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LAW

THE LEGAL FRAMEWORKS FOR THE FIGHT AGAINST TORTURE IN CAMEROON: AN ASSESSMENT OF THE EFFECTIVENESS OF THEIR APPLICABILITY

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Abstract

Given the systematic occurrence of torture in Cameroon, this article examines the effectiveness of the applicability of both international and the domestic legal frameworks in the fight against torture in the country. The study employs the desk -top approach in its analysis. In doing so, it conceptualizes the crime of torture; it examines the genealogy of the protection of the right to be free from torture, the conservation of the right to be free from torture in international and Cameroonian domestic laws *vis-à-vis* the practice in Cameroon and ends with a conclusion and some recommendations for reforms. Findings therefore reveal that despite the ratification and enactment of several legislations on the fight against torture, the vice is still predominantly prevalence in the country due to impunity on the part of some State's agents. The conflict in the Northwest and South west regions since 2016 amongst other causes remains an enabling ground for the orchestration of this crime. This is compounded by the fact that the State of Cameroon has not ratified the Optional Protocol to the United Nations Convention against Torture. In view of the above findings we therefore conclude that the measures put in place to ensure the effectiveness of the applicability of the legal frameworks for the fight against torture in the country are inadequate. This is so because most perpetrators of acts of torture are hardly investigated and prosecuted due to weak judicial measures, and even those that are prosecuted are hardly meted their deserved sanctions; giving room for impunity. We therefore recommend that more stringent measures should be adopted to hold the perpetrators of acts of torture accountable if the State of Cameroon must remain a civilised country where the rule of law prevails.

KEYWORDS: Legal Frameworks, against, Torture, Cameroon, Effectiveness, applicability

1. Introduction

The fight against torture¹ both internationally and domestically is very crucial in civilized societies. This is so because of the adverse effects of this vice on humanity in general and the victims in particular. Torture inflicts pain on the victim which could be psychological and physical and could be long lasting culminating to trauma and mental health problems. Torture directly affects a person's dignity, physical and psychological integrity occasioning the violation of a person's right to be free from cruel, inhuman and degrading treatment. However, for such acts to be considered as torture, there must be intentional; in fact the element of intention is sacrosanct in determining whether a particular act could amount to torture or not. Just like the requirements for the establishment of other crimes in Cameroon as in elsewhere, for the crime of torture to amount, the intention (*mens rea*) and the act (*actus reus*) must coincide. It follows that mere accidental causes occasioning pain and harm to a person cannot amount to torture. This paper therefore aims at examining the effectiveness of the applicability of the legal frameworks on the fight against torture in Cameroon. In doing this, the paper examines the genealogy of the international and domestic fight against torture, it further probes into the international and the Cameroonian legal frameworks on the fight against torture, it then assesses the extent of the applicability of the legal frameworks on the fight against torture *vis-à-vis* the present day happenings in Cameroon and then the paper ends with a conclusion and some recommendations for reforms that may help address the systematic occurrence of torture in the country.

¹ The word 'torture has been defined as an inhuman treatment, which has a purpose, such as the obtaining of information or confessions or the infliction of punishment, and it is generally an aggravated form of inhuman treatment. The notion of inhuman treatment covers at least such treatments as deliberately cause severe suffering, mental or physical, which in the particular situation is unjustified. 'Torture can also be defined as suffering inflicted on a person to obtain from him/her or a third person confessions or information. See generally Council of Europe, European Commission of Human Rights, The Greek Case: Report of the Commission, vol. 2 part.1, 1969, p.1. and Article 12(2) of the I Geneva Convention, 1949.

2. Conceptualisation of Torture in International law

In order to aid the comprehension of the analysis offered in this paper, it will suffice for us to attempt the definition of the major concept (torture) underpinning the discourse offered herein. However as Cullen rightly opines, an explicit meaning of torture is still very much debatable in the academic world². It therefore follows that it is beyond the scope of this paper to explore in detail these debates.

For the sake of the analysis offered in this paper, we shall wholly rely on the definition of torture proffers by the Convention against Torture (CAT), 1984. According to Article 1 of this convention, torture is any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.'

It follows from this definitional approach that for the crime of torture to ensue, the act amounting to torture must coincide with the intention to torture. Mere accidental causes amounting to pain and suffering cannot constitute torture. For such intentional acts occasioning severe pains or suffering, be it mental or physical to amount to torture, there must be inflicted by or instigated by a

² See A. Cullen 'Defining torture in International Law: A Critique of the concept employed by the European Court of Human Rights', *California Western International Law Journal*, Vol.34, 2003, P.29. Where he calls for the need for a less definitive and broader view of the concept of torture. Gross on his part argues that there is no clear definition of torture. He premised his argument on the fact that in *Republic of Ireland v The United Kingdom*, the judges at the European Court of Human Rights did not agree on the exact meaning of the term 'torture'. See E Gross 'Legal Aspects of tackling terrorism: The balance of the right of a democracy to defend itself and the protection of human rights', *Journal of International Law and Foreign Affairs*, Vol. 6, 2001, pp. 89-94. See also N.S. Rodley., 'The Definition(s) of Torture in International Law, *Current Legal Problems*, Vol.55, 2002, pp. 467-493. Kenny also opines that despite being the subject of much recent scholarly work, torture remains an ambiguous concept that has important and immediate political consequences. See generally P.D Kenny., 'The Meaning of Torture', *Polity*, Vol. 42, No. 2, 2010, pp. 131-155

public official; such as State agents³ or other person acting in an official capacity and for a specific purpose.

