

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 4 | Issue 3

2021

© 2021 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

This Article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in International Journal of Law Management & Humanities after due review.

In case of **any suggestion or complaint**, please contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication at **International Journal of Law Management & Humanities**, kindly email your Manuscript at submission@ijlmh.com.

The Legitimacy of Capital Punishment in Cameroon

NYIAWUNG MARCELLOUS NKWETTA¹, PROFESSOR GALEGA SAMGENA DIAGA² AND
PROF. DJIEUFACK ROLAND³

ABSTRACT

The existence of death penalty in Cameroon's criminal law is not a 21st Century issue because it has long existed as a principal penalty. Not sanctioning an individual who commits a crime in any organised society is an abnormality. Different crimes in different State like Cameroon and others are sanctioned differently with the most severe punishment being death sentence. Cameroon has several laws containing death sentence as sanction for particular crimes although its practice or application in Cameroon has not been witnessed for about two decades or more. There has been constant debate as to the legitimacy of capital punishment in Cameroon. The justifications for its existence and retention in law in Cameroon have been constantly questioned. Among some of the reasons for its retention in Cameroon are that it is an effective deterrent, the public wants it to be retained, it helps to incapacitate the offender from further committing crimes. These reasons today have hardly been convincing as this form of punishment is not only cruel, brutal, inhumane and above all, it is unconstitutional. Hence, with this counter argument, the legitimacy of capital punishment in Cameroon is constantly questioned as this form of punishment violates the fundamental human right to life. This paper opines that this form of punishment may have been best for certain categories of crimes decades past, but as the society evolves, so are concepts revisited and for the fact that there is a possibility of executing an innocent, it should be abolished.

Keywords: Legitimacy, Capital Punishment

I. INTRODUCTION

Death penalty is a kind of sanction that has been in use as old as history. There are debates surrounding the legitimacy of capital punishment in Cameroon, that is, whether death could serve as a proper execution in our legal system or not. Different arguments have been raised. However, none of them seem able to provide a determined answer to the issue; this results in a

¹ Author is a PhD Student, Department of English Private Law, Faculty of Law and Political Science, The University of Bamenda, Cameroon.

² Author is Professor of Law at University of Yaounde II, Department of English Law, Cameroon.

³ Author is an Associate Professor/HoD-Law HTTTC at The University of Bamenda (Uba), Cameroon.

lack of instruction in the legal practice. Cameroon has applied a *de facto* moratorium on the death penalty since 1997 but it has never been made official. The country has systematically abstained from voting on the UN General Assembly resolutions to implement this moratorium,⁴ despite numerous calls from the international community, including the African Commission on Human and Peoples' Rights. At the time of the final report of the latest Universal Periodic Review (UPR) in September 2018, Cameroon restated that it did not want to abolish the death penalty in law. It rejected all the recommendations made by the international community relating to abolition of the death penalty with the justification that the death penalty has dissuasive properties and that the public wanted it to be retained.⁵

Anyone who reflects on the practice of capital punishment has to work through two issues. The first is that of the justification of the punishment in general, and the second is that of the place of death within his or her overall theory of punishment.⁶ Within this work, the researchers do not endeavour to present an overarching theory of punishment from which certain conclusions about death penalty follow as special implications. Instead, the aim of this paper is to arrive at certain conclusions about the death penalty through a free-standing justification. Consequently, this part of the work's contestation of the prevailing rationales for the death penalty in Cameroon will address them predominantly as just such rationales rather than as doctrines that prescribe punitive measures across the board. To be certain, a few of the researcher's objections to the commonly marshaled arguments for capital punishment will question whether the factors invoked by those arguments can ever truly justify death sentence in Cameroon. This paper therefore devotes itself to the effort to find such an answer.

II. THE JUSTIFICATIONS IN FAVOUR OF CAPITAL PUNISHMENT IN CAMEROON

The word 'capital' originates from the Latin word '*capitalis*' which literally means 'regarding the head', and is referred to here as execution by beheading.⁷ Capital punishment was universally applied all over the world until the middle 20th Century. Since World War II, there has been a trend toward abolishing it. However, at the same time over 60% of the world population is still under the regulation of death penalty, such as in China, India, the United

⁴ Analysis of Cameroon's votes at the UN General Assembly on resolutions concerning the moratorium on the death penalty reveal that the country abstained from the first vote in 2007 and subsequently in 2008, 2010, 2012, 2014 and 2016.

⁵ Human Rights Council, 2018, Report of the Universal Periodic Review Working Group, Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, A/HRC/39/15/Add.1, Recommendations 121.1-121.9, 121.92 and 121.96-121.98.

⁶ William A. Edmundson: "Proportionality and the Difference Death Makes". *Journal of Criminal Justice Ethics*, Vol. 21, pp. 40, 2002. Available at www.papers.ssrn.com. Accessed on 4th August 2020.

⁷ Michael Kronenwetter, *Capital Punishment: A Reference Handbook* (ABC-CLIO, 2001) p. 291.

States and Indonesia and some countries have reintroduced it after suspension for several years, Sri Lanka and Philippines for example.⁸ Cameroon is not an exception though she does not longer apply it practically but still have it in law. Whether the capital punishment should be abolished both in practice and in law therefore is under fierce debate, not only among States, but also among scholars. Different reasons have been advanced to buttress the fact that death sentence is good and thus be maintained. What then explains why the Republic of Cameroon still keeps this form of punishment despite its non-application?

(A) Deterrence

The primary purpose of legal punishment is to deter crime. In other words, deterrence is the main purpose of the threats of punishment and of punishment itself.⁹ In 2004, the Minister of Justice and Keeper of the Seals, in justifying the retention of the death penalty in Cameroon, stated that it is a deterrent measure.¹⁰ Again, as seen earlier, the Republic of Cameroon rejected all the recommendations made by the international community relating to abolition of the death penalty with the justification that the death penalty has dissuasive properties.¹¹ To deter means to discourage or stop by fear, to stop or prevent from acting or proceeding by danger, difficulty, or other consideration which disheartens or countervails the motive for the act.¹² Going by this reasoning and meaning of deterrence, it holds that the legal draft man kept those provisions of death penalty in law in the Cameroon criminal justice system to scare citizens from committing heinous crimes. Thus, knowing that death awaits you if you commit a particular category of crime, according to the draft man of Cameroon, it will prevent you from committing the act.

However, it should be borne in mind that threats of punishment cannot and are not meant to deter everybody all of the times, but are meant to deter most people most of the time. The deterrence theory operates at two levels – individual and general deterrence. The concept of individual deterrence aims at thwarting further criminal activity by the particular defendant who is before the court.¹³ With individual deterrence, the offender is treated in such a way that he or she will in future shun away from committing other offences. In other words, the offender is treated in such a way that he or she will be deterred or afraid from committing an offence again. Strictly speaking, the death penalty is not concerned with individual deterrence in the sense that once the offender is executed, it cannot be said that the offender will be deterred

⁸ International Journal of Social, Behavioral, Educational, Economic, Business and Industrial Engineering Vol:11, No:3, 2017, p 504.

⁹ Van den Haag, E and Conrad, J *The death penalty: A debate* (1986) New York: Plenum Press

¹⁰ See *Le Messager* (a Cameroonian newspaper), No 681 of 5 July 2004, p 3.

¹¹ See note 2 above.

¹² *Haynesworth v. Hall Const. Co.*, 44 Ga.App. 807, 163 S.E. 273, 277.

