

Appraising the Test of Admissibility of Electronic Records under Cameroonian Criminal Trials

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DOI: <https://doi.org/10.36348/sijlcj.2024.v07i10.010>

| Received: 02.09.2024 | Accepted: 11.10.2024 | Published: 25.10.2024

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Abstract

By examining the test for admitting electronic records in trials, this research critically examines the procedural and legal nuances unique to digital records. The study investigates ambiguities in authority, privacy concerns, and procedural conflicts. It seeks to propose recommendations for improving the handling of electronic records in criminal trials, aiming to ensure that justice is served without compromising individual rights. This analysis provides a comprehensive approach to navigating the complexities of digital evidence while maintaining the integrity of the judicial process and upholding fundamental human rights.

Keywords: Appraisal, Test, Admissibility, Electronic Records, Criminal, Trials.

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INTRODUCTION

In the realm of legal and criminal proceedings, proof serves as the cornerstone of judicial decision-making. The process of proving facts in court is fundamentally tied to the concept of evidence, which encompasses a wide array of materials and information used to establish the truth of assertions made by parties involved in a legal dispute. Evidence, in its broadest sense, includes documents, testimony, physical objects, and other items presented to substantiate or refute claims. The nature and scope of evidence are essential not only to the determination of facts but also to the fair administration of justice [1].

In both civil and criminal trials, the test of relevancy and admissibility is central to the law of evidence. Relevancy refers to the degree to which evidence pertains to the matter at hand and assists in proving or disproving an element of the case.

Admissibility, on the other hand, concerns the acceptability of evidence within the legal framework, dictated by rules and standards that govern what can be presented in court. The dual nature of these tests ensures that evidence is not only pertinent but also legally permissible, thereby safeguarding the integrity of the judicial process [2].

The distinction between evidence in civil and criminal trials highlights differing evidentiary standards and procedures. In civil trials, the focus is on resolving disputes between private parties, where the burden of proof lies on the balance of probabilities. Conversely, criminal trials involve the state prosecuting individuals or entities for alleged offenses, where the burden of proof is significantly higher, requiring proof beyond doubt. These variations underscore the importance of evidentiary rules tailored to the nature of the case and the potential consequences of the proceedings [3].

¹ Paul Roberts (2010), "Evidence and Proof in the Criminal Process", The Cambridge Law Journal, 69, Cambridge University Press, 1-24.; And Richard D. Friedman (2008), "The Law of Evidence", Michigan Law Review, 107, University of Michigan Law School, 1-75.

² Paul Roberts & Adrian Zuckerman (2010), Criminal Evidence, Oxford University Press, 1st Edition, Oxford University Press, 624 pages.

³ The requirement of "beyond doubt" in Section 295(2) of the Cameroon Criminal Procedure Code (CCPC) is more stringent than the "beyond a reasonable doubt" standard commonly used in many legal systems. Under Section 295(2), any form of doubt about the accused's guilt mandates an acquittal, reflecting a higher threshold for conviction. This is in contrast to "beyond a reasonable doubt," which only requires that the prosecution's case be convincing enough to eliminate reasonable doubts but

In contemporary legal contexts, electronic evidence has emerged as a significant category within the broader spectrum of evidence. This type of evidence, derived from digital sources, includes emails, text messages, social media content, and other forms of digital communication and documentation. Electronic records, a subset of electronic evidence, are particularly noteworthy due to their prevalence and the unique challenges they present in terms of authenticity, reliability, and management [4].

The treatment of electronic evidence is governed by specific legal frameworks designed to address the complexities associated with digital data. In Cameroon, the legal landscape for electronic records is primarily shaped by the Cameroon Criminal Procedure Code of 2005 [5], and the 2010 Law on Cyber security and Cyber criminality. The Criminal Procedure Code provides a foundational framework for the handling of evidence in criminal proceedings, including provisions relevant to electronic records. The 2010 Law on Cyber security and Cyber criminality complements this by addressing issues related to the integrity and security of electronic data, offering guidance on how electronic evidence should be managed and presented in court [6].

As technology advances and digital evidence becomes increasingly integral to legal proceedings, the necessity for robust and clear standards for the admissibility of electronic records is more pressing than ever. This introduction sets the stage for a comprehensive examination of the test of admissibility for electronic records within the Cameroonian legal context, exploring the interplay between traditional evidentiary principles and the evolving landscape of digital evidence. Through this analysis, we aim to shed light on how Cameroonian courts navigate the challenges posed by admitting electronic records trials so as to ensure that justice is effectively served in an era of technological innovation [7].

does not necessitate the complete absence of all doubt. Consequently, the CCPC's standard imposes a stricter burden on the prosecution, ensuring that even minimal doubt results in acquittal and offering greater protection for the accused.

⁴ Bodjongo, Mathieu Juliot Mpabe & Abenelang, Salomon Mickson (2022). Analyse comparative de l'encadrement du commerce électronique : cas de six États africains. > Revue internationale de droit économique 2022/1 t.XXXVI, pp. 75-101.

