

CHAPTER V

PRELIMINARY INVESTIGATION (P.I)

Preliminary inquiry means an investigation of criminal charge done by an Examining Magistrate in view of committing an accused person for trial before the court of First Instance or the High Court. It is a criminal hearing usually conducted by a Magistrate to determine whether there is sufficient evidence to prosecute the defendant.

A novelty of the Cameroon C.P.C is that preliminary inquiry shall be carried out by an Examining Magistrate (*Juge d’Instruction*) who shall be a Magistrate of the Bench. S.142 (3) of the C.P.C and also S. 24 of the December 2006 Law on Judicial organization. However, even though a Magistrate of the bench he shall not be competent to try a matter in which he conducted preliminary inquiry. He shall be assisted by a Registrar in the exercise, and the defendant may be assisted by Counsel. Preliminary Inquiry shall be secret. See S. 154(1) of the C.C.P.C. However, the public may have access to the chambers of the Examining Magistrate only with his authorization. See S. 154 (3) of the C.C.P.C and S.25 (2) (b) of the 2006 Law on Judicial Organization.

P. I. is obligatory in cases of felonies and optional in cases of misdemeanours and simple offences. But it is mostly not necessary for simple offences. See S. 142 (1) & (2) of the C.C.P.C and also S. 25 (1) of 2006 Law on Judicial Organization in Cameroon.

P. I. can only be carried out if the State Counsel by a judicial act requests the Examining Magistrate to do so. See S. 143 (1) of the C.C.P.C. The judicial act by which the State Counsel seises the Examining Magistrate is known as a *holding charge* and such a charge preferred by the State Counsel must be in writing and could be made against a known or unknown person. It shall contain the statement of the offence committed and must mention the fact that prosecution has not been discontinued by virtue of any of the circumstances referred to in S.62 above.

The object is to discover the truth of the matter and to ensure that there is a case against the accused before the matter is sent to court for trial. The Examining Magistrate has two basic functions:

- 1) The first is to ensure that weak cases or those where an acquittal is likely, are not committed for trial, and
- (2) Is to investigate the case with sufficient thoroughness to ensure that the eventual decisions of the trial court on both culpability and sentence are taken in light of the best possible evidence and information.

The Examining Magistrate conducting the Preliminary Inquiry is only concerned to know whether there is enough evidence capable of proving all the essential elements or ingredients of the alleged offences. He is not, at all, concerned with the guilt of the accused person. In fact, the inquiry is not a trial and after hearing all the witnesses the Magistrate only decides whether or not a *prima facie* case has been made out. If the Examining Magistrate finds out that such a case has been made out at the conclusion of the inquiry, then he commits the accused for trial before the court. The accused may call witnesses, present evidence and testify himself if he so desires. If the Examining Magistrate finds out that a *prima facie* case has not been established against the accused, he may acquit the accused.

A person who claims that he has suffered injury resulting from the felony or a misdemeanour may when lodging a complaint with the competent Examining Magistrate file a claim for damages. The complaint in which the victim claims damages shall set the criminal action in motion. See S. 157 (2) of the C.C.P.C.

The Examining Magistrate may delegate his powers either to another Examining Magistrate or to a Judicial Police Officer. This is done through *rogatory commissions*. See SS. 151(3), 152, 191-202 of the C.C.P.C.

The Examining Magistrate may visit the *locus in quo*, carry out searches and seizures. See SS. 177-179 of the C.C.P.C. He may summon any person whose testimony is relevant. See, SS. 180-190. He can make an order for expert opinion. See SS. 203 -217. He can remand in custody. See SS. 218 – 221 and can grant bail (Self bail or unconditional bail. See SS. 222-223. For conditional bail, see Sections 224-235).

The Examining Magistrate may replace a remand in prison custody with judicial supervision which shall be implemented out of the prison. See SS. 246 of the

C.C.P.C. This prerogative enables the Examining Magistrate where he finds it necessary to impose certain obligations on the accused such as:

- Limiting movement to a specific area;
- Prohibiting visit of certain places;
- Appearing when summoned by the authority in charge of supervision; etc See S. 246(a)-(h).

