Finding a Place for Children: The Impact of Cameroon’s Criminal Procedure Code on Children in Conflict with the Law,

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Abstract

In the face of a number of complex challenges—including lack of resources, an often oppressive neoliberal international economic system, and low salaries—the Cameroonian government has taken important steps over the last 20 years to improve its justice sector generally, and specifically in relation to children in conflict with the law. Having ratified most of the leading international and regional legal instruments, including the Convention on the Rights of the Child, the Cameroonian government has shown an interest in bringing its police, adjudicatory, and prison justice sectors into line with international norms and practice. As an example of a mixed jurisdiction country, with a history of both French and British colonial rule, the 2005 Criminal Procedure Code (CPC) represents Cameroon’s first attempt at unified criminal procedure legislation since independence in 1960. The CPC contains many procedural protections for all accused of crimes, as well as articles directed specifically toward children in conflict with the law.

Cameroon is a highly diverse country with great human capital and a strong national identity. Cameroon also boasts a rich diversity of more than 200 ethnic groups, each of which has an informal (or traditional) justice mechanism in place to handle issues in the community. While the approximately 220 Customary Courts recognized by the Cameroonian government do not officially have the jurisdiction to address criminal matters, there is wide recognition that many children who are accused of breaking the law are heard in the community in traditional justice settings. Some traditional courts incorporate restorative justice principles, and these mechanisms appear to keep children out of the formal, government-run justice system.

This article describes how children in conflict with the law experience the justice system in Cameroon, and analyzes the potential and actual impact of the 2005 CPC on the administration of justice for these children. The article also considers the complexity of parallel traditional (informal) justice systems that deal with child (and adult) crime and describes two such systems. While the CPC provides an important legislative framework for improved treatment of children in conflict with the law, the article concludes by proposing increased attention and resources toward diversion from the criminal courts, specialization in child-sensitive procedures, and increased representation for children in conflict with the law. Though not comprehensive, these proposals aim to provide concrete methods for working toward ensuring fair treatment of children in conflict with the law and reducing the number of children who enter the formal justice system.
I. INTRODUCTION

While the causes of child delinquency are complex, though there is recognition that urbanization, poverty, and family separation underlie much child crime in Africa.\(^1\) The Cameroonian justice system as it pertains to children has not heretofore been widely or systematically studied.\(^2\) Some non-governmental organizations (NGOs) have undertaken specific research problems on children in conflict with the law,\(^3\) but large gaps exist in the academic literature in the area of the causes of child crime in Cameroon, and children’s treatment once entangled in the criminal justice system. This article analyzes the potential and actual impact of the 2005 Criminal Procedure Code (CPC) on the administration of justice for children in conflict with the law in Cameroon. As an example of a mixed jurisdiction country, with a history of both French and British colonial rule, the CPC is the first attempt at unified criminal procedure legislation since Cameroon’s independence in 1960. While the CPC provides an important legislative framework for improved treatment of children in conflict with the law, critical steps remain in order to achieve a fair system for adjudicating children in conflict with the law.

Following this introduction, section II of this article provides an overview of the Cameroonian political system and the justice system as it relates to children in conflict with the law. Section III provides an in-depth account of how children in conflict with the law experience the justice system in Cameroon, with a focus on the 2005 Criminal Procedure Code (CPC).

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\(^1\) See generally Suzanne Arcand & Yves Brillon, *Comparative Criminology: Africa*, 6 *ACTA CRIMINOLOGICA* 199, 204 (1973) (describing “disintegration of traditional family structures, the uprootings from the rural milieu, detribalization, and living conditions in the large urban centres” as potential causes of juvenile delinquency). In Cameroon, the majority of children in conflict with the law face charges of theft.

\(^2\) This article has its genesis in fieldwork the author undertook in Cameroon as an intern for UNICEF in June and July 2010. The author prepared an internal report for UNICEF that assessed the justice system for both children in conflict with the law and child victims of crimes, and provided detailed recommendations. The article reflects the author’s personal views, and not those of UNICEF. The author has made significant structural and substantive revisions, and has removed sensitive information concerning, for example, the interior of prisons because this material was obtained under the auspices of UNICEF, not as an independent researcher.

data gathering for section III is organized in part on the recently developed United Nations Office of Drugs and Crime Juvenile Justice Assessment Toolkit. Section IV provides a brief overview of traditional methods of approaching children in conflict with the law. Section V provides three modest suggestions for how to improve treatment of children in conflict with the law. Specifically, Section V discusses diverting children from the formal justice system, training specialists in children’s rights throughout the governmental system, and providing children in conflict with the law with legal counsel and/or assistance.

II. OVERVIEW OF THE POLITICAL AND JUSTICE SYSTEMS OF CAMEROON

A. The Political Framework

The Republic of Cameroon is a unitary republic in central Africa, bordering Nigeria, Chad, Central African Republic, Gabon, and Equatorial Guinea. The former French Cameroun and part of British Cameroons merged in 1961 to form the present boundaries. Cameroon is home to over 200 different ethnic and linguistic groups, and the total population on 1 January

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2010 was 19,406,100. The population is young and growing: an estimated 43.6% are under 15, and 64.2% are under 25; the birth rate is estimated at 34.1 births per 1,000 people, while the death rate is 12.2. Seventy percent of Cameroon’s population works in agriculture (many at a subsistence level), and the country’s GDP per capita (keeping in mind purchasing power parity) is US $2,300.

Approved by referendum 20 May 1972, Cameroon’s current Constitution has been revised several times, most recently in 2008. The constitution divides Cameroon into 10 regions, each headed by a presidentially appointed governor. The 10 regions are: Far North (Extrême Nord), North (Nord), Adamawa (Adamaoua), Centre (Centre), East (Est), South (Sud), littoral (Littoral), Southwest (Sud-Ouest), Northwest (Nord-Ouest) and West (Ouest). The Northwest and Southwest were once part of the British colony the Southern Cameroons and thus the residents speak English speaking; the other regions were in French Cameroun, and now are largely speak French. English and French are the official languages.

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7 Id.
8 Id.
9 See Charles Manga Fombad, Researching Cameroonian Law, Globalex, http://www.nyulawglobal.org/Globalex/Cameroon1.htm (last visited Jan. 30, 2011) (“Since independence and the reunification of the former British Southern Cameroons and the French Cameroun, the country can be said to have had at least three different Constitutions and numerous constitutional amendments. What can be considered to be the first Constitution was in reality the Constitution under which French Cameroun became independent on 1 January 1960. The second Constitution was in reality simply an amendment of the 1960 Constitution of the French Cameroun in 1961, when the British and French administered parts of the country were reunited and was styled as the Constitution of the Federal Republic of Cameroon, which ushered in a highly centralized federal system. On 2 June 1972, after a referendum, a new unitary Constitution was adopted and the name of the country was changed to the United Republic of Cameroon. In 1984, the apellation “United Republic” was replaced with “Republic.” What is currently in force is this 1972 Constitution although it was substantially amended in a rather controversial manner in 1996 with a new text of 69 articles replacing the old text of 39 articles.”). See also Constitution of the Republic of Cameroon (1996), Art 68 (describing how laws from prior, federated state will remain in force unless repugnant or amended).
10 A recent decentralization law changed the name from “provinces” to “regions.”
Reflecting its unique bifurcated colonial history, Cameroon’s legal system is a classic mixed jurisdiction.\textsuperscript{12} Previous to 2007, when the CPC came into effect, criminal procedure in the two Anglophone regions followed the Nigerian common law.\textsuperscript{13} Likewise, criminal procedure in the eight Francophone regions followed civil law, as passed by the Cameroonian legislature.\textsuperscript{14} The CPC, however, represents the first unified criminal procedure code in Cameroon, and is in effect in the entire country. The CPC is based primarily on the French civil law system with some British common law influences.\textsuperscript{15} In addition, customary law continues to play an important role in Cameroonian society, and traditional chiefs exercise a considerable amount of power over their local population, though this power varies by region. The Cameroonian state recognizes some traditional power holders, and the Ministry of Territorial Affairs and Decentralization (MINATD) manage this relationship.\textsuperscript{16}

Cameroon’s executive branch comprises a President sitting as chief of state, a Prime Minister appointed by the president as head of government, and the cabinet appointed by the

\textsuperscript{12} Decree 72 of the 26th August 1972 expands upon Article 68 of the Constitution in organizing the judiciary in a bijural manner. \textit{But see} Charles Manga Fombad, \textit{An Experiment in Legal Pluralism: The Cameroonian Bi-Jural/ Uni-Jural Imbroglio} 16 UNIV. TASMANIA L.R. 209, 216 (1997) (describing as weak Article 68’s language concerning Cameroon’s bijural nature). \textit{But see} Vernon Valentine Palmer, \textit{Mixed Legal Systems . . . and the Myth of Pure Laws}, 67 La. L. Rev. 1205, 1206–08 (discussing the pervasiveness of mixed legal systems when adopting factual, rather than normative or prescriptive criteria). Based within the criminal justice realm, this article clearly addresses public, rather than private law, and avoids the problem of “using private law as the proxy for judging entire legal systems.” \textit{Id.} at 1209.


