

A Legal Appraisal of the Application of the Death Penalty in Cameroon

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Abstract

This paper provides a comprehensive legal appraisal of the death penalty's application in Cameroon, evaluating its constitutional, legal, and human rights dimensions. Despite the global trend towards abolition, Cameroon continues to implement capital punishment, sparking intense debate regarding its alignment with international human rights standards and constitutional guarantees. The study examines the statutory framework governing the death penalty in Cameroon, including relevant provisions of the Cameroonian Penal Code and the Constitution. It assesses the recent legal reforms and international treaties on the death penalty's application. Through a critical analysis of judicial practices, and case law, the paper highlights inconsistencies and challenges in the implementation process. The appraisal further explores the socio-political and ethical implications of capital punishment in Cameroon, considering public opinion and the role of civil society. The study adopts a qualitative research methodology which makes use of empirical methods such as observation. It also makes use of the doctrinal method which entails content analysis of primary and secondary data. Ultimately, the study advocates for a reassessment of the death penalty's role in the justice system, emphasizing the need for reforms to align with evolving human rights norms and ensure fair and equitable application of justice.

Keywords: death penalty, application, appraisal, legal

1. Introduction

The death penalty in Cameroon, like in many countries, is a complex and multifaceted issue involving legal, ethical, and social dimensions.

The death penalty has been widely practiced by most civilizations in recorded human history. Its practice, nonetheless, has stirred considerable controversy. An increasing number of developed and developing countries has abolished the

death penalty either in law or practice. However, there are still countries that vigorously enforce the death penalty, with one of them being Cameroon. With Cameroon being a less developed and part of the states that adheres to human rights, it raises the question why the death penalty persists in Cameroon while it is no longer practiced in other parts of the world.¹

Some Cameroonians under the traditional era handed down death sentences and was executed beyond the control of colonialists, and often without their knowledge, in cases of theft or cutting bamboo at night. The purported sentence for theft was hanging or being thrown alive in a pit, while the purported sentence for cutting bamboo was to be tied upside down to a tree until death. Men found guilty of adultery were sometimes burned alive or stoned, while women were sold into slavery or thrown into the same pit for people convicted for thievery.²

After independence, President Ahmadou Ahidjo sought to use the death penalty as deterrent measures against organized crime. It was the case as he signed several orders that were passed without parliamentary approval in 1972 wherein aggravated theft and burglary were punishable with death. Under these laws, judges were prohibited from applying aggravating or mitigating circumstances and considering each case on an individual basis. The year 1972 saw the introduction of military courts, which increasingly played a role in implementing capital punishment.³ However, it is on record that many people were sentenced to death based on aggravated theft legislation from 1972 to 1990, when the laws were amended.⁴

The Cameroon parliament enacted Law No.65LF/24 of the 12th of November 1965 in book one and Law No. 67LF-1 of 12th June 1967 instituting the Penal Code of the Country which was revised by Law No 2016/007 of 12 July 2016 relating to the Penal Code. Section 276 (1) of the Cameroon penal code states that; whoever commits murder by premeditation; Poisoning

or; with a view to trafficking the organs of the victim, or in the preparation, facilitation or commission of a felony of misdemeanor, or to enable the escape or to procure the impunity of the offender or of an accessory to such felony or misdemeanor, shall be punished with death.⁵ Similarly, in 2014, Cameroon Parliament instituted Law No. 2014/028 of 23rd of December 2014 on Suppression of Acts of Terrorisms and punishes offenders involve in acts of terrorism to death.⁶

This paper seeks to appraise the application of the death penalty in Cameroon looking at the definition of the death penalty, the nature of the death penalty, conditions precedent the execution of the death penalty in Cameroon, legal framework guaranteeing the application of death penalty in Cameroon and human right norms on the death penalty.

2. Conceptual Understanding and Nature of Death Penalty in Cameroon

2.1 Conceptual Understanding of Death Penalty

Death penalty, which is also known as Capital punishment, is criminal punishment that takes the defendant's life as the punishment for the defendant's crime.⁷ The sentence ordering capital punishment is called the death sentence, and the act of carrying out the sentence is called an execution.⁸ A defendant sentenced to death and waiting for execution is said to be on death row. In the common law system, capital punishment is only used in a limited number of crimes such as treason, murder, rape, and arson. Even dating back to 1688, despite the extremely rigorous laws that had been established during the reigns of the Tudors and Stuarts, no more than about fifty offenses carried the death penalty.⁹ In the eighteenth century, however, their number began to increase. Generally, during the hundred and sixty years from the Restoration to the death of George III, the number of capital offenses had increased by about one hundred and ninety.¹⁰

Death penalty is an institutionalized practice

¹ Cameroon Human Rights Report. (2023). U.S. Department of State. Available at <https://www.state.gov/wp-content/uploads/2024/02/528267-CAMEROON-2023-HUMAN-RIGHTS-REPORT.pdf>. Accessed on the 20th July 2024.

² *Ibid.*

³ *Ibid.*

⁴ Cameroon (1961-present) "University of Central Arkansas. 2014." Archived from the original on 5 February 2024.

⁵ Section 276(1) Cameroon Penal Code 2016.

⁶ Law No. 2014/028 of 23rd December 2014 on the Suppression of Acts of Terrorism in Cameroon.

⁷ Cornell Law School, capital punishment. Available at https://www.law.cornell.edu/wex/capital_punishment. Accessed on the 20th of July 2024.

