

Juvenile justice in Cameroon: An international law perspective

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Abstract

The manifestations of discontent by minors in recent years have become increasingly violent, thus leading to an increase in crimes. Not only is the proportion of violent crimes committed by minors on the rise, but they are also associated to be victims of violent crimes. The phenomenon is more visible in urban areas due to overpopulation; thus leading to the formation of slums “off-limits” areas and “no man’s land. According to the latest UN-Habitat publication regarding Urban Development and Management, the absolute number of slum dwellers continues to grow, due to the fast tempo of urbanization. The problem has been further exacerbated by the lack of record-keeping and a wide array of institutions. This means that the exact number of minors held worldwide in such environments is not known. According to the United Nations Children’s Fund (hereinafter referred to as UNICEF), more than 1 million children are behind bars; some are held in decrepit, abusive and demeaning conditions, deprived of education, access to meaningful activities, and regular contact with the outside world. Many of whom were convicted for crimes committed when they were minors, have received excessive or disproportionate sentences at national detention centres contrary to international law, which requires that imprisonment of minors must be in “conformity with the law and should be used as a measure of last resort and for the shortest appropriate time”. Although the International criminal justice standards establish that every minor in conflict with the law must be treated per the rules of juvenile justice and that minors can be arrested only if they have reached the minimum age of criminal responsibility, which should not be lower than 12 years. However, contrary to the international mechanism put in place, detention procedures around the globe not excluding Cameroon rarely responds to their individual characteristics and specific needs, including the need for appropriate education, contact with family, the wider community, and recreation as posing a real danger to others. However, many countries have adopted measures within their national legal framework to safeguard the interest of juveniles. The purpose of this paper is to examine the national legal framework relating to juvenile justice enacted by Cameroon, albeit the extent to which the international commitments have been fulfilled nationally. The answer to this question has been addressed from three main perspectives; the perspective of international, regional as well as domestic/national law.

Keywords: minors, juvenile, justice system, cameroon and international law

Introduction

The manifestations of discontent by minors in recent years have become increasingly violent, thus leading to an increase in crimes. Not only is the proportion of violent crimes committed by minors on the rise, they are also associated to be victims of violent crimes. The phenomenon is more visible in urban areas due to overpopulation; thus leading to the formation of slums “off-limits” areas and “no man’s land. According to the latest UN-Habitat publication regarding Urban Development and Management, the absolute number of slum dwellers continues to grow, due to the fast tempo of urbanization ^[1]. This has caused many minors around the world including Cameroon to be languishing behind bars, sometimes for protracted periods. They face brutal and inhumane conditions. The problem has been further exacerbated by the lack of record-keeping and a wide array of institutions. This means that the exact number of minors held worldwide in such environments is not known ^[2]. According to the United Nations Children’s Fund

(hereinafter referred to as UNICEF), more than 1 million children are behind bars; some are held in decrepit, abusive and demeaning conditions, deprived of education, access to meaningful activities, and regular contact with the outside world ^[3]. Many of whom were convicted for crimes committed when they were minors, have received excessive or disproportionate sentences at national detention centres contrary to international law, which requires that imprisonment of minors must be in “conformity with the law and should be used as a measure of last resort and for the shortest appropriate period of time” ^[4]. As submitted by Howard, “No civilised society regards children as accountable for their actions to the same extent as adults... The wisdom of protecting minors against the full rigour of the law is beyond argument. The difficulty lies in determining when and under what circumstances should it

¹ UN-HABITAT (2016), World Cities Report 2016: Urbanization and Development - Emerging Futures, UN, New York, <https://doi.org/10.18356/d201a997-en>, accessed on 10.05.2020.

² Bochenek, Michael. “Children Behind Bars: The Global Overuse of Detention of Children.” World Report 2016: Events of 2015, by HUMAN RIGHTS WATCH, 1st ed., Bristol University Press, Bristol, 2016, pp. 41–

52. JSTOR, accessed on 20.10.2019, available at www.jstor.org/stable/j.ctvndv9bj.7.

³ Lawrence, R. (1998). School crime and juvenile justice. Oxford University Press, Order Department, 2001 Evans Road, Cary, NC 27513 (paperback: ISBN-0-19-510165-0, 19.95; clothbound: ISBN-0-19-510164-2).

⁴ Carolyn Hamilton, GUIDANCE FOR LEGISLATIVE REFORM ON JUVENILE JUSTICE, UNICEF, 2004, available at https://www.unicef.org/policyanalysis/files/Juvenile_justice_16052011_fin_al.pdf, accessed on 20.10.2019. See also article 37 of the CRC (infra).

be removed.”^[5]

For purpose of clarity,, the word ‘child’, ‘minor’ and ‘juvenile’ shall be used interchangeably to mean one and the same thing; persons below the age of 18 years as per the Convention of the Rights of the Child which accords special protection to children below 18 years.^[6] There is no clear definition of juvenile justice system. The reasons determining their protection, intervention, age consideration and development,,vary substantially from one country to another. It is therefore impossible to give a universal description of the juvenile justice system in the different countries in the world^[7]. Juvenile justice system as the term implied is that which mirrors the adult criminal justice system in terms of components. The distinguishing features of the components are based on the age of the youth, which varies according to jurisdiction^[8]. Another distinguishing feature is the legislative component, which mandates different processing procedures for youth and defines juvenile delinquency^[9]. Juvenile Justice is within the domain of criminal law which deals with the offences committed by juveniles which provides for their behavioral aspects, liberty, rehabilitation, and penal implications. The juvenile justice system is comprised of separate sentencing guidelines, court structures, juvenile secure and non-secure detention facilities, juvenile probation officers and statutes that define delinquency and status offenses, which are age-related offenses^[10].

Although the International criminal justice standards clearly establish that every child in conflict with the law must be treated in accordance with the rules of juvenile justice and that children can be arrested only if they have reached the minimum age of criminal responsibility, which should not be lower than 12 years. This is due to the fact that, minors constitute one of the most vulnerable groups in every country of the world. However, contrary to the international mechanism put in place, detention procedures rarely responds to their individual characteristics and specific needs, including the need for appropriate education, contact with family, wider community, and recreation as posing a real danger to others. However, many countries have adopted measures within their national legal framework to safeguard the interest of juveniles.

The purpose of this paper is to examine the national legal framework relating to juvenile justice enacted by Cameroon, albeit the extent to which the international commitments has been fulfilled nationally. Meaning therefore that, the international legal instruments applicable to juveniles in which Cameroon has ratified shall be examined. The issue shall be addressed from three main perspective; the perspective of international law, regional as well as domestic/national law.

The Concept/Notion of Juvenile Justice in international law

For the purposes of this paper, the expression “juvenile justice” will refer to criminal proceedings, while the term “administration of justice” will encompass all proceedings, such as criminal, separation and adoption proceedings.