¹³ Loewy, Arnold H. *Criminal law in a nutshell* (2000) Minnesota: West Group.

from committing future crimes. Broadly speaking, the death penalty certainly “deters” the murderer who is executed, by preventing the murderer from murdering again.¹⁴

General deterrence is to the effect that punitive sanctions imposed on a convicted criminal will deter others with similar tendencies from engaging in such conduct. With general deterrence, the offender is treated in such a way that the treatment provides a lesson for the public at large. It can be deduced from this that deterrence protects the social order by restraining potential offenders from committing offences.¹⁵

Deterrence as a justification for the support of capital punishment has been in years of inclusive debate as some studies purport to demonstrate that capital punishment really does deter murder,¹⁶ and that multiple lives are saved for each person executed.¹⁷ The basic thrust of the findings appears to be that, while at low levels of execution there is no deterrent effect and even a brutalizing effect that increases murder, beyond some threshold level of executions capital punishment is an effective deterrent.¹⁸ Moreover, the swifter the punishment is imposed, the greater the impact in deterring all types of murder among all ethnic groups.¹⁹

(B) Popular Opinion.²⁰

The second reason the Republic of Cameroon gave as a justification for not abolishing capital

¹⁴ Lilian Manka Chenwi (2005), “Towards the Abolition of the Death Penalty in Africa: A Human Rights Perspective”; Ph.D Thesis (University of Pretoria) p. 142.

¹⁵ Lilian Manka Chenwi. *Ibid.*

¹⁶ See for example in Harold Brumm & Dale O. Cloninger, *Perceived Risk of Punishment and the Commission of Homicides: A Covariance Structure Analysis*, 31 J. ECON. BEHAV. & ORG. 1 (1996); Dale O. Cloninger & Roberto Marchesini, *Execution and Deterrence: A Quasi-Controlled Group Experiment*, 33 APPLIED ECON. 569 (2001); Hashem Dezhbakhsh et al., *Does Capital Punishment Have a Deterrent Effect? New Evidence From Postmortality Panel Data*, 5 AM. J.L. & ECON. 344 (2003); Zhiqiang Liu, *Capital Punishment and the Deterrence Hypothesis: Some New Insights and Empirical Evidence*, 30 E. ECON. J. 237 (2004); H. Naci Mocan & R. Kaj Gittings, *Getting Off Death Row: Commuted Sentences and the Deterrent Effect of Capital Punishment*, 46 J.L. & ECON. 453 (2003).

¹⁷ Hashem Dezhbakhsh et al., *Does Capital Punishment Have a Deterrent Effect? New Evidence From Postmortality Panel Data*, 5 AM. J.L. & ECON. 344 (2003), p. 369

¹⁸ Joanna M. Shepherd, *Deterrence Versus Brutalization: Capital Punishment's Differing Impacts Among States*, 104 MICH. L. REV. 203 (2005) [hereinafter Shepherd, *Deterrence versus Brutalization*], pp. 233-242.

¹⁹ Joanna M. Shepherd, *Murders of Passion, Execution Delays, and the Deterrence of Capital Punishment*, 33 J. LEGAL STUD. 283 (2004) (hereinafter Shepherd, *Murders of Passion*), pp. 305, 308-309, 314-315. For more on this concept see Thomas Kleven, *Is Capital Punishment Immoral Even If It Deters Murder*, 46 *Santa Clara L. Rev.* 599-600 (2006). Available at: www.digitalcommons.law.scu.edu/lawreview/vol46/iss3/3. Accessed on August 6th 2020.

²⁰ Public opinion, defined for purposes of a historical review is seen as free and public communications from citizens to their government on matters of concern to the nation is a phenomenon of middle-class civilization. Its attainment of political significance was accomplished and facilitated by certain changes in the economic and convivial institutions of society and by shifts in social stratification. In its early phase public opinion was preoccupied with domestic affairs, but during the French Revolutionary wars and after the Congress of Vienna the utilization of public opinion in international affairs, became generally respectable among statesmen. Effective government by public opinion in the field of foreign affairs today is jeopardized by various specified characteristics modern democratic civilization. Available at www.journals.uchicago.edu. Accessed on August 7th 2020.

punishment and still having it in law was and is that she is following the opinion of the public that desires that it should not be abolished.²¹ According to the researcher, popular opinion consists of the desires, wants and thinking of the majority of the people. It has to do with the collective opinion of the people of a society or state on an issue or problem.

Etymologically, the term public opinion was derived from the French *opinion politique* which was first used in 1588 by *Michel de Montaigne* in the second edition of his essays.²² The French term also appears in the 1761 work *Julie, or the New Heloise* by *Jean-Jacques Rousseau*.²³

Reasoning in line with the view of the Republic of Cameroon's reasons justifying the non-abolition of death penalty, it seem to appear otherwise that public opinion is that if a man kills, he should not be allowed to live; if a man steals, mob justice should decide his fate. Section 23 of the Cameroon Penal Code on execution provides that 'Execution of the death sentence shall be by shooting or by hanging ... and shall be public'. Up to the last case, execution of the death sentence was a spectacle and the population went to watch and nobody disapproved of it. Thus, apart from religious persons, the general public opinion is in favour of the execution of the death penalty (not passing of the death sentence) as a deterrence to further, similar crimes. But it appears the public enjoys it more so as a spectacle. To some people, public opinion is that if the death penalty were to be abolished in Cameroon, the crime wave would continue to increase. This is the major reason why the death penalty still finds itself in the Cameroon Penal Code and other special legislations as a principal penalty. The authorities that are in a position to propose the draft bills to parliament are those that feel the most insecure about the abolition of the death penalty. The administrative authorities in Cameroon are rich and have become targets for ordinary thieves. These rich people are afraid that if the death penalty were to be abolished, crime would increase. So they dare not propose that the death penalty be abolished for they can be victims of crime anytime.²⁴

Public opinion is always introduced as an overwhelming argument for a state to abolish the death penalty. Since democracy is the fundamental institution adopted by most modern countries to decide law and policy, the attitude of the majority prevails over any other evidences

²¹ See note 2 above.

²² Kurt Braatz, Friedrich Nietzsche: *Eine Studie Zur Theorie der Offentlichen Meinung*, Walter de Gruyter, 2011, p. 1.

²³ Speier, Hans (1950). "Historical Development of Public Opinion". *American Journal of Sociology*. 55 (4): 376-388.

²⁴ See Henry Baaboh Feh in his "Country Report on the Application of the Death Penalty in Cameroon" at p. 10. National coordinator of the British Institute of International and Comparative Law (BIICL) Death Penalty Project, Cameroon. Mr Henry Baaboh Feh is a practising barrister and solicitor of the Supreme Court of Cameroon. Among the areas he practises he is also constituted by the Department of Public Prosecution to defend those who stand a chance of being sentenced to death and who are financially incapable of briefing counsel. Available at www.biicl.org. Accessed on August 8 2020.

provided by scholars as seen above. A referendum is usually the best place to reveal public opinion in a state that needs it to change its constitution where the capital punishment lies.²⁵ For example, Ireland passed a constitutional amendment by referendum in 2001 to prohibit reintroduction of the death penalty. It reveals the universal determination of its people to abolish capital punishment forever after it has been prohibited in the statute law in 1990. In a country which does not need or has not requested a referendum, attitudes of the public could only rely on polls. According to some existing surveys, more than 75% of people support the abolition of death penalty in Australia²⁶ and Norway,²⁷ and less than half of the population is in favour of it in France, Finland, Italy and New Zealand.²⁸ Those numbers and evidences support the abolitionists' opposition to capital punishment.

