorisation of the State counsel or in case of impossibility of getting in touch with the State Counsel, the judicial police officer may exceptionally continue with the search after 6 p.m. and shall, without delay, keep the State Counsel informed.

Section 97 requires that when a judicial police officer conducts a search, he alone shall have the right to examine the contents of the documents found in the place before they are seized. One can see in this, the desire to surround the search with maximum discretion and that of preserving the intimacy of the private life of the suspect, which constitutes a right to which the suspect is entitled, in relation to this quality.



Give me that letter. It is mine. You don't have the right to read it

Ok! And for what reason? Let's see...



#### c) Legal framework of the interceptions of communications and images

Sections 92 and 245 of the CPC authorize and organize these two intrusions into the private correspondence and the sphere of intimacy of the suspect.

Four main conditions:

- Only offences punishable with a minimum of two years' imprisonment are targeted;
- The written authorisation of the State Counsel is required;
- This authorisation shall only be valid for a maximum period of 4 months renewable once in the same forms (i.e. for an additional period of 4 months);
- The collected items should be destroyed at the end of the investigation.

**Applicable text:** Section 92 (3) of the CPC: "In cases of felonies and misdemeanours punishable with at least two years imprisonment, the judicial police officer may, on the written authorization of the State Counsel, and under

the control of the latter, in accordance with the conditions laid down in section 245, in the course of the investigations:

- intercept, record or transcribe all correspondences sent by means of telecommunication;
- take any photographs at private premises”.

## Chapter 3: The procedural rights of the suspect

### All suspects:

- have the right to counsel;
- have the right to remain silent.

As soon as investigations are opened, the judicial police officer shall, under the penalty of nullity, inform the suspect of his/her rights.

**I am asking you this question for the last time and you must answer me right away. Otherwise...**



**Gently Officer. My client has the right to remain silent if he wants to. This is an essential principle of the Criminal Procedure Code: Section 116**



Weh! It is this isolation that will kill me. I have been detained without any food. I don't even have the right to receive relatives or my lawyer. Oh Lord, what a miserable situation



**The suspects in custody** have the following additional guarantees:

- The suspect shall immediately be informed of the allegations against him, and shall be treated humanely both morally and materially;
- He shall be given reasonable time to rest fully in the course of the investigation (The period of rest shall be mentioned in the police report);
- The suspect shall not be subjected to any physical or mental constraints, or to torture, violence, threats or any pressure whatsoever, or to deceit, insidious manoeuvres, false proposals, prolonged questioning, hypnosis, the administration of drugs or to any other method which is likely to compromise or limit his freedom of action or decision, or his memory or sense of judgement;
- - The person on remand may at any time within the period of detention and during working hours, be visited by his counsel, members of his family, and by any other person following up his treatment while in detention;
- The State shall be responsible for feeding persons remanded in police custody. However, such persons shall have the right to receive from members of their families or from their friends the means of subsistence and other necessities.

Applicable texts: Sections 116 & 122 of the CPC

**I have brought some provisions for my husband who is deytained here. He needs to eat something**



**Go away! Your husband will stay like that...**



## **Chapter 4: Rights and Good practices specific to indigenous peoples and local communities**

In addition to the rights described above, the rights of indigenous peoples and obligations for law enforcement officers set out in this manual shall be those that are most likely to be violated in anti-poaching operations and hence in the implementation of the criminal proceedings. These include:

### **1) The obligation to consult local authorities during searches in villages**

This obligation that is specific to the forestry and wildlife law is important in forest areas where the homes of indigenous peoples can be vulnerable to intrusion.

What is a chief for me? Let's go and search all the houses on this side of the village and woe betide any one who will oppose us



Section 142 of the Wildlife Law provides that the sworn official can enter homes and fences after consultation with the traditional authorities in case of flagrante delicto as part of the anti-poaching operations.

**Procedures to be followed:** The law only refers in Section 142 to flagrante delicto and is silent on other cases that do not necessarily fall into that category. These include, for instance, the case where the law enforcement officer does not physically have a search warrant to conduct judicial police operations in case of need. In this case, it is the provisions of the Criminal Procedure Code that apply in particularly sections 29, 93 and following. The State Counsel shall be notified of any operation to carry out for the delivery of the different mandates.

