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Torture under Cameroonian Law: An appraisal of the prison sector

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Abstract
Torture is universally prohibited under international Human Rights law, Humanitarian law and has attained the status of customary international law. As such, all states are under an obligation to prevent its occurrence. It is on this premise that the state of Cameroon in 2019 commissioned the Cameroon Human Rights Commission with a third mandate to prevent acts of torture in places of detention and there are equally the constitutional prohibitions on torture. Ironically, the state of Cameroon remains the principal perpetrator of acts of torture in places of detention, thus questioning her responsibility in preventing such acts and her efforts of accountability for individuals who commit acts of torture. This paper makes a perusal of the practice of torture in Cameroon with attention of prisons. It attempts to present perspectives on the prohibition of torture, the forms it takes in detention places, and analyses different legal frameworks prohibiting torture in Cameroon. The paper opines that where states are primary perpetrators of acts of torture, most acts of torture go undocumented and unaccounted for. That the state restricts access to detention places where torture is practice and very little or no investigations are carried out. This is a clear characteristic of societies where there is no rule of law, coupled with barbaric human rights violations. The paper recommends that Cameroon must not only assume her human rights obligations in preventing torture but must hold individuals accountable for committing acts of torture in prisons.

Keywords: Cameroon, torture, law, prison, prison sector, torture, societies

Introduction
Torture have long been proscribed by international law instruments. Debates as to what constitutes torture under international law have evolved from definitions that required infliction of excruciating pain to a broader understanding that, at a minimum, torture encompasses acts that cause severe pain and suffering be it physical or psychological [1]. The protection against torture is compatible with set norms. For instance, the right to physical integrity and human dignity which are legally safeguarded. International human rights instruments have contributed greatly to the prohibition of torture and set out absolute binding prohibitive norms in order to protect persons from "torture or other cruel, inhuman or degrading treatment or punishment" [2]. International human rights have established appropriate, preventive and deterrent mechanisms [3] which restrain torture throughout the world. Majority of the States have ratified treaties which contain provisions that prohibit torture [4].

Torture is recognized as both a war crime and a crime against humanity [5]. It goes without saying that the need for protection against torture led to torture having its own multilateral treaty [6]. The United Nations Convention against Torture and other cruel, inhuman or degrading treatment or punishment (UNCAT) [7] was concluded to make the already existing prohibition under international law more effective. (UNCAT, 1984) [7].

As concluded in the *Prosecutor v Anto Furundzija*, [8] the prohibition of torture forms part of customary international law as a peremptory norm. Under international customary law, States are required, not only to prohibit acts of torture and other forms of ill treatment, but also to prevent individuals from being placed in situations which are likely to result in torture [9]. Customary international law imposes an obligation on States to investigate, prosecute and punish individuals accused of torture who are present on their territory or a territory under their jurisdiction [10].

The definition of torture under the UNCAT has its origins in human rights law and it has also been recognized in international criminal law.

The criminal tribunals have adopted this definition in several instances and so did the European Court of human rights [11]. Torture is also within the jurisdiction of the International Criminal Court (ICC) if committed under certain conditions [12].

Article 2 of the UNCAT creates obligations on States to take legislative measures, thereby making torture a criminal offence. These legislative measures are intended to function as a deterrence mechanism; thereby torturers refrain from committing torture. The duty to effectively prevent torture through a broad range of measures set forth in article 2 compels States to prohibit torture at national level where the prohibition is likely to be most directly and effectively enforced. The article also clearly states that torture may not be justified under any circumstances.

In the African region, when African states were under colonisation, the colonial masters violated the rights of the African people-men, women and children with impunity [13]. The protection and promotion of human rights was, however, not high on the agenda of African countries at independence. This is reflected in the 1963 Charter of the Organisation of African Unity, which does not accord the promotion and protection of human rights the status they deserve. The preamble to the OAU Charter states that the states are to promote international cooperation having due regard to the Charter of the United Nations and the Universal Declaration of Human Rights [14]. It is against that background, that many African states violated human rights in the immediate post-independence era and continue to do so [15].

More recently, African countries have taken steps to follow the world trends of the promotion and protection of human rights. This has resulted in the adoption of the African Charter on Human and Peoples' Rights (that has mechanisms of ensuring that human rights are promoted and protected in Africa), the desire to establish the African Court on Human and Peoples' Rights, the adoption of the African Charter on the Rights and Welfare of the Child, the Grand Bay Declaration, the Protocol on the Rights of Women, and the adoption of the Constitutive Act of the African Union. The Constitutive Act of the African Union emphasises the protection and promotion of human rights [16].

However, one scholar has doubts whether by adopting the Constitutive Act of the African Union African leaders were genuinely committed to the protection and promotion of human rights and he is of the view that the 'treaty could actually provide a cover for Africa's celebrated dictators to continue to perpetrate human rights abuses' [17].