2.1.The Genealogy of the International and Domestic Fight against Torture

Looking at the history of nations, one fact that remains consistent and true is that at one point or another States have practiced torture.⁴ Looking back at the history of mankind, it's very difficult to contest this generalization since as torture was a practice at the time. It follows that torture was a common practice to mankind; if not all of mankind but to a majority of them.

In the West, torture was very much practiced during wars and social stress,⁵ while in less troubled times the declared values of western societies towards their own citizens have followed cycles of legislation of torture and its abolition. Torture was some time legalized in the west to serve as a means of getting confessions and information for the judicial system.⁶ The demerits and the merits of the practice of torture as such was the subject of debate amongst scholars throughout that time.

Ancient Greece and Rome, from which the west traces of its liberal and humanist tradition, forbade torture of its citizen. However, in Athens a slave's testimony was not consider reliable unless he had been tortured. In republican Rome the same double standard applied, but under the increasingly despotic regimes of the empire, the free man was subject to torture for an ever-widening range of offences. The torture of the early Christians went beyond the simple extortion of confessions.⁷ Torture was used to cause the faithful to renounce their faith. However, as the church continued to expand, it eventually criticized the use of torture, this saw a decline in its use.

However, the use of torture reappeared in the end of the 11th century. The relevant Romans Laws *de quaestionibus* were resurrected. By the 13th Century,

³ Such as the police, the military etc.

⁴ See Amnesty International Report, 1972. P.14. Torture has said to have been used by state agents in Cameroun in the 1970s against the opponents of the authoritarian regime at the time. See Amnesty Report, 1972, P.14.

⁵ *Ibid.*

⁶ *Ibid.*

⁷ *Ibid.*

torture was considered to produce *probatio probatissimi*⁸, and its practice was meticulously regulated and codified. This authorized torture was administered in a special chamber by a civil servant, who also served as the public executioner.⁹

Though in the middle Ages there were voices raised against torture, its abolition gained real force in the 18th Century.¹⁰ More concrete steps came from France at this time. The French legislature adopted the Declaration on the Rights of Man which abolished torture 'forever'. This justifies why the French Revolution had few cases of torture on its record. Though with some lapses, the abolition of torture was intensified in the 19th Century Europe. Liberal and humanitarian ideas espoused by the ascendant bourgeoisie flourished in the wake of Industrial Revolution. The economically obsolete institutions of slavery, as well as practices such as mutilation, branding and many corporal punishments, were abolished. In the 1920s a European Scholar could authoritatively write that torture was a distant relic of a barbarous past, a practice forever left behind on man's journey to progress.¹¹

The experience of the aftermath of WWII again mandated mankind to pledge never again to subject fellow mankind to torture. Since after WWII, Many strides have been made both at the international and the national levels to help stamped out torture which is an act against the dignity of a person. Though recent reports show that many States' Agents still very much employ torture during their operations.¹²

2.2. An Assessment of the International Legal Frameworks on the Fight against Torture

The fight against human rights violation in general and torture in particular, has been one of man's greatest preoccupations after World War II. This is so because the respect for human dignity is at the very foundation of humanity.

⁸ Translated in Latin to mean 'the proof of all Proofs'.

⁹ See Amnesty International Report on Torture, 1972, P. 23.

¹⁰ This period is known in history as the Age of Enlightenment which propounded reason and human progress.

¹¹ See E. Cakal., 'Torture and Progress, Past and Promised: Problematizing Torture's evolving Interpretation', *International Journal of Law in Context*, Vol. 19, Issue 2, 2023, P. 241.

¹² See <https://www.asanet.org> Accessed 3-3-2025.

This idea has been disseminated throughout the world and has influenced the adoption of both international and domestic legal frameworks on the subject. To begin with, the Four Geneva Conventions of 1949 for the Protection of wounded, sick and shipwrecked members of land and sea forces, prisoners of war and civilians in time of armed conflict prohibits torture; whether physical or mental.¹³ In time of war, or other international armed conflict, all combatants, those placed *hors de combat*¹⁴ and other protected persons, are, under the Geneva Conventions of 12 August 1947, forbidden to be tortured. Common Article 3 of same conventions also prohibits the use of torture in the case of armed conflicts not of an international nature. Thus, in cases of civil war, no claim or domestic jurisdiction can be invoked by the parties to the conflict to deny the international illegality of the use of torture in the conduct of hostilities.

Similarly, the Universal Declaration of Human Rights, 1948¹⁵, the American Declaration on the Rights and Duties of Man, 1948¹⁶ and the Declaration of the Citizen's Rights in the Arab States and countries¹⁷, all prohibit the use of torture in time of peace. The International Covenant on Civil and Political Rights, 1966¹⁸, the European Convention on Human Rights 1950¹⁹, the American Convention on Human Rights 1969²⁰ and the African Charter on Human and Peoples' Right 1981²¹ equally prohibits torture. The African Charter has been ratified by all the 53 States of Africa²² and, unlike the other instruments on the

¹³ See specifically Article 32 of Geneva Convention (IV) on Civilians 1949 and Article 17 of Geneva Convention (III) on Prisoners of War, 1949.

