



## Compliance of Juvenile Justice Administration in Cameroon with the Human Rights Based Approach

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**ABSTRACT:** Juvenile delinquency is an age long problem, and the problem still occurs till present date. The world at large and Cameroon in particular has promulgated laws which govern the conducts of its citizens so as to keep order across the country and protect the public from danger which might be inflicted on them by the wrongdoer. However, there are some offenders who due to their vulnerability occupy a special place in the administration of justice and one of them is juvenile offenders. Institutions involved in juvenile justice administration are expected to be child-friendly and upon administration of justice, they are to accord special treatment to juvenile offenders in accordance with the law and to also ensure the protection of juvenile's rights. This article seeks to demonstrate that despite the existing legislation regulating the administration of juvenile justice in Cameroon, the protection of juvenile's rights is still questionable due to poor implementation of those laws. The ultimate objectives of juvenile justice administration are rehabilitation and reintegration of juvenile offenders into the society. The article seeks to establish that there are operational problems associated in achieving these objectives. Juvenile offenders still experience severe and physical abuses during pre-trial, trial and post-trial proceedings. The article acknowledges the quest of juvenile justice administration to promote and protect the rights of juveniles through the ratification of international treaties which reinforces the existing national laws but maintains that there is poor observance of the law in the English-speaking Regions of Cameroon. This paper adopts a qualitative research methodology. Qualitative research methodology involves collecting data and analysing non-numerical data (text, video or audio) to understand concepts, opinions or experiences. It has been used to gather in-depths insight into a problem or generate new ideas for research.

The article among other things determines whether from a practitioner perspective, a Cameroonian child resident in the English-speaking Regions of Cameroon and in conflict with the law is actually treated in such a way that it promotes the child sense of dignity and worthiness. Proposals are made for an improved mechanism for the protection of the rights of juveniles.

**KEYWORDS:** Juvenile, Justice, Compliance, Administration, Human Rights

### INTRODUCTION

The whole idea behind juvenile justice administration is that children due to their vulnerability, should be protected at all times regardless of the crime committed.<sup>1</sup> Juvenile justice administration comprises of three stages that is, the pre-trial, trial and post-trial stages. The pre-trial stage marks the initial contact between the juvenile and the police, and it is comprised of arrest, detention and processing of bail of the juvenile. The trial stage brings into force the role of the courts in the administration of juvenile justice and it is important to note that except in circumstances where the juvenile commits an offence with co-offenders who are adult, the court of first instance is the only court with jurisdiction to try juvenile offenders.<sup>2</sup> The post-trial stage is the last stage of the juvenile

<sup>1</sup>See Article 40 of the Convention on the rights on the rights of the child which states 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 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.

<sup>2</sup>Section 713 of the CPC which states that, the Court of First Instance sitting in cases of juvenile delinquency shall have jurisdiction to try all felonies, misdemeanours and simple offences committed by minors aged more than ten years but less than eighteen years of age. However, where there are accomplices or co-offenders who are adults, only the ordinary law courts shall have jurisdiction to hear the case.



justice system whereby the juvenile shall either be sent to the prison or borstal institute depending on the nature and circumstances of the case.

However, situations of human rights violations are inevitable and no matter their nature, their occurrence is a problem and has to be addressed. The protection for human rights violations cases, especially as concerns children's rights, is embodied in various international and regional instruments. Cameroon has ratified several conventions for the administration of juvenile justice both under the United Nations and African Union Human Rights System. These treaties are general and specific in nature.<sup>3</sup> The general treaties provide a general umbrella within which the treatment standards accorded to juveniles in detention can be appreciated they include general human right documents such as the Universal Declaration of Human Rights<sup>4</sup> and the African Charter on Human and Peoples Rights<sup>5</sup>. These documents provide for treatments standards accorded to juveniles in detention as human beings generally and worthy of human dignity.

The specific treaties look at the specific situation of juveniles as children generally and specifically as children in conflict with the law. They include the International Covenant on Civil and Political Rights<sup>6</sup>, the United Nations Minimum Standard Rules for the Administration of Juvenile Justice (Beijing Rules)<sup>7</sup>, the United Nations Convention on the Rights of the Child<sup>8</sup> and the African Charter on the Rights and Welfare of the Child<sup>9</sup>. Cameroon has signed these treaties and is mandated to make its provisions applicable within the juvenile justice system that applies in Cameroon.<sup>10</sup>

Cameroon also has various legislatives acts regulating juvenile justice in Cameroon among which include, the 1996 Cameroon Constitution<sup>11</sup>, the 2005 Cameroon Criminal Procedure Code<sup>12</sup> which harmonised the juvenile justice system within Cameroon and the 2016 Penal Code<sup>13</sup>. In the face of the aforementioned international instruments and legislation, Cameroon has provided a juvenile justice system of administration which in principle seems to guarantee a peculiar and best treatment for children in conflict with the law. In practice however, the juvenile justice system has left much to be desired in the treatment of juvenile offenders. Some of these violations have been highlighted by the Cameroon 2019 Human Rights Report.<sup>14</sup> This research therefore aims at examining the administration of juvenile justice in the English-speaking Regions of Cameroon so as to ascertain its compliance with human rights standards.

<sup>3</sup>Nde-fru Valentine, "International Law and the Upgrading of the State Juvenile Justice System: the case of Cameroon", 2011. Available online at <https://www.icenecdev.org/Juvenile-Justice-System> (accessed on January 23rd, 2024).

<sup>4</sup>UN General Assembly Resolution 217A(III) of 10 December 1948 adopting the Universal Declaration of Human Rights.

<sup>5</sup> African Charter on Human and Peoples' Rights (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.

<sup>6</sup> International Covenant on Civil and Political Rights (Adopted by the UN General Assembly Resolution 2200A (XXI) of 16 December 1966) ratified by Cameroon on the 27 June 1984.

<sup>7</sup>UN General Assembly Resolution 40/33 of 29 November 1985 adopting the UN Standard Minimum for the Administration of Juvenile Justice, called the Beijing Rules.

<sup>8</sup>The Convention on the Rights of the Child (Adopted by the 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.

<sup>9</sup>The African Charter on the Rights and Welfare of the Child (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 the 11 January 1993.

<sup>10</sup>Article 45 of the Cameroon Constitution is to the effect that, duly approved or ratified treaties and international agreements shall, following their publication, applied in Cameroon and override national laws, and provided the other party implements the said treaty or agreement.

<sup>11</sup>Law No 2008/001 of 14 April 2008 to amend and supplement some provisions of Law No 96/6 of 18 January 1996 to amend the constitution of 2 June 1972.

<sup>12</sup>Law No 2005/007 of 27 July 2005 on the Criminal Procedure Code.

<sup>13</sup>Law No 2016/007 of 12 July 2016 relating to the penal code.

<sup>14</sup>Cameroon 2019 Human Rights Report available online at <https://www.state.gov/wp-content/uploads/2020/03/CAMEROON-2019-HUMAN-RIGHTS-REPORT> (assessed on January 23<sup>rd</sup>, 2023).



## THE CONCEPT OF JUVENILE JUSTICE ADMINISTRATION AND THE REGULATORY FRAMEWORK

The need for effective rehabilitation and reintegration of juvenile offenders as good citizens in the society calls for juvenile justice administration. Although it is recognised that everyone is entitled to the enjoyment and protection of their inherent human rights and fundamental freedoms, it is essential to note that children by reason of their physical and mental immaturity need special safeguards and care including legal protection thus, whether as perpetrators or victims of crime children occupy a special place in the administration of justice. However, this recognition implies that, children are not like adults and consequently they are to be treated differently. This therefore justifies the development of juvenile justice systems and the adoption of child-sensitive procedures that take into consideration the special needs and rights of children who are in conflict with law.

Juvenile justice system is a special track of the criminal justice system whose aim is to protect children from the harshness of the criminal procedure. Juvenile justice administration is defined as the collective institutions through which a youthful offender passes until any charge has been disposed of or the assessed punishment has been concluded.<sup>15</sup> It is also defined as a system of justice which is applicable to juveniles all over the world and which is different from the justice system applicable to adults.<sup>16</sup>

Juvenile justice administration as a concept, reflects the recognition of childhood as a special phase in the human life cycle, distinct from adulthood. It is concerned with the rights of juveniles, alternative measure of punishment, differential treatment in the hearing of cases and safe guarding the best interest of the juvenile.<sup>17</sup> The emphasis of juvenile justice administration should therefore be rehabilitation, restoration and reintegration rather than punitive repression as the principal goals of the juvenile justice system.<sup>18</sup> Juvenile justice administration raises concern on issues of age determination for the purpose of administering justice and the roles of criminal justice institutions as it relates to pre-trial, trial and post-trial of children in conflict with law.

