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A CRITICAL APPRAISAL OF THE JUVENILE JUSTICE SYSTEM UNDER CAMEROON'S 2005 CRIMINAL PROCEDURE CODE: EMERGING CHALLENGES

S Tabe Tabe*

1 Introduction

One of the fundamental innovations of the 2005 Cameroonian *Criminal Procedure Code*¹ is the harmonisation of juvenile justice within the country. Before this Code came into being, juvenile justice was somewhat different in the English-speaking and French-speaking regions of the country. In the anglophone regions the major source of procedural law in juvenile justice matters was the *Criminal Procedure Ordinance*.² This Ordinance³ was applied alongside the *Children and Young Persons Ordinance* (Cap 32 of the Laws of Nigeria 1958).⁴ In the francophone regions the major source of procedural law in juvenile justice matters was the *Code d'Instruction Criminelle* and the French *Code of Criminal Procedure* of 1808. This Code was introduced into French Equatorial Africa via Senegal in 1903 and was rendered applicable to Cameroon by the Decree of 22 May 1924. Other instruments which were applicable in Francophone Cameroon in matters of juvenile justice include the following: the Decree of 30 November 1928 on Special Courts for Minors;⁵ the Decree of 30 October 1935 on the protection of Minors;⁶ Law N°58/203 of 26 December 1958 on

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¹ *Cameroonian Criminal Procedure Code* of 27 July 2005.

² *Nigerian Criminal Procedure Ordinance* Cap 43 of 1958.

³ The *Nigerian Criminal Procedure Ordinance* Cap 43 of 1958 comprised some four hundred and eighty-seven sections covering every aspect of criminal procedure in Anglophone Cameroon.

⁴ The *Nigerian Children and Young Persons Ordinance* Cap 32 of 1958 was applicable only to the English-speaking Regions of the country i.e. North-West and South-West Regions. Nigerian Laws were applicable in the English-speaking regions of Cameroon by virtue of article 9 of the British Mandate Agreement on Cameroons which gave Britain the liberty to fuse together British Cameroons with its Nigerian Protectorate for administrative and judicial purposes. See the *British Cameroons Order-in-Council N°1621* of June 1922 which ordered the fusion of British Cameroons to Eastern Nigeria.

⁵ This Decree governed the notion of probation and the procedure for administration of juvenile justice in criminal matters.

⁶ The above Decree protected minors and regulated the preventive placement of minors who were vagabonds, abandoned, or orphans.

Forced Labour;⁷ and Law N°58/203 of 26 December 1958 on the Adoption and Simplification of criminal procedure and subsequent modifications.⁸

For about 50 years after political independence and reunification, differences continued to exist in the administration of juvenile justice in Cameroon as there were no immediately available national laws of general application and also because of the carrying forward of ideas, values and priorities established under the different colonial administrations.⁹ In 2005 the Cameroonian Parliament passed a new *Criminal Procedure Code*, part of which replaced the colonial laws on the administration of youth justice.¹⁰ The sections of the Code dealing with juvenile justice is an amalgamation of all hitherto existing laws in the country that pertained to this area of justice. It serves as the first formal instrument in Cameroon since independence because before this Code was legislated there were no uniform laws on matters of juvenile justice.

The aim of this article therefore is to examine the changes introduced by the new *Criminal Procedure Code* on matters of juvenile justice. In doing so, the article will examine how the administration of youth justice has evolved 50 years after independence. It will also discuss the shortcomings in the treatment of juvenile delinquents since the enactment of the new *Criminal Procedure Code* in 2005. But before this, a word needs to be said on the definition of a juvenile.

⁷ This law protected minors from forced labour.

⁸ This law encouraged expedition in the trials of minors and discouraged adjournments in cases where minors were concerned. For a fine understanding of the above laws, see Mukete "Rights of the Juvenile Delinquent" 21-22.

⁹ Ajanoh 1998 *AJICL* 292.

¹⁰ Other post-colonial texts on juvenile justice in Cameroon include the following: the *Constitution of Cameroon*, 1996; the *Penal Code* of 1965-67 ; Decree N°92/052 of March 2 1992 creating a prison system in Cameroon; Decree N°90/524 of 23 March 1990, creating the National Commission for the protection of abandoned and delinquent children and children in moral danger; Decree N°92/053 of 27 March 1992 creating the Commission on Penitentiary Administration of prison system and circulars of the keeper of the seals (7 in all) relating to the prevention of the imprisonment of minors.

2 Definition of a juvenile

A juvenile under national and international law is defined in terms of age.¹¹ Black's Law Dictionary¹² defines a juvenile as "a person who has not reached the age (usually 18) at which one should be treated as an adult by the criminal justice system". The *Beijing Rules of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice* define 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".¹³ The *Children and Young Persons Ordinance* (Cap 32 of the Laws of Nigeria 1958) defines a child as "a person under 14 years of age, while a young person as someone who falls between 14 and 17 years of age".¹⁴ Article 1 of the *United Nations Convention on the Rights of the Child* of November 20, 1989 defines a child as "any person under the age of 18 years unless, under the law applicable to the child, majority is attained earlier".

Cameroonian criminal law also makes a distinction between adult and juvenile offenders. The *Penal Code*¹⁵ clearly states that any person below 18 years of age is a child. So a juvenile offender under Cameroonian law will mean every human being below the age of 18 years who commits an offence. However, Cameroonian criminal law exempts a child under 10 years of age from criminal responsibility under the presumption of *doli incapax*. Under section 80(1) of the *Penal Code*, "no criminal responsibility shall arise from the act or omission of a person aged less than 10 years". The rationale for this rule is that the proof of the *actus reus* with *mens rea* regarding the criminal acts of such a person is immaterial because there is no criminal responsibility. The Cameroonian *Penal Code* in section 80(2) has also adopted the Common Law rule that the criminal responsibility of a child between 10

¹¹ Dambazau *Criminology and Criminal Justice* 172.

¹² Garner *Black's Law Dictionary* 871.

