

The protection of juveniles under Cameroon criminal law and procedures through the lens of international standards

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Abstract

While the legislative framework on the administration of juvenile justice in Cameroon may currently be adequate and in compliance with the international conventions ratified by the State, the implementation of the national law should be the primary mechanism through which human rights are realized. Cameroon is usually said to be a State with good laws but poor implementation. With recourse to the normative and empirical methods, this article explores the provisions on the protection of juveniles in Cameroon criminal law and procedures through the lens of internationally recognized principles. It looks at the provisions as they are interpreted and applied by the Courts. The prospect being to invite the Government and all the stakeholders to embark on establishing the structures provided for and ensure effectiveness in the enforcement of juvenile justice in the country so as to overcome the current weaknesses that the system is experiencing.

Keywords: protection; juvenile; minor, Cameroon criminal law and procedure, international standards.

JEL Classification: K14, K33

1. Introduction

Cameroon is a State Member of many African and International Conventions² promulgating human rights in general and the protection of minors in particular. The latter is defined by domestic law with respect to age³. Hence, the

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² Cameroon has ratified many conventions for the administration of juvenile justice under the United Nations Human Rights System and the African Union Human Rights System. Indeed, Cameroon recognises the Universal Declaration of Human Rights (UDHR) of 10 December 1948, the International Covenant on Civil and Political Rights (ICCPR) of 1966, the Convention on the Rights of the Child (UN General Assembly Resolution 44/25 of 20 November 1989 and entered into force on 2 September 1990) ratified by Cameroon on the 11 January 1993, the African Charter on Rights and Welfare of the Child commonly called African Children's Charter (Adopted by the OAU Assembly of Heads of States and Governments on 11 July 1990, and came into force on 29 November 1999) ratified by Cameroon on 5 September 1997, African Charter on Human and Peoples' Rights called African Charter (Adopted by the OAU Assembly of Heads of States and Governments on 17 July 1981 and entered into force on 21 October 1986) ratified by Cameroon on 20 June 1989.

³ See section 80 of the Cameroon penal Code which stresses that "(1) No criminal responsibility shall arise from the act or omission of a person aged less than ten years. (2) An offence committed by a person aged not more than 10 years and not less than fourteen years may attract only such special measure as may by law be provided. (3) For an offence committed by a person aged over fourteen

Penal Code (hereinafter PC) provides different treatments to children depending on whether they are below the age of 10, between 10-14 years, or between 14-18 years; the Code recognizes that a minor or juvenile is any person aged less than eighteen (18) years⁴. The definition provided for in the Beijing Rules⁵ adopting the UN Standard Minimum for the Administration of Juvenile Justice reveals that the term juvenile does not necessarily correspond to the concept of age. Section 2(2)(a) of Beijing Rules defines a juvenile as a child or a young person who, under the respective legal systems, may be dealt with for an offence in a manner which is different from an adult. Referring to the Penal Code of Cameroon, section 349 (2) provides that "... any lunatic notorious or so found, and any spendthrift so found, shall be treated as a minor". Thus, it is the way in which the law is applied that dictates whether an offender is also a juvenile for purposes of law⁶.

Through the ratification of International Treaties, the repeal of formerly applicable laws⁷ on the administration of juvenile justice in Cameroon, the

and under eighteen years responsibility shall be diminished. (4) A person aged eighteen years or over shall be responsible as an adult. (5) The age relevant to this section shall be that attained at the date of the commission". Also see Sections 704-705 of the Cameroon Criminal Procedure Code which provide that " A minor of twelve (12) to fourteen (14) years of age shall not be remanded in custody, except when he is accused of capital murder or of assault occasioning death. A minor aged between fourteen (14) and eighteen (18) may be remanded in custody only if this measure is considered indispensable".

⁴ Cameroon Criminal Procedure Code, Section 700 (1) "A preliminary inquiry shall be compulsory for a felony or a misdemeanour committed by minors aged less than eighteen (18) years". Section 80(4) Penal Code provides that " A person aged eighteen years or over shall be responsible as an adult". The African Children's Charter, section 2 and the CRC in section 1, define a minor as every human being below the age of 18 years. It should be noteworthy that this definition of a juvenile is subjected to domestic legislations.

⁵ UN General Assembly Resolution 40/33 of 29 November 1985 adopting UN Standard Minimum for the Administration of Juvenile Justice, called the "Beijing Rules".

⁶ Eric Ngonji Njungwe, *International Standards on Juvenile Justice: Implications of the New Criminal Procedure Code on the Administration of Juvenile Justice in Cameroon*, CJDHR, Vol.2, N° 2, December, 2008, P. 60. The author was taking over the words of Geraldine Van Bueren in *The International Law on the Rights of the Child*, Netherlands, Martinus Nijhoff Publishers, 1995, P. 169.

⁷ Criminal Procedure Code, Section 746 (1) provides that " All previous provisions repugnant to this law are hereby repealed, in particular: d) The decree of 30 November 1928 establishing special courts and the probation system for minors ; (m) The Children and Young Persons Ordinance (Cap 32 of the Laws of Nigeria 1958); The decree of 30 October 1935 on the protection of children; Juveniles Courts Rules, Cap.32 of the 1958 Laws of the Federation of Nigeria; Circular N° 9062/DJAS of 15 July 1967 on pre-trial detention of minors; Circular N° 300018/DJAS of 8 July 1968 on juvenile delinquents and runaway children; Circular N° 66/5435/PGY of 30 June 1969 on juvenile delinquency and placement in the Cameroonian Juvenile Institute in Betamba; Decree N° 73/115 of 22 March 1973 on the organization and operation of the Buea Borstal Institute; Decree N° 73/333 of 25 June 1973 on the organization and operation of the Cameroon Juvenile Institute in Betamba; Circular N° 9062/MINJUSTICE/DAJS of 18 October 1989 providing for the reduction of pre-trial detention of minors to a minimum; Decree N° 90/524 of 23 March 1990 establishing the National Commission to Protect Children at Risk, Juvenile Delinquents and Abandoned Children; Decree N° 92/052 of 27 March 1992 on the prison system in Cameroon; Circular N° 0007/7128/DAJS of 27 January 1995 on pre-trial detention of minors.

amendment of the penal code⁸ and the coming into force of the Criminal Procedure Code⁹ (hereinafter the CPC), Cameroon has overhauled its criminal justice system by harmonizing the administration of criminal justice in general and extensively covered the administration of juvenile justice¹⁰ in compliance with internationally recognized principles. Despite the deficiencies observed in the implementation of some of these international principles in the domestic legal system, this paper has for purpose to show the endeavours achieved by Cameroon for the protection of juveniles. In that sense, it will be discussed that substantive criminal law measures are taken for the protection of juveniles, victims of offences (2) as well as for the protection of juveniles, authors of offences (3). During this demonstration, relevant insufficiencies will be in the limelight to show the weaknesses experienced by the system.

2. The protection of juveniles, victims of offences

In respect of the criminal principle "*nullum crimen, nulla poena, sine lege*", to wit, no penalty or measure may be imposed unless provided by law, and except in respect of an offence lawfully defined¹¹, the Penal Code of Cameroon has provided a bulk of offences committed on children. Severe measures are taken for the protection against *sui generis* crimes on minors (2.1) and common offences have seen their punishment being aggravated because the victim is a juvenile (2.2).

2.1 The protection against *sui generis* crimes committed on minors

The Penal Code provides different offences against which minors in Cameroon are to be protected of. The list is not exhaustive, Cameroon continuously bringing in new offences recognized by International law. The provisions on these offences on children are aimed at deterring their potential perpetrators. The said crimes can be classified into sexual offences on minors (2.1.1), offences on children and family (2.1.2) and on Children liberty (2.1.3).

⁸ The Cameroon criminal system has seen some of its substantial dispensations modified and extended by Law N° 2016/007 of 12 July 2016 relating to the Penal Code.

⁹ The Criminal procedure code entered into force on the 1st January 2007 putting an end to the dual criminal procedural system operated in the country reflecting its bi-jural nature, a legacy of colonialism. This code is instituted by law n°2005/07 of 27th July 2005 and governs criminal procedure through the territory of Cameroon. According to its Section 2, "The Code shall be of general application except where there is provision to the contrary as provided in the code of Military Justice or in any special law".

