

APPRAISAL OF THE PROTECTION OF THE RIGHTS OF SUSPECTS UNDER THE CAMEROONIAN CRIMINAL PROCEDURE CODE* / /*****

Abstract

Crime commission is an inescapable peculiarity in any given and recognized society operating under the canopy of established rules and regulations. Cameroon has engaged huge steps in inaugurating credible laws, all in the preservation and protection of fundamental human rights of suspects. The paper sets out to determine whether the judicial Police in the course of carrying out its duty in the investigative phase of the criminal proceedings respect the rights of parties especially those pertaining to the suspect. The paper establishes that, it is the responsibility and role of the investigating police in carrying out investigation, respect the due process of the law in the course of investigation. Hence, their act should not contravene the right of the suspect or accused in question. In achieving the said objective above, a doctrinal methodology approach was adopted. The judicial police should respect the provisions of the criminal procedure code when matters or issue of investigation is concerned. The basic tenet is that, when issues of investigation are not respected by the Cameroonian police, gross violations of the criminal processes are always experienced, and this greatly affects the objective of criminal law being that of protecting the rights and dignity of every citizen.

Keywords: *Judicial Police, Respect of Suspect Right, Criminal Proceedings, Criminal Procedure Code.*

1. Introduction

During the investigating process, every crime contains a progression of activities or steps that is always moving from the gathering of evidence, to that of getting information, developing the evidence acquired so as to form reasonable grounds for everyone in believing that the suspect or accused in question is really responsible for all the allegations made against him or her. Such process of determining the nature of the investigation setup can be done through evidence collected. In this regard, it is the role of the criminal investigator in looking at the clues and acquired evidence at disposition in order to determine or ascertain that the crime was

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committed and the suspect or accused in question is responsible for all the allegations made towards him.

The criminal investigator in place before establishing that someone has really committed an offence or crime must be conscious of his or her thinking, and such thinking put in place must always be in an intentional process.¹ This aspect of criminal investigation does not entail that the investigating police or official in question possesses the acquired skills; it will also depend on the thinking skill of the said officer.² Absolutely, contrary to the process of analyzing crimes every day, the role of the investigating police, the process of discovery, interpreting and even determining the validity of information most often becomes a complex and critical platform. It becomes a deduced obligation of every investigator not just in making a presumption about the validity and truth of information based on a personal confirmation of belief, but rather ensures that he or she is responsible and empowered under the law in making relevant and justifiable proof so that it should not affect the lives and even the right of those investigated upon.³ It is therefore understandable that, anyone qualified as a police investigator should have both the task and the thinking skills in collecting and analyzing evidence at all levels that will be accepted in the criminal justice system. The said person must carry out the investigation in such a way that it abides to the legal rules and appropriate processes of the evidence collected.

In its obligation of identifying the investigative system, a series of legal dispositions and criminal laws has been by Cameroon laws⁴ empowering the judicial or investigating police with the necessary competence and powers in effecting and engaging in matters of investigation from the crime commission to the trial process. In every matter referring to investigation, the investigating police in addition to the investigation of offences, is also responsible for collection of evidence, identifying offenders and accomplices and bringing them before the court of law.⁵ This police are also responsible in receiving complaints and report persons and the said person must make all investigations in accordance with all the conditions and procedures prescribed or laid down by law. It is by and large understandable that, for every act carried by these investigating police, such an act must be prescribed by the law, if not, any act engaged by these officials will be regarded as illegal and unacceptable. The question one needs to be posing is in determining the law that gives these persons the capacity and status in engaging in any act of investigation of a criminal portfolio.

2. Recognizing and Determining The Function of The Judicial Police Under Cameroonian Law

The Cameroon Criminal Procedure Code is the main law that grants and recognizes the status under which the investigating police officers are operating. These laws in effect governed and identified their various activities in such a way that these officials cannot carry out any act in effecting criminal issues unless these activities or competence are highly recognized by the various criminal laws.