Generally, there is no universal definition of a juvenile. The laws of different nations stipulate different age bracket for a juvenile. A juvenile under international, regional and national law is defined in terms of age and the concept is used interchangeably with other concepts like child, young person. The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), defines a juvenile as 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.<sup>19</sup> The United Nations Convention on the Rights of the Child defines a child as every human being below the age of eighteen years unless under the law applicable to the child, majority is attained.<sup>20</sup> The African Charter on the Rights and Welfare of the Child defines a child as every human being below the age of eighteen years.<sup>21</sup>

The Cameroonian Penal Code states that any person below eighteen years of age is a child.<sup>22</sup> Thus, any person under eighteen years involved in the commission of a criminal offence is a juvenile who must be dealt with under the special procedure prescribed by the code. This code goes forth by providing different treatment to children depending on the age range. Section 80(1) of the code states that, no criminal responsibility shall arise from the act or omission of a person aged less than 10 (ten) years thus, the Cameroonian criminal law exempts a child under 10 years of age from criminal responsibility under the presumption of *doli incapax*. Section 80(2) states that, an offence committed by a person aged not less than 10 (ten) years and not less than 14 (fourteen) years may attract only special measures as may by law be provided. Section 80(3) states that, for an offence committed by a person aged over 14 (fourteen) and under 18 (eighteen) years, responsibility shall be diminished. The implication of this provision is that a person under the age of 18 is a juvenile as far as criminal proceedings are concerned.

The definitions proffered by the aforementioned human rights instruments, make allowances for some flexibility in the definition of who should be a juvenile. It empowers state parties to set age within their respective legal system in order to accommodate the

<sup>15</sup> B.A. Garner., Black's Law Dictionary (8<sup>th</sup> ed. 2004), p2536.

<sup>16</sup> Hakeem Ijaiya, "Juvenile Justice Administration in Nigeria", *NUJS Law Review*, Vol. No.2 Issue 4, 2009: 573-583, P573.

<sup>17</sup> Chitembwe Amos "Juvenile Justice Administration in Zambia: How Effective Does It Reach Out to Its Intended Targets", University of Zambia, 2004, p1.

<sup>18</sup> Parajuli Ramesh, "Introduction to Juvenile Justice". In *Juvenile Delinquency* (eds. Prof. Dr. Laxmi Prasad Mainali and Rom Bahadur Thapa), Kathmandu, Nepal: Tribhuvan University, Faculty of Law and Juvenile Justice Co-ordination Committee, 2017, p7.

<sup>19</sup> Rule 2.2 (a) of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules").

<sup>20</sup> Article 1 CRC.

<sup>21</sup> Article 2 ACRWC.

<sup>22</sup> Section 80 of the Cameroonian Penal Code, which classifies minor offenders into three groups: below 10 years (*doli incapax*), 10-14 years (special measures), 14-18 years (diminished responsibility).



different economic, social, political, cultural and legal systems of the respective state. The Cameroonian Penal Code adopted the age of less than eighteen years which is in line with these human rights instruments and within the parameters of its economic, social, political and cultural imperatives of its environment, it further made a distinction by categorising those minors into three groups that is children below the age of ten years, children above ten but below fourteen years and children above fourteen years but less than eighteen years.

Laws and legal procedures relating to juvenile offenders have a long history dating back thousands of years and the American juvenile justice system has its roots from the English common law. In the 15<sup>th</sup> century, the chancery courts were created by the King of England and these courts under the guidance of the King's chancellor, were created to consider petitions of those who needed special aid or intervention such as women and children left in need of protection. Through these courts, the king could exercise the right of *parens patriae* (parent of the country) by enabling these courts to act *in loco parentis* (in the place of parents) to provide services in assistance to needy women and children.<sup>23</sup>

The ideology of treating juveniles the same as adults stemmed from the English Common Law.<sup>24</sup> Children under common law were classified into two that is, children under the age of seven years and children between the ages of seven to fourteen years. Children below the age of seven were presumed *doli incapax* (incapable of committing crimes) and this exception was rooted in the common law notion of *mens rea* which was a prerequisite to criminal culpability.<sup>25</sup> Children between the ages of seven to fourteen years were presumed incompetent to form the requisite criminal intent unless it could be demonstrated that they had formed the criminal intent, understood the consequences of their actions and could distinguish right from wrong.<sup>26</sup> Due to the absence of special courts for children, juveniles between the ages of seven and fourteen years were subjected to the same laws and penalties as adult offenders such as flogging, imprisonment and hanging<sup>27</sup> and they were equally tried before the adult court until the first juvenile court of law was created in America.

The first juvenile court dedicated to handle juvenile cases was established in Cook County (Chicago), Illinois in 1899 and was authorised by the Illinois juvenile court Act of 1899. The Act gave the court jurisdiction over neglected, dependent and delinquent children under age 16 and its focus was rehabilitation rather than punishment.<sup>28</sup> This juvenile court operated under the philosophy of *Parens Patriae* and *In Loco Parentis*. *Parens Patriae* meaning parent of the country, was adopted by English courts to provide the state with the power to substitute their authority for that of birth parent in order to intervene in the lives of children whose interest were at stake. This philosophy was first articulated in *Prince v. Massachusetts (1944)*.<sup>29</sup> *In Loco Parentis* meaning in place of the parents, was a legal doctrine to allow an individual or an organisation to take on the responsibilities of the parents in order to assist needy women and children. The first court dedicated to cases involving child offenders was a success which led to the creation of other courts in the United State. This model was however adopted by other countries such as Canada, Great Britain, France, Russia, Poland, Japan and Germany with the sole aim of administering juvenile justice within their respective territories.<sup>30</sup>

<sup>23</sup>Richard A. Lawrence, "History and Development of the Juvenile Court and Justice Process", 2008. Available online at [https://www.sagepub.com/sites/default/files/upm\\_binaries/19434\\_section\\_1.pdf](https://www.sagepub.com/sites/default/files/upm_binaries/19434_section_1.pdf) (accessed on December 20<sup>th</sup>, 2023).

<sup>24</sup> Altgrace Choute, "History of Juvenile Delinquency", 2021. Available online at <https://study.com/academy/lesson/history-of-juvenile-delinquency.html> (accessed on December 22<sup>nd</sup>, 2023).

<sup>25</sup>N.O., Umejiaku and C.N., Uzoka "An Appraisal of Juvenile Justice Administration in Nigeria: Advocating for the Rights of Child Offenders". *UNIZIK journal of Educational Research and Policy Studies*, Vol6(1), 2019:1-23, p2.

<sup>26</sup>William Wesley, "Contemporary Juvenile Justice System and Juvenile Detention Alternatives". Available online at <https://education.stateuniversity.com/pages/2143/juvenile-justice-system.html> (accessed on January 22<sup>nd</sup>, 2024).

<sup>27</sup>S.M. Davis., *Children in the Legal System* (New York: The foundation Press Inc., 1997), p760.

<sup>28</sup>Paul Marcus, "The Juvenile Justice System in the United States", *Revue Internationale de Droit Penal*, Vol. No 75, 2004: p535-552, p536.

<sup>29</sup>321 U.S. 158 (1944). The Supreme Court of the U.S.A ruled that, no minor boy under 12 or girl under 18 shall sell newspapers, magazines, periodicals or other articles of merchandise in the streets or other public places. The ruling was followed by many laws that target juveniles for acts of vagrancy and pauperism.

<sup>30</sup>Jensen Gary, "Juvenile Justice", 2021. Available online at <https://www.britannica.com/topic/juvenile-justice> (accessed on January 12<sup>th</sup>, 2024).



The legal and judicial system in Cameroon came with the arrival of the colonialists. Before the arrival of colonialist, there existed diverse unwritten indigenous laws and usages in the pre-colonial Cameroonian society which applied in varying degrees to the different ethnic groups. The traditional system of justice was administered by a series of *ad hoc* bodies ranging from the family head, quarter head, chief and the chief's council.<sup>31</sup> During this period, the Family head had authority to handle juveniles who were guilty of petty stealing and of disrespecting their seniors and parents.<sup>32</sup> Cases of juvenile delinquency were dealt with by the age-group association to which the miscreant belonged. This often took the form of jeering by the delinquent's age mates, beating and a threat that if he doesn't desist from his delinquent behaviour, a fearful masker or spirit would be invited to come and take him away.<sup>33</sup> During the German colonial period, Germans never hesitated to inflict vicarious punishment on Cameroonians. Parents were made to suffer for the faults of their sons and the excuse for the application of the principle of group responsibility was that the jungle provided an excellent asylum for delinquent Cameroonians, thereby making arrest of offenders almost impossible.<sup>34</sup> Britain and France on the other hand were authorised to administer Cameroon in accordance with their laws as an integral part of their territory, subject to modifications as may be required by the local conditions.<sup>35</sup> East Cameroon was administered by the French while West Cameroon was administered by the British. Britain established a common law legal system in West Cameroon embedded in the indirect rule system of administration through Southern Cameroon High Court Law of 1955<sup>36</sup>. During the British mandate, there was no special legislation, courts or prisons for juveniles as a result of it, the few who appeared before the court were either sent to the Approved School at Enugu or the Borstal section of the prisons at Port Harcourt, both located in Nigeria. There, they got a general education and some knowledge of a trade and upon discharge from the Approved School or the Borstal Institute, it was the duty of the District Officer of the Division to keep an eye on them and give them what assistance they needed for there were no probation officers in the territory.<sup>37</sup> France on the other hand through the policy of assimilation, established the civil law system as the basic structure of justice in East Cameroon. During the French Mandate, young offenders were classified into two that is, young offenders who acted without discernment and young offenders who acted with discernment. Due to the absence of borstal institute, special reformatory centres and special wing for young offenders in the ordinary prisons, an *arrête* of 7<sup>th</sup> December 1933 set up a 'colonie penitentiare' for juveniles' delinquent on a small island at the mouth of River Sanaga, at Malimba so as to prevent possible escape. This centre was however closed down in 1939 and its inmates moved to the prison at Saa.<sup>38</sup> The current criminal justice system in the English-speaking Regions of Cameroon derived its origin, principle and philosophy from the British system of criminal justice<sup>39</sup> as explained above of which the juvenile justice system is a component. However, this justice system was a repressive legal system with oppressive penal institutions whose aim was to deter and punish offenders. Reformation of such offenders, even if they were juveniles was the least of the problem of the colonial administration thus, children were subjected to the same penal laws and punishments as adult offenders. The mid-nineteenth century witnessed a crusade against the

<sup>31</sup> Charles Manga Fombad, "Researching Cameroonian Law", 2011. Available online at <https://www.nyulawglobal.org/globalex/> (accessed on December 8<sup>th</sup>, 2023).