¹³ Under the standard of the United Nations, the age limit will depend on the particularities of various legal systems. There is therefore provision for a wide variety of ages coming under this definition, ranging from 7 to 18 years. See *United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules)* (1985).

¹⁴ Section 2 *Nigerian Children and Young Persons Ordinance* Cap 32 of 1958. Under this Ordinance there were two classes of juveniles: Children and Young Persons. Children were further divided into three subclasses: i) a child or children under the age of 7; (ii) a child or children over 7 but under 12; and (iii) a child or children between 12 and 14.

¹⁵ See s 80 of the *Cameroonian Penal Code*, which classifies minor offenders into three groups: below 10 years, *doli in capax* – incapable of criminal intention; 10-14 years attracts only special measures; 14-18 years diminished responsibility.

and 14 years must be backed not only by the elements of the crime but also by what has been referred to as "mischievous discretion".¹⁶ Under the Common Law therefore, a person above 14 years has been presumed to be responsible for his actions entirely as if he were 40.¹⁷ The *Cameroonian Penal Code* has followed this stance in section 80(3) by stating that "for an offence committed by a person aged over 14 and under 18 years, responsibility shall be diminished". On its part section 80(4) provides that "a person aged 18 years or over shall be responsible as an adult". The implication of this provision is that a person less than 18 years of age in Cameroon is considered a minor or a child as far as criminal proceedings are concerned.

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.¹⁸ Where only the year of birth of a person is known, he shall be presumed to have been born on the 31st day of December of that year.¹⁹

3 General appraisal of some aspects of juvenile justice under the 2005 *Criminal Procedure Code of Cameroon*

Like adults, young persons have the responsibility to be law-abiding. When a young person breaks the law, he must be charged, prosecuted and sentenced like an adult. Under this section, it is imperative to look at the institution of prosecution for juveniles, the temporary detention of juveniles and the applicable measures and penalties for juveniles.

¹⁶ The proof that the child could "discern between good and evil at the time of the offence committed". See Smith and Hogan *Criminal Law* 179, cf Dambazau *Criminology and Criminal Justice* p.173.

¹⁷ Dambazau *Criminology and Criminal Justice* 173.

¹⁸ Section 703(1) *Cameroonian Penal Code*.

¹⁹ Sections 703(1) and (2) *Cameroonian Penal Code*.

3.1 *The institution of criminal proceedings against a juvenile*

Criminal proceedings can be instituted in courts vested with criminal jurisdiction by persons or authorities competent to do so:²⁰ the State Counsel, the police, private persons and special prosecutors. Article 40 of the *United Nations Convention on the Rights of the Child* provides the conditions under which a child may be tried for an offence. It provides *inter alia*:

(1) States parties recognize the right of every child alleged as accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms for 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.

By article 700(1) of the 2005 *Criminal Procedure Code* of Cameroon,²¹ a preliminary inquiry²² shall be compulsory for a felony or a misdemeanour committed by minors aged less than eighteen years of age. A novelty of the Code is that preliminary inquiry shall be carried out by an examining magistrate (*Juge d'Instruction*) who shall be a magistrate of the bench,²³ and such an inquiry can be carried out only if the State Counsel by a judicial act requests the Examining Magistrate to do so.²⁴ The judicial act by which the State Counsel seizes the Examining Magistrate is known as a holding charge and such a charge preferred by the State Counsel must be in writing and could be made against a known or an unknown person.²⁵ It shall contain the statement of the offence committed and must mention the fact that prosecution has not been discontinued²⁶. So where a minor aged less than 18 years is accused

²⁰ Oluwatoyin *Criminal Procedure in Nigeria* 57.

²¹ Hereinafter referred to variously as the CPC or the Code.

²² "Preliminary inquiry" means an investigation of a criminal charge held by a magistrates' court with a view to the committal of an accused person for trial before the High Court. It is a criminal hearing usually conducted by a magistrate to determine if there is sufficient evidence to prosecute an accused person. For a fine discussion on preliminary inquiry, see Tabe Tabe "Look at Preliminary Inquiry" 49-80.

²³ Section 142(3) of the Code. Before this innovation s 23(1) of Law N°89/019 of 19/12/89 modifying and completing certain dispositions of Ordinance n°72/4 of 26/08/72 on Judicial Organisation vested the competence to carry out preliminary inquiry in the Legal Department - more precisely the State Prosecutor.

²⁴ Section 144(1) of the Code.

²⁵ Section 143(1) of the Code.

²⁶ Sections 143(1) and 144(1) of the Code.

of committing a felony or misdemeanour, preliminary inquiry shall be carried out in accordance with the rules of ordinary law as stated in the Code.²⁷

The object of preliminary inquiry is to discover the truth of the matter, and to ensure that there is a case against the juvenile before the case is sent to court for trial.²⁸ The State Counsel or the Examining Magistrate shall inform the parents, guardian or custodian of the infant that proceedings have been instituted against the minor.²⁹ He shall also carry out all measures of investigation necessary to reveal the personality of the minor.³⁰ He 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 upbringing.³¹ He shall entrust the investigation to the social welfare service or failing this to any qualified person.³²

The Examining Magistrate may order a medical examination and any psychiatric tests, if need be.³³ He may, by a reasoned ruling, decide to place the minor in a welfare reception centre or in an observation centre.³⁴ Under section 702(1) of the *Criminal Procedure Code*,³⁵ the Examining Magistrate may entrust the custody of a minor to: (a) his parents, guardian, custodian or any other trustworthy person; (b) a welfare centre or an observation home; any specialised institution; or a vocational training or health centre. However, any order to place a minor in any of the above institutions must always state the reasons for the custody and shall specify the duration there, which must not exceed the date when judgement is delivered.³⁶

It is to be recalled that measures of the custody of a juvenile shall be taken in the best interest of the minor, and may be cancelled or changed at any time.³⁷

²⁷ Sections 144(1) and 700(2) of the Code.

²⁸ Section 154(3) of the Code.

²⁹ Sections 154(3) and 700(4) of the Code.

³⁰ Sections 700(4) and 701(1) of the Code.