Torture continues to feature as a serious human rights violation in Africa. This explains why during its 32nd ordinary session held in Banjul, The Gambia, the African Commission on Human and Peoples' Rights (the African Commission) resolved to adopt the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (The Robben Island Guidelines (RIG)). This is a new development in Africa aiming at 'operationalising' article 5 of the African Charter [18]. The RIG is phrased in a seemingly ambitious language but their implementation by the African States remains doubtful because they are not legally binding. This has to be viewed in the light of the fact that many African countries are States Parties to major regional and international human rights instruments but human rights violations still persist.

In Cameroon, the State has taken several measures to prohibit persons on her territory from being subject to any form of torture, cruel and inhuman, or degrading treatment. These measures are constitutional; legislative as provided in the penal code, institutional as the Cameroon Human Rights Commission is commissioned to prevent torture and lastly in the form of policy frameworks.

Torture: Context, types and forms

Torture is often practiced in a state-based n the prevailing context in that state. It is often perpetrated when a country is under instability, conflict, and undergoing socio-political crisis as the case in Cameroon.

Torture has long been endemic in Cameroon's law enforcement and military system, especially against people suspected of being members of or supporting the armed group Boko Haram or armed separatist groups. The authorities have detained people incommunicado and tortured detainees at the SED since at least 2014. The torture methods Human Rights Watch documented, including severe beatings and near-drowning, have also been used in both official and illegal, unofficial detention facilities throughout the country.

Torture violates most national and international laws, yet it persists [19]. Why do states, particularly democracies that formally prohibit torture, still engage in the practice despite its questionable efficacy? In his extensive review and analysis of torture, Rejali identified three reasons why torture appears in democracies: the national security model, the civil discipline model, and the juridical model [20]. For the United States, the national security model of torture as a response to terrorism is most prominent. Especially in the post-9/11 era, democracies, such as the United States, have used the threat of terrorism to justify the use of torture, or at least to turn a blind eye to its use [21].

To date, scholars and policy makers have put forth two claims for why torture is used by democracies in the name of counterterrorism: Interrogational torture and deterrent torture. Interrogational torture aims to extract information [22]. Deterrent torture aims to discourage similar acts of terrorism by raising the cost of engaging in this form of violence [23]. The empirical support for these claims, however, is lacking, and will be discussed in more detail below. Democracies may also use torture when there is an opportunity to do so with impunity. While other scholars have hinted at the opportunity explanation for torture [24], it has been underexplored in the literature to date.

Interrogational Argument

Interrogational justifications presuppose that the individual being tortured possesses information, and that this information will only be divulged via torture. Wantchekon and Healy explained that torture can be a rational action for both the state and the individual torturer to extract information [25]. Building on classical criminology theory, the decision to commit a crime, including torture, is influenced by an evaluation of its rationality and utility. Cornish and Clarke emphasized bounded rationality, which is the idea that rationality is constricted by the information available at the time of the decision to engage in crime or deviance [26]. In response to terrorism where information is constricted, torture can be appealing especially for

democracies to gather intelligence that potentially prevents future attacks because it is quick and has a low financial cost.

These theoretical arguments must be applied to real world scenarios to assess whether or not torture works. Interrogational justifications assume that torture is effective at eliciting actionable intelligence [27]. It is unclear, however, whether information obtained via torture is accurate. Anecdotal evidence suggests that it frequently is not [28]. During the "war on terror", some members of the United States government have used the interrogational justification for torture. The most memorable, perhaps, is former Vice President Dick Cheney's assertion that water-boarding Khalid Sheikh Mohammed produced "phenomenal" results. Cheney also claimed that similar "enhanced interrogation techniques" were integral in locating Osama bin Laden [29]. The Senate Intelligence Committee Report has since refuted Cheney's claims [30]. To date, there is more evidence to contradict the claim that torture is effective at information gathering than there is to support it [31]. If torture does not work, then the interrogational argument for torture has no merit and the practice cannot be justified. If there are certain scenarios in which torture may work, only then would it be pertinent to engage in a discussion about whether torture could ever be justified in those situations where it is most likely to be effective.

For legal, ethical, and practical reasons, it is challenging to empirically test the claim that torture is effective at gathering actionable intelligence. To date, social scientists have relied mostly on theoretical arguments, game theoretical models, and anecdotal evidence on the efficacy of torture. It is unlikely that researchers would be given access to interrogations where torture is used, and even if they were, such studies would be unlikely to be approved by Internal Review Boards. Similarly, researchers are unable to conduct laboratory experiment using torture or torture-lite practices. Novel experimental designs, however, have been developed to examine the prevalence of and scope conditions associated with false-confessions mirroring criminal justice interrogations [32] and military interrogations. The evidence from these studies shows that innocent "suspects" in experiments falsely confess the majority of the time instead of facing an uncertain future punishment. While there are concerns over the naturalism of lab experiments, studies such as these are likely the closest that researchers can get to study the efficacy of different interrogational tactics. This branch of research is in its infancy. Further exploration of the structural, sociological, and psychological factors that can yield accurate intelligence while decrease false information is a new and promising avenue of research.

