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Legal Framework on the Use of Forensic Science in the Criminal Justice System of Cameroon

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ABSTRACT

A legal framework that ensures the use of forensic science in a criminal justice system is imperative. It can accelerate criminal proceedings that take a longer period and ultimately augment the conviction or acquittal rate to a greater extent. This paper examines the legal basis of criminal investigation with the end result that the scope of the law on the use of forensic science investigation in Cameroon is pinpointed. The rules of investigation of offences in Cameroon is regulated by Law N° 2005 of 27 July 2005 on the Criminal Procedure Code. However, the origin of criminal law and procedure stems from Law No 96/06 of January 1996 to amend the Constitution of 2nd June 1972 considered as the highest law of the Republic. According to this Law, every accused person is presumed innocent until found guilty during a hearing conducted in strict compliance with the rights of defence. Law N0 2016/007 of 12/07/2016 relating to the Penal Code is the Criminal Law of the Republic which defines crime and punishment of offenses committed in the territory of Cameroon. It specifies the powers, functions and procedures of every institution involved in criminal adjudication. The criminal justice system consists of two main structures namely: The Judicial Police and the Legal Department. Investigations are carried out by the judicial police and gendarmes who are responsible for investigating offences, collecting evidence, identifying offenders and accomplices, and bringing them before the legal department. The legal department is the prosecuting arm in charge of all criminal matters. The Criminal Procedure Code contains provisions on the rules of evidence implying that forensic evidence could be helpful in shaping the process of proof in criminal investigations. In addition, the courts in Cameroon have used scientific evidence in some cases to supplement evidence which has already been adduced.

Keywords: Cameroon, legal framework, forensic science, investigation, justice system.

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I. INTRODUCTION

Contemporary law enforcement has greatly expanded its ability to solve crimes by the adoption of forensic techniques and procedures. The application of forensic science to assist in the gamut of activities in the criminal justice system has been recognized worldwide.³ It is a complex discipline that interacts with a range of fields including science, policing, government and law.⁴ Forensic science which has been defined as a group of scientific disciplines that are concerned with the application of their particular area of expertise to law enforcement, criminal, civil, legal and judicial matters⁵ has been absorbed as part of national security as it helps in investigating almost all kinds of crimes. Past and current utilization of forensic science indicates that it may deter a would-be-criminal from committing crime, as she/he may fear that she/he could be traced and apprehended. It can also induce admission or confession, and in many cases saves much time in the investigation and prosecution of offenders.⁶ The role of forensic science has greatly expanded in the last several years as it has contributed significantly to both the investigative portion of the justice system as well as in the adjudicative function.⁷ Despite the improvements of forensic science in developed countries, Africa, on the other hand, took quite some time to embrace this emerging science.⁸ It happened in the late 20th century in Africa. The field crept arduously into the Cameroon Criminal Justice System and is still in its developmental stages. This discipline over some few years has helped law enforcement agencies to solve complicated crimes. However, evolving and emerging sophisticated crimes will require parallel sophisticated techniques and crime investigative approaches.⁹ The anticipation of fully embracing forensic science in Cameroon may therefore be contrary to the necessary enabling environment, facilities, expertise and funds allocated for forensic science. This is evident in the yearly financial budget for Science in most African Countries.¹⁰

³ H.C. Lee & E.M. Pagliaro, *Forensic Evidence and Crime Scene Investigation*, 1 Journal of Forensic Investigation (2013).

⁴ HL, *Forensic Science and the Criminal Justice System: A Blueprint for Change*, HL Paper 333 HOUSE OF LORDS (2017).

⁵ J. Prahlow, *Forensic pathology for police, death investigators, attorneys, and forensic scientists.*, New York: Springer Link. (2010).

⁶ *Ibid.*

⁷ A. H. Howard & C. L. Henry, *Introduction to forensic science and criminalistics (2nd ed.)*. CRC Press Taylor & Francis Group (2019).

⁸ Kirstin Williams & Martin Villet, *A history of southern African research relevant to forensic entomology*, 102 South African Journal of Science (2006).

⁹ Anika Ludwig & Jim Fraser, *Effective use of forensic science in volume crime investigations: Identifying recurring themes in the literature*, 54 Science & Justice (2014).

¹⁰ Thomas K. Karikari, et al., *Developing expertise in bioinformatics for biomedical research in Africa*, 6 Applied & Translational Genomics (2015).