³¹ Sections 701(1) and 701(1)(a) of the Code.

³² Sections 701(1)(a) and 701(1)(b) of the Code.

³³ Sections 701(1)(b) and 701(3) of the Code.

³⁴ Sections 701(3) and 701(4) of the Code.

³⁵ Hereinafter variously referred to as the CPC or the Code.

³⁶ Section 702(2) of the CPC.

³⁷ Sections 702(2) and 702(3) of the CPC.

3.2 *The temporary detention of juveniles*

Generally speaking, juveniles who are under arrest or awaiting trial ("un-tried") are presumed innocent and shall be treated as such.³⁸ The Code establishes two classes of juveniles who may be detained. The first is a juvenile between 12 and 14 years old and the second, a juvenile between 14 and 18 years years old. According to section 704 of the CPC a minor of 12 to 14 years of age shall not be remanded in custody, except when he/she is accused of capital murder³⁹ or of assault occasioning death.⁴⁰ On its part, section 705 of the CPC is to the effect that a minor aged between 14 and 18 years old may be remanded in custody only if this measure is considered indispensable. In this connection, the Code is in line with the Beijing Rules⁴¹ in that detention of juveniles should be avoided before trial to the extent possible and limited to exceptional circumstances, and efforts should be made to apply alternative measures.

Under section 706(1) of the CPC, juveniles shall be detained only in: a Borstal institution; or in a special section of a prison meant for the detention of minors. Where there is no Borstal institution or special section of a prison, the juvenile may be detained in a prison for adults but must be separated from them.⁴² In the case where juveniles are being transferred, or when they are brought before an Examining Magistrate or before the court, steps shall be taken to prevent any contact with adult detainees or with the public.⁴³

A juvenile under detention can be granted bail. Bail is surety taken or an amount of money deposited by a person duly authorised for the appearance of an accused person at a certain day and place to answer and be justified in law.⁴⁴ When a juvenile is released on bail, the Examining Magistrate or the court requires: a written undertaking binding him over to be of good behaviour and to appear at any time

³⁸ Article 17 *United Nations Rules for the Protection of Juveniles Deprived of their Liberty* (1990).

³⁹ Capital murder is dealt with in s 276 of the *Penal Code*.

⁴⁰ Assault occasioning death is dealt with in s 278 of the *Penal Code*.

⁴¹ Article 17 of the *Beijing Rules*.

⁴² Section 706(2) of the CPC.

⁴³ Sections 706(2) and 707 of the CPC.

⁴⁴ For a fine discussion on the concept of bail, see Ewang Sone "Differing Conceptions of Bail" 179-197.

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; and an oral engagement by any person worthy of trust, guaranteeing the juvenile's appearance in court.

3.3 The court with competent jurisdiction in matters of juvenile delinquency

A Juvenile Court is a special court constituted to try juveniles for certain offences.⁴⁵ They are courts of criminal jurisdiction for the trial of children and young persons.⁴⁶ By section 713 of the CPC 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. So too, where an infant is involved in the same case as one or more adults, the preliminary inquiry shall be carried out in conformity with the rules of ordinary law.⁴⁷

The place of trial of a juvenile will depend on the venue. Venue in this context refers to the proper place where a suit shall be instituted.⁴⁸ Section 714 of the CPC outlines the Courts of First Instance which may have jurisdiction to try minors. They include: the court of the place where the offence is committed; the court of the place of residence of his parents, custodian or guardian; the court of the place where the minor has been found; and the court of the place where the minor has been placed permanently or provisionally.

Sections 709 to 712 of the CPC deal with the composition of the court in matters of juvenile delinquency. According to section 709(1), the Court of First Instance sitting in cases of juvenile delinquency shall comprise: a Magistrate of the bench, President of the Court of First Instance; two Assessors, a representative of the Legal Department; and a Registrar.

⁴⁵ Oluwatoyin *Criminal Procedure in Nigeria* 46.

⁴⁶ See Ibitoye 1967 *NMLR* 76, where the High Court reiterated the point that Juvenile Courts are courts of criminal jurisdiction for the trial of children and young persons.

⁴⁷ Section 716 of the CPC.

⁴⁸ Nwadialo *Civil Procedure in Nigeria* 52.

Assessors and alternate assessors shall be appointed for a term of two years by a joint decision of the Ministers in charge of Justice and Social Affairs. They shall be chosen from among persons of both sexes of Cameroonian nationality aged 30 years at least, and who are known for the interest they take in matters affecting juveniles or for their competence in that field.⁴⁹

Before assuming their duties, the Assessors shall take oath before the Court of First Instance to be true and loyal in the discharge of their duties and scrupulously keep the secrets of deliberation⁵⁰. They shall have the right to deliberate and vote on the sentences and measures to be taken against the infant.⁵¹

In case the Assessors who are summoned fail to be present during the deliberations, the President of the court shall after ascertaining their absence sit alone and refer to this fact in his judgment⁵². In every situation a special register shall be kept containing all decisions taken relating to infants less than 18 years old.⁵³

Generally speaking the hearing of any matter in which a juvenile is implicated shall be *in camera*.⁵⁴ The only persons entitled to attend the hearing shall be the parents, the infant's custodian or guardian and the witnesses, counsel, the representatives of services or institutions dealing with problems relating to children and probation officers.⁵⁵ However, the presiding magistrate may: a) authorise the presence of the representative of organisations responsible for the protection of human rights and the right of the child at hearings; or (b) read out the statement of the social welfare officer drawn up pursuant to section 701 of the CPC and put any question relevant to this information either to the infant himself or to his parents or guardian.⁵⁶

⁴⁹ Section 709(2) of the CPC.

⁵⁰ Sections 709(2) and 709(3) of the CPC.

⁵¹ Sections 709(3) and 710 of the CPC.

⁵² Sections 710 and 711 of the CPC.

⁵³ Sections 711 and 712 of the CPC.

⁵⁴ Section 720(1) of the CPC.

⁵⁵ Sections 720(1) and 720(2) of the CPC.

⁵⁶ Sections 720(2) of the CPC.