\textsuperscript{14} \textit{See}, e.g., Decree of Nov. 30, 1928 establishing special courts and probation for minors; Decree of Oct. 30, 1935 on the protection of children.

\textsuperscript{15} A comprehensive discussion of the derivation of legal concepts in the CPC is beyond the scope of this article. However, the concept of habeus corpus clearly derives from British common law. \textit{See} CPC Art. 584 (establishing habeus corpus relief).

\textsuperscript{16} The relationship between the state and traditional power structures is discussed in more detail \textit{supra} Section IV.
president from proposals submitted by the prime minister. The legislative branch is a unicameral national assembly of 180 members elected by direct popular vote to serve five-year terms; the president can either lengthen or shorten the term of the legislature. The Constitution calls for an upper chamber for the legislature, to be called a Senate, but this body has yet to be established.

The judiciary operates as a three-tier system. The first level is comprised of courts of first instance and high courts whose jurisdiction depends on the gravity or nature of the matter. Further, the government recognizes 227 Customary Courts (Tribunaux Coutumiers) that have the same force of law as the First Instance Courts. The second level is made of appeal courts with one in each region. At the top there is a Supreme Court (the top appellate court in the nation, wherein judges are appointed by the President), as well as Constitutional Council and a High Court of Justice (also called the Court of Impeachment). Cameroon accepts compulsory ICJ jurisdiction.

Cameroon’s criminal justice system favors punishment in the form of deprivation of liberty and fines, and is best characterized as retributive in nature. Restorative justice principles do not play a role in the administration of the formal justice system. By contrast, traditional leaders routinely involve both parties in informal reconciliation and mediation efforts. The integration of

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20 The High Court of Justice only tries high level political figures accused of treason or conspiracy against national security. Fuabeh P. Fonge, MODERNIZATION WITHOUT DEVELOPMENT IN AFRICA: PATTERNS OF CHANGE AND CONTINUITY IN POST-INDEPENDENCE CAMEROONIAN PUBLIC SERVICE 253 (1997).
21 This acceptance of jurisdiction was, of course, a prerequisite to seeking a decision from the ICJ in the Cameroon v. Nigeria case concerning the Bakassi Peninsula discussed supra note 5.
22 Restorative Justice is defined by the UN Basic Principles as an approach in which the victim/survivor and offender, and in some cases other persons affected by a crime, “participate actively together in the resolution of matters arising from the crime, generally with the help of a facilitator.”
customary law into the modern state can be challenging,\textsuperscript{23} though, as Section IV highlights, customary law remains a vibrant source of alternative dispute resolution, and cannot be ignored.\textsuperscript{24}

Cameroon has ratified a range of international and regional legal instruments including the International Covenant on Civil and Political Rights (ICCPR),\textsuperscript{25} the Convention on the Rights of the Child (CRC),\textsuperscript{26} the African Charter on Human and Peoples’ Rights,\textsuperscript{27} and the African Charter on the Rights and Welfare of the Child.\textsuperscript{28} Most recently, Cameroon signed, but has not yet ratified the African Youth Charter.\textsuperscript{29} As such, Cameroon’s challenge lies not with the ratification of international conventions, but in the putting in place and carrying out laws, structures, and policies that will bring the system in line with international obligations.

B. Overview of Children in Conflict with the Law

<table>
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<th>Table 1: Who are the Children in Conflict with the Law?</th>
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<td>Number of children in detention\textsuperscript{30}</td>
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<td>Percentage of those children in pre-trial detention\textsuperscript{32}</td>
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\textsuperscript{27} Signed 23 July 1987; ratified 20 June 1989.


\textsuperscript{30} At penitentiaries only; not including police custody (garde à vue), children’s homes, or administrative detention.

\textsuperscript{31} Institut National de la Statistique, \textit{Annuaire Statistique du Cameroun} 2006.

\textsuperscript{32} Pre-trial detention refers to the period when children are deprived of liberty between the moment of being charged and the moment of being sentenced. This is also referred to as preventive detention, or detention prévenu, in French.

\textsuperscript{33} Institut National de la Statistique, \textit{Annuaire Statistique du Cameroun} 2006.
Number of children in care and welfare facilities | 11,077 in 64 orphanages and 13 public institutions
---|---
Average time in pre-trial detention | 10 months
Percentage of children with legal counsel | Not available
Percentage of children with legal assistance | Not available
Birth registration rate | 70%

1. Legislation

The 1967 Penal Code (Code Pénal) and the 2005 Code of Criminal Procedure (Code de Procédure Pénale) (CPC) (which came into effect in January 2007) spell out the crimes and criminal justice procedure for both children and adults for the entire country. This subsection section will briefly introduce some key sections of the Penal Code and the CPC, and the next subsection will discuss key institutions and the policy framework in which these statutes operate.

Section III, infra, addresses, among other things, the challenges of implementation.

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34 Government of Cameroon Written Replies to Children's Rights Committee, at 15.
36 Legal counsel (assistance judicaire) refers to representation in court by a qualified lawyer (or a legally trained person who is authorized to appear in court).
37 Legal assistance (assistance juridique) means advice which can be provided by NGOs, paralegals, or even offered through rights-based training to children in conflict with the law at any stage of the criminal justice process.
38 Birth registration provides a means for acquiring citizenship benefits, including public education, and national identity cards. Further, police can detain any person who does not display an national identity card. For a reference of the criminalization of those who lack an identity card, see Immigration and Refugee Board of Canada, Cameroon: Information regarding the issuance of national identity cards, including the reasons for issuing them and the language used in the write-in sections of the cards, 30 April 2002, CMR38939.E, available at http://www.unhcr.org/refworld/docid/3df4be2034.html (last visited Feb. 4, 2011) (“Cameroonian are required to carry their ID cards with them at all times because if they do not, they police will arrest them during raids or times of curfew and take them to the police station where they will be detained.”).
39 Pauvreté et disparités chez les enfants du Cameroun (2009). The rate of birth registration is higher in urban areas (86%) versus rural areas (56%), and higher in richer households (91%) versus poorer households (51%). Id.
The Penal Code treats children differently depending on their age. Children below 10 years of age totally lack criminal responsibility, and cannot be brought before a judge for sentencing. Children between 10 and 14 can be considered criminally responsible, but a court may not give a prison sentence, and may only provide “special measures,” such as returning the child to her family, putting the child on probation, or placing the child in the home of a trustworthy person or a boarding school or charitable institution. Children between 14 and 17 are subject to the “special measures” described above, but courts can also give prison terms to children aged 15 to 17. All children receive mitigated sentences and fines.

The CPC has been called a revolutionary document as it brings together formerly disparate Anglophone and Francophone systems. The law as written does respect certain rights of children, though the real challenge in Cameroon concerns the implementation of the written law.

The CPC recognizes any person less than 18 years old as a minor. The Court of First Instance has jurisdiction to try all felonies, misdemeanors, and simple offences committed by children aged at least 10 years old and under 18 years old. However, if a child is accused of a

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41 The UN Committee on the Rights of the Child has expressed concern at this age, and recommends raising the minimum age to 12 years, at least. United Nations, supra note 38, at ¶¶ 79(a) and 80(a).
42 Though their parents can be forced to provide compensation to a victim of the child’s crime.
43 As per Penal Code Art. 80.
44 Njungwe, supra note 13 at 69.
45 Criminal Procedure Code of the Republic of Cameroon (hereinafter CPC) (2005), Section 700(1). This report primarily uses the term “child” instead of “minor.”
crime with an adult accomplice or co-offender, the ordinary law courts take jurisdiction.\textsuperscript{46} The CPC states that pre-trial detention of children 14-17 can take place only when “indispensable,” and children between 12 and 14 shall not be remanded in custody, except when accused of capital murder, murder or of assault occasioning death.\textsuperscript{47} When detention of a child is “necessary,” the law provides that it should be in a borstal institution, a children’s prison, or in a separate area of the adult prison.\textsuperscript{48} The CPC provides that any child charged with an offense has the right to assistance by counsel or by “any other person who is a specialist in the protection of children’s rights, and that the court shall assign a counsel to any child who cannot afford it.\textsuperscript{49} For those children lacking a birth certificate proving their age, the judge can order a medical examination, though the one court proceeding observed by the author believed a child’s stated age based on his visible appearance.

