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## **Incorporation of Criminological Theories in the Cameroonian Criminal Justice System**

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#### **Abstract**

**Purpose:** The study examined the incorporation of criminological theories notably the Classical school, Neo- Classical School, Positive school as well as the Anomie School of thought in the Cameroon Criminal justice system.

**Methodology:** Criminological theories focus in explaining the causes of crime identify the risk factors for committing crime and explaining how and why certain laws are created and implemented. The methodology adopted for purposes of this article is qualitative which is concerned with qualitative phenomenon and the chosen methods are doctrinal and empirical which involves a content analysis of existing literature, case law and observations.

**Findings:** The study discovered that the perception of criminological theories as articulated in the Cameroon Criminal Procedure Code, Cameroon Penal Code and other pieces of legislations have not been fully understood and implemented and this constitutes a major problem. This article concludes that the major protagonists who animated debate during the seventeen and eighteen centuries wanted a total overhaul of the criminal justice system in order to improve the welfare of the society and so were inspired with humanitarianism that gave them the urge to question the arbitrariness, cruelty, goriness and inefficiency of the criminal justice system and prison across the globe.

**Unique Contribution to Theory, Practice and Policy:** The study recommended that understanding why a person commits a crime and why individuals behave in certain ways, would help policy makers to develop a better and efficient ways of fully incorporating these criminological theories in the Cameroon Criminal justice system that will shape the ways to control crime and rehabilitate the criminal.

**Keywords:** *Incorporation, Criminological Theories, Classical School, Neo Classical School and Anomie School, Criminal Justice System*

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## INTRODUCTION

The Positivist and classical approach to criminal law differ in the manner in which they measure and respond to crime. According to Cesare Baccaria of the classical school, human selfishness can lead to crime and swift punishment will assist to deter society from continuing illegal activity. The Classical School theory also ordains that fair trials are necessary to maintain a person's humanity and penalties should fit the crime.

The Positivist school of criminology, in a robust approach, takes the emphasis off the crime and puts it on the person and analyzes the motive behind the action. Positivist will study the social barriers some people face and how those constraints can increase crime. Today, the Cameroonian criminal justice system has blended these two methodologies and their differences, benefits and disadvantages are frequent points of study in social sciences. The consideration of a clear system of justice, fair and equal treatment, swift punishment amongst others, have far reaching implications which have shaped the criminal justice system in Cameroon. In other words, Anomie and Strain theories are among the first sociological theories that preach on deviant behavior and define such social condition as the breakdown of any moral values, standards or guidance for individuals to follow. The right to fair trial is the hallmark in our criminal justice system as evidenced by the criminal procedure Code, the 1996 constitution as amended, as well as the Penal Code of Cameroon

This article examines and x-rays the criminological theories consideration in the Criminal Procedure Code that will include section 310 of the CPC, the rights of the suspects, defendants and accused, the impartiality of judges, independence of the magistracy, the reflection of criminological theories in the Penal Code, the principle of legality as contained in sections 3 and 17 of the Penal Code, the relevance of section 74 of the Penal Code and constitutional limits of the criminal justice system in Cameroon, the consideration of the Classical School regarding Sentencing in Cameroon that includes- imprisonment, fine, the necessity to abolish death penalty, community service, reparatory sentence, the National Disarmament, Demobilization and Reintegration Committee, hate speech, the consideration of the Neo-Classical school on the individualization of punishment, the role of the Lawyers during investigation and prosecution of criminal trial in courts as well as the role of the correction/prison.

Based on the above, this article poses the following research questions:

- What are the concepts and nature of crime and morality within the context of the various criminological theories?
- How is the nexus between crime and morality apprehended under the Classical School of thought?
- How is the nexus between crime and morality apprehended under the Positive School and Anomie theory?
- How have the criminological theories been incorporated or shaped the Cameroonian Criminal Justice System?
- What policy recommendations for the prevention or limitation of crime commission can be made?

## LITERATURE REVIEW

Existing theoretical and empirical literature have been reviewed based on the specific research questions and objectives which constitute the foundation upon which the entire edifice of this study rests.

Cesare Beccaria,<sup>1</sup> an Italian Philosopher, states that the Criminal law in the 18<sup>th</sup> century was best described as repressive, punitive and generally unacceptable. According to him, the manner in which evidence was obtained or gathered and which was meant to prosecute offenders was biased and harshly due to the enormous prosecutorial discretionary powers of the court or judges. The most painful manner of taking away the life of a human being otherwise known as capital punishment like death penalty was widely used on myriad of offences.<sup>2</sup> He was totally against the application of the death penalty and proposed deterrence as an alternative which according to him was better than punishment since punishment functions mainly as a deterrence to dissuade future criminals from breaching the law. He opines that, retributive punishment was only limited to the suffering of criminals which amounted to a complete waste of time since offenders still commit crimes/felonies punishable by death in spite of the presence of death penalty in our criminal justice system. The purpose of punishment therefore should serve as a means to prevent an offender from committing fresh offence and to deter others from doing this. While we subscribe with the above reasoning, we equally hasten to add here that, apart from the above considerations which appear legit, punishment could also be seen as a means of compensating the victim or putting him on the pre-injury state before the offence was committed against him or his person. This at least assuages him from complete sufferings and mental torture.

Again while the abolition of death penalty has been severally condemned by international covenants and some rights groups across the globe, we wish to state that death penalty is still recognized as one of the methods of dissuading or pre-empting crime commission in Cameroon by virtue of section 22 and 23 of the Cameroon Penal Code.<sup>3</sup> This therefore runs contrary to the aspiration of the Classical School of thought led by Cesare Beccaria and Jerry Benthan who were opposed to the punishment of death penalty and preached for its abolition.

The following theories are relevant in the context within which this research is based;

### **The Theory of Differential Association**

This theory was propagated by Edwin Sutherland who proposed that through interaction with others, individuals learn the values, attitudes, techniques and motives for criminal behavior. The rationale of this theory is that, it does not only describe the required social conditions that produce crime, but equally attempts to explain the processes by which the individual becomes a criminal<sup>4</sup>

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<sup>1</sup> A.B Dambazau, *Criminology and Criminal Justice*, (Spectrum Books Limited, 2011) at pag 6.

<sup>2</sup> Beccaria *Modernised Criminal Law* Potraits of Liberty 2015 via <https://www.libertarianism.org/columns/cesare-beccaria-trial-blazer-capital-punishment> accessed on the 13<sup>th</sup> of February, 2022.

<sup>3</sup> According to section 23 of the Cameroon Penal Code, the execution of a death sentence shall be shooting or hanging as may be ordered by the judgment and shall be public unless otherwise ordered in the decision not to commute.

<sup>4</sup> A.B Dambazau, *Criminology and Criminal Justice* (2nd edn, Spectrum Books Ltd 2011) 23.



According to Sutherland, the following nine conditions account for the process of acquiring criminal behavior;

1. Criminal behavior is learned
2. The learning is through association with other people
3. The main part of the learning occurs within close personal groups
4. The learning includes techniques to execute particular crimes, and specific attitudes, drives, and motives conducive toward crime
5. The direction of the drives and motives is learned from perception of the law as either favourable or unfavourable
6. A person becomes criminal when their definitions is favourable to breaking the law outweigh their definitions favourable to non-violation
7. The learning experiences-differential associations will vary in frequency, intensity, and importance for each individual
8. The process of learning criminal behavior is no different from the learning of any other behavior
9. Although criminal behavior is an expression of needs and values, crime cannot be explained in terms of those needs and values.<sup>5</sup>

This theory is relevant to this article in that it explains how the commission of crimes could be linked to association with people who are morally bankrupt and therefore pre-disposed of committing crimes.

### **The Theory of Anomie/Strain Theory**

This was propagated by the American sociologist Robert K. Merton, who suggests that criminality results from an offender's inability to attain his goals by socially acceptable means. Faced with this inability, the individual is likely to turn to other-not necessarily socially or legally acceptable objectives by unacceptable means. Therefore, societal structures can pressure individuals into committing crimes.<sup>6</sup>

He further argues that crime occurs when there is a gap between the cultural goals of a society (for instance material wealth, status) and the structural means to achieve these (for instance education, employment). This strain between means and goal results in frustration and resentment and encourages some people to use illegitimate or illegal means to secure success<sup>7</sup>

This theory is relevant to this article in that the Strain Theory helps to explain how the cultural values and social structures of society put pressure on individual citizens to commit crime and how our moral conscience could help limit the commission of offences.

### **The Positive School Theory**

The positivists work on crime could be traced as far back as 1820s and 1830s, following the works of Adolphe Quetelet and Andre Guerry of Belgian and French nationality respectively.<sup>8</sup> The examination of social statistics from each European country in the form of available data in these countries was obtained as though there were data obtained from the physical science.

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<sup>5</sup> *Ibid.*

<sup>6</sup>Merton's Strain Theory of Deviance and Anomie in Sociology-Simply Psychology via<<https://www.simplypsychology.org>> accessed on the 31<sup>st</sup> of March, 2022.

<sup>7</sup> Perhaps this could partially account for the motive of the ongoing Anglophone crisis rocking the South West and North West regions in Cameroon.

<sup>8</sup> Frank W&Marilyn D, Criminological Theory (Prentice Hall, Englewood Cliffs, 1988)pg24.

For example, Adolphe Quetelet applied theory of probability to these data in order to obtain the concept of an average man and thereafter extended this concept to the study of crime waves which eventually saw the same results *visa- vis* the same age and sex differences as influenced by climate and season which is the same situation we find in our present criminals.<sup>9</sup>

However, most criminological texts limit their consideration on Cesare Lombroso, Raffaele Garofalo and Enrico Ferri of Italian origins and were considered as the greatest and first influential Positivists. The Positive School of thought is thus an embodiment of a consensus perspective. This means that all other theories that were developed under its guardianship assumed the presence of a set of core values in the society.

The theory is relevant in this article in that it sets forth core values which could be used as benchmark of measuring criminal conduct in our society.