However, it should be recalled here that public opinion varies considerably by states. Distinct from the examples above, countries like America, India, China, Chad, Democratic Republic of the Congo, Egypt, Equatorial Guinea, Ethiopia, and Gambia still maintain a high percentage of population supporting the death penalty, especially its application on serious crimes.²⁹ Since citizens of a state could only decide the law and policy within that state, the inclination to abolish it in one state or even in most states could not justify its ban in other states. While at the same time, some states' application could not be counted as the reason for another state's use or reintroduction of capital punishment either. Moreover, public opinion is subject to change from time to time, which again reveals that a certain outcome of polls on the death penalty could not be universalized. The massive rise in support of the reintroduction of the death penalty among South African youth after more than two decade moratorium³⁰ is a good example.

In addition, public opinion may be discriminative. It has been pointed out that Americans for example are more likely to support the death penalty when they have been told that it is mostly

²⁵ World Academy of Science, Engineering and Technology: *International Journal of Social, Behavioral, Educational, Economic, Business and Industrial Engineering* Vol:11, No:3, 2017. P. 506.

²⁶ The Sydney Morning Herald, Tough Fight Remains to Halt Barbaric Death Penalty (30 November 2011). Available at www.smh.com.au/federalpolitics/editorial/tough-fight-remains-to-halt-barbaric-death-penalty20111130-1v1lv.html. Accessed on August 8, 2020.

²⁷ USA Today, Can Norwegian Punishment Fit the Crime? (27 July 2011) Available at www.usatoday30.usatoday.com/news/world/2011-07-27-Norwaypunishment-lenient-death-penalty_n.htm. Accessed on August 8, 2020.

²⁸ Death Penalty Information Center, International Polls and Studies. Available at www.deathpenaltyinfo.org/international-polls-and-studies. Accessed on August 8, 2020.

²⁹ See Amnesty International Global Report on Death Sentences and Executions (2017), p. 41. See also Christina Mancini and Daniel P Mears, 'To Execute or Not to Execute? Examining Public Support for Capital Punishment of Sex Offenders' (2010) 38 *Journal of Criminal Justice* 959.

³⁰ News24, Youth 'Want Death Penalty Reinstated' (22 February 2013) Available at www.news24.com/SouthAfrica/News/Youth-want-deathpenalty-reinstated-20130222. Accessed on August 8, 2020.

applied to African Americans.³¹ On that ground, even a stable and most widely accepted public opinion within the realm of a state could not be relied upon legitimately. The public therefore again says little about whether we should abolish or retain capital punishment. Away from these two justifications canvassed by the Republic of Cameroon for the support and maintenance of death penalty, there also exist others such as retribution and incapacitation.

(C) Retribution

Retribution is one of the arguments used to justify the retention of the death penalty in most retentionist African states. This is something given or demanded in payment. In criminal law, it is punishment based on the theory which bears its name and based strictly on the fact that every crime demands payment in the form of punishment.³² This concept is similar to the theory of restitution.³³ The Attorney General in *S v Makwanyane* contended that the imposition of the death sentence “meets the sentencing requirements for extreme cases of murder more effectively than any other sentence can do”, basing his contention on, *inter alia*, the fact that it meets the need for retribution.³⁴

Retributivism considers punishment as a response to a past crime in a proportionate way,³⁵ the leading figures of which are Kant and Hegel.³⁶ Kant insisted that retribution is the requirement of respecting human dignity which lies in the moral belief that a human being could only be treated as an end, but not as means to enhance common good or other good of him.³⁷ In this sense, punishment must be made in a ‘like for like’ way according to the principle of equality.³⁸ ‘Whatever underserved evil you inflict upon another within the people, that you inflict upon yourself’.³⁹ Therefore, anyone who commits murder — ‘commits it, orders it, or is an accomplice in it’ — must suffer death himself.⁴⁰ Only the imposition of the death penalty to

³¹ Samuel R Gross and Robert Mauro, *Death and Discrimination: Racial Disparities in Capital Sentencing* (Northeastern University Press, 1989) xiii.

³² Black’s Law Dictionary, 6th Edition, p. 1617

³³ An equitable remedy under which a person is restored to his or her original position prior to loss or injury, or placed in the position he or she would have been, had the breach not occurred. Act of restoring; restoration; restoration of anything to its rightful owner; the act of making good or giving equivalent for any loss, damage or injury; and indemnification. *State v. Barnett*, 110 Vt. 221, 3 A.2d 521, 525, 526. Act of making good or giving an equivalent for or restoring something to the rightful owner. *Antoine v. McCaffery*, Mo.App., 335 S.W.2d 474, 489. Compensation for the wrongful taking of property. *Com. v. Fuqua*, 267 Pa.Super. 504, 407 A.2d 24, 25. Restoration of status quo and is amount which would put plaintiff in as good a position as he would have been if no contract had been made and restores to plaintiff value of what he parted with in performing contract. *Explorers Motor Home Corp. v. Aldridge*, Tex.Civ.App., 541 S.W.2d 851, 852. See Restatement, Second, Contracts, § 373.

³⁴ Makwanyane (1995) para 112.

³⁵ Mark Tunick, ‘Is Kant a Retributivist?’ (1996) xvii(1) History of Political Thought 60, pp. 67–8.

³⁶ See note 63 (supra), see also J Angelo Corlett, ‘Making Sense of Retributivism’ (2001) 76 Philosophy 80.

³⁷ Immanuel Kant, *Ground Work of Metaphysics of Morals* (Mary Gregor and Jens Timmermann trans and (eds), Cambridge University Press, revised ed, 2012) p. 27.

³⁸ Mark Tunick, ‘Is Kant a Retributivist?’ (1996) xvii (1) History of Political Thought 60, pp. 67–8.

³⁹ *Ibid.*

⁴⁰ *Ibid.*

the murder serves in accordance with the strict law of retribution.⁴¹

The retributive theory is based on the premise that the commission of a crime disturbs the balance of the legal order, which will only be restored once the offender is punished for his crime.⁴² In other words, since a crime is a negation of the law, punishing the offender is an attempt towards cancelling the crime, thus restoring the balance of the legal order. If this balance is not restored, society will succumb to popular justice - people taking the law into their own hands. In the death penalty context, retribution implies that only the taking of the murderer's life restores the balance of justice and allows society to show believably that murder is intolerable and will be punished in kind.⁴³

Expiation, formal denunciation, and mollification of the injured party are three variants to retribution that have been recognised by Burchell and Hunt.⁴⁴ Expiation aims at purifying society by removing the criminal from its midst. With expiation, emphasis is placed on the offender's moral blameworthiness – the more moral blameworthy the offender, the more severe will be the punishment.

As regards formal denunciation, punishment is justified on the ground that it is a categorical denunciation of the crime by the community. The community denounces the crime because it is a way of expressing its compassion towards the affected victim(s) of the crime, affirming that the violent criminal or murderer does not deserve the compassion of the state, and promoting respect for human life. In *Republic v Mbushuu and Another*, it was argued that

*[s]ociety through the death penalty must denounce the taking of human life in the most emphatic manner possible and it is therefore right that society's extreme disapproval and indignation should be signified by imposing the ultimate penalty of death. By doing so society reinforces and promotes public respect for life.*⁴⁵

Lord Denning has also emphasised the importance of punishment as an emphatic denunciation of crime by the community. In 1953, before a Commission of Inquiry investigating the desirability of retaining the death penalty in Britain, he stated:

Punishment is the way in which society expresses its denunciation of wrong doing: and, in order to maintain respect for law, it is essential that the punishment inflicted for

⁴¹ *Ibid.* see also Nelson T Potter, 'Kant and Capital Punishment Today' (2002) 36(2) *The Journal of Value Inquiry* 267.

⁴² Snyman, C *Criminal law* (1992) Durban: Butterworths.

⁴³ Michigan State University and Death Penalty Information Centre, "Arguments for and against the death penalty" (2000). www.deathpenaltyinfo.msu.edu. Accessed on August 9th, 2020.