**Section 29 paragraph 1 of the CPC:** "A court process may be executed notwithstanding the fact that the judicial police officer executing it does not have it in his possession at the time."

**Section 93:**

- "(1) Searches and seizures shall be carried out by judicial police officers who possess search warrants. However, he may act without a search warrant in cases of a felony or a misdemeanour committed flagrante delicto.
- (2) Any search or seizure shall be carried out in the presence of the occupant of the place and the person in possession of the objects to be seized, or in case of their absence, their representatives, as well as two witnesses chosen from among the persons or neighbours present.
- (3) The occupant of the place and the person in possession of the objects to be seized, or in case of their absence, their representatives shall have the right to search the judicial police officer before the latter commences his search. He shall be informed of the said right and mention of it shall be made in the report of the fulfilment of this formality.
- (4) In the absence of the occupant or of the person in possession of the objects or of their representatives, and in case of urgency, the State Counsel may, in writing, authorize the judicial police officer to conduct the search or seizure in the presence of the witnesses described in



subsection (2) above and one other judicial police officer or two judicial police agents.

- (5) Where the judicial police officer cannot get in touch with the Legal Department, he shall proceed with the search and as the case may be, seizure in accordance with the provisions of subsection (4) above and shall mention the action he has taken in his report. "

## **2) The right to an interpreter during interrogation**

This right is particularly critical in the treatment of members of indigenous peoples and local communities. Sometimes the member of an indigenous community involved in an illegal activity is not able to understand the working language or any other language spoken by the law enforcement officer. The latter should ensure that the delinquent member of the indigenous community who has been arrested is able to communicate with him. When this is not possible, the officer must secure the services of an interpreter. The Cameroon Criminal Procedure Code refers to this in Section 90 (8).



**Article 14 paragraph 3 (a)** of the International Covenant on Civil and Political Rights of 1966 states that "In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him";

### **3) The right to a counsel or lawyer:**

A member of an indigenous community shall enjoy this right as part of a criminal procedure just like any other accused person. The counsel in this case is not necessarily a lawyer but anyone who can assist the accused in safeguarding their rights.

**Good practice:** Given the vulnerability of indigenous peoples, the law enforcement officer should involve the services of the Ministry of Social Affairs and of the family if such services are present in the locality. Otherwise, he should inform the competent services of the nearest town or of the place of detention of the member of the indigenous community for assistance.

The involvement of a third party working in the defence of the rights of indigenous peoples and local communities is also encouraged at this stage to protect the rights of the suspects.

See Article 14 of the aforementioned Covenant

### **4) Compliance with the principle of equality of all before the law and prohibition of discriminatory treatment of members of indigenous communities.**

This entails granting the delinquent member of an indigenous community the same treatment given to other non-indigenous offenders at all stages of the proceedings. This is stipulated by a number of laws including:

- **Section 1** of the Penal Code of 12 July 2016;
- **Preamble to the Constitution** of 18 January 1996 revised in 2008<sup>2</sup>,
- **Article 3** of the African Charter on Human and Peoples' Rights
- **Article 1** of the Universal Declaration of Human Rights of 1948;
- **Article 2** of the Declaration of the United Nations General Assembly on the Rights of Indigenous Peoples of 13 September 2007<sup>3</sup>

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2 -In accordance with the provisions of Article 65 of the text, the preamble is part of the Constitution of 18 January 1996 amended in 2008.

3 - Cameroon adheres to this declaration that was adopted by 143 votes against 04 (USA, Canada, Australia, New Zealand) and 11 abstentions (Colombia, Azerbaijan, Bangladesh, Georgia, Burundi, the Russian Federation, Samoa, Nigeria, Ukraine , Kenya)

- **Good practice:** Within the framework of proceedings involving two offenders at the same level of responsibility (e.g. two co-authors or two accomplices) notably a non- member and a member of the indigenous community, discrimination would entail allowing the Bantu to come freely before the judge while detaining the member of the indigenous community. It may even be possible for the Bantu offender to pay a caution while the member of the indigenous community is unable to do so. The good practice would entail not granting such advantages to avoid discriminatory situations.