### **The Classical School Theory**

This theory was propounded by Cesare Bonesana Beccaria between 1738-1794 and later by Jeremy Bentham between 1748-1832 that stemmed from efforts to reform the legal system as well as providing sufficient guarantees of the accused persons against harsh and arbitrary punishment by the state.<sup>10</sup> The barbarous nature of inflicting punishment at that time, forced him to maintain in his theory that punishment for crime should not surpass what was necessary to maintain public order and out rightly rejected capital punishment like death penalty, torture and secret trials.<sup>11</sup> While describing the system as savage, stupid and ineffective, Cesare was particularly interested in equality before the law, the control of government institutions as well as the rights of a people to shape their institutions by deliberate and rationale choice. According to him, the criminal law should be clear, so that all could know and understand, death penalty be abolished, torture to obtain confession should be abolished, true measure of crime should be the harm done to the rights of individuals in the society, rather than the standards of moral virtues. He added that the severity of punishment should be greatly reduced, no more than proportionate to the crime committed, and should not go beyond what was necessary to deter the criminal and others from injuring their fellows. It should be just be adequate to ensure that the penalty outweighed the advantage derived from the crime. While he emphasized that judges should be impartial, he equally stated that the sovereign who makes the law should not determine the guilt or innocence. He added finally that the nature of penalty should be commensurate to the crime.<sup>12</sup>

Being a theory of criminal institution, it is relevant to this article in that it explains how the criminal institution takes into consideration certain safeguards during the prosecution of a criminal trial and the punishment of crimes in our criminal justice system.

### **Neo Classical School of Criminology**

The “freewill” theory of the pure Classical School was short lived as it was later discovered that the major actors of the school faltered in their approach by given a deaf ear on the individual differences under certain condition and treating first offender and habitual alike on the basis of act or crime. The Neo Classical School of criminology continued from where the

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<sup>9</sup> Adolpg Quetelet, A Note on Quetelet and the Development Of Criminological Statistics (J CJ Vol 14, Issue 5, 1986) at pg 459-462.

<sup>10</sup> A.B Dambazau, n81 at pg 6.

<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid* 7 and 8.

classical school ended and presented the criminal behavior as the result of individual circumstances and rational thought and places crimes outside of the framework of society. According to them, all criminal behavior is situationally dynamic and individually determined.<sup>13</sup>

This school is guided by five major principles to wit; rationality, hedonism, punishment, human rights and due process. By making a rational choice to commit crime means that if the crime is low- risk and high reward with little hood of severe punishment, then offenders will be motivated to choose to commit crime.<sup>14</sup>

The neo classical school articulated on the recognition of varying degrees of moral and legal responsibility which is affected by certain circumstances like age/ minor, elderly and insane that warrants mitigating circumstances in general. This is because the above categories of persons cannot validly give rational freewill towards the commission of an offence thereby justifying the doctrine of individualization of punishment.

### **Gap in the Literature**

After reviewing literature and pursuance to the above mentioned theoretical framework based on criminological theories, we come in because of the nuance realized as the literature reviewed falls short of the following under-mentioned gaps which this article seeks to address:-

The literature has not addressed the fundamental issue of coming out with a theory about morality and criminal law which might have been very helpful to the title and which must be based on a defensible definition of morality and not one which confuses it with mere feelings of disgust and disaster.

Again, the literature has not sufficiently expounded on the Anomie School of thought which has to do with the structural problem and that requires a structural process

Again, the literature has not mentioned what should be done in case a Member state in an International or Regional Convention fails to adhere to the abolition of death penalty but only calls for its total condemnation and abolition. For instance although Cameroon is a signatory to the International Covenant on Civil and Political Rights, its ratification status on the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of death penalty is still a variance with section 22 and 23 of the domestic legislation/ Penal Code that still sanctions death penalty.

Thirdly, the literature has not sufficiently distinguished or addresses the thin line between conduct/behavior that is sufficiently offensive from those which are insufficiently offensive to warrant criminalization; a line which fluctuates not only within time but also from locality to locality. This thesis recommends that domestic legislation should adhere to international covenant and state parties should be given deadlines to ratify this intentional covenant so that it should be fully implemented in their domestic legislation without any conflict with the latter.

### **Criminological Theories Consideration in the Criminal Procedure Code (CPC)**

The origin of criminal investigation could be traced as far back during the Eighteen Century in England, a period which was characterized by numerous socio -economic and political upheavals. These changes were vectors in the creation of the first modern detective force, the

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<sup>13</sup> Neoclassical Criminology/Overview, Schools and Theory- Study via <<<https://study.com>>> accessed on the 13<sup>th</sup> of August, 2023.

<sup>14</sup> Although Jeremy Bentham and Cesare Beccaria developed many ideas of neoclassical criminology, the official founder of the neoclassical school is Gabriel Tarde who expounded on the ideas and established who was considered rational in relation to the committing of crimes.

Bow Street Runners.<sup>15</sup> Added to England's credit was London which was the home of the first police reformer called Robert Peel. The above factors were a motivation for the subsequent development of the Police organization and criminal investigation in the United States of America.<sup>16</sup>

Criminological theories have been integrated into the Cameroonian judicial system by virtue of the multiplicity of crimes that have been engrafted in the Penal Code and other related pieces of legislation. These crimes that range from crime of passion, adultery, abortion, suicide, indecency to a minor, rape, homosexuality, bestiality, pornography, theft, embezzlement and misappropriation of public funds as well as corruption which appears to be irksome and insidious, can only be prosecuted in accordance with the Criminal Procedure Code which is a code of general application in Cameroon. The Criminal Procedure Code as per section 310 authoritatively states as follows:

“The judge shall be guided in his decision by the law his conscience” This is reaffirmed in the Statute of the Magistracy. All of the above offences are appealing to the Criminological theories of the Classical School of Beccaria and Jeremy Bentham that emphasized on moral responsibility and the duty of citizens to consider fully the consequences of behavior before they acted, Positive School of Cesare Lambrosco, Raffaele Garofala, Enrico Ferri who articulated on criminal behavior and above all, the Anomie theory that deals with morality and our conscience.

### **The Rights of the Suspects, Defendants and Accused under the Criminal Procedure Code**

The rights of the defendant are contained in sections 167 to 176 of the Criminal Procedure Code. These rights cover the suspects on the appearance before the Examining Magistrate who shall verify the identity of the defendant, inform him of the case and provisions of the criminal law that has been infringed. The defendant is protected here in that the Examining Magistrate is not bound by the statement of the offence which the police has given to the facts of the case and that, the Examining Magistrate shall inform the defendant during his first appearance that he is now before him and no longer at the Police or gendarmerie where his cautionary statements had been recorded unless by way of rotary commission and that he shall be committed for trial if the inquiry confirms the charges preferred against him. He shall further inform the defendant amongst others that he is free to reserve his statement, has the choice to prepare his defence either with or without counselor with the assistance of one or more counsel and where he cannot immediately brief counsel, he shall be free to do so at any time before the close of the inquiry. The above requirements are in tandem with the postulations of the Classical School of criminology that emphasized that the accused or defendant should be given adequate time and resources necessary to prepare his defence.

The reflection of criminological theories is further contained in section 172 of the Criminal Procedure Code where it has given the defence counsel the right and latitude to defend his client wherever he appears before the Examining Magistrate and shall be notified in writing of the date and time of appearance at least forty-eight hours before the said appearance. The statement of the defendant including all Preliminary inquiry proceedings shall be typed to avoid falsification or mutilation of facts and filed in the report.

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<sup>15</sup> n419.

<sup>16</sup> *Ibid.*



The rights of the defendant have been extended by the Code to witnesses who shall be summoned via a bailiff act or ordinary nail against an acknowledgment receipt. Where a witness does not speak one of the official languages which is understood by the court, the Code has instructed for the latter to be accorded with the services of an interpreter who shall not be less than twenty-one year old and shall be bound to take oath. The advantage accorded the witness here is that. The interpreter is bound to interpret faithfully since he could be prosecuted for perjury.<sup>17</sup> Every folio of the record shall be initialed by the Examining Magistrate, the registrar, witness, interpreter if any and the defendant in case of confrontation.<sup>18</sup>

At the close of the inquiry, the Examining Magistrate may by virtue of section 256 (6) CPC deliver a no case ruling in circumstances where the facts do not constitute an offence,<sup>19</sup> or where the author of the offence has not been identified or where there is insufficient evidence against the defendant. The principle of *nullum crimen sine lege*<sup>20</sup> was invoked in *Olanguena Awono Urbain Vs The People of Cameroon*<sup>21</sup> where the Appellant was committed on several counts including misappropriation of public funds by assimilation with the particulars of the offence being breach of the rules for awarding public contracts. The Supreme Court in its judgment held that the above offence does not exist in our criminal law, holding that the alleged offence was managerial fault and not an offence contained in section 3 of Law No.74/18 of 5 December 1974 relating or bearing on the control of vote holder and managers of public structures. The court held that the Examining Magistrate erred in law when he committed the appellant for trial for an offence that does not exist.<sup>22</sup> It follows that the Code has given absolute powers to the Examining Magistrate to enter a no case ruling in favour of the defendant in situations where the law and notably the Penal Code has exonerated the defendant under specified defences like insanity, *Doli incapax*,<sup>23</sup> state of necessity,<sup>24</sup> threats, obedience to lawful authority<sup>25</sup> as well as accident and physical compulsion<sup>26</sup>

The Code has also afforded the defendant the right to appeal against the ruling of the Examining Magistrate before the Inquiry Control Chambers which is a special and judicial bench at the Court of Appeal. This chamber reviews the ruling of the ordinary law court as well as appeals and application for nullity of the decision of the Examining Magistrates.

With regards to nullity, section 3 of the CPC has provided for both absolute and relative nullity in the event where there is a breach of the criminal procedure. It states:

“The sanction against the infringement of any rule of criminal procedure shall be an absolute nullity when it is: prejudicial to the rights of the defence as defined by the legal provision in force, contrary to public policy. Nullity as referred to subsection (1) of this section shall not

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<sup>17</sup> I swear to speak the truth the whole truth and nothing but the truth. Once the oath has been taken, on no account shall its validity be questioned.

<sup>18</sup> Section 185 (2) CPC.

<sup>19</sup> This is in line with the principle of *nullum sine lege* as read together with Article 11(2) of the Universal Declaration of Human Rights 1947 as well as article 15 (1) of the International Convention on Civil and Political Rights 1966.

<sup>20</sup> No act could be considered as an offence if not so provided by law.

<sup>21</sup> Judgment No.002/SSP/CS of 5<sup>th</sup> August 2015 (GD)PC pp-497-521.