The presiding magistrate may at any time request the infant to withdraw during all or part of the hearing.⁵⁷ He may likewise order the witnesses to withdraw after giving evidence.⁵⁸

3.4 Applicable measures and penalties which could be imposed on a juvenile

The Court of First Instance can impose punishments on juveniles found guilty of the offence charged. The following punishments may be imposed: the juvenile or the juvenile and his parents may be ordered to enter into a recognizance to be of good behaviour,⁵⁹ the juvenile may be placed under the supervision of a probation officer, a relative or other fit person; the juvenile may be sent to a corrective institution, such as a borstal institute; or the juvenile and his parents may be ordered to pay fines, damages or costs.

Section 724 of the CPC requires that if a minor aged fourteen years or less is found guilty, the court shall admonish him before ordering one of the following measures: 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.

The specialised institutions where a juvenile can be placed in Cameroon include the following: the *Centre d'Accueil et d'Observation de Douala CAO* which was created by Decree N°72/461 of 2nd September 1972; the Borstal Institute Buea, created by Decree N°73/115 of 22nd March 1973; the Betamba Child Welfare Institute (*Institution Camerounaise de l'Enfance de Betamba*) created by Decree N°73/333 of 25th June 1973; the "Home Ateliers" Douala for young girls in moral danger created by Decree N°85/256 of 26th February 1985; and the Maroua and Bertoua Child

⁵⁷ Section 720(3) of the CPC.

⁵⁸ Section 720(3) of the CPC.

⁵⁹ By Article 48 of the *Penal Code* of Cameroon, where a person under the age of eighteen shall have committed any act defined as an offence, the President of the District Court may require his parents, guardian or the person responsible under customary law to enter into the recognizance to be forfeited if the minor shall commit any similar act within the space of one year unless the obligor shall prove that he took all reasonable steps to avoid the minor's committing the offence.

Welfare Institutes.⁶⁰ These are reformatories and re-education centres for children above 10 and below 18 years of age who have either committed an offence or are at risk of committing one or are in moral danger, are deserted and are already manifesting a predisposition towards delinquency.⁶¹

When the court decides to place a minor in one of the reformatory centres, the minor shall be in custody until the end of his education or until he attains civil majority.⁶² Any minor placed in an authorised institution, except where he has been granted leave of absence by the director thereof, shall be deemed to be in a state of legal detention and shall be arrested by warrant in the event of escape and sent back to the institution.⁶³ The court may, however, before a decision on the merits, order provisional probation for a particular length of time as an observation period.⁶⁴

In the case where a minor aged more than 14 years but less than 18 years is found guilty, the court shall by a reasoned decision pass a sentence of a fine or imprisonment. However, imprisonment should still come as a measure of last resort because alternative measures could be applied. No minor may be sentenced to death even for the aggravated offences of capital murder of another child or of an ascendant because with diminished responsibility, a death sentence shall be reduced to imprisonment for a period of 10 years where no other mitigating circumstances is taken into account.⁶⁵

4 The rights of a juvenile under the criminal justice system of Cameroon

Specific laws and procedures have been enacted in Cameroon to promote and protect the rights of juveniles. The Preamble to the 1996 *Constitution of Cameroon* incorporates all international instruments on human rights.⁶⁶ The same Preamble

⁶⁰ Ngassa *Gender Approach* 137.

⁶¹ Ngassa *Gender Approach* 137. Minors could be sent to these centres either by the court or through the Ministry of Social Affairs.

⁶² Section 726(1) of the CPC.

⁶³ Sections 726(1) and 726(2) of the CPC.

⁶⁴ Sections 726(2) and 726(3) of the CPC.

⁶⁵ Ngassa *Gender Approach* 139.

⁶⁶ Some international conventions and instruments ratified by Cameroon in view of child protection and juvenile justice include the following: United Nations *Convention on the Rights of the Child* (1989); *United Nations Standard Minimum Rules for the Administration of Juvenile Justice*

stresses in its last paragraph that the State guarantees to all of its citizens the rights and freedom enumerated in the Preamble. Article 65 makes the Preamble an integral part of the Constitution. From this perspective, international instruments on the rights of a juvenile have their place in the legal landscape of Cameroon.⁶⁷ So, in dealing with the rights of a juvenile, these international instruments must be read alongside the 2005 *Criminal Procedure Code* of Cameroon. An investigation into the rights of the juvenile in the Cameroonian criminal justice system shows that in addition to rights which the juvenile enjoys on an equal footing with adult offenders, there is a right which is peculiar to the juvenile offender. The rights of a juvenile under the Cameroonian criminal justice system include the following:

4.1 Common rights enjoyed by juvenile and adult offenders

The common rights which the juvenile enjoys with adult offenders in Cameroon include the following:

4.1.1 The right to presumption of innocence

The presumption of innocence⁶⁸ is a right established by the *Cameroonian Constitution*⁶⁹ in favour of any person accused of a criminal offence. So firm is this right that the juvenile is not even obliged to say a word from the day of his arrest to the time of judgment except, perhaps, that the court expects him to have the courtesy of pleading to the charge, if and when read to him. The criminal justice system of Cameroon and the *Constitution* place on the prosecution the duty to prove

(*Beijing Rules*) (1985); *African Charter on the Rights of the Child and Welfare of the Child* (1997); *Standard Minimum Rules for the Treatment of Prisoners* (1955); *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (1984); *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power adopted by the General Assembly* (1985); and the *Safeguards Guaranteeing Protection of the Rights of those facing the Death Penalty* (1984).

⁶⁷ Such instruments include the *United Nations Standard Minimum Rule for the Administration of Juvenile Justice* (1985) which stresses institutional treatment in a 26(1) in the following terms: "the objective of training and treatment of juveniles placed in institutions is to provide care, protection, education and vocational skills, with a view to assisting them to assume socially constructive and productive roles in society". See also a 40(2) *Convention on the Rights of the Child* (1989) which outlines the rights of a juvenile.