## 5) Respect of customary rights

The logging or customary right is defined by Section 8 of the forestry and wildlife law as the right which is recognized as being that of the local population to harvest all forest, wildlife and fisheries products freely for their personal use, except the protected species.

I have caught you red handed with a product of poaching. Your fate is bad

Akiéééé !

I live in this village. I can catch game from time to time for my food



**Section 26** of the Forestry and Wildlife Law of **20 January 1994** provides that the instrument classifying a State forest shall take into account the social environment of the local population, who shall maintain their logging rights. However, such rights may be limited if they are contrary to the purpose of the forest. In such case, the local population shall be entitled to compensation according to conditions laid down by decree.

**Good practice:** The law enforcement officer must first ensure that the wildlife product found in the hands of the suspect who is a member of an indigenous people or a member of a local community was not harvested within the framework of the logging rights recognised to people of communal forests. He does this by ensuring that the said product is of class C and that it was not harvested for commercial purposes taking into account the quantity and the distance covered with the product. If there is a product taken in a Community Hunting Zones

(CMZCI) created near a protected area<sup>4</sup> in order to compensate for the prohibition of hunting in these areas, the law enforcement officer should first verify that these products were collected in these areas. In this case, the holder of the products should present a formal mandate or a recognition from the management entity of the community hunting area.

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4 - See for example the development plan of the Lobeke National Park: The Mambele Convention of 8 June 1999 signed during the creation of the Lobeke National Park provides for community hunting areas through its zoning plan. There are 14 Community Hunting Zones of Cynegetic Interest (CMZCI) that facilitated the establishment of Wildlife Resources Development Committees (COVAREF) entirely managed by local and indigenous communities.

- Decree No. 2001/107 / CAB / PM of 19 March 2001 establishing the Lobeke National Park fixed as logging or customary rights within the Park the practice of fishing in Lake Lobeke and the harvesting and collection of medicinal plants.

## **PART II.**

### **The guarantee of the rights of the suspect: the issue of sanctions**

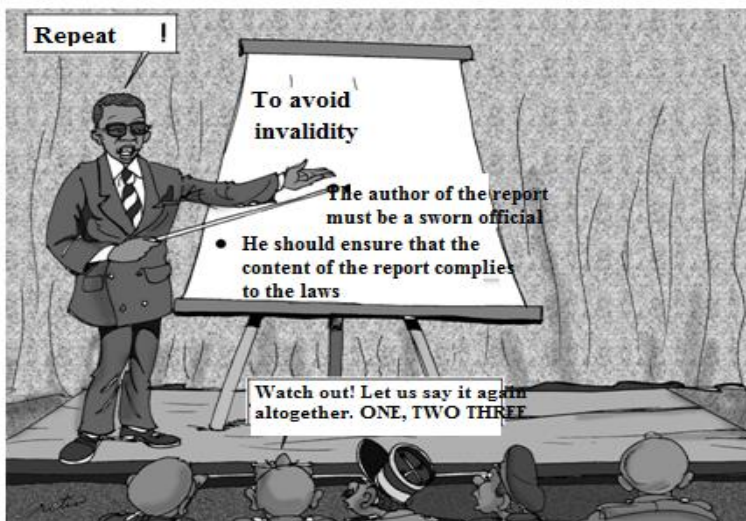
To ensure not only compliance with the rights stated above but also better supervision of the prerogatives granted to the suspect by law, the Judicial Police Officer having special jurisdiction is required to observe rigorous formalism in his actions (A). Moreover, in case of infringement of one of the rights of the suspect, the JPO shall be held personally liable (B), without prejudice to the liability of the State (C).

## Chapter 1: Guarantee by the formalism of offence reports

The report is the act of procedure established by a public officer reporting the facts or testimonies.

**INTRODUCTORY REMARK:** For Judicial Police Officers having special jurisdiction in forestry matters, this report drawn up and signed by the sworn official shall be held as a true record of the facts stated therein until proved false. Thus, the

Judicial  
Police  
Officer  
having  
special



jurisdiction in forestry matters, unlike other JPOs, has an almost irrefutable presumption of truth.