<sup>32</sup> Anyangwe Carlson, "The Administration of Justice in a Bi-Jural Country - The United Republic of Cameroon", University of London, August 1979, p34.

<sup>33</sup> *Ibid.*

<sup>34</sup> Anyangwe Carlson, "The Administration of Justice in a Bi-Jural Country - The United Republic of Cameroon", University of London, August 1979, p131-132.

<sup>35</sup> Article 9 of the League of Nations' Agreement conferring full powers of administration and legislation to Britain and France.

<sup>36</sup> Section 11 of the Southern Cameroon High Court Law 1955 states that, subject to the provisions of any written law and in particular Section 11, the common law, the doctrine of equity and the statutes of general application which were in force in England on the 1<sup>st</sup> day of January 1900, shall in so far as they related to any matter with respect to which the legislature of the Southern Cameroon is for the time being competent to make laws, be in force within the Jurisdiction of the court.

<sup>37</sup> Anyangwe Carlson, "The Administration of Justice in a Bi-Jural Country - The United Republic of Cameroon", University of London, August 1979, p193-194.

<sup>38</sup> *Ibid* p246-247.

<sup>39</sup> Article 9 of the League of Nation Agreement conferred on British full power of administration and legislation in English Cameroon.



bad treatment of juvenile offenders and movement of their reform. This situation was captured by the Supreme Court of the United States of America in the case of *Re Gault* 1967 thus:

The early reformers were appalled by adult procedures and penalties and by the fact that children could be given long prison sentences and mixed in jail with hardened criminals. They were profoundly convinced that the society's duty to the child could not be confined to the concept of justice alone. They believed that the society's role was not to ascertain whether the child was guilty or innocent... (but what could be done) ... in his interest and in the interest of the state to save him from a downward career... The child... was to be made to feel that he is the true object of (the state's) care and solicitude, not that he was under arrest and on trial.<sup>40</sup>

In response to these movements, Christian's Missionary Organisations set up approved schools and remand homes to cater for juvenile delinquents. However, the number of child offenders continued to increase to the extent that the corrective institutions set up to reform these young offenders became small to accommodate all of them and with minimal care. It was as a result of this that the colonial government enacted the Children and Young Persons Ordinance of 1934 which was subsequently amended through several legislations. Thus, the major source of procedural law in juvenile justice's matters in Anglophone Cameroon before the enactment of the Cameroon Criminal Procedure Code was the Criminal Procedure Ordinance which was applied alongside with the Children and Young Persons Ordinance (Cap 32 of the laws of Nigeria 1958).<sup>41</sup>

### Juvenile Justice Administration and its Stages

Juvenile justice administration deals with the various institutions through which a youthful offender passes until charges are disposed of or the assessed punishment has been concluded. The administration of juvenile justice in a state is the function of the state and it is exercised by specialised agencies or institutions whose duties are assigned by law. The agencies involved in juvenile justice administration are the police, the prosecutor, the court, the social welfare and correctional facilities and their respective roles maybe summarised as arrest, investigation, prosecution, adjudication, disposition and reformation.

The police are the first law enforcement agency and works alongside the court through the prosecutor to institute legal proceedings against the suspected juveniles. The role of the police is very crucial in the process because to an extent it determines the juvenile subsequent attitude towards the state and the society, and it determines the success and failure of further interventions by the juvenile justice system. Upon the trial phase, the Presiding Magistrate takes cognizance of the social welfare report drawn up only after the infant has been found guilty and he may proceed to a further medical examination, medico psychological or further inquiry or fix an observation period before passing judgment. Once the juvenile is found guilty and for the purpose of executing the judgment based on the nature of the offence, he may be placed on probation, in a vocational or health centre, in a specialised institution or in a prison for the purpose of serving his term of imprisonment. These agencies although having specific goals, are interrelated for the purpose of achieving the main goal of juvenile justice administration.

Juvenile justice administration comprises of three stages through which a youthful offender passes that is, the pre-trial stage, the trial stage and the post-trial stage.

### The Pre-Trial Stage

The pre-trial stage is the stage at which the suspected juvenile offender first comes in contact with the justice system. It marks the initial contact between the suspected juvenile offender and the police or law enforcement agencies. It comprises of arrest, detention and bail. Although there is no law in Cameroon which specifically provides for the way and manner in which a suspected juvenile offender should be arrested, the United Nations Convention on the Rights of the Child provides that, the arrest, detention or imprisonment of a child shall be in conformity with the law.<sup>42</sup>

<sup>40</sup>C.J.S., Azoro, "Juvenile Justice Administration in Nigeria: A Review of the Rights of Child Offenders, Witnesses and Victims", *Journal of Current Issues in Nigerian Law*, Vol 2 issue1, 2014:104-132, p.108.

<sup>41</sup>Nigerian Laws were applicable in the English-speaking Regions of Cameroon by virtue of Article 9 of the British Mandate Agreement on Cameroon which gave Britain the liberty to fuse together British Cameroon with its Nigerian Protectorate for Administrative and Judicial Purposes.

<sup>42</sup>Article 37(b) of the Convention on the Rights of the Child.



However, the procedural rule regulating justice administration in Cameroon has made provision for arrest. It empowers the judicial police officer, agent of judicial police or any officer of the forces of law to arrest any person suspected of having committed an offence. It also empowers any person to arrest the author of an offence in case of a felony or misdemeanour committed *flagrante delicto*.<sup>43</sup> In line with this section, suspected juvenile offenders are not exempted. Once arrest has been effected, the parents, guardian or custodian of the infant need to be informed so as to know the where about of the child or the next step to be taken for the interest of the child.<sup>44</sup> The Beijing rules provides same as it states, upon the apprehension of a juvenile, her or his parents or guardian shall be immediately notified of such apprehension, and, where such immediate notification is not possible, the parents or guardian shall be notified within the shortest possible time thereafter.<sup>45</sup>

Detention is the second phase of the pre-trial stage. It deprives a person of his or her liberty and this right to personal liberty is guaranteed to every citizen by the Constitution of Cameroon.<sup>46</sup> The international instruments regulating justice administration in Cameroon provides that detention 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. This provision goes in consonance with the Cameroonian Criminal Procedure Code which talks about the temporary detention of juveniles. The Cameroonian Criminal Procedure Code establishes two classes of juveniles who may be detained. The first is a minor of twelve to fourteen years of age who may only be remanded in custody if he or she is accused of capital murder or of assault occasioning death.<sup>47</sup> The second is a minor aged between fourteen and eighteen years of age who may only be remanded in custody if this measure is considered indispensable.<sup>48</sup> These provisions go in line with the UN Convention on the Rights of the Child and the Beijing Rules as it states that, detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time and whenever possible, detention pending trial shall be replaced by alternative measures; Where pre-trial detention becomes inevitable, juveniles under detention pending trial should be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.<sup>49</sup>

Bail is the last phase of the pre-trial stage. It is defined as a security such as cash or bond required by a court for the release of a prisoner who must appear at a future time.<sup>50</sup> Bail is granted as of right or by the examining magistrate at his own motion, it may be granted on the application of the defendant or his counsel.<sup>51</sup> It is quite important to note that there are bailable and non-bailable offences. For instance, a person charged with felonies punishable with life imprisonment or death cannot be granted bail.<sup>52</sup> A juvenile under detention can be granted bail and if he is released on bail, the examining magistrate or the court require a written undertaking binding him over to be of good behaviour and to appear at any time when he is required to do so; a recognizance entered into by his father, mother, guardian or custodian to guarantee his appearance in court when so required; an oral engagement by any person worthy of trust, guaranteeing the minor's appearance in court.<sup>53</sup> Bail as per the aforementioned provision pertains only to the power of the examining magistrate. This provision goes in line with the Beijing rules as it states that a judge or other competent official or

<sup>43</sup> Section 30 (2)(3) of the Cameroonian Criminal Procedure Code.

