



# IMPEDIMENTS TO ACCESS BY THE CHILDREN OF INDIGENOUS PEOPLES TO THE JUSTICE SYSTEM IN CAMEROON

ELEAZAR MICHEL NKOUÉ

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# Children's Access to Justice

A Critical Assessment

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Mona Paré, Mariëlle Bruning, Thierry Moreau  
and Caroline Siffrein-Blanc (eds.)

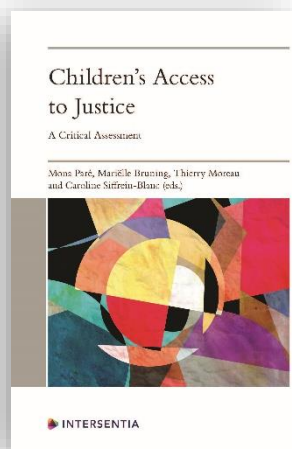


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# IMPEDIMENTS TO ACCESS BY THE CHILDREN OF INDIGENOUS PEOPLES TO THE JUSTICE SYSTEM IN CAMEROON

Eléazar Michel Nkoué

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## 1. INTRODUCTION

Access to the justice system is defined as a 'right of all citizens to have unimpeded access to justice for defence of their interests, even if their submission should be declared improper, inadmissible or ill-founded'.<sup>1</sup> It provides the possibility for the author of a claim to be heard in order for the judge to deliver their ruling. Access to justice is a *sine qua non* for the achievement of 'justice rights', such as the right to a trial or the rights of the accused (offences and penalties must be defined by law; presumption of innocence; etc.).

Access to justice has been enshrined globally, regionally, and nationally. It is a fundamental human right guaranteed by a number of international

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<sup>1</sup> G. CORNU, *Vocabulaire juridique*, 12th ed., Paris, PUF 2018, p. 9.

human rights instruments, in particular the Universal Declaration of Human Rights, Article 8 of which provides that, ‘Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.’<sup>2</sup> The International Covenant on Civil and Political Rights sets out this same principle in its Article 2(3).<sup>3</sup> At the regional level, Cameroon has ratified the African Charter on Human and Peoples’ Rights, which in its Article 7(1)(a) enshrines a guarantee of unimpeded access to the justice system for all citizens of a State.<sup>4</sup> At the national level, the Constitution of Cameroon includes the right of access to the justice system, by specifying in its preamble that, ‘the law shall ensure the right of every person to a fair hearing before the courts.’<sup>5</sup> Its implementation is defined by laws such as the Criminal Code and the Code of Criminal Procedure.

In reference to the judgment in *Golder v. United Kingdom of Great Britain and Northern Ireland*,<sup>6</sup> access to the justice system must not be simply theoretical, but concrete, and not be compromised by legal or financial impediments linked to the litigant’s lack of resources. An impediment is the ‘fact (...) of preventing the exercise of an activity authorized or required by

<sup>2</sup> Universal Declaration of Human Rights, General Assembly Resolution 217 A(III), 10 December 1948, Article 8.

<sup>3</sup> International Covenant on Civil and Political Rights, 16 December 1966, 999 UNTS 171. According to article 2 (3), ‘Each State Party to the present Covenant undertakes:

- ‘(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
- (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
- (c) To ensure that the competent authorities shall enforce such remedies when granted’.

<sup>4</sup> African Commission on Human and Peoples’ Rights, 27.06.1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), Article 7(1)(a), <<https://www.achpr.org/legalinstruments/detail?id=49>>. According to Article 7(1), ‘Every individual shall have the right to have his cause heard. This comprises:

- (a) The right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force’.

<sup>5</sup> In particular Law No. 2008/001 of 14.04.2008, amending and supplementing certain provisions of Law No. 96/06 of 18.01.1996, amending the Constitution of 2.06.1972. Const. of Cameroon, 1972, rev. 2008, <[https://www.constituteproject.org/constitution/Cameroon\\_2008?lang=en](https://www.constituteproject.org/constitution/Cameroon_2008?lang=en)>.

<sup>6</sup> *Golder v. United Kingdom*, 21.02.1975, Series A No. 18.



law.<sup>7</sup> It is also any action or situation that may inhibit the free exercise of access to the justice system.