⁶⁸ For a fine discussion on the presumption of innocence under Cameroonian Criminal Law, see Nah "Protection of the Maxim Innocent until Proven Guilty" 231-254.

⁶⁹ See the Preamble of the *Constitution of Cameroon*, 1996. See also ss 8(1) and (2) of the CPC.

the juvenile's guilt. There is no corresponding duty on the juvenile to establish his innocence.

4.1.2 *The right of the juvenile to be informed of the charge*

Every juvenile who is arrested or detained shall be informed in simple language by the Examining Magistrate of the facts and grounds for his arrest.⁷⁰ Under section 170(2) of the Code, the Examining Magistrate must in addition inform the juvenile that he/she has the choice to prepare his defence. The juvenile shall be informed promptly and directly of the charges against him or her, and if appropriate through his or her parents or legal guardians and to have legal or other appropriate assistance in the preparation and presentation of his or her defence. Even during the trial the presiding Magistrate shall explain to the juvenile in simple language the nature of the charge brought against him.⁷¹ The requirement that the juvenile should be informed turns on the elementary proposition that a person is *prima facie* entitled to his freedom and is required to submit to restraints on his freedom only if he/she knows in substance the reason why it is claimed that this restraint should be imposed.⁷²

4.1.3 *The right to remain silent*

Any juvenile who is arrested or detained shall have the right to remain silent or avoid answering any question until after consultation with a legal practitioner or any person of his own choice. The law permits the juvenile to remain silent during preliminary inquiry until the arrival of his lawyer, so as to better prepare his defence.⁷³

4.1.4 *The right to be brought promptly before a court*

Every juvenile arrested for a criminal offence has the right to be brought promptly before a court. An assessment of "promptness" has to be made in the light of the object and purpose of this requirement, which is to protect the individual against

⁷⁰ Section 170(1) of the CPC.

⁷¹ Section 718(1) of the CPC.

⁷² *Osita Human Rights Law* 113.

⁷³ Section 170(2) of the CPC.

arbitrary interference by the state.⁷⁴ Judicial control is intended to minimise the risk of arbitrariness.⁷⁵ The degree of flexibility in interpreting and applying the notion of "promptness" is therefore very limited. It implies a delay not exceeding a few days.⁷⁶ A delay of over four days was found to be too long,⁷⁷ and where there is no basis for an arrest, overnight is too long.⁷⁸

The Court of First Instance or Magistrate's Court has an advantage in that it has summary jurisdiction.⁷⁹ That is to say, a juvenile who commits an offence can be quickly charged and tried before it without all of the complications of the procedure applicable before the High Court.⁸⁰

4.1.5 *The right to counsel*

Everybody should be informed of the right to be assisted by a lawyer upon arrest.⁸¹ A juvenile has the right to communicate with his lawyer during preliminary inquiry. Under section 172(1) of the CPC, counsel for the juvenile shall have the right to defend his client whenever he appears before the Examining Magistrate. He shall be informed of the matter in writing at least 48 hours before the preliminary inquiry, in case he resides within the seat of the court; where he resides outside the seat of the court he must be informed at least 72 hours previously.⁸²

During the full trial, the juvenile shall be assisted by counsel or by any other person who is a specialist in the protection of children's rights.⁸³ Where the juvenile has no counsel, the court shall of its own motion assign one to him.⁸⁴ Where the juvenile's counsel, who has been summoned by all means with written proof, does not attend

⁷⁴ Starmer and Christou *Human Rights Manual* 11.

⁷⁵ Starmer and Christou *Human Rights Manual* 11.

⁷⁶ Starmer and Christou *Human Rights Manual* 11.

⁷⁷ Starmer and Christou *Human Rights Manual* 11.

⁷⁸ Starmer and Christou *Human Rights Manual* 11.

⁷⁹ Ngassa *Gender Approach* 135.

⁸⁰ Ngassa *Gender Approach* 135.

⁸¹ Principle 5 *United Nations Basic Principles on the Role of Lawyers* (1990); *AG Trinidad and Tobago v Whiteman* 1992 3 NZLR 540.

⁸² Section 172(2) of the CPC.

⁸³ Sections 172(2), 719(2) and 352 of the CPC.

⁸⁴ Sections 719(2) and 719(3) of the CPC.

two consecutive court sessions, the court shall assign another counsel.⁸⁵ Mention of this fact shall be made in the record book and in the judgment

4.1.6 *The right to adequate time and facilities for the defence*

Every juvenile charged with a criminal offence has the right to adequate time and facilities for the preparation of his/her defence.⁸⁶ This right includes access to documents and other evidence which the juvenile needs to prepare his/her defence.⁸⁷

4.1.7 *The right to an independent and impartial court*

In the determination of any charge, the juvenile is entitled to an independent and impartial court.⁸⁸ The right to an impartial court is intended to protect the juvenile from actual and presumed bias.⁸⁹ Independence depends on the manner of appointment and duration of office, protection from external influences and the appearance of independence.⁹⁰ The judge should not constantly interrupt defence counsel for where this is so impartiality is lost because the judge virtually takes over the prosecution.

4.1.8 *The right to be present at the trial*

A juvenile has the right to be present at his/her trial. Where the juvenile has absconded or disappeared, the court may order any measures which it deems necessary to ensure his/her appearance in court.⁹¹ It may in particular, by a reasoned decision, order that the juvenile be brought before the court and in such a case the juvenile shall appear at the earliest possible date before the court which made the decision.⁹² Where the minor cannot be found and the interests of third

⁸⁵ Sections 719(3) and 719(4) of the CPC.

⁸⁶ Article 14(3)b *International Covenant on Civil and Political Rights (ICCPR)* (1966); a 6(3)(b) *European Convention on Human Rights (ECHR)* (1950).

⁸⁷ Article 14(3)b *ICCPR*; a 6(3)(b) *ECHR*.

⁸⁸ Article 6(1) *ECHR*.

⁸⁹ Starmer and Christou *Human Rights Manual* 15.

⁹⁰ Starmer and Christou *Human Rights Manual* 15.

⁹¹ Section 723(1) of the CPC.

