

The Protection of the Minor Under Cameroon Criminal Law: An Appraisal

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Abstract

The protection of persons under domestic criminal law is considered primordial for the legislators of many countries, not being an exception, in principle, birth is the beginning of the acquisition of legal rights in Cameroon. Cameroon being a country in central Africa has signed and ratified many international conventions and implement several national laws to protect minors. Despite the rich legal and international framework applicable in Cameroon for the promotion and protection of minors, we still witness constant and persistent criminal offenses committed against minors in Cameroon as a result of the poor implementation of these laws. It is as a result of these short comings that we are inviting the government and the stakeholders to embark on the establishment of structures and to ensure effectiveness in the enforcement of the protection of minors and to overcome the current weakness that the country is experiencing.

Keywords: Protection, minor, Cameroon criminal law

INTRODUCTION

The protection of persons under domestic criminal law is considered primordial for the legislators of many countries. Not being an exception, in principle, birth is the beginning of the acquisition of legal rights in Cameroon. Cameroon, being a country in central Africa, has signed and ratified many international conventions [1] and implemented several national laws [2] to protect minors. The general rule holds that legal personality begins at birth. This implies that when a child is born, he or she enjoys certain rights [3], some of which are protected by the law. In order to gain legal personality at birth, the child must be born alive. To be born alive means to be capable of breathing. Also, the child must be born viable, that is, capable of living, which means all your organs are functioning. However, there is an exception to this rule, which is the infant conceptus rule expressed in the Latin maxim.

Infant Conceptus Pro Jam Nato Habitu Quoties Decomoties Ejus Agitur

Which means a conceive child is considered already born each time his protection is so required.

The Convention on the Rights of the Child, widely acknowledged as the most universally accepted convention, delineates that it applies to every individual under the age of eighteen years [4]. The same convention [5] gives room for the national law, which may consider the majority to be attained at an earlier age. A child or minor being considered as vulnerable [6] in society needs a special care and protection. It is in this line that the Cameroon Penal Code (PC) stress and considers an infant or child to be a person less than 10 years old (10), and not more than 14 years old, respectively [7].

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The purpose of this article is to examine how the Cameroonian legislator has substantively guaranteed the protection of the minor as the victim of offenses under the auspice of the Cameroonian criminal law, both at the procedural level of the minor and as the author of criminal offenses.

THE SUBSTANTIVE PROTECTION OF A MINOR, VICTIM OF CRIMINAL OFFENCE BY THE CAMEROON CRIMINAL LAW

The penal code of Cameroon protects and also provided measures for the protection of minors.

Protection of the Fetus

A child can bring an action in the future for any injury suffered by her mother's womb caused by the doctor. This was the case of a medical error in the Perruche case, in which compensation was demanded [8]. In Cameroon, the penal code protects the child through Section 337 [9] and Section 338, respectively. The penal code punishes and protects the child against the perpetrator of the offenses highlighted in the aforementioned sections. These offenses [10] go against the right to life of an unborn child. It also goes against the right to life and to physical integrity guaranteed by the 1996 Constitution of Cameroon.

Infanticide

Infanticide refers to the act of a mother causing the death of her own child. To be considered infanticide, the death of the minor must occur within a period of one month after the birth of the said child or minor. This act goes directly to the right to life of the children [11]. The law [12] punishes a mother who killed her child with imprisonment for from 5 (five) to ten (10) years.

Aggravated Rape

Statutory rape calls for aggravation because the legislator believes that a female aged less than 16 cannot genuinely consent to sexual intercourse. Rape becomes a felony [13], punishable where intercourse takes place without the consent of the 16-year old. In cases involving violence, the penalty escalates from a minimum of fifteen (15) to a maximum of twenty-five (25) years. Where the victim is aged between 16 and 21 years, Section 347 of the penal code shall apply doubling the punishment with imprisonment for 10 to 20 years. In *The People v. Sakwe Stephen* [14], the accused was sentenced to 10 years imprisonment for raping an under-16-year-old girl. The imposition of this penalty aligns with the stipulations outlined in Section 296 of the penal code [15].