The CPC provides that a three-person panel – one judge of the First Instance and two assessors (assesseurs) – must sit to adjudicate in cases where a child has been accused of committing misdemeanors or felonies, though a judge alone adjudicates these cases when a child allegedly acted with an adult.\textsuperscript{50} The CPC also creates probation officers (délégués de liberté surveillé) to monitor non-detained children.\textsuperscript{51}

2. Policy Framework

Cameroon does not have a separate system for administering justice for children in conflict with the law. The minimum age of responsibility is 10. Meanwhile, a child is defined as any person under 18. Children rarely have any legal representation or assistance, and almost

\textsuperscript{46} CPC Section 713.  
\textsuperscript{47} CPC Sections 704–05. In practice, children aged 14 and above are regularly imprisoned.  
\textsuperscript{48} CPC Section 706.  
\textsuperscript{49} CPC Section 719(2) and (3).  
\textsuperscript{50} CPC Sections 709 and 713.  
\textsuperscript{51} CPC Sections 730-37.
never at the police station. However, private (often religious) associations of paralegals and NGOs working in and around prisons have the capacity and desire – though not the resources – to provide crucial legal assistance to some children. The Ministry of Social Affairs (MINAS) social workers at the police, court, and prison play a key role in providing paralegal assistance to children, though these offices are under-staffed and under-funded.

Cameroon’s formal justice system does not incorporate substantive restorative justice principles.52 Victims rarely show up to court, which makes their inclusion in a restorative justice process quite difficult. The Criminal Procedure Code does emphasize the best interest of the child.53 Most criminal procedures involving children accused of crime are supposed to take place in camera, though in practice, this does not happen on a regular basis. Caregivers are encouraged to be a part of the child’s court case, and the law does give children the chance to be represented by counsel or others (CPC Art. 719(2)). Again, in practice, few children receive adequate counsel.

Cameroon’s justice policy and legislation stems from the legislation office (direction) within the Ministry of Justice. This office manages the drafting of a wide variety of legislation, well beyond scope of justice projects. The legislation office generally writes a draft law, consulting with relevant ministries at several points in the process. The Ministry of Justice’s legislation office also plays a role in drafting presidential decrees. The Ministry has written (though not released publically) a draft Law for the Creation, Organization and Functioning of the

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52 Restorative Justice is an approach to criminal matters in which the victim/survivor and offender, and in some cases other persons affected by the crime, “participate actively together in the resolution of matters arising from the crime, generally with the help of a facilitator.” UNICEF Toolkit on Diversion and Alternatives to Detention 2009 Glossary. In broader terms, restorative justice is a way of “responding to criminal behavior which emphasizes repairing the harm caused by the crime and ‘restoring’ harmony as much as possible between offender, victim/survivor and society.” Id.
53 CPC Art. 702(3)
National Commission on the Rights of Children, as well as a draft Code for the Protection of the Child.

There is very little coordination of the justice system pertaining to children on an institutional level in Cameroon. Despite the multiple state actors that interact with a child in conflict with the law, no juvenile justice coordinating bodies exist at national, regional, or departmental levels. The Ministry of justice appears to play a convening role in terms of wider justice policy.

The Ministries of Justice and Social Affairs, along with the Direction of National Security are the primary agencies involved with the delivery of services to children in conflict with the law. The Prison Administration, judges, prosecutors, and other court personnel all work under the Ministry of Justice; the social workers work under the Ministry of Social Affairs; the assessors and probation officers are appointed by both ministries. The Ministry of Justice does not have a specialized structure at the national level that develops policies affecting children. The Ministry of Social Affairs organizes itself around the concept of protecting children’s rights, and has a Director of Children’s Rights at the Ministerial level. This role encompasses a wide range of children in need, including both children in conflict with the law and child victims of crimes. Neither the police nor the gendarmes have special investigators for children in conflict with the law. Several actors expressed that tension exists between MINAS and MINJUSTICE concerning how best to judge children. Some social workers believe that magistrates are willing only to apply the law, at the expense of considering the social factors such as the family situation.

Social workers are, by law, placed in various locations throughout communities in Cameroon, in what are called “social service actions” (service de l’action social).54 They are

placed at most universities, hospitals, courts, police stations, and prisons. There exists an internal reference system (referred to as a social liaison (liaison social)) for social workers within MINAS to refer a case to another social worker within the system, though the extent to which this happens on a systematic basis remains unclear.

École Normale des Affaires Sociales (ENAS), the government-operated social work school, has not taken new students since 2006. It has been replaced (on paper, at least) by the Institut National du Travail Social (INTS) by a 2006 Presidential Decree. Unfortunately, the INTS is not operational and exists only on paper. As a result, no social workers have been trained since 2006, nor have MINAS’ social workers returned for refresher courses. According to multiple informants, the government’s reasoning for cutting back on trainings for social workers is that the profession does not help grow the national economy. The UN Committee on the Rights of the Child, at Cameroon’s January periodic review, recommended that Cameroon increase the budgetary allocations to MINAS, *inter alia*, toward its work with children, and generally recommends an increase in the number of professionals (including social workers) trained on the rights of the child.

Cameroon has four state-run alternative detention (or borstal) facilities: The Centre d’Appui et Observation (CAO) at Bepanda (combined with the Centre de Rééducation at Bepanda, as discussed *infra*) in Douala, the Centre d’Appui et Observation at Betamba (near Bafia), in the Center Region, the Borstal Institute, in Buea, South West Region, and the Maroua Center in the Extreme North Region (though one informant stated that the center in Maroua is empty). All of

55 Id. at Art. 71.
56 Id. at Art. 72.
57 Id. at Art. 73.
58 Id. at Art. 74.
59 Id. at Art. 75.
60 See Decree 2006/302 of 21 September 2006.
these centers are operated by MINAS. Given that there are 73 prisons in Cameroon, there is clearly not a focus on dispositional alternatives, as many regions do not have any alternatives to imprisonment for either children or adults. Some confusion surrounds two different named centers at the Bepanda location outside of Douala. While originally created as the Centre d’Accueil et Observation (CAO), a 2009 law also created the Centre de Reeducation des Mineurs (CRM) at Bepanda.63 Due to resource restrictions it appears that CRM only exists on paper, though the United Nations Committee on the Rights of the Child describes CRM-Bepanda as an “alternative detention center for minors.”64

While no official diversion programs exist in Cameroon, a large number of victims and families continue to use traditional power structures (village or neighborhood chiefs) to reconcile and mediate conflicts in the community involving children. Such structures are more in line with restorative justice principles and can be reinforced to divert children from the formal system.65

The National Institute of Statistics collects statistics relevant to justice from various ministries, and publishes an Annuaire Statistique every two years.66 However, it is not clear whether the regular collection of statistics flows directly into the development of justice policies for children in conflict with the law. The UN Committee on the Rights of the Child expressed concerns at the data collection constraints and capacity in Cameroon, and made recommendations toward Cameroon’s strengthening of the data collection system.67

International funding represents only 4.3% of Cameroon’s GDP.68 Given, however, that the Ministries of Justice and Social Affairs receive about 1% and 0.1% respectively of the federal

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63 See appendix 7.F
64 United Nations, supra note 38, at ¶ 79.
65 These structures are discussed in more detail infra Section IV.
66 See Tableau de Bord Social (TBS) du Cameroun.
67 See United Nations, supra note 38, at ¶¶ 19-20(a).
government’s budget, there remains a role for international partners to play a role in this field to affect positive change within the justice system.

Figure 2 (following page) summarizes in schematic form how a child’s case moves through the justice system.

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69 Based on the 2009 budget. MINAS’ budget was 7.4 billion FCFA (or roughly US$14.9 million) and MINJUSTICE’s budget was 24.4 billion FCFA (or roughly US$49.3 million) out of a total budget of 2301.4 billion FCFA (or roughly US$4.6 billion). Summary available at http://www.zimbio.com/Prime+Minister+Ephraim+Inoni/articles/3/Cameroon+Snapshots+2009+draft+budget (last visited December 8, 2010).
III. HOW A CHILD IN CONFLICT WITH THE LAW EXPERIENCES THE JUSTICE SYSTEM

Constituting the heart of this article, this section describes how a child experiences the justice system in Cameroon, moving from initial contact with police, to the adjudicatory process, to deprivation of liberty and reintegration. While focusing on the CPC and other legislation, this section hints at the challenges of implementation of the legislation.

A. Children’s Initial Contact with the State

Children in conflict with the law may make initial contact with the state through contact with either the police or gendarmes. Both institutions operate under the Presidency, both have jurisdiction throughout the country, and both may make arrests and pass cases on to the state counsel (prosecutor). Children generally come into contact with police in one of three different ways:

- A victim takes a child to the police, calls the police, or files a complaint against a child;
- A child is brought in on a police raid (rafle). Children without identity cards, including street children, may be picked up in these raids. If the child does not have a caregiver to take custody of him/her, the child can remain in police custody, or have the case turned over to the state counsel; or
- Family members bring the child in to the police asking for assistance: Police may “correct” them at the station through a short detention, or physical punishment. One study of 379 children in conflict with the law found that 72 children (or 21%) were brought to the police station by their parents to “teach them a lesson” (i.e. to have the

70 Following the French model, the National Police manage security in urban places, while the Gendarmes generally manage security in more rural spaces. In Cameroon, both police and gendarmes operate within the General Delegation for National Security (DGSN), which is under the President.
police incarcerate and/or beat the children) before sending them home.\textsuperscript{71} Some parents even file an official criminal complaint against their own child.