Except that, various reports shall be established during the phase of investigation of offences, and is done at various stages given that it would be tedious to consider an empirical study (case by case). It is necessary to identify the essential elements (1) and the penalties generally applied for non-compliance with the rules (2).

### 1. Precautions to take when drafting a report

#### • Precaution 1: ensure that the author of the Report is qualified

Unlike the 1996 Framework Law on Environmental Management that requires two law enforcement officers, the Law to lay down forestry,



wildlife and fisheries regulations only requires a single law enforcement officer for each report. He should be a sworn officer.

• **Precaution 2: Ensure that the content of the report is ABSOLUTELY consistent with regulatory requirements**

The legislative provisions in this regard are contained in Section 70 of the Decree of Implementation of 20 July 1995. The enforcement officer must have them in front of him and these include:

(1) "The report of a wildlife related offence shall contain the following information:

- the date of the report in words;
- the complete identity of the sworn official drawing up the report and his capacity, post and place of work;
- the date, the time and place of the offence;
- the complete identity of the offender and a detailed description of the means he used;
- a detailed description and assessment of the offence;
- the statements and signatures of the offender;
- the full identity of the witnesses, accomplices or potential co-perpetrators, their statements and their signature;
- references to the Sections of laws or regulations forbidding the act and / or prosecuting the offence committed ;
- the amount of the bail bond possibly received;
- a list of the products and equipment seized and their place of custody;
- all other references to assess the finding.

(2) The concluded report shall be entered in a special register of the local services concerned. It shall be forwarded to the competent official of the services in charge of wildlife within 72 (seventy-two) hours.

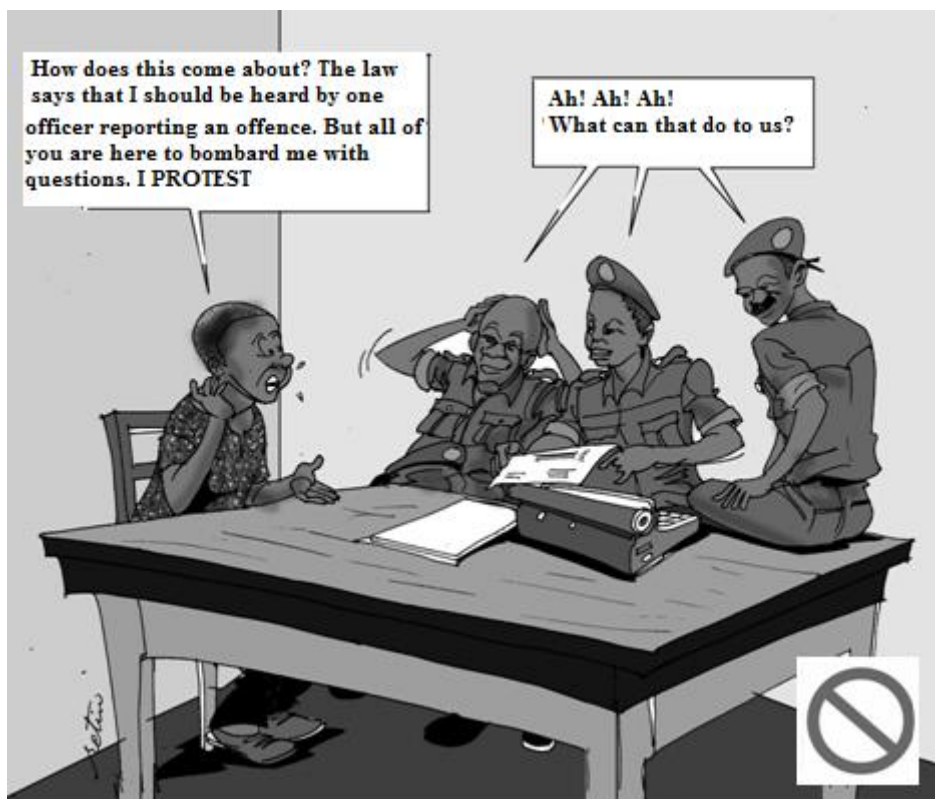
Such provisions should be linked with those of Section 90 of the Criminal Procedure Code "(1)

The police report shall state:

- The date and time when each phase of investigations started and ended;
  - The full name and the status of the investigator;
  - Where necessary, the authorization referred to in Section 88 (2).
- (2) Each sheet of the original of the report or of the statement register shall

bear the signature of the investigator;

- (3) When all or part of a written report is devoted to the recording of statements from or to the confrontation of persons the said persons shall, after the reading and, where necessary, interpretation of the statements, initial each sheet of the report and all erasures, alterations and interlineations therein. The interpreters shall also initial each sheet of the report and all erasures, alterations and interlineations. All erasures, alterations and interlineations not initialled shall be inadmissible.
- (4) The last page of the report or statement register shall be signed by the maker, the investigator and by the interpreters, if any.
- (5) Any person asked to sign a report or statement register but who does not know or cannot sign shall be asked to affix his right thumbprint to the document. Where this is not possible, the investigator shall choose any other finger and authenticate its print.
- (6) The investigator shall, in case of refusal to sign or thumbprint, mention this fact in his report.
- (7) Any person asked to sign a report or statement register may make any necessary reservations thereon before signing it. Such reservation shall be explicit and unambiguous.



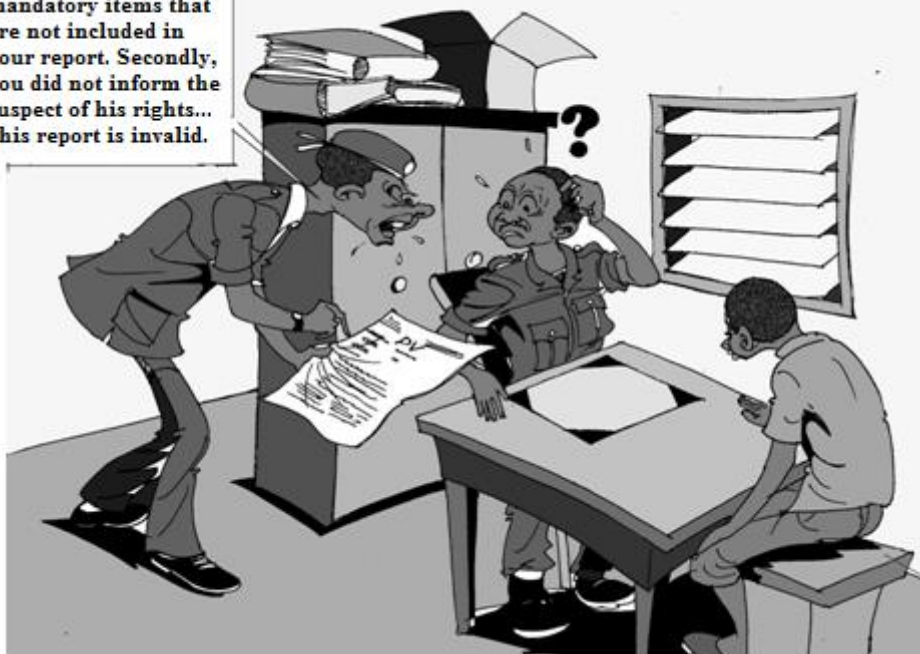
(8) Any person who is called upon to make a statement may either dictate it to the investigator or write it in a statement register or where there is none, write it on any sheet of paper. "

It can simply be noted that all attitudes or statements should always be mentioned.

## **2. Sanctions to apply in case of irregularities in writing the report**

Non-compliance with the procedure of writing the report shall nullify the police report. This invalidity may be partial or total.

**There are a lot of mandatory items that are not included in your report. Secondly, you did not inform the suspect of his rights... This report is invalid.**



**a) The nullity is partial when it only concerns acts.**

- On the one hand, under Section 100 of the Criminal Procedure Code, "Failure to comply with the provisions of sections 93 to 99 shall render the search and seizure null and void."
- On the other hand, under Section 124 (4) "The non-observation of the provisions of this section shall lead to the nullity of the police report as well as all subsequent acts, without prejudice to disciplinary sanctions against the judicial police officer concerned."

These are a set of provisions that have been made mandatory to guarantee the following rights of the suspect: the reasons and limited duration of the remand in custody, the right to rest and the duty of the Legal Department to supervise custody. However, the lawmaker has not specified the kind of "reports" that can be considered as null and void.