Section 298 of the same penal code doubles the penalty for rape if it is committed by:

Any person having authority over his victim, or in whose legal or custody care the victim is, a public servant or religious minister, or a person aided by one or more other persons [16]. In group rape, the leader is the one who goes first [17]. Where rape is committed by one of the above-mentioned persons against a female less than sixteen years old, the punishment is life imprisonment.

Corruption of Youth

The penal code [18] makes it unlawful for an adult to satisfy his desire by habitually exciting, encouraging, or facilitating the debauch of corruption by persons under the age of eighteen. In the event of such an occurrence, the wrongdoer will face imprisonment ranging from one to five years, along with a fine ranging from 20,000 to 1,000,000 francs.

Where the offender is a legal or customary guardian, parent, or curator, she or he may be ordered by the court to surrender his or her parental power and suffer the following forfeiture classes;

- Removal and exclusion from any public service, employment, or office;
- Incapacity to be a juror or assessor, except referee or sworn expert;
- Incapacity to be a guardian or member of a family council;
- Prohibition on wearing any decorations;
- Prohibition from serving in the armed forces; and
- Prohibition on keeping a school, on teaching in any educational establishment, and in general on holding any post connected with the education or care of children.

Custody of a Minor

The regime of protection for a minor illustrates the notion of the domicile of attachment. An adult on guardianship is domiciled with his guardian. This goes the same way with a minor whose domicile is that of the parents. A minor under guardianship has his or her domicile with his or her guardian. Guardianship is granted by a court decision. In this case, failure to respect this condition may lead to a criminal sanction against the defaulter. Section 179 of the penal code provides for the prosecution of a minor's custody as follows:

“Whoever fails to surrender a minor to the person to whom his custody has been granted by order, whether permanent or temporary, of a Court, shall be punished with imprisonment for from one month to one year and with fine of from five thousand to one million francs. Where the offender has been deprived of parental power, the imprisonment may extend to three years.”

In situations where a person fails to return a child to those having the right to claim him back, Section 355 of the penal code provides for that:

“Whoever being in charge of a child fails to return him to those having the right to claim him back shall be punished with imprisonment for from one to five years, and with fine of from 20000 to 200000 CFAF.”

Protection of a Minor Against Kidnapping

Within criminal law, kidnapping is defined as the illegal act of forcibly seizing, transporting, and confining individuals against their volition [19]. It is punishable under Section 352 of the penal code, which provides for that.

“Whoever without force or fraud takes or entices away any person under 18 years of age, against the will of those to whom custody belongs by law or by custom, or procures him to leave that custody shall be punished with imprisonment for from one to five year and with fine of from 20000 to 200000: provided that this subsection shall not apply to a person misled as to the age of the minor.”

THE PROTECTION OF MINOR THROUGH PROCEDURAL GUARANTEE UNDER CAMEROON CRIMINAL LAW

The new penal procedure code of the Republic of Cameroon was promulgated into law on July 27th, 2005, and came into practice in January 2007. It is both evolutionary and evolutionary, given that it has been altered for about 30 years since its promulgation into law. Our criminal justice system has been characterized by disjointed, incoherent legal rules that could not even assure the protection of human rights. The code has contributed much to revolutionizing criminal procedures in Cameroon. It is the most welcome master of peace in the protection and consolidation of human rights and liberties. A code of honest people, criminal procedure comprises rules that are particularly important on one hand for society, fine and punish offenders inspired by the hiding of the truth and, on the other hand, the safeguarding of individual liberty. It helps the innocent to avoid being victims of judicial error and provides the guilty with means so that the penalty will eventually be pronounced against him, be truly equitable and fair. The criminal procedure code also grants special treatment and guarantees to minors who are authors of criminal offenses during the period of investigation, during trial, and even after being sentenced.