¹⁰ See Book IV, Part XV of the Criminal Procedure Code. Entitled *Prosecution and Trial of Juveniles*: Chapter 1 deals with Institution of Prosecution, Chapter 2 deals with Temporary Detention of Juveniles; Chapter 3 deals with Composition of the Court of First Instance Sitting in Cases of Juvenile Delinquency; Chapter 4 deals with Competence ...; Chapter XIII deals with the costs arising from measures for the protection of juveniles.

¹¹ Cameroon Penal Code, section 17.

2.1.1 Protection against sexual offences on minors

In general, sexual offences are those having sexual gratification as the offender's predominant or overt motivation in their commission¹². Some of these offences take the form of a sexual aggression, consisting as they are of injury and affront to a non-consenting person. Others are breaches of sexual taboo and intercourse with severely subnormal persons. They are punishable even if the other party gave consent. Examples of this group of offences committed mostly on minors are rape, indecency with young people and immoral earnings

Rape. The offence of rape is punished under section 296 of the PC which provides that "Whoever by force or moral ascendancy compels any female whether above or below the age of puberty to have sexual intercourse with him shall be punished with imprisonment for from five to ten years¹³". In *The People v. Sakwe Stephen*¹⁴, the accused got 10 years for rape of an under -16 girl. In *The People v. Dominic Onuoba*¹⁵, the accused was convicted and sentenced 10 years' imprisonment for the carnal knowledge of an under -16 girl. In *The People v. Bigingi Amubngwa*¹⁶, the judge convicted the accused of unlawful sexual intercourse with an under -16. The accused got away with a light sentence of 5 years' imprisonment in hard labour having successfully pleaded the fact that he was a first offender. One would have thought that for an offence of this nature, no matter the reasons pleaded by the accused, they should have weighed in as aggravating rather than mitigating circumstances. At least, the Court should have refused to take that factor into account as mitigating factor and even gone ahead as in *The People v. Okeke Okafor John*¹⁷. In this case, the accused defiled Felicia, an under - 4 year old girl. The indictment was rape under section 296. Due to the fact that medical evidence resulted to very revolting circumstances of the case, the High Court of Kumba invoked its powers to alter a charge *proprio motu* (on its own initiative). The charges were amended to one of rape-indecency under section 346 (3), the accused convicted on it and sentenced to 15 years' imprisonment. A similar sentence was retained in *Kenneth Mbah v. The People*¹⁸ where the accused was convicted for the rape of a 9-year-old girl, the charge having been laid under section 346(4), which ordinarily punishes by imprisonment for from 15 to 25 years

¹² See Carlson Anyangwe, *Criminal Law in Cameroon. Specific Offences*, Mankon-Bamenda, "Langaa Research § Publishing Common Initiative Group", 2011, p. 499.

¹³ Nowadays, it is observed that even male can suffer rape. This section of the Code must therefore be updated in order to take into consideration the possibility of rape commits on juvenile male particularly.

¹⁴ *The People v. Sakwe Stephen* (1987), Suit N° HCF/9.c/87, unreported. The accused successfully pleaded his status of orphan and merely got 10 years imprisonment for rape of an under -16 girl.

¹⁵ *The People v. Dominic Onuoba* (1975), Suit N° HCSW/29.c/75, unreported. The accused successfully pleaded in mitigation the fact that he was a 52-year-old married man with eight children and the judge gave him a mere 10 years imprisonment for the carnal knowledge of an under -16 girl.

¹⁶ *The People v. Bigingi Amubngwa* (1985), Suit N° HCSW/38c./85, unreported.

¹⁷ *The People v. Okeke Okafor John* (1968), W.C.L.R. 60.

¹⁸ See *Kenneth Mbah v. The People* (1996), *Cameroon Herald*, July 12-14, 1996, p. 5.

indecent by way of rape committed against a child under the age of sixteen years. It was identical in *The People v. Pezimo Zacharia*¹⁹ where the appellant cornered an under-13 girl at a farm where she was harvesting peanuts. He held her hands, threw her over, pressed her to the ground with his foot and sexually assaulted her, the child crying in pain and bleeding all the while. His conviction was confirmed by the Bamenda court of Appeal. This same court confirmed the conviction of another appellant in *Joseph Moma v. The People*²⁰ for attempted rape²¹.

Indecency with young people. The punishments against indecency vary with the age of the juvenile. The penal code has organized the penalties based on two groups: Indecency to child under sixteen and indecency to minor between sixteen and twenty-one; Homosexuality on minors being condemned as well.

By virtue of section 346 of the PC " (1) Whoever commits an indecent act in the presence of a child under the age of sixteen shall be punished with imprisonment for from two to five years and with fine of from twenty thousand to two hundred thousand francs. (2) The penalty shall be doubled where the offence is accompanied by assault or where the offender is one of the persons described in section 298²². (3) The penalty shall be imprisonment for from ten to fifteen years where the offender has sexual intercourse with the victim, notwithstanding his or her consent. (4) In case of rape, the imprisonment shall be from fifteen to twenty five years or for life where the offender is one of the persons described by section 298²³..."

In *The People v. Dominic Mathew Akpan*²⁴, the accused was charged on two counts under section 346 (3) of the PC with having sexual intercourse with two girls aged about 7 years old. The girls, Lucy and Mary, gave evidence of how on the day in question they were bathing in a nearby bathing pool when the defendant invited them to his house. When they got there, he took them into his bedroom where he forcibly had carnal knowledge of them one after another. The Defendant was convicted and sentenced to 10 years' imprisonment.

In *The People v. Evaristus Ndong*²⁵, the accused got 15 years' imprisonment with hard labour for having repeatedly had sexual intercourse with the prosecutrix, a girl whose age was determined to be 11 years. The same judge had no sympathy for another accused, a 'native doctor', in the case *The People v. Mbedi Njanji* where he gave him 15 years in hard labour as well for repeatedly raping a 10 years' old girl under the pretence that he was curing her of her fainting

¹⁹ *The People v. Pezimo Zacharia* (1979), Criminal Appeal N° BCA/52.C/79, unreported.

²⁰ *Joseph Moma v. The People* (1974) BCA/29.C/74, unreported.

²¹ In this case, the Appellant caught the prosecutrix, knocked her to the ground, slept on her back, tried to turn her face upwards, sent his hand to her private part and tore her pants. Inglis J asked rhetorically, "what more evidence of an irrevocable intention on the part of the Appellant to commit this serious offence is required?".

²² Section 298 provides aggravation of penalties where the offender has authority over the victim, or custody of him by law or by custom.

²³ See the case *The People v. Okeke Okafor John* (1968) W.C.L.R. 60.

²⁴ *The People v. Dominic Mathew Akpan* (1968), W.C.L.R 33.

²⁵ *The People v. Evaristus Ndong* (1971-1973) UYLR 145.

fits. As it can be seen, the effect of section 346(3) is that it is absolutely forbidden to have sexual intercourse with an under -16. This prohibition makes it rape for a man to have carnal knowledge of an under -16 girl or for a man to have anal connection with an under -16 boy or girl as can be seen in other jurisdictions in *Garnett v. State*²⁶.

Section 347 on its part punishes indecency to minor between sixteen and twenty-one years of age. The tenor of its first paragraph is that "For any offence under sections 295²⁷, 296²⁸ and 347 bis²⁹ of this Code committed against a person over sixteen and under twenty one years of age, the penalty shall be doubled". This section prohibits forcible as well as consensual sexual connection between persons of the same sex. In *David Yombo v. The People*³⁰, the appellant, a quack traditional healer, was convicted and sentenced for committing homosexual rape when he "used a teenage boy like a woman" throughout the night.

Immoral earnings. By virtue of section 343 of the PC, where the victim of an offence against section 294 of the PC is under eighteen years age, the penalties prescribed by that section shall be doubled, subject to a maximum of ten years imprisonment. Referring to this provision, section 294 must be read as follows: "(1) Whoever procures, aids or facilitates a minor's prostitution, or shares in the proceeds of a juvenile's prostitution, whether habitually or otherwise, or who is subsidized by a minor engaging in prostitution shall be punished with imprisonment for from one to ten years and with fine of from forty thousand to two million francs"³¹. (2) Whoever lives with a minor engaging in prostitution shall be presumed to be subsidized by her, unless he shows that his own resources are sufficient to enable him to support himself. (3) The punishment shall be doubled where: a) The offence is accompanied by coercion or by fraud, or where the offender is armed, or where he is the owner, manager or otherwise in charge of an establishment where prostitution is habitually practised; b)- Where the offence has been committed to the detriment of any person under the age of twenty-one; c)- Where the offender is the father or mother, guardian or person with customary responsibility....".