¹⁴ This is a French term that translates literally to 'out of combat.' This term is mostly used in International Humanitarian Law. It's generally refers to individuals, particularly combatants who can no longer participate in the conduct of hostilities due being wounded, sick, captured, surrendered etc. See Generally Amnesty International Report, 1972. P.24

¹⁵ See Article 5.

¹⁶ See Article 26.

¹⁷ See Article 5.

¹⁸ See Article 7.

¹⁹ See Article 3.

²⁰ See Article 5.

²¹ See Articles 1 and 5. Article 5 of this Charter provides that 'every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and derogation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited'

²² See <http://www.africa-union.org/home/welcome.htm> accesses 28-3-2025.

fight against torture as seen above, Article 5 of the African Charter is not only limited to the right to freedom from torture, inhuman or degrading treatment or punishment, it goes further to cover 'respect of the dignity inherent in a human being'. This is important because torture aims at breaking down the individual to the level of losing their human dignity, and the right to freedom from torture is inseparable from the guarantee of human dignity. The African Charter equally put the crime of torture on same pedestal as slavery and slave trade, and categorizes them as 'forms of exploitation and degradation'. It follows from this reasoning that by so doing, the Charter expressly recognizes that the right to be free from torture has acquired the status of *jus cogens*²³ as is the case with slavery and slave trade. Closely linked to the African Charter on the subject is the African Charter on the Rights and Welfare of the Child 1990. Article 16(1) of this Children Charter requires States parties to take 'specific legislative, administrative, social and educational measures to protect the child from all forms of torture. Article 17(2)(a) goes further to provide that State parties are also required to ensure that no child who is detained or imprisoned or otherwise deprived of his or her liberty is subjected to torture, inhuman or degrading treatment or punishment.

Unlike the Inter-American and the European systems of human rights, the African human rights system expressly extends the right to freedom from torture to children. This could be so because in many African countries, children still suffer maltreatment in the hands of public entities and private individuals. This is compounded by the fact that in some African countries, children are detained in same cells with adults and are at times subjected to torture when prison or police authorities want to extract relevant evidence from them with regards to some offences they are alleged to have committed. Their protection against torture is therefore of utmost importance, especially in cases where they have been deprived of their liberty.

²³ Smith has rightly argued that 'the prohibition of slavery and torture is *jus cogens*, prevailing over all other forms of international law'. See A. Smith, 'Child Labour: The Pakistan effort to end a scourge upon humanity-is it enough?' *San Diego International Law Journal*, Vol.6, 2005, pp. 461-493.

Though these treaties permit derogations from some of the rights protected in case of extreme threats to the internal order of the State, the right not to be subjected to torture is one from which no derogation is permissible.²⁴ It therefore follows that, under all circumstances, regardless of the context in which it is used, torture is outlawed under the common law of mankind. As such, its use may properly be considered to be a crime against Humanity. Prior to the intensification of the fight against torture in 1972 by Amnesty International, torture was almost the order of the day in some States.²⁵ Torture was used as a means to silence political opponents,²⁶ and others who were not in the good books of the ruling class. Torture was used to deter others from opposing the ruling class. This was a very successful measure used by those who govern without the consent of the governed.²⁷ Amidst the recurrence of this vice, there was a need to take action. As a follow up to addressing this need, on Human Rights Day in 1972, Amnesty International launched a world-wide campaign against the systematic use of torture by governments, an integral part of which was the preparation of a Report on Torture in 1972. This report informs the adoption of International and the national legal safeguards against torture. As a response to the widespread and systematic practice of torture in Latin America and other regions of the world, the first international effort was made in 1984 following the adoption of the Convention against Torture which is a specialized Human Rights Treaty. This is *in tandem* with the fact that the prohibition of torture and cruel, inhuman or degrading treatment or punishment has been recognized in international and regional human rights

²⁴ See Articles 4 of the Covenant, 15 of the European C and 27 of the American Convention.

²⁵ *Ibid.* Principally, cases such as the case of Ayse Semara in Turkey, Vladimir Lvovich of the former USSR, Maria Dina in Uruguay amongst other, masterminded Amnesty International to take the lead at this time. See generally, Amnesty International Report on Torture, 1972, P. 18.

²⁶ This was the case of Cameroon in the 1970s. See Amnesty International Report on Torture, 1972, P.14.

²⁷ See Amnesty International Report on Torture, 1972, P. 18. Amnesty international's 1973 worldwide campaign for the abolition of torture put the issue on the international political agenda. Since then, a number of legal instruments have come into being in the framework of the United Nations and other regional organization. See generally S. Parmentier., 'The International Fight Against Torture', *Human Rights Quarterly*, Vol. 14, No. 4, 1992, pp.568-572.

treaties as an absolute and non-derogable human rights- also known as *jus cogens*.²⁸

The major preoccupation of this convention is to 'make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world'.²⁹ This goal was achieved by three different types of measures namely; repression against individual perpetrators of torture by means of domestic criminal law and the principle of Universal jurisdiction³⁰; recognition of the right of victims of torture to a remedy and adequate reparation; and comprehensive obligations of States Parties to prevent torture and cruel, inhuman or degrading treatment or punishment.