¹ R Gehl, D Plecas. *Introduction to Criminal Investigation: Processes, Practices and Thinking*, (United Kingdom: Justice Institute of British Columbia New Westminster, Bc, 2016), p 1

² *Ibid*, page 2.

³ *Ibid*, Page 2

⁴ In Cameroon, the main law dealing with criminal proceedings is Law No. 2005/007 of 22nd July 2005 dealing with the Cameroon Criminal Procedure Code

⁵ Section 82 of the Cameroon Criminal Procedure Code 2005

2.1 Legal Recognition of the Investigating Police under Cameroonian Law

The Cameroon Constitution⁶ considered as the highest law has established that all acts done within the territory of the country must be carried out in accordance with the law. It's stipulated in its Preamble that *no person may be prosecuted, arrested or detained, except in the cases and according to the manner determined by law.*⁷ The position under the Cameroonian Criminal Procedure Code is not an exemption as it comes in complementing the lubrications and flavour provided under the Cameroonian Constitution. This law inspires and breaths more air into the marrows and crones of the country's highest fabric of law by providing that;

*The law instituting the Criminal Procedure Code stipulates that the rules deal particularly with: (a) the investigation of offences; (b) the search and identification of offenders; (c) the method of adducing evidence; (d) the powers of those charged with prosecution; (e) the organization, composition and jurisdiction of courts in criminal matters.*⁸

The Code in question being the main criminal policy of the country has made it clear in all manners that concerns the jurisdiction and the scope of all those vested with the powers in engaging criminal matters and investigations in the country in which police investigators participate. In complementing the provision of the Criminal Procedure - Code, the Penal Code,⁹ otherwise considered as the Criminal Law of the Republic stipulates in its that *no penalty or measure may be imposed unless provided by law, and except in respect of an offence lawfully defined.*¹⁰

As far as the Police Investigator is concerned, there is a special code of 2012 that governs the ethics and deontology of the police force in all aspects of the police operation including those dealing with police investigations especially during their process of engaging in matters of investigation. The Code provides in its Article 17 that;

*Every National Security agent shall respect the law, ensure that the law is respected, and obey the law; defend and protect the fundamental human rights; banish tribalism, favoritism, nepotism, discrimination and corruption; serve the community according to the law, and not use it or supersede it.*¹¹

The Code continues in providing that it is the responsibility of every agent or officer of the Cameroon National Security to ensure, respect and protect the rights of all persons in all aspect of operation.¹² In conforming with these relevant dispositions and prescriptions, it further explains that during every criminal operation of the police officer in carrying out his/her duties,

⁶ Law no.96/06 of 18 January 1996 to amend the Constitution of 2nd June 1972. Article 65 of this Constitution is to the effect that the preamble is an integral part of the Constitution

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⁸ The 2005 Cameroon Criminal Procedure Code, section 1

⁹ The Cameroon Penal Code, section 17.

¹⁰ Decree no. 2012/546 of 19th November 2012 dealing with the code of conduct for the forces of the National Security

¹¹ Cameroon Penal Code, section 17.

¹² The Police Code of Ethics, article 27

they have to respect the right of freedom, individual security, private and family life, the inviolability of the home, and even that of confidentiality of correspondence.¹³

This is a clear indication that the investigating police must respect and comply with these when carrying out their investigation and under no circumstance should they breach the rights of the suspect or accused when meting their function of an investigator. It is thus their fundamental and judicial duty in respecting this fundamental human right of the suspect or accused under their custody.¹⁴We are not saying that they should exercise their investigative skills in executing their function imputed on them by the law; our worry is always at the level of performance where they want to use everything within their capacity and competence in adducing evidence from the suspect or accused, and as result violates their human right.