Decisions of the Examining Magistrate can be appealed against with the introduction of the Inquiring Control Chamber (See SS. 267-289 of the CCPC) which shall hear and determine the appeal within 30 days. See S.275 (1), C.C.P.C.

The time limit shall be 10 days with regard to applications relating to remand in custody. See S.275 (2) of the C.C.P.C.

Maximum period of deprivation of liberty for investigative purposes fixed

Detention whether carried out by the Examining Magistrate (SS. 218-221) or the Judicial Police Officer (SS. 118-121 and S. 196) have expressly been limited under the new Code of Procedure. Remand in custody is an exceptional measure which the examining magistrate orders in cases of misdemeanours or felonies for different reasons. Detention may be motivated by any of the following factors:

- Preservation of evidence, maintenance of public order, protection of life and property, ensuring the appearance of the accused before the Examining Magistrate or the Court.

Simple offences are non-arrestable offences. For cases of felonies and misdemeanours, arrest warrants are needed except *in flagrante delicto* offences. See S. 31 of the C.C.P.C.

A person with a known place of abode cannot be remanded in custody except in the case of a felony.

A remand warrant must specify the period of validity which must not exceed 18 months in cases of felony and 12 months in cases of misdemeanour. See S. 221 (1). At the expiration of this period of validity of the warrant, the Examining Magistrate must immediately release the accused on bail unless he is detained for other reasons. A remand in custody is an exceptional measure which shall not be ordered except in the case of misdemeanour or felony. See S. 218 (1).

The Examining Magistrate may at any time after charging the defendant but before the committal order, issue a remand warrant against him provided that the offence is punishable with loss of liberty. He shall then make a reasoned ruling committing the defendant in custody. The ruling shall be notified to the State Counsel and to the defendant. See S. 218 (2).

Police custody is a measure by which a suspect is detained in a judicial police cell for a little period for purposes of criminal investigations and the establishment of the truth. 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. See S.118 (2). Should the accused be remanded in custody for any other reason that has to do with criminal investigation, a written approval of the State Counsel is needed. See S 118 of the C.C.P.C.

The time allowed for remand in police custody must not exceed 48 hours renewable once. This period may exceptionally be extended twice with the written approval of the State Counsel. See S. 119(2). Remand in Police custody shall not be ordered on Saturdays, Sundays or Public holidays, except in cases of felonies and misdemeanours committed *flagrante delicto*.

Where there is a considerable distance between the place of arrest and the Police Station or Gendarmerie Brigade where a remand in police custody has been effected, such a period of remand shall be extended by 24 hours for every 50km. See S.120 (1) & (2) of the C.C.P.C.

CHAPTER VI

ACTORS IN THE CRIMINAL PROCESS

The following play an active role within the criminal process in Cameroon:

- The suspect, the defendant and the accused;
- The Judicial Police;
- The Legal Department;
- The Examining Magistrate;
- The Bench;
- The Court Registrar;
- Witnesses;
- Counsel for the Defence;
- Interpreter.

I - Suspect, defendant and accused

a) Suspect (*Le Suspect*)

According to S. 9(1) of the C.C.P.C, a *suspect* shall be a person against whom there exists any information or clue which tends to establish that he may have committed an offence or participated in its commission.

b) The Defendant (*L'inculpé*)

S. 9(2) of the C.C.P.C states that, *the defendant* shall be any suspect whom an Examining Magistrate notifies that he is presumed henceforth either as the offender, co-offender, or as an accomplice.

c) The Accused (*le prévenu*)

According to S. 9(3) of the C.C.P.C., *an accused* person shall be a person who must appear before the trial court to answer to the charge brought against him whether in respect of a simple offence, a misdemeanour or a felony.

Matters shall be brought to the State Counsel either by way of:

- A written or oral information;
- A written or oral complaint; or

- A written report by a competent authority. See S. 135 (1) (a) of the C.C.P.C.

Where the written or oral report is made by the victim of the offence, it shall be considered as a complaint. If it is made by a third party, it shall be considered as information. See S. 135 (4)(a) of the C.C.P.C.