**b) The total nullity concerns the whole judicial police investigation**

Under Section 116 (3), "As soon as investigations are opened, the judicial police officer shall, under the penalty of nullity, inform the suspect of:

- his right to counsel;
- his right to remain silent"

**The State Counsel, my client was not informed about the preliminary investigation, neither was he informed of his right to be assisted by a lawyer, nor of his right to keep silent. For this reason, I move that this Court should drop all ongoing proceedings against my client**



Indeed, the suspect who pleads for non-information at the outset of the investigation, and asserts his double right to counsel and silence can obtain the cancellation of the preliminary investigation. The implementation of such a guarantee will be easy because the law requires that "Mention of this information shall be made in the report." This constitutes a proof of compliance or not with this right.

## **Chapter 2: The personal responsibility of judicial police officers having special jurisdiction in forestry matters**

### **1. The civil responsibility of JPOs**

Civil liability is the obligation to repair the harm caused by a person to another. It is implemented through a civil action. This civil action may be brought alongside the criminal action before the same court when they arise from the same facts. It can also be brought separately from the criminal action. However, the fact remains that the civil liability of the JPO will only be initiated if there is a link of cause and effect between the alleged harm and the fault of the JPO.



### **2. The criminal liability of JPOs**

Law enforcement deals with behaviour, actions or omissions criminalized by the Criminal Procedure Code or simply assimilated to Penal Code offences to which it expressly refers. The "Catalogue" that has been constituted by the CPC may widen further because other types of behaviour that were not included in the CPC will be used by suspects in this matter.

In carrying out their duties, JPOs having special jurisdiction may commit several violations of the Penal Code either on the physical and moral integrity

of the suspect (**torture**) or against his privacy either against his honour and his consideration (defamation, denunciation, slander), or even just against his property (**diversion of pledge**), his fortune, etc. The criminal response in this regard is very tough. It would be tedious to elaborate on it, as it is a legal field that is just as dense as that of criminal forestry law. We can also recall the **breach of professional secrecy** and the **abuse of office** because of the high risk of witnessing the perpetration of such offences in the fight against poaching.

**Some cases in which the criminal responsibility of the JPO can be applied (not exhaustive)**





Aspects of violated human rights	Facts (or offences)	Enactments
<b>Physical and moral integrity</b>	<ul style="list-style-type: none"> <li>- Torture</li> <li>- Assault and battery</li> <li>- Grievous harm</li> <li>- Rape</li> </ul>	<ul style="list-style-type: none"> <li>- Section 277 of the Penal Code of 12 July 2016;</li> <li>- Section 279 and 296 of the same Penal Code;</li> </ul>
<b>Right to life</b>	<ul style="list-style-type: none"> <li>- Murder</li> </ul>	<ul style="list-style-type: none"> <li>- Section 275 of the 2016 Penal Code</li> </ul>
<b>Unlawful deprivation of liberty</b>	<ul style="list-style-type: none"> <li>- False arrest</li> </ul>	<ul style="list-style-type: none"> <li>- Section 291 of the 2016 Penal Code</li> </ul>
<b>Residence</b>	<ul style="list-style-type: none"> <li>- Invasion of residence</li> </ul>	<ul style="list-style-type: none"> <li>- Section 299 of the 2016 Penal Code.</li> </ul>
<b>Injury to character</b>	<ul style="list-style-type: none"> <li>- False Report</li> <li>- Defamation</li> <li>- Abuse of function</li> <li>- Breach of professional confidence</li> </ul>	<ul style="list-style-type: none"> <li>- Section 304 and 305 of the 2016 Penal Code</li> <li>- Sections 140, 310 of the 2016 Penal Code;</li> </ul>
<b>Offence against proprietary interest</b>	<ul style="list-style-type: none"> <li>- Theft</li> <li>- Misappropriation of attached property</li> </ul>	<ul style="list-style-type: none"> <li>- Section 318 of the 2016 Penal Code;</li> <li>- Section 190 of the 2016 Penal Code</li> </ul>



### **3. The liability of JPOs to disciplinary action**

Like any civil servant, the judicial police officer is "subject to a set of rules and obligations whose violation constitutes a fault and exposes him/her to disciplinary sanction." As a JPO belonging to a particular body, he has duties whose non-performance shall expose him/her to disciplinary sanction especially as his body is also responsible for "ensuring the respect and protection of institutions, freedoms, persons and property".