The Protection of Minor, Author of Simple Theft

Theft is the taking away of somebody's property with the intent of permanently depriving him or her of it. According to *Article 318(1)* of the *penal code*, theft is defined as the *fraudulent withdrawal of another's object or property*.

The sanction applicable in theft is that prevailed in Sections 318 [20] and 320 [21] of the *penal code*, modified by law N° 90/061 of December 19th, 1990, relating to the modification of certain dispositions of the penal code.

Although taking away someone's property without his or her consent is theft, special immunity conditions are extended to some members of the family with the exception of accessories and co-offenders. In this case, a daughter or son cannot steal from his mother, and vice versa. Even if the elements of theft were present. This is because, by law, there is no theft between legitimate descendants and natural descendants with respect to property or estate to be inherited.

The Protection of Minor Offender Through Special Measures of Education

The law also provides protection to minors who commit offenses under Section 80 of the penal code. According to the provision of Section 80(1) of the penal code, there is no criminal responsibility for a minor person aged less than ten (10). Thus, a person in that age bracket is completely protected by the law from being criminally responsible. The legislature believes that a person of this age is not capable of distinguishing between good and bad.

Technically, that person is considered *doli incapax* [22], as reaffirmed by Prof. Nicole Clair NDOKO [23]. In Section 80(2), an offender who is more than ten but less than fourteen can be subject to measures as provided by the law on juvenile delinquency [24]. Such a measure can be taken at any moment, even during trial, as provided in Section 702(2) of the Criminal Procedure Code of Cameroon [25]. This means that an offender may be sent to a reformation program hoping that he or she will be rehabilitated.

The Diminishing Responsibility of Minor Offender

Section 80(3) of the penal code provides that an offender 14 and above but below 18 be sentenced to the penalty provided for adults, but such a penalty should be reduced. Meanwhile, Section 80(4) states that no offender age 18 and above is criminally responsible for his or her offense. The age of the offender will be counted from the date he or she committed the offense.

It is clear from the provisions of Section 80 of the penal code that a child aged less than ten is not criminally liable. He or she can only be subject to special measures of care and protection but cannot be punished or subjected to preventive measures applicable to older children. A child who is over 10 but under 14 can be tried, but he or she cannot be sentenced to a penalty or to a preventive measure provided by criminal law for adults. He or she may be subjected only to measures reserved for juvenile delinquents. A youth 18 and older may have tried and been sentenced as an adult.

Thus, the age of criminal responsibility [26] in Cameroon is 18 years [26–30].

CONCLUSION

With the application of the convention on the rights of the child alongside the criminal law of Cameroon, we have come to realize that the protection of minors in Cameroon has been ameliorated to a certain extent. However, more is still to be done since the law protection for minors in Cameroon in criminal offenses does not sufficiently guarantee such protection since we continue to witness constant breaches and violations of the rights of minors in recent years. It is for this reason that we have undertaken to carry out this research in order to bring new innovations that can help to fill the loopholes in our criminal law system.

We have witnessed instances where a minor, a 16-year-old boy, was sentenced to 15 years of imprisonment for raping a 9-year-old girl. The boy was taking his bath naked in a river, where the girl was hiding and watching him take his bath. The accused later realized her, caught her, and committed the act of rape, which was later considered by the court under the provision of Section 346(4) of the penal code.

Recently, a report was made on the social media platform by Bate Bih on December 27. In this report, it is alleged that a 13-year-old rape victim was discovered pregnant, and the perpetrator is still free. The facts of the incident were as follows:

Princess (pseudonym) is a 13-year-old student residing in Bamenda who is a victim of rape. Tragically, after experiencing the traumatic incident of being raped a few months ago, she and her family have recently come to realize that her suffering is far from over.

For a while, she was pressured to maintain confidentiality until a few days ago, when shifts in her mood and physical appearance caught her parents' attention.

Her mother informed MMI that she had to request a pregnancy test, and the result was positive.

"I could not believe my eyes, so I went to different hospitals to confirm that my 13-year-old daughter was impregnated by a rapist," the mother told MMI.