<sup>22</sup> Fonkwe Joseph & Eware Ashu, *Cameroon Criminal Procedure Code* (Veritas Douala, 2019) pg 29.

<sup>23</sup> Section 80 PC

<sup>24</sup> Section 86 PC.

<sup>25</sup> Section 81 PC.

<sup>26</sup> Section 77 PC.

be overlooked. It can be raised at any stage of the criminal proceedings by any of the parties and shall be raised by the trial court of its own motion”

The Code has equally affirmed the human rights universal principle of the presumption of innocence of the suspect, defendant and accused until proven guilty by a court of competent jurisdiction and having regards to all the requirements of the rights to defence, In this regard, section 8 of the CPC states:

“Any person suspected of having committed an offence shall be presumed innocent until his guilt has been legally established in the course of a trial where he shall be given all necessary guarantees for his defence . According to sub section 2, the presumption of innocence shall apply to every suspect, defendant and accused.” The above requirements are in line with those of the Classical School of Criminology that upheld the presumption of innocence of the defendant until proven guilty. We extend our argument on section 347 of the CPC that instructs that the detained accused be brought unfettered before the court by an officer of the forces of law and order.

The concept of bail has also been incorporated into the Criminal Procedure Code by allowing the Examining Magistrate at any time before the close of the inquiry and of his own motion, to withdraw the remand warrant and grant bail.<sup>27</sup> Where bail is not granted as of right or by the Examining Magistrate of his own motion, it could be granted on the application of the defendant or his counsel and after the submission of the State Counsel when the defendant enter into a recognizance to appear before the Examining Magistrate and undertake to appear before him wherever needed.

Section 222 is complimented by section 246(g) where the defendant or accused is granted bail on account that he has reasonable sureties to procure his release on bail and do not intend to jump bail. According to section 221, the detention of the defendant should never be in perpetuity as it has clearly given the deadlines for action. The Criminal Procedure Code has instructed the Examining Magistrate to specify the period of remand in custody in the remand warrant. The seriousness of this legal provision is found in its wordings. It shall not exceed six months. However, such period may, by reasoned ruling of the Examining Magistrate, be extended for at most twelve months in the case of a felony and six months in the case of a misdemeanor. Upon the expiration of the above period of the warrant, the Examining Magistrate shall under pain of disciplinary action against him, order the immediate release on bail of the defendant, unless he is detained for other reasons. Hence, the maximum period for remand in custody is eighteen months notwithstanding te offence. It can never exceed twelve months in case of a misdemeanor and eighteen months in case of a felony.

Where the above period is not respected, the code has provided a special procedure to be exploited in a bid to restore the defendant’s right to bail and this time it is an immediate release.

The scope of habeas corpus has been provided in section 584 to 588 of the CPC which covers an immediate release based on an alleged illegality of arrest or detention or failure to observe the formalities ordained in section 584 CPC, measure of deprivation of liberty taken against any person who has been acquitted, discharged or released by an ordinary court or by a special Tribunal under section 588 CPC and illegal administrative<sup>28</sup> detention under section 584 (2) CPC. Section 584 provides:

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<sup>27</sup> Section 221

<sup>28</sup> Fonkwe Joseph & Eware Ashu at pg 127.

“ (1) The President of the High Court of the place of arrest or detention of the person, or any other judge of the said court, shall have jurisdiction to hear applications for immediate release based on grounds of illegality of arrest or detention or failure to observe the formalities as provided by law.

(2) He shall also have jurisdiction to deal with application filed against administrative remand measures”

Articulating on the duration for custody or detention exceeded, the code as explained above, has given definite deadlines for remand in custody. For instance, during police investigation, the time limit of forty-eight hours has been specified renewable once or exceptionally twice on the written consent of the State Counsel. With regards to arrest for simple offence, the duration is twenty four hours while misdemeanor and felony are six and twelve hours respectively.<sup>29</sup> The doctrine of Habeas Corpus was applied by Justice Epuli in *Etengene Joseph Tabe vs Governor Oben Peter Ashu &anor*<sup>30</sup> when he stated inter alia:

- (i) In a habeas corpus application, the main concern of the judge is the man’s detention in prison and not the merits of the case
- (ii) Where an order nisi has been made as in the present case, the burden is on the jailer to show cause why he should keep the applicant in detention or release him without more
- (iii) The burden to show cause can only be discharged by the filing of a counter affidavit denying, challenging and or disproving the allegations of facts contained in the supporting affidavit, or by moving the court to dismiss the application on grounds of law
- (iv) A ruling nisi of habeas corpus will be discharged if the person detained is at large or already release and is at liberty”<sup>31</sup>

### **Impartiality of Judges**

The Classical School of Criminology explained the importance of impartiality of judges by condemning their low level of professional training that affected most of their decisions which were unsatisfactory as a result of incompetence, capriciousness, corruption. The classical school of criminology reformed how courts administer punishments by creating a judicial code of ethics to guarantee those who commit crimes a fair trial where the penalty suits the crime. We proceed by saying that impartiality is capital and central to the proper discharge of the judicial and legal officer in Cameroon. It applies not only to the decision itself but also to the process by which the decision is made.

The perception of impartiality is the cardinal and fundamental quality required of a judicial officer and the core attribute of the judiciary in Cameroon. Therefore, impartiality must exist both as a matter of fact and a matter of reasonable perception by the Classical School of Criminology. If partiality is reasonably perceived, that perception as articulated in the Criminal Procedure Code is likely to leave a sense of grievance and of injustice, thereby destroying and eroding the confidence in the judicial system. It could be suggested that the perception of impartiality is measured by the standard of the reasonable observer. It follows that there are a

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<sup>29</sup> Ewang Sone Andrew, *Readings in the Cameroon Criminal Procedure Code* (Presses Universitaires d’Afrique) pg 160.

<sup>30</sup> (1998) 1CCLR.

<sup>31</sup>*ibid.*

number of bench marks that could suggest the perception that a judge is not partial and this include conflict of interest, his behavior why presiding the matter, as well as his association and activities outside court room.<sup>32</sup>

The European Court of Human Rights has articulated that there are two aspects of the requirements of impartiality.<sup>33</sup> First, the tribunal must be subjectively impartial.<sup>34</sup> Secondly, the tribunal must be impartial from an objective point of view. It follows that the judge must offer sufficient guarantees to exclude any legitimate doubt in this respect. It is in line with this that section 310 of the CPC has ordained that the judge must be guided by the law and his conscience whenever he is adjudicating a matter and delivering his judgment. This is in line with the Anomie School of Criminology that places morality and good conscience at the breast of every citizen.

It follows that a judge must maintain a fair balance that will ensure that judicial proceedings are conducted in an orderly and efficient manner in order that the court's process is not abused. That is why the criminal procedure code has enumerated the rights of the defence as the fundamentals of the due process of the law that was articulated by criminologist in their various postulations that decried the trenchant violation of the due process of law.

The Criminal Procedure Code has equally provided for recusal of a magistrate at the bench where a party feels that such a judge is impartial either because of conflict of interest or simply being biased. In the regards, section 591 of the Criminal Procedure Code ordains:

“Any Magistrate of the bench or a judge may be challenged for any of the following reasons:

- (a) Where he or his spouse is a relative, guardian or relative by marriage up to the degree of uncle, nephew, first cousin or the child of the first cousin of one of the parties
- (b) Where he or his spouse is employer, employee, next of kin, done, creditor, debtor, companion of one of the parties or director of an enterprise or company involved in the case
- (c) Where he has previously taken part in the proceedings or he has been an arbitrator or counsel or witness
- (d) Where he or his spouse is a party in a case which shall be tried by one of the parties
- (e) Where he or his spouse is involved in any incident tending to show friendship or hatred towards any of the parties and likely to cast a doubt on his impartiality.”

It emerges from the above that any magistrate who is caught by one of the above constraints and who feels that he could be challenged is authorized by the code to decline the matter and inform his hierarchy

### **The Reflection of Criminological Theories in the Cameroon Penal Code**

Our criminal justice system is largely influenced by criminological theories. These theories as articulated above, have been integrated into our criminal justice system via the 1996 Cameroon constitution as amended, the Penal Code, Criminal Procedure Code, the 2006 Law on Judicial Organization as amended, the 2008 Law governing the Special Criminal Tribunal as amended

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<sup>32</sup> UNODC, Commentary on the Bangalore Principles of Judicial Conduct.

<sup>33</sup> *ibid.*

<sup>34</sup> No member of the tribunal should hold any personal prejudice or bias.



the Law on the Suppression on acts of terrorism, the Status of Magistracy as well as the Organic Law to Organize Practice at the Bar.<sup>35</sup>

In strict compliance with the principle of non retrospection of the law and penalties and offences to be prescribed, the classical school theory has been incorporated under our criminal justice system by virtue of section 3 and 17 of the Penal under the prism of the principle of legality. The principle enjoys almost universal acceptance and it exist in almost all legal systems in the world. The importance of this principle is that, it re-inforces the principle of separation of powers between the executive, legislature and the judiciary. According to the principle, the role of the judge qua judge is to interpret and apply the law only. The judiciary should not make law. In other words, the judiciary has no power to create new offences or new punishment or the power to modify existing ones. This principle is expressed in latin as follows; *Nullum Crimen, Nulla Poena, Sine Lege* which is interpreted to mean as no crime, no punishment without the law.

Thirdly, the judiciary is forbidden to apply the laws retrospectively. This principle was first formulated in its modern form by the French Declaration of the rights of man of the citizen in 1789. Article 8 of the Declaration stated that nothing can be punished except by virtue of a law established and promulgated beforehand. This principle is now stated in article 4 of the French Penal Code, section 9(3) of the American Constitution and article 11 of the Universal Declaration of Human Rights.

In Cameroon, the principle is found in the preamble of the 1996 constitution as amended and in sections 17 and 3 of the Penal Code.

Section 17 states:

“No penalty or measure may be imposed unless provided by law and except in respect of an offence lawfully defined”. It follows that the courts have no power to creat new penalties or measures. They also have no power to create new offences.

According to section 3, the principle of non retrospection of law which is a sub principle of the principle of legality states:

“No criminal law shall apply to acts or omissions committed before its entry into force or in respect of which judgment has not been delivered before its repeal or expiring” This sub principle of the principle of legality tries to limit the application of criminal law both as to the past and as to the future. In the first place, acts committed in the past will not be governed by a law passed after their commission. Non retrospection thus means the non application of laws backward. That is to acts committed in the past before the entering into force of the laws.