If disciplinary sanctions are expressly mentioned in Section 122 (5) of the Criminal Procedure Code, their scope is not limited to the offences mentioned in that section. In reality, it is in relation to the duties and obligations of the JPO that we should understand his disciplinary liability. There may be slight nuances depending on the body. The truth is that there can be no disciplinary action unless a disciplinary misconduct has been proven.

Section 122 (5) of the Criminal Procedure Code: "Whoever violates or fails to comply with the provisions of this section or prevents their compliance with, shall be liable to prosecution without prejudice, where necessary, to disciplinary sanctions."

## **Chapter 3: The State's responsibility in relation to JPOs having special jurisdiction in forestry matters**

In modern States, the Government is subject to the law including the area of anti-poaching operations by virtue of fundamental principles such as the principles of legality and accountability of public authorities. Due to the sovereignty of the State, the administration judges itself through a special system of justice before which it may be held liable (1). When all the remedies available internally have been exhausted without satisfying one of the parties, the State may be held responsible at the international level (2).

### **1. The responsibility of the State before national courts**

This responsibility was enshrined by the French court of conflicts in the famous BLANCO judgement, in these terms: "The responsibility that may fall on the State for the harm caused to individuals by the actions of State employees cannot be governed by the principles established in the Civil Code for relations between individuals. This responsibility is neither general nor absolute; it is governed by special rules that vary according to the needs of the service and the need to reconcile State rights with private rights. Consequently, (...) only the administrative authority is competent to know this responsibility."

The responsibility of the State may be brought into play primarily before administrative courts, or on an ancillary basis, before the criminal courts as civilly liable for the actions of public officials.

### **• State responsibility primarily before administrative courts**

It results from a claim for compensation following an unlawful administrative act or a fault of the administration or that of its employee.

The unlawful administrative act is notably one that paves the way for an appeal for annulment due to an abuse of power, defect of form, procedural irregularity, incompetence of the authority, violation of the law by the authority or misuse of power by the authority.

The misconduct was committed either within the service or outside the scope of the service. A service misconduct proceeds from the defective performance of the service or the fault committed in the performance of the service. There are two types of faults: faults committed by action or by

omission or inaction such as lack of custodial control leading to suicide in prison, just like the lack of information.

Faults committed outside the performance of one's functions but still having a link with the service. (*Conseil d'Etat Ass, 18 Novembre 1949 demoiselle Mimeur*): A military officer who was driving an army vehicle decided to pass and visit his parents with the vehicle. On the way, he lost control of the vehicle, and smashed it into the wall of a house belonging to Miss Mimeur. Although this fault is personal, this does not conceal the fact that it has a link with the service. It is a fault that can be linked to his service.

When he/she meets these basic conditions, the victim of an act of the administrative authority should, before tabling the matter before the administrative court, submit his/her grievance to the authority in charge of receiving the preliminary internal administrative appeal. It is only in case of explicit or implicit total or partial rejection of his appeal that he may then refer the matter to the administrative court. The principle in the matter is that recourse to the courts is only admissible after the rejection of the preliminary internal administrative appeal addressed to the ministry or authority responsible for receiving it.

### **• The responsibility of the State before the criminal courts on an ancillary basis**

If a State employee is convicted of a criminal offence committed in the performance of his duties or in connection with the service, the State may be condemned as civilly liable or as liability insurer. After paying compensation to the victim, the State has recourse action against its own employee for the reimbursement of amounts paid on behalf of the latter.

## **2. The responsibility of the State before international courts**

From now hence, there "is a general international obligation for all States to respect human rights whose foundation is customary." The International Court of Justice clearly reiterated this obligation in its judgement of 27 June 1986: "The lack of a commitment in the matter does not mean that a State can violate human rights with impunity."