Children in court proceedings may be victims, witnesses, or defendants. They may also be involved in proceedings involving protection or inheritance. An individual below the age of majority, as set in Cameroon at 21 years of age, is a minor. Nevertheless, an individual of 18 years of age is fully accountable criminally. A minor over 14 and under 18 years of age is criminally liable, but benefits from mitigating circumstances. A child from 10 to 14 years of age is criminally liable, and may only be subject to special measures, while those under 10 years of age are not criminally liable.<sup>8</sup> In the context of this contribution, we will concentrate on the case of children of the indigenous peoples of Cameroon. Pursuant to the criteria for identification of indigenous peoples as contained in Convention No. 169 of the International Labour Organization (1989), the ethnic groups regarded as indigenous peoples in Cameroon are: the 'M'bororo<sup>9</sup> and the 'Pygmies'.<sup>10</sup> Convention No. 169 establishes the specificity of tribal cultures, and from that derive particular political rights. But in Cameroon, 'it appears that one is still far from what needs to be done'.<sup>11</sup>

Given their vulnerability, children should benefit from a procedure adapted to them. Thus, the treatment of children during legal proceedings

<sup>7</sup> Above n. 1, p. 363.

<sup>8</sup> See Article 80 of Law No. 2016/007 of 12.07.2016, setting forth the criminal code.

<sup>9</sup> The M'bororo, 'traditionally they were nomads, constantly on the move from one place to another to find pastures for their herds. Today, a number of them are transhumant herdsmen, who migrate on a seasonal basis but return to their temporary dwelling. The M'bororo live throughout Cameroon, but they are mostly to be found in the West, East, and Northwest regions, and in the northern part of the country.' International Labour Organization, *Indigenous peoples in Cameroon: A guide for media professionals*, (2015), p. 14 <[https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms\\_438854.pdf](https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_438854.pdf)>.

<sup>10</sup> Ibid., p. 14. The pygmies are peoples who live in the forests, with several tribes being called the Baka, the Bakola or Bagyeli, and the Bedzang. Estimates suggest that, 'the Baka, who are the largest group, number between 70,000 and 100,000 persons. They live in the eastern and southern parts of the country (Departments of Boumba-et-Ngoko, Haut-Nyong and Kadey). The Bakola or Bagyéli account for between 10,000 and 30,000 persons, and they live in the south of the country – more specifically in Akom II, Bipindi, Kribi, Campo, Ma'an and Lolodorf. There are fewer Bedzang, who number less than a thousand people, and they live in the northwest of the Mbam-et-Kim Division, on the Tikar Plain and also in Messondo in the Centre region. The Baka, Bagyéli and Bedzang are traditionally nomadic peoples, living from hunting and gathering.' Ibid.

<sup>11</sup> E.M. NKOUE, *La protection des écosystèmes forestiers d'Afrique centrale à l'épreuve des nécessités de développement socio-économique: cas du Cameroun*, Doctoral thesis in international law, University of Grenoble Alpes, 2019, p. 138.

has advanced, in particular with the arrival of the Convention on the Rights of the Child, which Cameroon signed on 25 September 1990 and ratified on 11 January 1993. The African Charter on the Rights and Welfare of the Child was ratified by Cameroon on 5 September 1997, with a view of improving the conditions of Cameroon children. Law No. 2005/007 of 27 July 2005, laying down the Criminal Procedure Code, provides a framework for the prosecution and trial of minors<sup>12</sup> in Cameroon. In accordance with Article 709(1) of the Criminal Procedure Code, the court of first instance rules with regard to young offenders.

In Cameroon, access to the justice system, 'leaves much to be desired'.<sup>13</sup> There are numerous impediments that might stall, block, or even curtail access to the justice system<sup>14</sup> and thus leave the right flowing from it without effect. In view of these considerations, do indigenous children, due to their special status, face specific impediments hamstringing their access to the Cameroonian courts of law?

The present contribution provides insight on the problems of good governance in the justice sector in Cameroon. Through probing with analytical tools specific to law, combined with those of social sciences, the finding emerges that these impediments have to do with the judicial system or with the socio-cultural context.

## 2. THE IMPEDIMENTS INVOLVING CAMEROON'S JUDICIAL SYSTEM

The barriers to accessing the justice system for children of the indigenous peoples have to do simultaneously with the organization and functioning of Cameroon's judicial system.

<sup>12</sup> See Articles 700 ff.