In addition the general obligation of States parties under Articles 2 and 16 to take effective legislative, administrative, judicial or other measures to prevent torture and cruel, inhuman or degrading treatment or punishment in any territory under their jurisdiction, States also have specific obligations to include the prohibition of torture and cruel, inhuman or degrading treatment or punishment in the training curricula of law enforcement and prison personnel,³¹ to keep interrogation rules and methods under systematic review,³² and to carry out prompt and impartial ex officio investigations, whether there is reasonable ground to believe that an act of torture or cruel, inhuman or degrading treatment or punishment has been committed.³³ This obligation on Police Chiefs, Prison Directors, Public Prosecutors, Police and Prison Doctors, and others to start ex officio a thorough investigation before an independent

²⁸ See Article 7 of the ICCPR, 1966. *Jus cogens* are peremptory norms of international law from which derogation is not allowed by virtue of membership of the United Nations. For a rule to qualify as *jus cogens*, in the light of Article 53 of the Vienna Convention on the Law of Treaties 1969, a two tier approach is involved namely the establishment of the proposition as a rule of general international law and the acceptance of that rule as a peremptory norm by the international community of states as a whole.

²⁹ See the Preamble to the 1984 Convention Against Torture.

³⁰ States are under this principle mandated to punish the crime of torture for so long as the perpetrators are within the jurisdiction of that state. It does not matter whether the crime was committed against the nationals of that particular State or not. See generally J. Bacchus 'The Garden', *Fordham International Law Journal*, Vol. 28, 2005, pp 308-332 in J D Mujuzi, 'An Analysis of the Approach to the right to freedom from torture adopted by the African Commission on Human and Peoples' Rights', *African Human Rights Law Journal*, Vol. 6, 2006, P.426

³¹ See Article 10 of the Convention Against Torture, 1984. This is very important because most cases of tortures are usually perpetrated by such States' agents.

³² See Article 11.

³³ See Article 12.

body whenever they suspect that an act of torture or cruel, inhuman or degrading treatment or punishment might have occurred, is of utmost importance for the prevention of torture.

Article 15 of this convention further provides that 'no confession or information extracted by torture shall be admitted as evidence in any judicial or administrative proceedings. States Parties to the Optional Protocol³⁴ to the Convention against Torture have an additional preventive obligation to establish one or several independent national preventive mechanisms with power to carry out unannounced visits to all places of detention, to conduct private interviews with all detainees, and to make recommendations to the competent authorities with the aim of preventing torture and improving conditions of detention.³⁵

More than forty years after the entry into force of the Convention against Torture, 174 States have ratified the main treaty to fight torture and other forms of ill-treatment. However, despite the broad ratification and universal recognition of the prohibition of torture and other forms of ill-treatment, there is still a crisis affecting most of the countries worldwide.³⁶ There is still the lack of the implementation of the obligations of CAT due to dysfunctional criminal justice systems, corruption and insufficient capacities of State authorities, as well as a lack of political will to fight this vice. In recent years the protection of human rights is experiencing a particularly serious crisis-also affecting the phenomenon of torture-in which official narratives and public belief often trivialize and even endorse such practices in the name of security and the fight against terrorism, ignoring the suffering and damages it causes. However despite these drawbacks, torture can be eradicated if the provisions of CAT and OPCAT are taken seriously and are being fully implemented by all.

³⁴ See the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 2002.

³⁵ See Articles 17-23 of the Optional Protocol to the Convention Against Torture, 1984.

³⁶ See <https://www.amnesty.org/en/get-involved/stop-torture> accessed 3-4-2025.

2.3. An Assessment of the Cameroonian Domestic Legal Frameworks for the Fight against Torture *Vis-À-Vis* the Practice in Cameroon

In tandem with States triple pronged obligations³⁷ under international human rights law towards their citizens, the State of Cameroon like any other civilize State in the world's community of States has adopted, enacted and ratified several legislations on the conservation of the right to be free from torture and other cruel, inhuman or degrading treatment or punishment in a bid to uphold human dignity and building a just and humane society.

To start with, the Preamble to the 1996 Constitution of Cameroon upholds the conservation of the right to be free from torture.³⁸ This constitutional provision states that 'every person has a right to life, to physical and moral integrity and to humane treatment in all circumstances. Under no circumstances shall any person be subjected to torture...' Though contained in the preamble, this position remains very authoritative because by virtue of Article 65 of same, the preamble remains part and parcel of the constitution, and also serves as a foundation on the fight against torture in the country. This is so because the constitution remains an informative legislation (the *grundnorm*) from which all other norms (legislations) takes their validity.

Drawing inspiration from the Constitution, the country's criminal justice system also protects the right to be free from torture by punishing anyone who involuntarily causes death by torture with life imprisonment.³⁹ In same

³⁷ This tripartite analysis was developed by Henry Shue. See generally H. Shue., *Basic Rights; Subsistence, Affluence and US Foreign Policy*, Princeton, Princeton University Press, 1980, P. 65. This concept equally applies to all states. The triple-pronged duty of states was further expanded upon by Macbeth who opines that the duty to respect human rights is essentially a duty not to infringe directly upon a person's human rights, the duty to protect human rights entails taking measures to ensure that other entities do not infringe on the human rights of others and finally the duty to fulfil human rights requires positive steps to be taken toward the realization of human rights. See generally A. Beth., 'Breaching the vacuum; A Consolidation of the role of international Human Rights Law in the Operations of International Financial Institution'. *The International Journal of Human Rights*, Vol. 10, No. 8, 2006, P 389.