II. LAWS GOVERNING CRIMINAL INVESTIGATIONS IN CAMEROON

1. Law N° 96/06 of January 1996 to Amend the Constitution of 2nd June 1972

Cameroon criminal law and procedure finds its basis in Law N° 96/06 of January 1996 to amend the Constitution of 2nd June 1972 considered as the highest law of the Republic. According to the preamble of this constitution, no person may be judged and punished except by virtue of a law enacted and published before the offence committed. It also stipulates that no person may be prosecuted, arrested or detained, except in the cases and according to the manner determined by law¹¹. Most importantly, it states that every accused person is presumed innocent until found guilty during a hearing conducted in strict compliance with the rights of defence.

2. Law N° 2005 of 27 July 2005 on the Criminal Procedure Code

The position under the Cameroonian Criminal Procedure Code is not an exemption as it comes in complementing the provisions of the Cameroonian Constitution. This law inspires and breaths more air into the marrows and crones of the country's highest fabric of law by stipulating the rules of criminal investigation. Law N° 2005 of 27 July 2005 on the Criminal Procedure Code stipulates the rules which deal particularity with: the investigation of offences; the search and identification of offenders; the method of adducing evidence; the powers of those charged with prosecution; the organization, composition and jurisdiction of courts in criminal matters; verdict; sentencing; the setting aside of judgements in default and appeals; the rights of the parties as well as the methods of executing sentences¹².

3. Law N° 2016/007 of 12/07/2016 relating to the Penal Code

This law considered as the Criminal Law of the Republic is one of the laws that define the crime and punishment of offenses committed in the territory of Cameroon.

III. STRUCTURES OF INVESTIGATION IN THE CRIMINAL JUSTICE SYSTEM

Cameroon, like other modern states has a criminal justice system involving a number of actors, with the police and court occupying strategic positions. There are two main structures involved in criminal investigations namely: the Judicial Police and the Legal Department.

1. The Judicial Police

Before prosecuting a person suspected of having committed an offence, it must be established

¹¹ Article 65 of this Constitution is to the effect that the preamble is an integral part of the constitution.

¹² Section 1 of

that the alleged offense was actually committed and there is evidence that leads to the presumption that the accused committed the offence. To this effect, investigation must be opened and this may lead to the arrest of the suspect, the identification of witnesses and gathering of exhibits. The Judicial Police is in charge of carrying out this preliminary finding. Therefore, the duty of Judicial Police is one of the tasks assigned to the forces of law and order and it is usually contrasted with Administrative Police duties exercised by the same Police or Gendarmerie Officer. The Judicial Police deals mostly with arrest, investigation and identification while the Gendarmerie serves as a back-up in mass crime and high-risk situations, being paramilitary in nature.

The duty of the Judicial Police consists in investigating offences, identifying offenders and accomplices and bringing them before the Legal Department for prosecution. To this effect, the Judicial Police Officers receive complaint and reports, and conducts preliminary investigations. In addition to their investigation role, they serve Court processes, and execute production warrants and Court decisions.¹³

The Judicial Police Officers receive instructions from the State Counsel. The State Counsel may stop any Judicial Police Officer from continuing with an investigation and he may reassign the matter to another officer. In such a case, he shall inform the officer's immediate hierarchy of his reason for doing so.¹⁴ This measure enables the State Counsel on the one hand, to check any obstacle emanating from Judicial Police Officers that may frustrate the implementation of the criminal policy, and on the other hand, to direct the Judicial Police Officers on the work approach.

Judicial Police Officers are empowered to check the identity and situation of any suspicious person, and where necessary, may detain him for a period of not more than twenty-four hours, and search or cause the suspect to be searched.¹⁵

Under certain circumstances, the Judicial Police Officer may carry out acts out of his territorial jurisdiction, provided he informs the State Counsel of the place of investigation. It is even advisable that when he is carrying out his task out of his jurisdiction of competence, he should act under the cover or protection of the local Judicial Police Officers.¹⁶

A Judicial Police Officer may, on the basis of a rogatory commission received from an

¹³ Section 82 CPC

¹⁴ Section 83 (5) CPC

¹⁵ Section 86 CPC

¹⁶ Section 88 (1) CPC

Examining Magistrate or a trial Court, carry out investigation throughout the national territory. He shall be assisted by a Judicial Police Officer serving within the area where he intends executing his mission.¹⁷

At the close of the investigations, the Judicial Police Officer shall forward the original and a copy of the report on the investigation to the State Counsel.¹⁸ An inventory shall be made of all the objects seized, and the said objects 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.¹⁹

2. The Legal Department

According to Section 60 of the CPC, criminal proceedings shall be instituted and prosecuted by the Legal Department. The Legal Department is therefore in charge of public prosecution in Cameroon. It is the pivot of all criminal actions and it represents and defends the interest of the people of Cameroon in criminal prosecution. The Legal Department is present during all stages of criminal proceedings namely: the pre-trial phase, the Preliminary Inquiry, the trial and the post-trial phase.