II - The Judicial Police

They are responsible for Police Investigations. They perform their duties under the supervision of the State Counsel. They are considered as the auxiliaries of the State Counsel. In the jurisdiction of the Court of Appeal, the Judicial Police is under the control of the Procureur General. See, S. 78 of the C.P.C.

a) Who can perform the Duties of a Judicial Police?

The duties of a judicial police are performed by:

- Judicial police officers;
 - Judicial police agents;
 - Other civil servants or persons to whom judicial police duties are assigned by law.
- See, S. 78(1) of the C.P.C.

b) Status of the Judicial Police Officers

The following shall have the status of a judicial police officer:

- Officers and non-commissioned officers of the gendarmerie;
- Gendarmes in charge (even in an acting capacity) of a Gendarmerie Brigade or Gendarmerie Post;
- Superintendents of Police;
- Deputy superintendents of Police;
- Gendarmes and Inspectors of Police who have passed the Judicial Police Officers examination and taken oath;
- Public servants even if they are temporarily performing the function of Head of an external service of national security. See S.79 of the C.C.P.C.

Note that public servants and other employees who have been assigned by special instruments shall discharge those duties under the conditions and within the limits fixed by the said instrument. See S 80 of the C.C.P.C.

Gendarmes who are not Judicial Police Officers, Police Inspectors and Constables shall have the status of *Judicial Police Agents* in the performance of their duties. They

report to senior officers all offences which come to their knowledge. See S. 81(1) of the C.C.P.C. *Judicial Police Agents* have no authority to take decisions to remand in police custody. See S. 81(2) of the C.C.P.C.

c) Duties of the Judicial Police

The Judicial Police shall be responsible for:

- Investigating offences, collecting evidence, identifying offenders and accomplices and bringing them before the Legal Department;
- Executing rogatory commissions of Judicial Authorities;
- Serving court processes;
- Executing warrants and Court decisions. See S. 82 of the C.C.P.C.

They shall receive complaints and reports against persons and shall make Preliminary Investigations according to the conditions provided in Sections 116-120 of the C.C.P.C. They shall have a right to request directly the assistance of the forces of law and order in the discharge of their duties. See S. 83 (3), C.C.P.C.

They shall receive instructions from the State Counsel to carry out all investigations or additional investigations which he considers necessary. See S. 83 (4) of the C.C.P.C. The State Counsel may stop any Judicial Police Officer from continuing with the investigation. In such a case, he shall inform that officer's immediate superior of his reason for doing so. See S. 83(5) of the C.C.P.C.

A non- military Judicial Police Officer may investigate offences provided for in the provisions of the Military Justice Code when no military judicial officer is available. See S. 85, C.C.P.C

A Judicial Police Officer may, whether in a public place or a place open to the public, search or cause to be searched, any person suspected of being in possession of arms or any other object likely to be used in the commission of an offence. See S. 87(1) of the C.C.P.C. See S. 87(2) with regard to how bodily searches shall be conducted. The right to search could be extended to vehicles, passengers and luggages. See S. 87(3), C.C.P.C.

The Judicial Police shall without delay inform the State Counsel of the offences of which he has knowledge. See S.89 (1) of the C.C.P.C.

He shall forward directly to the State Counsel at the close of the investigation the original and a copy of his report as well as all other relevant documents. See S. 89 (2) of the C.C.P.C. An inventory shall be made of all the objects seized. They shall be placed under seal and deposited with the Legal Department. A copy of the report on the seizure shall be given to the person who has possession of the objects. See S. 89(3) of the C.C.P.C.

Searches and seizures shall be carried out by the Judicial Police Officer who possesses a search warrant. However, in cases of a felony or misdemeanor, committed *flagrante delicto*, he may act without a search warrant. See S. 93(1) of the C.C.P.C. For more on searches, see SS. 93(2-5), 94-100 of the C.C.P.C.

III - The Legal Department

The Legal Department is one and indivisible. Any judicial act done by any magistrate of the Legal Department shall be presumed to be done in the name of the entire Legal Department. See S. 127(1) of the C.C.P.C.

The Legal Department shall comprise the magistrates of the Legal Department of the Supreme Court, Court of Appeal, High Court and the Court of First Instance.