⁴⁴ Burchell, E and Hunt, P *South African criminal law and procedure* (1970) Cape Town: Juta & Co. p. 69-72.

⁴⁵ Mbushuu (1994) 353.

*grave crimes should adequately reflect the revulsion felt by the great majority of citizens for them...The truth is that some crimes are so outrageous that society insists on adequate punishment, because the wrong-doer deserves it, irrespective of whether it is a deterrent or not ... The ultimate justification of any punishment is not that it is a deterrent, but that it is the emphatic denunciation by the community of the crime.*⁴⁶

Mollification involves preventing the public from taking the law into its own hands. It is to the effect that the offender should be punished in such a way that the aggrieved party will be satisfied, and not take the law into his or her own hands, since the offender will now see the law as effective and will continue to respect it. Pasteur Bizimungu, former president of Rwanda, in support of the death penalty stated that the death penalty will prevent people from taking the law into their own hands.⁴⁷ The Attorney General in *S v Makwanyane* put forward the same argument. He maintained that the law will be brought into disrepute if the courts impose lenient sentences on convicted criminals; and that in such a situation, members of the society will then take the law into their own hands.⁴⁸ In addition, Schreiner J pointed out in *R v Karg* that:

*“it is not irrelevant to bear in mind that if sentences for serious crimes are too lenient, the administration of justice may fall into disrepute and injured persons may incline to take the law into their own hands”.*⁴⁹

Georg Wilhelm Friedrich Hegel followed Kant’s retributivist approach but not the latter’s strict equivalence. Rather, Hegel preferred punishments to be commensurable in value with precipitating crimes, since a punishment is ‘an annulment, a cancellation’⁵⁰, of the performance of the crime or ‘a return to a previous state of affairs’.⁵¹ Notwithstanding, the value of life is incommensurable to any other punishments except for life itself, therefore death penalty is the only just punishment for murder.⁵² Kant’s and Hegel’s theories of retributivism are still considered nowadays as valid justifications for capital punishment to be a just penalty for at least atrocious crimes such as child murders, serial killers, torture murderers, and mass killing

⁴⁶ *Report of the Royal Commission on Capital Punishment* (1949-1953) 18; reference has also been made to the statement of Lord Denning in *Seleoane* (1996) 7, and in *Furman v Georgia* (1972) 408 US 238 at 453.

⁴⁷ Amnesty International, “Africa: A new future without the death penalty” AI Index: AFR 01/003/1997, 1 April 1997.

⁴⁸ Makwanyane (1995) para 124.

⁴⁹ Seleoane, M *The death penalty: Let the people decide* (1996) Florida: Vivlia Publishers and Booksellers. p. 8.

⁵⁰ Ted Honderich, *Punishment: The Supposed Justifications* (Penguin, 1976) p. 45.

⁵¹ *Ibid.* See also G W F Hegel, *The Philosophy of Right* (Alan White trans, Focus Publication, 2002) pp. 80–4, 85.

⁵² *Ibid.*

in terrorism, massacre or genocide.⁵³

Those who support the death penalty, thus, see it as the only punishment deserved by offenders who commit the most cruel and heinous crimes; no other punishment can substitute this. This is because executing the offender brings closure to the ordeal for the victim's family and ensures that the murderer will not commit such crimes again. As mentioned above, the Attorney General in *S v Makwanyane*⁵⁴ contended that the imposition of the death sentence "meets the sentencing requirements for extreme cases of murder more effectively than any other sentence can do". Therefore, any lesser punishment would be seen as undermining the value society places on protecting lives. Furthermore, despite substantial evidence that the death penalty has been inequitably applied, retributivists still justify the application of the death penalty by arguing that inequitable application is not inherent in the penalty, and that it is better that some receive their "just deserts" however biased the sample executed, than that none do.⁵⁵

According to the retribution argument, certain offenders must be killed not to prevent crime but because of the demands of justice.⁵⁶ It is in this line of understanding and reasoning that the government of Ethiopia stated that its support for the retention and use of capital punishment for most serious offences such as genocide and multiple crimes against humanity, as retaining the use of the death penalty means bowing to the demands of justice from victims and their relatives.⁵⁷ Thus, it is submitted here according to the retributivists that justice requires the death penalty as the only suitable retribution for heinous crimes and again justice in such cases is not only about arresting the criminal and getting a conviction, but primarily about the punishment, which has to be just.

In a society that aims at law and order, justice has to be administered, but if justice is not administered, then "justice" and "law" in its usual and original meaning has ceased to function. Anderson argues that, "as long as a punishment bears no proportion to a crime the justice is weak and deadly sick" and that if the death penalty is not imposed on a murderer, then complete justice has not been performed.⁵⁸ The state's role in dispensing justice, to punish criminals, is

⁵³ E Lambert, A Clarke and J Lambert, 'Reasons for Supporting and Opposing Capital Punishment in the USA: A Preliminary Study' (2004) 1 *The Internet Journal of Criminology* 1, p. 7. See also Robert Blecker, *The Death of Punishment: Searching for Justice among the Worst of the Worst* (Palgrave MacMillan, 2013) Appendix A.

⁵⁴ Makwanyane (1995) para 112.

⁵⁵ Lempert, R "Dessert and deterrence: An assessment of the moral bases of the case for capital punishment" (1981) 79 *Michigan Law Review* 1178-1179.

⁵⁶ Amnesty International *When the State kills...The death penalty v. human rights* (1989) London: Amnesty International Publications. p. 16.

⁵⁷ Amnesty International, "Africa: A new future without the death penalty" AI Index: AFR 01/003/1997, 1 April 1997.

⁵⁸ Anderson, D *The death penalty: A defence* (2001). Available at www.web.telia.com/~u15525046/ny_sida_1.htm. Accessed on August 9th, 2020.

therefore a justification for capital punishment.

(D) Incapacitation

Supporters of capital punishment hold that the death penalty prevents an offender from committing other crimes. Thus, those who favour the retention of the death penalty also rely on the preventive theory to justify its imposition. This theory is based on the idea that punishing an offender will prevent him or her from committing other crimes. Proponents of this theory hold the view that the death penalty, as a form of punishment, prevents the commission of a crime permanently thus very effective.⁵⁹

Burchell and Hunt have stated that the death penalty “may certainly validly, if cynically, be defended as a permanent preventative”.⁶⁰ Once the criminal is executed, he is incapacitated forever. Death incapacitates totally and permanently, as opposed to imprisonment that incapacitates only partially and temporarily. This appears to be an obvious argument that even abolitionist cannot refute. Executing a criminal means a clear-cut stop of new crimes committed by that criminal as the dead criminal cannot commit future crimes or do harm to others.

Often linked to the prevention argument, is the argument that in preventing criminals from repeating their crimes or committing further crimes, the death penalty creates a somewhat safer society. An illustrative example of how the death penalty creates a safer society is provided by Anderson.⁶¹ He states that after a man who has raped and strangled two young children is sentenced to death, all of society can once again feel at ease and they will no longer have to keep their children indoors. Safety returns to society, and society does not have to fear his upcoming release, or failed custody and rehabilitation treatment.⁶²

III. ARGUMENTS AGAINST CAPITAL PUNISHMENT IN CAMEROON

*“The death penalty has no place in the 21st century. Leaders across the globe must boldly step forward in favour of abolition.... Together, let us end this cruel and inhumane practice.”*⁶³

⁵⁹ For a review of this concept, see Zimring, F. E., & Hawkins, G. (1995). *Incapacitation*. New York: Oxford University Press.