The law of prostitution under section 343 (1) of the PC is well illustrated by the decision in the English case of *R. v. Munck*³². A mother was charged, inter alia, with having attempted to procure her daughter, nearly 15 years of age, to be a prostitute. The mother permitted the girl to take men home to the house where she herself was living and allowed those men to be in private with the girl in circumstances which would have led anyone to suppose that the girl had had connection with them. The trial judge made it clear that, despite the fact that

²⁶ *Garnett v. State* (1993) 332 Md 571, 632 A.2d 797.

²⁷ Section 295 punishes private indecency.

²⁸ Section 296 punishes rape.

²⁹ Section 347 punishes homosexuality.

³⁰ *David Yombo v. The People* (1982), Criminal Appeal N° BCA/37.c/82, unreported.

³¹ This provision of section 294 PC is modified in other to take into consideration that the victim is a minor, hence the penalties are aggravated as specified in section 343 PC.

³² *R. v. Munck* (1918) 1 K.B. 635. Also see the case of *R. v. Webb* (1964) 1 Q.B. 357.

medical evidence proved that the girl was *virgo intacta*, the term 'prostitute' was not necessarily confined to a woman who for gain offered her body for natural intercourse but also includes offering her body for the gratification of the sexual passions of any man by any unnatural and abnormal act of indecency. The jury was satisfied that there had been lewd conduct between the girl and the men who were brought to the house, that the girl exposed herself to them for the gratification of their sexual passion. The mother was therefore convicted.

2.1.2 Protection against offences on children and family

There are here two predominant interests that the criminal law seeks to protect: the interest of the child and the interest of the family³³. Protection of the child is warranted by the fact of the child's immaturity and consequential vulnerability to exploitation. The family deserves protection of the law because its stability and cohesion contribute to the equilibrium of the society in general.

Abortion. For the protection of children and family, section 337 of the PC punishes the practice of abortion. By the tenor of the above section, (1) Any woman procuring or consenting to her own abortion shall be punished with imprisonment for from fifteen days to one year or with fine of from five thousand to two hundred thousand francs or with both such imprisonment and fine. Paragraph 2 of that section provides that "*whoever procures the abortion of a woman, notwithstanding her consent, shall be punished with imprisonment for from one to five years and with fine of from one hundred thousand to two million francs*". Subsection 3 emphasizes that "*the penalties prescribed by subsection 2 shall be doubled where the offender (a) engages habitually in abortion, or (b) practises the profession of medicine or an allied profession*". This prohibition of abortion is reinforced by the Cameroon Code of Medical Ethics in section 29(1) stating that "*Any practice or act of abortion shall be forbidden*"³⁴. However, section 29 (2) of the Code of Medical Ethics, followed in the same sense by section 339³⁵ of the PC and section 14 of the Maputo Protocol³⁶, provides that therapeutic

³³ There is an impressive number of instruments bearing on the rights of the family and the rights and welfare of the child. For example, article 16 of the Universal Declaration of Human Rights (UDHR) of 10 December 1948; articles 23 and 24 of the International Covenant on Civil and Political Rights (ICCPR) of 1966; the Convention on the Rights of the Child (UN General Assembly Resolution 44/25 of 20 November 1989 and entered into force on 2 September 1990) ratified by Cameroon on the 11 January 1993. For more instruments duly ratified by Cameroon, see note 1 of the present article.

³⁴ See the Code of Medical Ethics, Decree N° 83-166 of 12 April 1983.

³⁵ Entitled *Saving Mother*, section 339 stresses that "(1) Neither of the two foregoing sections shall apply to acts performed by a qualified person and prove necessary for the saving of the mother from grave danger to her health. (2) In a case of pregnancy resulting from rape, abortion by a qualified medical practitioner after certificate by the prosecution of a good case shall constitute no offence".

³⁶ The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa adopted at Maputo (Mozambique) on the 11 July 2003 invites States Parties to ensure that

abortion may be performed if such action is the only way of safeguarding the mother's life³⁷.

Assault on woman with child. Section 338 of the PC punishes with imprisonment for from five to ten years and with fine of from one hundred thousand to two million francs "*whoever by force used against a woman with child or against a child being born causes intentionally or unintentionally the death or permanent incapacity of the child*". However, as in the previous section, for the purpose of *Saving Mother*, section 339 of the PC stresses that the foregoing section shall not apply to acts performed by a qualified person and prove necessary for the saving of the mother from grave danger to her health³⁸. In a case of pregnancy resulting from rape, abortion by a qualified medical practitioner after certificate by the prosecution of a good case shall constitute no offence³⁹.

Infanticide. The preview of infanticide under section 340 of the PC is to prevent and punish "... for murder within the meaning of sections 275⁴⁰ or 276⁴¹, or for abetment of such murder, by a mother of her child within one month of birth with imprisonment for from five to ten years".

Cloud on parenthood. The tenor of section 341 of the PC punishes with imprisonment for from five to ten years, any person whose conduct has the result of depriving a child of the evidence of his true parentage. The basis of this offence is on the theory that a child has the right to know the identity of his/her biological parents. Any conduct by a person that has the result of depriving the child of evidence of that identity is punishable. For example, the removal of a child under the circumstances tht his identity is necessarily lost; bringing up a child and hiding him under a name that is not his thereby making him to lose his true identity; giving a child a false civil status by fraudulently representing him to be the child of a woman who is not his true mother.

the right to health of women, including sexual and reproductive health is respected and promoted. See section 14(2c) of the Protocol.

³⁷ In such a case, the doctor must perforce obtain the opinions of two doctors, one of whom shall be chosen from the civil court list of experts and the other a member of the council of the Association who will give a written attestation that the life of the mother can only be preserved by such therapy. In areas where there is only one doctor, or where the opinion of two colleagues cannot easily be obtained, the decision to induce therapeutic abortion shall be at the discretion of the doctor in charge, who must forthwith send a circumstantial report to the Minister of Public Health and to the President of the National Council of the Medical Association. A doctor must if necessary accept the refusal of the patient, who has been duly informed. There shall be no exception to this rule, save in the case of extreme urgency, and where the patient is not in a fit state to give her consent. If the doctor cannot, because of his convictions, practise abortion, he may withdraw his services, ensuring that treatment is continued by a qualified colleague. During difficult or prolonged labour, the doctor must consider himself as the sole judge of the respective interests of the mother and child, without let-ting himself be influenced by considerations of a family nature.

³⁸ Section 339 (1) of Cameroon penal code.

³⁹ Section 339 (2), *ibid*.

⁴⁰ Section 275 punishes Murder.

⁴¹ Section 276 punishes Capital Murder.

This section will also fall on the person who, for example, destroys a child's birth certificate, or kills or swears to secrecy the doctor, midwife or other witness present at the child's birth with the intent to deprive the child of evidence of his true parenthood⁴².

Corruption of youth. Section 344 of the PC provides that (1) whoever, in order to satisfy the desires of another person, habitually excites, encourages or facilitates the debauch or corruption of any person aged sixteen, seventeen or eighteen years shall be punished with imprisonment for from one to five years and with fine of from twenty thousand to one million francs. (2) where the victim is a youth under the age of sixteen years, the imprisonment is from 2 to 10 years and a fine⁴³. Additionally upon conviction, the Court may order the forfeitures described in section 30⁴⁴ of the PC and deprive the offender for the same period of parental power and disqualify him from being guardian or curator of any minor.

Youths and drinks. Section 348 of the PC punishes whoever, "(a) being licensed to sell intoxicating liquor for consumption on the premises *admits* to the said premises any person under sixteen years of age not accompanied by a person over twenty-one responsible for superintending him ; or (b) being licensed to sell beverages for consumption on the premises *sells or offers*, whether on the said premises or in any other public place, any intoxicating liquor to any person under eighteen years of age not accompanied by a person over twenty-one responsible for superintending him ; or (c) makes any person *under twenty-one years of age drunk*", with fine of from five thousand to fifty thousand francs. Upon subsequent conviction within the meaning of section 88⁴⁵ of the PC, the punishment shall be imprisonment for from fifteen days to one month and fine of from ten thousand to one hundred thousand francs, unless the offender proves that he was misled as to the age of the minor or as to the age or authority of the person accompanying him.