Magistrate of the Legal Department of the Supreme Court, Court of Appeal, High Court and Court of First Instance shall under the control, direction, and authority of the heads of the said Legal Departments, exercise the powers conferred by the law on the Procureur General at the Supreme Court, the Procureur General of the Court of Appeal and the State Counsel respectively. See S. 127 (7) of the C.C.P.C.

The Legal Department shall ensure the enforcement of laws, regulations and judgments and may in the interest of the law make any request it considers necessary before any court. See S. 29(1) of the 2006 Law on Judicial Organization in Cameroon.

In criminal matters and without prejudice to the rights of the civil party, it shall search for offences, institute and carryout prosecutions and issue any warrants necessary for the institution and prosecution of criminal action. See SS. 29(2) of the December 2006 Law.

The presence of the Legal Department in court shall be obligatory in criminal matters and optional in any other matter otherwise provided by Law. See S. 29(3), 2006 Law

The original case files concerning offences committed within the jurisdiction of either the Court of First Instance or the High Court and which is supposed to be heard and determined by the ordinary law courts shall be sent to the State Counsel. See S. 139 of the C.C.P.C.

The competent state counsel shall either be:

- That of the place of commission of the offence;
- That of the place of residence of the suspect; or
- That of the place of arrest of the suspect. See, S. 140 of the C.P.C.

When more than one state counsel is seised of the same matter, priority shall be given to the State Counsel in whose jurisdiction the offence was committed. See S.140 (2), C.C.P.C. It is important to know the functions of:

- the Procureur General at the Supreme Court. See S. 132 of the C.C.P.C.;
- the Procureur General at the Court of Appeal. See SS. 133 and 144;
- the State Counsel. See SS. 135-144 of the C.C.P.C.

A-CHARACTERISTICS OF THE LEGAL DEPARTMENT

These characteristics include: hierarchical subordination, indivisibility, independence, irrevocability and irresponsibility.

1-Hierarchical Subordination

The Legal Department is organized in such a manner that at the summit is the Minister in charge of Justice and Keeper of the Seals. The Minister is not a member of the Legal Department but is the boss of this unit and all the members are hierarchically subordinated to him. He gives instructions to the *Procureur General* of the Supreme Court and the *Procureur Generals* of the Courts of Appeal and Special Criminal Court. The Procureur Generals of the Court of Appeal do not receive orders from the *Procureur General* of the Supreme Court as the latter is not the boss of the former.

The *Procureur Generals* of the Appeal Courts receive instructions from the Minister of Justice and Keeper of the Seals and transmit them to Advocate Generals, their Assistants and to State Counsel.

Under the obligation to respect their hierarchical superiors, Magistrates of the Legal Department can be switched from one function to another and are revocable. However, this rule of hierarchical subordination is subject to two exceptions:

-First Exception: In the exercise of the intrinsic powers of the Head of the Legal Department.

By virtue of this rule, the head of the Legal Department can prosecute without or even contrary to the orders of his hierarchical superior. If he does this, the engaged prosecution is regular and valid. Again the hierarchical superior cannot enter into the shoes of the Head of the Legal Department in a situation where the latter resists his instructions.

Second Exception: A right to contrary oral submission.

The Magistrates of the Legal Department in their written submissions must conform to the orders of their hierarchical superiors. But while in court he becomes free and is guided only by his conscience. He is permitted to present an oral submission contrary to what he has in the written submission. This is graphically illustrated by the French adage “*La plume est servie, mais la parole est libre*” in English, “The pen is slave but the word is free”.

However, the statutes of Magistracy oblige him to alert his hierarchical superior in case he intends to deviate. This exception is hardly put into practice for fear of provoking hatred and informal sanctions from the superior.

2- Indivisibility of the Legal Department

The Legal Department is one and indivisible. Any judicial act done by any Magistrate of the Legal Department shall be presumed to be done in the name of the entire Legal Department. See S. 127(1) of the C.C.P.C.