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ *Ibid.*

designed to result in deliberately executing persons in response to actual or supposed misconduct and following an authorized, rule-governed process to conclude that the person is responsible for violating norms that warrant execution.¹ Punitive executions have historically been imposed by diverse kinds of authorities, for an expansive range of conduct, for political or religious beliefs and practices, for a status beyond one's control, or without employing any significant due process procedures. Punitive executions also have been and continue to be carried out more informally, such as by terrorist groups, urban gangs, or mobs. But for centuries in Europe and America, discussions have focused on capital punishment as an institutionalized, rule-governed practice of modern states and legal systems governing serious criminal conduct and procedures.²

Death penalty formerly called judicial homicide, is the state-sanctioned killing of a person as punishment for actual or supposed misconduct. The sentence ordering that an offender be punished in such a manner is known as a death sentence, and the act of carrying out the sentence is known as an execution. A prisoner who has been sentenced to death and awaits execution is condemned and is commonly referred to as being "on death row". Etymologically, the term capital refers to execution by beheading,³ but executions are carried out by many methods, hanging, shooting, lethal injection, stoning, electrocution, and gassing. Crimes that are punishable by death are known as capital crimes, capital offences, or capital felonies, and vary depending on the jurisdiction, but commonly include serious crimes against a person, such as murder, assassination, mass murder, child murder, aggravated rape, terrorism, aircraft hijacking, war crimes, crimes against humanity, and genocide, along with crimes against the state such as attempting to overthrow government, treason, espionage, sedition, and piracy.

2.2 Nature of Death Penalty in Cameroon

Capital punishment or death sentence is the

putting to death of a convict by the state as punishment for a capital offense or crime.⁴ Section 23 of the Penal Code⁵ provides for the manner of the execution of the death sentence to be indicated in the judgement of the court which should be either by shooting or hanging⁶. The general rule is that this is to be executed publicly, unless the President of the Republic indicates otherwise in his decision not to commute the death sentence as stipulated in Section 22 of the PC which lays down condition's precedent to execution. Hence, there are basically two modes of executing the death penalty in Cameroon which are by shooting or hanging as spelt out in section 23 of the penal code. These will be treated in turns below.

2.2.1 Execution by Hanging

Hanging, execution or murder by strangling or breaking the neck by a suspended noose. The traditional method of execution involves suspending victims from a gallows or crossbeam until they have died of asphyxiation. In another common method, people to be hanged stand on a trapdoor, and, when the trap is released, they

⁴ There are more than **twenty-eight (28) capital offences** under Cameroon penal law provided in the Penal Code, the Military Justice Code (2017), the 2014 law on terrorism, **Section 4** of the 1989 law on toxic and dangerous waste, the 1983 law regulating police authorities within seaports, **Section 9** of the 1995 law on radioprotection, etc. They include, for the main: hostility against fatherland (**S.102 PC**), treason (**S.103 (a) PC**), espionage (**S.103 (b) PC**), sabotage (**S.103 (c) PC**), secession (**S.111 (2) PC**), provocation of civil war (**S.112 PC**), concert against the security of the state (**S.124 (3) PC**), assault on public servant (**S.156 (5) PC**), depredation by band in time of war (**S.236 (3) PC**), capital murder (**S.276 PC**), aggravated theft with use of force occasioning death or grievous harm (**S.320 (2)**), murder of children under 15 years (**S.350 PC**), murder of ascendants (**S.351 PC**), aggravated kidnapping occasioning death of minor (**S.354 (2) PC**), and under the 2014 terrorism law we have: acts of terrorism (**S.2 (1) and S.2(2)**), financing of acts of terrorism (**S.3**), laundering of proceeds of terrorism (**S.4**), recruitment and training of terrorists (**S.5**), military offenses under Law No. 2017/012 of July 12, 2017 laying down the Military Justice Code include: desertion in war time and/or with conspiracy to join the enemy (**S.34 (4)**), abstraction of items in zone of operations from wounded, sick or dead service men and violence (**S.51 (2)**), treason (**S.61**), collusion with the enemy (**S.62**), espionage (**S.63**), hiring in enemy force (**S.64**), and use of aircrafts to cause death of persons per **Section 10** of Law No. 2017/013 of July 12, 2017 relating to sanctions on violations of civil aviation security, etc. It should be noted that the criminal law provides for the punishment of attempts (**S.94 PC**), conspirators (**S.95 PC**), co-offenders (**S.98 PC**), accessories (**S.97 & 98 PC**) in like manner as the principal offender(s).

⁵ Law No 2016/007 of 12 July 2016 relating to the Penal Code.

⁶ Section 23 of Law No 2016/007 of 12 July 2016 relating to the Penal Code.

¹ Internet Encyclopedia of Philosophy. Capital Punishment. Available at <https://iep.utm.edu/death-penalty-capital-punishment/>. Accessed on the 21st of July 2024.

² *Ibid.*

³ Kronenwetter, Michael. (2001). *Capital Punishment: A Reference Handbook* (2 ed.). ABC-CLIO. ISBN 978-1-57607-432-9.

fall several feet until stopped by the rope tied around their neck. The jerk breaks the cervical vertebrae and is thought to cause immediate loss of consciousness. A knot or metal eyelet (the hangman's knot) in the noose helps jerk back the victim's head sharply enough to break the neck.¹

Hanging was one of the modes of execution under ancient Roman law, and it was subsequently derived by the Anglo-Saxons from their Germanic ancestors. It had become the prescribed mode of punishment for homicide in England by the 12th century, and in time it came to supersede all other forms of capital punishment for felony convictions until the abolition of capital punishment in Great Britain in 1965. Public hangings were held in England until 1868, when they were removed to prisons.²

Hanging became the standard mode of execution throughout the British Empire and wherever else the Anglo-American common law was adopted. It also came into use in Russia, Austria, Hungary, and Japan. Hanging was the preeminent means of execution in the United States until the mid-20th century. In the United States and elsewhere, hanging was also usually the mode of murder used in lynchings.