³⁸ See Paragraph 6 of the Preamble to the 1996 Constitution of Cameroon.

³⁹ See Section 277(1) of the Cameroon Penal Code. The punishment for the crime of torture is solely determined by the gravity of the effect of torture on the victim. For instance, instead of life imprisonment in situation where torture involuntarily causes death as seen above, the sanction is mitigated to imprisonment for from 10(ten) to 20(twenty) years where torture causes a permanent deprivation of the use of all or part of a limb, organ or sense. See generally Section

connection, the country's Criminal Procedure Code has also conserved the right to be free from torture. In a bid to ensure the protection and security of persons detained, Section 263 of this law provide that 'Any person who has been illegally detained may, when the proceedings end in a no-case ruling or an acquittal which has become final, obtain compensation if he proves that he has actually suffered injury of a particular serious nature as a result of such detention'. This legislative position is applaudable as it goes a long way to warn against any physical or mental torture that may be meted on those in detention centres in the country. Commenting on this view Nchoutu and Nana opine that the general and acceptable principle is that, any person deprived of his or her liberty retains human rights and fundamental freedom, except for restrictions required by the very fact of their imprisonment⁴⁰.

Section 122 of same code also upholds the fight against torture by stating that 'the suspect shall be treated humanely both morally and materially'.

Article 277(3) of the Penal Code provides extensively for the criminalization of torture in the country. It prescribes life imprisonment, where torture leads to the death of the victim. Where torture causes a permanent deprivation of the use of all or part of a limb, organ or sense, the penalty is imprisonment from 10 to 20 years.⁴¹ Furthermore, the penalty shall be imprisonment from five to ten years with a fine of CFA 100,000 to CFAF 1,00,0000 where torture leads to illness or incapacity to work for more than 30 days.⁴² Lastly, the penalty shall be imprisonment from two to five years with a fine of from CFAF50,000 to CFAF 200,000 where torture leads to illness or incapacity to work of up to 30 days, pain or mental or psychological injury.⁴³ While commenting this statutory position, it is regrettable to note that the fine to be paid by the perpetrator of

277(2) of the Cameroon Penal Code. The punishment for torture is further mitigated where torture leads to illness or incapacity to work of more than 30 (thirty) days to imprisonment for from 5 (five) to 10 (ten) years.

⁴⁰ See V. Nchoutu and C. Nana., 'An Analysis of the Legal Standard in the Fight against Torture and Treatment of Prisoners under International Law: What Prospect for Application under Cameroonian Law?', *Law and Safety*, Vol.1, No. 76, 2020, P.129.

⁴¹ See Article 277(3) (i).

⁴² See Article 277(3)(ii)

⁴³ See Article 277(iii)

the act of torture does not benefits the victim since as payment is made directly into the State's treasury.

To take the fight against torture in the country further, Law No. 97/009 of 10 January, 1997 was adopted to amend and supplement certain provisions of the country's Penal Code to the effect that a new Section 132 was introduced in the Penal Code dedicated to upholding the right to be free from torture in the country. Similarly within the context of Article 45 of the Country's Constitution, Cameroon has ratified several international instruments⁴⁴ on the fight against torture in a bid to lend credence to the furtherance of this human course.

Judicial measures also play a crucial role in combating torture in the country. The criminalization of torture in Cameroon has led to the prosecution of the perpetrators of the vice, among who are mostly members of the State Defense and Security Forces (DSF) who usually commit torture during the exercise of their duties. Despite the numerous cases involving the DSF that have led to the handing down of administrative and judicial sanctions for act of torture, the Committee on the Fight Against Torture has noted that most of these sentences were very light.⁴⁵ This is compounded by the fact that mitigating circumstances that can lead to a reduction of sentences still apply to the crime of torture in Cameroon⁴⁶, despite the categorization of torture as a crime against humanity. This is worsened by the fact that the courts are still allowed to hand down suspended sentences in cases where the offender has not been previously sentenced to imprisonment or where, after such sentence, their conviction has been expunged⁴⁷. This and other factors⁴⁸ justify the reduced sentencing

⁴⁴ For instance the State of Cameroon ratified the Convention against Torture on December 19, 1986, The African Charter on Human and Peoples' Rights 20 June, 1989 and the Africa Charter on the Rights and welfare of the Child 5th, September 1997.

⁴⁵ For a comprehensive list of cases of conviction relating to torture and other forms of inhuman treatment, see the Fourth Periodic Report of Cameroon to the Human Rights Committee, 31st March, 2009.

⁴⁶ See Article 90 of the Penal Code.

⁴⁷ See Article 54 of the Penal Code.