Juvenile

In simple parlance, in every society in the world, the age of majority is when a young person is old enough to be called an adult. Therefore, the direct opposite of a majority age is the juvenile age. A juvenile, therefore, is any person who has not attained the age of majority. The criteria for determining a juvenile may vary from jurisdiction to jurisdiction. This explanation falls in line with article 1 of the CRC, which defines a child as “every human being below the age of eighteen years, unless under the law applicable to the child, majority is attained earlier”^[11]. However, according to the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, also known as the Beijing Rules, a juvenile is a child or young person who, under the respective legal systems, may be dealt with for an offence in a manner which is different from an adult^[12]. The aim of the Juvenile justice system has been well articulated under article 5 of the set convention, which is to the effect that the juvenile justice system shall emphasize the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence. Also, the *Children and Young Persons Ordinance*, Cap 32 of the Laws of Nigeria 1958, which is applicable in West Cameroon, defines a child as “a person under 14 years of age, while a young person [is] someone who falls between 14 and 17 years of age”^[13]. The Black Law Dictionary further defines it as someone who has not reached the age of 18, at which point one should be treated as an adult by the criminal justice system^[14].

Under Cameroonian Criminal law, section 80 of the Penal Code grouped juvenile offenders into three main categories; juveniles who are under 10 years (*doli in capax*) and incapable of any criminal responsibility; juveniles between 10-14 years who can only attract sanctions of a special nature; and juveniles between 14-18, who have diminished criminal responsibility.¹⁵ Section 80(1) of the set code further postulates that “no criminal responsibility shall arise from the act or omission of a person aged less than 10 years”. The rationale for this rule is that the proof of the *actus reus* with *mens rea* regarding the criminal acts of such a person is immaterial because there is no criminal

⁵ See Colin Howard; “Criminal Law”, Law Book Co, 4th ed edition (1982), see also Bernard, T. J., Kurlychek, M. C., & Kurlychek, M. C. (2010). The cycle of juvenile justice. Oxford University Press.

⁶ See Article 1 of the CRC; *infra*.

⁷ See Cappelaere, Geert, Anne Grandjean, and Yasmin Naqvi. "Children Deprived of Liberty: Rights and realities." (publisher 2005): 280-281.

⁸ George T. Patterson, in *Clinical Interventions in Criminal Justice Settings*, 2018, available at <https://www.sciencedirect.com/topics/psychology/juvenile-justice-system> accessed on 10.08.2019

⁹ *Ibid*

¹⁰ *Ibid*.

¹¹ *Ibid*

¹² See article 2(a) of the UN General Assembly, United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"): resolution / adopted by the General Assembly, 29 November 1985, A/RES/40/33, available at: <https://www.refworld.org/docid/3b00f2203c.html> [accessed 10 October 2019]

¹³ See the Children and Young Persons Act Cap 32, Laws of the Federation of Nigeria and Lagos, 1958 <http://www.cleen.org/Juvenile%20Justice%20Repert> (accessed 20 September 2019).

¹⁴ Garner Black's Law Dictionary, 19 ed, 871.

¹⁵ “The Cameroon Penal Code: Practical Comparative Law”, *The International and Comparative Law Quarterly*, Vol. 17, No. 3, July <http://www.jstor.org.ezproxy.lib.rmit.edu.au/stable/pdfplus/757015.pdf> - Accessed 8 October 2019.

responsibility^[16].

Delinquency

Delinquency, on the other hand, is a complex term with conflicting definitions. As *Holt in "Juvenile Delinquency: Its Nature and Control"* stated, "we use the term delinquent as we sometimes use the term "love" as though it were a simple concept whereas it actually embraces complex patterns of behavior"^[17]. *Frederick B. Sussmann* made a list of acts or actions included in the delinquency definition, being "violation of any law or ordinance, habitual truancy, association with thieves, vicious or immoral persons, and incorrigible beyond control of parent or guardian and so on"^[18]. Sociologists and legal scholars seem to have a better interpretation and meaning of the terms. For instance, *Clyde B* as a sociologist is of the opinion that juvenile delinquency constitutes an anti-social act of minors. Such acts are either specifically forbidden by law or may be lawfully interpreted as constituting delinquency, or as requiring some form of official action^[19]. According to *Robison* in *Bombay Children's Act*, delinquency is "an umbrella for a wide variety of socially disapproved behaviour that varies with the time, place and the attitudes of those assigned to administer the law"^[20].

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Diversion

According to General Comment No. 10 relating to children's Rights in Juvenile Justice, diversion refers to measures for dealing with children alleged as, accused of, or recognized as having infringed the penal law without resorting to judicial proceedings, whenever appropriate and desirable.

The Legal Framework on Juvenile Justice

As earlier mentioned, for the purpose of this paper, the legal framework relating to juvenile justice has been categorised into three main instruments; international, regional as well as the national instruments. It is important to note that some of these instruments are legally binding while others are soft laws in nature. Although soft laws do not as such create legally binding obligations, some of the rules contained therein are binding on States since they are also contained in the Convention on the Rights of the Child such as Torture, inhuman or degrading treatment, slavery, non discrimination, meanwhile others can be considered to provide more details on the contents of existing rights. Again, soft law can also serve as good guidance to states as to the direction in which they should develop their juvenile justice systems. This explains why they are consistently being invoked by the Committee on the Rights of the Child when it considers the reports of the States parties.²⁵

The International Legal Framework

The United Nations Convention on the Rights of the Child

The 1989 United Nations Convention on the Rights of the Child (hereinafter referred to as the CRC), is legally binding on all members of the United Nations^[26]. It is one of the most important international legal instruments dealing with the rights of children in general and that of juveniles in particular. The CRC recognizes that in addition to the human rights, which belong to everyone, children have additional rights with special consideration based on their physical and mental immaturity^[27]. It spells out the basic human rights that children have such as the right to survival, to develop to the fullest, to protection from harmful influences, abuse and exploitation, and to participate fully in family, cultural and social life. In fact, the four core principles of the Convention are non-discrimination; devotion to the best interests of the child, the right to life, survival and development, and respect for the views of the

¹⁶ See Law no 2016/007 of 12th July 2016 Relating to the Penal Code.

¹⁷ Frankel, H. H. (1961). *Book Reviews: Juvenile Delinquency: Its Nature and Control*, Sophia M. Robison. Pp. 546. New York, Holt, 1960, \$6.75. *Crime & Delinquency*, 7(2), 185-188, <https://doi.org/10.1177/001112876100700210>, accessed on 09th of October 2019

¹⁸ Frederick B. Sussman, *LAW OF JUVENILE DELINQUENCY* (The Laws of the Forty-Eight States), Legal Almanac Series No. 22, Oceana Publications, New York; 1950, 96, accessed on <https://doi.org/10.1177/003288555103100109> on 09th October 2019.