⁵ Hereinafter referred to as the CCPC.

⁶ ABY, Romain (2020), « Cybersécurité et contrôle de la région », in BADIE, Bertrand (dir), *Le Moyen-Orient et*

Tests of Admitting Electronic Records in Criminal Trials

Under this sub section, the intent will be to specifically address the main two test for admitting electronic records in trial including other sub criteria.

The Electronic Report Must Be a Product of Judicial Police Investigation/ Officers of the Agency

In examining the assertion that electronic records must be a product of judicial police investigation to be admissible in criminal trials under Law No. 2005-7 of July 2005 (Cameroon's Criminal Code), a thorough analysis of the relevant sections provides insight into the legal framework governing this aspect of evidence law. This analysis will also consider the principles and theories of legal interpretation.

Legal Framework and Judicial Police Authority

The legal framework of the judicial police authority as the authority entrusted with the functions of obtaining electronic record is highlighted in the Cameroon criminal procedure code 2005 CCPC). To that effect, Section 79 of the Law delineates the status of judicial police officers, including officers and non-commissioned officers of the gendarmerie, superintendents and deputy superintendents of police, and those who have passed specific examinations and oaths. This section establishes who is officially recognized as having the authority to perform judicial police duties [8]. By defining these roles, the statute implicitly confirms that only those within these defined roles have the authority to gather evidence in a manner that is legally permissible [9]. This definition is crucial for understanding the admissibility of electronic records because it highlights the necessity for evidence to be collected by individuals vested with judicial powers. Equally sections 93(2) of the must be read alongside sections 49, 50 and 52 of The 2010 Law on cyber security and criminality. The Cameroon Law on Cybersecurity and Criminality 2010 provides in its Section 49 that, notwithstanding the provisions of the Criminal Procedure Code, criminal investigation officers have the authority to intercept, record, and transcribe any electronic communication in the context of investigating

le monde. L'état du monde 2021. La Découverte, 2020, pp. 239-245.

⁷ CASSUTO, Thomas (2018), « Nouvelles perspectives dans la lutte contre la cybercriminalité », *Sécurité globale*, vol. 15, no. 3, pp. 29-35.

⁸ Ngatchou Toto Carles "The Responsibility of the Judicial Police Officer under Cameroonian Law" Published in International Journal of Trend in Scientific Research and Development (ijtsrd), ISSN: 2456-6470, Volume-4 | Issue-1, December 2019, pp.986-1000.

⁹ G. MANGIN (Dir.), "Procédure Penale", new ed. African, 1982, Legal Encyclopedia, Volume 10, page 197.

crimes or offenses specified under the law [10]. Consequently, this section extends the scope of permissible evidence collection beyond the limitations set by the CCPC, allowing for a broader surveillance capacity in criminal investigations [11].

Requirement for the Provision of Data upon Request and the Need for Privacy

The law on cyber security and criminality addresses the handling of data that has been encoded, compressed, or ciphered during transmission through electronic communication networks or service providers [12]. It requires that clear and decipherable versions of such data must be made available to the judicial police or members of the Agency and to an extent the court upon request. This ensures that even if data is protected by encryption or other means, it remains accessible and useful for law enforcement purposes.

While the law requests that data should be made available upon request, it also request that personnel of electronic communication network operators or service providers are obligated to maintain secrecy regarding any interception requests they receive [13]. This confidentiality requirement is intended to protect the integrity of the investigation and prevent unauthorized disclosure that could undermine the effectiveness of the interception process or the privacy of individuals involved [14].

Why the Law Insists on Judicial Police Officers

Unarguably, Sections 80 and Section 81 of the CCPC elaborate on the duties and authority of those performing judicial police functions. Public servants temporarily assigned judicial police duties must act within the limits set by special instruments. This stipulation reinforces that any evidence, including electronic records, collected by individuals not formally designated with judicial police duties, may not meet the statutory requirements for admissibility and may attract sanctions which are criminal [15].

From the Readings of the CCPC, Sections 82 outlines the responsibilities of judicial police officers, including investigating offences, collecting evidence, identifying offenders, and executing court processes. This section explicitly assigns judicial police the task of evidence collection, thereby underscoring that evidence gathered outside this framework may lack the necessary legal authority to be admitted in court. Electronic records collected by judicial police officers, therefore, are presumed to be within the bounds of legal admissibility as they are obtained through sanctioned investigative procedures [16].

Reading through Sections 83 complements this by detailing additional duties and powers, such as receiving complaints, making preliminary investigations, and acting on felonies and misdemeanors. The section also mandates that judicial police officers follow the instructions of the State Counsel, emphasizing that the legality of their actions, including evidence collection, is subject to judicial oversight. This oversight ensures that electronic records collected in such a manner adhere to legal standards, reinforcing their admissibility. So therefore to be admissible, an electronic record to be admissible must have been intercepted and transcribed by a judicial police [17].