⁶⁰ Burchell, E and Hunt, P *South African criminal law and procedure* (1970) Cape Town: Juta & Co. p. 73. They further argue that while prevention is legitimate, it must be balanced by “considerations of ‘fairness and consistency’ and the moral blameworthiness of the offender”.

⁶¹ Anderson, D *The death penalty: A defence* (2001). 1 (Argument 10), Chapter 2. Available at www.web.telia.com/~u15525046/ny_sida_1.htm. Accessed on August 9th, 2020.

⁶² *Ibid.*

⁶³ Words of the United Nations Secretary-General Ban Ki-moon during the OHCHR’s global panel: “Moving away from the death penalty – wrongful convictions”, New York, 28 June 2013 © UN Photo/Evan Schneider.

Those who argue in favour of the death penalty do so with some reasons as have been examined above. But looking at this discussion from that perspective only will mean a bias because the arguments put forth to support the non- abolition of capital punishment are or may not be conclusive. Thus, those who pray that this form of punishment be abolished, do so for a number of reasons. The proceeding paragraphs shall examine these reasons.

(A) Death Sentence in Cameroon is Unconstitutional.

The constitution is the supreme law of the land in most if not all legal systems. It can be seen as “the legal embodiment of a country’s highest values, extending human rights guarantees to everyone in the country’s jurisdiction”.⁶⁴ The very first instrument in which the fundamental human right to life is enshrined in Cameroon is the Constitution in its Preamble which holds that “*every person has the 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, to cruel, inhumane and degrading treatment*”.⁶⁵ The Constitution says nothing about death penalty and it should equally be mentioned here that among the varied cases of capital crimes sanctioned with death penalty in Cameroon, it is if not rare difficult to find a case where a court in Cameroon has been petitioned for the constitutionality of death penalty.

The Cameroon Penal Code which was drafted in 1965 and 1967 defines death as one of the principal penalties in its section 18. About a quarter of a century later in 1990 law n°90/06 of 19 December 1990 on the modification of certain provisions of the Cameroon Penal Code still maintained the death penalty as one of the principal penalties. Following this reading, the death penalty is a violation of the very constitution of the Republic of Cameroon which sanctifies the right to life as a basic human right.⁶⁶

Since the introduction of democratic reforms by states, the practice of death penalty is perceived by many, especially the developing states as a means to fight criminality and to minimize the number of crimes committed in the society. This sanction imposed by states not leaving out the Republic of Cameroon seems to contradict most constitutional principles and the rights promised within it.⁶⁷ The right to life, like any other fundamental right is must

⁶⁴ Amnesty International “Constitutional prohibitions of the death penalty” AI Index: ACT50/05/99, 1 September 1999. www.amnesty.org/rmp/dplibrary.nsf/other?openview. Accessed on August 15th 2020.

⁶⁵ Preamble to the Constitution of Cameroon. Article 65 of the Constitution sets out that the preamble is an integral part of the Constitution.

⁶⁶ See declaration No. 12 of the Preamble of the Constitution of Cameroon.

⁶⁷ See Abstract of Eric Che Muma, 2018 “The Constitutionality / Constitutionalisation of Death Penalty in Cameroon and Ghana: An Appraisal on the Right to Life”. *RAIS Journal for Social Sciences*, Research Association for Interdisciplinary Studies, Vol. 2(2), Pages 1-10, December. Available at www.ideas.repec.org. accessed on August 15th 2020.

precious from which all other rights derive their validity. This right is promised by almost all states to their nationals within their respective constitutional order.⁶⁸

The entrenchment of the right to life within the constitution of Cameroon, and the ratification of international human rights treaties, imposes a direct obligation on the state of Cameroon to respect and to protect all its nationals during the process of implementation.⁶⁹ However, this right promised in the constitution to all citizens, alongside those found guilty of committing heinous crimes, has been subjected to serious violations following the incorporation and practice of the death penalty within national laws. The pressing question arising here remains whether the said penalty is constitutional and in favour of the right to life enshrined in the constitution. It is true for more than a decade nobody has been executed in Cameroon but it should also be understood that before today, people had been executed and the punishment still exist in law. Thus, the existence of the law on death sentence in Cameroon is not only unconstitutional; the punishment is cruel and inhumane.

(B) Capital Punishment is Cruel and Inhumane.

“Cruel” has been defined as “disposed to inflict pain or suffering”, “harsh”; “inhuman” as “failing to conform to basic human needs”, “brutal”; and “degrading” as “tending to degrade”, that is, to lower in status or strip of honour.⁷⁰ It is submitted here that death by way of punishment destroys an individual’s status and his or her very existence in an organised society. The extreme severity of a punishment is degrading to the dignity of human beings. Therefore, any punishment that strips human beings of their dignity or denies a person’s humanity is degrading.

“Cruel, inhuman and degrading treatment or punishment” has not been defined in human rights instruments. However, different bodies have laid down the various components of this prohibition. What constitutes the above is subjective, as can be seen from some of the cases of the UN Human Rights Committee.⁷¹ The European Commission on Human Rights (European Commission) in the *Greek* case, described the concept of “inhuman and degrading treatment” under article 3 in the following words:

“The notion of inhuman treatment covers at least such treatment as deliberately causes

⁶⁸ *Ibid.*

⁶⁹ Article 45 of the Constitution of Cameroon holds that “Duly approved or ratified treaties and international agreements shall, following the publication, override national laws, provided the other party implements the said treaty or agreement”.

⁷⁰ See Longman Dictionary of English language in Penguin Hutchinson Reference Library (1996).

⁷¹ Carlson, S and Gisvold, G *Practical guide to the International Covenant on Civil and Political Rights* (2003) New York: Transnational Publishers. p. 74.

suffering, mental or physical, which, in the particular situation, is unjustifiable...Treatment or punishment of an individual may be said to be degrading if it grossly humiliates him before others or drives him to act against his will or conscience.⁷²

Deducing from what has been said above, death penalty is a cruel and inhuman treatment or punishment as it causes mental suffering and arouses the feeling of fear and anguish in a death row inmate, and physical suffering during execution of the sentence.

It should be mentioned here that, cruel punishment is clearly not a static notion; it reflects the evolving standards of decency that mark the progress of a maturing society.⁷³ The question that arises then is – what are the indicators of evolving standards of decency? In *Furman v Georgia*, Justice Powell briefly summarised the proffered *indicia* of contemporary standards of decency in relation to the death penalty, which included the following: First, a worldwide trend towards the disuse of the death penalty; second, the reflection in the scholarly literature of a progressive rejection of capital punishment founded essentially on moral opposition to such treatment; third, the decreasing numbers of executions over the last 40 years and especially over the last decade; fourth, the small number of death sentences rendered in relation to the number of cases in which they might have been imposed; and lastly, the indication of public abhorrence of the penalty reflected in the circumstances that executions are no longer public affairs.⁷⁴

The above implies that if the death penalty was not considered cruel, inhuman or degrading, for example, in the early 1970s – 90s, it may be considered so at present. A punishment can be cruel either because it inherently involves so much physical pain and suffering that civilised people cannot tolerate or because it is excessive and serves a legislative purpose that an

⁷² Cooper, J *Cruelty: An analysis of article 3* (2003) London: Sweet & Maxwell. p. 3. The European Commission for Human Rights also described “torture” as an aggravating form of inhuman treatment. In other words, the Commission was of the opinion that torture encompasses inhuman and degrading treatment and that inhuman treatment embodies degrading treatment. See European Commission for Human Rights, Opinion of 5 November 1969, YB XXII 186. Extracts from the Opinion are reproduced in the *Digest of Strasbourg Case Law Relating to the European Convention on Human Rights* Vol. 1 (Articles 1-5) 100-101. The European Commission also attempted to lay down the parameters of article 3 in *Ireland v United Kingdom* (1978) 2 EHRR 25). The Commission stated that inhuman treatment and/or punishment will be so classified if ill-treatment causes “intense physical and mental suffering”; and treatment will be deemed to fall within the category of degrading treatment and/or punishment of article 3 (European Convention) violation if it is adjusted as to arouse in a victim the feeling of fear, anguish and inferiority capable of humiliating and debasing them and possibly breaking their physical and moral resistance (paras 159 & 167).