In the second place, even an existing law will not govern acts committed while it was inforce if it is repealed or it expires before final judgment is pronounced by the courts over the acts. This second position of section 3 gives rise to different questions. Will the acts be excused or punished under the new law? If no new law is passed, what should the courts do?

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<sup>35</sup> Law No. 2016/007 of 12<sup>th</sup> July, 2016 governs the Penal Code of Cameroon, Law No. 2005/007 of 27<sup>th</sup> of July, 2005 to institute the Criminal Procedure Code in Cameroon, Law No. 2011/27 of 14<sup>th</sup> December, 2011 to amend and supplement some provisions of Law No.2006/015 of 29<sup>th</sup> December, 2006 on Judicial Organization, 2014 Law on the suppression on Acts of Terrorism in Cameroon, Law No. 95/048 of 8 March, 1995 as amended and supplemented by Decree No.2000/310 of 3<sup>rd</sup> November, 2000, 2004/080 of 3 April, 2004, 2012/ 188 and 2012/89 of 18 April, 2012 on the regulations governing Judicial and Legal Services in Cameroon as well as Law No. 90/059 of 19<sup>th</sup> December, 1990 to Organize Practice at the Bar.

Criminological theories like the Classical School dwells on morality and responsibility while the positive School theory touches on the criminal behaviour. It follows that while the Classical School focuses on the legal statutes, governmental structures and human rights, Positive School of thought focuses on pathology in criminal behaviour, treatment, and on the correction of criminality within individuals. Anomie on the hand focuses on the breakdown of societal norms and condition where those norms no longer control the ability of societal members. It follows that offences like suicide, corruption, adultery, abortion, indecency as well as pornography are all offences that have to do with morality and are punishable by the Cameroon Penal Code. Morality plays a vital role to determine human conscience that has no frontiers and serves as one of the determinants in the commission of an offence, prosecution and trial process by the judicial authority.

The above statutory line of reasoning is corroborated by section 37 of the 1996 Cameroon constitution as amended. That constitutional provision instructs magistrates of the bench to apply the law according to the law and their conscience. To these should be added section 5(1) of the law on the regulations governing Judicial and Legal Services in Cameroon and which states as follows:

“Members of the bench shall, in carrying out their judicial functions, be subject only to the law and their conscience.” The combination of the above legal provisions and their incorporation in the Cameroonian criminal justice system, one would say, got their inspiration from the Classical School of thought whose protagonists emphasized on moral responsibility and the duty of citizens to consider fully the repercussions of their behaviour before they acted.

The Cameroonian model of its criminal justice system places more reliance on the cardinal principle of *mens rea and actus reus*<sup>36</sup>. Proof of intention is therefore required for criminal responsibility to lie. Intention therefore is provided for by section 74(2) of the Cameroon Penal Code which states as follows:

“Criminal responsibility shall lie on him who intentionally commits each of the ingredients acts or omissions of an offence with the intention of causing the result which completes it”.

It is however important to mention that intention is only one of the facets to prove *mens rea* of an offence. Others include recklessness and negligence. Although section 74 (2) of the Penal Code places a high premium on intention, proof of intention is not required in simple offences like traffic offences.<sup>37</sup> It follows that the proviso to section 74 of the Penal Code makes it clear that *mens rea* as it is usually understood is not required to simple offences as all that is required in cases of simple offences is proof of *actus reus*.

Cesare Lombroso made a distinction on the various categories of criminals and gave the motive for they becoming criminals. He cited insane criminals, epileptic criminals and occasional criminals who for no biological reason but for reasons of circumstances or surroundings that they became criminals. Moreover, Raffaello Garofalo qualified some criminals as born criminals while those who commit crimes of passion like suicide are influenced by certain factors such as race, age, customs, and religion and population density. Judging from the above,

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<sup>36</sup> The mental and physical element of an offence and which both must coincide for criminal responsibility lie. The absence of one vitiates the other.

<sup>37</sup> Section 74 (4) of the Penal Code states that except as otherwise provided by the law the shall be no criminal responsibility unless sub section 2 of this section has been satisfied provided that responsibility for simple offence shall not require any intention to act or to omit or to cause the result.

the Penal Code of Cameroon has integrated these forms of offences and criminals and accorded them some benefits under the general defences of law.<sup>38</sup>

The Neo- Classical theory and the principle of individualization of punishment explains the doctrine of individualization of punishment which have equally been given a government stamp of approval in our criminal justice system given that a particular punishment would have a differential punishment on different people although all or both of the accused persons committed the same offence. That is why our penal code has provided for mitigating circumstances by virtue of sections 90, 91 and 92 of the penal code.<sup>39</sup> In addition to the above cited provisions of the law on mitigating circumstances infavour of the convict, the Penal Code has provided for in section 54 a suspended sentence. Section 54 states:

“Subject to any contrary provision of law, upon conviction for a felony or misdemeanor of an offender not previously sentenced to imprisonment, or where after such sentence his conviction has been expunged, the court may, for reasons to be recorded in the judgment, suspend for a period of from three to five years the enforcement of any sentence of imprisonment for five years or less or for fine not imposed under section 92 (2) of this Code”.

Another instance of mitigating circumstances as explained by the Neo-Classical theory of individualism of punishment and incorporated in our penal code is the defence of insanity governed by section 78 of the Cameroon Penal Code. It states:

“No criminal responsibility shall arise from an act or omission by a person suffering from mental illness which deprives him of all will power or of the knowledge that what he does is blame worthy.” The question that begs for an answer is what is the meaning of mental illness in the context of insanity?. We submit that within the context of insanity as a defence, it would mean a disease of the mind as opposed to a disease of the brain. Insanity must be distinguished from disease of the brain which includes, natural imbecility, idiocy of stupidly. It must be born in mind that the defence of insanity is both an absolute and partial defence. Section 78 (2) states:

“Mental illness whose consequences are only partial shall diminish responsibility. In order words, for this defence to apply, it must be shown that the accused is suffering from mental illness that the mental illness deprives him of all will power or of knowledge that what he does is blameworthy.”<sup>40</sup>

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<sup>38</sup> General defences are found in book 1 of the Penal Code and do apply to all offences in our criminal law. General defences maybe absolute or partial. They are absolute when they exonerate the offender completely from criminal responsibility. They are partial when they lead only to diminished responsibility.

<sup>39</sup> Section 90 states that the benefit of mitigating circumstances may be given for reasons to be recorded in the judgment except where there are expressly excluded by law. The benefit of mitigating circumstances is at the discretion of the court and includes examples as poor financial situation of the offender, his family responsibility, first offender, his person character, being remorseful, possibilities of his being reformed. With regard to section 92, it states that where the offence is punishable with imprisonment, this may be reduced to not less than five years where the offence is a misdemeanour or simple offence.

<sup>40</sup> The last condition is similar to that propounded in England in MCNaghten-s case (1843) 8 ER 718 which is a committee of judges and they stated in 1843 that an accused is presumed to be sane until he proves otherwise. The practice in Cameroon is for a qualified medical doctor to establish insanity or insanity and is considered conclusive.

Chief Justice Ayah Paul Abine attempts the general defence of insanity in Criminal law that can be raised at two levels<sup>41</sup>. It could be raised on ground that, at the time the offender committed the offence, he suffered from a disease mind such that he was not aware of what he was doing. In other words, he had no criminal responsibility at the material time. It can also be raised to the effect that the offender at the time of prosecution suffered from a ceases in the mind that prevented him from following the proceedings. The question that begs for an answer is whether there is criminal responsibility? It is a preliminary objection or caveat to the commencement of the proceedings.

In the second instance, the offender is kept or quarantined in an institution for lunatics. If the offender's conduct returns to normalcy, proceeding commences or continues as the case maybe. We may wish to comment here that the second arm of the defence could benefit Jean Pierre Amougou Belinga<sup>42</sup> who is one of the defendants undergoing preliminary inquiry in relation to the death of a renowned journalist- Martinez Zogo. The defendant was charged amongst others, "complicity in torture by aid "and on the 27<sup>th</sup> of April, 2023, the Yaoundé Court of Appeal rejected his application for bail. The application was based on medical examination and follow-up on grounds of insanity. He endeavor will succeed and the Jean Pierre Belinga would be a free man. And this could equally apply to other offenders with similar situations. The burden of proving insanity as a defence will shift from the prosecution to the defendant or accused as it is both a partial and complete defence depending on the circumstances and based on the medical evidence before the court.

Contextualizing this further within the Cameroon criminal justice system, where common law and civil law operate side by side, and the latter by contrast, paints the following scenario: if the offender's insanity lasts for ten years and the offence is a felony, the offences cease to be an offence by virtue of "prescription". At common law, prescription has been essentially for civil matters.

Again mitigation as explained by the Neo- Classical school has been incorporated in our criminal justice system by virtue of section which defines infancy as a defence created infavour of persons who are *doli incapax* or who are relatively too young to be subjected to criminal responsibility like adults. It is trite law to note that the term infancy as used in section 80 of the Penal Code does not necessarily refer to infancy. The defence equally applies to people who are not yet adults but who are above the age of infancy. The age of criminal responsibility in Cameroon is contained in section 80(4) to be eighteen years. It follows that this defence cannot benefit someone who is eighteen and above as the defence only benefits those who are *doli incapax* and are below ten years.<sup>43</sup>

Again, indecency to a child under sixteen is punishable by virtue of section 346 of the Cameroon Penal Code and amounts to statutory rape in that even if consent was obtained it is vitiated by virtue of this section. Section 346 must be read together with section 347 of the penal code. The difference here is that section 347 extends the indecency to a minor between the ages of sixteen and twenty one year. It states that for any offence under section 295, 296

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<sup>41</sup> INSANITY IN CRIMINAL LAW BY JUSTICE AYAH PAUL ABINE via <<https://www.facebook.com>> accessed on the 29<sup>th</sup> of May, 2023.

<sup>42</sup> Owner of Visiion 4. Vision 4 Television is a Cameroonian television channel owned by media Groupe L'Anecdote which was handed by Jean Pierre Amougou Belinga who also owns the media group's namesake newspaper, L'Anecdote and the Pan -African channel TeleSud. He is a buisness tycoon in Cameroon and the world at large.