The Legal Department of the Court of First Instance investigates and prosecutes criminal allegations brought to its knowledge by way of a written or oral information or complaint, or a written report by a competent authority. The operations of Judicial Police Officers and Judicial Police Agents are controlled by the State Counsel, who may visit the Police station or the Gendarmerie Brigade to verify the conditions of people in custody. In the course of such control, the people whose release he orders of his own motion, or people who have been released by virtue of an order of *Habeas corpus*, must immediately be set free under pain of prosecution for unlawful detention against the Judicial Police Officers in charge of the Police or Gendarmerie unit where the person is detained as provided by section 137 (2) of the CPC.

The functions of the Legal Department of the High Court are similar to those of the Legal Department of the Court of First Instance. The only exception is that its material competence is limited to felonies, save where the State Counsel is appointed cumulatively as State Counsel of the Court of First Instance. The State Counsel of the High Court prosecute all criminal actions filed before the said Court, irrespective of whether the Court was seised by a committal for trial of an Examining Magistrate of a Court of First Instance or that of the High Court. The

¹⁷ Section 88 (2) CPC

¹⁸ Section 89 (2) CPC

¹⁹ Section 89 (3) CPC

only instance where another State Counsel may appear before the High Court is in *habeas corpus* action, where a State Counsel of Court of First Instance may be summoned as respondent detaining the applicant. In such a case, and regardless of the indivisibility of the Legal Department, the State Counsel of the Court of First Instance may appear before the High Court to justify the detention of the applicant.

The Legal Department of the Military Tribunal is charged with investigation and prosecution of the following offences: military offences and war crimes; crimes against humanity and crimes of genocide; offences related to the acts of terrorism and the security of the state; offences of piracy and unlawful acts against the safety of maritime navigation and platforms; offences committed by servicemen, with or without civilian co-offenders or accomplices, in a military establishment or in the exercise of their duties; offences against the law governing 1st, 2nd, 3rd and 4th category weapons, as specified in the law to lay down general weapons and ammunition regulations in Cameroon and offences committed using such weapons; armed robbery; any offence involving a serviceman or any person considered as such, committed in times of war or in a region under a State of Emergency or emergency measures; offences committed by civilians in a military establishment, causing damage to military equipment or installations, or prejudicial to the physical integrity of a serviceman, or disrupting normal service; offences relating to the purchase, sale, production, distribution, wearing or keeping of military equipment or insignia as defined by the regulations in force.²⁰

The organization and functioning of the Legal Department of the Special Criminal Court is provided for by Law No. 2011/028 of 14 December 2011 setting up the Special Criminal Court, as amended and supplemented by Law No. 2012/011 of 16 July 2012. As per the provisions of section 4 of the said law, the Legal Department of the Special Criminal Court is headed by a Procureur General, assisted by one or more Advocates General and one or more Deputies to the Procureur General. The Legal Department is competent to prosecute cases of misappropriation of public property and related offences, where the value of the loss is at least fifty million francs CFA. The seat of the Court is Yaounde and its jurisdiction is nationwide. The Department investigates complaints, accusations or petitions relating to any of the offences falling under its competence. During this preliminary or judicial investigation phase, the Procureur General acts as State Counsel of ordinary law Courts. He has under his control a specialized corps of judicial police officers, who carry out investigations and rogatory

²⁰ Section 8 of Law No. 2017/012 of 12 July 2017 to lay down the Code of Military Justice.

commissions.

The Legal Department of the Court of Appeal ensures that the criminal law is applied throughout the jurisdiction of the Court of Appeal. In the exercise of his function, the Procureur General of the Court of Appeal shall have powers to directly requisition the forces of law and order.²¹ He may instruct the Magistrates of the Legal Department within his jurisdiction to investigate offences of which he has knowledge, to close a case file or to institute proceedings. The Procurer General supervises the activities of the Judicial Police Officers and Judicial Police Agents working within his region of command and submits half yearly reports to the Minister in charge of Justice on their activities and conduct. He may also direct them to obtain any information he deems necessary for the proper administration of justice.