⁷³ Schabas, W. *The abolition of the death penalty in international law* (1996) Cambridge: Cambridge University Press. p. 21.

⁷⁴ *Furman v Georgia* (1972) 408 U.S. 238 at 434; In this case, the United States (US) Supreme Court held that the imposition and carrying out of the death sentence in the present cases constituted cruel and unusual punishment, in violation of the Eighth and Fourteenth Amendments of the United States Constitution. It should be noted that this decision was later overturned in 1976, when the US Supreme Court ruled in *Gregg v Georgia* (1976) 428 U.S. 153 that the punishment of death for murder does not violate the Eighth and Fourteenth Amendments.

alternative punishment could still serve. Even if a punishment serves a valid legislative purpose, it can still be unconstitutional because it is harsh, dehumanising or abhorrent to currently existing moral values. On the whole, if the above indicators are positive (which is the case), the death penalty is, therefore, a cruel, inhuman and degrading treatment or punishment.⁷⁵

A plethora of international human rights instruments and the constitution of the Republic of Cameroon, prohibit “torture or cruel, inhuman and degrading treatment or punishment”. Although the main focus of this sub-section is the examination of capital punishment as being “cruel, inhuman or degrading”, it is important at this point to briefly look at the relation between the “prohibition of torture” and the death penalty, as it is crucial in the context of the death row phenomenon and methods of execution. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UN Convention against Torture or CAT)⁷⁶ defines torture to mean:

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.⁷⁷

On the face of it, the death penalty is exempted from the above definition, as the last sentence explicitly excludes “pain or suffering arising only from, inherent in or incidental to lawful sanctions”. Therefore, it is questionable whether the death row phenomenon and executions may invoke a violation of the prohibition of torture. However, as would be seen in the cases discussed in this chapter, it is accepted that a certain amount of mental anguish or suffering is incidental to the imposition of the death penalty. Thus, although the death row phenomenon and executions might not invoke a violation of torture under the UN Convention against Torture, as the death penalty is a lawful punishment, there are elements of torture involved in

⁷⁵ Lilian Manka Chenwi (2005), p. 215.

⁷⁶ Adopted by the UN General Assembly, resolution 39/46 of 10 December 1984, entered into force on 26 June 1987.

⁷⁷ Article 1(1) of the UN Convention against Torture. It should be noted that unlike “torture”, the “cruel, inhuman or degrading treatment or punishment” is not defined in any of the international human rights instruments. Even the Constitution of the Republic of Cameroon does not. As will be seen in the cases discussed in this sub-section, distinctions have been drawn between the various components of this prohibition.

the imposition of the death penalty, such as “mental pain or suffering” with regard to the death row phenomenon, and “physical pain or suffering” as regards the execution.

1. Prohibition of Cruel, Inhuman and Degrading Treatment or Punishment under the Constitution of Cameroon.

As noted earlier, the constitution is the supreme law of the land in most legal systems. An examination of the above prohibition in national constitutions is necessary to identify what causes obstruction to constitutional challenges to the death penalty in Cameroon.

Most African national constitutions prohibit cruel, inhuman or degrading treatment or punishment. Some constitutions do not have provisions on cruel, inhuman or degrading treatment or punishment.⁷⁸ Therefore, in Madagascar and Morocco, where there is not a provision on the above prohibition (and on the right to life), and in Senegal, where the right to life is unqualified, with no provision on the above prohibition, there is possibility to challenge the death penalty by relying on the above two rights.⁷⁹ Also, there is possibility to challenge the death penalty on the ground that it is cruel, inhuman and degrading in Liberia and Tunisia, for example, since it is difficult to rely on the qualified right to life provision in their constitutions. However, this is restricted in countries where the constitution has a limitation or derogation clause.⁸⁰

It is worthy to note here that different constitutions do not use the same terminology. Also, the treaties do not employ uniform terminology. For example, the UDHR, ICCPR and American Convention protect against torture, or cruel, inhuman or degrading treatment or punishment, the European Convention omits the word “cruel”, as it protects against torture or inhuman or degrading treatment or punishment, and the American Declaration (and the Constitution of the United States, Eighth Amendment) protects against cruel (infamous) and unusual punishment. In African national constitutions, while most constitutions employ the words “treatment” and “punishment” together, the Constitution of Cameroon 1996, for example, uses just the word “treatment”. So the question that comes to mind is: Are punishments that are cruel, inhuman or degrading allowed in Cameroon? Cameroon has signed and ratified other human rights instruments that prohibit cruel, inhuman or degrading punishment. Therefore, though the national constitutions (and treaties) do not employ uniform terminology, the underlying concept, which is to prohibit cruel, inhuman or degrading treatment or punishment, is the same.

⁷⁸ These include the Constitutions of Equatorial Guinea (1991), Liberia (1984), Madagascar (1998), Rwanda (1991), Senegal (2001), Tanzania (1995) and Tunisia (1991). See Lilian Manka Chenwi (2005), p 224.

⁷⁹ The right not to be subjected to cruel, inhuman and degrading treatment or punishment and the right to life.

⁸⁰ Lilian Manka supra

Since the underlying concepts are the same, a proper interpretation and application of the word “treatment” in the Constitution of Cameroon would include the word “punishment”.⁸¹ In this regard, Hudson has pointed out that

[w]hile the terminology is different, it is submitted that the underlying concept is the same. Each clause, in each national and international instrument, was adopted to protect persons from unnecessary and undue suffering. [Therefore,] it is the interpretation and application which is important.⁸²

Thus, summing from what has been said above, it can be observed and understood that death penalty is cruel, inhumane and degrading and such acts are constitutionally prohibited following declaration number 12 of the Preamble of the Constitution of the Republic of Cameroon.⁸³

As a more illustration of the above points and for reasons of clarity of this subject matter, opinions of other nations or countries around the world may not be minimized given that lessons may also be drawn from there. For instance, the decision of the South African Constitutional Court in *S v Makwanyane*⁸⁴ is one of the most widely known and justifiably influential court opinions to address the death penalty. Although the case did not deal specifically with the death row phenomenon, the Court acknowledged it as not only falling within, but also constituting a violation of, the prohibition of cruel, inhuman and degrading treatment or punishment. Since in Africa, executions are delayed in most cases than not, abolishing the death penalty will be the only solution to the death row phenomenon, as even where those sentenced to death are executed without delay, it is most of the time, done so after unfair trials. It is therefore submitted that abolishing the death penalty in Africa, not leaving out Cameroon, will curb the violation of a prisoner’s rights, as the death row phenomenon renders the death penalty a cruel, inhuman or degrading punishment.

(C) There is the Possibility of wrongful Conviction and Executing the Innocent.

“If a great country cannot ensure that it won’t kill an innocent citizen, it shouldn’t kill at all.”⁸⁵

⁸¹ It should be noted that before the coming of the Constitutional Council which is the body with full jurisdiction in all matters pertaining to the interpretation and application of the Constitution, the enforceability and justiciability of the rights guaranteed in the Constitution of Cameroon remained untested.

⁸² Hudson, P “Does the death row phenomenon violate a prisoner’s human rights under international law?” (2000) 11 *European Journal of International Law*. P. 817.

⁸³ “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, to cruel, inhumane or degrading treatment”.