<sup>43</sup> Section 18(3)of the Penal Code.



and 347-1 of the Penal Code committed against a person over sixteen and under twenty one years of age, the penalty shall be doubled. It follows that upon conviction of the offender under this section, the court may deprive the offender of parental power and disqualify him from being guardian or curator of any manner for the time prescribed by section 21 (4) of the Penal Code.

Apart from mitigating circumstances, the doctrine of individualization of punishment also explains how different offenders may have different punishments with some having higher than others whereas all of them committed the same offence. This is the tenor of section 88 of the penal Code which makes it aggravating circumstances for a public servant to involve in a crime. It states:

“Subject to any special penalties provided for felonies or misdemeanors committed by national, foreign, or international public servants, national, foreign or international public officers or national, foreign or international officials, the fact of being a public servant established or otherwise shall aggravate the responsibility of any such person guilty of any other felony or misdemeanor against which it is his duty to guard or take action”

Furthermore, the irksome and insidious offences of embezzlement and missappropriation of public property/ funds are all offences of moral deprivation and bankruptcy of the citizens and which the Penal Code has sanctioned via section 184. The High Court of the place of commission, arrest or residence of the accused has jurisdiction.<sup>44</sup> However, where the value of the property is above fifty million francs CFA, competence is transferred to the Special Criminal Tribunal in Yaoundé which has national competence.<sup>45</sup> This court was created as a result of rampant corruption, embezzlement and misappropriation of public property especially by top government officials to complement the work and audit creatures and institutions in the country like the Audit Bench of the Supreme Court, The National Agency for Financial Investigation (ANIF), National Anti Corruption Commission (CONAC) Supreme State Audit (CONSUPE) Public Works Regulatory Agency (ARMP) amongst others.

The Cameroon Penal Code has integrated the theory of Anomie by making it an offence for interference of freedom of conscience, contempt of ministry of Religion, violent obstruction of Ministry as well as disturbance of Public Worship. According to section 272 of the Penal Code, whoever by disturbance or disorder obstructs delays or interrupts religious worship in the place where it is customarily offered, shall be punished with imprisonment for Fifteen days to one year or with a fine of from five hundred thousand francs CFA to one hundred thousand or with both such imprisonment and fine. Again, it becomes an offence under section 269 whereby any interference or threat that prevents the practice of any form of religion which does not involve the commission of a criminal offence, with an imprisonment of one month to one year and with fine of from five thousand to fifty thousand CFA.

The offences of Adultery, abortion, suicide, indecency pornography have all been incorporated in the Cameroon Penal Code. The offence of adultery is contained in section 361 of the Cameroon Penal Code. According to that section, a woman who, being married, has sexual intercourse with a man other than her husband shall be punished with imprisonment for from

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<sup>45</sup> The Special Criminal Court was created by virtue of Law No. 2011/028 of 3<sup>rd</sup> December, 2011 to try high profile criminals otherwise known as white collar criminals whose missapropation of public property or loss caused is valued at fifty million and above. The government launched the operation sparrow hawk that dent most top government officials to prison like Marafa Hamidou Yaya, Ephraim Inoni etc.

two to six months or with fine of from CFAF twenty five thousand francs to CFAF one hundred thousand.

Subsection 2 ordains that a husband who has sexual intercourse with a woman other than his wife or wives shall be punished as provided in subsection one (1) above. However, the burden of proof of the existence of a polygamous union shall lie with the husband. According to subsection 3 of section 361, no prosecution may be commenced without the complaint of the wronged spouse. It follows that as per sub section 4, the connivance or condonation of the wronged spouse shall bar the commencement or continuation of any prosecution. Consent by the wronged spouse to resumed cohabitation shall put an end to the effect of conviction. Elsewhere, adultery has been defined as conjugal infidelity which that a married person decides to have an amorous relationship with another person other than the person to whom they are legally married. Adultery has been considered by most societies as taboos especially for women and despite the outburst of general public condemnation, the act is still committed with a great degree of frequency.<sup>46</sup> Adultery and fornication are used to denote moral regulation of sexual activity. Although the rationale for such sexual regulation may vary, both terms when used together hold that sexual activity among unmarried couples is an action which should be considered morally wrong and falls within the ambit of the Anomie theory which refers to the breakdown of societal norms due to deregulation. Fornication refers to all sexual activity conducted between persons not married to one another.<sup>47</sup>

Furthermore, abortion is punished under section 337<sup>48</sup>. This section does not define abortion but simply states its punishment. In spite of this, abortion may be defined as the procurement of a miscarriage by the unlawful means. The offence of abortion does not exist because the status of a fetus or embryo is particular. Legal personality starts at birth. Since the fetus or embryo is not yet born, it lacks legal personality. Hence, its killing cannot amount to murder or capital murder or unintentional killing. The peculiarity of a fetus or embryo takes its birth from the fact that although it owes no legal duties, the law accords him certain rights. The reason for this is to ensure the continuity of mankind. Since a fetus or embryo is an innocent invitee, the law deems it necessary to protect it from harm or destruction.

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<sup>46</sup> Anderson L & Krathwohl D, "A Taxonomy for Learning, Teaching and Assessing: A Revision of Bloom's Taxonomy of Educational Objective" (New York Longman, vol. 7 No.3, 2001). In yore, adultery in some cultures was principally considered a crime that applied to female spouses who were unfaithful while it was silent or condoned among men. As per the Roman law and Mosaic Law, the word adultery refer only to the carnal intercourse of a wife with a man who was not her husband. On the contrary, the intercourse of a married man with a single woman was considered fornication and not adultery. Adultery in some countries amounted to death penalty if caught in *flagrant delicto*. However, with the coming of Christianity and its teachings, the husband and wives were taught to remain faithful to their holy matrimony and most of these Christian teachings are of mutual fidelity are implied in many scriptures of Christian especially that the Christian sacrament. Melo (2003) stated that in spite of the above; most countries have not arrived at parity when apportioning criminal responsibility between husband and wives. For instance the English Parliament in 1857 passed a law by which a husband could obtain a divorce as a result of his wife's commission of adultery, but the wife on the other hand could trigger similar action against her husband who has committed adultery only when his infidelity is established to have a sufficient degree of violence or cruelty associated with it and which has the propensity of causing some form of grievous harm or public humiliation. This same law was passed to early new colonies of England now the USA in the state of Massachusetts where the commission of adultery by the wife and not the husband necessitated a divorce in favour of the husband.

<sup>47</sup> Richard A & Mitchell M, *Encyclopedia of Criminology* (Vol. 1, Routledge New York, 2005) at pg 16-17.

<sup>48</sup> Cameroon Penal Code.

Section 337 of the Penal Code states:

“Any woman procuring or considering to her own abortion shall be punished with imprisonment for from fifteen days to one year or with fine of from CFA Five thousand to CFA two hundred thousand or with both such imprisonment and fine”. According to subsection 2, whoever procures the abortion of a woman, notwithstanding her consent shall be punished with imprisonment for from one year to five years and with fine from CFA two million. Subsection 3 further states that the penalties prescribed by subsection 2 shall be doubled where the offender engages habitually in abortion, practices the profession of medicine or similar profession.

From the above provisions, we find that a woman who procures or consent to have an abortion is less severely punished than a third party who procures her abortion. Secondly, it seems that section 337 (3) which doubles the penalty for third parties who are habitually abortionists or medical practitioner does not extend to the woman who aborts her child or who consents to the abortion of her own child.

Again the aspect of morality as depicted in the Anomie theory could be attributed to the offence of suicide. The Cameroonian model under its Penal Code depicts<sup>49</sup> a somewhat interpretation or the offence which has been severally been considered as one of the offenses of passion and love. Under the Cameroon Penal Code, to die by suicide is not illegal, as is reporting on a suicide in the media. However, it becomes an offence when it touches on the publication of suicide of a minor. Suicide is considered an abomination and taboo in most parts in Cameroon in particular and Africa at large. One of its major causes has been attributed to depression as well as worries about contacting an HIV/AIDS person.

Again homosexuality though is permitted in most parts in Europe and America and other countries in the world; Cameroon refuses to accept its practice on grounds of morality and Christianity. Hence, section 347-1<sup>50</sup>states:

“Whoever has sexual relations with a person of the same sex shall be punished with imprisonment for from six months to Five years and as fine of from CFA twenty thousand to CFA two hundred thousand. It follows that Cameroon prohibits via her Penal Code same sex marriages which criminalizes acts of homosexuality. Both men and women are criminalized under this law with a maximum penalty of five years imprisonment. We wish to state categorically clear that homosexuality was never an offence in Cameroon<sup>51</sup>. However, it became an offence following an amendment that was introduced in 1972 and which has been maintained till present date in spite of divergence of public opinion.

Furthermore, the Penal Code punishes immoral Earnings of either sex, or who engages habitually for gain, in sexual intercourse. Immoral earnings are a composite offence in that it is made up of two sub offence. The first sub offence is committed by procuring, aiding or facilitating prostitution. The second committed by any person who shares in the proceeds of another’s prostitution or who is subsidized by any person engaging in prostitution. It follows

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<sup>49</sup> The Penal Code does not specifically define suicide as an offence although such practice is condemned in our society. This aspect of physiological disorders relating to suicide severely lacks funding in spite of the irksome nature of the offence.

<sup>50</sup> The Cameroon Penal Code

<sup>51</sup> The first Penal Code of Cameroon accommodated same sexual activity.

that it is illegal to advertise prostitution as was demonstrated in the case of *Shaw v DPP*<sup>52</sup> just like brothel-keeping which facilitates prostitution. The offence is found in section 294 of the Cameroon Penal Code and carries both imprisonment terms for from six months to five years and with fine of from CFA twenty thousand to CFA five hundred thousand.