The economy of this provision reveals that section 348 consists of three distinct offences. Two of them capable of being committed only by a person who is a licensed publican, and one by just anybody, including a publican. The first offence relates to the *admission*, by a publican, of an under-16 in his business premises. The second relates to the *selling or offering*, by a publican, of intoxicating liquor to an under-18. And the last offence punishes whoever *makes an under-21 drunk*⁴⁶.

⁴² See Carlson Anyangwe, *op. cit.*, p. 551.

⁴³ Of from forty thousand to two million francs.

⁴⁴ Section 30 PC provides the forfeitures applicable in Cameroon: (1) Removal and exclusion from any public service, employment or office; (2) Incapacity to be juror, assessor, expert referee or sworn expert; (3) Incapacity to be guardian, curator, deputy guardian or committee, save of the offender's own children, or member of a family council; (4) Prohibition on wearing any decoration; (5) Prohibition on serving in the armed forces; (6) Prohibition on keeping a school, on teaching in any educational establishment, and in general on holding any post connected with the education or care of children.

⁴⁵ Section 88 PC has to do with previous convictions. This is considered as an aggravating circumstance.

⁴⁶ See Carlson Anyangwe, *op. cit.*, p. 555.

Custody of minor and failure to return a child. Section 179 of the PC provides that "Whoever fails to surrender a minor to the person to whom his custody has been granted by order, whether permanent or temporary, of a Court, shall be punished with imprisonment for from one month to one year and with fine of from five thousand to one million francs. Where the offender has been deprived of parental power, the imprisonment may extend to three years". On the other hand, section 355 of the PC punishes the failure to return a child to those having the right to claim him back with imprisonment for from one to five years, and with fine of from twenty thousand to two hundred thousand francs.

2.1.3 Protection against offences on children liberty

Forced labour. Under section 292 of the PC, whoever for his personal interest compels another to do any work or to render any service which he has not offered of his own free will shall be punished with imprisonment for from one to five years or with fine of from ten thousand to five hundred thousand francs, or with both such imprisonment and fine.

Slavery and related offences. Today, classical slavery and the system of pledge of a human being as a guarantee of debt are, unlike in the past, offences not only under municipal law but also under international law. Under section 1 of the Slavery Convention, slavery is defined as the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised⁴⁷. Slave trade involves all acts involved in the capture, acquisition or disposal of a person with the intent to reduce him into slave⁴⁸. In international human rights law, slavery is a term that covers a variety of human rights violations that go beyond traditional slavery, slave trade and debt bondage, and includes such slavery-like practices as child prostitution, sale of children, exploitation of child labour, traffic in persons⁴⁹ etc...

In that regard, the combination of sections 293 and 342 of the Cameroon penal code punishes offences such as slavery, traffic in persons and giving or receiving as security. The result of their combination can be read as " Whoever enslaves or engages, whether habitually or otherwise, in any traffic in persons where the victim is under the age of eighteen years, the penalty shall be imprisonment for from fifteen to twenty years"⁵⁰ and " Whoever gives or receives a person under eighteen years of age as security shall be punished with imprisonment for from five to ten years and a fine of from fifty thousand to one million francs"⁵¹.

⁴⁷ Slavery Convention, 1926, article 1.

⁴⁸ *Ibid.*

⁴⁹ See the Convention for suppression of the traffic in persons and the exploitation of the prostitution of others, 1949; Protocol to prevent, suppress and punish trafficking in persons especially women and children, supplementing the UN Convention against transnational organized crime, 2000.

⁵⁰ This is a combination of section 293 (1)(a)(b) and 342 (a) where we notice that the penalties are aggravated when the victim of such offences against section 293 is a minor.

⁵¹ See section 293 (2) combined with section 342 (b).

Kidnapping. The Penal Code of Cameroon has provided penalties against Kidnapping of minors. Hence, the tenor of section 352 punishes with imprisonment for from one to five years and with fine of from twenty thousand to two hundred thousand francs whoever without force or fraud takes or entices away any person under eighteen years of age, against the will of those whom custody belongs by law or by custom, or procures him to leave that custody⁵². This situation is illustrated in *The People v. Adamou Amadou*⁵³.

Another form of kidnapping made by force or fraud is provided by section 353 of the PC which punishes with imprisonment for from five to ten years and with fine of from twenty thousand to four hundred thousand francs "Whoever by force or fraud takes or entices away any person under the age of twenty-one years, notwithstanding that he thought him older, and against the will of those to whom custody belongs by law or by custom or procures him to leave that custody".

The punishment will be aggravated into imprisonment for life, under either of the two foregoing sections, where the person kidnapped is under the age of thirteen, and converted into death penalty where the minor dies as a result of the kidnapping.

Forced marriage and abuse in respect of bride price. Section 356 of the PC prescribes and punishes two '*forced-marriage*' offences. The section criminalizes two types of traditional practices that were once quite common: compelling a person to marry against his or her will, and giving in marriage a pre-pubertal child. In that sense, it is provided that " whoever compels a person under eighteen years to marry shall be punished with imprisonment for from five to ten years and with fine of from twenty-five thousand to one million francs". The punishment in this case may not be less than two years of imprisonment whatever the mitigating circumstances. The same foregoing penalties shall be administered to whoever gives in marriage a boy under sixteen years of age or a girl under fourteen. It should be noticed that the Court may, upon conviction, deprive the offender of parental power and disqualify him from being the guardian or curator of any person for the time prescribed by section 31(4) of the PC.

Section 357 of the PC on '*abuse in respect of bride price*' does not outlaw the institution of bride price. Nor does it penalize mere giving or receiving of bride price. Yet, the sociological reality being that bride price is often abused, the law has stepped in to regulate it by realistically setting itself the modest objective of attacking those aspects of bride price that give the institution the colour of '*bride sale*⁵⁴'. To achieve this objective, the lawmaker has considered as an offence to demand 'excessive bride price' or to receive bride price under circumstances akin to false pretence.

Section 357 (1) of the PC creates and punishes six different offences relating to abuse in respect of bride price. In connection with our topic, only sub-

⁵² It should be noteworthy that this section shall not apply where the minor so taken enticed or procured marries the kidnapper.

⁵³ Unreported. 25/10/2016.

⁵⁴ See Carlson Anyangwe, *op. cit.*, p. 570.

section (e) of section 357 (1) retains our attention. The latter punishes with imprisonment for from one to five years or with fine of from five thousand to five hundred thousand francs or with such imprisonment and fine, whoever, for want of compliance with his excessive demands for bride price for the marriage of a girl under the age of twenty-one, and for no other reason, obstructs her marriage.

Advantage of weakness. By virtue of section 349 of the Penal Code, "(1) Whoever takes advantage of the needs, weakness or passions of any person under twenty-one years of age to induce him to sign any obligation, discharge or disposition, or any other document liable to harm the signatory in his person or in his substance, shall be punished with the penalty prescribed by section 318⁵⁵ of this Code (the offence is punishable by imprisonment of from five to ten years and by fine from one hundred thousand to one million francs). (2) For the purposes of this section, *any lunatic notorious or so found, and any spendthrift so found, shall be treated as a minor*".

The essence of an offence of this nature is the fact of taking unconscionable advantage of another's weakness, needs or passions by inducing him to sign a document detrimental to the signatory. Everyone, irrespective of age, having weaknesses, needs and passions that may be detrimentally exploited by an unscrupulous person, the draftman intent here was to enhance penalty where the victim of the offence is a minor.

2.2 Aggravation of common crimes' penalty for minority of the victim

The fact that Cameroon Penal Code provides *sui generis* offences committed on minors doesn't mean that common infringements committed on Children are saved from punishments; The latter infringements are generally committed on "any person", "every individual" and "all people" under the competence of the State. A plain view of these phrases supports the logical conclusion that children are also protected as individuals and somewhat, some common offences have seen their penalties aggravated when perpetrated on juveniles.

Assault on children. Under the offence of assault on children provided in section 350 of the PC, the legislator aggravates the penalties prescribed by section 275⁵⁶ on Murder, 277⁵⁷ on Grievous Harm and 278 on Assault Occasioning Death⁵⁸. Hence, where the foregoing offences are committed against a person under fifteen years of age, the penalty shall become death and imprisonment for life

⁵⁵ Section 318 of the PC punishes offences against proprietary interest such as Theft, Misappropriation and False Pretences.