The Cameroon Penal Code provides in its Section 23 hanging as one of the methods of executing the death penalty in Cameroon. This provision read thus;

(1) Execution of a death sentence shall be by shooting or hanging as may be ordered by the judgment and shall be public unless otherwise ordered in the decision not to commute.

(2) The bodies of persons executed shall be returned to their families at their request, but on condition of a quiet funeral.

(3) Nothing may be published by the press beyond the official record of the execution and any official communique that may be released.

(4) The detailed application of this Section shall be prescribed by decree.

In line with the above provisions, it is evident that hanging is one of the primary modes of executing the death sentence in Cameroon for those that are on the death row. This means of execution has been criticized by the man for being cruel and inhumane, however, since 1997, there

has been no case of such execution even though the courts of Cameroon have been dishing out death sentence right up to date.

The death penalty has only sparingly been used in Cameroon since the second coup attempt. Only two executions have been carried out in Cameroon since 1984. The first execution was a double execution that took place on 28 August 1988, and the convicts, identified only as Njomzeu and Oumbe, were convicted of the 1979 murder of the Mpondo family, a violent crime involving "bloodshed with aggravating circumstances." The men were subjected to a public execution by firing squad in Douala, with 24 soldiers, twelve for each man, appointed to carry out the executions.³ That is the only case in view where the death sentence had been executed and it was not by hanging rather by firing squad.⁴

2.2.2 Execution by Shooting

Execution by firing squad, is sometimes called fusillading, a method of capital punishment, particularly common in the military and in times of war. Some reasons for its use are that firearms are usually readily available and a gunshot to a vital organ, such as the brain or heart, most often will kill relatively quickly.⁵

A firing squad is normally composed of several soldiers, all of whom are usually instructed to fire simultaneously, thus preventing both disruption of the process by one member and identification of who fired the lethal shot. To avoid disfigurement due to multiple shots to the head, the shooters are typically instructed to aim at the heart, sometimes aided by a paper or cloth target. The prisoner is typically blindfolded or hooded as well as restrained. Executions can be carried out with the condemned either standing or sitting. There is a tradition in some jurisdictions that such executions are carried out at first light or at sunrise, giving rise to the phrase "shot at dawn".⁶

³ Mbembe, Achille. (1992). "Provisional Notes on the Postcolony". *Africa: Journal of the International African Institute*, 62(1). Cambridge University Press, 11-12. doi:10.2307/1160062. ISSN 0001-9720. JSTOR 1160062. S2CID 145451482. Accessed on 29 July 2024.

⁴ United Nations Human Rights Committee (18 February 1993). Second periodic reports to be communicated by State Parties in 1990, Covenant on Civil and Political Rights (Report). Retrieved 29 July 2024.

⁵ Execution by firing squad. Available at https://encyclopedia.marginalia.nu/wiki/Execution_by_firing_squad. Accessed on the 8th of August 2024.

⁶ *Ibid.*

¹ Britannica, Hanging. Available at <https://www.britannica.com/topic/hanging>. Accessed on the 8th of August 2024.

² *Ibid.*

Execution by firing squad is a specific practice that is distinct from other forms of execution by firearms, such as an execution by shot(s) to the back of the head or neck. However, the single shot by the squad's officer with a pistol is sometimes incorporated in a firing squad execution, particularly if the initial volley turns out not to be immediately fatal. If the condemned prisoner is an ex-officer who is acknowledged to have shown bravery throughout their career, they may be afforded the privilege of giving the order to fire. As a means of insulting the condemned, however, past executions have had them shot in the back, denied blindfolds, or even tied to chairs.

The most recent execution confirmed to have taken place in Cameroon was on 9 January 1997, when an inmate identified as Antoine Vandit Tize was executed by firing squad in Mokolo, a city in the Mayo-Tsanaga division of the Far North Region. Tize had been on death row in Cameroon for approximately seven years after his conviction for murder, and he was detained at the Central Prison in Maroua before his transfer to the site where his execution took place. The execution of Tize was the first verified to have taken place in the country since 1988.¹ Execution by firing squad is provided for in Section 23 of the Penal code² as it states thus;

(1) Execution of a death sentence shall be by shooting or hanging as may be ordered by the judgment and shall be public unless otherwise ordered in the decision not to commute.

(2) The bodies of persons executed shall be returned to their families at their request, but on condition of a quiet funeral.

(3) Nothing may be published by the press beyond the official record of the execution and any official communicate that may be released.

(4) The detailed application of this Section shall be prescribed by decree.

This mode of execution makes up one of the prescribed modes of executing the death sentence in Cameroon. Nevertheless, since 1997 there has been no such execution by this means.

3. Legal Basis for the Application of Death Penalty in Cameroon

¹ Amnesty International. (1998). *Amnesty International Report 1998 – Cameroon*. RefWorld. Archived from the original on 28 April 2022. Retrieved 28 July 2024.

² Law No 2016/007 of 12 July 2016 relating to the Penal Code.

There is no mention of the death penalty in the Cameroonian Constitution promulgated on 18 January 1996.³ However, the Preamble of the Constitution states that *“every person has a right to life, to physical and moral integrity”*.⁴ According to article 65,⁵ the Preamble is an integral part of the Constitution. Nevertheless, there are several national laws that guarantees the application of the death penalty in Cameroon. Amongst them we have the new Criminal Code promulgated on 12 July 2016 which retained the old provisions on the death penalty.⁶ Thus, 11 crimes are punishable by death including *“hostility against the homeland”*, treason and espionage even if they do not result in death. The Criminal Code sets out two methods of execution: hanging and executions by firing squad.⁷ The Criminal Code also defines some categories of individuals excluded from capital punishment such as juveniles, pregnant women and individuals suffering from a mental disability or insanity. Article 2 of same code states the primacy of international law and treaties over national penal provisions as Cameroon is signatory to the African Charter on the Rights and Welfare of the Child, the death penalty cannot be applied for infants, mothers or young children.