<sup>44</sup> Section 37 of the CPC is to the effect that, any person arrested shall be given reasonable facilities in particular to be in contact with his family, obtain legal advice, make arrangements for his defence, consult adductor and receive medical treatment and take necessary steps to obtain his release on bail. Going by this section, arrested children are not exempted from enjoying these facilities.

<sup>45</sup> Rule 10.1 of the Beijing Rules.

<sup>46</sup> Preamble of the Cameroon Constitution provides that, no person may be prosecuted, arrested or detained except in the cases and according to the manner determined by law. Though the constitution does not specifically mention children, it is clear that the section also applies to children.

<sup>47</sup> Section 704 of the CPC.

<sup>48</sup> Section 705 of the CPC.

<sup>49</sup> Rules 13.1, 13.2 and 13.4 of the Beijing Rules and Article 37(b) and (c) of the CRC.

<sup>50</sup> B.A. Garner., Black's Law Dictionary (8<sup>th</sup> ed. 2004), p425.

<sup>51</sup> Section 222(2) of the CPC read in line with Section 224(1) which states that any person lawfully remanded in custody may be granted bail on condition that he fulfils one of the conditions referred to in section 246(g). Going by section 224(1), a juvenile offender is not exempted from the grant of bail.

<sup>52</sup> Section 224(2) of the CPC.

<sup>53</sup> Section 708 of the CPC.



body shall, without delay, consider the issue of release.<sup>54</sup> In the similar vein, the International Covenant on Civil and Political Rights also makes provision on release and went forth to state that release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings and should occasion rise, for execution of the judgment.<sup>55</sup>

## Trial stage

This stage brings the role of the court in the administration of juvenile justice. Cases of child offender who come in conflict with the law are to be dealt by juvenile courts and in the absence of such courts, the competent authority has competency to handle the matter according to the principles of a fair and just trial.<sup>56</sup> Although Cameroon does not have specialised juvenile courts, Section 713 of the Cameroonian Criminal Procedure Code converts the Court of First Instance into a juvenile court with jurisdiction to try all felonies, misdemeanours and simple offences committed by minors aged more than ten years but less than eighteen years of age and once an offence is committed by a minor and accomplices who are adults, only the ordinary law courts shall have jurisdiction to hear the case. The presiding magistrate in handling juvenile cases, has a duty of ensuring that the juvenile is 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 considers the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in the society.<sup>57</sup> Thus, rights such as presumption of innocence, right to be notified of the charges, right to counsel, right to an interpreter to name a few, ought to be respected by the presiding magistrate.

## Post-Trial Stage

The post-trial stage is the last stage of the juvenile justice system. Once the child is found guilty or the allegation against him is proven, the court orders the appropriate punishment to be given to the child in line with the provisions of the law. Thus, this stage brings into play the role of institutions responsible for the reformation and reintegration of juvenile offenders and for the application of retributive punishment.

At this stage, juveniles are placed on probation, in a vocational or health centre, in a specialised institution or in prison depending on the nature and circumstances of the case. The Cameroonian Criminal Procedure Code makes provision of the Borstal Institute but quite a part of this, there are other institutes in Cameroon such as, *Les Institutions Camerounaises de l'Enfance* (ICE) of Maroua and Betamba; *Les Centres d'Accueil et d'Observation* (CAO) of Douala and Bafoussam; *Les Centres d'Accueil des Mineurs* (CAM) of Bertoua; *Le Home Atelier* de Douala for young girls in moral danger or handicap.<sup>58</sup> These centres and institutes are meant to re-educate children in view of their socio-professional reintegration into the society.

When the court decides to place a minor in one of these institutes, the infant shall be placed in custody until the end of his education or until he attains civil majority.<sup>59</sup> When the juvenile is to serve a term of imprisonment, he shall be detained in a special section of a prison meant for minors or in the absence of such, the infant may be detained in a prison for adults but must be separated from them.<sup>60</sup> However, death penalty cannot be imposed on a child in conflict with the law in Cameroon even for aggravated offences which are punishable with death sentence.<sup>61</sup> This is because the effect of diminished responsibility is that, it reduces penalty of the offence and in cases of death penalty, the penalty is reduced to loss of liberty for from two to ten years imprisonment.<sup>62</sup>

<sup>54</sup> Rule 10.2 of the Beijing Rules.

<sup>55</sup> Article 9(3) of the ICCPR.

<sup>56</sup> Rule 14.1 of the Beijing Rules.

<sup>57</sup> Article 40(1) of the CRC.

<sup>58</sup> Danpullo Ibrahim, *The Socio-Legal Perspective of Child Protection in Cameroon* (Yaoundé: Presses Universitaires d'Afrique, 2008), p159.

<sup>59</sup> Section 726(1) of the CPC.

<sup>60</sup> Sections 706(1) and (2) of the CPC.

<sup>61</sup> Section 21(1) of the Cameroonian Penal Code stipulates that, a felony is an offence punishable with death or with loss of liberty for a maximum of more than ten years and fine where the law so provides.

<sup>62</sup> Section 87(1)(a) of the PC.





## THE REGULATORY FRAMEWORK OF JUVENILE JUSTICE ADMINISTRATION

This subtitle analyses the regulatory framework of juvenile justice administration in Cameroon. The legal framework that regulates the juvenile justice system and the institutional framework involved in juvenile justice administration are examined.

### The Legal Framework of Juvenile Justice Administration

Various legal frameworks have been provided for the regulation of juvenile justice administration in Cameroon. However, for the purpose of this research the legal framework is grouped into international legal framework and national legislation.

### The International Legal Framework

There are several human rights treaties relevant in the field of juvenile justice system which include the Universal Declaration of Human Rights (herein after referred to as UDHR), 1948<sup>63</sup>, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), the United Nations Convention on the Rights of the Child, the International Covenant on Civil and Political Rights 1966<sup>64</sup>, the African Charter on the Rights and Welfare of the Child 1990<sup>65</sup> and the African Charter on Human and Peoples Rights. Each of these instruments prohibits inhuman treatment of children accused or found guilty of having infringed the penal law and provides for procedural safeguards guarantee to a child in conflict with the law some of which include, the presumption of innocence until proven guilty, right to speedy trial, right to privacy, right to a counsel, right to be informed of the charges against him in a language he or she understands.

### National Legislation

There are several legislations dealing with juvenile justice administration in Cameroon. We have the Cameroon Constitution, regulatory acts, the Cameroonian Penal Code and the Criminal Procedure Code.

#### a. The Cameroon Constitution

The Cameroon Constitution<sup>66</sup> is the supreme law of the land and as such, any law that is inconsistent with the constitution is to the extent of its inconsistency void. The Cameroon Constitution in its preamble recognises and protects fundamental rights and freedoms of the individual that are applicable to everyone in the territory. The Constitution provides that, human person without distinction as to race, religion, sex or belief, possesses inalienable and sacred rights and that all persons shall have equal rights and obligations.<sup>67</sup> Some of the fundamental rights covered by the Cameroon Constitution include, the right to fair hearing before the courts, presumption of innocence until proven guilty, right of defence, right to life, physical and moral integrity and to humane treatment in all circumstances, no person may be prosecuted, arrested or detained except in the cases and according to the manner determined by law. These rights are fundamental in the juvenile justice system.

#### b. Regulatory Acts

The executive arm of government has signed and adopted several decrees regulating juvenile justice administration in Cameroon among which include:

Decree No 92/052 of 27 March 1992 on the penitentiary regime in Cameroon. This instrument in its article 2 provides for the creation of five categories of prisons which are, orientation prisons, relegation centres, production prisons, school prisons and special prisons. Article 3(b) states that, orientation prisons shall receive minors of less than eighteen years of age who have been convicted or placed in rehabilitation centres for observation and orientation. School prisons<sup>68</sup> and special prisons<sup>69</sup> are of special interest to the

<sup>63</sup> Adopted and proclaimed by the UN General Assembly resolution 217A (III) of 10<sup>th</sup> December, 1948.

<sup>64</sup> Adopted by the UN General Assembly Resolution 2200A (XXI) of 16 December 1966 and ratified by Cameroon on the 27 June 1984.

<sup>65</sup> Adopted by the OAU Assembly of Heads of States and Governments on 11 July 1990 and ratified by Cameroon on the 11 January 1993.

<sup>66</sup> Law No 2008/001 of 14 April 2008 to amend and supplement some provisions of Law No 96/6 of 18 January 1996 to amend the constitution of 2 June 1972.

<sup>67</sup> Preamble of the Cameroon Constitution.

<sup>68</sup> Article 6 of Decree No 92/052 of 27 March 1992 states that, school prisons are designed for the theoretical and practical training of minors who are to be rehabilitated.