¹⁹ Roy, C. (1977). *Book Review: The Delinquent Girl*. Clyde B. Vedder and Dora B. Somerville, USA, Charles C. Thomas, 154 pp, 1973 and 1975. *International Journal of Offender Therapy and Comparative Criminology*, 21(3), 286-

286. <https://doi.org/10.1177/0306624X7702100316>

²⁰ *Bombay Children's Act*, 1948. See also Md Shamsdad; *Defining, Meaning, Causes and Theories and Prevention of Juvenile Delinquency*.

²¹ Frankel, H. H. (1961). *Book Reviews: Juvenile Delinquency: Its Nature and Control*, Sophia M. Robison. Pp. 546. New York, Holt, 1960, \$6.75. *Crime & Delinquency*, 7(2), 185-188. <https://doi.org/10.1177/001112876100700210>, accessed on 09th of October 2019

²² Frederick B. Sussman, *LAW OF JUVENILE DELINQUENCY* (The Laws of the Forty-Eight States), Legal Almanac Series No. 22, Oceana Publications, New York; 1950, 96, accessed on <https://doi.org/10.1177/003288555103100109> on 09th October 2019.

²³ Roy, C. (1977). *Book Review: The Delinquent Girl*. Clyde B. Vedder and Dora B. Somerville, USA, Charles C. Thomas, 154 pp, 1973 and 1975. *International Journal of Offender Therapy and Comparative Criminology*, 21(3), 286-

286. <https://doi.org/10.1177/0306624X7702100316>

²⁴ *Bombay Children's Act*, 1948. See also Md Shamsdad; *Defining, Meaning, Causes and Theories and Prevention of Juvenile Delinquency*.

²⁵ See articles 37, 39 and 40 of the CRC.

²⁶ UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at: <https://www.refworld.org/docid/3ae6b38f0.html>, accessed 34 May 2020.

²⁷ See the CRC Preamble.

child ^[28]. The Convention moves on to state that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be of primary consideration ^[29]. The right of the child to be heard has been well articulated under article 12 of the CRC. This article states *inter alia* that:

States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law ^[30].

This article is of great importance because it guarantees the protection and participation of children in all matters, most especially those that are capable of forming their own views. It also imposes a duty on state parties to involve children in all matters that affect them, including judicial and administrative juvenile justice proceedings ^[31]. This implies that in any decision-making process, due consideration must be taken with regard to the age and maturity of the child. However, when hearing the views of the child, authorities must weigh these views by taking into account the age and maturity of the child by determining what is in the best interest of the child by balancing other interests that are at stake ^[32]. Of greater importance to this paper is Articles 37 and 40 of the CRC relating to deprivation of liberty and juvenile justice. Article 37 stipulates that:

No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be

separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action ^[33].

The implication of this article is that imprisonment and deprivation shall be used only as a measure of last resort and for the shortest appropriate period of time. Article 37 (c) deals with issues of confinement and inhuman treatment by stating that every child confined shall be treated with humanity and respect for their inherent human dignity in a manner which takes into account the needs of the child's age. In a situation where the juvenile is in need of legal assistance, article 37(d) makes clear that in such a situation the child should have prompt access to legal assistance and the right to challenge their imprisonment before a court. Worthy of note here is that, as per European Rules for juvenile offenders subject to sanctions or measures, deprivation of liberty under article 37 is applicable within and outside the juvenile justice system. This is because European Rules for juvenile offenders define deprivation of liberty as 'any form of placement in an institution by decision of a judicial or administrative authority, from which the juvenile is not permitted to leave at will', ^[34] meaning therefore that children who are placed in semi-open institutions may also fall under the protection of article 37 CRC and related standards ^[35].

Article 40 of the convention deals with issues of administration of juvenile justice by stating *inter alia* that:

States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society ^[36].

The core provision relating to the international human rights law for children in conflict with the law is article 40 of the CRC. Article 40(2) (a-b) relates to issues of due process by reiterating that no child shall be alleged as, be accused of, or

²⁸ Ibid

²⁹ Article 3 of the CRC.

³⁰ CRC; article 12 (1&2).

³¹ Ibid article 2.

³² Can anyone hear me? Participation of children in juvenile justice: A manual on how to make European juvenile justice systems child-friendly Liefwaard, T.; Rap, S.E.; Bolscher, K.G.A.

International Juvenile Justice Observatory; Brussels 2016.

³³ See article 37 (a-d) of the CRC.

³⁴ See Council of Europe: Committee of Ministers, Recommendation CM/Rec(2008)11 of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions or measures, 5 November 2008, CM/Rec(2008)11, available at: <https://www.refworld.org/docid/4a7058c02.html> [accessed 25 November 2019].

³⁵ See Liefwaard, T 2008, Deprivation of the Rights of Children in the light of International Human rights law and Standards, Antwerp: Intersentia, see also Winterdyk, J. (Ed.). (2002). Juvenile justice systems: International perspectives. Canadian Scholars' Press.

³⁶ Article 40(1) of the CRC

recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed. If the child was to be in conflict with the law, the following must be guaranteed:

1. To be presumed innocent until proven guilty according to law;
2. To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;
3. To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;
4. Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;
5. If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;
6. To have the free assistance of an interpreter if the child cannot understand or speak the language used;
7. To have his or her privacy fully respected at all stages of the proceedings^[37].

International Soft laws

The United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines)

It was a result of the preliminary activities of the United Nations that the eighth congress advised the General Assembly to adopt the two resolutions, the United Nations Guidelines for the prevention of juvenile delinquency^[38] and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty^[39]. Both resolutions were intended to complement the minimum standard rules that were previously adopted in 1985 for the administration of juvenile justice^[40]. The Guidelines establish the rules for the prevention of juveniles delinquency as well as the protection measures for young people who have been abandoned, neglected, abused or those who are marginalized – in other words, at “social risk”. The Guidelines include the pre-conflict phase before young people are in conflict with the law^[41]. They concentrate on the child and are based on the premises that it is necessary to counteract those conditions that negatively affect the healthy development of the child. Therefore, exhaustive and multidisciplinary measures were proposed to ensure young people would have

a life without crimes, victimization and conflicts with the law. The Guidelines are focused on a preventive and protective intervention, and they aim to promote a general effort of various social organizations, including the family, the educational system, the media and the community, as well as the young people themselves^[42].

It stresses the “need for and importance of progressive delinquency prevention policies” that should avoid criminalizing and penalizing a child for behavior that does not cause serious damage to the development of the child or harm to others; provide educational opportunities that meet the varying needs of young people, especially those at risk or in special need; recognize that part of maturing often includes behavior that does not conform to societal norms and that tends to disappear in most individuals with the transition to adulthood; and avoid labeling a youth as a deviant or delinquent as this contributes to negative patterns of behavior^[43].

At the socialisation level, the guidelines move on to state that young persons and their families should be informed about the law and their rights and responsibilities under the law. In the same light, law enforcement and other relevant personnel, of both sexes, should be trained to respond to the special needs of young persons and should be familiar with and use, to the maximum extent possible, programmes and referral possibilities for the diversion of young persons from the justice system^[44].