⁴⁸ Such as executive intervention and *ordre public*. See generally G.E K. KAMGA., 'The Political Independence of the Judiciary in Cameroon: Fact or Fiction?' *Africa Review*, Vol. 11, 2019, P. 45

provided in several cases of torture perpetrated by the Defense and Security Forces in the country. Some examples of these cases are illustrative here; In the case of *Ibrahim Bello*, a 16 years-old lost both legs and left arm due to severe torture while in detention. The Mbam and Inoubou High Court found the two police officers concern guilty of torture and grievous harm. One of the police inspector concerned received a four year prison sentence, whereas the other was given a three year suspended jail term. Both were ordered to pay the sum of 50,000,000 to the victim as damages.⁴⁹ The facts of this case points to the impunity that exist within the Defense and Security Forces in Cameroon. The dictum in this case failed to meet the threshold in both international and national laws. The State of Cameroon through the State Counsel office further appealed the decision of this case, requesting the court to reduce the damage ordered in the case.⁵⁰

Similarly, the Yaounde Military Tribunal sentenced a certain Lazare Leroy to 30 months in prison for acts of torture inflicted on Moussa Moupain in a cell at the central service of the Judicial Research of the Gendarmerie in Yaounde in March 2016. The victim later died due to these acts of torture. The State of Cameroon was required to pay the sum of CFAF 10,000,000 as damages to the rightful claimant of the disease.⁵¹

Again, in the case concerning four State and Security Forces who were tried for torture and murder, Constables KAM John, BIMOGA Louis and GREBOUDAI Michel were found guilty of torture and murder of a detainee and sentenced to 5 years imprisonment each by the Mfoundi High Court. Inspector ETOUNDI Marc was found guilty of failing to offer assistance and consequently sentenced to three months imprisonment.⁵²

Though from the above cited cases one can argue that there are several cases of torture that have been prosecuted in the country, these cases rather point at a deficiency in the criminal justice system of the country in the prosecution of

⁴⁹ See the Committee against Torture Sixth Periodic Report submitted by Cameroon, 21st March, 2022, at Paragraph 10.

⁵⁰ *Ibid.*

⁵¹ See *The People v D.M Lazare Leroy*, Military Tribunal Yaounde, 2018, cited in CAT/C/CMR/6 Para.22

⁵² See *The People v Stephen Ngu* cited in Cameroon Second Periodic Report to the African Commission on the African Charter, 2003-2005, May, 2010.

torture. This is so because the sentences are in no way close to those provided for in the Penal Code. In other cases suspended sentences were handed down, all of which not only show a failure of the obligation to prosecute and punish acts of torture, but also show a failure of the obligation to provide adequate redress to victims of torture in the country. This goes a long way to encourage the perpetration of acts of torture by State agents in the country. Some examples here abound; a case in point is SIDJE KAMGANG Dieudonne who was illegally arrested, detained and tortured by the elements of the Military Security (SeMil) in Yaoundé, for failing to produce his 17 years old son who was suspected of rape.⁵³ This act by the elements of SeMil is totally ultra vires since as it was out of their jurisdiction. It should be recalled that elements of SeMil are solely concern with military justice and has nothing to do with civilians. Away from arrest and torture, the question that comes to mind is; is criminal responsibility in Cameroon Personal? The answer to this question is in the affirmative. Section 74(1) of the Cameroon Penal Code state that 'no penalty may be imposed on an individual, except the individual is criminally responsible...' It follows that, the arrest and torture of the victim in this case was totally in contravention of the due process.

Generally, arrests are made on warrant against persons if the offences for which the arrest warrant is punishable with loss of liberty, or in the case of imprisonment sentence or if the defendant and/ or accused is at large.⁵⁴ It is not in all situations however that an arrest warrant is needed. An offender caught in the act (*flagrante delicto*) can be arrested by anyone without an arrest warrant.⁵⁵

To further strengthen efforts towards the fight against torture in Cameroon, the country has adopted a National Preventive Mechanism as contemplated in the Optional Protocol to the Convention against Torture,⁵⁶ despite not ratifying the

⁵³ See <https://buff.il/42Ad1au> Accessed on 4-4-2025

⁵⁴ See Section 18(1) (2) of the Cameroon Criminal Procedure Code, 2005.

⁵⁵ See Section 30(3) of the Cameroon Criminal Procedure Code read in conjunction with Section 31.

⁵⁶ See Article 17 of this Protocol.

treaty. The Cameroon Human Rights Commission (CHRC)⁵⁷ was given the mandate of a national mechanism for the prevention of torture in places of detention. The commission executes this role through the sub-commission on the Prevention of Torture in Places of Detention, which is a standing working sub-commission.⁵⁸ Amongst other responsibilities, the CHRC has to the duty to; Carry out regular visits to all places of detention, initiate constructive dialogue with the authorities in charge of the administration and management of places of detention or any other authority, and participate in monitoring the implementation of the observation made by the United Nations Subcommittee on the Prevention of Torture.⁵⁹ The powers of the CHRC were extended⁶⁰ to include its ability to carry out impromptu visits, where necessary, in the presence of either the State Counsel or the head of the place of detention concerned, and to conduct private interviews with detainees or any other person or entity deemed relevant in strict confidentiality.⁶¹ Places of detention here are taken to mean; places where people are or could be detained.⁶² This extension is particularly important in that it gives the CHRC the powers to carry out impromptu visit to incommunicado detention centres in the country. This is supported by the fact that several persons are usually arrested in line with the counter-insurgency measures adopted in the restive Far north region and the South West and Northwest regions of the country, and also some activists and opponents of the regime are usually arrested and kept in facilities that may not fit into the standard definition of prisons. A case in point is that of journalists, activists, and person who were arrested within the context of the

⁵⁷ See Law No. 2019/014 of July 2019 relating to the establishment, organization and functioning of the Cameroon Human Rights Commission.