<sup>13</sup> New Human Rights Cameroon, 'Pour une justice pénale plus accessible au Cameroun. Étude nationale sur les engagements du Cameroun en matière de justice pénale et d'effectivité des droits de le homme' (2019), p. 41, According to the NGO New Human Rights Cameroon, 'more than 48.3 per cent of the citizens surveyed are of the view that Cameroonian justice is very poor.' <[http://ndhcam.org/wp-content/uploads/2019/06/NDH\\_2019\\_Pour-Une-Justice-pe%CC%81nale-Plus-accessible-au-Cameroun.pdf](http://ndhcam.org/wp-content/uploads/2019/06/NDH_2019_Pour-Une-Justice-pe%CC%81nale-Plus-accessible-au-Cameroun.pdf)>.

<sup>14</sup> Ibid., p. 41, according to the NGO New Human Rights Cameroon, '69 per cent of the persons questioned state that citizens lack ready access to the justice system in Cameroon'.

## 2.1. THE JUDICIAL SYSTEM'S ORGANIZATIONAL IMPEDIMENTS

The barriers linked to access to the justice system by indigenous children are due to the organizational shortcomings of Cameroon's judicial system. It should be noted that the latter are not the preserve of Africa, but they 'are particularly difficult to overcome'.<sup>15</sup> These obstacles translate into the distancing of persons subject to law, insufficient personnel, lack of territorial and material organization, etc.

Judicial proceedings are open to the public, but access to the justice system on the part of indigenous children is dependent of the geographical proximity of the courts of law to their place of residence. In general, the indigenous peoples of Cameroon live in enclaves or camps far from towns and villages. Efforts have been made by public authorities to bring the law closer. According to Article 13 of Law No. 2006/015 of 29 December 2006 bearing on judicial organization, amended and supplemented by Law No. 2011/027 of 14 December 2011, one court of first instance is created per district [*arrondissement*]. Nevertheless, following the demands of service, the jurisdiction of the courts may include several districts. However, these efforts on the part of the public authorities are still very limited and insufficient. Several districts are without a court of first degree. Mobile court hearings are often organized in the district; however, accessibility to the judicial administration from the indigenous peoples' camps is difficult if not virtually impossible. This further reinforces the distance between the modern judicial apparatus and children of the indigenous peoples.

In addition, the traditional courts of Cameroon are the courts of first degree and the customary courts (in the Francophone part of the State); the Alkali courts and the customary courts (in the Anglophone part of the State). The courts of first degree and the customary courts consist of a presiding judge and two non-presiding judges with voting rights.<sup>16</sup> The presiding judge of the court of first degree is appointed by decree of

<sup>15</sup> R. DEGNI-SÉGUI, 'L'accès à la justice et ses obstacles' in *L'effectivité des droits fondamentaux dans la communauté francophone*, Montréal, Aupelf-Uref, 1994, p. 242.

<sup>16</sup> Article 8 of Decree No. 69/DF/544 of 19.12.1969, establishing the judicial system and proceedings before the traditional courts of the former East Cameroon. However, the reading of Article 10 of this decree shows that each customary court includes two titular and four alternate non-presiding judges.

the Minister of Justice, from among the staff in service within the court's jurisdiction. In the event of the absence or incapacity of the presiding judge, they are automatically replaced by the sub-prefect of the district where the court holds its sessions, or by a district deputy named by this official. The presiding judge of the customary court is appointed by decree of the Minister of Justice, from among the notables with satisfactory knowledge of the tradition. The Minister of Justice also appoints by order the non-presiding judges for these courts, on the joint proposal of the prefect and of the presiding judge of the court of first instance of the jurisdictional territory. The list adopted is made up in such a way as to assure equitable representation of the traditions.<sup>17</sup> Several obstacles to access the justice system for children of indigenous peoples emerge from the foregoing. A problem arises of specialization of the judges of the traditional courts, who are not professional judges. In the traditional courts there is no section specialized in disputes involving juvenile offenders or at-risk children. These courts are responsible for disputes under general traditional law. In addition, the judges who are appointed to these courts do not have solid experience on issues linked with children's rights in general, and those of indigenous children in particular. With regard to young offenders, the judicial authorities are seldom trained to deal with cases of indigenous children in conflict with the law.

The impoverishment of some officials of the judicial system considerably worsens their working conditions, as well as the service rendered to users. The qualitative and quantitative inadequacy of staff is evident in the Cameroonian judicial administration. The workload is often very high in proportion to the staff in particular localities. This human resource shortfall inevitably leads to inappropriate treatment of the complaints brought to their attention. As a consequence, 'those persons subject to the law wishing to benefit from a professional and objective handling of their case must sometimes employ illicit means',<sup>18</sup> by paying for the service of public officials.