United Nations Rules for the Protection of Juveniles Deprived of their Liberty, 1990 (The Havana Rules)

The United Nations rules for the Protection of Juveniles Deprived of their Liberty, or the Havana Rules, were adopted by the General Assembly in 1990^[45]. The protection afforded to juveniles deprived of their liberty ranges from arrest or awaiting trial to the management of juvenile facilities. The rules elaborate on norms contained in the Convention on the Rights of the Child and, in particular, those regarding the deprivation of liberty of any person under the age of 18. The rules establish the minimum standards accepted by the United Nations “for the protection of juveniles deprived of their liberty in all forms in consistent with human rights and fundamental freedoms and with a view to counteracting the detrimental effects of all types of detention and to fostering integration in society”^[46]. Among the minimum standards addressed in the UN Rules are the rights and guarantees of juveniles in detention, the management of detention facilities, the conditions of the environment and accommodations at detention facilities and the grounds upon which juveniles can be detained. In this regard, deprivation of the liberty of a juvenile should be a disposition of last resort and for the minimum necessary period and should be limited to exceptional cases^[47]. The length of the sanction should be determined by the judicial authority, without precluding the possibility of his or her early release^[48]. Even in a situation of arrest and detention, the juvenile should have the opportunity to make requests or

³⁷ Article 40(1)(b)(i-vii)

³⁸ See note 25, United Nations Resolution A/RES/45/112 of March 1991

³⁹ See United Nations resolution 45/113 of 14 December 1990

⁴⁰ See Cappelaere, Geert, and Eugeen Verhellen. “United Nations Guidelines for the Prevention of Juvenile Delinquency: Prevention of juvenile delinquency or promotion of a society which respects children too?” *The International Journal of Children's Rights* 4.1 (1996): 57-67.

⁴¹ Ibid.

⁴² Ibid.

⁴³ The Riyadh Guidelines, 1-4.

⁴⁴ Ibid 23 and 58.

⁴⁵ Ibid note 30

⁴⁶ See Rules 3 of the UN Rules for the Protection of Juveniles Deprived of their Liberty 1990

⁴⁷ Rule no 2

⁴⁸ Ibid

complaints to the director of the detention facility. He or she should do so without censorship to the central administration, the judicial authority or other proper authorities through approved channels and be informed of the response without delay^[49]. The rules also make it possible for juveniles to request assistance from family members, legal counsellors, humanitarian groups or others where possible, in order to make a complaint. In the same light, illiterate juveniles should be provided with assistance in case they are in need of the services of public or private agencies and organizations that provide legal counsel or which are sufficiently competent to receive complaints^[50].

The United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985

It should be noted that before the Convention on the Rights of the Child was adopted in 1989, the 1985 UN Standard Minimum Rules on the Administration of Juvenile Justice (the Beijing Rules) were adopted by the UN. On 29 November 1985, the United Nations General Assembly passed A/RES/40/33, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules")^[51]. The Beijing Rules affirm member States' commitments to "endeavour to develop conditions that will ensure for the juvenile a meaningful life in the community, which, during that period in life when he or she is most susceptible to deviant behaviour, will foster a process of personal development and education that is as free from crime and delinquency as possible."^[52] The Beijing Rules contain detailed minimum rules regulating the administration of juvenile justice at the domestic level. Although the Beijing Rules are not legally binding, the monitoring body of the CRC, the UN Committee on the Rights of the Child, has recommended applying the rules to all children in the justice system^[53]. Again, some of these rules have become binding because they are codified in the CRC^[54]. Regarding the issue of participation of children in juvenile justice procedures, Rule 14.2(2) is of great importance because it stipulates that "the proceedings shall be conducive to the best interests of the juvenile and shall be conducted in an atmosphere of understanding, which shall allow the juvenile to participate therein and to express herself or himself freely"^[55]. Rule 14(2), dealing with the right to participate in juvenile justice proceedings, seems to be in line with article 12 of the CRC relating to the rights of the juvenile to be heard.

Regional Legal Framework

The African Charter on the Rights and Welfare of the Child

The African Charter on the Rights and Welfare of the Child (ACRWC) was adopted by the Organisation of African Unity (OAU) in 1990, now African Union and entered into force in 1999^[56]. However, just like CRC, the Children's

Charter is a comprehensive instrument that sets out rights and defines universal principles and norms for the status of children, more specifically from an African perspective. As of now, the ACRWC and the CRC remain the only international and regional human rights treaties that cover the whole spectrum of civil, political, economic, social and cultural rights of children. At the time of writing this paper, apart from nine African countries that have not yet ratified the ACRWC, all African countries are signatory to the charter^[57].

The Charter further stresses the need to include African cultural values and experience in considering issues pertaining to the rights of the child in Africa. It also calls for the creation of an African Committee of Experts on the Rights and Welfare of the Child. According to *Burr*, one of the main setbacks of the charter is that it praises the family as the main caregiver, while at the same time undermining the role of community networks in fostering the rights of the child^[58]. Notwithstanding *Burr's* point of contention, it is evident to a larger extent that the charter complements the CRC^[59].

The element of the charter, which is of relevant to this paper is the best interest principle that has been addressed under article 4 of the charter. Just like the CRC, the charter covers the best aspect of the child principle in relation to judicial or administrative proceedings affecting a child by stipulating that in all judicial or administrative proceedings affecting a child who is capable of communicating his/her own views, an opportunity shall be provided for the views of the child to be heard either directly or through an impartial representative and those views shall be taken into consideration by the relevant authority in accordance with the provisions of appropriate law. In all of these, the best interests of the child shall be the primary consideration^[60]. Of even greater significance to this paper is article 17 of the ACRWC relating to the administration of juvenile justice. This article states *inter alia* that:

Every child accused or found guilty of having infringed penal law shall have the right to special treatment in a manner consistent with the child's sense of dignity and worth and which reinforces the child's respect for human rights and fundamental freedoms of others^[61].

Sub 2 of article 17 places obligations on States Parties to the charter by stating that States Parties to the present charter shall, in particular:

- (a) ensure that no child who is detained or imprisoned or otherwise deprived of his/her liberty is subjected to torture, inhuman or degrading treatment or punishment;
- (b) ensure that children are separated from adults in their place of detention or imprisonment;
- (c) ensure that every child accused in infringing the penal

⁴⁹ See Rule 75 and 76.

⁵⁰ See Rule 78.

⁵¹ *Ibid* note 29.

⁵² *Ibid*.

⁵³ General Comment No 10 para 4.

⁵⁴ See article 40 of the CRC.

⁵⁵ See Rules 12(2) of the Beijing Rules.

⁵⁶ Organization of African Unity (OAU), African Charter on the Rights and Welfare of the Child, 11 July 1990, CAB/LEG/24.9/49 (1990), available at: <https://www.refworld.org/docid/3ae6b38c18.html>, accessed 4 December 2019.