⁵⁸ See Article 4 of Law No. 2019.

⁵⁹ See Article 9 of Law No. 2019.

⁶⁰ This was done following the amendment of Law No.2019.

⁶¹ This is important because it serves as an avenue for detainees to lodge complaints of torture that the commission can investigate. See generally Article 9 of Law No. 2019/014.

⁶² See Article 8(2) of Law NO.2019 stated above read in conjunction with Article 4 of the Optional Protocol to the 1984 Convention against Torture.

Anglophone crisis were detained incommunicado, interrogated and tortured at the State Defense Secretariat known by its French acronym as SED.⁶³

Despite these commendable duties of the CHRC as adumbrated in the 2019 Law, the law has been found wanting for limiting the scope of the duties of the CHRC. This is particularly concerned with the commission's duty to conduct impromptu visits to detention centres as captioned in Article 9. The Law further provides that '... in any case, the State Counsel or the Prosecutor in a Military Tribunal where applicable, shall be informed of the planned visit.'⁶⁴ Such visits may be opposed in view of being rescheduled in cases of serious grounds relating to national defense, safety, security and public order and serious disturbances in the places visited.⁶⁵ This provision further gives the authorities involved the powers to provide written information on the status of detainees in their facilities.

Regrettably, the Law does not define this concept, leaving room for authorities to apply it without need for justification. Article 10 further undermines the role of the commission by limiting its visits concerns to detention conditions. This goes a long way to inhibit the ability of the commission to investigate cases of torture in detention facilities. Supporting this view, EN argues that, this provision may imply that the CHRC is precluded from making observations on evidence of torture, thereby giving the authorities the ability to prevent such investigations.⁶⁶ To worsen situations, Article 40 (2) of same law provides that recommendations and opinions that are made in relation to visits to places of detention shall be exclusively forwarded to the competent authorities.⁶⁷ This to this researcher is a measure aimed at vetting the content of the reports of the

⁶³ Human Rights Watch 'Cameroon Routine Torture, Incommunicado Detention. UN Security Council Should Condemn Abuse, Demand Reforms' at <https://www.hrw.org/2019/05/> Cameroon-routine-torture-incommunicado-detention (Accessed 22-6-2025)

⁶⁴ See Article 9 of Law No. 2019.

⁶⁵ See Article 11 of Law No. 2019.

⁶⁶ See S.N Edumebong., ' Victims of Torture and the Search for Legal Redress in Cameroon', a Thesis submitted to the Centre for Human Rights, University of Pretoria, in partial fulfillment of the requirement of the award of a Mater of Laws in Human Rights and Democratization in Africa, 2023, P.42.

⁶⁷ The competent authorities here include; the President of the Republic, the Minister of Justice, Mister of Territorial Administration, Defense, Public Health, Delegate General of National Security, as well as other relevant government services.

commission in a bid to frustrate the exposure of act of torture perpetrated by State Agents. The inability of the CHRC to directly publish its report on torture in detention facilities promotes impunity.

It has been opined that torture is so common in Cameroon to the extent that it has been included in the national security measures of the country.⁶⁸ This is so especially within the context of the existing conflict in the North West and South West Regions, and the Counter terrorism measures employed in the Far North region. Reported cases of torture by the Defense and Security Forces in these regions are numerous, contrary to article 2(2) of CAT and article 277 (3) (vi) of the Penal Code which indicates that neither war, political instability or other circumstances may justify the use of torture.

The crisis in the North West and South West regions since 2016 seems to have created an enabling ground for the commission of acts of torture by State agents and the armed separatists. Most victims of torture by these State's agents are individuals suspected of collaborating with the armed separatists⁶⁹, political opponents of the regime and individual critics of the regime⁷⁰. On the other side, just like the case with State agents, victims of torture by armed separatists fighters are mostly individuals suspected of collaborating with the defense and security forces,⁷¹ and generally anyone who is their critic.

⁶⁸ See V. Nchoutu and C. Nana., 'An Analysis of the Legal Standard in the Fight against Torture and Treatment of Prisoners under International Law: What Prospect for Application under Cameroonian Law? *Law and Safety*, Vol.1, No. 76, 2020, P.129.

⁶⁹ A case in point was the arrest and tortured of Jacka business man on the 30th of January 2019 in Buea, South West Region of Cameroon. Jack was accused of buying arms from the United States and supplying them to separatists' armed groups. He was taken to the Gendarmerie Brigade where he was thrown on the floor and given 60-75 lashes with the flat side of a machete, thereafter, the Rapid Intervention Battalion (BIR) took over, beat him and threaten him to death with a gun. The defense and security forces then detained him for one a half month incommunicado. After unsuccessful denunciation to national authorities in 2021, The Center of Human Rights and Democracy in Africa (CHADA) filed a complaint against Cameroon to the United Nations Committee for act of torture perpetrated by the security forces contrary to Articles 1, 2(1), 11, 12, 13, 14 and 16 of the Convention against Torture which guarantees protection against act of torture and ill-treatment and compensation to victims. See generally [www. Omct.org](http://www.Omct.org) accessed 4-4-2025.