Furthermore, Infanticide under section 340 of the Penal Code has been identified as having a nexus with the criminological theories that have been incorporated in the Cameroonian Criminal Justice system especially if one were to consider the Anomie theory which refers to the breakdown of society norms, deregulation and morally deregulated condition. It seems that section 340 of the Penal Code neither defines nor punishes infanticide as a distinctive offence. It provides that punishment for murder within the meaning of section 275 or 276 or abetment of such murder by a woman of her own child within one month of birth shall be reduced to imprisonment for from five to ten years. It appears therefore that section 340 merely reduces the punishment for murder or capital murder in respect of a woman who kills her own child who is not more than one month old. Is infanticide as such a substantive offence under the Cameroon Penal Code? This question is open to debate. We may however submit that a Cameroonian court will hardly strike out a charge of that debate. Under English the Law, section 1 of the Infanticide Act 1938 by implication defines infanticide as a woman's willful killing of her own child less than one year of age.<sup>53</sup> The question that arises is why should the law create a special offence of infanticide *visa vis* women who kill their own children and in addition to that provides a penalty less than that for murder? The Cameroonian Penal Code is silent on this point. However, from the provision of section 1 Infanticide Act 1938, it could be gleaned that the main reason for this is the post natal depression suffered by some women after birth. Granted that this is the reason, another question possess: can post-natal depression extend to a month in the case of Cameroon or one year in the case of England? It is our humble submission that the above question is that of fact that could be resolved by medical experts.

The cases of killing a child "en train de nature" and in the process of being born beg for special attention. Section 338 of the Cameroon Penal Code punished an offence called assault on a woman with child. It states that whoever by force, used against a woman with child or unintentionally causes the death or permanent incapacity of the child shall be punished. The section was thus primarily meant to protect children still in their mother's womb. It is therefore a sub- offence under assault on a woman with child.

Under the English Law, this offence is referred to by statute as child's destruction. The important thing worth resolving is ascertaining what precisely the term or phrase- "In the process of being born". It is submitted that the phrase simply refers to the period when the child is already in the process of coming out of the mother's womb, the last moment when it comes out and the umbilical cord is severed.

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<sup>52</sup> [1962] AC 220. In this case, the court found the defendants decision to feature prostitute adverts in his magazines as dangerous to the welfare of society and it was their duty to protect the public majority's morals, as well as safety and order.

<sup>53</sup> Where a woman by any willful act or omission causes the death of her child being under the age of twelve months, but at the time of the act or omission the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child or by reason of the effect of location consequent upon the birth of the child, then the circumstances were such that but for this Act the offence would have amounted to murder or manslaughter, she shall be guilty of felony, to wit of infanticide, and may for such offence be dealt with and punished as if she had been guilty of the offence of manslaughter of the child.



Misappropriation of public property is one of the offences that explains and expose our moral decadence and bankruptcy in our public service in particular and the entire Cameroonian sector at large. This insidious and irksome offence is contrary to and punishable by section 184 (1)<sup>54</sup> it states:

“Whoever by whatever means, fraudulently takes or keeps any property, movables or immovables belonging to, destined or entrusted to the state, cooperative, council or public establishment under the supervision of the state or in which the state directly or indirectly holds the majority of the shares shall be punished.

According to sub section 2, where the value of the property exceeds CFAF five hundred thousand francs the imprisonment term would be for life. Furthermore, where the value of the property is above CFAF one hundred thousand but below or equal to CFAF five hundred thousand francs, the imprisonment term would be from fifteen to twenty years. Again, where the value of the property is less than or equal to CFAF one hundred with imprisonment for from five to ten years and with fine of from CFAF fifty thousand to CFAF five hundred thousand. According to sub section 3, the penalties provided in subsection 1 above may be reduced by mitigating circumstances below ten, five or two years and a suspended sentence may not be granted. Where section 87(2)<sup>55</sup> of this Code is applicable, the minimum punishment may be five years, two years and one year and execution may not be suspended except in case of diminished responsibility of infancy.

It is important to mention that confiscation as per section 35 of this Code shall be ordered in every case and the forfeitures ordained in section 30 shall, on grounds of morality, shall be imposed for from five to ten years and the court shall order for publication.<sup>56</sup> From the above analysis of section 184, the High court of either the place of commission, arrest or detention would assume jurisdiction to try offenders whose allegation of misappropriation of public property is not above fifty million. In other words, an ordinary law court has jurisdiction to try cases where the value of the public property is not above fifty million. However, where the value is above fifty million, the Special Criminal Tribunal shall assume jurisdiction by virtue of the law setting up the Special Criminal Tribunal with headquarters in Yaoundé.<sup>57</sup>

With regards to pornography, Law No.2019/017 of 24<sup>th</sup> December 2019 authorizes the President of the Republic to ratify the optional protocol to the convention on the rights of the child, on the sale of children, child prostitution and child pornography. It follows that penalties for the possession of, use of or trafficking of illegal drugs in Cameroon are severe as convict could serve long jail terms and heavy fines.<sup>58</sup>

<sup>54</sup> Cameroon Penal Code as read together with section 74 (2) of the Penal Code. Being a felonious offence, section 42 of the Criminal Procedure Code makes it mandatory for preliminary investigation to be conducted.

<sup>55</sup> Where responsibility is by law diminished, the penalty provided for offences shall be reduced as follows- the penalty of death or loss of liberty for life shall be reduced to loss of liberty for from two to ten years. Any other penalty for felony shall be reduced to loss of liberty for from one to five years. The maximum penalty for misdemeanor, whether of loss of liberty or of fine, shall be reduced by half and the minimum to that provided by section 92 of this code. Where responsibility is reduced for more than one reason or where there are in addition mitigating circumstances, the minimum shall be that provided by section 92 (1).

<sup>56</sup> The Code of Military Justice shall cover offences relating to misappropriation and receiving of military equipment.

<sup>57</sup> Law No 2012/011 of 16<sup>th</sup> July, 2012 to amend and supplement some provisions of 2011/028 of 14<sup>th</sup> December, 2011 to set up the Special Criminal Court.

<sup>58</sup> The 1996 constitution of Cameroon, the Penal Code, the 1997 law on narcotic drug use and the Criminal Procedure Code. International Statutes include the single convention on Narcotic Drug of 1961 ratified by

Again, trafficking and slavery have been condemned and sanctioned by the Cameroon Penal Code. Section 342 of Penal Code states

“Whoever engages even occasionally in the practice of trafficking in persons or slavery shall be punished with imprisonment for from ten to twenty years and with fine of CFAF Fifty thousand to CFAF one hundred to CFAF ten million where the offence is committed against a minor to fifteen years old and the perpetrator is a legitimate, natural or adopted ascendant at the victim, the offender has authority over the victims or is expected to participation by virtue of his duties in the light against slavery or in peace keeping. Subsection (d) includes sanctions where the trafficking is committed by an organized gang or an Association of criminals or committed via use of a weapon”

Furthermore, the Penal Code of Cameroon<sup>59</sup> in order to safeguard the living together within the context of our cultural diversities has sanctioned contempt of race/tribe and religion in section 241-1 (new) of the Penal Code. It states as follows:

“Whoever commits a contempt to tribe or ethnic group within the meaning of section 152 of this code<sup>60</sup>, by any means makes hate speech against people or incites them to violence due to their tribal or ethnic origin shall be punished with imprisonment from one to two years and with fine of FCFA three million francs”. Where the benefit of mitigating circumstances is given the punishment provided for in Subsection 1 above shall not be less than three months imprisonment and the fine shall not be less than two hundred thousand francs. Execution shall not be suspended except in case of diminished responsibility of infancy.<sup>61</sup>

The law has extended sanction against hate speech in public servant in order to keep the work place safe from such provocation than can affect productivity. Subsection 3 provides that where the hate speech is committed by a Public Servant within the meaning of section 131 of the Penal Code, the punishment provided for in Subsection 1 above, shall be doubled and the benefit of mitigating circumstances shall not be given. The same sanction applies to a Political Party, Media house, or a Non-Governmental Organisation or a religious institution.

From the forgoing, it is both morally and legally wrong to hate someone, express hatred by vocal abuse which the anomie school of criminology condemns. It is morally wrong to have sexual intercourse with animals (bestiality) which the Penal Code punishes under section 268-1 with an imprisonment of from three to five years. It follows that whoever, by force or moral ascendancy, compels any person to have sexual intercourse on an animal shall be punished with imprisonment for from five to ten years. All these explain moral decadence in our society which the law has come in to prosecute and which is in tandem with the anomie school of thought.

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Cameroon on the 15<sup>h</sup> of January, 1962 as amended by the 1972 Protocol, the Convention on Psychotropic Substances of 1971 ratified by Cameroon on the 5<sup>th</sup> of June 1981 as well as the 1988 UN Drug Trafficking Convention.

<sup>59</sup> Law No. 2019/020 of 24<sup>th</sup> of December, 2019 to amend and supplement some provisions of law No.2016/7<sup>th</sup> of July, 2016 relating to the Penal Code.

<sup>60</sup> Contempt shall mean any defamation, abuse or threat conveyed by gesture, word or cry utter in any place open to the public, or by any procedure intended to reach the public. The exception defined by section 306 shall be applicable to contempt. Prosecution shall be barred by the lapse of four months from commission of the offence or from the last step in preparation or prosecution.

<sup>61</sup> Section 241-1 (new) (2 and 3).

## **The Moral and Constitutional Limits of the Criminal Law**

“Liberty consists in the freedom to do everything which injures no one else; hence the existence of the natural rights of each man has no limits except those which assure to the other members of the enjoyment of the same rights. These limits can only be determined by law”<sup>62</sup>

Article V of the French Declaration of the Rights of Man and of Citizens 1789 adds that:

“Law can only prohibit such actions as are hurtful to society. Nothing may be prevented which is not forbidden by law, and no one may be forced to do anything not provided by law”<sup>63</sup>

Again Article 7 of the European Convention further ordains:

“No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or internal law at the time when it was committed. Nor shall a heavier penalty be imposed than was applicable at the time the criminal offence was committed. This study shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by civilized nations”

In Cameroon, the moral and constitutional limits of the criminal law are guaranteed by the 1996 constitution as amended, the Criminal Procedure Code, the Penal Code as well as the 2006 Law on Judicial Organisation as amended<sup>64</sup> The preamble to the Constitution provides as follows:

- (i) No person may be compelled to do what the law does not prescribe
- (ii) No person may be prosecuted, arrested or detained except in the cases and according to the manner determined by law
- (iii) Every accused person is presumed innocent until found guilty during a hearing conducted in strict compliance with the rights of defence.
- (iv) No person shall be harassed on grounds of his origin, religious, philosophical or political opinions or beliefs, subject to respect for public policy. Section 65 of the Constitution as a special provision makes the preamble part and parcel of the constitution.