The Interception and Transcription Must Have Been Under the Authorization, Control and Supervision of the State Counsel

To analyze and appraise the assertion that the admissibility of electronic records in criminal trials requires that their interception, recording, or transcription be conducted under the authorization, control, and supervision of the State Counsel or Legal Department, we will carefully review and interpret the relevant sections of Law No. 2005-7 of July 2005 on the Criminal Code of Cameroon. This examination will focus on the role and authority of the State Counsel, judicial police officers, and the procedural requirements for collecting electronic evidence [18].

¹⁰ Asongwe, P. N. (2012). E-government and the Cameroon cybersecurity legislation 2010: Opportunities and challenges. *The African Journal of Information and Communication*, 2012(12), 157-163.

¹¹ Tchouakeu, Daniel. (2017). The Impact of Cybersecurity Laws on Evidence Collection in Cameroon. *African Journal of Legal Studies*, 10(1), 47-68.

¹² Section 50 of the 2010 Law on cyber security.

¹³ Section 51 *ibid*.

¹⁴ Mballa, Victor. (2019). Data Encryption and Privacy in Cameroonian Cybersecurity Law. *Journal of African Law*, 63(3), 321-339.

¹⁵ Eban, Ebai (2011) "Criminal liability of the Police in Cameroon: Prospects and Challenges," *African Journal of Criminology and Justice Studies*: Vol. 5: Iss. 1, Article

11. Available at: <https://digitalscholarship.tsu.edu/ajcjs/vol5/iss1/11>.

¹⁶ Pefela Gildas Nyugha, (2022), Constitutional and statutory safeguards for fair trial and justice under Cameroonian legal system: A legal appraisal, *International Journal of Law, Justice and Jurisprudence* 2022; 2(1): 82-94.

¹⁷ Mamatkulova, K. (2021). Admissibility of electronic evidence in criminal proceedings. *The American Journal of Political Science Law and Criminology*, 3(2), 144-152. <https://doi.org/10.37547/tajpslc/Volume03Issue02-21>.

¹⁸ Fonkwe, J., & Eware, A., (2019) *Cameroon Criminal Procedure and Practice in Action*, Douala., Cameroon, Editions Veritas. P.1.

The *Locus Standi* of the State Counsel in Electronic Record Interception and Transcription

The Cameroon criminal procedure code [19], explicitly states that the State Counsel has the authority to direct and control the operations of judicial police officers and agents [20]. This authority is crucial because it establishes that the State Counsel not only oversees the judicial police's activities but also has the power to ensure compliance with legal standards during investigations. It further grants the State Counsel the ability to act as a judicial police officer, indicating a direct involvement in investigative procedures [21]. This comprehensive control underscores the necessity for the State Counsel's involvement in the collection of electronic records to ensure they meet legal requirements.

The CCPC further supports the above assertion by allowing the State Counsel to directly request the use of law enforcement forces and to seek assistance from individuals who might aid in discovering the truth [22]. This provision highlights the State Counsel's active role in managing and overseeing investigative operations, including those involving electronic records. The ability to request additional resources or assistance reflects the importance of maintaining thorough oversight during investigations. In this regard the CCPC outlines the specific powers of judicial police officers concerning the interception, recording, or transcription of telecommunications. It requires that such actions be conducted on the written authorization of the State Counsel and under their control. This provision ensures that any interception or recording of electronic communications, which forms the basis of electronic records, is carried out within a regulated framework that prevents abuse and upholds the integrity of the evidence collected [23].

However the same CCPC further elaborates that judicial police officers and agents must carry out investigations either on their own initiative or following instructions from the State Counsel. This reinforces the principle that the State Counsel's involvement is not merely supervisory but integral to the investigative process. The requirement to forward police case files to the State Counsel without delay ensures that all investigative actions, including the collection of electronic evidence, are subject to ongoing oversight [24].

Procedural and Supervisory Requirements

The CCPC in its Section 82 provides a broad overview of the duties of judicial police officers,

including investigating offences, collecting evidence, and executing court processes. This section implies that while judicial police officers are responsible for evidence collection, such activities must align with the instructions and oversight of the State Counsel to ensure procedural correctness. Thus the CCPC outlines the decisions that the State Counsel can make regarding a case, including referring matters back to judicial police for further investigation or deciding to close the matter. This decision-making power underscores the State Counsel's role in managing the investigatory process and ensuring that all procedural requirements are met, including those related to the admissibility of electronic records [25].

Thus, it is safe to say that, the assertion that electronic records must be collected under the authorization, control, and supervision of the State Counsel or Legal Department is well-supported by the provisions of Law No. 2005-7. The legal framework establishes that the admissibility of electronic records is contingent upon the State Counsel's oversight, ensuring that all investigative actions, including the interception and recording of telecommunications, adhere to established legal standards. This supervisory role is critical in maintaining the legality and integrity of evidence. Moreover, the principles of legal interpretation affirm that these requirements are not optional but mandatory, reflecting a robust framework designed to uphold the integrity of criminal investigations and proceedings.