⁷⁰ A case in point is Thomas Awah Jr. a journalist and critic of the regime who was arbitrary detained and eventually sentenced by the military court in 2018 to 11 years imprisonment on charges of terrorism, hostility to fatherland, amongst other charges. This act has been condemned by the UN Working Group by requesting the state of Cameroon to respect its obligations under CAT in a bid to respect the dignity of persons within its territory. Similarly, after Abdul Karim Ali was seen in a video accusing the Cameroonian military of torture, he was arrested, tortured and charged alongside two of his colleagues for hostilities towards the homeland. See generally www.amesty.org accessed 4-4-2025.

⁷¹ For instance, in June 2022, 25 persons were tortured and killed and 20 houses burnt in Kedjom Ketu Village of the Northwest region of the country by armed separatist for not siding with them, collaborating with the defense forces and

The situation of torture within the context of this crisis is so visible to the extent that it has attracted condemnation from international human rights bodies. For instance Lewis Mudge, Central Africa Director of Human Rights Watch argues that ‘over the past years the security forces in Cameroon have used torture without fear of repercussion....’and therefore recommended that ‘ the UN Security Council should send a clear message that ending torture in detention is critical to addressing the crisis..’⁷² This is further supported by Chapter VII of the United Nations Charter that authorizes the UN Security Council to intervene in case of gross human rights violations in member States that are a major threat to peace.

The use of torture by state agents in the context of this crisis constitute a violation of the country’s obligations under the Four Geneva Conventions of 1949 for the Protection of the wounded, sick and shipwrecked members of land and sea forces, prisoners of war and civilians in time of armed conflict that prohibits torture; whether physical or mental.⁷³ In time of war, or other international armed conflict, all combatants, those placed *hors de combat* ⁷⁴and other protected persons, are, under the Geneva Conventions of 12 August 1949, forbidden to be tortured. Common Article 3 of same conventions also prohibits the use of torture in the case of armed conflicts not of an international nature.

not paying the liberation tax. Similarly, on the 4 of October 2021 armed separatists gathered the inhabitants of Guzang Village, tortured and killed two of them. On the 6th of November same year, 25 people were reportedly tortured and killed in Egbekaw village near the town of Mamfe in the South West region of Cameroon. See generally amnesty .org accessed 4-4-2025.

⁷² See hrw.org accessed 5-4-2025.

⁷³ See specifically Article 32 of Geneva Convention (IV) on Civilians 1949 and Article 17 of Geneva Convention (III) on Prisoners of War, 1949.

⁷⁴ This is a French term that translates literally to ‘out of combat.’ This term is mostly used in International Humanitarian Law. It’s generally refers to individuals, particularly combatants who can no longer participate in the conduct of hostilities due being wounded, sick, captured, surrendered etc. See Generally Amnesty International Report, 1972. P.24

In the country, critics of the regime⁷⁵ are mostly victims of torture as a repressive measure. In most recent times, advocates of justice such as lawyers⁷⁶ have also been subjected to torture. If advocate of justice such as lawyers are so subjected to torture, then one can only imagine what the situation with ordinary citizens will be. Amidst this kind of cruel and inhuman treatment meted on the lawyers who are the voice of the voiceless in the country, the Cameroon Bar Council immediately called for a strike action⁷⁷ against increasing incidents of violence and mistreatment by law enforcement officers, and also requesting the State of Cameroon to respect its international law obligations under the United Nation Convention Against Torture, 1984.

3. Conclusion

In view of the above analysis, this paper conclude that though torture has been categorized as a crime against humanity, having a universal jurisdiction for the trial of its perpetrators, and also sanctioned in relevant international legal frameworks, it remains regrettably a fact that most States including Cameroon are yet to take adequate steps towards the effective application of these legal frameworks. Though Cameroon has ratified the 1984 Convention against Torture and other regional instruments on the subject, has included the fight against torture in its penal legislation and even in its constitution, evidence on ground shows that most perpetrators of acts of torture in the ranks of the Defense and Security Forces are hardly investigated and prosecuted. This is compounded by the fact that Law No.2019 establishing the National Prevention Mechanism in the likes of the Cameroon Human Rights Commission (CHRC)

⁷⁵ An example here is the case of Ramon Cotta a social media activist who was disappeared forcibly by the Cameroonian Authorities and security forces in 2024 and apparently tortured, leading to a paralyzed left side of his body with severe visual impairment following tortured in detention. This victim was known for his critical views about the Cameroonian authority. Human Right Watch has called for the Cameroonian authorities to investigate and sanction the perpetrators of this crime against humanity. See www.hrw.org accessed 5-4-2025.

⁷⁶ An example here is Barrister Tamfu Richard a prominent human rights lawyer who was tortured by the elements of the Gendarmes for rightfully refusing that they will not arrest his client without a warrant of arrest. See generally www.hrw.org accessed 5-4-2025

⁷⁷ The council called for a three day nation -wide strike action that commenced from the 5th of March 2025. See <https://panafricanvisions.com> accessed 5-4-2025.

limits its activities in detention centres to the inspection of detention facilities simpliciter.

We therefore recommend that the state of Cameroon must adopt more a concrete measure towards the recognition, investigation and prosecution of the perpetrators of acts of torture in a bid to combat impunity. The country should equally translate its international law obligations into national laws and ensure their effective applicability if the fight against torture in the country must take another twist.

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