Deterrent Argument

In 2002, Alan Dershowitz suggested that judicially sanctioned torture could deter terrorism by punishing offenders. The idea of deterrence has been applied to a range of criminal offenses, including terrorism [33]. Tindale discussed deterrent torture as a mechanism to raise the costs of terrorism to individuals in an attempt to dissuade future offenders. According to classical deterrence theory, crime is a choice based on weighing costs and benefits, where increasing the cost deters the action. Deterrence theory assumes that punishment deters offenders and that humans are rational and self-interested. Some argue that terrorists are rational actors [34], while others argue that terrorists are more concerned with their larger goal and less about their own punishment than a common criminal. If a state or its agents view terrorists as rational, then torture may occur using a deterrent justification. However, if individuals who use terrorism have collective goals, deterrence involves more than just an individual impact. Since deterrence research has largely focused on the costs and benefit analysis of crimes at the individual level as opposed to the group level, there may be a mismatch in unit of analysis for studying the potential deterrent impact of torture that should be addressed in future studies of this relationship.

It is unclear if torture actually works as a deterrent against terrorism. To date, this discussion has been largely theoretical and there is no empirical support for the claim that torture deters terrorism. Torture sometimes fails not just to deter future acts of violence, including terrorism, but may actually lead to increased incidents [34]. There is some preliminary evidence that the backlash faced from torture through increased terrorist attacks and recruitment for terrorist groups outweighs the possible deterrent impact [35]. In asymmetric conflict, the groups that use terrorism want the populace to question the state's legitimacy. When a state responds to terrorism with torture and these offenses become public, the people may question the state's authority. This can lead to backlash helping to accomplish the goals of those who use terrorism. Neglecting human rights to fight the "war on terror" may undermine the very goals of this war, and is unlikely to result in greater security [36]. If we give up many of our freedoms in search of security, are we not accomplishing the goals of our adversaries? More research is needed on the impact of torture on terrorism, and this scholarship should address the issues listed below.

The relationship between torture and terrorism may be endogenous, making it difficult to empirically test. The issue of endogeneity has been handled in past research by lagging all independent variables by one year. However, this may not be the ideal time lag because groups may respond to one another in a different time frame. Additionally, the one year lag does not account for possible changes in the relationship between torture and terrorism over time, which can be examined using different time lags in future studies, assuming that more granular data is available for the outcome variable, key independent variable, and controls. Future research should address issues of endogeneity and time lags more extensively.

At present, there is more empirical evidence to suggest that experiencing terrorism diminishes a state's respect for human rights and results in increased use of torture than for the reverse causation [37]. Torture can be a clearer reaction to terrorism, though the reverse causal pathway is likely muddied by the myriad factors that can also lead to terrorism. Without knowing the reason or reasons that motivate each act of terrorism, researchers cannot determine the impact of torture alone on terrorism. Instead of looking at annual levels of terrorist attacks in a country and the number of torture allegations against that country, future research should disaggregate each form of violence to see if situational variants of torture (i.e., type, perpetrator, victim) impact different types of terrorism, and how these relationships may vary by groups that use terrorism or the ideologies claimed by these groups.

There are concerns over the validity and reliability of data on torture and, to a lesser extent, terrorism. Despite best efforts to collect complete and accurate data on torture and terrorism, both generally rely on publicly known information (for example, the Cingranelli-Richards (CIRI) Human Rights Dataset [38] and the Ill-Treatment & Torture (ITT) Date Project [39] for torture data, the Global Terrorism Database (GTD) [40] and the International Terrorism: Attributes of Terrorist Events (ITERATE) data [41] for terrorism data). There are certainly incentives for governments to protect information regarding the use of torture and incidents of terrorism, which could result in underreporting, especially from more closed states. Due to data issues for terrorism and especially for torture, caution should be exercised when drawing conclusions about the impact of one type of event on the other.

Routine Activities and Obedience arguments

Routine activities and obedience explanations for why torture is used in counterterrorism have received little attention to date but warrant further examination, especially since there is scant evidence to support the arguments that torture works as either an interrogational or deterrent tool. Cohen and Felson argued that crime occurs during one's routine activities when a motivated offender, a suitable target, and lack of a capable guardian converge in time and space. Inherent in the theory is the assumption that anyone would commit crime given the right combination of disposition and opportunity.