⁵⁷ These countries include: Central African Republic, Djibouti, Democratic Republic of Congo (DRC), Sao Tome and Principe, Somalia, South Sudan, Sudan, Swaziland and Tunisia.

⁵⁸ BURR, RACHEL. "Global and Local Approaches to Children's Rights in Vietnam." *Childhood* 9, no. 1 (February 2002): 49–61. Doi:10.1177/0907568202009001004.

⁵⁹ Murray, R. (2004), 169. *Human Rights in Africa: From the OAU to the African Union*. Cambridge: Cambridge University Press. doi:10.1017/CBO9780511494031

⁶⁰ See article 4(1&2) of the ACRWC.

⁶¹ *Ibid* note 79. article 17(1)

law:

- shall be presumed innocent until duly recognized guilty;
- shall be informed promptly in a language that he understands and in detail of the charge against him, and shall be entitled to the assistance of an interpreter if he or she cannot understand the language used;
- shall be afforded legal and other appropriate assistance in the preparation and presentation of his defence;
- shall have the matter determined as speedily as possible by an impartial tribunal and if found guilty, be entitled to an appeal by a higher tribunal ^[62].

What makes the ACRWC more unique is the fact that it protects even the unborn minors. This is seen in its strong wordings of article 30, which is to the effect that parties to the charter 'shall undertake to provide special treatment to expectant mothers ... and young children who have been accused or found guilty of infringing the penal law and shall in particular', something which the CRC didn't mention ^[63]. However, the important rule in the CRC, which of course is the "mother convention" relating to children that 'no child shall be deprived of his or her liberty unlawfully or arbitrarily', does not appear. Additionally, the provision that imprisonment should be used only as a measure of last resort and for the shortest possible period of time is completely absent in the ACRWC ^[64]. The international instruments analysed above give a clear picture of what an ideal standard of child justice system should include. The approach to be adopted should therefore aim to promote the well-being of the child at the individualistic level ^[65].

Case Study-Cameroon

Historical Origin of Cameroon's Juvenile Justice Framework

The criminal justice system in Cameroon, just like any other modern African state has been shaped primarily through different countries' inheritance of laws which existed in Europe through the nineteenth century ^[66]. Unlike most countries in Africa, Cameroon, for instance, has a unique legal system on juvenile justice. The country follows a civil law system (legal system based on strict codified law), inherited from the French colonial administration in the Francophone sector of the country (East Cameroon). In the two Anglophone regions (West Cameroon), the judicial system adheres to common law tradition (law that respects and follows tradition and binding legal precedent) inherited from Britain ^[67]. It should be noted that French Cameroon was the second French colony in sub-Saharan Africa to achieve independence in 1960 (East Cameroon) after Guinea while Anglophone Cameroon (West Cameroon) achieved independence from Britain in 1961. This makes the Cameroon legal system as previously mentioned to be unique not only in Africa. The uniqueness is due to its bi-jural nature as well as its two distinct colonial history; starting with annexation in 1884 till independence in 1960

by France and 1961 by Britain respectively. It is not within the scope of this paper to go into a deeper historical analysis, though for purposes of clarity, reference may be made to history.

Historically, East Cameroon is the portion of Cameroon that was administered by France, while West Cameroon is the portion that was administered by the British as part of Nigeria. Several months after Nigeria became independent from Britain and due to reunification forces in the British West Cameroons, a U.N. plebiscite was held to determine whether British West Cameroon would join Nigeria or *La République du Cameroun* (already independent). The southern section of British West Cameroon joined *La République du Cameroun*, while the northern section chose to remain as a part of Nigeria ^[68]. Therefore, the judicial system governing juvenile justice in Cameroon is a mixture of both the common law and the civil law. This explains why before the harmonization of the Cameroon Criminal Procedure Code, ^[69] the applicable law to juvenile justice in West Cameroon was the received Nigerian Criminal Procedure Code together with the *Children and Young Persons Ordinance* (Cap 32 of the Laws of Nigeria 1958). In East Cameroon, we have the *Code d'Instruction Criminelle* and the French *Code of Criminal Procedure* of 1808, Decree of 30 November 1928 on Special Courts for Minors Decree of 30 October 1935 on the protection of Minors, 6 Law N°58/203 of 26 December 1958, as well as Law N°58/203 of 26 December 1958 on the adoption and simplification of criminal procedure and subsequent modifications ^[70].

The problem here rests on the fact that most legal systems divide crimes into categories for various purposes connected with the procedures of the courts, such as assigning different kinds of courts to different kinds of offences. Common law originally divided crimes into two categories: felonies and the graver crimes, generally punishable by death. Whereas in systems practicing civil law, the criminal code generally distinguished between three categories: crime, délit, and contravention. This problem has been further motivated by the fact that, as *Charles Manga* rightly puts it, given the acknowledged disparity in the approach, form and substance in many issues between the common and civil law systems..., the predominant they have had in Cameroon and they will continue to have on the development of Cameroonian national law. The fear is that civil law will remain domain and to dictate to the minority common law regions of Cameroon thus making the unity of the two legal systems to rather conflict ^[71]. Again, two legal systems, like in the case of Cameroon, mean two different courts and procedures. However, with the increase in concerns relating to child protection and their rights both at national and international levels, the UN Convention on the

⁶² Ibid, article 17(2)(a-c)(i-iv).

⁶³ See article 30(1).

⁶⁴ Ibid see note 43.

⁶⁵ Ibid.

⁶⁶ Russ VerSteege, *Law in Ancient Egypt*, Carolina Academic Press, 2002.

⁶⁷ Global Conscience Initiative, *Increasing access to Justice in Rural Cameroon*, 2005, accessed 10, July 2019 at <https://gci-cameroon.org/about-cameroon/legal-system/>.

⁶⁸ Charles M. Fombad, *Researching Cameroonian Law*, GLOBALEX (2007), available at <http://www.nyulawglobal.org/globalex/cameroon1.htm> (accessed 21.09, 2019)

⁶⁹ See law N°2005 of 27 July 2005 on the Criminal Procedure Code, available https://www.unodc.org/res/cld/document/criminal-procedure-code_html/Cameroon_Criminal_Procedure_Code_2005.pdf, accessed on 10 November 2019.

⁷⁰ Tabe, S. Tabe. "A critical appraisal of the juvenile justice system under Cameroon's 2005 Criminal Procedure Code: emerging challenges." *Potchefstroom Electronic Law Journal* 15.1 (2012): 148-176.

⁷¹ Ibid note 8. "The Scope for Uniform National Laws in Cameroon." *The Journal of Modern African Studies*, vol. 29, no. 3, 1991, pp. 443-456. JSTOR, www.jstor.org/stable/160881, accessed on 10.08.2019

Rights of the Child indicates that States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and, which takes into account the child's age and the desirability of promoting the child's reintegration and the child assuming a constructive role in society ^[72].