⁵⁶ Whoever causes another's death shall be punished with imprisonment for life.

⁵⁷ Whoever permanently deprives another of the use of the whole or of any part of any member, organ or sense shall be punished with imprisonment for from ten to twenty years.

⁵⁸ The punishment when the offence is committed on an adult is imprisonment for from six to twenty years where by force or interference somebody causes another's death unintentionally. And imprisonment for life for the same result where the force or interference is used in the course of any witchcraft, magic or divination.

respectively. The penalties prescribed by sections 279(1)⁵⁹ on Assault Occasioning Grievous Harm, 280⁶⁰ on Simple Harm and 281 on Slight Harm⁶¹ shall be doubled.

By way of example, the cases of *The People v. Okeke Okafor John*⁶² and *Kenneth Mbah v. The People*⁶³ expose the requalification of the offence of simple rape to aggravated rape resulting to the enhancement of penalty against the offenders. In the first case, while the indictment was rape under section 296, the revolting circumstances shown by the medical evidence resulted into the amendment of the charges to one of rape-indecency under section 346 (3) and the sentencing of the convict to 15 years' imprisonment. In the second case, the charges of rape were laid under section 346 (4) which ordinarily punishes by imprisonment for from 15 to 25 years' indecency by way of rape committed against a child under the age of sixteen years.

Desertion of incapable. The intent to abandon any person unable to protect himself by reason of his physical or mental condition is punished with imprisonment for from one to three years and with fine of from five thousand to twenty thousand francs. By virtue of section 282(3) of the PC, the penalty shall be aggravated where the offender is an ascendant or any other person having authority over the incapable or having custody of him, whether by law or in fact. The punishment in that case shall be imprisonment for from ten to twenty years.

Constructive force and moral ascendancy. The administration of any substance harmful to health and desertion under section 282 are generally treated as constructive force. The use of force or interference is a ground for aggravation of the punishment of the offender under section 285(c) in case of deprivation of nourishment or care, to a degree endangering health, by a person having custody in law or in fact of another who is either incapable of withdrawing himself from the said custody or incapable of providing himself. If a man obtains a woman's consent to sexual intercourse without the use of force, threats or fraud he is not guilty of rape, though he may have resorted to various devices to procure the collapse of her resistance such as soft lights, sweet music, flattery and drink⁶⁴. If a man has sexual intercourse with a woman after falsely promising to marry her there is no rape

⁵⁹ Whoever by force or interference unintentionally causes to another the injuries described in section 277 shall be punished with imprisonment for from five to ten years and in a fit case with fine of from five thousand to five hundred thousand francs.

⁶⁰ whoever by force or interference causes intentionally or unintentionally to another any sickness or inability to work lasting more than thirty days shall be punished with imprisonment for from six months to five years or with fine of from five thousand to two hundred thousand francs, or with both such imprisonment and fine.

⁶¹ whoever by force or interference causes intentionally or unintentionally to another any sickness or inability to work lasting more than eight days and up to up to thirty days shall be punished with imprisonment for from six days to two years or with fine of from five thousand to fifty thousand francs or with both such imprisonment and fine.

⁶² *The People v. Okeke Okafor John* (1968), W.C.L.R. 60.

⁶³ See *Kenneth Mbah v. The People* (1996), *Cameroon Herald*, July 12-14, 1996, p. 5.

⁶⁴ In *R. v. Camplin* (1850, 1 Den 89), the Court of Appeal upheld the conviction of a man who had sexual intercourse with a woman whom he had rendered insensible by giving her liquor with intent to excite her sexual passions.

since the woman was not mistaken as to the act and also because she fully consented, no force or moral ascendancy having been used. But if she is a juvenile under the age of 16, the man can be convicted of indecency with the child under section 346 (3) of the PC where notwithstanding the consent of the juvenile, the offender who has sexual intercourse with the victim (juvenile) shall be imprisoned for from ten to fifteen years as it was the case in the *people and W. Benoit v. B. Joseph*⁶⁵.

It also amounts to moral ascendancy and can be interpreted as rape, for an officer investigating a crime to have sexual intercourse with a woman by lying to her that her father was implicated in the crime and threatening that he would have him prosecuted if she did not have sexual intercourse with him as in the *People § Makam Cécile v. Ndombol Jean-Baptiste*⁶⁶. Moral ascendancy also connotes the use of stricks, intimidation, false pretences, threat inducing fear, misrepresentation as to the nature of the act. If a woman's willingness to intercourse proceeds from fraud or to some other fundamental matter, the willingness is deemed by the law invalid. In *R. v. Williams*⁶⁷, Williams, a singing teacher, had sexual intercourse with a pupil aged 16 by pretending that it was a method of making an air passage and improving her voice. The girl believed him and offered no resistance, not appreciating that he was having sexual intercourse with her. He was convicted of rape and his appeal against conviction was dismissed. In *R. v. Case*⁶⁸, a medical practitioner had sexual intercourse with a girl of 14 years of age upon the pretence that he was treating her medically and the girl made no resistance owing to the good faith belief that she was being medically treated. Case was convicted of rape. In *R. v. Camplin*⁶⁹, the Court of Appeal upheld the conviction of a man who had sexual intercourse with a woman whom he had rendered insensible by giving her liquor with intent to excite her sexual passions.

From the above substantive criminal law provisions, it is relevant to say that Cameroon criminal law effectively gives a special protection to children victims of offences. Adjectival law also provides special dispensations for juvenile. For example, while for the purpose of evidence in Court, the age of witnesses has been held to not less than fourteen (14) years⁷⁰, yet, for the protection of the minor victim, the latter may testify as a witness even though he/she is less than 14 years of age⁷¹. The law provides that the State Prosecutor shall initiate proceedings against adult perpetrator of the above criminal offences stipulated by the Penal Code on his own motion or after a complaint from the juvenile's representative. If then the juvenile victim is protected as it can be seen, what are the measures taken for the delinquent juvenile?

⁶⁵ See *Ministère Public § W. Benoit v. B. Joseph* (1975), 8 *Revue camerounaise de droit* 146.

⁶⁶ See *Ministère Public § Makam Cécile v. Ndombol Jean Baptiste* (1976), C.A. Bafoussam, Arrêt N° 319 du 23 février 1976, unreported.

⁶⁷ *R. v. Williams* (1923) 1 KB 340.

⁶⁸ *R. v. Case* (1850) 1 Den 580.

⁶⁹ *R. v. Camplin* (1845) 1 Den 89.

⁷⁰ CPC, section 322(1).

⁷¹ *Ibid.*

3. The protection of juveniles, authors of offences

Special provisions regulating the administration of juvenile justice can be found in International Treaties⁷². It was in the 1980s that international law began to develop in a constructive manner which acknowledged that children in conflict with the law could benefit from being separated from adults in the administration of justice. Hence, the Convention for the Rights of the Child (CRC)⁷³ recognized that, separation in the justice system for adult and children can only occur if the system of justice to which children are subject observes the safeguards which are incorporated into international human rights law⁷⁴. African States among which Cameroon, under the human rights regime established with the adoption of the African Charter on Human and People's Right (African Charter)⁷⁵, adopted in 1990, the African Charter on the Rights and Welfare of the Child (African Children's Charter)⁷⁶. After ratification of the foregoing Conventions, Cameroon has effectively endorsed internationally adopted principles on children's rights through the Criminal Procedure Code, which to a greater degree satisfies the requirements of international standards on juvenile justice. This part of our paper explores provisions applicable to delinquent juveniles in Cameroon. Hence, the protection by circumstantial exclusion of this category of offenders from criminal responsibility (3.1) will be followed by the procedural guarantees bestowed on them (3.2).

3.1 Circumstantial exclusion of delinquent juvenile from criminal responsibility

Section 80 (1)⁷⁷ of the PC creates a dichotomy in the youth criminal justice system (3.1.1) providing different treatments to minors depending on the range of ages and the CPC further ordains special measures purporting their protection (3.1.2).

⁷² See foot note 1 of the present article.

⁷³ CRC, UN General Assembly Resolution 44/25 of 20 November 1989 and entered into force on 2 September 1990. Cameroon ratified the CRC on 11 January 1993.

⁷⁴ G. V. Bueren, *The International Law on the Rights of the Child*, Netherlands, "Martinus Nijhoff Publishers", 1995, p.169.