Also, the 2017 Code of Military Justice⁸ removed some offences punishable by death such as abandonment of post in the presence of the enemy and voluntary mutilation in the presence of the enemy. Crimes punishable by death include treason, intelligence with the enemy, espionage and desertion.

The Anti-Terrorism Law⁹ responding to the Boko Haram violent attacks, Cameroon adopted regulations to repress terrorist acts. This legislation extends the scope of capital punishment to people considered accomplices to terrorism. Financing of acts of terrorism, laundering of the proceeds of acts of terrorism and recruiting and training people with a view

³ The 1996 Cameroon Constitution.

⁴ Preamble of the 1996 Cameroon Constitution.

⁵ *Ibid.*

⁶ Law No 2016/007 of 12 July 2016 relating to the Penal Code.

⁷ Section 23 of Law No 2016/007 of 12 July 2016 relating to the Penal Code.

⁸ Law no 2017/12 of July 2017 to lay down the code of military justice in Cameroon.

⁹ The Anti-Terrorism; Law No. 2014/028 Of 23 December 2014.

to their participation in acts of terrorism are henceforth punishable by death. Moreover, the definition of terrorism is vague as it includes acts that do not require physical violence such as property damage. This new legislation establishes the jurisdiction of military courts for all terrorism offences, including acts committed by civilians. This legislation on weapons¹ broadens the concept of a weapon and provides for death for certain types of use of chemical and nuclear weapons. In total, 24 legal provisions provide for the application of the death penalty in Cameroonian law.

4. Crimes Subjected to Death Penalty in Cameroon

In Cameroon, the death penalty is prescribed for a range of serious crimes under the Penal Code. Amongst them we have Murder, Terrorism, High Treason, Rape with Aggravating Circumstances, Armed Robbery with Murder, Certain Acts of War Crimes, Drug Trafficking with Aggravating Circumstances. These crimes will be treated in turns.

4.1 Murder

Murder refers to the unlawfully killing of another person. Murder is not the same as homicide because not all homicide is unlawful. Instead, murder is a category of homicide.² The precise legal definition of murder varies by jurisdiction. Most states distinguish between different degrees of murder (first, second, and third). Some states use Model Penal Code to legally define murder and the subsequent punishments.³

At common law, murder was historically defined as killing another human being with malice aforethought. Malice aforethought is a legal term of art, that encompasses the following types of murder:

- “Intent-to-kill murder” — intentional murder.
- “Grievous-bodily-harm murder” — Killing someone in an attack intended to cause them grievous bodily harm. For example, a defendant is still liable for murder, even if the defendant only

intended to wound the victim.

- “Felony-murder” — Killing someone while in the process of committing a felony. For example, in common law, robbery was a felony. If a robber accidentally killed someone during a robbery, the robber could be executed.
- “Depraved heart murder” — Killing someone in a way that demonstrates a callous disregard for the value of human life. For example, if a person intentionally fires a gun into a crowded room, and someone dies, the person could be convicted of depraved heart murder.

Certain, specified types of murder were first-degree murder, and carried the death penalty. All other types of murder were second-degree murder, which did not carry the death penalty. First-Degree Murder includes willful, deliberate, and premeditated murder, particularly heinous types of murder. Felony-murder, but only for certain listed felonies.⁴

Second-Degree Murder typically includes murder with malice intent, but not premeditated. Third-Degree Murder encompasses all other types of murder that do not fall within first- or second-degree murder categories, such as unintentional murders.

In Cameroon, murder is a serious criminal offense punishable by death under specific conditions. Murder per the Cameroon penal code is defined as the unlawful killing of another person with intent. The key elements of murder include:

1) Unlawful Killing

- The act must result in the death of another individual.
- It must be done without legal justification or excuse (e.g., self-defense).

2) Intent

- The perpetrator must have had the intention to kill or cause serious harm that could result in death.
- This means that the killing must be premeditated or deliberate.

Murder in Cameroon is primarily governed by

¹ Law No. 2016/015 of 14 December 2016 on the System of Weapons and Ammunition in Cameroon.

² Cornell Law School, Murder. Available at <https://www.law.cornell.edu/wex/murder>. Accessed on the 7th of August 2024.

³ *Ibid.*

⁴ For example, in the original Pennsylvania statute, the only eligible felonies were arson, rape, robbery, and burglary.

Section 276 of the Penal Code,¹ which states:

- 1) *Whoever commits murder:*
 - a. *After premeditation; or*
 - b. *By poisoning; or*
 - c. *With a view to trafficking the organs of the victim;*
 - d. *In the preparation, facilitation of commission of a felony or misdemeanours, or to enable the escape or to procure the impunity of the offender or of an accessory to such felony or misdemeanours, shall be punished with death.*

Cameroonian law recognizes different forms or categories of murder, each carrying potentially different legal implications. Amongst them it has Premeditated Murder which entails when the killing is planned, showing clear intent to cause death. This is considered more severe and often results in the death penalty. There is also Murder with Aggravating Circumstances which includes murder committed under particularly heinous conditions, such as extreme brutality or while committing another serious crime (e.g., robbery or rape). The presence of aggravating factors can lead to a more severe sentence, including the death penalty. Felony Murder that involves a death that occurs during the commission of another felony, such as armed robbery or burglary, where the perpetrator did not necessarily intend to kill but was involved in a crime where death resulted is another.²

The investigation of Murder cases is thoroughly investigated by law enforcement officers. Evidence gathering, witness testimonies, and forensic analysis play critical roles. The prosecution must prove beyond a reasonable doubt that the accused had the intent to kill and that the killing was unlawful before one can be sentenced for such crimes.