National legal Framework

The Convention on the Rights of the Child is the most important legal instrument forming the basis for the rights of the child. In fact, it is the highest ranking legal norm that takes precedence in the hierarchy of rules of law regarding the rights and protection of children in any domestic legislation. This is evident in the Cameroon constitution which provides that “duly approved or ratified treaties and international agreements shall, following publication, take precedence over national laws” ^[73]. Cameroon being a signatory to most of the international agreements has adopted a set of legislative and institutional measures designed to protect and promote the rights children in conflict with the law. Therefore, a picture of these domestic legislative measures adopted by Cameroon shall be analysed. The analysis shall be based on the age of criminal responsibility of the minors, the right to defence, sanctions and competence of the judiciary, separation of adults and juveniles, detention, custody as well as the medical examination of the juveniles before and after detention.

The Constitution

On the basis of the provisions of article 3 of the Convention relating to the Rights of the Child, the preamble of the Constitution states, in general terms, that “[t]he nation shall protect and promote the family as the natural foundation of society. It shall protect women, young people, the elderly and the disabled ^[74]. It further incorporates all international instruments relating to juvenile justice by stating that the State guarantees to all of its citizens the rights and freedom enumerated in the Preamble. It also provides that “the law may not have a retrospective effect by stating that “No person may be judged and punished, except by virtue of the law enacted and published before the offence is committed” ^[75]. Given the importance attached to the rights of the children in general, one would have expected the constitution being the highest and authoritative law of the land, to clearly specify the protection of juveniles in specific terms rather than in general terms as seen in the preamble. Secondly the Constitution provides that the “law shall ensure the right of every person before a fair hearing and before the courts”, and lastly every accused person is presumed innocent until found guilty during a hearing conducted in strict compliance with the rights of the

defendant ^[76].

This means that all international instruments dealing with juvenile justice ratified by Cameroon shall have their place in the legal landscape of Cameroon and at the same time, making it possible for all duly ratified instruments to be read together with the constitution. Again the phrase “every person before a hearing and before the court” is too general. Therefore the absence of the word “juvenile” within the protective circle of the constitution has not only failed to achieve the objective and purpose of article 37 and 40 of the CRC within the constitution which stipulate that “States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity....” ^[77], but it has rather further handicapped its implementation.

The Penal Code

With regard to procedure, special measures have been adopted to protect minors, both at the level of preliminary investigation and during trial and sentencing. The starting point is article 27, paragraph 2, which provides that “[i]f a woman who has been sentenced to a term of imprisonment is pregnant or has just given birth, she shall start serving her sentence only six weeks after the child is born.” Paragraph 4 of the same article also makes it clear that a husband and wife sentenced to less than one year’s imprisonment and not imprisoned as of the day of the trial may, at their request, not serve their sentences at the same time, if, having proved that they have the same domicile, they have responsibility for and custody of a minor below the age of 18 years.

A minor between the age of 10 and 14 is criminally responsible; however, only one of the special measures provided for by the law can be imposed on him. Only the Public Prosecutor can decide to institute public proceedings. If the charges against him are sufficient, the minor is referred directly to the council chamber of the civil court in semi-private session. The decision is handed down in public session. If the minor is found guilty, the court has the choice of three measures: (a) to return him to his family; (b) to put him on probation; or (c) to place him, for a period not extending beyond the attainment of his civil majority in the home of a trustworthy person or in an appropriate boarding school or charitable institution ^[78]. In addition to this, for minors between the ages of 14 and 18 years, the Penal Code provides for parallel measures. With regards to the possibility of imposing on them the lenient measures provided for those between ages 10 and 14, the Code also provides for their possible sentencing. The measures and the sentence can run consecutively ^[79].

In addition to this classification of minors, the purpose of which is to exclude certain categories of children from prosecution or from sentencing, article 80 of the Penal Code provides for an automatic ground for mitigation in favour of any minor liable to a sentence. The effect is substantially to reduce the penalty provided for by law and to avoid, as far as possible, imprisoning young children. The consequences for minors of the ground for mitigation are set forth in

⁷² See Article 40 of the CRC, UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at: <https://www.refworld.org/docid/3ae6b38f0.html> [accessed 10 October 2019]

⁷³ See article 45 of the 1996 Constitution

⁷⁴ See Law No.2008/001 of 14 April 2008 to amend and supplement some provisions of Law No.96/06 of 18 January 1996 to amend the Constitution of 2 June 1972.

⁷⁵ Ibid.

⁷⁶ Ibid.

⁷⁷ See Article 27 of the CRC, supra.

⁷⁸ See Cameroon: Code Pénal [Cameroon], n° 67/LF/1, 12 June 1967, available at: <https://www.refworld.org/docid/54c221674.html> [accessed 23 December 2019] note 97.

⁷⁹ Ibid.

article 87 of the Penal Code, which stipulates that, when the law provides for mitigation, the penalties are reduced as follows:

- a. If the death penalty or life imprisonment has been incurred, the penalty is reduced to loss of liberty of from 2 to 10 years;
- b. If a period of imprisonment has been incurred in the case of a felony, the penalty is reduced to loss of liberty of from one to five years;
- c. In the case of a misdemeanour, the maximum loss of liberty or maximum fine is reduced by half and the minimum is brought down to five days or a fine of one franc. Moreover, the child may be sentenced to one of the two penalties alone^[80].

Moreover, it is noteworthy that Cameroon therefore excludes any death sentence or even life imprisonment for a child under 18 years. As indicated above, the maximum sentence that can be imposed on such a child is 10 years; if the defendant has the benefit of extenuating circumstances, the penalty may be reduced to five days and a suspended sentence is also possible. But the judiciary is not obliged to sentence a juvenile delinquent.

From the wordings of section 80, an offence committed by a person aged not less than ten years and not more than fourteen years may attract only special measures as provided by law. Criminal responsibility is diminished for an offence committed by a person aged over fourteen and under eighteen.

Also, Section 48 deals with offences committed by juveniles under customary law. The code provides that parents, guardians or a person responsible under customary law for a person under eighteen who has committed an act defined as an offence to enter into recognizance to forfeit his right of guardianship over the said person if he or she shall commit a similar act within a space of one year, unless it is proven that he or she took reasonable steps to avoid the minor's committing the offence^[81]. Section 82 further provides for responsibility to be diminished for an offence committed by a person under eighteen years under compulsion of his or her parents or the person having charge of him or her, or responsible for him or her under customary law. In case of a sentence, the PC provides that "[a]n offender under the age of eighteen shall serve his sentence in a special establishment, or failing such establishment, shall be separated from offenders over that age."^[82]

However, despite the protection afforded to juvenile under the PC, the applicability of the ages of 10, 14 and 18 as the age of criminal responsibility remains problematic. This is because, there no uniform definition of a minor/child under the Cameroon domestic law and as seen from the above analysis, the current domestic legislation establishes 10 as the minimum age of criminal responsibility, although a presumption against responsibility exists until the age of 14 through the principle of *doli incapax*. Although there is no international standard regarding the minimum age of criminal responsibility, one would expected the position of article 40(3) (i) of the CRC to be given due attention. This article requires the implementation of a 'minimum age below which children shall be presumed not to have the

capacity to infringe the penal law.' Eventhough the Convention itself does not identify a specific appropriate age, however 12 years has been strongly recommended as the absolute minimum age for states to implement. The Committee has argued that a higher minimum age of criminal responsibility of 14 or 16 years 'contributes to a juvenile justice system which, in accordance with article 40 (3) (b) of the CRC, deals with children in conflict with the law without resorting to judicial proceedings, providing that the child's human rights and legal safeguards are fully respected'^[83].