To this regard, the law provides that, the police officer in carrying out his/her duty, should be guided by principles of impartiality and scrupulous respect for fundamental human rights, especially the right to freedom of thought, conscience, religion, expression, opinion, peaceful assembly, free circulation and respect for the properties of all persons.¹⁵In matters of criminal performance, the officer shall refrain from any discrimination based on sex, race, ethnic origin, language, religion, education, political affiliation, opinion, disability, social position and other reasons prohibited by the Constitution and by international treaties and agreements.¹⁶The application of the various laws posed above has been very unreasonable and infallible as we continue to experience violations of these laws on the part of the police.

2.2 An Examination of The Role and Place of The Investigating Police in Criminal Proceedings

The State of Cameroon has ratified a good number of international and regional treaties that impose an obligation on the government through its law enforcement officials in investigating all allegations of human rights violations and bring the alleged perpetrators to justice. One of the fundamental treaties ratified by Cameroon are the International Covenant on Civil and Political Rights, the United Nation Convention against Torture and other Forms of Cruel, Inhuman or Degrading Treatment or Punishment and the African Charter on Human and Peoples' Rights. Article 6(1) of the International Covenant on Civil and Political Rights States that;

*Every human being has the inherent right to life. This right shall be protected by law, and no one should in any circumstance or situation be arbitrarily deprived of his right to life.*¹⁷

¹³ *Ibid*, article 28.

¹⁴ H Gross, *Criminal Investigation, A Practical Textbook For Magistrate, Police Officers, and Lawyer*, (London: Oxford University Press, 2014) p 24.

¹⁵ *Ibid*, Article 29

¹⁶ Article 30

¹⁷ The International Covenant on Civil and Political Right (herein referred after to as ICCPR) with strict compliance, article 6. The same recognition is found in *Article 2* of the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms, *Article 4* of the *American Charter on Human Right*; and even Article 4 of the African Charter on Human and People's Rights 1986. S G Brandl *Criminal Investigation*, (University of Wisconsin-Milwaukee Press, 2006)p 34.

It continues in providing and stipulating in its Article 7 that No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In respecting this, both countries have been able to perform criminal proceedings through its investigative or judicial police.¹⁸

These international norms-requirements have found their direct consolidation at the level of criminal procedural law. For example, Article 11 of the Criminal Procedure Code of Cameroon stipulates that the respect for human dignity, rights and freedoms of every person must be ensured during criminal proceedings. It is prohibited to subject a person to torture, cruel, inhuman or degrading treatment or punishment, to resort to threats of such treatment, to keep a person in degrading conditions, to force him to actions that degrade his dignity. In order to implement these provisions in practice the legislator provided for judicial control during the application by the prosecution (investigator, prosecutor) of restrictive measures in particular has to be looked into the choice of preventive measures against the person, compulsory attendance, interference with privacy.

In addition, an essential guarantee of the protection of person's rights and freedoms is that evidence obtained as a result of torture, cruel, inhuman or degrading treatment or threat of such treatment is declared inadmissible by the court. That is, evidence obtained as a result of a substantial violation of human rights and freedoms will inevitably be declared unacceptable by the court.

3 The Cameroonian Criminal Law and the Judicial Police

In every aspect concerning the investigating euphoria, it is the general rule and principle that during the process of investigation, it is the role of the police to question, conduct service, make arrest as far as the necessary evidence acquired in the course of the investigation is weighty and can be convincing. It is normal that the investigating police in the course of carrying its duties must ensure that such duty carried should respect the necessary provision prescribed by the law, if not any act or activities carried out will be considered as null and automatically illegal.