Police informants stated that children experience police custody (\textit{garde à vue}) with certain protections, namely separation from adults, and assistance from a social worker.\textsuperscript{72} The former (separation) is in line with international obligations that provide for children being held separately from adults.\textsuperscript{73} However, most police stations do not have separate spaces for children.

The Criminal Procedure Code provides that suspects (both adult and children) have the right to be immediately informed of the allegations, and shall be “treated humanely both morally and materially.”\textsuperscript{74} The law provides that suspects shall not be “subjected to any physical or mental constraints, or to torture, violence, threats or any pressure whatsoever . . . or to any other method which is likely to compromise or limit his freedom of action or decision, or his memory or sense of judgment.”\textsuperscript{75} Suspects also have the right to be visited by their lawyer, family, or “any other person following up his treatment while in detention.”\textsuperscript{76} The state has the legal responsibility for feeding people in police custody, though family members and friends may bring food.\textsuperscript{77} Failure to comply with the above-mentioned provisions, or violation of those provisions, results in the potential for prosecution and disciplinary sanction.\textsuperscript{78} However, cases of police misconduct of prisoners rarely result in investigation or sanction.

\begin{itemize}
\item \textsuperscript{72} See Decree 2005/160 of 25 May 2005, Art. 74 (discussing the placement of social workers at police stations).
\item \textsuperscript{73} Beijing Rule 26.3.
\item \textsuperscript{74} CPC Art. 122(1). The Committee on the Rights of the Child recommends that Cameroon “undertake all necessary measures to prevent acts of torture and inhuman or degrading treatment or punishment.” United Nations, \textit{supra} note 38, at ¶ 36.
\item \textsuperscript{75} CPC Art. 122(2).
\item \textsuperscript{76} CPC Art. 122(3).
\item \textsuperscript{77} CPC Art. 122(4).
\item \textsuperscript{78} CPC Art. 122(5).
\end{itemize}
In short, the law allows anyone arrested “reasonable facilities” to contact family, obtain legal advice, make arrangements for defense, consult a doctor, and take necessary steps to obtain release on bail.\textsuperscript{79} Further research is necessary to determine whether arrested children understand these rights, though most children will not likely have access to the funds to hire an attorney.

The criminalization of street children – charging them with the ‘crime’ of begging (\textit{vagabondage}), or of failure to produce an identity card – represents a failure of the child protection system. Any use of the vagabondage statute as a tool to “clean up the streets” of street children and other beggars, are against the spirit of recommendations from the UN Committee on the Rights of the Child.\textsuperscript{80}

\textbf{Length of police custody:} International standards on police custody dictate that “anyone arrested or detained on a criminal charge” must be brought “promptly” before a “judge or other officer authorized by law to exercise judicial power.”\textsuperscript{81} While vaguely defined, the term “promptly” is generally understood as 48 hours.\textsuperscript{82} Article 119(2) of the Criminal Procedure Code outlines the length of time that a person may be kept in police custody, though two interpretations of the law are possible, given the wording of the statute.\textsuperscript{83} One interpretation places the maximum length of time at six (6) days, while another interpretation places maximum at eight (8) days before the case must either be referred to the examining magistrate, or the child (or adult) released. If the term “this period” in section 119(2)(b) refers to the original 48-hour period, then there can

\textsuperscript{79} CPC Art. 37.
\textsuperscript{80} See United Nations, supra note 38, at ¶ 72. \textit{See also} Marie Morelle, \textit{Les enfants de la rue à Yaoundé (Cameroun) et Antananarivo (Madagascar)}, AUTREPART 2008/1 (no. 45), at 43–57.
\textsuperscript{81} International Covenant on Civil and Political Rights, \textit{supra} note 25, at Art. 9(3).
\textsuperscript{82} \textit{See, e.g.}, United Nations Press Release, “UN Special Rapporteur presents preliminary findings on his mission to Jamaica,” February 19, 2010 (“Police custody should only be used for short-term detention not exceeding a maximum of 48 hours.”), \textit{available at} www.jm.undp.org/files/Jamaica\%20statement\%20190210.doc.
\textsuperscript{83} Criminal Procedure Code Section 119(2) reads:
(a) The time allowed for remand in custody shall not exceed forty-eight (48) hours, renewable once.
(b) This period may, with the written approval of the State Counsel, be exceptionally extended twice.
(c) Reasons shall be given for each extension.
only be two total possible total renewals, and only six total maximum potential days in police custody. At any point during custody, police/gendarmes or examining magistrate may release child to custody of parents or others,\textsuperscript{84} or examining magistrate may order child to prison for temporary detention.\textsuperscript{85}

The structure of the police and gendarmes under the Presidency (and not Ministry of Justice) can result in a limitation of accountability between police and other justice actors, and leaves little recourse when police abuses are identified. Internal police investigations of misconduct occur from the Regional Police Control Unit, but it is not clear whether this is an effective mechanism for investigating police. The code allows people in police custody to be examined by a doctor on their own (or state counsel’s) request.\textsuperscript{86}

<table>
<thead>
<tr>
<th>Day 1</th>
<th>Day 2</th>
<th>Day 3</th>
<th>Day 4</th>
<th>Day 5</th>
<th>Day 6</th>
<th>Day 7</th>
<th>Day 8</th>
</tr>
</thead>
<tbody>
<tr>
<td>Police/Gendarmes can hold child suspect for two days (CPC 119(2)(a)).</td>
<td></td>
<td>Police/Gendarmes can renew custody one time for additional two days (CPC 119(2)(a)).</td>
<td></td>
<td>State Counsel can “exceptionally” extend custody for two additional days (CPC 119(2)(b)).</td>
<td></td>
<td>Depending on interpretation, State Counsel may or may not “exceptionally” extend custody for two final days (CPC 119(2)(b)).</td>
<td></td>
</tr>
</tbody>
</table>

At any point during custody, police/gendarmes or examining magistrate may release child to custody of parents or others (CPC 118(2)), or examining magistrate may order child to prison for temporary detention (CPC 704-706).

**B. Adjudicatory Process**

The adjudicatory process for children in conflict with the law in Cameroon can take a very long time, often a year or more. Though the delays in the adjudicatory process are many and complex, two primary reasons stand out: First, while simple offenses can be sent straight to the judge of the first instance for judgment, any time a child is accused of a misdemeanor or felony,\textsuperscript{84} CPC Art. 118(2). \textsuperscript{85} CPC Arts. 704–06. \textsuperscript{86} CPC Art. 123.
the case must go before the examining magistrate, whose investigation often takes several months. Second, the process serving (summons, or citation) of victims and witnesses does not always proceed as indicated in the statute, which leads to lengthy delays in both the examining magistrate’s chamber, and in the judge’s chamber. This section will discuss the adjudicatory process, as spelled out in the CPC.

**Jurisdiction:** The First Instance Court (*Tribunal du Premier Instance*), with a judge sitting with two assessors, has jurisdiction to hear all cases of children accused of simple offenses, and cases of children accused of misdemeanors, or felonies committed alone or with other children.\(^{87}\) If a child is accused of committing a misdemeanor or felony with an adult accomplice or co-offender, the case goes to the First Instance Court with a judge sitting alone for misdemeanors, and to the High Court (*Tribunal du Grand Instance*) with a judge sitting alone for felonies.\(^{88}\) Cases of children that are heard by the High Court follow all of the High Court procedures, though children can still benefit from the sentencing reductions from the “diminished responsibility” article in the Penal Code.\(^{89}\)

**State Counsel:** The police pass the file to the state counsel (*procureur de la république*). In simple offenses (those that carry a prison term of under 10 days), the state counsel passes the file directly to the magistrate who will make the judgment. However, in felony or misdemeanor charges, the state counsel either can decide not to continue with the case (issuing a formal decision called “*sans suite*”), or she can file a “holding charge” which seizes the examining magistrate to

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87 CPC Art. 709.
88 CPC Art. 713, subject to Art. 716. See also Penal Code Arts. 80, 87.
89 Penal Code Art. 87. Also discussed *supra* note 42-43.
start the investigation. If the child has not been released on bail from the police department, the six (or eight) day police custody clock continues to run while the case is with the state counsel.

**Experiencing Magistrate (Juge d’Instruction):** The 2005 CPC made the “experiencing magistrate” system mandatory for all cases where a child is accused of a misdemeanor or felony (though not a simple offense). The “experiencing magistrate” concept comes directly from French inquisitorial criminal procedure.

The idea behind ensuring that an experiencing magistrate investigates more children’s cases (as this was a new feature of the 2005 CPC) is to have some measure of separation between the person who judges, and the person who pulls together the relevant information and does the research. This was meant to be a protection for the defendant to assure that only people who had been fully investigated could be found guilty. However, this level of the procedure can take a long time to complete. If an accused is in custody, the experiencing magistrate has a six-month time limit before she must pass the case on to the judge (or release on bail); this period can be extended by 6 months for misdemeanors, or by 12 months for felonies. In other words, while the defendant waits in pre-trial detention, the experiencing magistrate has a maximum time of 12 months to investigate a misdemeanor and 18 months to investigate a felony.