Common defenses against a murder charge may include claims of self-defense, provocation, or mental incapacity. The defense can argue that the killing was not premeditated or that there were mitigating factors. An accused individual has the right to a fair trial, including access to legal representation and the opportunity to appeal a conviction. If convicted of murder, the standard penalty is life imprisonment or the

death penalty, depending on the specifics of the case and the presence of aggravating circumstances. Section 276 explicitly prescribes the death penalty for murder, but courts also consider other sentencing options based on case specifics. Convicts have the right to appeal their sentences. Higher courts review the conviction and sentence, ensuring legal standards and procedures were followed. The President of Cameroon has the power to grant clemency or commute the death sentence, reflecting an avenue for possible reprieve.³

4.2 Terrorism

Terrorism refers to the calculated use of violence, to create a general climate of fear in a population and thereby to bring about a particular political objective. Terrorism has been practiced by political organizations with both rightist and leftist objectives, by nationalistic and religious groups, by revolutionaries, and even by state institutions such as armies, intelligence services, and police.⁴

Defining terrorism is usually a complex and controversial task because of the inherent ferocity and violence of terrorism. The term in its popular usage has developed an intense stigma. It was first coined in the 1790s to refer to the terror used during the French revolution by the revolutionaries against their opponents.⁵

Terrorism is not legally defined in all jurisdictions; the statutes that do exist, however, generally share some common elements. Terrorism involves the use or threat of violence and seeks to create fear, not just within the direct victims but among a wide audience. The degree to which it relies on fear distinguishes terrorism from both conventional and guerrilla warfare. Although conventional military forces invariably engage in psychological warfare against the enemy, their principal means of victory is the strength of arms. Similarly, guerrilla forces, which often rely on acts of terror and other forms of propaganda aim at military victory and occasionally succeed. Terrorism proper is thus the calculated use of violence to generate fear, and thereby to achieve political goals, when direct military victory is not possible. This has led some social scientists

¹ Law No 2016/007 of 12 July 2016 relating to the Penal Code.

² *Ibid.*

³ *Ibid.*

⁴ Britannica, Terrorism. Available at <https://www.britannica.com/topic/terrorism>. Accessed on the 6th of August 2024.

⁵ *Ibid.*

to refer to guerrilla warfare as the weapon of the weak and terrorism as the weapon of the weakest¹.

In Cameroon, terrorism is regulated by Law No. 2014/028 of December 23, 2014, on the Suppression of Acts of Terrorism. Terrorist acts, particularly those resulting in death or significant harm, can be punishable by death. This includes actions intended to incite fear or terror for political, ideological, or religious motives.

4.3 Treason and Espionage

Treason is the crime of attacking a state authority to which one owes allegiance. This typically includes acts such as participating in a war against one's native country, attempting to overthrow its government, spying on its military, its diplomats, or its secret services for a hostile and foreign power, or attempting to kill its head of state. A person who commits treason is known in law as a traitor.²

In common law countries, treason also covered the murder of specific social superiors, such as the murder of a husband by his wife or that of a master by his servant. Treason against one's monarch was known as high treason and treason against a lesser superior was petty treason. As jurisdictions around the world abolished petty treason, "treason" came to refer to what was historically known as high treason.³

At times, the term traitor has been used as a political epithet, regardless of any verifiable treasonable action. In a civil war or insurrection, the winners may deem the losers to be traitors. Likewise, the term traitor is used in heated political discussion — typically as a slur against political dissidents, or against officials in power who are perceived as failing to act in the best interest of their constituents.

In Cameroon, treason is punishable under Section 102 of the Penal Code.⁴ The provision states thus;

Any citizen:

a) Taking part in hostilities against the Republic;

b) or assisting or offering to assist the said hostilities; shall be guilty of treason and punished with death.

On the other hands, Espionage, spying, or intelligence gathering is the act of obtaining secret or confidential information (intelligence). A person who commits espionage is called an espionage agent or spy. Any individual or spy ring (a cooperating group of spies), in the service of a government, company, criminal organization, or independent operation, can commit espionage. The practice is clandestine, as it is by definition unwelcome. In some circumstances, it may be a legal tool of law enforcement and in others, it may be illegal and punishable by law.

Espionage is often part of an institutional effort by a government or commercial concern. However, the term tends to be associated with state spying on potential or actual enemies for military purposes. Spying involving corporations is known as industrial espionage.⁵

One way to gather data and information about a targeted organization is by infiltrating its ranks. Spies can then return information such as the size and strength of enemy forces. They can also find dissidents within the organization and influence them to provide further information or to defect. In times of crisis, spies steal technology and sabotage the enemy in various ways. Counterintelligence is the practice of thwarting enemy espionage and intelligence-gathering. Almost all sovereign states have strict laws concerning espionage, including those who practice espionage in other countries, and the penalties for being caught are often severe.⁶

The crime of espionage is governed by section 103 of the Cameroon penal code.⁷ The said provision states thus;

Shall, if a citizen, be guilty of treason and, if a foreigner, be guilty of espionage, and shall in either case be punished with death whoever:

a) Instigates a foreign power to undertake hostilities against the Republic; or;

b) Surrenders or offers to surrender to a foreign

¹ Opt. cit. note 15.

² Britannica. "Treason | Treason Punishment, Treason Law, Treason Definition." Available at <https://www.britannica.com/topic/treason>. Accessed on the 5th of August 2024.