4 The Police and the Place of Instant Arrest

The Cameroon Criminal Procedure Code in its Section 30 has made provisions when issues of arrest are concerned. It provides that the responsibility of the judicial police officer when empowered with the authority and competence in effecting arrest on a suspect should do so without plaguing or using methods which randomly affect the human rights of the accused in question.¹⁹The general rule is that in every criminal aspect under the Cameroonian criminal law, the accused is presumed to be innocent until proven guilty by the prosecuting party who is bringing allegations that the accused or suspect really committed the offence.²⁰The code states in its Section 30 that;

¹⁸ *Ibid* article 7

¹⁹ *In The People v. Enguene Malgloire* ,(JUDGFEMENT No. 16/04 delivered on the 16th of January, 2009. a Superintendent of Police attached to the Garoua Emi-Immigration Police Station used violent and abuses the accused, the accused was charged with assault and false arrest. He was acquitted.

²⁰ Section 8 of the Criminal Procedure Code talks on the aspect of presumption of innocence until proven guilty. That it is the role of the Prosecuting counsel in establishing that the accused in question committed the crime, and this can only be done with the available evidence necessary, and the evidence gathered must be weighty and capable of implication the accused beyond all reasonable doubts. Once there is a doubt on the evidenced established, the case in hand is dismissed and the accused liberated and acquitted.

*A judicial police officer, agent of judicial police or any officer of the forces of law and order effecting an arrest shall order the person to be arrested to follow him and in the event of refusal, he shall use reasonable force necessary to arrest the person. That any individual may in case of felony or misdemeanor committed *frangant delicto* arrest the author of such an offence.*²¹

The code has vested the judicial police with the power to arrest. However, the official in question has no authority during the arrest in causing any bodily or psychological harm on the person arrested.²²The said police officer must respect the fundamental human right of the arrested person. The question one needs to ask at the time of arrest is the duty of the police officer to touch the body of the criminal.²³In the case of *Ashukem Agem Napoleon v. the People of Cameroon*,²⁴ the preliminary investigation that were carried out by the investigative police were dismissed on the ground that the legal department or State Counsel does have the *locus standi* to question act of the investigative police when they discovered some irregularities done during the preliminary investigation of the offence. It was of a common standing in questioning whether a State Counsel has the *locus standi* to question the acts of his predecessor; and whether such acts are binding on him. There was also the issue as to whether the trial Magistrate has powers to point out and rule on supposed irregularities done during a preliminary investigation; and whether he is bound by the Committal Order of the Examining Magistrate. Also, in the case of *Ndi Tangiri James and 54 others v. The People of Cameroon*²⁵the court held that it is the duty of the judicial police to mention in his report the reasons of the accused arrest. This is to ensure that the right of the suspect is respected during the arrest phase by the judicial police in the rule of the law in the process.

Article 12 of the Criminal Procedure Code of Cameroon also stipulates that during criminal proceedings no one may be kept in custody, detained or restricted in the exercise of their right to free movement in any other way on suspicion or accusation of committing a criminal offence other than on the grounds and in the manner prescribed by this Code. Anyone detained on suspicion or charge of a criminal offence or otherwise deprived of his liberty shall be brought before an investigating judge as soon as possible to decide on the lawfulness and justification of his detention, other deprivation of liberty and further detention. A detainee shall be released immediately if he or she has not been served with a reasoned detention order within seventy-two hours of his or her detention.²⁶Unfortunately, there is a negative practice regarding violations of procedural requirements of the law during detention.

5 Justifying the position of Reasonably Force in Aspect of Investigation

The Cameroon Criminal Procedure Code has been able to respect these international instruments as it makes clear that, an arrest, ordinarily, should be conducted by simply ordering the person to be arrested to follow the judicial police officer or any person authorized to perform the arrest to the police station or any other specified legal ground of investigation or detention.²⁷In other words, unless the person to be arrested offers some physical resistance, the

²² *Ibid* Criminal Procedure Code, Section 30(4)

²³ W Denham 'Arrest: What to Do When Your Loved One is in Jail', *Chicago Review Press*, 2010, p 21

²⁴ Suit No. 11^C of the Court of Appeal South West Region, 2009 unreported

²⁵ Suit No. 60^C Court of Appeal North West Region, 2012 unreported

²⁶ Article 12 of the Criminal Procedure Code of Cameroon

²⁷The Criminal Procedure Code Section 30 (2).