⁹² Sections 723(1) and 723(2) of the CPC.

parties require that the matter be adjudicated upon, the juvenile shall be tried *in absentia*.⁹³

4.1.9 *The right to an interpreter*

By virtue of section 183(1)(a) of the CPC a juvenile has the right when appearing before an Examining Magistrate to an interpreter paid for out of public funds. The interpreter must interpret correctly to the juvenile anything said in a language he does not understand. Simultaneously, there should be adequate interpretation to the Examining Magistrate of anything said by the juvenile. The interpreter shall not be less than 21 years old.⁹⁴ He shall take oath to give a true interpretation of the statement of any person who speaks in a different language or dialect and the fact of his having taken oath shall be mentioned in the record of the proceedings.⁹⁵

When an interpreter does not give a true and faithful interpretation, any party to the proceeding may point this out and move the court to have the interpreter replaced.⁹⁶ The court may also of its own motion point out an interpretation which is not true and faithful and shall proceed to replace the interpreter after having heard the parties.⁹⁷

4.2 *The right peculiar to juvenile offenders*

The right to privacy is peculiar to juvenile offenders standing trial. By section 720 of the CPC any proceedings concerning, involving and against a juvenile must be heard *in camera*, that is, in closed courts. The only persons entitled to attend the hearing shall be the parents, the infant's custodian or guardian, and the witnesses, counsel, the representatives of services or institutions dealing with problems relating to children and probation officers.⁹⁸

⁹³ Sections 723(2) and 723(3) of the CPC.

⁹⁴ Sections 723(3) and 183(1)(b) of the CPC.

⁹⁵ Sections 183(1)(b), 183(1)(d), 354 and 354(2) of the CPC.

⁹⁶ Sections 354(2) and 355(1) of the CPC.

⁹⁷ Sections 355(1) and 355(2) of the CPC.

⁹⁸ Section 720(2) of the CPC.

5 Hurdles that beset juvenile justice in Cameroon

Fifty years after independence, juvenile justice in Cameroon continues to be beset by a number of hurdles. These include:

5.1 *The lack of dedicated juvenile courts*

Cameroonian jurisdictions dealing with juveniles are somewhat different from those of other countries.⁹⁹ After fifty years of independence, juveniles are still tried in the Court of First Instance. Although the 2005 *Criminal Procedure Code* has harmonised juvenile justice in Cameroon, there is still a need for the creation of juvenile courts outside the regular penal system to try young offenders. A juvenile court is a special court constituted to try juveniles for certain offences.¹⁰⁰ They are courts for the trial of children and young persons. Juvenile Courts have no jurisdiction to entertain civil actions pertaining to the custody and maintenance of children.¹⁰¹

Juvenile courts possess certain characteristics which are different from regular courts. Juvenile courts are not open to the public. Only members and officers of the court and the parties to the case, legal representatives, and other persons directly concerned with the case should be allowed to attend court.¹⁰² *Bona fide* representatives of news agencies are also allowed in court. It is our suggestion that the identity of juveniles should not be published by any person except with the leave of the court. Any person who acts in contravention of this provision should be punished. It is also suggested that a juvenile court sits either in a different building or room from that in which the regular courts are held, or on different days or at different times from those at which the regular sittings of court are held.¹⁰³

⁹⁹ See for example the sentencing of children in France and Nigeria. In France special courts have been established outside the regular courts to try juveniles (e.g. the French Ordinance of 2 February 1945 and the Law of 9 September 2002 both of which regulate juvenile justice). This is so, too, with Nigeria, where the Children and Young Persons Law of 1973 has created special courts for children.

¹⁰⁰ Oluwatoyin *Criminal Procedure in Nigeria* 46.

¹⁰¹ Oluwatoyin *Criminal Procedure in Nigeria* 46.

¹⁰² Oluwatoyin *Criminal Procedure in Nigeria* 46.

¹⁰³ Oluwatoyin *Criminal Procedure in Nigeria* 46.

5.2 Juveniles allowed to associate with adult offenders

Young persons arrested by the police and the gendarmerie are detained in the same police cells as adult offenders. It is to be recalled that these cells are usually filled with hardened criminals who routinely recount frightening stories of burglary and murder in the presence of juveniles. Furthermore minors who are in pre-trial detention are sometimes sent to prisons where adult offenders are found. Minors may consequently learn some bad habits from seasoned criminals before they get out of prison. It is suggested in this connection that when it is necessary to incarcerate children under 18 years they should not be detained in a common jail with adults. Neither should convicted children under 18 years old be incarcerated in a common jail with adult offenders. They should be sent to a reformatory school. A specialised child police unit should be created in every police station, which would help facilitate the bail process of detained minors and also help in the prompt notification of the detention to parents of the minor.

5.3 The continuous use of the expressions "conviction" and "sentence" instead of "judicial placement"

The use of the expressions "conviction" and "sentence" by Magistrates of the Court of First Instance should be avoided in cases of juvenile justice. Instead a finding of guilt should be recorded, where the juvenile committed the offence. The preference of the Cameroonian law should be to seek educative solutions rather than to impose prison sentences or other repressive measures on the juvenile. This has been the approach of countries like France, where special courts have been established outside the regular penal system, and where these courts have more resources placed at their disposal to enable them to cope with the multiple problems of juveniles. Under French law preference is given to educative measures rather than repressive and strictly penal ones.¹⁰⁴ The founding principles of the French system of juvenile justice are specialised jurisdiction, mitigated criminal responsibility due to age, the placement of priority placed on educational rather than law enforcement measures.

¹⁰⁴ See the French Ordinance of 2 February 1945 and the Law of 9 September 2002.