One of the dimensions of this responsibility is a principle established in the case of Ireland v. United Kingdom handled by the European Court of Human Rights. According to this principle, not only the action but also the inaction of the competent authorities in relation to the actions of their

subordinates may give rise to liability to third parties under the European Convention on Human Rights. There are two main types of mechanisms that can be mobilized for this purpose as mentioned below:

- **African mechanisms under the aegis of the African Union**

*The African Commission on Human and Peoples' Rights* issues recommendations to States in case of violation of their human rights commitments.

*The African Court on Human and Peoples Rights* issues judgements in cases of violation of human rights commitments by member States.

- **Universal mechanisms under the aegis of the United Nations**

The United Nations Human Rights Committee is the central body for monitoring respect for human rights by States. This is a quasi-judicial body.

Other specialized bodies like the *Committee against Torture* also monitor compliance by States with human rights commitments in relation to specific themes.

# Appendices

List of legal texts and declarations:

- 1 International Covenant on Civil and Political Rights of 16 December 1966;
- 2 International Covenant on Economic and Social Rights of 16 December 1966;
- 3 United Nations Convention Against Torture of 10 December 1984;
- 4 African Charter on Human and Peoples' Rights of 27 June 1981;
- 5 Universal Declaration of Human Rights of 10 December 1948;
- 6 United Nations Declaration on the Rights of Indigenous Peoples of 13 September 2007;
- 7 UN Declaration of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions of 24 May 1989
- 8 The Constitution of the Republic of Cameroon of January 1996 revised on 14 April 2008;
- 9 The forestry, wildlife and fisheries Law of 20 January 1994;
- 10 Framework Law on the Environment of Cameroon of 5 August 1996;
- 11 The Cameroon Penal Code of 12 July 2016;
- 12 The Cameroon Criminal Procedure Code of 27 July 2005;

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# Afterword written by the Bar Association

The fight against poaching during the phase preceding the actual trial is a judicial police activity. During this phase, the judicial police conducts investigations and takes steps to identify offences, gather the evidence thereof and apprehend the perpetrators. It turns out that, by their nature, some of these acts may restrict or violate the individual rights and freedoms of the accused.

The balance then sought and which is altogether mandatory and not optional, is to find a middle-way between the respect for the individual rights and freedoms of the accused and the constraints of protection of the general interest, which call for the sometimes-excessive prerogatives attributed to JPOs even if they enjoy a special jurisdiction like Eco-Guards.

How can one precisely find out and maintain this mandatory balance? Such is the aim of this manual that is structured into two main sections: the first section highlights the prerogatives of the public employee, the rights of the accused before JPOs in general and before JPOs having special jurisdiction in forestry matters like the Eco-Guard. The second section of the manual highlights the system for guaranteeing these rights for ensuring obligatory compliance.

From this viewpoint, this document is both a manual on the use of the prerogatives of the Eco-Guard and a manual for the preservation of the individual rights and freedoms of persons suspected of poaching by the Eco-Guard. The merit of this manual is that it has drawn the attention of Eco-Guards to the risks to which they expose themselves as a result of poor performance of their duties, particularly in cases of violations of the human rights of suspects. Misconduct may lead them to prison, without prejudice to the heavy financial and / or disciplinary penalties that may be imposed on them.

The scope of responsibilities here is simply proportional to the prerogatives insofar as, for instance, where the report of ordinary JPOs is considered simply as information at the level of the weight of evidence that of the Eco-Guard is held as a true record of the facts stated therein until proved false. This shows that, once this report has been established, the judge has no alternative but to consider it.

Consequently, the process that leads to the preparation of such a report should be accompanied with maximum professionalism and seriousness in terms of respect for the rule of law!

The Human Rights Commission of the Cameroon Bar Association simply expresses its gratitude for having been associated with the development of this toolkit alongside the National Commission on Human Rights and Freedoms. The Cameroon Bar Association thanks all the partners behind this generous project that will pave the way for the promotion and protection of human rights in all circumstances, including the fight against poaching.

May this manual, which recommends itself, reach its target as soon as possible....  
For the Cameroon Bar Association, and by special delegation of the President of the Bar Association,

**Barrister Simon Pierre  
ETEME ETEME**

*Chairman of the Commission of Human Rights, of the Bar Association*