The problem has been further compounded by the fact Cameroon has a dual legal systems (Common law; applicable in West Cameroon and Civil law applicable in East Cameroon) and each of these systems has its own definition. For instance, under the French Civil Code applicable in Francophone Cameroon, a minor is any person under the age of 21 while under the Common law; applicable in Anglophone Cameroon, a minors is any person below the age of 18. One would have expected that in the absence of a uniform definition, Cameroon should adhere to the Committee on the Rights of the Child which is of the opinion that a Minimum Age of Criminal Responsibility (MACR) below the age of 12 years is considered by the Committee not to be internationally acceptable. States parties are encouraged to increase their lower MACR to the age of 12 years as the absolute minimum age and to continue to increase it to a higher age level^[84].

The Criminal Procedure Code

Another striking national law relating to juveniles in Cameroon is the CPC^[85]. This instrument was enacted on 27 July 2005 and entered into force on 1 January 2007. This was unanimously acclaimed as a significant and decisive advancement in the protection of human rights and the consolidation of the rule of the law in Cameroon. Of more significance to this paper is the fact that the code provides rules specific to the prosecution and trial of minors, beginning from the institution of prosecution proceedings to criminal record and costs arising from measures for the protection and treatment of juveniles^[86].

It should be mentioned here that although the CRC calls for special detention facilities for minors offenders under detention, the CPC makes no distinction between a minor and adult offenders. In the case of arrest and with the exception of *flagrante delicto*, an arrest warrant is presented as per the CPC^[87]. The set law also provides for the respect of the physical and psychological integrity of the person arrested^[88]. If a minor is kept in police custody, section 118-126 is to the effect that, if detained, the period should not exceed forty-eight hours and the detained person cannot be remanded into police custody on Saturdays, Sundays or public holidays. The detainee has a right to medical health

⁸³ See Cunneen, Chris, Barry Goldson, and Sophie Russell. "Juvenile justice, young people and human rights in Australia." *Current Issues in Criminal Justice* 28.2 (2016): 173-189.

⁸⁴ See UN Committee on the Rights of the Child (CRC), General comment No. 10 (2007): Children's Rights in Juvenile Justice, 25 April 2007, CRC/C/GC/10, para 32, available at: <https://www.refworld.org/docid/4670fca12.html> [accessed 16 May 2020]

⁸⁵ Enacted under Law N°2005 of 27 July 2005 on the Criminal Procedure Code.

⁸⁶ Ibid note 95.

⁸⁷ See Section 30-38 of the CPC.

⁸⁸ Ibid.

⁸⁰ See article 87 (a-c) of the Penal Code.

⁸¹ Ibid.

⁸² Ssee Section 29 of the PCC.

care, visitation and legal aid rights ^[89]. The CPC further provides that a minor from twelve to fourteen years of age shall not be remanded in custody except when he or she is accused of capital murder, murder, or assault occasioning death. In the same light, a minor aged between fourteen and eighteen may be remanded in custody only if this measure is considered indispensable ^[90].

In addition to this, the code makes it clear that the detention of minors can only be carried out in a borstal institution or a special section of a prison meant for the detention of minors. He or she may only be detained in a prison for adults where the above mentioned institutions are absent but must be separated from them ^[91]. If transferred or brought before an examining magistrate or before the court, steps shall be taken to prevent any contact with adult detainees or the public ^[92]. In addition to these provisions involving penalties, measures have been taken in connection with judicial proceedings to protect the privacy of minors. A judicial investigation is compulsory for any offence committed by a minor. It is conducted secretly. Article 198 of the Code of Criminal Investigation prohibits the publication of any decision convicting a minor, as well as any means of identifying him. Article 226 punishes anyone who, without the written authorization of the Attorney-General, makes the suicide of a minor under the age of 18 public by any means whatsoever. It also punishes anyone who, except as requested in writing by the investigating magistrate, reproduces, in pictures or in any other form, all or part of the circumstances of violent offences and all offences committed against minors.

Furthermore, according to article 2 of the Decree of 13 November 1928, decisions concerning minors aged between 10 and 14 years are not included in the court records. Article 28 of the Decree reads: "Court clerks shall keep a special non-public register in which all decisions concerning minors below the age of 18 are recorded. Decisions of the Council Chamber and excerpts from the file may be communicated only to the judicial authorities and only during the period while the persons concerned are still minors. However, an excerpt of a decision provisionally or definitively entrusting a minor to an individual or to a charitable institution shall be notified to the individual or institution concerned by the justice of the peace or the prosecutor, who shall take all the necessary measures to turn the child over.

If a juvenile were to go through a trial process, the code provides that the court shall be cognizant of the social welfare report drawn by the examining magistrate only after the infant has been found guilty ^[93]. Also, the presiding magistrate shall explain to the minor in simple language the charges brought against him or her. Irrespective of the infant's reply, the code makes it clear that the court shall hear the testimonies of witnesses, enable the minor or his or her representatives to put relevant questions to the witness and hear any statement the minor may wish to make and in which case the presiding magistrate shall put questions to the witness or to the minor as he or she deems fit ^[94].

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one to him or her. If finally found guilty, a juvenile aged fourteen years or younger, can be subject to the following measures;

Furthermore, where the juvenile has no lawyer, section 719 of the code empowers the court to grant on its own motion one to him or her. If finally found guilty, a juvenile aged fourteen years or younger, can be subject to the following measures;

- Entrusting the infant to the custody of his or her parents, guardian, custodian or any trustworthy person;
- Placing him or her on probation;
- Placing him or her in a vocational or health centre;
- Placement in a specialised institution;
- Requiring him or her to enter into preventive recognizance ^[95].

Statutory law

At the level of statutory instruments dealing with juvenile justice, the Presidential Decree No. 92/052 of 27 March 1992 on the penitentiary regime is worth mentioning. Section 2 of this decree provides for the creation of five categories of prisons, namely orientation prisons, relegation centers, production prisons, school prisons and special prisons. When a minor is being prosecuted, Ordinance No. 58/1301 of 23 December 1958 provides that he may be tried in chambers or behind closed doors so that the public nature of the proceedings will not be prejudicial to him. The aforementioned decree of 30 November 1928 provides, in addition to the special measures of guardianship, supervision, education, reform and assistance that are ordered by the presiding judge of the civil court, for a particular measure, namely, probation. This measure, ordered by the judge, involves maintaining the child in his natural environment, whether with his family or a substitute, for the purpose of his education under the supervision of either a judge or a social worker appointed by the juvenile court.