3- Independence of the Legal Department

The Legal Department, as representative of the executive power within the Cameroonian Justice System, is independent vis-à-vis the jurisdiction in charge of preliminary inquiry, the bench and the victim of an offence. This independence before the new Criminal Procedure Code entered into force, was put to question by Article 24(6) of Ordinance No.72/04 of 26 August 1972 which gave to Magistrates of the Legal Department the powers to conduct preliminary inquiry and also to prosecute offences. This accumulation has been suppressed by the new Criminal Procedure Code which has instituted the function of the Examining Magistrate: he is now the authority charged with conducting the preliminary inquiry.

The Legal Department has thus become independent from the bench and the jurisdiction in charge of preliminary inquiry (the Examining Magistrate). Consequently, the judges of the bench cannot address to them neither warnings nor injunctions. The judges cannot institute an action against them, save as regards offences committed during the hearing.

In relation to the victim of the offence, the Legal Department is also independent. Neither the withdrawal of the victim from the action nor the withdrawal of his complaint would stop the Legal Department from pressing for the punishment of the accused who has been found guilty.

4-The Irrevocability of the Legal Department

The Legal Department represents the executive power and is a party to a criminal trial. It is considered the main complainant so unlike judges who could be challenged by one of the parties, it cannot be challenged. See SS.593, 591 *et seq.*

5-The Irresponsibility of the Legal Department

Unlike the civil party who would be called upon to pay damages in situations where his case is not grounded, the Legal Department, even in situations where it erroneously prosecutes, resulting in a no-case ruling or an acquittal, would not be asked to pay damages. The law considers him irresponsible. In this light S.131 of the Cameroon Criminal Procedure Code holds that where there is a no case ruling or where there is an acquittal, the Legal Department shall not be made to bear the costs of the proceedings or to pay damages to the party prosecuted. However, it is important to note that this irresponsibility is not absolute. In the case of a personal fault of a Magistrate, an action could be taken against him in a special court; and, if found guilty, he would be punished.

B-THE ROLE OF THE LEGAL DEPARTMENT

It exercises within the jurisdiction of the court to which it is attached and is concerned with the offences committed within its territorial jurisdiction, and the authors of offences resident or arrested therein.

The most important functions of the Legal Department are those of prosecution and enforcement of court decisions.

1-Prosecution

The first function of the Legal Department is to decide to institute criminal proceedings against the suspect. The Legal Department prosecutes but does not decide alone. It is an original party in a criminal process. It is the principal party and, as representative of the society, it acts on behalf of the latter in case where offences are committed against it. Before preliminary inquiry is set on motion, it carries on, or causes to be carried on by the Examining Magistrate or the Judicial Police Officers, investigations; it establishes the commission of all offences and receives complaints and information. During the trial, it shall address the court and tender written submissions. It can go on appeal if need be. As representative of the society, it cannot withdraw from the action initiated.

2-Application of the Criminal Law and the Enforcement of Court Decisions

The Legal Department is charged with ensuring that the criminal law of the country is applied. It is responsible for enforcing criminal court judgments. For those convicted and sentenced to imprisonment terms, it is the responsibility of the Legal Department to cause them to be received by the penitentiary authorities to serve their imprisonment term. It can cause the detention of those fined to force them pay the fines.

IV - The Examining Magistrate

The Examining Magistrate is a Magistrate of the bench. He shall not be competent to try matters of which he carried out Preliminary Inquiry. See S. 24 of the December 2006 Law.

Subject to the provisions of S. 157 of the C.C.P.C, the Examining Magistrate may carry out Preliminary Inquiries only if the State Counsel requests him to do so. See S.145 (1) of the C.C.P.C. The judicial act by which the State Counsel seises the Examining Magistrate shall be called *a holding charge*. See S. 143(2) of the C.C.P.C.

Preliminary Inquiry shall, except otherwise provided by law, be compulsory in cases of felonies and optional in the cases of misdemeanours and simple offences. It is mostly not necessary for simple offences. See S. 142 of the C.C.P.C and S. 25(1) of the December 2006 Law.

V- Witnesses

These are those who assist the court by the evidence they give to prove or disprove a fact in issue.

Any person not less than 14 years of age may testify as a witness before the Examining Magistrate or the court. However, a minor of any age who is a victim of an offence may testify as a witness. See S. 322(1) of the C.C.P.C.