⁷⁵ African Charter on Human and Peoples' Rights called African Charter (Adopted by the OAU Assembly of Heads of States and Governments on 17 July 1981 and entered into force on 21 October 1986) ratified by Cameroon on 20 June 1989.

⁷⁶ The African Charter on Rights and Welfare of the Child commonly called African Children's Charter (Adopted by the OAU Assembly of Heads of States and Governments on 11 July 1990, and came into force on 29 November 1999) ratified by Cameroon on 5 September 1997.

⁷⁷ Section 80 PC deals with infancy.

3.1.1 The dichotomy in the youth criminal justice system on the basis of degree of criminal responsibility

The African Charter on the Rights and Welfare of the Child (African Children's Charter) obliges States to set a minimum age below which children shall be presumed not to have the capacity to infringe the penal law⁷⁸. Hence, the issue of criminal responsibility of minors in Cameroon is different whether they are below 10 years of age, between 10-14 years or between 14-18 years. It is noteworthy that the law provides for a diminished responsibility for the last category of ages (c). The first category of young delinquent caught up in crime are *doli incapax* and completely absolved of criminal responsibility (a) irrespective of whether there is evidence establishing the material ingredients of the offence and the relevant intention under section 74(2) of the PC⁷⁹. The second category of delinquent juvenile can be convicted for the commission of an offence but without sentence to a penalty (b).

The absolution of criminal responsibility for minors below 10 years. By the tenor of section 80(1) "no criminal responsibility shall arise from the act or omission of a person aged less than ten years". A child under 10 is considered as a *doli incapax*, to wit, he is totally irresponsible and may not even be tried for what he does. He may be the subject of special measures of care and protection, but not of punishment nor of the preventive measures applicable to older children. His parents alone can be sentenced to provide compensation for the harm caused to the victim pursuant to the rules relating to civil liability.

The conviction under judicial placement of minors between 10 and 14 years. Section 80(2) of the PC stresses that "an offence committed by a person aged not more than fourteen and not less than ten years may attract only such special measures as may by law be provided". Thus, a child between 10-14 years of age is considered criminally responsible and may be tried, but may not be sentenced to a penalty nor to a preventive measure provided by the criminal law for adults. Only special measures can be taken against him if found guilty⁸⁰.

It has to be stressed that by article 7(1) of Decree N° 2001/09/PM of 20th March 2001, the court shall make an order of "judicial placement" for a minor who has been found guilty of an offence and not a sentence to an imprisonment term⁸¹ in

⁷⁸ African Children's Charter, section 14(4).

⁷⁹ See M. A. Yanou, *Criminal Law and Procedure in Cameroon*, Yanou Law Series, 2014, pp. 42-49, especially p. 43.

⁸⁰ These measures include returning the child to his or her family; putting the child on probation; or placing the child, 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. See Eric Ngonji Njungwe, *International Standards on Juvenile Justice: Implications of the New Criminal Procedure Code on the Administration of Juvenile Justice in Cameroon*, CJDHR, Vol.2, N°2, December, 2008, p. 68.

⁸¹ See S. Tabe Tabe, *A Critical appraisal of the Juvenile justice system under Cameroon's 2005 Criminal Procedure Code: emerging challenges*, "Potchestroom Electronic Law Journal", 2012, Vol. 15, N° 1, p. 168.

regular prison. Some scholars have criticized judicial officers and magistrates for confusing the terms "sentence" and "judicial placement" arguing that: *In the case where a juvenile is found guilty, the magistrate should issue a placement order placing the said juvenile in conflict with the law at any re-education centre, instead of sentencing him/her to a term of imprisonment. it is inappropriate to use an imprisonment warrant form for a juvenile who is placed at the disposal of a re-education centre. Cases abound where magistrates have confused judicial placement with sentencing*⁸². In that light, fingers are pointed to the magistrate courts Tiko and Muyuka, criticized for ignoring the law in *The People v. AK* (a juvenile)⁸³ and *The People v. FB* (an infant)⁸⁴ respectively. In both cases, the magistrates found the minors charged guilty of the offences of simple theft under section 318 (1)(a) of the PC and sentenced them to term imprisonment of 3 years in regular prisons. Such ignorance of the law was described as profoundly unfortunate for a judicial officer presiding over a court. On the other hand, the magistrate court Mamfe is congratulated for knowing and respecting the law in *The People v. TB* (an infant)⁸⁵ where after finding the minor guilty of an offence, he drew up a placement order placing the child at the borstal institute Buea.

The diminished responsibility of minors between 14 and 18 years. By virtue of section 80(3) of the PC "*For an offence committed by a person aged over fourteen and under eighteen years, responsibility shall be diminished*". The Code provides that children between the ages of 14-18 can be subject to the lenient measures provided for those between 10-14, but also stresses their possible sentence to a penalty. Minority being an automatic ground for mitigation, the juvenile perpetrator aged of 14-18 will benefit from the following effect of diminished responsibility provided in section 87 of the Penal Code:

"Wherever responsibility is by law diminished, the penalty provided for the offence shall be reduced as follows : (a) The penalty of death or loss of liberty for life shall be reduced to loss of liberty for from two to ten 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 1 to five years ; (c) In the case of a misdemeanour, the maximum of liberty or maximum fine is reduced by half and the minimum is brought down to five days or a fine of one francs"⁸⁶.

With respect to this dispensation, in *The People v. Salomon Mbang*⁸⁷ the accused, who the Court found to be an under -18 boy, admitted having sexual intercourse with the prosecutrix whose age the Court estimated to be below 13 years. However, given the minority of the accused, the judge held that he was a person with diminished responsibility and, further, that since the prosecutrix was a willing party to the sexual encounter, that fact though not a defence nevertheless

⁸² *Ibid.*

⁸³ Case reported by S. Tabe Tabe, *op.cit.*, p. 166. Cited by M. A. Yanou, Criminal Law and Procedure in Cameroon, *op. cit.*, p. 49.

⁸⁴ *Ibid.*

⁸⁵ *Ibid.*

⁸⁶ Section 87(a)(b) and (c), Cameroon Penal Code.

⁸⁷ *The People v. Salomon Mbang* (1968) W.C.L.R. 56.

entitles the accused to a consideration of mitigating of his sentence. The accused was accordingly sentenced to 2 years' imprisonment.

On the contrary, in *Kenneth Mbah v. The People*⁸⁸, the court sentenced a 16-year-old boy to 15 years' imprisonment for raping a 9-year-old girl. In that case, the accused was bathing in a stream completely naked while a little girl mischievously hid herself in a nearby bush was watching him. Having realized that a girl was hiding in the bush and furtively gazing at his nakedness, the accused ran out the stream towards where the little girl was, grabbed her and forcibly had carnal knowledge of her. The charge was laid under section 346 (4) of the PC, which ordinarily punishes by imprisonment for from 15 to 25 years indecency by way of rape committed against a child under the age of sixteen.

The inconsistency noticed in the comprehension of diminished responsibility as applied by the second judge in the above case reveals that, despite the fact that Cameroon substantively complies with the International instruments providing for the reduction of penalty and that death penalty should not be imposed for crimes committed by persons below 18 years of age⁸⁹, some autocratic judges still pronounce unfortunate decisions fundamentally arbitrary and contrary to the rule of law. There is therefore an urgent need to have a better reading of the law by the practitioners putting aside their feelings and rather applying the law as it is in accordance with the spirit of the trial procedures which should take into account the necessity of the juvenile rehabilitation. Even if it can be supposed that the judge by pronouncing such a heavy sanction against a juvenile was acting in the interest of the society, his autocratic view is plainly misguided when viewed in the context of the decision of the Canadian Supreme Court in *R. v. Cornel*⁹⁰, where it was held that the society's interest in the adjudication of cases " does not outweigh the interest of the society in the longer term in discouraging routine disregard of constitutional and statutory safeguards" particularly with regard to the special measures for the protection of minor's liberty and sanctity.

3.1.2 Special measures provided by Law on juvenile delinquency

The interest of a young delinquent requires that he/she is not exposed to publicity during his/ her criminal prosecution. It is for this reason that a special court is constituted to try young offenders. Although Cameroon does not have specially designated juvenile courts, section 713 of the CPC converts the court of first instance into a juvenile court with jurisdiction to try felonies, misdemeanours and simple offences committed by children and young persons. However, section 716 of the CPC permits the trial of a minor in the ordinary court in accordance with ordinary rules of criminal procedure where a minor is involved in the same offence

⁸⁸ *Cameroon Herald*, July 12-14, 1996, p. 5.