Enquiries have been made, and a minor has identified the alleged rapist.

The individual identified as Adamu, who is the author of the minors' pregnancy, has acknowledged his responsibility for the situation.

Earlier today, the family filed a report with the police regarding the alleged rapist, Adamu. Nevertheless, he remains at large and continues to carry out his activities without facing any repercussions.

Amidst her tears, Princess' mother expressed, "Today, we approached the judicial police to apprise them of the situation. However, they raised doubts about the certainty of Princess being pregnant. This encounter has left us with a sense of despair regarding the prospect of seeking justice through law enforcement."

Princess underwent a medical examination at the Bamenda Regional Hospital, but the healthcare professionals have not revealed the age of her pregnancy to her parents.

This is not the first time MMI is reporting the case of a 13-year-old being a victim of rape or other forms of sexual violence. These many rape instances of 13-year-olds highlight the prevalence of the problem in different parts of Cameroon.

Guidance counselors recommend obtaining appropriate counseling for Princess to mitigate the risk of further harm.

These are limitations to the protection of minors that need to be strengthened at all costs by the legislator.

Recommendations

With the provision of the Cameroon criminal procedure code, which provides for a composition of judges whenever a minor is being tried, such a measure needs to be enforced since the minor is tried in the same court as the adult offender. It is high time our justice system provided a separate court for minors or juvenile delinquents.

Also, in criminal matters, prescription runs from the date of commission of the offense; this is to be reexamined in situations where the offense is being committed by a minor whose age is not known. This is because confusion may arise if we rely on the provisions of Section 703(1)(2), which provide for:

Section 703(1): “In the absence of a birth certificate for the infant, his age shall be determined by a medical officer who shall issue a medical certificate of apparent age.”

This measure may not be adequate, even though sciences in the medical field are evolutionary in nature. Africa still needs to make some progress towards this effect in the domain of medicine.

As for counting prescriptions, the date of start may affect the judgment of the court since the wording of Section 703(2) may be elastic with regards to the age of the minor offender. Section 703(2) of the Criminal Procedure Code is a mere assumption of a date that provides for:

“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.” The question is, what if the year is not known?

It is in this regard that we recommend a constant revision of the criminal law mechanism for minors who need to be reinserted in society.

Bibliography

NDOKO (NC), *La culpabilité en droit pénal Camerounais*, LGDI, 1985, p. 42.

Mary C. *The protection of vulnerable group*. P.396, Downloaded from Elgar online at 10/29/2019, 10:39:10AM via Sydney University.

Tabé Tabé (S.), *A critical appraisal of the juvenile justice system under the Cameroon's 2005 Criminal Procedure Code: Challenges*.

Convention on the rights of the child of 1989.

Law n°. 2016/007 of July 12, 2016 relating to the Penal Code.

Law n°. 2005/007 of the 27th July 2005 on the Criminal Procedure Code.

REFERENCES

1. Among these conventions and international treaties signed by Cameroon, we can cite; the United Nations Convention on the rights of the child of 1989, United Nations Standard Minimum Rules for the administration of Juvenile justice (The Beijing Rules). The Universal Declaration of Human Rights (UDHR) of 10 December 1948, the International Covenant on Civil and Political Rights (ICCPR) of 1966, the Convention on the Rights of the Child (UN General Assembly Resolution 44/25 of 20 November 1989 and entered into force on 2 September 1990) ratified by Cameroon on the 11 January 1993, the African Charter on Rights and Welfare of the Child commonly called African Children's Charter (Adopted by the OAU Assembly of Heads of States and Governments on 11 July 1990, and came into force on 29 November 1999) ratified by Cameroon on 5 September 1997, African Charter on Human and Peoples' Rights called African Charter (Adopted by the OAU Assembly of Heads of States and Governments on 17 July 1981 and entered into force on 21 October 1986) ratified by Cameroon on 20 June 1989.
2. Law n°. 2016/007 of July 12, 2016, relating to the Penal Code, Law n°. 2005/007 of 27th July 2005 on the Criminal Procedure Code of Cameroon.
3. Right to life, freedom from torture, freedom from enslavement and prohibition from all forms of human trafficking.
4. Article 1 of the 1989 Convention on the rights of the child.
5. *Ibid*.
6. Mary C. *The protection of vulnerable group*. p. 396. Downloaded from Elgar online at 10/29/2019, 10:39:10am via Sydney University.