<sup>69</sup> Article 7 of Decree No 92/052 of 27 March 1992 states that, special prisons are reserved to women and minors.



correction of juveniles. With regard to custody of minors, a special section is reserved for minors<sup>70</sup> and they are not subjected to the same punishment as adult offenders and they can only be assigned maintenance work within the prison.<sup>71</sup> The prison establishment meant for minors has the duty to organise classes for inmates and to put at their disposal textbooks necessary for the improvement of their knowledge and such act must be in compliance with the prison rules.<sup>72</sup>

Decree No 2001/109/PM of 20 March 2001 on the organisation and functioning of public institutions for the training of minors and the reformation of socially maladjusted minors. This Decree in its Article 2(2) classifies minors who are subjected to care and rehabilitation into four which are, abandoned children, children in distress, children in moral danger and juvenile delinquents. The appropriate rehabilitation centre for juvenile delinquent is the home-ateliers whose main role is to re-educate and promote their socio-professional integration or reintegration.<sup>73</sup> The time frame for re-education of juvenile delinquents at the home-ateliers is three years.<sup>74</sup>

Decree No 72/461 of 2<sup>nd</sup> September 1972 on the creation and organisation of the *Centre d'Accueil et d'Observation* (CAO) of Douala and Bafoussam. These institutions are designed for the reception and observation of minors in moral danger in view of assessing their situation and returning them to their families, placing them in foster homes or placing them in institutions.<sup>75</sup> These institutions admit minors of 10 to 14 years<sup>76</sup> and any decision in respect of their placement in these institutions shall be taken by the court judge with jurisdiction in the area on the basis of a social enquiry and/or observation report on the initiative of the social worker with jurisdiction or any other person concerned.<sup>77</sup> However, in case of emergency, the divisional representative of the Minister in charge of social affairs may, as an interim measure, undertake an administrative placement within these institutions and he shall refer the matter to the judge within forty-eight hours following his decision.<sup>78</sup>

Minors going through these institutions have a one year training and throughout this period, they may benefit from certain measures such as, leave of absence, holiday or youth campus, transfer to another institution that best suits his case and trial stay in family.<sup>79</sup> Parents of minors placed in these institutions have to contribute in defraying the cost of their children's stay, pharmacy, education, insurance and upkeep but children with no family ties or from poor families shall be exempted from those charges by decision of the regional official of the Ministry in charge of social affairs upon the recommendation of the director of the institution.<sup>80</sup> The system applicable to home institute is the boarding school system.

Decree No 73/115 of 22 March 1973 on the creation and organisation of the Borstal Institute of Buea. This institute is concerned with the protection, re-education, resocialisation, rehabilitation and reinsertion of juvenile delinquents, socially maladjusted youths, children in moral danger, orphans, abandoned and street children aged between twelve and seventeen years.<sup>81</sup> Any decision in respect of their placement in this institution shall be taken by the court judge with jurisdiction in the area on the basis of a social enquiry and/or observation report on the initiative of the social worker with jurisdiction or any other person concerned.<sup>82</sup> However, in case of emergency, the divisional representative of the Minister in charge of social affairs may, as an interim measure undertake an administrative placement within these institutions and he shall refer the matter to the judge within forty-eight hours following his decision.<sup>83</sup> Minors placed in this institution have a two years training and no minor may stay in a reformatory institution beyond

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<sup>70</sup>*Ibid*, Article 20(4).

<sup>71</sup>*Ibid*, Article 50(2).

<sup>72</sup>*Ibid*, Article 62.

<sup>73</sup> Article 4 of Decree No 2001/109/PM of 20 March 2001.

<sup>74</sup>*Ibid*, Article 8(1).

<sup>75</sup> Article 4 of Decree No 2001/109/PM of 20 March 2001.

<sup>76</sup>*Ibid*, Article 5.

<sup>77</sup>*Ibid*, Article 6(2).

<sup>78</sup>*Ibid*, Article 6(3).

<sup>79</sup>*Ibid*, Article 8(1) and 10(3) respectively.

<sup>80</sup>*Ibid*, Article 11.

<sup>81</sup> Decree No 73/115 of 22<sup>nd</sup> March 1973, Articles 3 and 4 respectively.

<sup>82</sup> Decree No 2001/109/PM of 20 March 2001, Article 6(2).

<sup>83</sup> Article 6(3) of Decree No 2001/109/PM of 20 March 2001 and Article 5 of Decree No 73/115 of 22<sup>nd</sup> March 1973.



18 years except its management may request an extension of a minor's stay and for such to happen, the matter shall refer to the judge of the area where the institution is established.<sup>84</sup>

However, minors of this institution may for the purpose of improving their conduct, benefit from certain measures such as, leave of absence, holiday or youth campus, transfer to another institution that best suits his case and trial stay in family.<sup>85</sup> Parents of minors placed in these institutions have to contribute in defraying the cost of their children's stay, pharmacy, education, insurance and upkeep but children with no family ties or from poor families shall be exempted from those charges by decision of the regional official of the Ministry in charge of social affairs upon the recommendation of the director of the institution.<sup>86</sup>

Decree No 85/256 of 26 February 1985 on the creation and organisation of the *Home Atelier* of Douala. It is designed for the reception as a day or boarding school or delinquent or minor girls in moral danger or from needy families with a view of reforming them and reintegrating them into socio-professional life.<sup>87</sup> The institution admits minors of 14 to 18 years<sup>88</sup> for a period of three years and their admission into the centre shall be decided by a recruitment commitment whose composition and functioning conditions shall be laid down by order of the Minister in charge of social affairs.<sup>89</sup> For home-craft centres, no minor may stay in a public training and reformatory institution beyond 18 years except its management may request an extension of a minor's stay and for such to happen, the matter shall be refer to the judge of the area where the institution is established.<sup>90</sup>

However, minors of this institution may for the purpose of improving their conduct, benefit from certain measures such as, leave of absence, holiday or youth campus, transfer to another institution that best suits his case and trial stay in family.<sup>91</sup> Parents of minors placed in these institutions have to contribute in defraying the cost of their children's stay, pharmacy, education, insurance and upkeep but children with no family ties or from poor families shall be exempted from those charges by decision of the regional official of the Ministry in charge of social affairs upon the recommendation of the director of the institution.<sup>92</sup> The system applicable to home-craft centres is either the boarding or the day-school system.

Decree No 73/333 of 25 June 1973 on the creation and organisation of the *Institution Camerounaises de l'Enfance* (ICE) of Maroua and Betamba. These institutions are designed for the reception and observation of minors in moral danger, juveniles, adjusted minors and ex-street children in view of assessing their situation. In line with the law on the organisation and functioning of public institutions for the training of minors and the reformation of socially maladjusted minors, residential establishments are vested with such authority as they are designed for the temporary reception of abandoned minors, those in difficult circumstances or minors from the establishments mentioned in the three preceding paragraphs.<sup>93</sup> This implies that residential establishments also have authority to receive minors in moral danger, maladjusted minors of either sex and juveniles thus complies with the mission of the ICE of Betamba and Maroua.

These institutes admit children from 10 to 17 years and placement under these establishments may under no circumstances be extended beyond the age of legal majority.<sup>94</sup> The system applicable to these institutes is the boarding or day-school system and minors of this institution may for the purpose of improving their conduct, benefit from certain measures such as, leave of absence, holiday or youth campus, transfer to another institution that best suits his case and trial stay in family.<sup>95</sup> Parents of minors placed in these institutions have to contribute in defraying the cost of their children's stay, pharmacy, education, insurance and upkeep but

<sup>84</sup> Articles 8(2) and 9(2) of Decree No 2001/109/PM of 20 March 2001 and Article 4 of Decree No 73/115 of 22<sup>nd</sup> March 1973.

<sup>85</sup> Decree No 2001/109/PM of 20 March 2001, Articles 8(1) and 10(3) respectively.

<sup>86</sup> *Ibid*, Article 11.

<sup>87</sup> *Ibid*, Article 4.

<sup>88</sup> *Ibid*, Article 5.

<sup>89</sup> *Ibid*, Article 6(1).

<sup>90</sup> *Ibid*, Articles 8(2) and 9(2) respectively.

<sup>91</sup> *Ibid*, Articles 8(1) and 10(3) respectively.

<sup>92</sup> *Ibid*, Article 11.

<sup>93</sup> *Ibid*, Article 4.

<sup>94</sup> *Ibid*, Articles 8(3) and 10(1) respectively.

<sup>95</sup> *Ibid*, Articles 8(1) and 10(3) respectively.



children with no family ties or from poor families shall be exempted from those charges by decision of the regional official of the Ministry in charge of social affairs upon the recommendation of the director of the institution.<sup>96</sup>

### c. The Penal Code, 1996

The Cameroonian Penal Code<sup>97</sup> has provisions relating to juvenile justice administration. Section 80 of the code sets the age of criminal responsibility at eighteen years and classifies minors into three groups with their respective punishment. Children below the age of ten years are presumed *doli incapax* and as such, no criminal responsibility shall arise from any act or omission committed by them. An offence committed by a person aged not less than ten years and not less than fourteen years may only attract special measures as provided by law thus, children of this age range maybe tried but they are expelled from retributive measures. Criminal responsibility is diminished for an offence committed by a person aged over fourteen and under eighteen years and the effect of criminal responsibility varies depending on the offence committed.<sup>98</sup> Criminal responsibility can only be diminished once the finding of mitigating circumstances is satisfactory and in relation to juvenile justice administration, the determination of the age of the offender is paramount as the mitigating circumstance.