The poor jurisdictional coverage of the country, along with the shortage of human and financial resources, have repercussions on the performance of the judiciary.

<sup>17</sup> Ibid., Article 10.

<sup>18</sup> Above n. 13, p. 21.

## 2.2. THE FUNCTIONAL CONSTRAINTS ON THE JUDICIAL SYSTEM

Cameroon's indigenous face hurdles in accessing the justice system, due to problems involving the functioning of the judicial system, notably the slowness and costs of the court proceedings.

The slowness of the court proceedings constitutes a recurring concern in Africa in general and in Cameroon in particular. Judicial proceedings are relatively short and simplified before the lower courts, but they continue to be slow and long as one traverses the levels of the justice system. Even so, this shortcoming is not particular to indigenous children. The fact remains that the delays in judicial proceedings are simply a denial of justice leading children from the indigenous peoples to withdraw from it.

The principle in Cameroonian law is, 'justice being free of charge. This means the person subject to the law does not pay their judge, who is an official funded out of the central government budget'.<sup>19</sup> According to the NGO New Human Rights Cameroon, '87% of citizens believe the principle of justice being free of charge is not observed in Cameroon'.<sup>20</sup> The cost of legal proceedings limits accessibility to justice on the part of children of the indigenous peoples. This is the case of subpoenas and deposit with the court clerk of the monies necessary for payment of court costs. What is appalling for indigenous children is not only the high costs, but that the charge for the trial is difficult to assess. It is important to highlight that in most cases the indigenous peoples have meagre incomes, with some making a living from fishing, hunting, and gathering. Even if it is established that access to the justice system is a right recognized for every citizen by the Constitution, the fact that it is not free of charge, ipso facto condemns the communities living below the poverty line to being precluded. Thus, 'the various successive documents that entail charges may correspondingly dissuade them from engaging in or pursuing legal action'.<sup>21</sup> The same applies to the retaining of a lawyer. While the presence of a lawyer is not mandatory, except in the case of a crime, it would appear necessary due to the intricacies of the law and the procedures of modern law courts. The possibilities for indigenous children to access Cameroonian justice through a lawyer are weak and unequal, depending on their region. In the

<sup>19</sup> G. KENFACK, 'L'accès à la justice au Cameroun' (1996) *Cahiers de l'UCAC*, p. 205.

<sup>20</sup> Above n. 13, p. 41.

<sup>21</sup> Above n. 15, p. 246.

Far North of Cameroon, for example, 'the rate of accessibility to a lawyer is of 1 per 837,000 inhabitants, while in the Centre and Coast it is 1 per 53,000. Persons subject to the law who are disadvantaged [like children of the indigenous peoples] are pushed out of the judicial system'.<sup>22</sup>

Fortunately, legal aid facilitates access to the justice system for a certain category of persons. In effect, legal aid is an assistance mechanism making it possible for certain individuals<sup>23</sup> – and on an exceptional basis legal entities<sup>24</sup> – to be excused from paying certain charges for legal proceedings, because of resource constraints. As laid down by Cameroonian legislation, this legal aid is expected to facilitate the effective exercise of legal action on the part of these children. Nevertheless, 'legal aid is confined to representation in court to the exclusion of assistance in access to the law, as has been the case in France since 1992'.<sup>25</sup> This institution is far from having yielded positive results on a practical level in Cameroonian society, since very few individuals have been informed of it. According to the report of the NGO New Human Rights Cameroon, 'around 50.5% of citizens are unaware of the law for legal aid in Cameroon'.<sup>26</sup> Also in the same report, 'around 80% of citizens are unacquainted with both the categories of persons able to benefit from legal aid, and with the benefits that this law provides'.<sup>27</sup> Implementation of this mechanism is highly limited to certain destitute persons in the large towns, to the exclusion of the majority of persons subject to the law living in villages. Since children of the indigenous peoples live in camps far removed from the villages and towns, it goes without saying that they do not request this aid and are automatically precluded from it. The appointment of public defenders in legal disputes involving indigenous minors poses a certain problem, as in all legal disputes. There is justification for 'fearing that the lawyer is unmotivated, preferring to devote all of their craft to the high-profile paying cases, to the detriment of those of the destitute [like a child from of the indigenous peoples], and/or abandon them outright into the hands of inexperienced trainees'.<sup>28</sup>

Access to the justice system on the part of these children is quite limited. Among the contributing factors to this structural and functional

<sup>22</sup> Above n. 13, p. 21.