7. Section 80 of the Cameroon penal Code which stresses that “(1) No criminal responsibility shall arise from the act or omission of a person aged less than ten years. (2) An offence committed by a person aged not more than 10 years and not less than fourteen years may attract only such special measure as may by law be provided. (3) For an offence committed by a person aged over fourteen and under eighteen years responsibility shall be diminished. (4) A person aged eighteen years or over shall be responsible as an adult. (5) The age relevant to this section shall be that attained at the date of the commission.”
Also, Sections 704-705 of the Cameroon Criminal Procedure Code provided for that, “A minor of twelve (12) to fourteen (14) years of age shall not be remanded in custody, except when he is accused of capital murder or of assault occasioning death. A minor aged between fourteen (14) and eighteen (18) may be remanded in custody only if this measure is considered indispensable.”
8. Cassation assemblée plénière, 11 November 2000. Arrêt n°. 457, consulted online on the 29 December 2023 at www.courdecassation.fr/arrets/visu.cfm.
9. Punishes abortion and protect the unborn child with an imprisonment from fifteen days to one year and a fine of 5000 to 200000 francs.
10. Abortion and assault on a woman with child.
11. Humanium. (n.d.) Infanticide. [Online] Available at <http://www.humanium.org/en/infanticide> [Accessed on April 2024].
12. Section 340 of the Cameroon Penal Code.
13. A felony in the wording of section 21 of the penal code shall mean an offence punishable with death or with loss of liberty for a maximum of more than 10 (ten) years and fine where the law so provides.
14. *The People v. Sakwe Stephen* (1987), Suit N° HCF/9.c/87.
15. Whoever by force or moral ascendancy compels any person, whether above or below the age of puberty, to have sexual intercourse with him shall be punishable with imprisonment for from 5 (five) to 10 (ten) years.
16. Group rape.
17. *Public Prosecutor v. Koh Rong Guang* (2018) SGHC 117. In the High Court of Singapore, criminal case n°. 80 of 2017, Koh Rong Guang who is also known as Charles, a gang leader was sentence to 28 years imprisonment and 28 strokes of can for aggravated statutory rape on a 13-year-old girl.
18. Section 344 of the Penal Code.
19. Wikipedia. (n.d.). Kidnapping. [Online] Available at <https://en.m.wikipedia.org/wiki/kidnapping>. [Accessed on April 2024]
20. Simple theft. According to *article 318 of the Penal Code*, simple theft is sanctioned with an imprisonment from 5-10 years and with a fine of 100,000-1million frs CFA. the law N°90/061 of 19th December 1990, gives possibility to the judges to grant punishment that are lesser to that prevailed if, it is admitted that the delinquent can benefit from mitigating circumstances. In this case, he can either be punished for an imprisonment or the simple payment of a fine.
21. Aggravated theft.
22. Incapable of criminal intent.
23. NDOKO (N C), *La capacité en droit pénal Camerounais*, LGDI, 1985, p. 42.
24. Tabe S. A critical appraisal of the juvenile justice system under Cameroon’s 2005 Criminal Procedure Code: emerging challenges. *Potchefstroom Electronic Law J.* 2012; 15 (1): 168.
25. In the wordings of this section, 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; c) any specialized institution; d) a vocational training or health centre.
26. Age of criminal maturity.
27. *Kenneth Mbah v. The People*, reported by Cameroon Herald, July 12-14, 1996, p. 5
28. 2023Mimi Mefo Info, publication of 27 December 2023 by Kate Bih December 27, 2023 Reading Time: 2 mins.
29. *Ibid.*
30. Section 709(1).