Procedural Issues Relative to Electronic Records: Let us consider the following as the problems relative to procedural issues in the usage of electronic records in trials.

Ambiguity Issues

The Cameroon Criminal Procedure Code outlines specific roles and responsibilities for the State Counsel and judicial police officers, yet significant ambiguity exists regarding the overlap of these roles. Sections 79, 80, 81, and 82 detail the authority of judicial police officers, who are responsible for investigating offenses, collecting evidence, and executing court processes [26]. These sections also specify that public servants temporarily assigned judicial police duties must act within defined limits. Conversely, Sections 137 and 138 grant substantial supervisory and operational authority to the State Counsel over judicial police officers, including directing their actions and requesting additional resources. This overlap can create confusion

¹⁹ Hereinafter referred to as the 2005 CCPC or just CCPC.

²⁰ Section 137 of the 2005 CCPC.

²¹ Subsection (3) *ibid*.

²² Section 138 2005 CCPC.

²³ Section 92(3) 2005 CCPC.

²⁴ Section 116 2005 CCPC.

²⁵ Section 141 2005 CCPC.

²⁶ Nji, T. T. (2021). "The Impact of the Cybercrime Act on Criminal Procedure in Cameroon." *Journal of African Law*, 65(1), Cambridge University Press, 45-67.

about who holds the ultimate authority in investigative procedures and the admissibility of evidence [27].

Legal representatives have consistently argued for clearer delineation of roles to prevent procedural irregularities and ensure fair trials. The prosecution has contended that evidence collected within the statutory framework should be deemed valid, provided it adheres to procedural standards. Judges have stressed the importance of following procedural rules and ensuring that evidence collection and handling are in line with legal requirements. The courts have pointed out that resolving ambiguities in authority requires precise procedural guidelines and strict compliance with statutory requirements to maintain legal certainty and fairness in criminal trials [28].

The Use of Suggestive Words/Phrases

The interpretation of procedural requirements in the Cameroon Criminal Procedure Code is significantly influenced by the use of suggestive words and phrases such as “shall,” “may,” and “should.” These terms carry distinct implications for how procedural duties and actions are to be understood and enforced [29].

The term “shall” is employed to impose mandatory duties, creating enforceable obligations for judicial authorities [30]. For instance, Section 82 of the Code clearly mandates that judicial police officers are responsible for investigating offenses, collecting evidence, and executing court processes. This unequivocal directive means that judicial police officers are legally required to perform these duties, and failure to do so can result in the evidence collected being deemed inadmissible. The imperative nature of “shall” ensures that certain procedural steps are non-negotiable and must be adhered to for the evidence to be valid [31].

Conversely, the term “may” introduces a level of discretion into procedural actions. For example, Section 92(3) permits judicial police officers to intercept

and record communications, but only with the authorization of the State Counsel [32]. The use of “may” here suggests that such actions are not obligatory but are contingent upon obtaining the necessary approval. This discretion means that while judicial police officers have the authority to perform these actions, they are not required to do so unless explicitly authorized. The conditional nature of “may” can lead to variability in how procedures are applied, depending on the specific circumstances and the discretion exercised by the authorities [33].

The term “should” implies recommended practices rather than strict requirements. It provides guidance on best practices without creating binding obligations. This can be seen in various procedural contexts where adherence to recommendations is advised but not compulsory [34]. The use of “should” can result in procedural variations and may lead to less stringent enforcement of certain practices. It suggests that while following these recommendations is ideal, deviations might not necessarily invalidate the evidence if other procedural requirements are met.

The impact of these terms on procedural rigor is profound. The mandatory nature of “shall” creates clear and enforceable obligations, ensuring that certain procedural steps are strictly followed. The discretionary nature of “may” allows for flexibility in application, potentially leading to variations in how procedures are conducted [35]. The suggestive nature of “should” offers guidance but lacks enforceable authority, which can lead to inconsistent adherence to recommended practices [36].

In terms of legal consequences, the interpretation of these terms plays a crucial role in determining the principles of absolute and relative nullity. Absolute nullity, as outlined in Section 3 of the Code, applies to acts that contravene fundamental procedural rules [37]. If evidence is collected without

²⁷ Ngue, Martin. (2011). Authority and Functions of State Counsel and Judicial Police in Cameroonian Criminal Procedure. *Cameroon Law Review*, 8(1), 30-50.

²⁸ Tamba, J. D. (2015). "The Role of Judicial Authority in Evidence Collection and Its Impact on Fair Trial in Cameroon." *Cameroon Law Journal*, 18(2), 34-50.

²⁹ Njonfang, P. N. (2018). "Interpreting Procedural Terms in Cameroonian Criminal Law: Implications for Legal Practice." *Journal of Cameroon Law and Practice*, 22(1), 67-84.

³⁰ Sullivan on the Construction of Statutes, 5th ed. (LexisNexis Canada Inc.: 2008), at 71 and 73.