<sup>23</sup> Article 5(2) of Law No. 2009/004 of 14.04.2009 providing legal aid in Cameroon.

<sup>24</sup> Ibid., Article 5(5).

<sup>25</sup> Above n. 15, p. 247.

<sup>26</sup> Above n. 13, p. 41.

<sup>27</sup> Ibid.

<sup>28</sup> Above n. 15, p. 248.

failure, we must not omit the considerable influence the socio-cultural context exerts.

### 3. IMPEDIMENTS INVOLVING THE SOCIO-CULTURAL CONTEXT OF THE INDIGENOUS PEOPLES OF CAMEROON

The barriers of access for these children involving the socio-cultural context are linked to the specificities of these populations. We will emphasize the adverse socio-cultural situation and the resistance to relying on modern courts.

#### 3.1. THE ADVERSE SOCIO-CULTURAL SITUATION

One of the major obstacles to access to justice is being unaware of one's rights. Among indigenous peoples there are a significant number of illiterate people or of individuals with low educational attainment.

In Cameroon, it is apparent most legal standards issued by the public authorities are disregarded by the large proportion of those from the indigenous peoples who remain illiterate. Although efforts have been undertaken for some years by the public authorities to school these groups, many are still illiterate. Following adoption of legislative instruments, public authorities often do not bother to disseminate them among all sections of Cameroonian society. As for popularization of the laws, it is noted that, 'there is always an asymmetry between the level of information possessed by [the public authorities and] that in the communities'.<sup>29</sup>

Most of these communities are unaware of the existence of the legislation and regulations organizing life under the rule of law. On this subject, Professor Dégni-Ségué states that, 'one of the major obstacles to access the courtroom in Africa is citizens' ignorance of the law in general, and of their rights in particular. Nevertheless, they are supposed not to disregard them, in accordance with the adage that ignorance of the law is no defence'.<sup>30</sup> Resistant illiteracy within these groups in the population produces consequences on children's access to the justice system, which becomes seriously compromised or even curtailed.

<sup>29</sup> Above n. 11, p. 153.

<sup>30</sup> Above n. 15, p. 252.

Moreover, the Pygmies and M'bororo prefer to live in the forests, given their way of life, and are constantly on the move. Unfortunately, a large number of children of the indigenous peoples continue to be without birth certificates, making it difficult to accurately determine their age.

Furthermore, in Cameroonian society, free access to the justice system is constantly hampered by the excessive reverence that indigenous persons subject to the law display towards 'the administration',<sup>31</sup> judges or, 'other Cameroonians'.<sup>32</sup> The mere mention of a court or of the name of a judge raises anxiety and fear. It is exceedingly rare for these groups to refer violations committed against their children to the courts. In light of the experience of discrimination practiced by the other residents of Cameroon, the indigenous communities 'often tend to be resigned to the injustices and to accept experiencing certain violations of their rights, without thinking about holding onto material or documented evidence of them (...) that could be used in their defence'.<sup>33</sup>

In the Cameroonian society, access to the justice system and the law is at times subject to bargaining. 'Consequently, only those who have the power of money manage; those who are impoverished [like children from the indigenous peoples] sink, in spite of the multitude of legal instruments affirming otherwise'.<sup>34</sup> Sometimes it is necessary to pay in order to have access to the service you are entitled to under the law, since, 'corruption has made its nest within the justice system, and as a consequence judges have lost their purity'.<sup>35</sup> The trading in services in the judicial administration constitutes a severe weight on access to the justice system, 'for the poor person who – instead of being reassured – finds themselves bullied. If you

<sup>31</sup> Above n. 11, p. 158, According to E.M. Nkoué, 'the villagers living in the forest areas harbour a morbid fear of the local administrative authorities, who are known as "ngomna"'.  

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<sup>32</sup> *Les Pygmées Baka et la gestion participative des aires protégées au Sud-est Cameroun: Une étude des zones d'Intérêt Cynégétique à gestion communautaire à la périphérie Nord du Parc de Lobéké*, University of Yaoundé I, Report at End of Internship, 2004, p. 20. According to O. TEGEMO, '[t]he dependence of the Baka pygmy on the Bantu results from the development of inferiority complexes'.