This theory can be applied to political crimes, such as torture, yet has been underdeveloped to date. Routine activities theory could explain why torture occurs, even in democracies, when police officers or intelligence agents need actionable information, when there is little oversight, and when there are terrorist suspects and other prisoners in their custody. For example, Tony Lagouranis's first-hand account describes the disconnect between the Army interrogation training that prohibits torture and the practices of some interrogators on the ground at Abu Ghraib [42]. He notes that prisoners were assumed to have information and were routinely dehumanized, which likely made it easier for interrogators to engage in torture despite prohibitions against it. By creating situations that are conducive to torture and failing to punish those who use it, countries including democracies implicitly condone torture. When it is seen as a mechanism to gather information, torture can be a classic principal-agent issue where the agent on the ground can break the law, and the principal who benefits from the action can deny knowledge if it ever becomes public.

In democracies, it is especially important for the principal to have this plausible deniability. Alternatively, torture may persist because states even democracies explicitly order it either directly or through commanders on the ground who jettison official protocol. Levinson argued that torturers are not necessarily sadistic or evil [43]. Instead, as Milgram found in his ground-breaking research, they may just be obedient. He found that obedience is a basic component of human social nature, even if there is no punishment for disobeying. Milgram's participants inflicted pain on another person, even an innocent civilian, if told to do so by a figure of authority. Wantchekon and Healy suggest that obedience to authority may be even higher for torture, though this claim lacks empirical support to date. (Wantchekon and Healy, 1999)

Crelinsten in his book *The World of Torture: A Constructed Reality* argued that torture is a trained behavior and, no doubt, there are situations where this has been the case. However, Zimbardo's prison study found that, even in the absence of training, average people can fall into the role of brutal prison guards within a short time period in the proper circumstances. If a principal within a state agency orders torture, agents are likely to obey. For individual agents, the shift from conformity to the rules to deviance from them may be easier when fellow interrogators are moving toward deviance as well. Amir and colleagues stated that: "There is no question that the insights from research in psychology and behavioral economics could be very useful in informing policy decisions. If the designers of the prison systems would have been more familiar with the work of Zimbardo, the travesty at the Abu Ghraib Prison (as well as in others) might have been prevented". In fact, Zimbardo aided the defense of a soldier accused of torture in Abu Ghraib by stating that in a stressful and chaotic environment with poorly trained officials, this behavior is inevitable [45]. For this reason, Fiske and colleagues asked whether supervisors (and peers) should be held responsible when torture occurs even when it was not expressly ordered [9], as they could have provided guardianship against the practice of torture but failed to do so.

Anecdotal evidence and first-hand accounts suggest that routine activities and obedience approaches may explain why torture persists despite its questionable efficacy, yet there is dearth of empirical research on this. As Lagouranis mentioned, interrogation conditions at al-Asad Airfield were far less harsh than at Abu Ghraib [40]. Why did torture occur in one and not the other? At a macro-level, the structure of the prison itself, bureaucratic functions within the prison, or the level of oversight may explain differences in torture by location even within the same conflict in the same spatial and temporal domains. At the micro-level, individual interrogators may engage in torture if it is socially desirable in the prison culture to do so, through groupthink, or if prisoners are dehumanized to the point that cognitive dissonance is alleviated because their subjects are no longer viewed as human beings about whose treatment one could have moral reservations. Future research should focus on the differences in structural factors, sociological contexts, and individual interrogators between prisons where torture occurs and prisons where it does not.

There is also a dearth of empirical literature on torture from the perspectives of the individuals involved. Narrative accounts of torture from both the victim and the perpetrator's perspective provide names and faces to the practice and can serve to make torture more visible to the public. Literature on torture victims discusses the myriad challenges that survivors face, such as psychological issues including post-traumatic stress disorder and depression [6] and myriad physical health issues.

For perpetrators, torture persists due to diffusion of responsibility and can lead to a cycle of degeneration and corruption. Perpetrators of torture likely have long-term psychological trauma as a result of their actions, but this topic is under-researched due to lack of access to people who have tortured. The primary challenge to research with the individuals involved in torture is gaining access to these populations. Many torture victims are unable to talk about their experiences due to continued detention or death. Those who are potentially accessible may be reluctant to discuss

their traumatic experiences with researchers. Similarly, while a few former interrogators have come forward to discuss their experiences, it would be challenging to conduct a systematic examination of torture from the perspective of the perpetrators. Despite these challenges, research with those directly involved with torture would greatly expand our understanding of the practice and why it persists.

Causes and forms of torture

Conflict

Since the beginning of the crisis in the Anglophone regions of Cameroon in late 2016, Cameroonian security forces have arrested or held incommunicado hundreds of people. Many people have been held for several months, and some have not re-emerged. Local human rights organizations estimate that nearly 1,000 people have been arrested since late 2016, of whom only 340 were released following two presidential decrees, in August 2017 and December 2018. Many have been charged under the 2014 counterterrorism law, which uses an extremely broad definition of terrorism that could be used to restrict fundamental rights and freedoms and enables the government to try civilians unlawfully in military courts. People found guilty of terrorism under the 2014 law can face the death penalty.