³ *Ibid.*

⁴ Law No 2016/007 of 12 July 2016 relating to the Penal Code.

⁵ Archive.org. available at <https://archive.org/download/personal-securityopsec-and-leadership/Espionage.pdf>. Accessed on the 8th of august 2024.

⁶ *Ibid.*

⁷ Law No 2016/007 of 12 July 2016 relating to the Penal Code.

power or to its agents any troops, territory, installations or equipment employed in the defence of the nation, or any defence secret, or who in whatever manner acquires such a secret with intent to surrender it to a foreign power;

c) With intent to injure the defence of the nation, damages any construction, installation or equipment, or commits any malpractice liable to prevent their normal working or to lead to an accident.

Espionage is therefore the process of obtaining military, political, commercial, or other secret information by means of spies, secret agents, or illegal monitoring devices. Espionage is sometimes distinguished from the broader category of intelligence gathering by its aggressive nature and its illegality.¹

4.4 Other Crimes

There exist other crimes which are subject to death penalty in Cameroon; among them we have crimes such as Secession, Aggravated theft, Assault on children, Assault on public servant,² Aggravated kidnapping,³ and Desertion in wartime and/or with conspiracy.

With Secession, the law in Article 111⁴ provides that;

(1) Whoever undertakes in whatever manner to infringe the territorial integrity of the Republic shall be punished with imprisonment for life.

(2) In time of war, or in a state of emergency or siege, the penalty shall be death.

Regarding Aggravated theft, the penal code provides in Article 320;⁵

- 1) Whoever commits a theft by the use of force causing the death of another or grievous harms as provided for in

¹ Britannica, definition of Espionage. Available at <https://www.britannica.com/topic/espionage>. Accessed on the 7th of August 2024.

² See Article 156 Assault on public servant. (1) Whoever uses force on a public servant or otherwise interferes with him, shall be punished with imprisonment for from 1 (one) month to 3 (three) years and with fine of from CFAF 5 000 (five thousand) to CFAF 100 000 (one hundred thousand).

³ Article 354 Aggravated kidnapping. (1) The punishment for kidnapping under either of the two last foregoing Sections shall be imprisonment for life where: – the person kidnapped is under the age of thirteen; or – the offender commits the offence with intent to obtain a ransom or obtains a ransom. (2) The punishment shall be death where the minor dies as a result of the kidnapping.

⁴ See Law No 2016/007 of 12 July 2016 relating to the Penal Code.

⁵ See Law No 2016/007 of 12 July 2016 relating to the Penal Code.

Sections 277 and 279 of the Penal Code shall be punished with the death.

Cf. Article 277 – Grievous Harm. Whoever permanently deprives another of the use of the whole or of any part of any member, organ or sense shall be punished with imprisonment for from 10 (ten) to 20 (twenty) years.

Cf. Article 279 – Assault occasioning grievous harm.

5. Conditions Precedent to Execution of a Death Penalty in Cameroon

In Cameroon, the execution of a death penalty involves several conditions and procedural safeguards to ensure due process and legal compliance. These conditions are provided for in section 22 of the penal code which read thus;

(1) *Every sentence of death shall be submitted to the President of the Republic for his decision on commutation.*

(2) *No death sentence may be executed until the President shall have signified his decision not to commute.*

(3) *No woman with child may be executed until after her delivery.*

(4) *No execution may take place on Sunday or on a public holiday.*

Per the above provision, according to section 22 of the Cameroon Penal Code on conditions precedent to execution, (1) every sentence of death shall be submitted to the President of the Republic for his decision on commutation; (2) no death sentences may be executed until the President shall have signified his decision not to commute; (3) no woman with a child may be executed until after her delivery.⁶

In addition to the provisions of the Cameroon penal code, international instruments approved by Economic and Social Council resolution 1984/50 of 25 May 1984 provides Safeguards Guaranteeing Protection of the Rights of those Facing the Death Penalty. They shed a broader light in the application of the death penalty: Article 3 of the safeguards provide that Persons below 18 years of age at the time of the commission of the crime shall not be sentenced to death, nor shall the death sentence be carried out on pregnant women, or on new mothers, or

⁶ See Law No 2016/007 of 12 July 2016 relating to the Penal Code.

on persons who have become insane.¹

Article 4 of the same instrument provides that Capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts. In Article 5, the instrument provides that Capital punishment may only be carried out pursuant to a final judgment rendered by a competent court after the legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the International Covenant on Civil and Political Rights, including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings.²

Away from the above narrative, there are other conditions that must be adhere to before the execution of a death penalty in Cameroon is carried out. Before a death penalty can be executed, the convicted individual must have exhausted all legal avenues for appeal. This means that the conviction and sentence must be upheld by higher courts, including the Supreme Court of Cameroon if applicable. The convicted person has the right to challenge the verdict and the sentence, and the appellate courts review the case to ensure that legal standards and procedural fairness were observed.

After a conviction is finalized, the death sentence is subject to a review by the President as we have already discussed above as spelt out in Section 22 of the penal code. The President has the authority to grant clemency, commute the sentence to life imprisonment, or uphold the death penalty.³ The review process enables a final check on the appropriateness of the death sentence, considering factors such as the nature of the crime, the convicted individual's background, and any mitigating circumstances. The execution must also comply with Cameroonian laws and regulations governing the death penalty. This includes adherence to legal procedures related to the timing and

method of execution.⁴ Execution is prescribed to be carried out by firing squad as per the Penal Code.

The execution of a death penalty in Cameroon involves several procedural and legal steps to ensure fairness and compliance with both domestic and international standards. These steps include final conviction and appeals, presidential review, adherence to legal procedures, international considerations, proper notification, and humane treatment. These conditions are designed to safeguard the rights of the convicted individual and ensure that the execution process is carried out within the bounds of the law.