<sup>33</sup> C. CHEUMANI, 'Cadre de Planification en faveur des Populations Pygmées' (2012), p. 27, <<http://documents1.worldbank.org/curated/en/357521468227701262/pdf/IPP6410Cameroo00210201300Box377347B.pdf>>.

<sup>34</sup> Above n. 13, p. 20.

<sup>35</sup> I.B.R. NJUPOUEN, *Dynamiques alternatives pour l'accès au droit et à la justice dans un contexte de pauvreté: enjeux de l'état de droit, de la gouvernance et du développement durable*, Doctoral thesis in Sociology, University of Paris Dauphine – Paris IX, 2013, p. 166 <<https://basepub.dauphine.fr/handle/123456789/13670>>.



hope to obtain anything, you need to be able to afford a price that is beyond the reach of poor people'.<sup>36</sup>

The low level of recourse to the courts is also explained by the fact that the indigenous peoples, in general, live beyond the bounds of the modern courts.

### 3.2. RESISTANCE TO RELIANCE ON THE MODERN COURTS

Certain situations in a State may create an ongoing or temporary climate not conducive to respect for human rights. The encampments of indigenous peoples constitute this kind of place, which we may refer to as 'areas of resistance to the law'.<sup>37</sup> In fact, there is a certain wariness from individuals of indigenous communities in respect of modern justice. This is due in part to the fact that the law applied in Cameroon is essentially a law inherited from Franco-British colonialism. Justice in Cameroon took root on a base that had already been shaped by other cultures. Quite frankly, this modern law is in large measure foreign to the way of life of the Cameroonian population, and in particular to the members of the indigenous peoples. It is important to note that, 'behind the harmonious façade of a borrowed modernity, there exists a plurality of ethnic entities with their world-views, their forms of social and political organization and their value systems, ultimately making up a corresponding number of legal sub-orders within the space of the state'.<sup>38</sup>

The areas of resistance to certain fundamental rights are often consensual.<sup>39</sup> Even in the absence of a consensual foundation in a given community, it has been possible to observe that, 'the creation of enclaves where certain fundamental rights are suspended is justified in the name of established tradition, or further of a collective right to difference'.<sup>40</sup> Indeed, by 'superimposing dissimilar foreign cultures on African societies, colonization has sown confusion in them'.<sup>41</sup> One of the major obstacles to

<sup>36</sup> Above n. 13, p. 21.

<sup>37</sup> Y.-M. MORISSETTE, 'L'accès à la justice et les droits fondamentaux comme moyen et fin' in *L'effectivité des droits fondamentaux dans la communauté francophone*, Montréal, Aupelf-Uref, 1994, p. 271.

<sup>38</sup> M. KAMTO, 'Une justice entre tradition et modernité' (1990) 156 *Afrique Contemporaine*, p. 60.

<sup>39</sup> Above n. 37.

<sup>40</sup> Ibid.

<sup>41</sup> Above n. 38.

access to the justice system on the part of these children lies in the conflictual situation between modern law and traditional law. In the indigenous people's culture, a concern prevails to safeguard 'the group's cohesion and harmony',<sup>42</sup> by internalizing collective values – in contradiction to Western culture, which revolves around 'safeguarding individual values'.<sup>43</sup> Dean Maurice Kamto underlines that, 'indeed, in traditional Africa justice was a moment of reconciliation rather than one of division, because every dispute constitutes a disturbance of social cohesion'.<sup>44</sup> It is for this reason Professor Sawadogo points out that, 'the undertaking of legal proceedings is considered an act of hostility against the respondent, who will not lack opportunities to get even. It is thus unsurprising that a great many debtors are not brought to court'.<sup>45</sup>

Furthermore, access to the justice system for indigenous children is compromised since the modern justice system constitutes an unknown that elicits rejection, due to its procedures and its object, which are unfamiliar to them. According to Jacques Vergès, the modern justice system is designed as 'an arena fight in which the adversaries embrace as enemies, where the relentless cut and thrust of the arguments and procedural trickery must come to a conclusion in a dramatic end, with a winner and a loser, who turn their backs on each other on leaving the courtroom'.<sup>46</sup>

When the rights of an indigenous child are infringed, it is difficult for them to take legal action. Certainly, this is a fundamental judicial right, but this involves the 'judicial law, which is most restricted when the person claiming their rights is a child'.<sup>47</sup> Children may not undertake direct appeal before the Cameroonian courts. A child may litigate through their legal representative.<sup>48</sup> The latter must have the will, ability, and knowledge

<sup>42</sup> Above n. 35, p. 48.