### d. The Criminal Procedure Code, 2005

The Criminal Procedure Code<sup>99</sup> is the procedural law regulating justice administration in Cameroon. It provides specific rules for the prosecution and trial of juveniles beginning from the institution of prosecution to costs arising from measures for the protection of juveniles. The code does not specifically provide for the way and manner in which a suspected juvenile offender should be arrested thus, juveniles are apprehended in the same way as adult offenders.

With regard to the institution of prosecution, the code provides that the conduct of a preliminary inquiry is compulsory for a felony, or a misdemeanour committed by minors aged less than eighteen years and it shall be conducted in accordance with the rules of ordinary law. An infant shall not be prosecuted by direct summons except in cases of simple offence. The state counsel or the examining magistrate has the obligation to inform about the institution of proceedings against the minors to the parents, guardian or custodian of the infant. The examining shall properly carry out investigation with the aim of revealing the personality of the minor. The examining magistrate may at his discretion entrust the investigation into the material and moral situation of the family of the minor and general behaviour to the social welfare service or any other qualified person. In the absence of a birth certificate of the infant, his age shall be determined by a medical officer who shall issue a medical certificate of apparent age and where only the year of birth of a person is known, he shall be presumed to have been born on the 31<sup>st</sup> day of December of that year.

Undoubtedly, International law with regard to juvenile justice has developed in a very positive manner with the adoption of the UN Convention on the Rights of the Child as the first international instrument to adopt a coherent child right approach to the international legal regulation of juvenile justice and other instruments. However, even though the legal frameworks of Cameroon are to a greater extent compatible with the international instruments, there are some discrepancies. For instance, the concept of diversion is not mentioned as well as the lack of non-judiciary diversionary mechanism in the law, there is no specific provision on the manner and way in which a suspected juvenile offender is to be arrested and it can therefore be deduced that, the wellbeing and the best interest of the juvenile are not taking into consideration due to the lack of trained police officers, the law is equally silent on the manner in which a juvenile who is detained while awaiting trial or serving his sentence is to be treated for the purpose of facilitating his reintegration into the society. The absence of such provisions in the law may hinder the attainment of the goal of juvenile justice.

<sup>96</sup>*ibid*, Article 11.

<sup>97</sup> Law No 2016/007 of 12 July 2016 relating to the penal code.

<sup>98</sup> Section 87(1) of the Cameroonian Penal Code states that, the penalty of death or of loss of liberty for life shall be reduced to loss of liberty from two to ten years; penalty for felony shall be reduced to loss of liberty from one to five years and penalty for misdemeanour, whether of loss of liberty or of fine shall be reduced by half and the minimum to that provided by section 92(1) which states that, upon finding of mitigating circumstances after conviction of misdemeanour or of a simple offence, the court may reduce to five days any sentence of loss of liberty.

<sup>99</sup> Law No 2005/007 of 27 July 2005 on the Criminal Procedure Code regulates juvenile justice administration from section 700 to 743.



## ADJUDGING THE COMPLIANCE OF JUVENILE JUSTICE ADMINISTRATION TO HUMAN RIGHTS STANDARDS

Juvenile justice administration is intrinsically linked with the implementation of human rights standards. Several international human rights instruments as examined above have set out the standards to be adopted by state parties for the treatment of children in conflict with the law. Cameroon has enacted laws so as to ensure compliance with the human rights standards set out by international human rights instrument for instance a minor whose guilt has been established cannot be subjected to death sentence and life imprisonment taking into consideration the effect of mitigating circumstances on sentences. However, despite Cameroon effort to ensure compliance, there are still area of non-compliance for instance age in Cameroon which is of crucial importance for juvenile justice administration is too low and incompatible with the standard set by the Committee on the Rights of the Child and there are actually no diversionary measures in Cameroon as even a minor who commits a simple offence must be subjected to the judicial proceedings.

## THE INTERNATIONAL HUMAN RIGHTS STANDARDS

In view of assessing the extent to which the practice of juvenile justice administration in the English-speaking Regions of Cameroon complies with the human rights standards, it is quite important to analyse the human rights standards applicable to children in conflict with the law.

### a. General Human Rights Standards Applicable to Children in Conflict with the Law

Several international human rights instruments have set out the standards for the treatment of human beings in general among which include the Universal Declaration of Human Rights, 1948, the African Charter on Human and Peoples Rights, 1981, the International Covenant on Civil and Political Rights, 1966 and that of children in particular among which include the United Nation Convention on the Rights of the Child, 1989, the African Charter on the Rights and Welfare of the Child, 1990 and the Beijing Rules, 1985. This subtitle therefore outlines the provisions of international instruments dealing with the standards for the treatment of children. According to these instruments, the arrest, detention or imprisonment of a child must be in conformity with the law, and it must only be used as a measure of last resort and for the shortest appropriate period of time and when detention is indispensable, juveniles must be separated from adults' offenders and their procedural safeguards must be guarantee during the deprivation period. The treaties equally prohibit inhuman treatment of children accused or found guilty of having infringed the penal law.<sup>100</sup> Emphasis is also placed on the procedural safeguards which must be guarantee to juveniles at all stages of proceedings among which include, the right to fair hearing, the right to privacy, presumption of innocence until proven guilty, the right to be notified of the charges, the right to an interpreter and legal counsel, the right to the presence of a parent or guardian to name just a few.<sup>101</sup> State parties according to these instruments must set out the minimum age below which children shall be presumed not to have infringe the penal law and they must equally set out measures for dealing with children who are in conflict with the law without resorting to judicial proceedings.<sup>102</sup> Also, the aim of treatment of every child during the trial and also if found guilty of infringing the penal law must be his or her reformation, reintegration into his or her family and social rehabilitation.<sup>103</sup>

### b. Specific Human Rights Standards for Children in Conflict with the Law under the CPC

Several laws cover children in conflict with the law however, the only procedural rules regulating juvenile justice administration in Cameroon is the 2005 Criminal Procedure Code from sections 700 to 742. This subtitle therefore outlines the main provisions of the Criminal Procedure Code dealing with the specific human rights standards for children in conflict with the law in Cameroon. Minors as per section 706 of the CPC can only be detained in the Borstal institute, a special section of a prison meant for the detention of minors and where such does not exist, they may be detained in a prison for adults but must be separated from them. The separation of minors from adult detainees extends to the transfer of minors to court. Assistance by a counsel is mandatory for minors as the CPC states that, a minor shall be assisted by counsel or by any other person who is a specialist in the protection of children's rights and when the minor has no counsel, the court shall of his own motion assign one to him.<sup>104</sup>

<sup>100</sup> Article 37, CRC, Article 17(2)(a) and (b), ACRWC and Rule 13 of the Beijing Rules.

<sup>101</sup> Ibid, Article 40(2)(b), Article 17(2)(c) and (d), ACRWC and Rules 7 and 8 of the Beijing Rules.

<sup>102</sup> Article 40(3), CRC, Article 17(4), ACRWC and Rules 4 and 11.1 of the Beijing Rule

<sup>103</sup> Article 17(3), ACRWC.

<sup>104</sup>Section 719(2) and (3), CPC.



The child right to privacy is provided for by the CPC as it states that, the hearing of any matter in which a juvenile is implicated must be in camera. This right extends to the publication of judgment as, mentioning the minor's name or initials is prohibited.<sup>105</sup> Minors whose guilt has been established are subjected to special measures and penalties depending on the age. For instance, a minor aged less than fourteen years if found guilty shall be subjected to special measures; A minor aged more than fourteen years but less than eighteen years if found guilty, shall be sentence taking into consideration the application of mitigating circumstances and its effects; A minor aged fourteen to eighteen years if found guilty of a simple offence, shall be reprimanded as well as his parents, guardian or custodian.<sup>106</sup>

The special composition of the Court of First Instance sitting in cases of juvenile delinquency considers the best interest of the child. As Section 709 of the CPC talks about the composition of the Court and the presence of two assessors actually makes the court distinct from ordinary law courts and these assessors are known for the interest, they take in matters affecting juvenile or for their competence in the field.

In order to ease understanding, the aforementioned human rights standards set out by international instruments and the Criminal Procedure Code are summarised into seven concepts that is, Arrest and detention; specialised legislation, juvenile courts and trial procedures; age of criminal responsibility; due process rights; diversion, alternative sentencing and punishment.

## TO WHAT EXTENT HAS CAMEROON COMPLIED WITH THE HUMAN RIGHTS STANDARDS?

This subtitle examines the extent to which Cameroon complies with the human rights standards. The standards set out by international instruments regulating juvenile justice administration will be examined in line with the legislative framework regulating juvenile justice administration in general and in the English-speaking Regions of Cameroon in particular.