Exclusion of torture or degrading treatment or punishment

With regard to torture and the degrading treatment of juveniles, as stated under article 37 (a) of the CRC, States Parties are required to ensure that no child is subjected to torture or other cruel, inhuman or degrading treatment or punishment. Cameroon has endorsed that principle by enacting Decree No. 97/079 of 25 April 1997, the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984. On the basis of this convention and its application in Cameroon, in 1997, Cameroon adopted statutory law No. 97/009 of 10 January 1997, which amends and supplements certain provisions of the Penal Code. Pursuant to that, article 132, entitled "Torture", has been inserted between articles 132 and 133 of the Code. This article reads *inter alia* that:

1. "Anyone who, by torture, involuntarily causes the death of another person shall be liable to life imprisonment;
2. When the torture permanently deprives the victim of the use of all or part of a limb, an organ or a sense, the penalty shall be 10 to 20 years' imprisonment;
3. When the torture causes the victim's illness or incapacity for work for more than 30 days, the penalty

⁸⁹ Ibid.

⁹⁰ See section 704 and 705 of the CPC.

⁹¹ section 706.

⁹² section 707.

⁹³ section 717.

⁹⁴ section 718.

⁹⁵ section 724.

shall be 5 to 10 years' imprisonment and a fine of CFAF 100,000 to CFAF 1 million;...^[96]

Physical and Psychological Recovery and Social Integration

The physical and psychological recovery and integration of juveniles is well catered for by the provisions of Decree No. 92/052 of 27 March 1992 on the prison system in Cameroon and pursuant to Ministerial Instruction No. 93/00726/MINASCOF/SG of 1 April 1993, determining the functions of the prison and social welfare of juveniles. In terms of this decree, the minors' section in a prison functions as a rehabilitation unit with three basic tasks: (a) to influence the minor's behaviour by education or psychological means; (b) to provide schooling or vocational training; and (c) to work towards the minor's reintegration into society so as to prevent him re-offending after his release^[97]. The prison social welfare officer also has the task of establishing relations with religious and philanthropic partners to mobilise different forms of assistance for minors in detention^[98]. In his work, he has the cooperation of the Ministry of Youth and Sports, which appoints youth and community activity counsellors to the unit to organize leisure, recreation and cultural activities.

Conclusion/ Recommendations

The legal protection afforded to minors in general and to those in conflict with the law in particular is an important concept. This is because protecting minors does not only give a minor a future life assurance but also ensures the sustainable economic development of a given country. Cameroon has a huge package which justified its commitment to compliance with international obligation in the direction of juvenile offenders. As seen from the above analysis, laws exist that carry both civil as well as penal sanctions meant to protect minors who are in conflict with the law, notably the 1967 Penal Code, which at the time of writing this paper is in the process of revision to give more impetus to juvenile justice. There is also the criminal procedure code and a host of presidential and inter-ministerial decrees all aimed at protecting minors who are in conflict with the law. Cameroon has also gone further to ratify important international conventions such as the 1989 CRC and the African Charter on Rights and Welfare of Children, just to mention a couple. However, despite the fact that the government of Cameroon has demonstrated an intention to implement or meet up with international obligation on the issue of juvenile justice, it is remorseful to say that its implementation is full of lapses. Many serious gaps continue to exist in the administration of juvenile justice in Cameroon.

To begin with, Cameroon is yet to have a specialised court for children as well as adequately trained specialised judges and staff. Presently, it is the Court of First Instance which has the competent court to try juveniles. Although Section 29 of the Cameroon Penal Code mandates the separation of minors, specifying that those under the age of 18 should serve their sentence in a special establishment, or in the absence of such establishment, in quarters separated from

offenders above 18, in reality, minors deprived of liberty continue to be detained with adults in violation of international law norms. Therefore, the absence of specific jurisdiction for minors results in delays in the judicial process and lengthy pre-trial detention for juveniles. The hope is that the drafted child protection bill, which is currently in the process of finalisation, may help to fill these gaps in the direction of child protection in Cameroon and juvenile justice in particular.

Recommendations

As demonstrated throughout this paper, it is clear that the juvenile justice system of Cameroon is in need of urgent reforms. These reforms are in the area of criminal justice as well as social welfare. Therefore, the recommendations set out in this paper shall be categorised into four main areas of reforms, namely legislation, trial, detention and reintegration.

Beginning with legislation, there is an urgent need to amend national legislation to be in line with the UN Convention on the Rights of the Child and other UN guidelines on juvenile justice, such as the Riyadh Guidelines, Beijing Rules, Havana Rules, in addition to the Committee of the CRC-General Comments. The amendments, among others, should ensure that minors below the age of 18 are accorded the protection of separate justice provisions and are not treated as adults, as well as set the minimum age of criminal responsibility (not to be confused with the minimum age of imprisonment) at a suitable level, with due regard for the protection of all children above and below that age, according to comprehensive implementation of international human rights standards and with special regard for children who may end up in the custodial system through welfare or administrative, rather than criminal, provisions.

At the level of prevention, the government should allocate resources to the development of minors' comprehensive prevention policies as outlined in the 1990 UN Guidelines for the Prevention of Juvenile Delinquency. Also, prevention programmes should be regularly monitored to ensure that prevention strategies reflect the changing situations of street children and crime. With regard to diversion, there is a need to amend legislation and allocate resources to ensure that the arrest and detention of minors should only be used as a last resort.

At the level of arrest, it must be made lawfully and not as the result of discrimination or for the purposes of harassment, extortion, or the so called 'street clearing', 'vagrancy' or of victims of commercial sexual exploitation. Minors should not be falsely accused; there is the need to always prove their case first. Before remanding a minor, the court should satisfy itself that satisfactory screening has taken place and that all diversion options have been exhausted.

During trial, magistrates, as with the case of Cameroon, lawyers and other court officials should receive special training on child rights and restorative justice, especially on the importance of diversion and alternatives to detention. Judges in particular should be asked or encouraged to order lighter sentences for minors, taking into consideration the age of the minor at the time of the commission and not the present age of the accused.

Finally, at the level of detention, the government should ensure that conditions in detention comply with international standards, such as the separation on the

⁹⁶ See article 132-123 (1-3) of the UNCT.

⁹⁷ Article 41 of the Decree of 27 March 1992 on the prison system in Cameroon sets out that: "Detainees may communicate with their legal advisors when they wish during visits."

⁹⁸ Ibid.

grounds of age, hygiene, sanitation, space, food, clothing, adequate sleeping materials such as mattresses and blankets, sanitary facilities, and other social amenities that should be available at each detention centre.

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