arresting officer should not use any force intended to cause bodily or psychological harm in carrying out the arrest.²⁸ However, a judicial police officer, agent or persons authorized to carry out the arrest may use “reasonable force” whenever the person to be arrested refuses to follow him peacefully.²⁹

Indeed, the worry here is that the code did not make mention of what would amount to a reasonable force, thereby giving the authority the power to enforce what they actually think is sufficient for and most often, violates the rights of the suspects.³⁰ To ensure that the force however used in carrying out the arrest is a reasonable one,³¹ the code provides that no bodily or psychological harm may be inflicted on the arrestee upon arrest.³² The code further ensures the safety and security of the person arrested by providing that, the arresting officer if so required by the arrestee or where the Judicial Police Officer intends to reprimand the arrestee, shall allow a third party to accompany the suspect or arrestee in order to ascertain the place in which he is being detained.³³ Where this was the case in an arrest, it shall be mentioned in the police reports for tranquility.³⁴ Section 31 of the Cameroon Criminal Procedure Code has made it clear that in every circumstances in which arrest is effected, the person arrested should be informed of the reason of his or her arrest, and even allow a third party in accompanying the person arrested so as to ascertain the place to which he or she is being detained.³⁵ This has not been the case because many people were arrested³⁶ and swiftly brought to trial unusually, with little or no time to prepare their defence. Many of the defendants had no legal counsel; while others were denied time to consult their lawyers. The trials were summary in nature. Hundreds of defendants were sentenced to between three months and two years in prison.³⁷

Even with the arrest of suspect and defendants in question, there continues to be prolonged pre-trial detention which constitutes a serious problem and affects the right of the

²⁸ The Criminal Procedure Code Section 30 (2 & 4)

²⁹ The Criminal Procedure Code Section 30 (2)

³⁰ D C. Ormerod Blackstone *Criminal Practice*, (Justice Institute of British Columbia New Westminster, Bc, 2012), p 34

³¹ In *The People v. Ava Gabriel*, judgment No. 63/CRIM of 2 July 2007 an Inspector of Police was accused and prosecuted for torture. At the hearing of 18 April 2008, he was found guilty of the offence and sentenced to 6 months imprisonment, suspended for 3 years and ordered to pay damages of FCFA 150,000. Also, in the case of *The People v. Bannem Anatole and Others*, judgment No. 20/6 of 21 March 2006, a Judicial Police the accused was prosecuted for torture. The matter was discontinued.

³² Section 30 (4) of the Criminal Procedure Code.

³³ The Criminal Procedure Code section 119(1) (a)

³⁴ Section 119 (1) (b) of the Criminal Procedure Code

³⁵ In *The People v. Police Constable Belomo Joseph and Police Officer Epanda Richard*, Judgment No. 45/CRIM of 19/10/2007, the accused was prosecuted for assault. By, the first accused was acquitted. The second accused was ordered to pay a fine of 100,000 FCFA and damages of 343.643 FCFA.

³⁶ As a result of the February 2008 Protest of the country against the increase of fuel, so many people were on the street contesting the increase. Many of them were arrested by the police without even informing them about their reason of the arrest, and this has breached the provision of Section 31 of the Cameroon Criminal Procedure Code which emphasizes that suspect arrested must be provided the reason of their arrest, and that no information provided to this effect will render the arrest null and illegal. This section also is in compliment with that of Section 389(3) of the same Code which provides that, there must be reasoned and written judgment by the Examining Magistrate after which he must have finds the accused guilty as charged.

³⁷ Section 221 of the Code that emphasized on the time limit of detention of the accused which must not exceed six months

accused.³⁸ According to Article 221 of Cameroon Criminal Procedure Code the time limit for detention pending an investigation cannot exceed six months and can only be extended by an order from a judge giving grounds by 12 months for serious crimes and six months for lesser crimes. When the time limit expires, the suspect must proximately be released.³⁹ The Code requires police and gendarmes to obtain an arrest warrant except when a person is caught in the act of committing a crime, but the police often do not respect this requirement in practice. The law provides that detainees must be brought promptly before a magistrate, but this frequently does not occur.