In addition to leading the investigation into the merits of the claim, the experiencing magistrate makes several important decisions for the child’s case, and for the disposition of the child during the case, namely concerning (1) age determination, (2) custody, and (3) whether to order a social inquiry report. First, if a child does not have a birth certificate to prove his or her

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90 CPC Art. 143. CPC Art. 700 requires all misdemeanors or felonies to go to an examining magistrate.
91 See supra note 81-86 and accompanying text (discussing the ambiguity in the Criminal Procedure Code concerning the maximum length of police custody).
93 CPC Art. 221.
age, the examining magistrate must order an age determination by a medical professional, a process that can delay the procedure, and requires the police to accompany the child to a hospital.

Second, the examining magistrate makes a decision about the custody of the child while the case is ongoing. The examining magistrate has three choices: she can (1) release the child to parents, guardian, custodian, or “any other trustworthy person, subject to bail requirements;”94 (2) order custody to a welfare center, observation center, vocational training center or health center, or “any specialized institution;”95 or (3) remand the child to temporary detention in a borstal institution, to special section of a prison only for children, or to an adult prison, but separated from adults.96 Temporary detention is not an option for children aged 10-11, and is only an option for children aged 12-13 who are accused of murder, capital murder, or assault resulting in death (corps mortel).97 For children aged 14-17, temporary detention should only occur when “indispensable.”98

Third, in cases concerning children, the examining magistrate can order a social inquiry report, medical examination, and/or psychiatric tests.99 There are questions about how frequently this occurs in practice. Even if a social inquiry report were drafted on a routine basis, the judge who manages the trial is not supposed to see this report until after reaching a guilty verdict, so the report can influence only the sentencing.100 Ostensibly, keeping the social inquiry report out of the judge’s hands until after judgment assures that the judge makes the decision based on the facts of

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94 CPC Arts. 702 and 708.
95 CPC Art. 702.
96 CPC Art. 706.
97 CPC Art. 704.
98 CPC Art. 705.
99 CPC Art. 701.
100 CPC Art. 717.
the case, and does not develop a preconceived notion about the personality or other needs of the child.\textsuperscript{101}

### Table 3: Breakdown by nature of infraction of children condemned in the Court of First Instance and High Court (YEAR UNKNOWN, though other statistics from this report are from 2003)\textsuperscript{102}

<table>
<thead>
<tr>
<th>Nature of Infraction</th>
<th>Boys</th>
<th>Girls</th>
<th>% of all condemnations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Felony</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Assault against a person (Atteinte à l’intégrité physique)</td>
<td>32</td>
<td>0</td>
<td>5%</td>
</tr>
<tr>
<td>Assault against property (Atteinte aux biens)</td>
<td>19</td>
<td>0</td>
<td>3%</td>
</tr>
<tr>
<td>Other</td>
<td>7</td>
<td>0</td>
<td>1%</td>
</tr>
<tr>
<td>Misdemeanor</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Assault against a person (Atteinte à l’intégrité physique)</td>
<td>105</td>
<td>8</td>
<td>18%</td>
</tr>
<tr>
<td>Assault against property (Atteinte aux biens)</td>
<td>307</td>
<td>9</td>
<td>52%</td>
</tr>
<tr>
<td>Other</td>
<td>65</td>
<td>9</td>
<td>12%</td>
</tr>
<tr>
<td>Violation (simple offense)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Assault against a person (Atteinte à l’intégrité physique)</td>
<td>18</td>
<td>0</td>
<td>3%</td>
</tr>
<tr>
<td>Assault against property (Atteinte aux biens)</td>
<td>11</td>
<td>5</td>
<td>3%</td>
</tr>
<tr>
<td>Other</td>
<td>15</td>
<td>1</td>
<td>3%</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>579</td>
<td>32</td>
<td>611</td>
</tr>
</tbody>
</table>

Note from Table 1 above that 58\% of all children’s convictions were crimes against property.

### Table 4: Breakdown by nature of punishment of children condemned in the Court of First Instance and High Court (YEAR UNKNOWN, though other statistics from this report are from 2003)\textsuperscript{103}

<table>
<thead>
<tr>
<th>Nature of Penalty</th>
<th>Boys</th>
<th>Girls</th>
<th>Total</th>
<th>% of all condemnations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Death Penalty</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Imprisonment</td>
<td>122</td>
<td>4</td>
<td>126</td>
<td>21%</td>
</tr>
<tr>
<td>Imprisonment with Fine</td>
<td>110</td>
<td>4</td>
<td>114</td>
<td>19%</td>
</tr>
<tr>
<td>Fine</td>
<td>27</td>
<td>3</td>
<td>30</td>
<td>5%</td>
</tr>
<tr>
<td>Suspended Sentence (Peine avec sursis)</td>
<td>220</td>
<td>6</td>
<td>226</td>
<td>37%</td>
</tr>
<tr>
<td>Other</td>
<td>100</td>
<td>15</td>
<td>115</td>
<td>19%</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>579</td>
<td>32</td>
<td>611</td>
<td>100%</td>
</tr>
</tbody>
</table>

\textsuperscript{101} M. Eyike-Vieux, L’AUDIENCE AU PROCEDURE PENALE CAMEROUNAISE ¶ 439 (2007).
\textsuperscript{102} Institut National de la Statistique, Annuaire Statistique du Cameroun 2006; Tableau 11.20, p. 202
Note from Table 2 above that 40% of all children’s convictions resulted in imprisonment, including many for misdemeanors (see Table 1, above).

**Process serving (Summons) slows down the procedures.** The examining magistrate and later, the judge, will issue summons (citations) to interested parties, including victims and witnesses. Summonses are served by bailiffs (huissiers de justice), and while Cameroonian judges understandably want to give adequate notice for victims to be summoned to court, the summons process can slow down the investigatory procedure and delay final judgment. While there is a legal obligation for witnesses to appear in court if summoned, the summons process suffers from at least two problems. First, homes and businesses in Cameroon do not have standardized addresses, so bailiffs may have a difficult time locating individuals. Second, even when summoned by the court, many people do not actually show up in court. In the three court proceedings that the author observed, not a single victim was present, even when successfully summoned. If a victim does not show up, even after giving ample notice and time for victims to come to court, the judge must dismiss the case.

**Adjudication by Judge and Assessors:** The CPC provides that children accused of misdemeanors or felonies are to be judged by a panel of one magistrate (judge) and two assessors. The judge can sit alone if the assessors do not show up. Children accused of simple offenses are judged by a magistrate alone. Assessors receive appointment by a joint decision of the Ministries of Justice and Social Affairs, and their qualifications are that they “are known for the interest they take in matters affecting juveniles or for their competence in the

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104 CPC Arts. 40 et seq.
105 CPC Art. 41(3).
106 CPC Art. 709(1).
107 CPC Art. 711.
108 CPC Art. 700(3).
field." There are no provisions in the CPC to have assessors present in the High Court, though
appeals of children’s criminal cases from the First Instance court are heard by a panel of one
appellate judge and two assessors.\textsuperscript{110}

\textbf{In Camera Procedures:} Children’s court is supposed to take place in private to protect
the identity of the accused. The Code of Criminal Procedure spells out the in camera (\textit{huis clos})
procedures for children,\textsuperscript{111} with the exception of the rendering of the sentence, which must be done
in public.\textsuperscript{112} A child’s right to privacy is not consistently protected. During fieldwork, one
defense lawyer complained to the author that meetings in prison between detainees and legal
counsel generally take place in crowded rooms where confidential information can easily be
overheard.

\textbf{Assistance of Counsel:} The Convention on the Rights of the Child provides that children
in conflict with the law shall benefit from legal assistance and all other appropriate assistance at all
stages of the procedure.\textsuperscript{113} Cameroonian law is in line with this, stating that “a minor shall be
assisted by counsel or by any other person who is a specialist in the protection of children’s
rights.”\textsuperscript{114} However, only a tiny fraction of children in conflict with the law can afford private
counsel.\textsuperscript{115} The court can order a certain lawyer to represent a child, but as the payment to the
lawyer is only FCFA 5,000 (approximately US$10) per hearing (\textit{audience}),\textsuperscript{116} appointed lawyers
have little incentive to do a good job, or even come to court. It appears to be widely accepted that

\textsuperscript{109} CPC Art. 709(2). Note that competence is neither defined or outlined.
\textsuperscript{110} CPC Art. 738.
\textsuperscript{111} CPC Art. 720.
\textsuperscript{112} CPC Art. 721(2)
\textsuperscript{113} CRC Arts. 37(d), 40(2)(ii).
\textsuperscript{114} CPC Art. 119(2).
\textsuperscript{116} The author did not see this amount in writing, but all parties interviewed agreed that this is the amount that should be paid to lawyers.
the majority of children go through the entire justice process from beginning to end without legal assistance. It is possible for a pupil advocate (a recently graduated lawyer who is interning at a law firm) to represent children in criminal proceedings. In the court proceedings observed by the author, a pupil advocate was assigned to three cases, and these cases were postponed.