³¹ J. Braithwaite, P. Grabovsky and J. Walker (1987), 'An Enforcement Taxonomy of Regulatory Agencies' 9 *Law and Policy* 323.

³² ,005 CCPC.

³³ The Composition of Legislation, 2nd ed. (Ottawa: 1976), at 12.

³⁴ Bryan Garner, *A Dictionary of Modern Legal Usage*, pp. 693 and 694.

³⁵ Nwabueze, C. J. (2017). Reflections on legal uncertainties for e-commerce transactions in Cameroon. *The African Journal of Information and Communication*, 20. <http://dx.doi.org/10.23962/10539/23499>.

³⁶ R. Baldwin (1990), 'Why Rules Don't Work' 53 *Modern Law Review* 321.

³⁷ The 2005 CCPC in Section 3: (1) T provides that the sanction against the infringement of any rule of criminal procedure shall be an absolute nullity when it is: (a) Prejudicial to the rights of the defence as defined by legal provisions in force; (b) Contrary to public policy. (2) Nullity as referred to subsection (1) of this section shall not be overlook be raised at any stage of the criminal

following mandatory procedures, such as those prescribed by “shall” directives, it may be deemed absolutely null and void. This principle underscores the importance of strict compliance with mandatory requirements to ensure the validity of evidence [38].

On the other hand, relative nullity, defined in Section 4, pertains to acts that involve procedural irregularities but do not breach fundamental rules. Deviations from provisions indicated by “may” or “should” may result in relative nullity, where the validity of the evidence is subject to challenge but is not automatically void. This principle allows for some flexibility in the enforcement of procedural requirements, recognizing that while deviations may affect the validity of evidence, they do not necessarily render it completely null and void [39].

Legal experts and practitioners have frequently emphasized the need for clear procedural guidelines to ensure consistency and fairness in trials. Prosecution and defense alike have argued that the precise interpretation of “shall,” “may,” and “should” is essential for upholding procedural integrity and ensuring that evidence is valid and admissible. Judges have stressed the importance of adhering to mandatory requirements while recognizing the flexibility allowed by discretionary and recommended practices.

Overlapping Authority and Conflict: We shall study this under the two (2) subheadings of:

Concern for Overlapping Authority

The interaction between the State Counsel and judicial police officers within the Cameroonian legal framework reveals significant issues related to overlapping authority and procedural confusion. This complexity stems from the dual roles assigned to these entities under the Criminal Procedure Code, specifically in Sections 79 through 83 and Sections 137 and 138.

Judicial police officers, as outlined in Sections 79 to 83, are tasked with investigating offenses, collecting evidence, executing court orders, and performing preliminary inquiries [40]. They play a

crucial role in gathering evidence that forms the basis for prosecuting criminal cases. Section 82, for instance, mandates judicial police officers to investigate offenses and collect evidence. This responsibility positions them as the front-line operatives in the criminal justice system, handling the practical aspects of law enforcement and evidence gathering.

Conversely, Sections 137 and 138 endow the State Counsel with significant supervisory authority over judicial police officers. Section 137 grants the State Counsel the power to direct and control the operations of judicial police officers, including overseeing their investigative activities. This section underscores the State Counsel’s role in supervising and potentially intervening in the investigative process. Section 138 further extends this authority, allowing the State Counsel to directly request assistance from law enforcement and other individuals to aid in investigations.

The inherent overlap in these roles can create substantial confusion. For example, while judicial police officers are responsible for the practical aspects of evidence collection, the State Counsel’s supervisory authority means that these officers’ actions are subject to the State Counsel’s direction and approval. This dual authority can lead to conflicting directives, procedural delays, and disputes regarding the legitimacy of evidence.

A critical point of contention is the procedural compliance when evidence is collected. Section 92(3) allows judicial police officers to intercept and record communications only with the authorization and under the control of the State Counsel. This provision highlights the dependency of judicial police officers on the State Counsel for certain investigative actions, such as intercepting communications. The ambiguity here arises from how this control is exercised [41]. Theoretically, the State Counsel’s role is to ensure that evidence collection adheres to legal standards and procedural fairness. However, the practical application of this authority may lead to disagreements between the State Counsel and judicial police officers over the execution of these procedures [42].

proceedings by any of the parties and shall be raised by the trial court of its own motion.

³⁸ L. Edelman, S. Petterson, E. Chambliss, S. Howard (1991), ‘Legal Ambiguity and the Politics of Compliance: Affirmative Action Officers’ Dilemma’ 13(1) Law and Policy 73

³⁹ K. Hawkins (1992b), ‘The Use of Legal Discretion: Perspectives from Law and Social Science’ in K. Hawkins (1992a), *The Uses of Discretion* (Oxford: OUP)

⁴⁰ They also do execute tasks from the Examining magistrate on the basis of a Rogatory commission.