6. Human Rights Norms and the Death Penalty

There are two fundamental human rights principles central to the death penalty debate: the right to life and the protection against cruel, inhuman, and degrading punishments.⁵ Both of these normative principles can trace their roots to aspects of Anglo-American constitutional law.

The principle of right to life was made famous by the Declaration of Independence of 1776, referring to the right not to be deprived of life without due process of law. The protection against cruel, inhuman, and degrading punishments originated in the English Bill of Rights of 1689. The specific aims of this law were to safeguard individuals from barbaric treatment as prisoners and exceptionally cruel and painful methods of lethal execution such as drawing and quartering, and disemboweling.⁶ Though no explicit fundamental opposition to the death penalty can be derived from these norms, these principles contributed to the death penalty abolition movement in recent decades.

Several international organizations have influenced the nature and scope of domestic laws and practices on the death penalty in modern times. Most notable is the United Nations (UN). As early as 1966, the UN adopted the *International Covenant on Civil and Political Rights* (ICCPR) stating that "every human being has the right to life" and that "no one shall be

¹ Economic and Social Council resolution 1984/50 of 25 May 1984.

² CHRDA, Statement on The Death Sentence Handed Down To 04 Accused Persons by The Buea Military Tribunal. Available at <https://www.chrda.org/statement-on-the-death-sentence-handed-down-to-04-accused-persons-by-the-buea-military-tribunal/>. Accessed on the 8/8/2024.

³ Section 22 of the Cameroon penal code.

⁴ Section 23 of the Cameroon Penal Code.

⁵ William A. Schabas. (1966). "International Legal Aspects." In *Capital Punishment – Global Issues and Prospects*, eds. Peter Hodgkinson and Andrew Rutherford. U.K.: Waterside Press, 17-44.

⁶ Schabas, William A. (1966). "International Legal Aspects." In *Capital Punishment – Global Issues and Prospects*, eds. Peter Hodgkinson and Andrew Rutherford. U.K.: Waterside Press.

arbitrarily deprived of his life.” It further restricted the use of death penalty to the most serious crimes. The specific resolution entitled *Safeguards Guaranteeing Protection of the Rights of those Facing the Death Penalty*, drafted in 1984 and endorsed in 1985 by several bodies of the UN,¹ represented the most comprehensive and explicit restriction of the death penalty in the history of this organization.² Since the passage of the *Safeguards*, the official stand of the UN on the death penalty includes the following:

- The use of the death penalty must be restricted to “intentional crime with lethal or other extremely grave consequences;”
- Offender categories excluded from the death penalty included juveniles, pregnant women, new mothers, and the insane; and
- Offenders sentenced to death must be based on “clear and convincing evidence leaving no room for an alternative explanation of the facts.”³

Aside from the UN, several other international organizations have also issued mandates and resolutions that focus on the death penalty. For example, the European Union proclaimed the abolition of the death penalty in 1989.⁴ The *American Convention on Human Rights*, effective in 1978, tightened the restrictions on the use of the death penalty and affirmed that once nations abolished the death penalty, they may not reintroduce it.⁵

Other regional treaties such as the *African*

Charter of Human and People’s Rights and the *Arab Charter of Human Rights* were less aggressive on the abolition of the death penalty. In fact, the African Charter did not explicitly mention the death penalty. While the Arab Charter did not prohibit the death penalty, it proclaims the right to life and excluded the imposition of the death penalty for certain types of persons and crime.⁶

Global abolitionist movement Recent developments in international tribunals and international judicial cooperation have also been directed primarily toward the legal abolitionist of the death penalty. For example, the 1993 Statute of the International Tribunal for the former Yugoslavia stipulated that the maximum sentence for crimes tried in the international criminal court shall be life imprisonment.⁷ Sovereign states, relying on one another in international judicial cooperation in areas of extradition, have also increasingly insisted upon treaty provisions that permit them to refuse the extradition request if the accused faced the possibility of the death penalty.⁸

7. Case Law Perspective on the Application of Death Penalty in Cameroon

The death penalty has only sparingly been used since the second coup attempt. Only two executions have been carried out in Cameroon since 1984. The first execution was a double execution that took place on 28 August 1988, and the convicts, identified only as Njomzeu and Oumbe, were convicted of the 1979 murder of the Mpondo family, a violent crime involving bloodshed with aggravating circumstances. The men were subjected to a public execution by firing squad in Douala, with 24 soldiers, twelve for each man, appointed to carry out the executions. Reportedly, both men required a *coup de grâce*.⁹

¹ The *Safeguards* were drafted by the Committee on Crime Prevention and Control in 1984. It was endorsed by the Economic and Social Council, the General Assembly, and the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1985 (Schabas 1996, 27).

² The United Nations has passed several resolutions related to the death penalty since the birth of its organization. For example, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, along with several failed attempts (e.g., the resolution containing the proposal of a moratorium on the death penalty in 1990 failed to obtain a two-thirds majority support) (Schabas, 1996, 26-27).

³ Economic and Social Council Resolution 1984/50, Annex. General Assembly Resolution 29/118, 1984. See also Schabas, 1996, 27.

⁴ For a more complete discussion on the European movement, see Roger Hood. (2002). *The Death Penalty: A Worldwide Perspective*, third edition. Oxford University Press, 16-18.

⁵ For subsequent developments in the Organization of American States on the issues of the death penalty, see Hood, 2002, 15.

⁶ See Schabas, 1966, 18–20 for the description of these developments. The particular types of crime and persons who were excluded from the imposition of the death penalty by the Arab charter included political crimes and nonserious crimes, children (under the age of eighteen), pregnant women, nursing mothers for a period of up to two years following childbirth (Schabas 1996, 20).