Victims said they were tortured both alone and in front of other detainees. The majority of former detainees said that the most severe beatings occurred early in the morning and before meals. Some said that they were tortured daily in sessions ranging from 15 minutes to two hours, while others said they were tortured randomly, or only once.

A 39-year-old man from the South-West region said that guards beat him on the head with electric cables and on his fingers with wooden sticks until he lost his fingernails. Former detainees said they developed health issues from the torture they suffered. Four of them showed Human Rights Watch researcher's scars and marks on their bodies that they said were from torture [46].

Perpetrators of torture in Cameroon

Torture can be perpetrated by formal, state-based authorities, such as police or military, or by de facto authorities, such as armed groups controlling territory. Despite such definitions, identifying torture can be complex and ambiguous in practice, as legal definitions can be difficult to apply to complex social situations. Furthermore, even when definitions are clear, moral ambiguity can remain. Despite near-universal condemnation of torture in principle, as a fundamental violation of human rights and dignity, throughout the 20th century, and now well into the 21st, democratic justifications for the use of torture have persisted. For example, as modern warfare becomes more asymmetric, even regimes with rights-respecting rhetoric at times justify the use of torture as necessary to protect national security.

The most common place where torture is practiced in Cameroon is in detention centres. Interviews indicate that fourteen former detainees said that they were tortured at the SED [47]. They described various methods and showed Human Rights Watch photographs that they said were of scars left on their bodies by the torture. Human Rights Watch consulted forensic experts, who analyzed the photographs and said they substantiate victims' accounts. Former detainees said that they were beaten with various objects including wooden sticks, planks, electric cables, machetes, guns, chains, kitchen tools, and other items. Two detainees said they were also subjected to near-drowning, with their heads forced into buckets of water.

Former detainees said torture was used to force them to admit to supporting armed separatist groups, identify friends and acquaintances, or provide names of armed separatists, collaborators, or Anglophone activists.

Legal framework prohibiting torture in Cameroon

There are principally two key legal frameworks that prohibit torture in Cameroon. These include the Constitution and the Penal Code.

The Constitution of Cameroon is regarded as the *grund norm* of the land and therefore super cede any other laws. The constitution in its preamble provides for the rights of all Cameroonian without any discrimination as to any form. In the same regard, the constitution in its preamble has in very strict terms condemned and prohibited all acts of torture and any form of cruel, inhuman or degrading treatment in the following words: no one shall be subjected to acts of torture, and all forms of cruel and inhuman and degrading treatment. It should be noted that, although preambles of state constitutions do not constitute part of their constitutions, the Cameroonian situation presents an exception by stating in article 65 of the same constitution that the preamble shall form part and parcel of the constitution.

The Penal Code [48] is one of the laws regulating the state of human rights in prison and Cameroon in general. Although its scope is defined in terms of prescribing penalties for offences committed within the territory of Cameroon, it provides a convenient atmosphere to promote respect for human rights. The application or relevance of this code on the protection of human rights in the country is however not expressly provided but construed implicitly.

To guarantee the application of this code, Section 2(1) posits that 'the penal code and every provision of criminal law shall be subject to the rules of international law and to all treaties duly promulgated and published'. This means that the penal code admits the direct application of international human rights instruments protecting detainee's rights and therefore becomes subjected to such international norms.

The penal in attempts to punish perpetrators of torture punishes anyone who commits physical or psychological torture by assault, battery or any form. It equally protects the freedom from torture by enshrining the right to dignity.

Section 277(3) of the 2016 Cameroonian Penal Code is instructive of what constitute torture under Cameroonian law, it state:

- Whoever involuntarily causes death by torture shall be punished with life imprisonment.
- The penalty shall be 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.
- The penalty shall be imprisonment for from 5 (five) to 10 (ten) years and with fine of from CFAF 100 000 (one hundred thousand) to CFAF 1 000 000 (one million) where torture leads to illness or incapacity to work of more than 30 (thirty) days.
- The penalty shall be imprisonment for from 2 (two) to 5 (five) years and with fine of CFAF 50 coo (fifty thousand) to CFAF 200 COO (two hundred thousand) where torture leads to illness or incapacity to work of

up to 30 (thirty) days, or pain or mental or psychological injury.
- For the purposes of this section, "torture" shall mean any act by which acute pain or suffering, either physical, mental or psychological, is intentionally inflicted to a person by a public servant, a traditional leader or any other person acting in the course of duties either at his own instigation or with his express or implied consent, in order to obtain information or confessions from that person or from another, to punish her for an act that she or any other person has committed, or is presumed to have committed, to intimidate or overawe her or any other person, or for any other motive based on any discrimination. The word "torture" as so defined does not apply to pain or suffering resulting from legitimate punishments, inherent to or caused by them.
- No exceptional circumstances, whatever they are, whether a state of war or threat of war, internal political stability or state of exception, may be invoked to justify torture.
- Torture may not be justified by command of a superior or public authority.
- The requirements provided in section 10 (1) of this Code shall not be applicable to torture