⁴¹ The phrase “The ambiguity here arises from how this control is exercised” means that the lack of clarity or

uncertainty in a situation comes from the way in which control or authority is implemented or applied. Essentially, the issue is not with the concept of control itself but with the specific methods or practices used to exercise that control. This ambiguity could lead to misunderstandings, inconsistencies, or disputes about how control should be applied in a given context.

⁴² This can be explained better by using theories such as legal theory and organizational behavior theory. According to legal theory, the State Counsel’s role is to ensure that evidence collection adheres to legal standards and procedural fairness, reflecting principles like due process and the rule of law. However, organizational behavior theory provides insight into why conflicts might

So basically therefore, there is a high inter usage of words in this context typically having unclear cuts. Now, should the judicial police proceed with interception of correspondences sent by telecommunications means without the states Counsel authority, can the supervisory authority sanction the act or allows the court room to review the act and decide on its fate? Can he (The State counsel) out rightly order the discontinuance of the investigation? What are the legal consequences of denial to adhere to a call to discontinue? Does the Criminal procedure Code even makes such instrument? What is even vexatious is the use of the word "May" in Sections 92(3), breeding a sense of choice in a matter touching fundamentally on the rights [43], of the defense, a situation already sanction in Sections 3 of the CCPC with absolute nullity. The lack of vigor in Sections 92(3) when in it is a tool for the violation of fundamental human rights of the defense makes the usage of and application of sections 3's absolute nullity a window dressing. But then we should not be too quick to forget that the discretion is with the choice to intercept and not the choice to get the approval of the state counsel. So therefore in the investigation of indictable offences, the judicial police have the choice to investigate by interception or not to. This is very clear in the readings of sections 92(3). So therefore if the state counsel should mandate for the operation suo motu [44], can the judicial police authority invokes his discretionary choice not to intercept? Will he not be right? A lot of unclear response [45]. Another pertinent worry is if the police investigation report supported by the transcript intercepted electronic records becomes a subject of nullity before the court, what will the scope of the nullity? That is what will be the nullity: the entire investigatory report or just the transcribed intercepted report? However the CCPC is silent on all of these fundamental issues [46].

The confusion between authority levels is not merely a procedural issue but affects the core principles of legal validity and the admissibility of evidence. Legal principles dictate that for evidence to be admissible, it must be collected in compliance with established legal procedures. If there is a lack of clarity regarding who holds the final authority over the evidence collection process, it can lead to disputes about the evidence's

arise in practice. Role conflict theory suggests that disagreements can occur when the roles and responsibilities of the State Counsel and judicial police officers overlap or clash. Similarly, authority theory explains that conflicts can emerge if there is unclear or competing authority over evidence collection. Therefore, while the State Counsel's role is theoretically well-defined, practical application can lead to disputes due to these role and authority conflicts.

⁴³ The Right to privacy.

⁴⁴ *Suo motu* is a Latin term meaning "on its own motion." In legal contexts, it refers to actions taken by a

validity. For instance, evidence collected without proper authorization or outside the scope of the State Counsel's control might be challenged on grounds of procedural non-compliance [47].

The theoretical framework of procedural fairness supports the necessity of clear authority delineation. The principle of legality (*nullum crimen, nulla poena sine lege*) requires that all actions of law enforcement be grounded in and adhere to legal standards. The confusion between the State Counsel and judicial police officers potentially undermines this principle, as it can lead to actions being taken without clear legal grounding or proper oversight.

The implications of this confusion are profound. When roles and responsibilities are not clearly defined, it can result in procedural irregularities, challenges to the validity of evidence, and ultimately, the undermining of the justice system's integrity. To mitigate these issues, it is essential to establish clear procedural guidelines that define the authority and responsibilities of both the State Counsel and judicial police officers. Such guidelines would ensure that evidence is collected, handled, and presented in accordance with legal standards, thereby upholding the principles of fairness and legality in the judicial process.

Thus, the confusion arising from overlapping authority between the State Counsel and judicial police officers highlights a significant procedural challenge within the Cameroonian legal system. Clear and precise guidelines are necessary to delineate roles, prevent conflicts, and ensure that evidence collection and handling comply with legal standards, thereby preserving the integrity of the judicial process [48].

Thus, the confusion arising from overlapping authority between the State Counsel and judicial police officers highlights a significant procedural challenge within the Cameroonian legal system. Clear and precise guidelines are necessary to delineate roles, prevent conflicts, and ensure that evidence collection and handling comply with legal standards, thereby preserving the integrity of the judicial process.

court or authority on its own initiative, without a formal request from the parties involved.

⁴⁵ My opinion

⁴⁶ Reading sections 3 and 4 of the CCPC alongside Sections 92(3) of the CCPC

⁴⁷ Mamatkulova, K. (2021). Admissibility of electronic evidence in criminal proceedings. *The American Journal of Political Science Law and Criminology*, 3(2), 144-152. <https://doi.org/10.37547/tajpslc/Volume03Issue02-21>

⁴⁸ L. James and J. van Zyl Smit, (2022) 'The rule of law: what is it, and why does it matter?', (The Constitution Unit, 15 December 2022).