The Criminal Procedure Code provides in its section 8(1) as follows:

“Any person suspected of having committed an offence shall be presumed innocent until his guilt has been legally established in the course of a trial where he shall be given all necessary guarantees for his defence.”

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<sup>62</sup> Article IV of the French Declaration of the Rights of Man and of Citizen 1789.

<sup>63</sup> This is in tandem with section 3 of the Cameroon Penal Code which limits the application in time of the criminal law both as to the past and as to the future. In the first place, criminal law as governing the future can apply only to acts committed after its entry into force, subject of course to any contrary provision of law, of which there are examples in section 3 and 4 of the law introducing this code. In the second placer, the law ceases to punish acts, even if committed while it was in force, if before judgment in respect of them it was repealed, expressly or by implication, or expired by reason of its force being limited to a particular duration. The word “tacit” in French text shows it does not refer in particular to the “desuetude” of a law.

<sup>64</sup> Law No. 2008/001 of 14<sup>th</sup> April, 2008, to amend and supplement some provisions of Law No. 96/06 of 18 January 1996 to amend the Constitution of 2<sup>nd</sup> June, 1972 of the Republic of Cameroon, Law No. 2005/007 of 27<sup>th</sup> April, 2005 on the Criminal Procedure Code and Law No. 2016/007 of 12<sup>th</sup> July, 2016, relating to the Penal Code as well as Law No. 2011/027 of 14<sup>th</sup> December, 2011 to amend and supplement some provisions of Law No. 2006/015 of 29<sup>th</sup> December, 2015 on the law on Judicial Organisation in Cameroon.

Sub section 2 adds that, the presumption of innocence shall apply to every suspect, defendant and accused. It is important to mention that the presumption of innocence as provided for in sections 8(1) and (2) should be read in conjunction with sections 222, 224, 225 and 246(J) of the Criminal Procedure Code in matters of both self and conditional bail in favour of the Suspect, defendant and accused.

The Penal Code on its part guarantees the protection of an individual when it states in section 17 as follows:

“No penalty or measure may be imposed unless provided by law, and except in respect of an offence lawfully defined” .Hence the courts have no power to create new offences.

Again section 3 of the Penal Code states the principle of no retrospection of law which is a sub principle of the principle of legality. The section states:

“No criminal law shall apply to acts or omissions committed before its coming into force or in respect of which judgment has not been delivered before its repeal or expiry”. This sub principle of legality tries to limit the application of criminal law both as to the past and as to the future. In the first place, acts committed in the past will not be governed by a law passed after their commission. Non-retrospection therefore means the non-application of law backward. That is, to acts committed in the past before the entering into force of the laws.

In the second place, even an existing law will not govern acts committed while it was in force if it is repealed or it expires before final judgment is pronounced by the courts over the acts. This second position of section 3 gives rise to different questions. Will the acts be excused or punished under the new law? If no new law is passed, what should the courts do?

### **Exception to the General Rule**

**Less severe laws.** A new criminal law will apply retrospectively if it prescribes a penalty less severe than the old. This exception is contained in section 4(1) of the Penal Code. According to section 4(2), if the new law prescribes a more severe penalty than that prescribed by the old law, the old law will continue to govern the act. It becomes clear that section 4(2) PC conflicts with the second position of section 3 which states that “ A repealed or an expired law will not govern act or omissions committed when there were in force but not yet punished before its repealed or expiring. It is submitted that for purposes of justice, section 4(2) has to take priority over section 3.

**New Preventive Measures.** A new preventive measure will always apply retrospectively. This is the tenor of section 5 which exempts preventive measures from the general rule under section 3. The reason for this is that preventive measures are not punitive in nature. They are meant to protect the society by pre-empting crime.

**The 2006 Law on Judicial Organisation as amended also guarantee the right to fair trial and bail in its various provisions.**<sup>65</sup> This was the object of the application for bail brought pursuant to section 25(3) (f) between *Kongso Antoinete Gohla vs The State Prosecutor*<sup>66</sup>the

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<sup>65</sup> Section 25(3) (f) provides that if silence on the part of the Examining Magistrate on the application for bail for five days provided for in paragraph (b) above, tantamount to rejection and in such a case , the defendant may carry his application before the inquiry Control Chambers of the Court of Appeal.

<sup>66</sup> Suit No. CASWR/15/1CC (2021).In this case, Counsel for applicant is praying the Honourable South West Court of Appeal to admit the applicant on bail pending preliminary investigations before the Examining Magistrate of the Military Tribunal in Buea. The applicant is a mother of two children, the second of which is the son of her ex-boyfriend a certain Separatist Fighter- General NO PITY involved in the ongoing armed conflict in the South

relevance of this case law explains the operation and the application by the court of the due process of law in Cameroon. That is why in our thesis, we find it relevant to reproduce an excerpt of the facts and the ruling of the above sheet anchor of authority/case law to buttress our argument on how the law on judicial organization in Cameroon, the Criminal Procedure code, the 1996 Constitution of Cameroon as well as other international instrument explain the link between crime and morality within our context.2.5.4 Constrains on the Substantive Criminal Law.

Glanville Williams<sup>67</sup> noted that an obvious moral basis could be found for criminalizing serious offences or harms like theft, fraud, rape, murder, assault, criminal damage, terrorism amongst others. However, a more complex moral analysis is required for ascertaining the fairness of criminalizing borderline wrongdoing such as exhibitionism, offensive speech or hate speech, fox haunting and so on<sup>68</sup>

Glanville Williams points out that it is not clear why the crime label has been applied to a range of innocuous activities such as passing begging<sup>69</sup>, fornication, homosexuality,<sup>70</sup>. The majority in some societies may not approve homosexuality, prostitution, marijuana, use of homelessness but majority mores do not tell us it is fair to criminalize such conduct. Why are those who engage in such activities deserving of criminal censure? At the other ends of the scale, children as young as 10 have been allowed to have harmful unnecessary cosmetic surgery such as labiaplasty<sup>71</sup> and breast augmentations. These unnecessary and harmful procedures have been medicalised while other innocuous conduct has been criminalized.<sup>72</sup>

The above examples buttress the fact that there exist some demarcation between crime and morality which in most cases limits the operation of the criminal law to cover

### **The Consideration of the Classical School regarding Sentencing in Cameroon Prison/Correction**

The theory of retribution and utilitarianism propagated by the Classical School of thought could best explain the court's consideration of sentencing. The tribunal or courts will accept the bad side of retributive theory/justice in order to assert the general principle which holds the punishment meted out against the offenders should be commensurate with their guilt and harmfulness of what they committed.<sup>73</sup> Imprisonment, fine, the necessity to abolish death penalty, community service, reparatory sentence as well as the National Disarmament, demobilization and reintegration committee are some of the spotlights that were articulated by the Classical School of Criminology and articulated in our justice system.

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West and North West Region of Cameroon against the State of Cameroon and she is charged under the 2014 Law on Terrorism in Cameroon for failing to report terrorism.

<sup>67</sup>Glanville Williams, *Textbook of Criminal Law* (4th edn, Sweet & Maxwell 2015) 81.

<sup>68</sup> Hunting Act 2004 UK.

<sup>69</sup> Section 3 of the Vagrancy Act 1824 and section 245 and 246 of the Cameroon Penal Code punishes begging and aggravated begging.

<sup>70</sup>*Lawrence V. Texas* (2003) 539 US.

<sup>71</sup>A surgical procedure done to reshape the labia minora-the inner lips of the vulva.

<sup>72</sup>Such as walking naked in the outdoors as in *Gough V DPP* (2013) 177 J.P 669.

<sup>73</sup> Glanville Williams, *Textbook of Criminal Law* (4<sup>th</sup> edn, Sweet & Maxwell, 2015) Pg 442.



## **Imprisonment**

Section 24 of the Cameroon Penal Code defines imprisonment as loss of liberty during which the offender shall be obliged to work, subject to any contrary order of the court for reasons to be recorded in the judgment.

The Black's Law Dictionary<sup>74</sup> defines a prison as a public building or other place for the confinement or safe custody of persons, whether as punishment imposed by law or otherwise in the course of the administration of justice. Put it differently, a prison could be defined as an institution meant for the confinement of persons who have been remanded in custody either by a Legal or Judicial authority<sup>75</sup> who have been deprived of their liberty by virtue of a conviction for a crime and subsequent sentencing into prison by a court of competent jurisdiction after full hearing or judgment in default. An accused found guilty of a felony or misdemeanor may be required to serve a prison sentence in the absence of a suspended sentence.

The aspect of an accused held in custody awaiting trial perhaps remains an essential function of contemporary prisons and in most countries, such accused persons constitute the bulk of the prison population. In India for example, more than two-third of persons in custody are pre-trial detainees while in over one –fifth of the prison populace in the United Kingdom is those unconvicted or unsentenced.<sup>76</sup>

## **Fine**

According to section 25-1 of the Penal Code, a fine shall mean a financial penalty by virtue of which a convict natural person or corporate body pays an amount of money specified by law, into the public treasury.

The provision of sub section 2 provides that the maximum amount of fine applicable to corporate bodies shall be five times that provided for natural persons. Where a corporate body is guilty of an offence punishable with imprisonment only, the fine to be paid shall be from CFAF one million to CFAF five hundred million. This is because moral person are a legal entity and cannot serve prison sentence and so the offences committed by moral person will be commuted by the judge to a fine.

Elsewhere, the Criminal Procedure Code in its PART XVI makes provision for court fees in criminal matters.

In consonance with section 774 of the CPC, a special instrument shall fix court fees in respect of felonies, misdemeanor and simple offence by specifying the amount to be paid, the condition of payment and recovery. The cost borne out by the Legal Department for commencing and carrying out criminal prosecution including preliminary inquiries as well as the execution of judgment shall be defrayed by the Public Treasury. The code has also provided that the cost of the proceedings shall be borne by the losing party save in cases where the court in its reasoned ruling decides otherwise.<sup>77</sup> It must be emphasized here that cost is at the discretion of the court

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<sup>74</sup> 4<sup>th</sup> Edition, 1968 at page 1358.

<sup>75</sup> The State Counsel or Magistrate of the bench.

<sup>76</sup> Britannica Prison- Community Supervision and Electronic Monitoring  
via <<<https://www.britannica.com/topic/prison/Other-penalties>>> accessed on the 2<sup>nd</sup> of October, 2022.