⁷ International criminal court has jurisdiction over cases that seriously violated humanitarian law such as genocide, and certain narcotics crimes and terrorism (Schabas 1996, 29).

⁸ See Schabas, 1996, 29–30.

⁹ Mbembe, Achille. (1992). “Provisional Notes on the Postcolony”. *Africa: Journal of the International African Institute*, 62(1). Cambridge University Press, 11-12. doi:10.2307/1160062. ISSN 0001-9720. JSTOR 1160062. S2CID 145451482. Accessed on the 27/08/2024.

The most recent execution took place in Cameroon on the 9th of January 1997, when an inmate identified as Antoine Vandi Tize was executed by firing squad in Mokolo, a city in the Mayo-Tsanaga division of the Far North Region. Tize had been on death row in Cameroon for close to seven years after his conviction for murder, and he was detained at the Central Prison in Maroua before his transfer to the site where his execution took place. The execution of Tize is the first verified to have taken place in the Cameroon since 1988. Other executions possibly took place that year, but we are unable to confirmed that.¹

However, Cameroon has moved to expand their death penalty law. In December 2014, President Biya declared his intention to introduce the death penalty for terrorism due to increased violence from Boko Haram insurgents from bordering Nigeria and that his desire was to curb collaboration with them. The law attracted great criticism from human rights organizations and others, such as the religious organization Ecumenical Service for Peace, who were concerned that the law would instead serve to curb political dissent. Those who worried that the law would result in violations of individuals' human rights pointed out that Cameroon has a history of using the criminal justice system to suppress political criticism and expository journalism.

In March 2016, a military court condemned to death 89 Boko Haram insurgents who were convicted for terrorist attacks in Cameroon's Far North Region. Their death sentence was handed down under the new anti-terrorism law passed in 2014. The military court in Buea also sentenced four person to death following an attack that took place in Kumba resulting to the death of some school children.² They were sent to death by firing squad for charges related to murder, terrorism, secession, insurrection, hostility against the fatherland, and illegal possession of firearms due to their involvement in an attack that took place in a school in Kumba on the 24th of October 2020, resulting in the

deaths of six children.³

There has been no execution of the death penalty in Cameroon since after 1997 even though there have been several cases wherein a death sentence has been handed. However, the state of Cameroon has been slow in carrying out the execution of the death sentence leaving many with the dilemma of why the death sentence in the first place if it cannot execute. This attitude of the state can be related to the to the pressure and advocacy of many human right organizations within and out of the country clamoring of the abolition of the death penalty completely from the Cameroon criminal justice system which is yet to be given any consideration by the state of Cameroon.

8. Conclusion and Recommendations

The death penalty in Cameroon is governed by both statutory law and international human rights obligations. The Cameroonian legal framework, including the Penal Code and various decrees, provides for capital punishment in specific circumstances. However, there is an ongoing debate about the alignment of these laws with the principles enshrined in the Constitution, particularly regarding human dignity and the right to life. The application of the death penalty in Cameroon raises significant human rights concerns. International human rights treaties, to which Cameroon is a signatory, emphasize the right to life and advocate for the abolition or, at the very least, a moratorium on capital punishment. The practice of the death penalty often conflicts with these international norms, particularly concerning issues of due process, fairness, and the risk of irreversible errors.

The implementation of the death penalty in Cameroon has been subject to scrutiny regarding its application and administration. Reports of arbitrary and inconsistent application, potential biases, and the lack of effective legal representation for those facing capital charges highlight systemic issues within the judicial process. These concerns underscore the need for reforms to ensure that any use of the death penalty adheres to the highest standards of justice and human rights.

Public opinion in Cameroon regarding the death

¹ *Ibid.*

² Nwenfor, Boris Esono. (2021, September 8). "Four Sentenced to Death in Mother Francisca School Killing in Kumba". *Pan African Visions*. Archived from the original on 9 September 2021. Accessed on the 27/08/2024.

³ Chintom, Ngala Killian. (2016, March 9). "89 Boko Haram Militants Sentenced to Death in Cameroon". *CNN*. Archived from the original on 5 April 2022. Accessed on the 27/08/ 2024.

penalty is mixed, reflecting broader debates about its efficacy and morality. While some view it as a necessary deterrent to serious crimes, others argue that it perpetuates a cycle of violence and fails to address the root causes of crime. The societal impact of capital punishment, including its implications for social justice and human rights, remains a point of contention. Hence, the evolving global perspective on capital punishment calls for Cameroon to reconsider its stance on the death penalty.

That said, this paper has examined the concepts of death penalty. It has demonstrated the definition of the concept of death penalty. It also looked at the nature and scope of death penalty coupled with the crimes subjected to death penalty in Cameroon. This paper has also examined the methods for executing the death penalty in Cameroon alongside the condition's precedents for the execution of the death penalty in Cameroon. In addition, it also demonstrated the human rights norms and the death penalty.

This paper makes the following Recommendations to address the application of the death penalty in Cameroon.

Firstly, the introduction of a moratorium on executions. By adopting this, it will go a long way to guarantee at the national and international levels, the right to life enshrined in the Constitution and other text like the Universal Declaration of Human Rights without getting caught up in the debate on the legitimacy of the death penalty, which remains in force in Cameroon.

Secondly, a review of the legal and judicial processes surrounding capital punishment. This will help eradicate the possibility of erroneous sentencing of innocent persons due to noncompliance of due process.

Additionally, exploring alternative sentencing options and strengthening the legal safeguards for those facing severe penalties as it will contribute to a more just and humane legal system.

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