While larger cities (namely Douala and Yaoundé) have a large pool of lawyers, whether a child even has a possibility of receiving assistance from a lawyer depends on where the child lives. Many smaller towns in Cameroon have courts with state-appointed judges and prosecutors, but do not have lawyers, or do not have very many. Cameroon does not have a publicly funded system of public defenders, though there does exist an inadequate system of legal aid (*assistance judiciare*). In smaller towns, some associations or NGOs provide paralegal services on a limited basis as a relatively inexpensive means of providing counsel for children. The institution of ‘paralegals’ is not well known in Cameroon, though some associations and NGOs self-identify as providing paralegal services. The Program pour l’Amélioration des Conditions de Detention II (PACDET II) project funded by the European Union provided financial support to lawyers to represent incarcerated adults and children. This program was not, however, comprehensive and the project was slated to close down in October, 2010.

**Court expenses:** In addition to fines being levied against children (despite a specific prohibition against that practice for this population), children (and adults) found guilty of criminal charges must also pay court expenses (*dépens*) before being released from prison. These expenses include registration charges, stamp charges, “expedit,” “citation.” These charges run between FCFA 10,000 and 30,000 (approximately US$ 20-60), which is prohibitively expensive for most

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117 Again, relying on the French inquisitorial system.
118 See Law No. 2009/004 Portant Organization de L’Assistance Judicaires, Apr. 14, 2009; CPC Art 489 (concerning applying for legal aid); CPC Art. 490 (directing judges to assign legal counsel for the appeal of any sentence of life imprisonment or death).
Cameroonian. The CPC states that “all judgments delivered by courts sitting in cases of juvenile
delinquency shall be exempted from stamp duty and shall be registered free of charge,” though
whether this provision in favor of children in conflict with the law is carried out is not clear. The
Criminal Procedure Code allows for judges to ‘convert’ the expenses and fines into additional time
in an order called “imprisonment in default of payment” (contrainte par corps). However, orders of imprisonment in default of payment are explicitly not to be imposed on persons under
the age of 18. Despite this prohibition, the author encountered many children who were only
imprisoned because of the court expenses. One informant suggested that a barrier to judges’
converting the fine into additional time is that judges may have negative repercussions from their
superiors for not collecting the expenses.

As a final note on the negative effects of court fees, the CPC states that “the fees of counsel
assigned by the court of its own motion shall be paid as expenses incurred in criminal matters.”
This means that a child may be charged FCFA 5,000 as a court expense for being assigned a
defense attorney by the court – money which, in practice, rarely actually reaches the attorney.

Street children: Cameroon has recently built two new centers to address the needs of
street children, the Centre d’Accueil et Réinsertion Sociale des Enfants de la Rue de Yaoundé,
with a claimed capacity of 400 children, and the Centre d’Écoute du Mfoundi. In general, the
protection needs of children living on the street are not being met by the state, or by family
members. There is an over-representation of street children in the criminal justice system in urban
areas, in large part because these children do not have family members in town to help mediate,
bail, or take custody at various points in the interaction with the state. Being a vagabond

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119 CPC Art. 727.
120 CPC Art. 564. Up to FCFA 10,000 can be converted to 20 days; up to FCFA 20,000 can be converted to 40 days;
and up to FCFA 40,000 can be converted to 90 days.
121 CPC Art. 565.
122 CPC Art 746(2).
(vagabondage) remains a criminal offense in Cameroon, and children continue to be arrested for vagabondage.\textsuperscript{123} Refugee children and other non-Cameroonian children face similar challenges to street children.\textsuperscript{124} These children are often away from their caregivers, and their problems are magnified by not speaking the local language.\textsuperscript{125}

Further research is necessary to determine whether the four state-run centers can adequately cover the child protection needs at a national level, though such coverage is unlikely. There are also concerns that when a child is assigned to a borstal center, their family must pay up to FCFA 20,000 (approximately US$40) for the registration, which acts as a deterrent to placement. Other options are available under the law, such as placement with suitable individuals or private care institutions.\textsuperscript{126}

\textbf{C. Deprivation of Liberty and Reintegration}

Under the direction of the Penitentiary Administration (a section of the Ministry of Justice), Cameroon operates 73 prisons.\textsuperscript{127} Children can spend long periods in pre-trial detention, and most children in prisons are still awaiting trial.\textsuperscript{128}

\textbf{Key legal provisions.} Prisoners have the right to one meal per day, and that the ration must be enough to avoid any alimentary deficiency (carence).\textsuperscript{129} All detained persons must

\textsuperscript{123} Penal Code, Art. 247.


\textsuperscript{125} As a general note, poorer children (and rural children) are less likely to speak French or English, as they may not receive as much formal education. While many magistrates and prosecutors speak at least one indigenous language, these state functionaries are dispatched throughout the country and do not necessarily speak the language of the populace.

\textsuperscript{126} CPC Art. 724.

\textsuperscript{127} The primary legal text that governs prison functioning is Decree No. 92-052 of 27 March 1992 regarding the Penitentiary Regime in Cameroon.

\textsuperscript{128} This observation was noted with concern by the UN Committee on the Rights of the Child. \textit{Id.} at ¶ 79(b).
receive a mat and cover “and eventually a mattress and bed frame.”¹³⁰ Prisoners can be placed in an isolated cell (cellule de correction) for a maximum of 15 days.¹³¹ Women and children are to participate in prison chores only on the interior of the prison, or in fields belonging to the prison (champs appurtenant).¹³² Those awaiting trial are to be confined in separate quarters from those already convicted.¹³³

Throughout Cameroon, pre-trial detainees make up the majority of those in prison (79% in December 2004) and pre-trial detainees are housed together with those found guilty. Pre-trial detention for children lasts on average 10 months.¹³⁴ By law, prisoners can levy complaints to the warden in writing, to the state counsel, or to “inspectors during their visits.”¹³⁵

All incarcerated persons in Cameroon (including children) have the chance to receive visitors, though visiting rights can be suspended temporarily for disciplinary reasons.¹³⁶ The Penitentiary Administration spends only FCFA 240 (approximately US$0.45) per detainee per day; the Administration recognizes that this is insufficient to provide adequate nutrition, and openly welcomes family and associations supplementing this.¹³⁷

Prison inspections are supposed to take place at the national, regional, and departmental levels, and different institutions exist at each level to (ostensibly) carry out these inspection. The extent to which inspections actually take place is not known to the author. At the national level, the National Commission for the Surveillance of Prisons has an inspection mandate. Secondly, the

¹²⁹ Decree No. 92-052, Art. 29.
¹³⁰ Id. at Art. 30.
¹³¹ Id. at Art. 45(b).
¹³² Id. at Art. 50(2)
¹³³ CPC Art. 553(1).
¹³⁵ Penitentiary Code, Art. 47.
¹³⁶ Decree No. 92-052 at Arts. 37, 45(d).
¹³⁷ Food being supplied by family members is such a normal occurrence that the exterior sign on the prison in Mbouda, West Region reads “Visits and bringing of meals every day from 9:00AM to 4:00pm.” Photo on file with author.
Regional Penitentiary Administration is supposed to conduct inspections of the prisons two times per year, and on an ad hoc basis when there are problems. Third, each Department is supposed to establish a commission on the surveillance of prisons that should visit at least once per year, though interviewees reported that this also does not occur.\textsuperscript{138}

MINAS assigns one social worker to most prisons, though the level of involvement of the social worker in the children’s lives and legal cases depends on the personal initiative of the individual person.\textsuperscript{139} The budgetary restraints on MINAS are a roadblock for their further involvement.

**Civil Society:** There is considerable energy from civil society around supporting prisoners’ needs. Urban prisons benefit from support from multiple NGOs that provide a range of educational, alimentary, legal, and skills training support to prisoners. For example, more than 20 organizations work in and around Douala’s Central Prison, though most work with both adult and child populations, and there is little coordination among groups. In Mbalmayo, a smaller city in the Centre Region, one NGO – the Centre d’Écoute et Documentation – provides legal, alimentary, and other support to incarcerated children. In Yaoundé, several groups provide a range of services to incarcerated children.