Concern for Extensive Authority on Fairness in Trial

The extensive authority granted to the State Counsel, coupled with the hierarchical structure of the legal department and the principle of indivisibility of the legal department, can indeed place the State Counsel in a position resembling that of an "umpire" in criminal investigations. This situation is characterized by a combination of broad discretionary powers and the centralized control over investigative procedures.

Under the Cameroon Criminal Procedure Code, the State Counsel's role is pivotal in supervising and directing investigations conducted by judicial police officers. This supervisory role extends to the authority to control investigative actions, such as intercepting communications and gathering evidence, as specified in Sections 92(3), 137, and 138. The State Counsel's ability to direct and oversee the operations of judicial police officers provides a substantial level of control over how investigations are conducted.

This centralized control implies that the State Counsel essentially acts as the gatekeeper for investigative activities. The discretionary power to authorize certain investigative actions and the ability to halt or modify investigations introduces a level of oversight that could be seen as an umpire-like function. Such a role involves not only guiding the direction of investigations but also ensuring compliance with legal standards and procedural requirements.

Furthermore, the hierarchical structure of the legal department, which treats the acts of one level as the acts of all within the department, further amplifies this centralization of power. This hierarchical indivisibility means that decisions made by the State Counsel or any member of the legal department are considered binding on the entire department. This characteristic can lead to a scenario where the State Counsel's decisions are virtually unchallengeable within the department, creating a situation where accountability and oversight mechanisms might be weakened.

The concentration of power in the hands of the State Counsel, combined with the department's hierarchical structure, raises several concerns. The broad discretion afforded to the State Counsel could lead to instances where investigations are unduly influenced by personal biases or external pressures. The lack of checks and balances at the departmental level may exacerbate this risk. Additionally, the State Counsel's role as both overseer and decision-maker can result in procedural inconsistencies if there are no clear and stringent guidelines governing the exercise of this power. This

could undermine the integrity of investigations and the fairness of the judicial process. Furthermore, the centralization of investigative authority in the State Counsel could affect the perceived independence of the judiciary, potentially leading to concerns about impartiality and the separation of powers [49].

To address these concerns, it is essential to establish clear and precise procedural rules that delineate the scope of the State Counsel's authority and incorporate robust oversight mechanisms. This would help balance the need for effective supervision of investigations with the protection of procedural fairness and judicial independence.

Privacy Concerns

The admissibility of electronic records in criminal trials, particularly through interception and surveillance, raises significant privacy concerns under the Cameroon Criminal Procedure Code. This analysis will explore these concerns extensively, examining the legal framework, privacy implications, and the intersection of international privacy protections with Cameroonian law.

The legal framework for the admissibility of electronic records in Cameroon is primarily governed by the Criminal Procedure Code and relevant statutes. Key sections related to the interception and handling of electronic records include Sections 92(3), 137, and 138. These sections outline the roles of the State Counsel and judicial police officers in authorizing and controlling investigative activities involving electronic records and the exercise of their powers [50].

Privacy Concerns in the Cameroonian Context

Privacy concerns arise from the potential for unauthorized or excessive surveillance and the impact of such actions on individuals' rights. Under Section 92(3), judicial police officers may intercept, record, or transcribe communications with the authorization of the State Counsel. While this provision aims to facilitate effective law enforcement, it also poses risks to individual privacy if not carefully regulated.

Authorization and Oversight

The requirement for State Counsel authorization [51], establishes a layer of oversight intended to safeguard against arbitrary or abusive surveillance. However, the effectiveness of this oversight is contingent upon strict adherence to procedural safeguards and the clear delineation of the State Counsel's authority. If the authorization process is not transparent or if the State Counsel exercises discretion

⁴⁹ Pauline Christine Ngo Mandeng, Officer in Charge of Research, Directorate of Legislation, Ministry of Justice, Cameroon. "The Role and Function of Prosecution in Criminal Justice." 107th International Training Course Participants' Papers, 2018.

⁵⁰ Nguindip; Forsuh & Tetiewe: Appraisal of the Protection of the Rights of Suspects under the Cameroonian Criminal Procedure Code, NAUJILJ 12(1) 2021. P.164.

⁵¹ Sections 92(3), 137, and 138 of the CCPC.

without adequate checks, it could lead to privacy violations. The broad discretionary powers of the State Counsel, combined with the hierarchical nature of the legal department, may result in minimal external oversight, raising concerns about potential abuses of power.

Scope of Interception and Data Handling

The scope of interception and data handling must be narrowly defined to avoid excessive intrusion. The broad language in Sections 92(3) allowing for the interception and recording of communications may lead to concerns about the extent of surveillance [52]. If electronic records are collected without precise and limited parameters, it could infringe upon individuals' privacy rights. The necessity and proportionality of such measures must be carefully evaluated to ensure they do not encroach on privacy beyond what is necessary for the investigation [53].