### Arrest and Detention

For a juvenile to be detained, he or she must have been arrested. The international instruments regulating juvenile justice failed to make provisions of instances under which children should be arrested, the method of arrest and of handling children during the period of arrest. They simply state that, the arrest of a child shall be in conformity with the law.<sup>107</sup> This provision is ambiguous as it gives power to state parties to conduct arrest in accordance with their own law thus, countries without special legislation applicable to children subject children to the same manner of arrest applicable to adult offenders. This is the case of Cameroon in general and the English-speaking Regions of Cameroon in particular as resort is made to the general provisions of the CPC for the conduct of arrest. Thus, children may be handcuffed, arrested during police patrol without any warrant of arrest, transported in the same vehicle with suspected adults which might affect the rest of the proceedings negatively.

The human rights instruments regulating juvenile justice made provision for detention. No child as per the CRC shall be deprived of his or her liberty unlawfully or arbitrarily. The detention or imprisonment of a child must be in conformity with the law and must be used only as a measure of last resort and for the shortest appropriate period of time. Every child deprived of liberty is to be treated with humanity and respect for the inherent dignity of human person and in a manner which takes into account the needs of persons of his or her age. Every child deprived of liberty is to be separated from adult unless it is considered in the child's best interest not to do so and entitle to due process rights.<sup>108</sup> These provisions are reiterated in Rule 13 of the Beijing Rules though emphasis is on pre-trial detention, Article 17(2)(b) of the ACRWC on the separation of children from adults in their place of detention or imprisonment and Article 10(3) of the ICCPR which talks about reformation and social rehabilitation as the essential aim of penitentiary system, segregation of juvenile offenders from adults and to be accorded treatment appropriate to their age and legal status.

The Cameroonian legislation made provisions for the separation of juvenile offenders from adult offenders in detention facilities, treatment to be accorded to juvenile offenders to facilitate their reformation and social rehabilitation. In practice, juvenile justice administration in the English-speaking Regions of Cameroon has left much to be deserved. The article reveals that, detention of

<sup>105</sup>*Ibid*, Section 720(1) and Section 721(2) respectively.

<sup>106</sup>*Ibid*, Section 724, 725(1)(a) and 729(1) respectively. These provisions demonstrate the distinction between adult offenders and juvenile offenders in terms of penalties.

<sup>107</sup> Article 37(b), CRC.

<sup>108</sup> Article 37, CRC.



juvenile offenders is not used as a measure of last resort as the examined judgments disclose that detention in prison facilities is the rule and detention in rehabilitation centres is the exception. A visit to the Borstal Institute affirms that for more than seven years no juvenile offenders have been sent to the institute.<sup>109</sup> The studies reveal that children are remanded in custody for longer periods while awaiting trial. Children detained in Kumba and Buea Central Prison are merged with adult offenders but separated in terms of sex.<sup>110</sup> Prison conditions in the English-speaking Regions of Cameroon are inhumane as there is overcrowding, no potable water, no beds, unsanitary toilets, poor quality of food to name a few. This facilitates the spread of diseases which affects children physically and psychologically.

Based on the aforementioned explanation, it can be concluded that in terms of laws there is an extent of compliance since the national legislation does not exhaustively provide same as international instruments. To a greater extent there is actually no compliance with the human rights standards in terms of practice.

### Specialised Legislation, Juvenile Courts, and Trial Procedures

The CRC in its Article 40(2) does not make it mandatory or essential that children must be dealt with by a judicial body but it instead recognises children in conflict with the law to be dealt with before a competent, impartial and independent body which is non-judicial as long as it complies with the procedures and safeguards enshrined in the CRC.<sup>111</sup> However, the CRC states that, in order to be able to give effect to their obligations under international human rights law, state parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognised as having infringed the penal law.<sup>112</sup>

With regard to the establishment of institutions specifically applicable to children alleged as, accused of, or recognised as having infringed the penal law, the committee on the rights of the child states that, a comprehensive juvenile justice system requires the establishment of specialised units within the police, the judiciary, the court system, the prosecutor's office as well as specialised defenders or other representatives who provide legal or other appropriate assistance to the child.<sup>113</sup> In Cameroon, there is no specially designated juvenile court but Section 713 of the CPC converts the Court of First Instance into a juvenile court with jurisdiction to try all felonies, misdemeanours and simple offences committed by minors aged more than ten years but less than eighteen years of age. Thus, what distinguishes the Court of First Instance as an ordinary law court from the Court of First Instance sitting in cases of juvenile delinquency is their composition.<sup>114</sup> The provision of Section 713 of the CPC limits the jurisdiction of the Court of First Instance sitting in cases of juvenile delinquency as it does not entertain matters where children commit offences with adult co-offenders. There are no specialised juvenile courts in Cameroon as the court decisions examined in this article and the experience obtained as a legal practitioner in Cameroon reveals that there is actually no specialised juvenile courts and the Court of First Instance sitting in cases of juvenile delinquency is actually the same building with a distinct composition where adult offenders are equally tried. As for the establishment of a special unit within the police, such does not actually exist in the Kumba Central Prison

<sup>109</sup>Visit of the Institute on Tuesday, 14th June 2022. A discussion with the director of the institute reveals that for more than seven years juvenile offenders have not been placed in the institute and the few that were present before the arrival of DDR trainees were from the French speaking-Regions of Cameroon. An examination of placement orders by the researcher equally reveals that the last order received from the English-speaking Regions of Cameroon was on the 30<sup>th</sup> of September 2014 following ref No LDM/43/vols/408/14 on the urgent escort of the convict to the Borstal Institute Buea from the state counsel of Mbengwi.

<sup>110</sup>Visit to the Kumba Central Prison on the 5<sup>th</sup> of May 2022 and Visit to the Buea Central Prison on the 2<sup>nd</sup> of August 2022. Following the discussion with the assistant superintendent of the respective institute, the research reveals that children are separated in term of sex but merged with adult offenders of the same sex.

<sup>111</sup>Rule 14.1 of the Beijing Rules provides same as it states that where the case of a juvenile offender has not been diverted, he or she shall be dealt with by the competent authority according to the principles of a fair and just trial. This provision clearly stipulates that there is a possibility of dealing with children in conflict with the law without resorting to judicial proceedings.

<sup>112</sup>Article 40(3), CRC.

<sup>113</sup>Committee on the Rights of the Child, General Comment No. 10: Children's Rights in Juvenile Justice, CRC/C/GC/10, 25 April 2007, paragraph 92.

<sup>114</sup>According to Section 709(1) of the CPC, the Court of First Instance sitting in cases of juvenile delinquency comprises of a presiding magistrate, two assessors, a representative of the legal department and a registrar. The presence of these assessors makes the court to be distinct.



and for the Buea Central Prison, there is a special unit for children who unfortunately are often merged with the so called “VIP Convicts”. At this juncture, it can be concluded that juvenile justice administration in the English-speaking Regions of Cameroon does not comply with the human rights standards.<sup>115</sup> The absence of specially designated juvenile courts in the Regions contradicts the provisions of international human rights instruments as it may raise issues over the efficiency and smooth running of the court process and by transferring children who commit offences with adult co-offenders to adult courts, implicitly amount to discrimination and double standards as they are denied the same treatment and advantages afforded to children who are tried before the CFI sitting in cases of juvenile delinquency.

In order to comply with international human rights instruments on the protection of children in conflict with the law, enactment of legislation is of great importance. In Cameroon, there is actually no law specifically applicable to children in conflict with law. However, laws regulating justice administration in general in Cameroon contain provisions dealing with children for instance the Criminal Procedure Code deals with the prosecution and trial of juveniles from section 700 to section 743; the Penal Code, Section 29 talks about separation of minors in detention facilities from adult offenders, Section 80 classifies children for the purpose of prosecution; Section 15(a) of the 2006 law on Judicial Organisation talks about the Court of First Instance having jurisdiction to try felonies committed by minors with a distinct composition. The above examined decrees for re-education apply to children in general, so children in conflict with the law are not exempted. These provisions are invoked in the course of administering juvenile justice in Cameroon which therefore concludes that, though not exhaustive, these laws to an extent complies with the human rights standards.

Regarding the establishment of procedures specifically applicable to children alleged as, accused of, or recognised as having infringed the penal law, the CPC provides for sections specifically applicable to the prosecution and trial of juveniles who commit offences without adult co-offenders though resort is still made to some of the general provisions of the CPC. In the case of offences committed by a minor with adult co-offenders, resort is made to the general provisions of the CPC specifically applicable to adult offenders and provisions specifically applicable to juvenile offenders may at the discretion of the presiding magistrate, be taken into consideration. It is observed at this level that, there is compliance to an extent with the human rights standards as the procedural rules regulating juvenile justice administration in Cameroon as a whole made provision of sections specifically applicable to minor offenders only though not exhaustive and by subjecting in whole minors who commit offences with adult offenders to the procedures applicable to adult offenders, is detrimental to the interest of the minor as there is a sort of discrimination which contradicts the human rights standards.