<table>
<thead>
<tr>
<th>Date</th>
<th>Awaiting Trial</th>
<th>Convicted</th>
<th>Total</th>
<th>% of total awaiting trial</th>
<th>Source</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Boys</td>
<td>Girls</td>
<td>Boys</td>
<td>Girls</td>
<td></td>
</tr>
<tr>
<td>Jan-03</td>
<td>624</td>
<td>9</td>
<td>91</td>
<td>3</td>
<td>727</td>
</tr>
<tr>
<td>Dec-04</td>
<td>582</td>
<td>11</td>
<td>151</td>
<td>5</td>
<td>749</td>
</tr>
</tbody>
</table>

\textsuperscript{138} Id. at Art. 58.
\textsuperscript{139} Decree 2005/160 of 25 May 2005, Art. 75.
\textsuperscript{140} It should be noted that girls only rarely enter the formal justice sector or enter prisons in Cameroon. When imprisoned, girls generally are housed with the adult women.
The UN Committee on the Rights of the Child recommends, in line with the Convention on the Rights of the Child, the separation of children from adults in all detention facilities.\textsuperscript{141} The Committee has commended Cameroon for its acceptance of refugee children from neighboring states, and the adoption of the Act concerning the Status of Refugees.\textsuperscript{142}

Some prisons do have separated “children’s quarters” (quartier des mineurs) that keeps children separated from adults during the day and night. However, these facilities do not exist comprehensively throughout the country. The majority of prisons in Cameroon do not have functioning education programs for incarcerated children operated by the government. The Ministry of Education does not provide teachers. A number of private, often parochial, associations provide educational support to children.

The Regional Prison in Bamenda operates the only Ministry of Basic Education-supported school inside a prison. The Juvenile Reformatory School has three full-time teachers, a library, and classrooms. The school suffers from a lack of resources, but compared to the educational opportunities available in other prisons, this situation is quite good.

**Probation / Reintegration:** Probation services are not well-developed in Cameroon. The CPC spells out the creation of probation officers (delegués de liberté surveillé) overseen by MINAS.\textsuperscript{143} The specific payment structure for probation officers has not been decided, and most do not get remunerated. In an example of unchecked authority, probation officers can ask judges to change the term of imprisonment for children.

\textsuperscript{141} United Nations, supra note 38, at ¶ 80(g). It should be noted that under Cameroonian law, a large range of public authorities may use administrative detention for 15 days, which can be indefinitely renewed. See Law No. 90/054 of 19 Dec. 1990 on the Maintenance of Law and Order. Data is not available concerning whether any children are incarcerated under this administrative detention law. See also Joseph Tanyi Mbi, *Administrative Detention as a Human Rights Violation in Cameroon*, 1 CAMEROON J. DEV. HUMAN RTS. 21 (2007).

\textsuperscript{142} Act No. 2005/006, referred to in United Nations, supra note 38, at ¶ 67.

\textsuperscript{143} CPC Art. 731.
In some urban areas, NGOs and associations are involved in the reintegration process of children. For example, the Foyer d’Esperance in Yaoundé provides a place for children who have been released from prison to sleep and eat before heading off on their own.

IV. INFORMAL AND TRADITIONAL JUSTICE SYSTEMS

Traditional justice mechanisms represent a substantial informal diversion for children in conflict with the law in Cameroon. This section therefore advocates a deeper look at informal justice as an important aspect of analysis when considering children’s experiences when in conflict with the law. Because of the slow nature of state-run justice processes, the high cost, and the perception of corruption in the state courts, a certain segment of the population prefers to take conflicts to these traditional leaders. Traditional leaders routinely mediate conflicts where children are accused of committing a crime and when children are victims of crimes. If traditional leaders are not able to resolve the conflict, the parties to the conflict can (and sometimes do) then go to the police, and start a formal criminal action.

Traditional leaders operate on their moral authority, and, at times on authority vested by the State. As noted earlier, Cameroon boasts over 200 distinct ethnic groups, all of whom have some sort of traditional power structure in place, either a group of elders or more centralized in

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144 Traditional justice or informal justice should be distinguished from the term “community justice,” the latter of which may refer to “vigilante” or “mob” justice, wherein a suspected criminal is caught by the community, beaten, or even killed. Such a meting out of punishment at the community level may not respect the rights and dignity of the child, though it may arguably be preferable to the potentially lengthy judicial processes and pre-trial detention.  
145 A brief semantic note before describing the structure of traditional justice. The UNICEF Toolkit on Diversion and Alternatives to Detention (2009) defines a “child in conflict with the law” as “any child who comes into contact with law enforcement authorities because he or she has been accused of – or been found responsible for – breaking the criminal law.” This definition would not include a child who is accused by a community member of breaking the law and who is brought before a traditional leader. Community members often bring children to traditional leaders first, without contacting the police. If a traditional leader does resolve the dispute involving a child, this child is not, technically “in conflict with the law” as there is no contact with the organs of the state. For the remainder of this section discussing traditional leaders, I will refer instead to a “child accused of a crime.” Even this definition is insufficient, as the term “crime” in French is a term of art, and translates into “felony” in English. I am using this term broadly here, to include children accused of simple offenses, felonies, and misdemeanors.
one chief. Some traditional leaders operate rather formal customary courts, while others have less formal processes.

The Cameroonian state recognizes *some* traditional power holders, and the Ministry of Territorial Affairs and Decentralization (MINATD) manages the relationship between the chiefs and the state. Further, the government recognizes 227 Customary Courts (*Tribunaux Coutumiers*).\(^{146}\) Customary courts have the same force of law as the First Instance Courts, though *customary courts do not technically have jurisdiction to handle criminal matters.*\(^{147}\) A decision from the Customary Courts can be appealed to Court of Appeals. To further complicate matters, a judge reported that in civil affairs such as marriage and inheritance, Cameroon’s state-run courts recognize customary law if (a) both parties agree to it, and (b) the law does not go against the Constitution.

A distinction may be made between traditional courts generally overseen by village chiefs (*chefs du village*) in rural areas that are more ethnically homogenous, and neighborhood chiefs (*chefs du quartier*) in urban areas who are responsible for all the people in the neighborhood, regardless of their ethnic group. Further, some urban areas also have chiefs and associations that cater to people from one ethnic group or region that are living in the city. These chiefs may also mediate conflicts, including those that involve children accused of what would be considered a misdemeanor or felony if handled in the state courts.

Due to Cameroon’s ethnic diversity – with each ethnic group theoretically applying its own remedy to a conflict – this article cannot attempt to provide a comprehensive account of the state of traditional laws and conflict resolution mechanisms. Instead, in the sections below, this article offers brief descriptions of the process and experience of two types of traditional leaders: a


\(^{147}\) The Customary Court Ordinance governs the former British North West and South West regions and dates before independence in 1960. In Francophone zone, a 1969 law applies, though the author was not able to obtain the law.
“Block Chief” in an ethnically diverse neighborhood of Yaoundé, and a chief of the more ethnically homogenous town of Bamendjou, in the West Region.

A. Case Study 1: Neighborhood Chief in Yaoundé.

The Neighborhood Chief (*Chefs du Quartier*) provides a means of transmission of information between the population and the state (at the level of sub-prefect or *sous-prefet*). Neighborhood chiefs are chosen by a vote in the community, and once voted, are in for life.\(^{148}\) The role of the chief is to arrange and fix problems at the local level, and, when necessary, to refer matters to the police.

The neighborhood chiefs in one neighborhood of Yaoundé see about two to three cases per month of a child having been accused of a crime, usually theft. They have sometimes even received referrals from the police. When a case comes to the chief, she or he will generally use mediation to resolve the conflict between the victim and the accused, and work out some sort of payment from the perpetrator (or his family) to the victim.

The neighborhood chiefs also respond to situations where children are victims of crimes. Some chiefs have received training from local NGOs on children’s rights and on how to identify and refer cases of child sexual abuse and potential cases of child slavery. In addition to their role mediating conflicts involving children (and adults), the neighborhood chiefs are truly at the front lines of identifying cases of child victims of exploitation and abuse. Families and neighbors routinely approach the neighborhood chiefs with problems of children being raped and of child slavery. When they learn about it, the chiefs bring the child to MINAS, and bring the adult to the police. This manner of handling conflict allows the child to remain in the community and

\[^{148}\text{Some neighborhood chiefs are female, though one informant stated that the majority are male.}\]
demonstrates to them the very local consequences of their actions because their punishment arrives through their immediate social web, rather than through the formal state apparatus.

B. Case Study 2: Chief of a Town in West Region–Fo’o Sokoudjou Tchendjou II

In Bamendjou, a town of about 40,000, there are three levels of traditional justice: Criminal problems are first heard at the neighborhood (quartier) chief level. There are 23 neighborhood chiefs in Bamendjou. If the neighborhood chief reaches no resolution, the case moves to the second level, or the Moula Toumbo (the equivalent to the “Minister of Justice” within the traditional power hierarchy). He holds court every market day (every 8 days, reflecting the pre-colonial calendar), and draws from “the power of the ancestors and from god” to reach a decision. If there is still no resolution, the case moves to the Fo’o (head chief) himself.