Aside domestic instruments prohibiting torture, Cameroon has ratified human rights instruments regionally and universally to punish acts of torture. Thus, per article 45 of the Cameroonian constitution of 1996 as amended, provides that, duly approved and ratified treaties and international agreements shall, following their publication, override national laws, provided the other party implements the said treaty or agreement. Thus, African charter on human and peoples' rights and the United Nations Convention against Torture 1984 becomes applicable in Cameroon as part of Cameroonian law.

The right to freedom from torture is protected under article 5 of the Africa Charter [49] which 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 degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited. The African Charter has been ratified by all the 53 States in Africa [50] and, unlike the other instruments like the CAT, ICCPR, CRC, the American Convention on Human Rights and the European Convention on Human Rights, article 5 of the African Charter is not limited to only the right to freedom from torture, inhuman or degrading treatment or punishment but it also covers 'respect of the dignity inherent in a human being.' This is important because, as mentioned earlier, 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.

Another unique feature about the African Charter is that it puts torture in the same category as slavery and slave trade, and categorizes them as 'forms of exploitation and degradation.' It may be argued that by so doing it expressly enacts that torture has acquired the status of jus cogens [51] as is the case with slavery and slave trade.

The major international treaty dedicated wholly to the fight against torture is the Convention against Torture and Cruel, Inhuman or Degrading Treatment or Punishment (CAT) [52]. The majority of African countries have ratified CAT [53] and this could be interpreted to mean that they realize that torture is a serious problem on the continent and there is a will to eradicate it. This treaty lays down, in detail, some of the steps that States Parties have to take to ensure that torture is brought to an end. It obliges a State Party to take effective legislative, administrative, judicial and other measures to prevent acts of torture [54]. It emphasizes the absolute nature of the right to freedom from torture by providing that no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture [55].

An order from a superior officer or a public authority may not be invoked as a justification of torture. This treaty requires States Parties not to expel, return or extradite a person to a country where there is a substantial danger that they may be tortured. It requires States Parties to criminalize all acts of torture and to have jurisdiction to try torture whenever and wherever it is committed. Another important aspect of this treaty is the fact that it makes torture an extraditable offence and requires States to cooperate and offer assistance in respect of criminal proceedings in the case(s) of torture. It requires States Parties to educate all personnel responsible for the custody, interrogation or treatment of any person deprived of their liberty that torture is prohibited.

States Parties are also obliged to keep under systematic review interrogation rules, methods and practices and also to ensure that public authorities immediately investigate allegations of torture [56]. Individuals who allege that they have been subjected to torture have a right to complain and have their cases promptly investigated, and are entitled to fair and adequate compensation in case they were subjected to torture [57]. The treaty also prohibits courts from relying on any statement that has been extracted from the accused through torturous means [58].

The optional protocol to Convention against Torture (CAT)

A very important treaty that indicates the prospect of combating the use of torture in detention facilities is the Optional Protocol to CAT (OPCAT) [59]. The objective of OPCAT is to 'establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment. 'A Subcommittee on the Prevention of Torture (a Subcommittee on Prevention) is to be established and States are required to cooperate with it for the implementation of the Protocol.

The nature and state of prisons: Torture Perspective

The nature and state of prisons from a torture perspective can be summarily assessed based on the nature and state of accommodation that is inhuman, degrading and torturous in nature. Accommodation [60] is one of the basic needs for human survival. The ICESCR in article 11 provides for the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing. As a prerequisite, specifically, article 10 of the ICCPR provides that detained persons must be treated with respect for their inherent human dignity. The UN Standard

Minimum Rules for Treatment of Prisoners points out the minimum level of provision of accommodation stating that:

> …the sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.

The prohibition of torture and ill-treatment in Article 7 of the ICCPR is formulated in absolute terms, envisaging no exception to the rule. Furthermore, under the ICCPR freedom from torture and ill-treatment is a non-derogable right-a right entailing obligation from which no derogation is permitted. Article 4(1) of the ICCPR permits states parties to derogate from some of their obligations "[i]n time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed", but under Article 4(2) no derogation is permitted from Article 7. Other treaties which permit derogation from some of their provisions in time of public emergency likewise make no such allowance for the prohibition of torture and ill-treatment.