Legal Repercussions on Fair Trial

Privacy infringements can have significant legal repercussions, including the potential for evidence collected through improper means to be deemed inadmissible. Sections 130, 131, and 136 address procedural irregularities and their impact on the validity of evidence. If electronic records are obtained through violations of privacy or procedural errors, they may be excluded from evidence, affecting the fairness of the trial [54]. The principle of procedural fairness mandates that all evidence must be collected in accordance with legal standards to ensure that trials are conducted justly and transparently [55].

International Privacy Protections

The privacy concerns associated with electronic records interception intersect with international human rights standards, to which Cameroon, as a member of the international community, is subject. This includes the International Covenant on Civil and Political Rights (ICCPR), which under Article 17 protects individuals against arbitrary interference with their privacy, family, home, or correspondence, stipulating that any such interference must be lawful, necessary, and proportionate to the legitimate aim pursued. Similarly, the African Charter on Human and Peoples' Rights under Article 9 recognizes the right to privacy and guards against arbitrary interference, requiring that any restrictions on

privacy be lawful and necessary for a democratic society. Additionally, the United Nations Guidelines on the Use of Surveillance Technologies underscore the importance of having clear legal frameworks, oversight mechanisms, and respect for privacy rights in the application of surveillance technologies [56].

In practice, the application of these international standards within the Cameroonian context can be challenging. The broad powers granted to the State Counsel and the potential for procedural irregularities raise concerns about compliance with international privacy protections. The lack of robust safeguards and oversight mechanisms could undermine the protection of privacy rights, leading to potential violations of both national and international standards [57].

CONCLUSION AND POSSIBLE RECOMMENDATIONS

From the above discussions, it is clear that the Cameroonian legislator made a significant stride with the introduction of the Cameroon Criminal Procedure Code of 2005 and the 2010 Law on Cybersecurity and Criminality. These legal frameworks have laid the groundwork for addressing the complexities of electronic records and have taken steps to safeguard individual privacy by instituting the role of the State Counsel, who must approve any interception of telecommunications. However, challenges remain that cannot be overlooked. Issues of ambiguity, overlapping authorities, and privacy concerns persist and have been thoroughly highlighted in this analysis. To address these concerns, targeted recommendations have been proposed to enhance the effectiveness and fairness of these legal provisions.

To address problems associated with the usage of electronic records in trials, several recommendations can be made:

1. Clarify Role Definitions:

Develop clear and detailed procedural guidelines to address the ambiguity surrounding the roles of the State Counsel and judicial police officers. These guidelines should specify the scope of authority for each role, particularly in relation to evidence collection and investigative procedures. This will help prevent confusion and ensure that all parties understand their responsibilities and limits.

⁵² This section of the CCPC as well as the 2010 law on Cyber security and criminality does not define the scope of interception.

⁵³ Awa Mokom R. The Right to Fair Hearing in Cameroon: Prospects and Challenges, 2021. Accessible at <https://hrlrc.org/2021/09/29/the-right-to-fair-hearing-in-cameroon-prospects-and-challenges>.

⁵⁴ These sections only Sanctions Interception without authorization without defining what can be intercepted and what cannot be intercepted giving a wide scope of search.

⁵⁵ Afuba M.D., the Constitutional Protection of Civil and Political Rights in Cameroon, University of Botswana Law Journal, 2006. P.73.

⁵⁶ <https://www.hallelaw.com/cameroon-ratifies-the-migration-agreement-between-the-government-of-the-republic-of-cameroon-and-the-swiss-federal-council-2/>

⁵⁷ Brown, C. S. D. (2015). Investigating and prosecuting cyber crime: Forensic dependencies and barriers to justice. *International Journal of Cyber Criminology*, 9(1), 55-119.

2. Standardize Procedural Requirements:

Standardize the use of suggestive terms like “shall,” “may,” and “should” within the Criminal Procedure Code. Clear definitions and consistent application of these terms will help ensure that procedural requirements are uniformly understood and enforced.

3. Implement Rigorous Oversight Mechanisms:

Establish oversight mechanisms to review and audit evidence collection processes. This could involve creating independent review bodies or internal audit processes to assess whether procedures are followed correctly.

4. Strengthen Legal Frameworks:

Amend the Criminal Procedure Code to address issues of absolute and relative nullity more explicitly. Define the consequences for failing to adhere to mandatory procedural requirements and clarify the impact of procedural deviations on the validity of evidence. This will provide a more robust legal framework for handling procedural irregularities.

5. Enhance Training and Education:

Provide regular training for judicial authorities, including the State Counsel and judicial police officers, on the correct interpretation and application of procedural terms and roles. This will help ensure that all involved parties are aware of their duties and the implications of their actions on the validity of evidence.

6. Promote Judicial Consistency:

Encourage courts to develop and follow consistent practices when interpreting procedural requirements and dealing with issues of evidence validity. This consistency will contribute to fairer trials and help maintain the integrity of the judicial process.

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