One of the prerogatives of the Legal Department is to control judicial police operations. The State Counsel directs and controls the operations of the Judicial Police Officers and Judicial Police Agents of his jurisdiction when they are carrying out investigations. Pursuant to the provisions of section 137 (3) of the CPC, he can take over and marshal the investigation at any stage, by personally carrying out all necessary acts within the framework of the investigation. The powers of the state counsel are exercised from the moment an offence is committed, or immediately public order is perturbed. Judicial Police Officers are bound to inform him promptly of any alleged offence, and even where he is not so informed, he can *suo motu* initiate investigations as provided by section 135 (3) of the CPC. There are certain Judicial Police investigation acts which cannot be carried out without his prior approval. This is the case, for example, with interception, recording and transcription of communications, as well as taking of photographs in private premises. His authorization must be sought before any search already commenced could be continued after 6 p.m. In case of offences committed *flagrante delicto*, the State Counsel automatically take control of the investigation operations when he gets to the crime scene, unless he decides otherwise.

Generally speaking, the State Counsel is the director of criminal investigations and the Judicial Police Officers act under his control. Judicial Police Officers forward daily, a list of people detained at their units to him.²² At the end of the Judicial Police investigations, the original of case files concerning offences committed within the jurisdiction and to be tried by the ordinary law Courts, are forwarded to him.²³ Upon perusal of the file, he may decide to prosecute the

²¹ Section 133 CPC

²² Section 34 CPC.

²³ Section 139 CPC

suspect, close the file or return it to the Judicial Police Officer for further investigation.

IV. LEGAL BASIS ON THE USE OF FORENSIC SCIENCE IN THE CRIMINAL JUSTICE SYSTEM

The Criminal Procedure Code is the current procedural law which governs criminal investigations in Cameroon. It prescribes the procedure from the point of taking cognizance of crime by police investigators till the delivery of final order of conviction or acquittal or any appropriate order looking into the fact of the case by judicial magistrates. Some provisions of the Criminal Procedure Code on the rules of evidence imply that forensic evidence could be helpful in shaping the process of proof in criminal investigations.

Section 308 (a) of the CPC provides that, an offence may be established by any means of proof, except where the law expressly provides otherwise. This provision of the CPC implies that forensic evidence can be accepted as a means of proof in criminal proceedings. According to Fonkee and Eware, there are three standard means of proof: testimonial evidence, documentartary evidence, and real or physical evidence. With respect to real or physical evidence, this is evidence which the court can personally inspect so as to draw inferences and conclusions on the existence or nonexistence of the fact which the evidence seeks to prove. Real or physical evidence permits the courts to reach conclusions on the basis of its own perception and not on that of the witness. It is evidence that speaks for itself.²⁴ Examples of real or physical evidence include situations where the footprints of the accused are found at the crime scene, or his fingerprints are found on the weapon used to commit the offence. In a murder case, the visit of the crime scene permits the court to observe and draw inferences from the position of the body of the deceased, traces of blood found on the scene, footprints or tire prints on the crime scene. With progress made in science today, the DNA of the author of the offence found at the crime scene equally consitutes real evidence.

The courts in Cameroon have, in some cases ordered that a DNA test should be conducted in situations where they had doubts that needed clarifications. In the case of *Etchi PeterTambe Vs The People*²⁵, the appellant and one other stood trial on two counts for dissertation. After receiving evidence from the parties, there was doubt on the paternity of the child allegedly disserted. The Court ordered for a DNA test to be conducted to determine which of the accused was the biological father of the child. Even though the test was finally not conducted because

²⁴ J. F. Fonkee & A. Eware, Cameroon Criminal Procedure and Practice in Action, (Editions Véritas. 2020).

²⁵ Judgement in Suit No. CASWR/4c/2011 of 11 March 2014

the parties could not pay for it, this case shows that the use of forensic evidence exists in Cameroonian courts.

Section 310 (3) of the CPC provides that the decision of the Court shall be based only on the evidence adduced during the hearing. This could be physical evidence gathered by a forensic investigator at a crime scene such as DNA, blood, clothing fibers, tire tracks, firearm residue, drugs and other chemicals. Due to the fact that evidence naturally revolves around two cardinal things namely facts and issue, these two combine to form evidence which the court may or may not rely on in determining the merits of the case.

The courts have accepted corroborative evidence to supplement evidence which has already been adduced. Under the CPC, corroboration is provided by section 311 which bars the Court from basing its decision to convict an accused on the evidence of a co-accused unless it is corroborated by the evidence of a third party who is not implicated in the case or by any other evidence. According to Fonkee and Eware (2020), corroboration may take the form of scientific evidence. In the case of *Emmanuel Fonjong Vs The People*,²⁶ for example, the prosecution tendered a medico-legal certificate, where as proof of rape, it was attested that the hymen of the alleged victim was absent. The medical report did not state whether the hymen was ruptured long before the day of the alleged offence or on the said day. Even though the Court of Appeal held that the corroboration was not sufficient because it did not establish causal link between the medical findings and the alleged act of the accused, this case is demonstrative of the fact that scientific or forensic evidence is applicable in Cameroonian courts.