By article 7(1) of Decree N° 2001/109/PM of 20 March 2001, judicial placement should be made at the end of the trial of a juvenile offender in the place of an imprisonment in a regular prison. It should not carry the heading "imprisonment warrant" but simply a placement order. Some judicial officers and magistrates still seem to confuse the terms "sentence" and "judicial placement".¹⁰⁵ 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 to a term of imprisonment.¹⁰⁶ 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". In *The People v AK (an Infant)* case,¹⁰⁷ the Tiko Court of First Instance charged a juvenile with simple theft punishable under section 318(1)(a) of the *Penal Code*. At the end of the trial, which was held *in camera*, the accused was sentenced to a term of imprisonment of 3 years. Similarly, in *The People v FB (an Infant)* case,¹⁰⁸ the Muyuka Court of First Instance erred when it charged a juvenile for simple theft punishable under section 318(1)(a) and sentenced him to 3 years using an imprisonment warrant form. In fact, it is inappropriate to sentence a juvenile delinquent to a term of imprisonment and worse still to use an imprisonment warrant form.

What is expected of the magistrate in the case where a juvenile is on trial and is found guilty is for him to draw up a placement order at the end of the trial. Some magistrates have, however, followed the right procedure. For instance, in *The people v TB and LAL*¹⁰⁹ the Mamfe Court of First Instance conducted a trial and, after establishing the accuseds' guilt, drew up a placement order placing the first juvenile at the Borstal Institute of Buea and putting the second juvenile under supervision by a probation officer.

¹⁰⁵ For a fine discussion on this point, see Mukete "Rights of the Juvenile Delinquent" 47-49.

¹⁰⁶ Mukete "Rights of the Juvenile Delinquent" 47-49.

¹⁰⁷ As discussed in Mukete "Rights of the Juvenile Delinquent" 48.

¹⁰⁸ As discussed in Mukete "Rights of the Juvenile Delinquent" 48.

¹⁰⁹ As discussed in Mukete "Rights of the Juvenile Delinquent" 48.

5.4 *The lack of juvenile detention facilities*

The number of institutions for the reformation and re-education of juveniles in the country today is insufficient to accommodate the increasing number of juvenile delinquents. Since independence only six centres have been created for the detention of juveniles in Cameroon. These include: the *Centre d'Accueil et d'Observation de Douala* CAO created by Decree N°72/461 of 2 September 1972; the Borstal Institute Buea created by Decree N°73/115 of 22 March 1973; the Betamba Child Welfare Institute (*Institution Camerounaise de l'Enfance de Betamba*) created by Decree N°73/333 of 25 June 1973; the "Home Ateliers" of Douala for young girls in moral danger created by Decree N°85/256 of 26 February 1985; and the Maroua and Bertoua Child welfare Institutes.¹¹⁰ These 6 institutions put together have an intake capacity of 660 distributed as follows: Borstal Institute: 120 places; Betamba: 120 places; CAO Douala: 120 places; Maroua: 60 places; Cam Bertoua: 60 places; and Home Atelier: 180 places.¹¹¹

These 6 institutions are not enough to contain the increasing number of juvenile delinquents. Delinquency today is seen as an extreme consequence of a child's unsuccessful interaction with other elements in his environment, such as family conflict, mental or physical disabilities, inadequate educational opportunities, or racial tensions, which either individually or collectively negate the development of a child.¹¹² The causes of juvenile delinquency are multiple, and they include peer pressure, parental neglect, parental imitation, genetic or biological factors, poor education, lack of opportunities, media violence, poverty, divorce, child abuse, and other similar causes of adult criminal behaviour.¹¹³ As a result, the number of juvenile delinquents in Cameroon today has increased, so more juvenile detention facilities should be created. This would help to reduce the number of minors sent to prison. Children sent to prison are rendered vulnerable in many ways. They lack family affection and basic needs such as food. In addition, they are raped in exchange for food and other gifts and favours.¹¹⁴ Juveniles incarcerated in prisons

¹¹⁰ Cf Ngassa *Gender Approach* 137.

¹¹¹ Ngassa *Gender Approach* 137.

¹¹² Dambazau *Criminology and Criminal Justice* 174.

¹¹³ Dambazau *Criminology and Criminal Justice* 174.

¹¹⁴ Danpullo *Socio-legal Perspective* 97.

are open to most forms of sexual abuse in the prison environment, like rape, paedophilia and homosexuality.¹¹⁵ They are vulnerable to physical and sexual abuse by older inmates, many of whom are living with HIV/AIDS. It is suggested that the creation or establishment of juvenile detention centres in every region of the country will go a long way to reduce the abuse of minors by adult offenders in our prisons.

5.5 The absence of a clear distinction between "a child" and "a young person" in penal law

The *Children and Young Persons Ordinance* (Cap 32 of the Laws of Nigeria 1958), which was applicable in former West Cameroon (North West and South West Regions), made a clear distinction between "a child" and "a young person". A child was defined under the Ordinance as a person under 14 years of age and a young person as someone between 14 and 17 years of age.¹¹⁶

The Ordinance divided juveniles into two classes: children and young persons.¹¹⁷ Children were further divided into three subclasses: (1) a child or children under the age of 7; (ii) a child or children over 7 but under 12 years old; and (iii) a child or children between 12 and 14 years old. A child under the age of 7 was not liable for any act or omission done by him constituting an offence.¹¹⁸ A child over the age of 7 but under the age of 12 was not criminally responsible for an act or omission constituting an offence unless it was proved that at the time of the act or the omission he had the capacity to know that he ought not to do the act or make the omission.¹¹⁹ A child between 12 and 14 years old was liable for any act or omission done by him constituting an offence. This classification was important in determining whether an accused was a child, a young person or an adult. If the accused was considered within the definition of a child or a young person, he could be tried only by a juvenile court.

¹¹⁵ Danpullo *Socio-legal Perspective* 97.

¹¹⁶ Section 2 *Nigerian Children and Young Persons Ordinance* Cap 32 of 1958.

¹¹⁷ Section 2 *Nigerian Children and Young Persons Ordinance* Cap 32 of 1958.

¹¹⁸ Section 2 *Nigerian Children and Young Persons Ordinance* Cap 32 of 1958.

¹¹⁹ Section 2 *Nigerian Children and Young Persons Ordinance* Cap 32 of 1958.