<sup>77</sup> Section 75 of the CPC.

and some of the cost are statutory namely cost of executing the courts proceedings during Preliminary inquiry, service on the parties including witnesses amongst other.

Again, section 556-572 CPC contains additional provisions with regard to payment of fine that has to be deposited at the registry that delivered the judgment as well as imprisonment in default of payment which serves as a means of forceful execution by bodily restraint. It consists of serving an imprisonment term in default during which the convict is obliged to work manual labour. Upon paying the required amount, the imprisonment term is cancelled and the surety who enters recognizance leads to the convict's release.

Again, section 563 CPC ordains for the period of remand in custody to be deducted from the period of imprisonment in default, where the accused has been sentenced to a fine only. The deduction is made by the court at the time the imprisonment warrant is signed.

On its part, section 53 (2) CPC instructs the court relieve wholly or partially a convict who was remanded in custody who is subsequently sentenced with fine

### **The Necessity to Abolish Death Penalty**

Prior to the 18<sup>th</sup> century, the primary function of prisons were the confinement of potential debtors who had gone bankrupt, those accused of offences and in custody awaiting trial as well as convicts awaiting the imposition of their sentences usually death or deportation overseas. It follows that imprisonment sentence were hardly imposed but for minor offences.<sup>78</sup>

Following the decline of capital punishment in the 18<sup>th</sup> century, the courts found the prison as a place for punishing serious offenders by sending them to prison. Hence, the use of prison cut across the globe and was a translocation of colonial practice to countries with no indigenous practice of prisons and so by early 21<sup>st</sup> century, death penalty had been abolished by a majority of countries across the globe either in law or practice and was substituted by imprisonment considered the most severe form of sanctioning what their courts could impose.<sup>79</sup>

### **Community Service**

This falls within the bracket of alternative penalties which are delivered instead of the traditional principal penalties of imprisonment or fine. The law recognizes two types of alternative penalties to wit community service and reparation sentence. The aim of the draftsman here is to fight against over crowdedness in our prisons facilities. It follows that offences that carry an imprisonment term of less than two years may not be substituted by community service as the law only allows for imprisonment term of up to two years. In the same vein, offences punishable with an imprisonment of more than two years may not be replaced with reparatory sentence.<sup>80</sup>

However, certain categories of offences have been excluded from alternative sentences like crime against the law of arms, bodily injury offences as well as sexual offences.

Community service is thus carried out without remuneration and for the profit of either a public corporation or a private corporation incharge of a public service mission or an association. For

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<sup>78</sup> *Ibid.*

<sup>79</sup> *Ibid.*

<sup>80</sup> Ferdinand Doh Galabe, The Sentencing System under Cameroon Criminal Law obtainable via <<[<https://daysspringglaw.com/the-sentencing-system-under-Cameroon-criminal-law>>](https://daysspringglaw.com/the-sentencing-system-under-Cameroon-criminal-law)>>

this to occur, the convict must give his prior consent to his fine or imprisonment sentence being replaced with community service.<sup>81</sup>

Community service sentence is contained in the court's judgment which ranges from two hundred to two hundred and forty hours. Technically and Judging from the above, such period of service amounts to two months imprisonment. It follows that the community service could be viewed as an alternative judgment in the sense that it gives an alternative unsuspended prison sentence to be served in default of performance of community service.<sup>82</sup>

### **Reparatory Sentence**

The purpose of the reparatory sentence is offer an opportunity for the offender to assuage the victim of the offence by making amends applied to some categories of offences not considered too serious. Under this situation, the court orders the convict to indemnify the victim of the offence which must be in a pecuniary or monetary form to the victim following his loss and for a prescribed period that must be specified in the judgment. Like community service, this is another alternate judgment that states an alternative unsuspended prison sentence to be served in default of performance of reparatory sentence.<sup>83</sup>

### **The National Disarmament, Demobilization and Reintegration Committee**

Created by a Presidential Decree No2018/719 of 30<sup>th</sup> November, 2018 to establish the National Disarmament, Demobilization and Reintegration Committee, the aim of establishing this committee is to provide a framework for receiving and reintegration repentant ex-fighters of Boko Haram and members of armed groups in the North West and South West Regions willing to respond to the Head of State's peace offer made in his inaugural address on 6<sup>th</sup> of November, 2018, by laying down their weapons. The crisis in the restive regions of South West and North West triggered the creation of this committee aimed at bringing lasting solutions and normalcy.

Under the authority of the Prime Minister Head of Government, and headed by a Coordinator appointed by decree of the President of the Republic, the Committee has regional centers in Bamenda, Buea and Mora in which disarmament , demobilization and preparation for reintegration will be carried out.

Coming on the heels of the commissioning of the Emergency Humanitarian Assistance Plan and the establishment of the centre for the Coordination of Humanitarian Assistance in the North –West and South West Regions, the setting up of this Committee is in keeping with the Head of State's continued readiness to seek peaceful solutions to crises affecting our country. Religious, Traditional Authorities as well as people of goodwill have been urged to sensitize armed groups and for them to drop their arms.<sup>84</sup> The above clarion call from the Head of State has been followed by churches, political groups Non Governmental Organisation and the traditional authorities like the recent press release from the President of the North West House of Chiefs<sup>85</sup>

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<sup>81</sup>*ibid.*

<sup>83</sup>*ibid.*

<sup>84</sup> Press Release dated the 30<sup>th</sup> of November, 2018 by the Minister of State, Secretary General of the Presidency of the Republic- Ferdinand Ngoh Ngoh.

<sup>85</sup> Press release dated the 17<sup>th</sup> of July 2023 where the President of the House of Fons in the North West Region, following the tragic incident that occurred in Bamenda on Sunday the 16<sup>th</sup> of July, 2023 where dozens were massacred, in his capacity as President of the Fons of the North West region, urged separatists carrying

## The Role of the Lawyers in Criminal Proceedings

A Lawyer is an “officer of the court”. The implication here is that, while the Lawyer has as principal duty to represent the interest of his client(s),<sup>86</sup> an underlying duty binds the Lawyer with the legal system itself. These duties include inter alia; deference to the magistrates/ Judges as well as the rules of court etiquette as well as allegiance to conventional jurisprudence.<sup>87</sup>

In Cameroon, section 15<sup>88</sup> of Law No. 90/059 of 19<sup>th</sup> December to organise practice at the Bar provides a solid foundation upon which the entire edifice of legal practice rests. It states:

“I swear as an Advocate to perform my duties as counsel for the defence or as a Legal Adviser in total independence and with dignity, conscientiousness, probity and humanness. In accordance with the Ethics of my profession and with due respect to the Courts and Tribunals and to the laws of the Republic” Everything that an Advocate does revolves around his oath of office as provided for by section 15 of the Organic Law.

### Criminal Responsibility (Elements of a Crime)

Criminal responsibility rest on two pegs: The physical and mental elements. These two elements must coincide for criminal responsibility to exist. This assertion was corroborated by Justice Mbeng in the matter of *People of Cameroon v Forka James Nda*<sup>89</sup> who upheld the view of the Lower Court that crimes carry a twofold classification while stressing that in all criminal trial it is mandatory to establish the material or mental element of the offence. The mental element is referred to as the *Mens rea* or material element of an offence. The *Actus reus* is usually translated to mean wrongful act and *Mens rea* to mean guilty mind. These translations are not very perfect in that the physical element of a crime may also consist of an omission.

Furthermore, acts or omissions are usually accompanied by state of affairs or surrounding circumstances which also constitute part of the *Actus reus*. This could be deduced from section 3 of the Penal Code and such are classified as the physical elements or external conduct of the offence which must prima facie be established by cogent evidence in a criminal prosecution.<sup>90</sup> It follows that in order to discover the physical element of an offence it is the responsibility of the Lawyer for the accused to carefully analysis the legal provision sanctioning the offence. This would mean paying particular attention to the wording of each provision creating and defining that offence as it varies from one offence to another.<sup>91</sup> In the same light, the *mens rea* of an offence might be proved even though the offender does not feel guilty of what he has done. Hence the latin maxim that *Actus non Facit Reum, Nisi mens sit Rea* must be understood within the forgoing as was in the case of *Younghus Band v Luftig*<sup>92</sup> in which this latin expression

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arms to heed to the Head of State’s call to drop their arms and integrate into the disarmament and reintegration (DDR0 centers, where they can receive support to reintegrate into the society.

<sup>86</sup> If it is in a trial court, the Lawyer must ensure that all the procedures and necessary guarantees are respected.

<sup>87</sup> <<<https://www.Assignmentpoint.com>>> accessed on the 5<sup>th</sup> of September, 2022.

<sup>88</sup> Oath of office of an advocate.

<sup>89</sup> Suit No. CASWP/33C/2008.

<sup>90</sup> Michael A. Yanuo, *CRIMINAL LAW AND PROCEDURE IN CAMEROON* (Excel Publishers, 2014) 74-82.

<sup>91</sup> For instance the offence of murder contrary to and punishable under section 275 of the Penal Code simply states “whosoever causes another’s death shall be punished for imprisonment for life”. It follows that the act of causing death is the physical element of murder. These may include acts like attacks with or without the use of weapons.

<sup>92</sup>(1942) 2 KB 354.

was explained to mean that an act does not make a man legally guilty unless the mind is legally blameworthy.

### **Conclusion**

This article has edified us on how criminal trial should be conducted. It has outlined the various actors and the qualities to guarantee fair trial from investigation at the Legal Department, the various units- Police, Gendarmerie, the Examining Magistrates, the Courts, the role of Advocates in defending his client(s) as well as the prison which is the end of justice. Given that this article deals with the incorporation of criminological theories into the Cameroonian criminal justice system, it has answered some worries as to the importance of criminological theories that attempt to explain what may be often considered inexplicable as well as to examine what could be considered the oppression or cruelty. The theories of Classical School, Positive School Anomie School of thought have been examined in relation to offences like suicide, corruption, misappropriation of public fund or property, abortion, adultery amongst others which are crimes that have a moral bearing. The Penal Code, Criminal Procedure Code, the 2006 Law on Judicial Organization and other pieces of legislation have been consulted and could be cited as the basic judicial tools that have been used to incorporate the above criminological theories in the Cameroon criminal Justice system.



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