<sup>43</sup> Ibid.

<sup>44</sup> Above n. 38, p. 58.

<sup>45</sup> F.M. SAWADOGO, 'L'accès à la justice en Afrique francophone : problèmes et perspectives. Le cas du Burkina Faso', in *Effectivité des droits fondamentaux dans la communauté francophone*, Montréal, Aupelf-Uref, 1994, p. 308.

<sup>46</sup> J. VERGÈS, *Pour en finir avec Ponce Pilate*, Paris, *Le pré aux clercs*, 1983, p. 89.

<sup>47</sup> M. PARÉ, 'L'accès des enfants à la justice et leur droit de participation devant les tribunaux : quelques réflexions' (2014) 44(1) *Revue générale de droit*, p. 92.

<sup>48</sup> In civil and commercial matters, children lack capacity of execution, but have a right of action. However, an emancipated minor has capacity, except for engaging in trade. This representation of the child needs to be distinguished from representation *ad litem*. The power of representation does not dispense with the need to refer to the name of the child represented in the proceedings, in accordance with the maxim that, 'no one can litigate by proxy'. Indeed, this involves preventing the person who has the right of action from concealing their name.

required to institute proceedings in court with regard to the rights of their aggrieved child. Unfortunately, many of them seem to dread this excessively formalized modern justice. Indeed, modern jurisdictional complexity, of which 'the structuring into tiers, which is to say into levels of jurisdiction and power, complicates the proceedings, in the intricacies of which the persons subject to the law [coming from the indigenous peoples] get lost, and interminably drags out proceedings the outcome of which remains uncertain.'<sup>49</sup> In response to this atypical and complex situation, we readily grasp 'the disillusionment or disaffection experienced by persons subject to the law [from the indigenous peoples], who remain rooted in the traditional culture, or are of limited means, when faced with this marketable or cash-convertible justice, which substantiates so often this maxim of the French fabulist, 'Thus human courts acquit the strong, and doom the weak, as therefore wrong.'<sup>50</sup> We readily understand why most of these individuals believe the judgments of the modern courts are not well rendered, and consequently seldom send their children to them.

#### 4. CONCLUSION

Access to the justice system by children from the indigenous peoples is a concern in Cameroon, with several impediments marring its efficacy. Accessibility to the Cameroonian legal system is subject to organization and functional dysfunctions. In addition, some socio-cultural problems (poverty, ignorance, illiteracy, lack of adequate government communication, and, at times, lack of confidence in modern justice) constrain access to the justice system on the part of these children. In the face of the indifference towards modern justice on the part of the members of indigenous peoples, alternative procedures emerge, such as recourse to out-of-court dispute settlement, in line with customary procedures. These customary procedures put into perspective the importance of modern legal formalities, and also embody the advantage of being uttered in 'the language of the litigants, following a law in the standards and principles of which they are knowledgeable.'<sup>51</sup>

<sup>49</sup> Above n. 38, p. 63.

<sup>50</sup> Ibid.

<sup>51</sup> Ibid.

Children's access to justice has emerged as an important topic in the children's rights domain. While there has been increasing attention paid to child-friendly justice internationally, there has been relatively little research in this area. This book, with contributions from researchers and practitioners, explores the meaning, practice and challenges of children's access to justice and contributes to a deeper understanding of what access to justice means to children, how they experience it and what it should look like in practice. It seeks to define access to justice in a global way, by addressing current challenges, asking new questions and providing answers to existing problems. One of the main areas of focus is children's participation in legal proceedings, which critically explores how children are heard in family law, criminal law and child protection procedures. Special challenges faced by groups of children, such as indigenous children, are brought to light. The roles of different actors in justice, including judges and lawyers, but also institutions such as independent child commissioners and schools, and how they can improve children's access to justice are explored. The book also highlights structural obstacles to children's participation that can be explained by country-specific situations and the attitudes of adults towards children.

Many of the contributions are based on empirical research, bringing forth the voices of actors of justice and children themselves. While many of these contributions are county-specific, the book clearly demonstrates how challenges to children's access to justice are universal in nature.

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