Under Article 2(2) of the Convention against Torture, "No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture." Article 3 of the Declaration against Torture contains the same principle with regard to torture and ill-treatment, as does Article 5 of the UN Code of Conduct for Law Enforcement Officials. The Inter-American Convention to Prevent and Punish Torture (Article 5) precludes invoking exceptional circumstances as a justification for torture. Under the Rome Statute, there are also no exceptions to the prohibition of torture as a war crime or a crime against humanity. The UN Commission on Human Rights has condemned "all forms of torture and other cruel, inhuman or degrading treatment or punishment, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified"

Cameroon has ratified the aforementioned instruments and is hereby bound by the obligations [61]. Moreover, detained persons are guaranteed with similar legal protection in Cameroonian legislations. While the preamble of the constitution stipulates in general terms without specific mention of detainees or any category of people provides that 'all persons have the right to good standard of living'. This imply that persons held in custody and persons imprisoned upon conviction and sentencing have the right to treatments concerning their human dignity and failure of the state to provide adequate accommodation to detainees, violates their rights to good standard of living, dignity and accommodation.

Review of literature ranging from institutional reports and academic circles have persistently identified accommodation as a major problem in Cameroon prisons. In this regard, the National Commission for Human Rights and Freedoms in its 2017 annual report asserts that most prisons in Cameroon remain overcrowded and dilapidated. This problem runs through all the reports of this commission. On similar basis, a 2002 report by the Special Rapporteur on Prisons in Africa [62], during her visit to Cameroon, identified the problem of accommodation caused by overcrowding. Several recommendations were made by this body for measures to be taken to ensure that detainees are accommodated under hygienic and decent conditions. Nevertheless, 19 years later, the problem of accommodation is worsening. As such, recommendations by the Human Rights Commission and the Special Rapporteur on prisons remain a paper work and lack the force of implementation. This view has been upheld by some academic scholars like Helen Fontebo [63].

Accommodation remains a pertinent problem plaguing Cameroonian prisons [64]. In *Albert Mukong v. Cameroon* [65], some minimum conditions for detainees such as floor space, cubic content of air for each prisoner, adequate sanitary facilities, clothing and food in concert with the UNSMR for the treatment of prisoners were complied with. The committee on human rights in Africa stressed that minimum requirements should always be observed regardless of economic constraints suffered by the state. Noncompliance with minimum standards amounted to a violation of article 10(1) and in particular any harsh treatment that the victim was subjected to such as incommunicado detention and threats of torture, equally amounted to a violation of article 7 of the ICCPR 1966.

The situation in the Buea and Bamenda Central Prisons has been worsened following the advent of the Anglophone crisis. The Chief of Service incharge of Discipline at the Buea central prison asserts that:

> Accommodation has always been a major problem to detainees in Cameroon and this has been further complicated by the massive arrest and detention of people during the Anglophone crisis. The Buea central prison housed over 800 detainees before the Anglophone crisis started in 2016. As of December 2018, the prison has a total population of over 1300 detainees after the release of over 90 that benefited from the presidential pardon. A single cell now houses over 100 detainees which is inhuman and degrading. The increase in prison population is not followed by budgetary allocations and no new cells are being constructed [66].

Boh and Ofege [67] describe Kondengui as a prison where "inmates wake up to line up behind each other and take turns urinating on the little mountain of faeces in one corner of the cell, chipping it off and scattering the pieces onto the floor". Tande paints a picture of Kondengui prison as a microcosm of the prison conditions in Cameroon. According to Tande, Kondengui prison is defined as "hell on earth" [68].

As regard accommodation in the Yaounde Central prison, the chief of service In-charge of socio-cultural activities states thus:

> Accommodation is a major problem in the prison due to the daily increase in number of detainees. The capacity of this prison is 1500 but as of now, the prison has 4567 detainees comprising those awaiting trial and those that have been sentenced. This causes serious shortage of cells, beds, and other needed service. As such, some detainees sleep out of the cells and on bare floor. It has led to health problems and other negative vices. This problem does not only violate detainees' rights but poses serious security and control problems within the prison [69].

In Ethiopia, Regulations No 138/2007 on Treatment of

Federal Prisoners is a direct reflection of UN Standard Minimum Rules for Treatment of Prisoners. Regarding accommodation, the regulation provides that:

> Premises in which prisoners live or work shall have windows large enough to allow adequate light for reading and fresh air to circulate and artificial light for reading during the Night without causing hazard to the eyesight [70].

This provision is verbally copied from article 11 of UN Standard Minimum Rules for Treatment of Prisoners. Unfortunately, this Ethiopian regulation leaves out the important things pertaining to accommodation. While the article is confined only to accommodation and light, it is silent about all requirements of health, cubic content of air, minimum floor space, heating and ventilation, sanitary installations. While it is appreciated to have the treatment regulation, the inadequacy of provisions on thematic issues like, accommodation can be understood as a sign of lack of a whole hearted commitment in this area.