Within the Bamiléké tradition (under which Bamendjou falls), it is believed that caregivers have a key role in raising their children and are essentially responsible for their children’s good and bad behavior. In the case of a child who steals, the caregivers are held responsible. This is also the case for more serious crimes and accidents. For example, there was a case where an eight-year old had accidentally killed another child. The Chief explained that the community held the caregivers responsible for leaving a weapon (machete, often used in the field) available for a child to access.

If a person is accused of a crime (like theft), the chief does conciliation. In the Bamiléké culture, if a person is accused of a crime but claims that he did not do it, the neighborhood chief asks that the accused swear to his innocence on a calabash (or gourd) full of water, and throw the

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149 Fo’o or Fo is the title meaning “chief” among the Bamiléké in the West Region. Sokoudjou Tchendjou II is the name of the individual. See generally, Meredith Terretta, ‘God of Independence, God of Peace’: Village politics and nationalism in the Maquis of Cameroon, 1957-1971, 46 J. AFRICAN HIST. 75, n.40.
150 This is the author’s phonetic spelling, and may not align with standard orthography of the Bamiléké language.
151 Interview with the Fo’o, July 2010.
calabash to the ground. If the accused person does this, the chief lets him go free. However, if that person has lied “in the eyes of god,” something bad (a sickness or accident, for example) will befall the accused in the next seven days. This is believed to be stronger than the court-level justice, because “people can lie in court, but they do not dare lie in front of the traditional court.”

Sometimes cases are judged by the traditional authorities, but then one of the parties is unhappy, and the case goes to the police and the “institutions” of justice. If people don’t trust the local power structure, they go straight to the police.

V. RECOMMENDATIONS

While this article is largely descriptive in nature, the handling of children in conflict with the law by government authorities in Cameroon certainly has room for improvement. This section provides policy recommendations along three themes: diversion, specialization, and representation. These recommendations are made fully cognizant of the debate concerning the role of legal reforms within development, and are thus done with a certain level of consternation. Cameroon has, after all, adopted a new criminal procedure code supported by rule of law reform funders, though the challenge remains in the implementation of legal policy and norms.

A. Diversion

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152 Early common law tradition relied upon an oath of truth-telling, which has carried on to today. For an in depth discussion of oaths, see Eugene R. Milhizer, So Help Me Allah: An Historical and Prudential Analysis of Oaths as Applied to the Current Controversy of the Bible and Quran in Oath Practices in America, 70 Ohio St. L.J. 1, 4–19. Milhizer cites to a Texas case wherein the court allowed a Nigerian witness to swear his ‘tribal’ oath as well as a standard oath in front of the jury. Id. at 18 n.72.


154 Davis and Trebilcock characterize the situation in rather unflattering, or at least deeply honest, terms: “[I]n the poorest countries of the world, billions of dollars that could be devoted to projects such as vaccination programs, primary school education, and water and sanitation facilities are instead being put into the pockets of lawyers.” Id. at 896.

155 See id. at 917–19 (introducing implementation problems as a critique brought by the skeptics).
While not mentioned in Cameroon’s CPC, there is increasing international attention on the diversion of children away from the formal justice system.\textsuperscript{156} Diversion means channeling children in conflict with the law away from judicial proceedings through the development and implementation of procedures or programs that enable many - possibly most - to avoid the potential negative effects of formal judicial proceedings, provided that human rights and legal safeguards are fully respected.\textsuperscript{157}

Cameroon does not have any formal diversion programs or projects. Further, the concept of diversion is not well-known in Cameroon.\textsuperscript{158} However, a large number of cases go to traditional authorities (such as village or neighborhood chiefs) instead of entering the system at all. This is discussed at length below in Section V. Further, cases can be, and are dropped at various times through the administration of the formal justice system. For example, the police and gendarmes can and do play a role in mediating conflicts at the station, arranging compensation, and then not forward the case onto the state counsel’s office.

There is not a well-developed culture of official mediation or alternative dispute resolution in Cameroon that operates within the formal government. In Yaoundé, however, (and probably in Douala) mediation capacity exists at the civil society level. Organizations like the Cameroon Society for the Prevention of Child Abuse and Neglect (CASPCAN), and School as an Instrument for Peace have the capacity to train others in mediation. Traditional mediation remains strong and can be used to develop more culturally appropriate models in the formal sector (in lieu of borrowing outside models).


\textsuperscript{157} UNICEF Toolkit on Diversion and Alternatives to Detention, http://www.unicef.org/tdad/index_55653.html (last visited December 9, 2010).

\textsuperscript{158} For more information about diversion programs, see the UNICEF Diversion and Alternatives Toolkit, available at http://www.unicef.org/protection/index_53295.html.
Improved diversion programs could be implemented along three lines. First, provide further education and awareness-raising within justice and police circles concerning the concept of diversion, and other successful diversion programs, such as NICRO in South Africa. Second, support further research into piloting a diversion program for non-violent offenses committed by children. Third, engage in further study on traditional mediation practices and how children experience community actions – work with traditional leaders to support more age appropriate, rights based practices. Build on strong tradition/culture of mediation/conflict resolution in Cameroon at the village or community level.

B. Specialization

Provide specialization within the Ministry of Justice (including the Penitentiary Administration), Police, Gendarmes, and MINAS through the creation of child-focused units to develop policy, act as trainers, and eventually provide improved care to children in conflict with the law. The goal is for the best interests of the child standard to be used in practice for all judicial and administrative decisions that have an impact on children. The author is cognizant of the UN Approach to Justice for Children, and believes that this specialization should take place within the context of systemic justice reform.

160 This accords with id., at ¶ 30 and the Convention of the Rights of the Child, Article 3.
161 See GUIDANCE NOTE OF THE SECRETARY-GENERAL: UN APPROACH TO JUSTICE FOR CHILDREN (Sept. 2008), available at http://www.unrol.org/files/RoLGuidance_Note_UNApproach_Justice_for_Children_FINAL.pdf. This approach integrates children’s issues into an overall framework for strengthening the rule of law rather than viewing child justice as separate from a nation’s broader justice, security, governance and social welfare policies and practices. The goals of the UN Approach are to promote greater understanding and support for the child justice provisions of the Convention on the Rights of the Child (CRC) and other international instruments, and to position children’s issues as central in a nation’s efforts to achieve its role of law objectives. To accomplish these goals, the UN Approach envisions a two-tracked approach: the first aimed at integrating children’s issues into broader rule of law efforts (e.g. institutional reforms, programming, traditional justice processes, and monitoring efforts) and the second focused on improving child-focused rule of law initiatives such as promoting developmentally-appropriate access to justice for children, strengthening community and civil society capacity to respond to children’s needs, and raising awareness of children’s rights in the justice system, including victims, witnesses, and child offenders.
There are many potential areas of specialization within the government around children in conflict with the law. First, there exists great potential in providing training to the MINAS social worker based at the police station to provide legal advice to children in custody, and to monitor children’s treatment by the police. Second, in the absence of a separate juvenile court system, the Ministry of Justice can instruct Presidents of Tribunals to channel all children’s cases to one (or two) examining magistrate and judge. Further, extensive training would benefit these magistrates so that they can be true ‘advocates from the inside’ in terms of moving cases quickly and using incarceration as a last resort. Third, the Penitentiary Administration could create a “children’s section,” wherein certain guards and administrators are specially trained in child’s rights, and have primary responsibility over children’s quarters.

C. Representation

In response to the general lack of assistance counsel by incarcerated children, consider a three-tiered response for improving legal assistance to children that includes providing lawyers, paralegals, and social workers. First, children in conflict with the law could benefit from the training and payment of lawyers to take their cases. Pupil Advocates (recent law school graduates interning at a law firm) could have a role in providing legal assistance to children in conflict with the law. Second, paralegals (parajuristes) can provide assistance to many children, and child-friendly legal assistance should, ideally, be integrated into a national strategy on justice reform. The services rendered could include investigation of case, intervention with examining magistrate, and speaking on behalf of child in court. Ideally, both lawyer and paralegal assistance programs could work together, as some children only need their case pushed forward by a paralegal, while others may need a lawyer.

162 Like the Paralegal Advisory Service in Malawi and Benin.
Third, social workers (Assistants social) already stationed at the police station, court, or prison could provide more specific juridical assistance to children in conflict with the law. The social workers can be trained to speak on behalf of children in custody, and provide a best interest assessment, and to provide a more structured recommendation for the best outcome for the child. Likewise, the MINAS representative at the police station can also play a key role in diverting children from even entering the system, recommending that the police drop the case completely (if appropriate), or refer the case to traditional/community justice structures for mediation or resolution.

VI. CONCLUSION

This article has described the 2005 CPC and its impact on how children in conflict with the law experience the justice system. Cameroon has made important progress in the realm of addressing the specific needs of children in conflict with the law. However, there exists important room to improve how children in conflict with the law are treated by the police, by judges, and by prison officials. Children who lack support from caregivers generally move further and further into the system, which represents a larger problem of child protection within Cameroon. Through increased attention and investment in the areas of diversion, specialization, and representation, there exists room to make the justice system more child-friendly and respectful of the interests and rights of children.