If a person summoned to appear as witness does not, the Examining Magistrate may issue a bench warrant against him without prejudice to the provisions of S. 173 of the Penal Code. See S. 188(1) of the C.C.P.C.

VI- Court Registrars

They keep the records of the court and those of the Examining Magistrates.

They arraign the accused.

VII- Counsel for the Defence

They represent and assist the accused.

VIII- Interpreters

For witnesses who do not understand the language of the court (Supra).

IX - The Bench

It hears and determines the matter.

CHAPTER VII

COURT PROCESSES, LEGAL NOTIFICATION, SUMMONSES AND SERVICE

I - COURT PROCESSES

A) What is a court process?

A court process shall be a written document by which a magistrate or a court orders either:

- The appearance or production of an individual before them; or

- The remand in custody of a suspect, a defendant, an accused or a witness suspected of hindering the search for evidence; or
- The imprisonment of a convict; or
- The search of objects either used for or procured by the commission of an offence.

B) Types of court processes

The following shall constitute court processes:

- Summons;
- bench warrants;
- imprisonment warrants;
- Remand warrants;
- search warrants;
- Production warrants;
- warrant of arrest;

1) Summons

This is governed by S.13 of the C.C.P.C. The purpose of a summons is to command the person named therein to appear before the State Counsel, an Examining Magistrate or a trial court on the date and hour mentioned in the summons.

2) Bench Warrants

This is governed by S. 14 of the C.C.P.C. A bench warrant shall be an order given by a court to any officer of the judicial police to bring immediately before it, the person named therein.

3) Remand Warrants

This is defined by S. 15 of the C.C.P.C. A remand warrant shall be an order given by the State Counsel in the cases of a felony or misdemeanour committed *flagrante delicto*, the Examining Magistrate or the trial court to the superintendent of prisons to receive and detain a defendant or an accused. It shall be issued in accordance with provisions of SS. 218-221 of the C.C.P.C. It should be distinguished from remand in police custody (*garde à vue*) SS. 118-126

4) Production Warrants

This is governed by S. 17 of the C.C.P.C. A production warrant shall be an order given by one of the judicial authorities cited in S. 12 of the C.C.P.C. to the superintendent

of a prison that a defendant, an accused or a convict be brought before him or before a trial court.

5) Search Warrants

This is governed by S. 16 of the C.C.P.C. A search warrant shall be an order given to a judicial police officer, by the State Counsel, an Examining Magistrate or a trial court to enter any public or private place and search it for the purpose of seizing any article or documents used in committing an offence or which appear to be the product of an offence.

6) A Warrant of Arrest

See SS. 18-24 of the C.C.P.C. A warrant of arrest shall be an order given to an officer of the judicial police to arrest a defendant, an accused or a convict and bring him before one of the judicial authorities cited in S. 12 of the C.C.P.C.

7) Imprisonment Warrants

See S. 25 of the C.C.P.C. An imprisonment warrant shall be an order given by a trial court to the superintendent of a prison to receive and detain a convict.

C) Courts Processes Issued By Judicial Authorities

1) State Counsel

He may issue summonses, warrants of arrest, search warrants or production warrants. In the case of offences committed *flagrante delicto*, he may issue a remand warrant. S. 12(1) (a)&(b) of the C.C.P.C.

2) Examining Magistrate

He may issue a summons, a bench warrant, a search warrant, a remand warrant and a production warrant. See S. 12 (2) of the C.C.P.C.

3) Trial Courts

The trial court may issue a summons, a bench warrant, a search warrant, a remand warrant, an imprisonment warrant and a production warrant. See S.12 (3) of the C.C.P.C.

II) Legal Notification, summonses and service

A) Legal Notification

Legal notification shall consist of bringing a legal document to the knowledge of the interested party. It is done through administrative channels so that trace of it can be kept. This will particularly be by registered letter with acknowledgement of receipt due, or by an officer of the judicial police who shall make a report thereon. See S.39 of the C.C.P.C.

B) Summonses (*Citations*)

Summons (citation) in contrast with “*mandat de comparution*” shall be an order requesting a person to appear before the court. See SS.40-55 of the C.C.P.C.