5.1 The Power of Questioning the Suspect

The police in its course of acquiring the necessary evidence needed for the criminal proceedings in question has the power in questioning the suspect during aspect of investigation so as to acquire statements from the suspect.⁴⁰ In *The People v. Warrant Officer*,⁴¹ Eteme Hubert warrant officer committed gross abuse on the suspect was through the use of false arrest, assault and torture. This act done by the police was really a violation of fundamental human right of the suspect as that of the use of arbitrary treatment on the suspect violating his right.

The issue here is that, even though the police has this prerogative disposition at their disposal, it must be done in a voluntary manner, for the law will frown on any statement gotten from the suspect using oppressive methods all in the aim of getting the suspects to confess their guilt and even implicate others.⁴² The use of torture, threat, intimidation, undue influence is prohibited by the law in the extraction of evidence which can still be gotten even during the trial proper. So, for evidence of the accused to be admissible in a court of law, the confession must be carryout voluntarily. This has not been the case in question. Section 315 of the Cameroon Criminal Procedure Code provides that;

*A confession is a statement made at any time by an accused in which he admits that he committed the offence with which he is charged. The confession will not be admissible in evidence if it was obtained through duress, violence, or intimidation in exchange of a promise for any benefit whatsoever or by any other means contrary to the free will of the maker of the confession.*⁴³

From the intent of this provision, it is clear that all confession or evidence adduced from the accused by the accuser must be voluntary before it can be admissible in the court of law, anything outside of this will be considered illegal and inadmissible. The question one needs tend to find out is to know if this has always been the case when carrying out investigation by the competent authority especially the judicial police vested with this power. We continue experiencing violation of this fundamental human right of the accused by the country's police force as they continue using excessive force and punishment on the accused which is against the provision of Section 132 of the Penal Code that deals with torture.

³⁸ Cameroon NGO; 'Report On the Implementation of the ICCPR (Replies to CCPR/C/CMR/Q4) Report' presented by Gender Empowerment and Development, *Bamenda, June 2010*

³⁹ *Ibid*, p.21

⁴⁰ R Stone; *Civil Liberties and Human Right*, 10th Edition, (United Kingdom :Oxford University Press, Stone R. (2012). *Civil Liberties and Human Right*, (Oxford University Press, 10th Edition,) 23) 23

⁴¹ Judgment No. 81/6 of 4 October 2006,

⁴² K Sweeney. *Arrest, Detention and Question: Law and Practice*, 1st Edition, (Cameroun: Clarus Press,2016) p11

⁴³ Section 315 of the Criminal Procedure Code

The Criminal Procedure Code of Ukraine also prohibits the torture of a person, his or her cruel or inhuman treatment. Of course, such requirements are also applied during the interrogation of a person, including a suspect.⁴⁴ If the suspect has been subjected to physical, psychological influence or other actions that degrade his honor and dignity, he has the right to record it in the protocol of interrogation, as well as to state any other remarks and objections concerning the procedure of the investigative action. Therefore, compliance with the procedural requirements regarding the implementation of procedural actions in criminal proceedings first, ensures compliance with the procedural form of criminal proceedings; secondly, it is a guarantee of the admissibility of evidence obtained as a result of procedural actions; thirdly, it promotes the fulfillment of the tasks of criminal proceedings and respect for its basic principles.