### Age of Criminal Responsibility

Determining an appropriate age of criminal responsibility is an essential part of the juvenile justice system. Article 40(3)(a) of the CRC obliges states parties to set a minimum age below which children shall be presumed not to have the capacity to infringe the penal law, but it does not mention a specific minimum age in this regard. However, the committee on the rights of the child has consistently reiterated that the age of criminal responsibility should not be fixed below the age of twelve.<sup>116</sup> Similarly, the Beijing Rules do not set out any particular minimum age of criminal responsibility but states that the age shall not be fixed at too low an age level, bearing in mind the facts of the emotional, mental and intellectual immaturity.<sup>117</sup> Issue of age of criminal responsibility is also reiterated in Article 17 of the ACRWC as it states that, there shall be a minimum age below which children shall be presumed not to have the capacity to infringe the penal law.

In Cameroon, for purposes of criminal liability, there are three different categories of children involved as provided for under Section 80 of the Penal Code as it states;

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<sup>115</sup>The Committee on the Rights of the Child in its concluding observations on the combined third to fifth periodic reports of Cameroon, CRC/C/CMR/CO/3-5, 6<sup>th</sup> July 2017, paragraph 47(c), urges the Government of Cameroon to expeditiously establish specialised juvenile courts facilities with adequate human, technical and financial resources, presided over by designated specialised judges.

<sup>116</sup>Committee on the Rights of the Child, General Comment No. 10: Children’s Rights in Juvenile Justice, CRC/C/GC/10, 25 April 2007, paragraph 32.

<sup>117</sup>Rule 4 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), 1985.





No criminal responsibility shall arise from the act or omission of a person aged less than ten years. This provision completely exonerates children below the age of ten years from criminal responsibility on the presumption of *doli incapax*. An offence committed by a person aged ten years and less than fourteen years may attract only such special measures as may by law be provided. This provision considers children aged ten years but below fourteen years of age criminally responsible, but they cannot be subjected to a penalty. For an offence committed by a person aged over fourteen and under eighteen years, responsibility shall be diminished. This provision considers children of this age range to be fully responsible as adult criminal, but lawful defences shall be invoked to reduce their punishment.

Based on the aforementioned explanation, it can be concluded that the minimum age of criminal responsibility in Cameroon in general and the English-speaking Regions in particular is ten years old which is too low and incompatible with the standard set by the Committee on the Rights of the Child as the Committee has urged the Government of Cameroon during Cameroon's review in 2010 to raise the minimum age of criminal responsibility to at least twelve years so as to meet the international standards which up to date, no modification has been made.<sup>118</sup>

### Diversion

Article 40(3)(b) of the CRC states that, state parties shall whenever appropriate and desirable, institute measures for dealing with children in conflict with the law without resorting to judicial proceedings, providing those human rights and legal safeguards are fully respected and diversion is one of those measures. Rule 11 of the Beijing Rules states that, consideration shall be given, whenever appropriate, to dealing with juvenile offenders without resorting to formal trial by the competent authority. Rule 11(2) of the Beijing Rules further states that, agencies dealing with juvenile cases shall be empowered to dispose of such cases at their discretion, without recourse to formal hearings, in accordance with the respective legal system and also in accordance with the principles contained in these rules. The juvenile or her or his parents or guardian must freely give their consent to the diversion. The Beijing Rules recommends viable alternatives to juvenile justice processing in the form of community-based diversion that is, programmes that involve settlement by victim restitution and those that seek to avoid future conflict with the law through temporary supervision and guidance.<sup>119</sup>

The examination of juvenile justice in the English-speaking Regions of Cameroon on this aspect reveals that it does not correspond with the requirement set by the CRC and the Beijing Rules. The CPC, which is the only procedural rule in Cameroon, does not provide specific provisions on the use of alternative measures in dealing with children in conflict with the law, even for simple offences. As Section 729 of the CPC states that, where a minor aged fourteen to eighteen 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-commission and this reprimand is entered into a special register. Thus, any child suspected or accused of committing criminal offence and who has attained the age of criminal responsibility must be subjected to the judicial proceedings which contradicts the standards set by international human rights instruments and the Committee on the Rights of the Child which recommended that diversion from the justice system should be a core objective of every juvenile justice system and it should be explicitly stated in the legislation.<sup>120</sup>

### Alternative Sentencing

Issue of alternative sentencing arises when the child alleged as, accused of or recognised as having infringed the penal law has not been diverted thus, he must be subject to judicial proceedings. The CRC in its article 37(b) states that, the detention or imprisonment of a child should only be used as a measure of last resort. The same is reiterated in Rule 17.1(c) of the Beijing Rules which states that, incarceration in the case of juveniles should be avoided unless there is no other appropriate response that will protect the public

<sup>118</sup> Committee on the Rights of the Child, concluding observations on the combined third to fifth periodic reports of Cameroon, CRC/C/CMR/CO/3-5, 6<sup>th</sup> July 2017, paragraph 47(a).

<sup>119</sup>United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), 1985, Commentary to Rule 11.4.

<sup>120</sup>Committee on the Rights of the Child, General Comment No. 10: Children's Rights in Juvenile Justice. CRC/C/GC/10, 25<sup>th</sup> April 2007, paragraph 24.



safety.<sup>121</sup> The CRC in its article 40(3)(a) has provided for a variety of dispositions among which include guidance and supervision orders, counselling, probation, foster care, education, vocational training programmes and other alternatives to institutional care. Rule 18.1 of the Beijing Rules also provides for a variety of disposition measures after proper adjudication of the case among which include, care, guidance and supervision orders; probation; community service orders; financial penalties, compensation and restitution; intermediate treatment and other treatment orders; orders to participate in group counselling and similar activities; orders concerning foster care, living communities or other educational settings; other relevant orders.

The CPC outlined some special measures to be ordered by the court once the guilt of a minor aged not less than ten years and not less than fourteen years has been established. These special measures include 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, placing him in a specialised institution or requiring him to enter into a preventive recognizance.<sup>122</sup> However, the same might be applied depending on the conscience of the presiding magistrate to children aged more than fourteen years but less than eighteen years whose guilt has been established and even if it has to apply, the probation order and the other special measures can only take effect after the term of imprisonment has been served by the convict.<sup>123</sup>

Findings reveal that Juvenile justice administration in Cameroon does not comply with the human rights standards as the court's decisions seem to impress that imprisonment term is actually the rule and alternative measures are the exceptions for children aged more than fourteen years but less than eighteen years. In the case of *The People of Cameroon and Letongo Stephen v. AD*,<sup>124</sup> the Court of First Instance, Limbe upon finding of mitigating circumstances for him being a minor, a first offender and for the fact that he pleaded guilty to both offences, was sentenced to an imprisonment term of fourteen months instead of being rehabilitated. The case of *The People of Cameroon v BC*<sup>125</sup> is equally illustrative as the Bamenda Court of First Instance upon finding of mitigating circumstances, subjected the convict to an imprisonment term of seven months for aggravated theft to be served in the Bamenda Central Prison rather than being subjected to a rehabilitation centre.

## CONCLUSION

The article reveals that, despite the effort put in place by the Cameroonian government to ensure proper administration of juvenile justice in Cameroon through its existing legislative acts, much still needs to be done in terms of practice in order to ensure compliance with the human rights standards. The national legislations are not exhaustive enough to be in total compliance with the human rights standards and in terms of practice, there are no special design juvenile courts in the Regions, children awaiting trial and convicted minors are merged with adult offenders, no personnel specifically trained to handle juvenile matters. This hinders the proper administration of juvenile justice and acts as an obstacle to the main goal of the juvenile justice system set by international human rights instruments.

Based on the above, the following recommendations are made: amendment of the law, establishment of an autonomous juvenile courts, separation of children from adult and convicted juveniles, creation of additional rehabilitation centres and training of key actors of the juvenile justice system and sensitization campaign. It is recommended that the national legislation specifically the Criminal Procedure Code and the Penal Code should be amended so as to be in compliance with the international human rights instruments. Section 80 of the Penal Code should be amended so as to increase the age of criminal responsibility from ten to twelve years as requested by the Committee on the Rights of the Child in 2010.

The findings of the second research question and second research objectives reveal that the only institute offering re-education and rehabilitation services to juveniles' offenders within the English-speaking Regions of Cameroon is the Borstal institute of Buea and the institute receives children based on judicial and administrative placement. The carrying capacity of the institute and the actual presence of ex-fighters of the Disarmament, Demobilization and Reintegration committed are detrimental to children in conflict

<sup>121</sup>United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), 1985, Commentary to Rule 17.1(c).

<sup>122</sup>Section 724, CPC.

<sup>123</sup>Section 725(2)(b), CPC.

<sup>124</sup>Suit No. CFIL/192C/2017 of 7<sup>th</sup> March 2018 (Unreported).

<sup>125</sup>Suit No CFIBA/0139/GCRIMCB/CO/2021 of 31<sup>st</sup> March 2021 (unreported).



with the law within the English-speaking Regions of Cameroon. I recommend that several rehabilitation centres should be created within the English-speaking Regions of Cameroon so as to deter detention in prison facilities and foster the re-education, rehabilitation and reintegration of children and juvenile offenders in the society. The training of key actors of the juvenile justice system and public sensitization is equally recommended.

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