⁸⁹ ICCPR, section 6(5). Also see section 37(a) of the Convention for the Rights of Children which guarantees the juvenile offender the right to be protected against torture, inhuman or degrading treatment, capital punishment and life imprisonment.

⁹⁰ Case cited by M. A. Yanou, *op. cit.*, p. 47.

as an adult. This was recalled at and underlined in *The People of Cameroon v. Njoka Bruna Ning*⁹¹ where after the Expert opinion of Dr Enow Erock George received in evidence and marked exhibit 'A' revealing that the accused's age as at the 21/02/2012 is estimated to be about 18 years, Justice Charles Namme Menyoli held that since the accused was less than 18 years of age at the time of the commission of the offence, and mindful of the provisions of section 713 of the CPC, contrary to the learned Prosecuting Counsel's submissions, that the court to try the accused is the court of first instance Buea. The accused, appearing before the High court of fako division, was therefore before the wrong court. Having underscored that and underlined that courts have been enjoined not to hunger for jurisdiction, the learned judge declined jurisdiction and forwarded the matter to the court of first instance, Buea, for competence and necessary action.

Seemingly, in *The People v. Donladi Amadou*⁹², the accused, 14 years old committed aggravated theft, an offence tried by the High court. Due to his age, he was committed before the court of first instance-Nkambe after preliminary inquiry by Justice Adamu Linus. The same judge, in *The People v. Daladji Hamadou*⁹³, committed for trial before the court of first instance - Nkambe the accused aged 16 years for aggravated theft under section 320 (1)(c) of the PC. In *The People v. Nfor Theophile § Fonyuy Emmanuel Kongnyu*⁹⁴, the second accused was committed for trial before the Court of first instance - Nkambe after finding that he was above 18 years and the first accused was 16 years. Fonyuy E. K. was sentenced to 3 years and Nfor T. to 3 months taking into consideration the necessity to protect juvenile delinquent.

These decisions respect the spirit that should animate the handling of criminal matters involving young persons as pointed out in section 40 of the United Nations Convention of the Rights of the child. Abiding by the international recognized principles which make imprisonment for juvenile as a last resort, the Criminal Procedure Code of Cameroon⁹⁵ which came into force on 1 January 2007 has incorporated international standards on juvenile justice which aim at providing special measures of protection for young offenders. In this regard, section 700(1) of the CPC has mandatorily prescribed the conduct of a preliminary inquiry for a felony or misdemeanour committed by a minor before a fully-fledged criminal trial⁹⁶ as it was the case in *The People v. Chitu Abdoulaye*⁹⁷. The State counsel is thus obliged to prepare a holding charge in all such criminal cases where minors are involved and bring the species of offender before the Examining Magistrate. The latter, in conducting the proceedings, is empowered to carry out all measures

⁹¹ *The People of Cameroon v. Njoka Bruna Ning* (2014), SUIT N° HCF/52C/13, tuesday, 4 February 2014.

⁹² High court Donga-Mantung, Unreported. 28/06/16.

⁹³ High court Donga-Mantung, Unreported. 13/12/16.

⁹⁴ *The People v. Nfor Theophile § Fonyuy Emmanuel Kongnyu*, SUIT N° NM/249C/15 on 20/04/16.

⁹⁵ Law N°2005/007 of 17 July 2005, Criminal Procedure Code.

⁹⁶ See M. A. Yanou, *op. cit.*, p. 45.

⁹⁷ *The People v. Chitu Abdoulaye*, CFI/NK/277C/016.

of investigation necessary to reveal the personality of the minor⁹⁸. For that purpose, he shall involve the social welfare services or request medical examination and psychiatric tests of a minor so as to adequately consider the best interest of the juvenile offender in temporary detention, custody and sentencing.

Regarding custody, the law provides that the Examining Magistrate may return the child to his or her family; entrust the minor to a welfare centre or an observation home, or place the child, for a period not extending beyond the attainment of his civil majority, in the home of a trustworthy person or in a vocational training or health centre⁹⁹.

As regards temporary detention measures, there are broadly two categories of juveniles for the purpose of detention pending trial and these are dealt with differently. A minor of twelve (12) to fourteen (14) years of age shall not be remanded in custody, except when he is accused of capital murder or of assault occasioning death¹⁰⁰. This provision is mandatory because following the rules of interpretation which requires that where "shall" is used the courts will have no discretion in the matter¹⁰¹.

The second category of young person is identified by section 705 of the CPC. Under this provision, a minor between 14-18 years may only be remanded in custody only where this measure is considered indispensable¹⁰². Where detention of juveniles is necessary, such must be in Borstal institution, a special section of the prison meant for the detention of minors, or separate from adults in situation where there is no Borstal institution or special section of prison. It can be rightly observed that the latter provision is a reflection of article 17 of the Beijing Rules and therefore absolutely binding on Cameroonian courts.

The case of *The People v. Ojon Mbi Marsiaino*¹⁰³ illustrates the accurate approach of the courts when dealing with minors. The offender in this holding charge a young person of 15 years and a student of St Joseph's College Sasse was brought before the examining magistrate accused of stabbing to death a fellow student in the same establishment. Based on this fact, counsel of the minor Bar. Keme Ogbe applied for his bail. Relying on the principles articulated above and the United Nations rules for the protection of juveniles deprived of their liberty, the learned judge P. Mbuagbor granted the minor bail. This decision being disregarded by the State counsel, the latter's appeal against the minor's bail was dismissed by Mbeng JCA affirming the examining magistrate decision and ordering for his release in terms of the bail conditions set¹⁰⁴.

⁹⁸ Criminal Procedure Code, section 701(1). To reveal the personality of the minor, refer to section 701(2)(a), the Examining Magistrate may in particular, order a social investigation into the material and moral situation of the family of the minor, his character and antecedents, his attendance at school and general behaviour, and the conditions of his up-bringing.

⁹⁹ CPC, section 702(1).

¹⁰⁰ CPC, section 704.

¹⁰¹ Michael A. Yanou, *op. cit.*, p. 46.

¹⁰² CPC, section 705.

¹⁰³ *The People v. Ojon Mbi Marsiaino*, SUIT N° CASWR/10/ICC/2013.

¹⁰⁴ M. A. Yanou, *op. cit.*, pp. 46-47.

3.2 Procedural guarantees of juvenile delinquent

The criminal procedure in the administration of juvenile justice in Cameroon observes most of the internationally recognized Standards guiding proceedings in Court. The infant offender benefits of procedural guarantees during the trial (3.2.1) and after the trial if found guilty (3.2.2).

3.2.1 Procedural guarantees during the trial

The first observation in this area of the law is that a juvenile court is constituted differently from ordinary magistrate courts. It is a collegiate court which by section 709(1) of the CPC is made up of the magistrate of the bench presiding, two assessors, a representative of the legal department and a registrar. This court which must be constituted in scrupulous respect of the above provision is by section 720 (1) of the CPC obliged to hear the cases involving minors only in camera. The juvenile offender benefits during the trial of many guarantees for a fair hearing of his case. The law provides that minors aged more than 10 but less than 18 years charged with felonies, misdemeanours and simple offences shall be tried by the Court of First Instance. A preliminary inquiry is compulsory for felony and misdemeanour¹⁰⁵, while direct summons can be used only in the case of a simple offence¹⁰⁶. However, where there are accomplices or co-offender who are adults, only ordinary law courts¹⁰⁷ shall be competent to hear the case¹⁰⁸. The juvenile has the right to be assisted by counsel or by any other person who is a specialist in the protection of children's rights¹⁰⁹; and if the minor cannot afford counsel representation, then the Court shall assign a counsel to him¹¹⁰. The identity of the juvenile offender must be protected; hence, under pain of the trial being declared a nullity, the hearing of any matter in which a juvenile is implicated shall be in camera¹¹¹. The only persons entitled to attend the trial shall be the parents, the infant's custodian or guardian as well as the witnesses, counsel, probation officers, the representatives of services or institutions dealing with problems relating to children and the representatives of organizations responsible for the protection of human rights and the right of the child¹¹². The presiding magistrate shall explain to the minor in simple language the nature of the charges brought against him. Then, he shall enquire whether he admits the commission of the offence either as a principal or accessory¹¹³. The court shall enable the minor or his representatives to

¹⁰⁵ CPC, section 700(1).