However, the UN Standard Minimum Rules for Treatment of Prisoners requires allocating a detained person with minimum floor space 'without actually defining it. The International Committee of the Red Cross (ICRC) has recommended minimum space per prisoner of no less than 3.4 sq m and area within the security perimeter of 20-30sq meters per person. The Council of Europe's CTP has also established 4 square meters per prisoner as a minimum in a communal cell, 6 square meters in single cells. In the United States the Federal Supreme Court adopted 18.18 square meters floor space for a prisoner. Yet, this approach is found debatable and completely undefined in the Cameroonian laws relating to detained persons. Nevertheless, such absence implies that the country is bound by international norms and standards regulating detainees' accommodation.

The major negative vice of accommodation is overcrowding in prisons. This cuts across all the four prisons under study. One of the major problems in many jurisdictions is the level of overcrowding. This is often worst for remand and pre-trial prisoners. Overcrowding can take different forms. In some cases, it may mean that cells which were built for one person are used for many occupants. In the worst situation this can mean up to twelve or fifteen individuals in cells which are hardly eight square metres. In other circumstances it can involve up to a hundred individuals crammed into a larger room. Generally speaking, the international instruments do not specify a minimum floor or cubic area for each prisoner. The accommodation condition, hence, is below the international and national minimum standards. This is a violation of article 9 and 10 of the UN Standard Minimum Rules for the Treatment of Prisoners [71]; preamble of the 1996 Constitution of Cameroon, 1992 decree on prison administration; article 10 of the ICCPR; and article 11 of the ICESCR.

The limitation of inmates' right to adequate accommodation has to comply with minimum space provided for under international norms and standards. This is based on the fact that this right does not have any limitation other than "adequate" accommodation. Thus, it should be limited in a manner that complies with the needs of detainees simpliciter. McLean argued this as follows: Since prisoners' right to adequate accommodation is not qualified by progressive realization and availability of the resources, it may be limited only if reasonable and justifiable in an open and democratic society taking into account the needs of prisoners and their vulnerability.

Challenges in eliminating torture in Cameroon prisons

There several challenges in eliminating torture in Cameroon and the prison sector in particular. Among these challenges is the challenge of impunity. Human rights law is normally not concerned with individual responsibility. It is therefore crucial for the struggle against torture that, according to Articles 4 and 5 of the Convention against torture, States must enact legislation allowing for the punishment of perpetrators of torture who are their own nationals or, in the case of aliens, are not extradited. While, according to the *travaux preparatoires*, these provisions have been inspired by conventions dedicated to the struggle against terrorism, 44 the foundation on which they are based is the concept of individual responsibility for grave breaches of international humanitarian law.

A primary challenge in eliminating torture in Cameroon prisons stems from the fact the state is the perpetrator of the act. As such, very little or no information is known about prisoners who are subjected to torture and other forms of cruel, inhuman and degrading treatment. This completely defeats the notion that people are not send to prison for punishment but as punishment. The practice of incommunicado detention, solitary confinement as clear instances of torture in Cameroon prisons. Aside this, the physical acts of torture perpetrated by prison officials on prisoners some of which go unaccounted for. The restriction of access to prisons to human rights organizations and other bodies presents an associated challenge in identifying and combating acts of torture in Cameroon prisons. This is a challenge faced by the Cameroon Human Rights Commission itself that has the mandate to prevent torture in prisons. Aside the lack of access, the Commission is understaff and geographically unable to access all prisons in regions given that is found just in regional headquarters.

Conclusion and Recommendations

The Republic of Cameroon fails to uphold its obligations under the Convention. The Convention recognizes "the obligation of States under the Charter, in particular Article 55, to promote universal respect for, and observance of, human rights and fundamental freedoms" and states "that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." The State routinely detains people based on perceived support for the Anglophone separatist movement. In detention, Cameroonian authorities subject Anglophones and people suspected of supporting them to torture and cruel, inhuman, and degrading treatment, in direct contravention of Articles 2 and 16 of the Convention.4 The State fails to appropriately censure the marginalization, persecution, discrimination, and violence directed toward these people and to provide a remedy to victims, as required by Articles 12, 13, and 14 of the Convention [72]. The continued criminalization of the Anglophone separatist movement has created a hostile and unsafe environment for Cameroon's English-speaking minority.

The military often detains and tortures people in the Anglophone region on mere suspicion of their participation in or aid to the separatist movement [73]. The military often provides no notice before an arrest and arrest people simply

because of their proximity to a protest or other separatist activity. The military restricts detainees' ability to contact their family or speak to a lawyer and often only releases them if they pay a bribe.

The challenges in investigating torture are approached from a double perspective, including the obligations of judicial police officers and the obligations of health professionals. This obligation is of a general nature, and the investigation may be undertaken even without a complaint or after a complaint is withdrawn. The obligation to investigate does not adopt a restrictive approach and lead to the identification and punishment of perpetrators of torture.

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