C) Service (*significations*)

Service shall mean the delivery of the court process or judgment by a bailiff to the addressee. It shall be executed at the instance of the Legal Department or any other interested party. The provisions of SS. 40-55 of the CCPC on summons shall apply to service.

Where personal service has not been effected on the concerned, it may be made at his place of residence, the council office, the Legal Department, on his surety or at his place of work. See S. 57 of the C.C.P.C. The Student should be able to distinguish between *personal and substituted services*.

III-Commencement of Criminal Action in Court

Several methods could be used to seize the Court in a criminal action. Some of these methods are: direct summons, committal orders, immediate seizure in cases of *flagrante delicto* offences, and automatic seizure of the Court in case of offences committed in open Court. The seizure of the trial court has certain effects.

A. Methods of Commencement of Criminal Action in Court

1. Direct Summons

A Direct Summons is an act of the bailiff, issued upon the request of the State Counsel, the Civil Party or Certain Administrative officers who have the right to initiate criminal action in relation to offences touching on their interest. It permits the direct seizure of the court by summoning the accused in front of it. It is used only in cases of misdemeanour and simple offences and not in felonies where preliminary inquiry is obligatory. The

accused must be notified thereof to permit him prepare his defence. It must indicate the place, the day, and the hour of hearing, the facts the accused is being reproached for, and must equally identify the accused.

2. Committal Order

At the end of preliminary inquiry if the Examining Magistrate arrives at the conclusion that there is sufficient evidence to put the defendant on trial, he issues a committal order sending him for trial either in the High Court if it is a felony or the Court of First Instance in cases of misdemeanours and simple offences.

3-Order of the Inquiry Control Chambers

As a result of an appeal to the inquiry control chambers its judgment could be to the effect that there is sufficient evidence to put the defendant on trial and so it will commit him for trial.

4. Immediate seizure of the Court in cases of *Flagrante Delicto* Offences

This is a simple and rapid special procedure to seize the court, instituted by Article 114 of the Cameroon CPC. The above Article provides that, a suspect arrested *flagrante delicto*, shall be brought by the Judicial Police Officer before the State Counsel who shall proceed to check his identity, interrogate him summarily and if he decides to prosecute shall place him under temporary detention or release him on bail with or without sureties. In all cases the State Counsel shall make a report on the measures he has taken and where he intends to prosecute him, he shall do so at the very nearest session of the court. From the provisions of Article 114(3) the above prescription does not prevent the State Counsel from instituting criminal prosecution against the suspect by way of direct summons or after preliminary investigation.

5. Automatic Seizure of the Court in Case of Offences Committed in Open Court

This method of commencement of action is used in exceptional circumstances, notably for offences committed in open court. In case the offence committed is a felony the judge would order the arrest of the perpetrator, hear him, take records of his declarations and hand him to the competent State Counsel for the opening of the Preliminary Inquiry. But if the offence committed is a misdemeanour or simple offence the judge would initiate the action and trial the offender immediately.

6. Normal Method of instituting proceedings by the State Counsel

Criminal proceedings shall be instituted and prosecuted by the Legal Department. They may also be instituted by any Government Department or by the injured person under conditions laid down by law. See S.60 of the CCPC. Matters shall be brought to the State Counsel either by way of:

- a written or oral information; or
- a written or oral complaint; or
- a written report by a competent authority.

He may also be seised of his own motion. See S. 135, CCPC. He may then decide to institute criminal proceedings against the suspect. See S. 141.

B. The Effect of Seisure of the Trial Court

The trial court is seised by way of a charge. The charge could be defective; so room is provided by the law to amend it. Historically however the amendment could only be done in the light of the fact as presented in the original charge sheet. Today with the New Criminal Procedure Code, Article 363 empowers the Presiding Magistrate, if in the course of hearing new facts emerge against the accused, to amend or alter the charge in respect of the facts and proceed with trial on the basis of the new charge.

The seisure of the trial court is *in personam*, that is, it is only concerned with those who are mentioned in the different documents relating to the action. This is different from the jurisdiction in charge of Preliminary Investigation which can examine all persons known to have been connected in one way or the other in the commission of the offence.