¹⁰⁶ Section 700(3), *Ibid.*

¹⁰⁷ It should be noteworthy that minors do not appear before some category of Court such as the Military Court.

¹⁰⁸ CPC, section 713.

¹⁰⁹ Section 719(2), *Ibid.*

¹¹⁰ Section 719(3), *Ibid.*

¹¹¹ Section 720(1), *Ibid.*

¹¹² Section 720(2), *Ibid.*

¹¹³ Section 718 (1), *Ibid.*

put relevant questions to the witnesses ; hear any statement the minor himself may wish to make, in which case the presiding magistrate shall put questions to the witnesses, or to the minor as he deems fit¹¹⁴. Meanwhile, where the judgment against a minor is publicly published, no mention of the minor's name, initials, personal or family particulars may be disclosed¹¹⁵ under pain of the penalties provided for in section 198¹¹⁶ of the PC.

It is obvious that the applicable domestic laws guarantee to young delinquent the right to fair hearing, the right to legal representation, protection of identity, presumption of innocence and right to appeal. With regard to these dispensations, a juvenile trial conducted in a court not constituted as stated above by section 709(1) of the CPC or where the juvenile's counsel is asked to leave is illegal and in fact prejudicial to both the right of the juvenile involved and contrary to public policy in terms of section 3 of the CPC and the decisions in *Ndi Nwet Bafua v. The People*¹¹⁷. Additional special measures are provided when the minor is found guilty.

3.2.2 Procedural protection of the juvenile after the trial, if found guilty

The law provides a variable of applicable measures and penalties where the minor is found guilty after the full trial. If no criminal responsibility shall arise from the act or omission of a person aged less than ten years¹¹⁸, a child between 10-14 years of age tried and found guilty shall be admonished¹¹⁹ and ordered special measures¹²⁰ such as entrusting the infant to the custody of his parents, guardian, custodian or to any trustworthy person; placing him on probation; placing him in a vocational or health centre; placement in a specialized institution and requiring him to enter into a preventive recognizance¹²¹.

Where a minor aged more than fourteen (14) years but less than eighteen (18) years is found guilty, the court shall, by a reasoned decision pass sentence in accordance with the provisions of sections 80(3) and 87 of the PC¹²² and order one of the special measures above.

Where a minor aged fourteen (14) to eighteen (18) years is found guilty of a simple offence, the court shall reprimand the minor as well as his parents, guardian or custodian and shall warn them of the consequences of its re-

¹¹⁴ Section 718(2), *Ibid.*

¹¹⁵ Section 721(2), *Ibid.*

¹¹⁶ This section of the penal Code punishes Forbidden Publications.

¹¹⁷ *Ndi Nwet Bafua v. The People*, SUIT N° CASWR/10C/2010.

¹¹⁸ Penal Code, section 80(1).

¹¹⁹ Admonition by the Court is ordered if it may be concluded from the attitude of the juvenile to the committed offence and his readiness to refrain from committing criminal offences in the future, that an admonition is sufficient. When pronouncing an admonition, the Court shall point out to the juvenile the inadmissibility of his action and demonstrate that other sanctions may be pronounced in the event of re-offending.

¹²⁰ Penal Code, section 80(2).

¹²¹ CPC, section 724.

¹²² Section 725(1), *Ibid.*

commission. If the child is a relapser, the measures and penalties ordered for the other categories of juvenile delinquents shall be applicable to that simple offence¹²³. Thus, in the case of a non-suspended term of imprisonment, only probation¹²⁴ may be ordered in addition.

The purpose of these special measures in favour of a juvenile offender is to influence his proper development, enhance his personal responsibility in order to avoid a relapse into crime in the future. This is the reflection of the desirability of United Nations to promote the child's reintegration into society. In this light, State are invited to recognized the rights of every child accused of having infringed the penal code to be treated in a manner consistent with the promotion of child's sence of dignity and worth contrary to the decision in *Kenneth Mbah v. The People*¹²⁵. The rationale being the belief that it is by so doing that the child's respect for human rights and fundamental rights of others will be reinforced in society.

4. Conclusion

The Convention for the Rights of the Child was the first international instrument to adopt a coherent child rights approach to the international legal regulation of the deprivation of liberty for children¹²⁶. It recognized that separation in the justice system for adult and children can only occur if the system of justice to which children are subject observes the safeguards which are incorporated into international human rights law. In compliance with internationally recognized principles, Cameroon has laid down a comprehensive normative framework in the administration of juvenile justice. Theoretically, the legislation provides measures which to a greater degree satisfy the requirements of international standards on infant justice. It also spells out the implementation mechanisms geared towards encouraging and promoting the protection of children victims and offenders. It requires that victimized or delinquent children must be treated in a manner consistent with protection of their rights. Hence, measures should be taken with desirability of promoting their rehabilitation, reintegration and their assumption of a constructive role in society¹²⁷. While the legislative framework on the administration of juvenile justice in Cameroon may currently be adequate, the implementation of the national law then becomes the primary mechanism through which human rights are realized. The lack of many of the structures for the execution of special measures related to juvenile justice in Cameroon and the autocratic view of some judges in the application of laws are ambits to the

¹²³ Section 729(1) and (3), *Ibid.*

¹²⁴ Section 730, *Ibid.* "The probation of a juvenile shall be a measure whereby an infant is entrusted to his parents, guardian or custodian and is supervised by specially trained persons known as probation officers. Probation shall consist of means of support, protection, supervision and education".

¹²⁵ *Cameroon Herald*, July 12-14, 1996, p. 5.

¹²⁶ R. Krech, *Implementation of the United Nations Juvenile Justice Instrument*, in Eugeen Verhellen (ed), *Understanding Children's Rights*, Belgium, Ghent, 1998, p.16.

¹²⁷ E. N. Njungwe, *op. cit.*, p. 72.

compliance with international standards. Therefore, as well as it has become a necessity to update the substantive laws by incorporating in the Penal Code newly identified offences committed on children as recognized by international criminal law¹²⁸, Cameroon should rapidly put in place the institutions required for the protection of minors¹²⁹ in order to fully comply with international standards.

Bibliography

- Anyangwe, C., *Criminal Law in Cameroon. Specific Offences*, Mankon-Bamenda, *Langa Research & Publishing Common Initiative Group*, 2011.
- Krech, R., *Implementation of the United Nations Juvenile Justice Instrument*, in Eugene Verhellen (ed), *Understanding Children's Rights*, Belgium, Ghent, 1998.
- Njungwe, E.N., *International Standards on Juvenile Justice: Implications of the New Criminal Procedure Code on the Administration of Juvenile Justice in Cameroon*, *CJDHR*, Vol.2, N°2, December, 2008.
- Tabé Tabé, S., *A critical appraisal of the juvenile justice system under Cameroon's 2005 Criminal Procedure Code: emerging challenges*, *Potchestroom Electronic Law Journal*, Vol. 15, N° 1, 2012.
- Van Bueren, G., *The International Law on the Rights of the Child*, Netherlands, *Martinus Nijhoff Publishers*, 1995.
- Yanou, M.A., *Criminal Law and Procedure in Cameroon*, *Yanou Law Series*, 2014.
- Cameroon Code of Medical Ethics, Decree N° 83-166 of 12 April 1983.
- Law N° 2016/007 of 12 July 2016 relating to the Penal Code of Cameroon.
- Law N° 2005/07 of 27th July 2005 relating to Criminal Procedure Code.

¹²⁸ The international fight against illiteracy has been taken into consideration in the recent 2016 amendment of the Cameroon penal code whereby education is made compulsory for children of a certain age. Section 355(2) of the PC punishes with fine of from fifty thousand to five hundred thousand FCFA, any parent with sufficient means who refuses to send his child to school. The punishment shall be imprisonment for from one year to two years where the offence is repeated. See section 355-2 (1) and (2) of law N° 2016/007 of 12 July 2016 relating to the penal code of Cameroon.

¹²⁹ The penitentiary system in Cameroon as a whole presents too many flaws. There is overcrowding in prisons, shortage of social and educational support for children in prisons, and the absence of special quarters for juvenile in most prisons. Even where juvenile sections exist in prisons, the conditions are not better from those of their adult counterparts.