⁸⁴ In the Matter of the *State v. T. Makwanyane and M. Mchunu*, case no. CCT3/94, Constitutional Court of the Republic of South Africa, 1995. Available from www.saflii.org/za/cases/ZACC/1995/3.pdf. Accessed on August 21st 2020.

⁸⁵ Words of *Kirk Bloodsworth* in 1993, who spent 8 years, 11 months, and 19 days (including two years on death

International attitudes to the death penalty have evolved with the knowledge that every criminal justice system, however sophisticated, is susceptible to error and miscarriage of justice.⁸⁶ International human rights law, recognising that susceptibility, mandates that fair trial guarantees must be implemented in all death penalty cases. The understanding is that those facing the death penalty should be afforded special protection and guarantees to ensure a fair trial above and beyond those afforded in non-capital cases.

The reality is that the prevailing law and practice in far too many retentionist countries across the different continents do not provide the level of protection required in capital cases. Unless and until states can meet universally accepted standards, the death penalty should not be enforced. Too many countries retain the death penalty without assuming responsibility for the proper administration of criminal justice; many states fail to provide special procedural protections in capital cases.

In Cameroon, cases have come to lamp light when people have been wrongfully convicted for capital crimes by the trial court and only the court of appeal have rescued them. In the appeal case of *The People of Cameroon & Mathias Ngwa v. Ambe Lilian Sirri & Ambe Vitalis Niba*,⁸⁷ the decision of the High Court of Mezam for convicting the first and second appellants for attempted capital murder punishable under Section 276(1)(a) as read with Section 94(1) of the Cameroon Penal Code, was dismissed for lack of common design and no community of purpose.⁸⁸ The trial court misdirected itself when it held that both Appellants had to bear the

row) for a crime he did not commit. *Kirk Bloodsworth* was the first person in the United States to be exonerated—have his conviction reversed—through DNA testing. He was a young man, a former marine from a humble background, without any criminal record, when he became the victim of faulty eyewitness identification. After almost nine years (two of them on death row) trying to prove his innocence, he was finally released. Nowadays, he is a strong advocate for the abolition of the death penalty and for the rights of the wrongfully convicted. Available at: www.ohchr.org/EN/NewYork/Pages/Resources.aspx. Accessed on February 4th 2019.

⁸⁶ For a global snapshot of cases and research findings on wrongful convictions, see The Death Penalty Project, *The Inevitability of Error: The Administration of Justice in Death Penalty Cases* (London, 2014), available from www.deathpenaltyproject.org/news/1795/.

⁸⁷ SUIT No. CANWE/14F/2018.,

⁸⁸ The brief facts leading to this appeal was that_ The accused/appellants and the complainant/2nd respondent (Mathias Ngwa) lived in the neighborhood of Bafut. In that locality, there was a Youths Association whose objective was to maintain peace, probity and sanity. They resolved that any thief caught had to be subjected to some sort of mob justice. That is, by tying him and warming with fire. They put this resolution of theirs into practice. In January 2015, the 1st appellant (Ambe Lilian Sirri) accused the 2nd respondent (Mathias Ngwa) of stealing her firewood. She raised an alarm and the youth association was alerted. They caught him and their president decided that he should be punished as prescribed by their practice. Ill-fated Ngwa was escorted to a shrine in which he was brutalized, tied and suspended over a hole in which fire was set. His elder brother rushed to the scene and rescued him and took him to the hospital. The 2nd respondent lodged a report against the accused. A preliminary investigation was conducted and both of them were committed for trial for the offence attempted capital murder within the purview of Section 276 (1) (a) as read with Section 94 (1) of the Penal Code. At the close of the case for the prosecution, the court ruled that both accused/appellant had a *prima facie* case to answer. In compliance with the mandatory provisions of Section 366 of the Cameroon Criminal Procedure Code, they elected to give sworn evidence. On the 24th of October, 2017, the trial judge handed down her judgment. She found both the accused/appellants guilty for committing the offence attempted capital murder. They were both

brunt simply because they were identified. The Appeal Court held that even if they were identified in the mob, their mere presence there did not suffice. Thus, they had to be present and consenting either expressly or implicitly to the act.⁸⁹ The Appeal court further in clarification held that the evidence adduced at the trial was not such that could have warranted the conviction of the appellants by a reasonable tribunal. Accordingly, the appeal had merit and both appellants were acquitted.

In the case of *The People of Cameroon & Emboat Martin Njenile v. Nyabua Asoh Gabriel*⁹⁰, the appellant was committed to stand trial before the High Court of Mezam Division, charged with the offence of capital murder to and punishable under Section 276 (1) (a) of the Cameroon Penal Code for causing the death of his father, *Emboat John Asoh* by stabbing him after premeditation. On appeal, it was held by Justice Anne Nyajro Povi that the circumstantial evidence relied upon by the learned trial judge was not strong, compelling and equivocal enough to lead to the irresistible conclusion that the appellant murdered Emboat John Asoh, his father. Thus, we agree with the learned counsel for the appellant that the learned trial judge misconstrued the facts and wrongly inferred the appellant's guilt from them. An essential ingredient of the offence charged, to wit, that it was the appellant that caused the death of the deceased, has not been established to our satisfaction. As a consequence, the conviction, sentence, cost and civil award made against the appellant are hereby set aside and the appellant acquitted.⁹¹

It is true the Cameroon criminal justice system is well organized, what is obvious is that capital crimes are tried or held in the High Courts before a single judge who determines guilt and imposes a sentence, not before a jury. Thus, there is a great risk of innocent people being convicted and sentenced to death.⁹²

convicted and sentenced to serve a term of 8 years imprisonment. They were ordered to pay cost of 50,000frs and in default of payment thereof serve an additional term of 3 months imprisonment. An award of 2 million francs was made against both accused/appellants jointly and severally in favour of the 2nd respondent

⁸⁹ Judgment No. 5/F/2019.

⁹⁰ *SUIT No. CANWR/1C/2017*

⁹¹ Judgment No. 02/F/2019. See also the case of *Laghai Romanus, Eric Tardzenyuy & Christian Wigfon v. The People of Cameroon, SUIT No. CANWR/MA/2C/2014*.

⁹² See chapter three from page 91-94 of this work. Also, in Uganda, Edmary Mpagi spent over 18 years on death row, accused of killing a man who was later found to be alive. In 1982, he was convicted, together with his cousin, of murder and sentenced to death, after what has been called "fabricated evidence, coerced testimony and a generally slipshod trial (see Foundation for Human Rights Initiative, *Towards the Abolition of the Death Penalty in Uganda, the Civil Society Coalition on the Abolition of the Death Penalty in Uganda* (2008)). Mpagi met with his state-appointed lawyer only twice before the trial, and no translator was provided even though neither he nor his cousin had any working knowledge of English. (see Mpagi Edward Edmary, "Mpagi Edward Edmary", *Our Friends in Prison*, available from www.ourfriendsinprison.weebly.com/lifestory-of-mpagi-edward-edmary.html. Accessed on August 20th 2020) Prison conditions were reportedly cruel, degrading and inhumane. Mpagi's cousin died in prison in 1985 after the prison authorities refused to provide him with medical attention, stating that they could not waste time or money on a condemned prisoner who was due to be executed.²¹ In 1989, the Attorney

The potential for wrongful conviction and execution is precisely why international norms require such exacting standards and a heightened level of due process in capital cases. The key question is: Are there significant gaps between the minimum conditions required in all capital cases and the law and practice in Cameroon? If so, the only option is that the death penalty should no longer be law led alone it being enforced in the Cameroon criminal justice system. A precondition, under international law, for imposing the ultimate penalty is that the investigation, prosecution and trial have been conducted with impeccable fairness and propriety. All too often, capital trials fall short of these standards. But even when procedural guarantees are improved and the protection of law is provided to all individuals, this research holds that wrongful convictions and miscarriages of justice will still occur. The likelihood of wrongful convictions can be decreased, but the risk that innocent people will be executed can never be eliminated altogether as there is no perfect justice system.