The substantive rules of criminal law in Cameroon as contained in the *Penal Code* of 1965-67 use the term infant in section 80 without making a distinction between children and young persons. Under the *Penal Code* a child below 10 years old is *doli incapax*.¹²⁰ An offence committed by a person aged more than 10 years and less than 14 may attract only such special measure as may by law be provided.¹²¹ And for an offence committed by a person aged over 14 and under 18 years responsibility shall be diminished.¹²² This classification of the *Penal Code* is similar to that of the Ordinance, but it does not fix a minimum age for juvenile offenders and it does not make a distinction between children and young persons. Likewise, section 700(1) of the 2005 *Criminal Procedure Code* merely makes mention of minors aged less than 18 years without any distinction as to children or young persons. It would have been better if the 2005 *Criminal Procedure Code* had followed the stance of the Ordinance in making the distinction between children and young persons with regards to juvenile justice.

5.6 The lack of basic knowledge of juvenile justice by judicial police officers

The police are the biggest, most visible and most important sub-system of the criminal justice system.¹²³ The police provide the entry point into the criminal justice system either through crime reports from the public or their own discovery.¹²⁴ The policeman is the "gate-keeper of the justice system". He decides who goes into the system, and his decision has wide implications for the other components of the system.¹²⁵

In Cameroon, Judicial Police Officers serve as auxiliaries of the State Counsel in the investigation and detection of crimes. Section 79 of Law N°2005 of 27 July, 2005 instituting a Criminal Procedure Code for the entire country defines the status of a Judicial Police Officer as follows:

¹²⁰ Section 80(1) of the *Cameroonian Penal Code*.

¹²¹ Sections 80(2) and 80(2) of the *Cameroonian Penal Code*.

¹²² Sections 80(2) and 80(3) of the *Cameroonian Penal Code*.

¹²³ Dambazau *Criminology and Criminal Justice* 90. The other components of the criminal justice system includes the courts and the prisons.

¹²⁴ Dambazau *Criminology and Criminal Justice* 90.

¹²⁵ Dambazau *Criminology and Criminal Justice* 90.

- (a) Officers and non-commissioned officers of the gendarmerie;
- (b) Gendarmes in charge even in an acting capacity of a gendarmerie brigade or gendarmerie post;
- (c) Superintendents of police;
- (d) Deputy superintendents of police;
- (e) Gendarmes and inspectors who have passed the judicial police officers' examination and taken the oath;
- (f) Public servants even if they are temporarily performing the functions of head of an external service of the National Security.

The duties of Judicial Police Officers are outlined in section 82 of the *Criminal Procedure Code*. They include the investigation of offences, collecting evidence, identifying offenders and accomplices and bringing them before the Legal Department, executing rogatory commissions of judicial authorities, serving court processes, executing warrants and court decisions.

Apart from the duties defined in section 82 above, Judicial Police Officers shall also receive complaints and reports against persons and shall make preliminary investigations in cases of felonies and misdemeanours committed *flagrante delicto*.¹²⁶ They are also empowered to check the identity and situation of any suspected person and where necessary detain him/her in special police custody for not longer than 24 hours.¹²⁷ Furthermore, they are invested with the powers to conduct searches or cause to be searched any person suspected of being in possession of arms or any other object likely to be used in the commission of an offence.¹²⁸

The police therefore need to be schooled in the body of principles for the protection of all persons under any form of detention or imprisonment¹²⁹ and the *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*¹³⁰ as well as the *United*

¹²⁶ Sections 83(1) and (2) of the CPC.

¹²⁷ Sections 83(1), 83(2) and 86(1) of the CPC.

¹²⁸ Sections 83(1), 83(2) and 86(1) of the CPC.

¹²⁹ See the *United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* (1988).

¹³⁰ *United Nations Rules for the Protection of Juveniles Deprived of their Liberty* (1990).

Nations Convention on the Rights of the Child.¹³¹ The government should open up many education centres to educate Judicial Police Officers on these international instruments for the protection of juveniles. Juvenile justice should be taught in police schools as a subject. This will help the officers to better handle cases involving minors. In their training, emphasis should be laid on the rules for the protection of juveniles deprived of their liberty. Judicial Police Officers should be made to understand that the deprivation of liberty of a minor must be a last resort, must last for the shortest possible period of time, and must be limited to exceptional cases. Priority should be given to a speedy trial to avoid unnecessarily lengthy detention periods.

6 Conclusion

An attempt has been made in this article to examine juvenile justice in Cameroon 50 years after independence. There is a uniform system of juvenile justice throughout the country with the coming into force of the 2005 *Criminal Procedure Code*. The Code notwithstanding, children under detention are still grossly abused across the country. Juveniles are incarcerated in prisons with adult offenders, some of whom are hardened criminals. The establishment of special juvenile prisons will go a long way to protect the young offenders from the exploitation and abuses of adult offenders. Since the government of Cameroon has ratified treaties and conventions dealing with juvenile justice, it should work alongside international organisations to improve conditions for minors in the country's prisons. Together, they should provide juvenile detention centres with televisions, educational materials, books, beds and blankets, while also training judicial police and prison officers to treat juvenile offenders correctly. The ultimate aim of the government should be to get juveniles out of adult prisons and into rehabilitation centres where they can be educated and reintegrated into society. Emphasis should be laid on increasing the reintegration of young people into the community following custody, and not the overuse of incarceration as a method for dealing with troubled youths. Seminars and workshops should be organised on a regular basis on juvenile justice, in which a wide range of groups will be invited to participate, including judges, judicial police officers, social

¹³¹ *Convention on the Rights of the Child* (1989).

workers, prison administrators, children's services organisations, victims, parents, young offenders, educators, advocacy groups and social-policy analysts. The strategy of the government in improving juvenile justice should be focused on three areas: youth crime prevention, providing young people with meaningful consequences for their actions, and the rehabilitation and reintegration of young offenders.

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List of abbreviations

AJICL	African Journal of International and Comparative Law
CPC	Cameroonian Penal Code
ECHR	European Convention on Human Rights
ICCPR	International Covenant on Civil and Political Rights
NMLR	Nigerian Monthly Law Reports