Section 319 of the CPC permits expert opinion to be adduced if the court finds that it is necessary for the discovery of the truth. Section 203 (1) provides that, where a technical problem arises in the course of the preliminary inquiry, the Examining Magistrate may, of his own motion or on the application of any of the parties including the insurer of liability, where necessary, make an order for expert opinion and appoint one more expert. Expert witnesses can be regarded as those who by virtue of their education and experience have become knowledgeable, and authorities in their area of specialization, calling or vocation; whether it is in the field of art, humanities or science. The expert opinion could be solely documentary, solely testimonial, or documentary evidence followed by testimonial evidence, as provided for in section 217 CPC.

Before an expert testifies, the court must ascertain his expertise. Where the expert is among

²⁶ Judgement in Suit No. CASWR/8c/82 (1997 ICCLR part 2 at 177).

those in the national list of experts as provided for under section 206 CPC, there is no need for his expertise to be ascertained further. Section 208 (2) provides that, the experts, whose names do not appear on the national list, shall take the oath provided for in section 204 before the Examining Magistrate whenever they are commissioned. Failure to do so shall render their report null and void. The report on the oath shall be signed by the Examining Magistrate and the registrar. Where the person called as an expert is not on the said national list of experts, the court must be satisfied that he has the necessary expertise. According Fonkee and Eware (2020), the question as to whether a person is an expert or not is an issue of fact which is determined by the court before the testimony of the expert. The indicators to guide the court in arriving at a conclusion are: educational background which could be established by presentation of certificates/or credentials; evidence on the area in the field where he has taken extra courses; work experience.

Section 211(1) states that, the expert shall carry out his mission in close collaboration with the Examining Magistrate or the commissioned magistrate. He shall, in particular, keep such magistrate informed of the progress of his investigation in order to enable him, at all times, to take any necessary measures. Sub section 2 is to the effect that, there shall be no violation of the right of the defence, where an order of the Examining Magistrate extends the mission of the expert to fresh facts likely to justify the preferring of an additional count. According to Section 212, where the expert so appointed requests clarification on a point which is outside his field of specialization, the Examining Magistrate may, on the proposal of the expert, appoint any person specially qualified to assist him. The person so appointed shall take the oath prescribed in section 204 and his report shall be annexed to that of the expert.

The task of experts was succinctly stated by Lord Cooper in the case of *Davies Vs Edinburg Magistrates*²⁷ as follows:

Their duty is to furnish the judge or jury with the necessary scientific criteria for testing the accuracy of their conclusions, so as to enable the judge or jury to form their independent judgement by the application of these criteria to the fact proved in evidence.

The opinion will therefore be based on facts ascertained by the expert or put before him as the basis for his opinion. Normally, he will disclose the said facts before being permitted to express his opinion.

²⁷ (1953) SC 34 at 40.

At the end of the expert's work, he is required to submit his report in as many copies as there are parties plus one extra copy according to the provision of section 215(1). This report shall contain a description of all activities undertaken by the expert and his findings thereon.

According to sub section 2, where there is more than one expert, they shall submit a joint report; if they have different opinions, each of them shall state his separately in the same report. Sub section 3 states that, the report and the exhibits under seal or their remnants shall be handed over to the registrar of the inquiry. The latter shall forthwith prepare a report of the handing over.

V. CONCLUSION

Most governments have developed rules of forensic science as an advanced scientific technique which assist courts, police systems and private agents and individuals during investigation. This paper has explored the legal framework on the use of forensic science in the criminal justice system of Cameroon. The Constitution of the Republic considered as the highest law of the Republic, the Penal Code which is the main criminal law of the country and the Criminal Procedure Code which is the procedural law which governs criminal trials and other related laws, form the legal basis of criminal investigation. The Criminal Procedure Code contains provisions of rules of evidence implying that forensic evidence could be helpful in shaping the process of proof in criminal investigations. The courts in Cameroon have also used scientific evidence in some cases to supplement evidence which has already been adduced. The two main structures involved in criminal investigations consists of the Judicial Police and the Legal Department. The operations of these two structures are carried out in accordance with the laws governing criminal matters. It can therefore be said that a legal framework exists in Cameroon that ensures the use of forensic science in the criminal justice system. This framework, however, needs to be strengthened to include specific legal instruments on forensic investigation.