(D) Death Penalty violates the Fundamental Human Right to Life.

The right to life of the person and its various applications in different political situations is one of the most debated subjects of modern discuss. This question is important today for a number of reasons: the widespread demand for abortion, the drive for the right to die, and the challenge to capital punishment. The debate seems at times to be confused: those opposing all forms of war and capital punishment seem to approve of abortion; while others vehemently opposed to abortion, approve of war and capital punishment. But this inconsistency disappears once an absolute view of man's right to life is recognized. Under an absolute view of man's right to life, capital punishment is never justified.⁹³

Capital punishment is alleged by abolitionists as the worst violation of human rights,⁹⁴ a psychological torture,⁹⁵ or 'the ultimate irreversible denial of human rights'⁹⁶, since it deprives a man of his right to life. Human life in their eyes is so valuable that even the most cruel murderers or torturers should not be subject to punishment by death.⁹⁷ Beccaria insisted that

General established that Mpagi was innocent and wrongly convicted; however, it was not until 2000, 11 years later, that Mpagi received a presidential pardon and was released. See also 'Moving Away from the Death Penalty: Arguments, Trends and Perspectives', 2015, pages 57-58. Available at: www.ohchr.org/EN/NewYork/Pages/Resources.aspx. Accessed on August 20th 2020.

⁹³ Peter J. Riga. "Capital Punishment and the Right to Life: Some Reflections on the Human Right as Absolute." *University of Puget Sound Law Review*. [Vol. 5:23 1981], pp. 23.

⁹⁴ Gerald W Smith, 'The Value of Life — Arguments against the Death Penalty: A Reply to Professor Lehtinen' (1977) 23(3) *Crime and Delinquency* 253, p. 258.

⁹⁵ Amanda K Eklund, 'The Death Penalty in Montana: A Violation of the Constitutional Right to Individual Dignity' (2004) 65 *Montana Law Review* 135.

⁹⁶ Amnesty International, 'Abolish the Death Penalty' (2015) available at www.amnestyusa.org/our-work/campaigns/abolish-the-deathpenalty. Accessed on 14th July, 2020.

⁹⁷ See Gerald .W. Smith (1977) in note 168 supra.

right to life is retained by each individual when they come into a state, and therefore, the state has no right to take their lives.⁹⁸ That is why international declarations and covenants, as well as domestic constitutional norms, always incorporate right to life as an important inalienable human right or constitutional right. Death, no matter what form it takes, therefore could never be justified.⁹⁹

Retentionists, however, argue that even if the right to life could not be alienated; it could be forfeited or waived.¹⁰⁰ Inalienability means whether to maintain life or to lose it ought not to be determined by anyone other than the possessor of the life.¹⁰¹ It does not exclude the possibility that the possessor may choose in person to lose it by committing a capital crime.¹⁰² Locke, Mill and William Blackstone all agree with this view, although they lay great emphasis on the right to life as abolitionists.¹⁰³ According to Locke, behaviours which are against the law of nature, such as serious crimes, depart the transgressor from the rule of reason.¹⁰⁴ He therefore loses his capacity to enjoy a right and steps into a state of war with other members of a society. That confers the latter with a legitimate reason of self-protection to kill the former.

To these authors who equally rebut the above argument in disfavour of capital punishment, since the right to punish has been transferred to that state when the member of the society enters the state and becomes a citizen of it, the same reason justifies the state's appliance of capital punishment as well.¹⁰⁵ Blackstone and Albert Camus embraced a similar view with Locke that serious crimes will cut off the transgressor's connection with the society, degrade him as a monster and put him under the punishment by death.¹⁰⁶ Mill, in clearer words, contended that 'adoption of a rule that he who violates that right in another forfeits it for himself'¹⁰⁷ is the best way to respect the value of life. Thus, the death penalty therefore does not intrude in the realm

⁹⁸ 'Cesare Beccaria (1738-1794)', in James Fieser and Bradley Dowden (eds), *Internet Encyclopedia of Philosophy*. Available at www.iep.utm.edu/beccaria/ '3. Against Capital Punishment', accessed on 14th July, 2020.

⁹⁹ Yujie Zhang. "Reconsidering the Legitimacy of Capital Punishment in the Interpretation of the Human Right to Life in the Two Traditional Approaches" *International Journal of Social, Behavioral, Educational, Economic, Business and Industrial Engineering* Vol:11, No:3, 2017, pp. 507.

¹⁰⁰ Joel Feinberg, 'Voluntary Euthanasia and the Inalienable Right to Life' (1978) 7(2) *Philosophy & Public Affairs* 93.

¹⁰¹ *ibid*

¹⁰² *ibid*

¹⁰³ John Locke, *Two Treatises of Government* (Cambridge University Press, 1988) pp. 268, 271, 272, 274; see also William Blackstone, *Commentaries on the Law of England: A Facsimile of the First Edition of 1765-1769* (University of Chicago Press, 1979) vol 4, pp. 215–17, 373–79.

¹⁰⁴ *Ibid.* see also Brian Calvert, 'Locke on Punishment and the Death Penalty' (1993) 68 (264) *Philosophy* 211, p. 212.

¹⁰⁵ John Locke (1988), Brian Calvert (1993) *Ibid.*

¹⁰⁶ William Blackstone (1979), pp. 215–17, 373–79. See equally Albert Camus, *Resistance, Rebellion and Death* (H Hamilton, 1961) pp. 129, 143.

¹⁰⁷ John Stuart Mill, 'Parliamentary Debate on Capital Punishment within Prisons Bill', in *Hansard's Parliamentary Debates* (Hansard, 3rd series, 1868) pp. 1053–054.

of right to life.

Having faced indeterminacy in the previously discussed arguments such as retributivism, deterrent effect and even public opinion in favour of capital punishment, the introduction of right to life, even emphasis on the value of life, is again unable to solve the debate between abolitionists and retentionists. Each side still has reasons to support their own attitude, which results from the unclarity of the answer to the key question which is 'whether the human life is so valuable that it could neither be alienated nor forfeited, or even could not be alienated but could be forfeited'.

IV. CONCLUSION

As hinted earlier, there are debates around or questioning the legitimacy of capital punishment in Cameroon since it has not been clear whether capital punishment could serve as a proper deterrence in our legal system or not. The paper began by trying to bring to the lamp light the various justifications in favour of capital punishment in the Cameroonian criminal justice system. The justifications canvassed for the retention of such a punishment rotates around deterrence, public opinion, retribution and incapacitating the criminal. These factors, after a careful examination and their contribution to criminal justice, one realises that standing by those justifications alone may indicate an imbalance. Thus, the desire for one to see why death penalty should be abolished could not be left out.

For this reason, saying that capital punishment should be abolished in the Cameroonian criminal law is because such a punishment is unconstitutional as the Constitution itself holds that everyone has the right to life, physical, moral integrity and to humane treatment in all circumstances. It is true that the Constitution of the Republic of Cameroon says nothing about death penalty but it acknowledges that the right to life is fundamental. Again, others hold that capital punishment is cruel, inhumane and degrading as will be justified under the UDHR, ICCPR, ACHPR and even the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment and others. Again, those who hold that capital punishment should be jettisoned say so because there is a possibility of convicting and executing the innocent. Thus, there is need for this form of punishment to be revisited as it does not reflect the 21st Century criminal justice anymore.