5.2 The Police Power of Search and Seizure

The police officer in carrying out an arrest has the right to search the suspected person, or cause the person to be searched upon. This power in exercising search is provided by Section 87 of the Cameroon Criminal Procedure Code which provides that;

*A judicial police officer may, whether in a public place or a place open to the public, search, 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. Also, the bodily search shall be carried out only by a person of the same sex on the suspect.*⁴⁵

From the words of the code, the general rule is that all aspect of search must be done in public or a place recognized as a public place. This therefore means that any search done in private by the Judicial Police will be considered as illegal.⁴⁶ What is of prime interest again goes at the disposition of the code which talks those who are supposed to carry out the search. It is clear from the provision of Section 87(2) that bodily search should be carried out only by person of the same sex on the suspect which is fundamental in the respect of the right to privacy and that of indecency as stipulated under Section 295 of the Cameroon Penal Code which talks on aspect of private indecency. The issue here is not the person carrying out the search whether a male on a male, or female on female. Our concern here will be based on the manner in which such search is done on the suspect or accused in question.⁴⁷ In most circumstances there exists some use of force which is considered as per Section 292 of the same Penal Code as a Sanction.

The Section provides that anyone for his or her personal advantage, compelling someone to do any work or render any service which the person does not do of his own free will shall be punished with imprisonment term as from one year to five years.⁴⁸ This law applies to everyone irrespective of the status acquired. There is always the use of force on the suspect in question when effecting search by the investigating police, and as if this is not enough the situation becomes appalling when we see police officer searching private homes. According to Section 16 of the Criminal Procedure Code, a search warrant shall be an order given to a judicial police

⁴⁴ *D.S Oyebowale v. Company Commander of Gendarmerie for Fako*, Suit No. 0040/HB/09 of High Court Fako(unreported)

⁴⁵ The Criminal Procedure Code, section 87

⁴⁶ J S Creamer; *Law of Arrest, Search and Seizure*, 3rd Edition (United States of America: Holt, Rinehart and Winston, 1980,) p45

⁴⁷ *Ibid*, p.47

⁴⁸ The Cameroon Penal Code section 292.

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. Therefore, the Judicial police are of no right to enter houses or premises to conduct a search for it will constitute a violation of the Cameroon Constitution in its Preamble which states that the home is an inviolate residence.⁴⁹ Even the Cameroon Penal Code in its Section 299 punishes aspect of invasion of resident, and we can say that any forceful entering into someone's residence without a search warrant can be sued for the action of trespass. As this is not exhaustive, it is the responsibility of those around in searching the police officer so as to ensure that the police officer does not plant any incriminatory evidence that can affect the suspect. This becomes complicated in carryout the act in question, most at times, the suspect is intimidated, threatened and even placed under duress, making it impossible in effecting this act.

6 Judicial Police Investigation and The Inadmissibility of Evidence

The introduction of the system of examination by the Cameroon Criminal Procedure Code makes it possible for the Judicial Police officer who sends his report to the court or to the examining magistrate to be cross-examined in court though this is at the discretion of the court. This enables the judge or the examining magistrate to enjoy considerable authority even in relation to senior police officers whose reports can be criticized in open courts. This system of procedure is common law oriented, giving the judge the opportunity to personally interrogate the judicial police officers about the course of police investigation and the circumstances of the confession. The police experience the judicial power to control and sanction their behavior in a public trial. The public sees for itself that police officers have limited powers and that there is a controlling authority strong enough to protect individual rights against abusive State power. Unfortunately, the fact that cross examination is optional still makes it possible for the practice in Francophone Cameroon to prevail whereby a written report of a police officer about his interrogation of the accused can be substituted for his personal appearance at the trial.

6.1 Controlling The Legality of The Police Power in The Investigation Process

The Cameroon Penal Code in its Section 17 has emphasized on the aspect or principle of legality, where all acts must be done in accordance with the provision of the law, in which those of the police or investigating officers are not an exception. The law provides that all acts of the police must be checked in order to avoid abuse of power on the part of these police officers.

It is also worth paying attention to the fact that the Cameroon Penal Code in its Section 291 talks about the concept of false arrest on someone which will deprive that person of his liberty. The code continues in its Section 132 to talk about aggravation for public servants who use force on anyone, and the police is not an exception. Following sections 5 and 9 of the Universal Declaration of Human Rights, Section 7 of the International Covenant on Civil and Political Rights, Preamble of the Cameroon Constitution, and other international instruments which are all to the effect that, "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". The Cameroon Criminal Procedure Code has been able to respect these international instruments as it makes clear that, an arrest, ordinarily, should be conducted by simply ordering the person to be arrested to follow the judicial police officer or any person

⁴⁹ The Cameroon Constitution section 65 is to the effect that the Preamble is considered as an integral part of the constitution.

authorized to perform the arrest to the police station or any other specified legal ground of investigation or detention.

In other words, unless the person to be arrested offers some physical resistance the arresting officer should not use any force intended to cause bodily or psychological harm in carrying out the arrest. However, a judicial police officer, agent or persons authorized to carry out the arrest may use “reasonable force” whenever the person to be arrested refuses to follow him peacefully. What about the phenomenon of invasion of residence in which the police are also criminally liable for such act? Upon receipt of an application the judge shall make the order which will specify the date and time for a hearing. After the hearing, if the judge determines upon the facts of the case that the arrest or detention is illegal, he shall order the immediate release of the detainee.⁵⁰ That decision may be subject to appeal. However, the detainee shall be immediately released pursuant to the decision, irrespective of any appeal.⁵¹

Again, this is a significant feature of the law as it underlines the Criminal Procedure Code emphasis on the liberty of the citizen, since it goes against the general trend of the law in Cameroon under which an appeal has the effect of suspending execution of the judgment below.⁵² Worthy of note is Section 585(5) which states that in the event of non-appearance of the detainee in court, the judge shall consider the reasons for this and make a decision on the basis of the documents presented in the application. Thus, the non-appearance of the custodian or the detainee does not preclude the judge from deciding on the legality of the detention. However, a major flaw in the new law is that it does not go as far as to provide penalties or any sanctions against a custodian who refuses to comply with a court order to produce the detainee in court and explain the basis of the detention.⁵³

6.2 Conclusion

The application of every law, especially criminal law is instrumental and imperative for the machinery of justice to be effective. The commission of crimes is an inevitable aspect that is plaguing every society whether with bonded principles or not. The investigating police otherwise known as the crime implementation police is not vested with powers in ensuring the protection of the fundamental human rights of the accused before, during, and even after crime commission, but it is embedded with the responsibility of respecting and safeguarding the rule of law in the executing and enforcement of justice. Cameroon as a country bonded under the auspices of recommended and recognized criminal disposition ensures that the right of the accused during the pre-trial process should be respected and enforced by the investigative police in the course of collecting evidence from the presumed accused. It is experienced that, even though with all these methods exercised by the investigating police in these countries, enforcement of justice by these law abiding officers has been problematic and questionable.

6.3 Recommendations

We are aware that the judicial police officer under the Cameroon Criminal Procedure Code even though respect the rule of law during the investigative process always experienced great difficulties in respecting certain provisions especially when dealing with the respect of the suspect right.

⁵⁰ Section 586(4) of the Penal Code

⁵¹ *Ibid*, Section 586(5)

⁵² *Ibid*, Section 586(6)

⁵³ L S Enonchong; ‘Habeas Corpus under The New Criminal Procedure Code of Cameroon: Progress or Statusquo?’, *Oxford University Commonwealth Law J*, 2016, vol 14, at 55

There is lots of violation of this right of the suspect and this has affected the criminal process and the respect of the fundamental human right of the suspect.

The question here is that even though the Cameroon Criminal Procedure Code has established provision for the respect of the rule of law during the investigative phase, it there the role of the Investigative police to ensure that the fundamental human right of the suspect should be guarantee in all phases of the investigative process.

Ensuring the suspect right during the investigative process will be of great interest for the criminal justice system.