

The Legal Status of Armed Separatists in Cameroon: Terrorists or Secessionists

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Abstract

International Humanitarian Law (IHL) states that armed separatists are parties to the conflict. Hence, IHL applies to both armed separatists and government forces with equal force. Ambiguity comes in at the level of Cameroonian law, where armed separatists have been arrested and charged with the offences of terrorism and secession without consideration that there are parties to the conflict. The aim of this paper is to determine the status of armed separatist in NW and SW regions of Cameroon for the proper applicability of the law. This paper shall also examine whether the right to self-determination nullifies the offences of secession and terrorism within the context of the conflict in Cameroon. In order to attain the above objectives, doctrinal and analytical methodology has been adopted. The paper concludes that terrorism and secession are distinct offences under Cameroonian Law and the right to self-determination appears to be too abstract to shield these offences. To this end, it is recommended that they should be a clear line between secession, terrorism and self-determination. Equally, the law should clearly define the procedure for self-determination.

Keywords: Legal, Status, Armed Separatists, Terrorist, Secessionists.

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INTRODUCTION

Cameroon is made up of ten (10) regions of which two (the North West and South west) are dominantly English speaking and eight regions French Speaking. Since 2016, Cameroon has been involved in a socio-political crisis in the two English speaking regions. Protests and strikes that led to riots in these two regions related to sectorial demands by lawyers and teachers which escalated into an armed conflict over economic and political marginalization of the Anglophone regions which constitute a minority population [¹]. The movement grew to the point where the government's repressive approach was no longer sufficient to calm the situation forcing government to get into some concessions with the major trade Unions involved in the crisis. The demands later shifted to a political crises demanding for a review of the form of the State which was never a welcomed ideology by the Government of

Cameroon. In November 2017, starting at a low-scale the socio-political crisis turned into an armed conflict with major humanitarian impact. Operation "Ghost towns" were imposed, closing down businesses, schools, and non-circulation of vehicles. This armed conflict involves the regular army (government forces) and the armed separatists referred to as the "Amba Boys" who are seeking to establish a separate State known as the "Federal Republic of Ambazonia", [²], claiming the right to self-determination. This raises the question whether Southern Cameroon as a people is still entitled to assert its inalienable right to self-determination. The government of Cameroon showed intransigence on the issued and tag them "terrorist and secessionists" with an agenda to destabilise the state saying that Cameroon is one and indivisible. The government then launched an extensive military crackdown with the hope to crush the uprising. This measure instead triggered the population into greater radicalism and by a 2017 NW and SW

¹Agence France Presse, "Kidnappings in Cameroon multiply as English-speaking separatists are emboldened", South China Morning Post (22 May 2018), online:
<<https://www.scmp.com/news/world/africa/article/2147>

250/kidnappings-cameroon-multiply-english-speakingseparatists-are>. Last Consulted 15 May 2023.
² According to a report of the month of March 2021 by the international Crisis Group, the armed conflict has killed about 4.000 people and displaced 765,000 of whom 60,000 are refugees in Nigeria.

regions witnessed serious fighting between armed separatists and regular government forces. Many conflicts in Africa are based on grievances and claims for self-determination. These claims are to be considered if Africa seeks to avoid the multitude of internal armed conflict. Therefore it is logical that the commitment to avert conflicts in Africa be taken seriously by looking at the grievances advanced by people seeking secession [3]. This brings us to the question whether what is taking place in these regions is an armed conflict or mere disturbances and tensions

The Nature of the Conflict: Internal Disturbances or Internal Armed Conflict

The concept of internal disturbances designates a situation of instability that does not pertain to armed conflict. This concept has never been defined at law but Additional Protocol II to the Geneva Conventions 1977 explicitly refers to it [4]. Internal disturbances are a situation of confrontations whose intensity has not attained the level of armed conflict but involve acts of violence within the country. A clear example of internal disturbances in Cameroon is the 1990 political unrest where they were clashes between the police and population clamouring for multipartism.

Internal armed conflicts, on the other hand refers to situations which involve an armed confrontation between a state government's military forces and a dissident or other organised armed group or two of such organised armed groups fighting each other [5]. As opposed to international armed conflicts which are inter-state confrontation, non-international armed conflicts are intra-state conflicts otherwise known as civil wars. Common Article III to the Geneva Convention does not define what non-international armed conflicts are but Additional Protocol II to the Geneva Conventions provides a definition. According to this Protocol:

Non-international armed conflicts are conflicts which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organised armed groups which, under responsible command, exercise control over a part of its territory as to enable them to carry out sustained and concerted military operations.

It should be noted that Article 8 (2) (b) (f) of the Rome Statute takes it further stating that such armed conflicts involve a protracted armed confrontation between governmental authorities and organised armed groups or between such groups [6]. There are certain

considerations for classification of an internal armed conflict which are a minimum level of intensity and a minimum level of organization of groups. Indicative intensity factors would be; number, duration and severity of individual clashes, number of people and type of forces involved (police, armed forces); means used, that is types of weapons and extend of damage caused; effect of the violence on civilian population (displacements) etc. There are other criteria for organization of parties to the conflict. Government armed forces are always assumed to meet the minimum standard of organization required. For armed groups indicative factors are hierarchical structure and chain of command, ability to plan and launched coordinated operations, ability to recruit, and train new fighters, territorial control, leaders having ability to control the members of armed groups etc.

A clear observation of the conflict in the NW and SW regions since 2017 reveals that all the above considerations have been met. It is apparent that the hostilities in the NW and SW regions of Cameroon have met the Protocol's threshold for some time. The armed militias in the NW and SW regions-like the “*Red Dragons of Lebialem, the Seven Kata of Bufut, The Ambazonian Defence Forces of Batibo, the Nso Warriors of Bui, the Marine Forces of Banbalang, the Buffalo Soldiers of Bali Nyonga* [7], ”etc have controlled and exercised considerable influence over the civilian population in the two regions. This is evident from the “*operation ghost town policy*” strictly respected by civilian's population in the two regions imposed by the above named armed groups, displacement of the population, extensive damage to property, some villages completely burnt down. These armed groups have control over some of these areas that have enabled them to engage in sustained military operations that they have undertaken in a systematic, coordinated manner for over five years (2016-2023). They have a central command structure, “*the Ambazonia Interim Government*”. It should be noted that full-fledged field battles are not necessary to make Protocol II applicable [8]. From these analyses, we can say that the armed conflict in the NW and SW regions of Cameroon is an internal armed conflict.

Some authors hold the view that unless a situation of conflict is classified by the ICC as an internal

³ Carol Chi N. Self-determination and the Southern Cameroon quest for sovereign statehood, Edinburgh University Press, 2021.

⁴ See Article 1(2).

⁵ Christopher Greenwood in Fleck Dieter, *the Hand Book of Humanitarian Law in Armed Conflicts*, Oxford University Press, USA. PP, 27-28.

⁶ Ibid.

⁷ BBC News, and the intensification of the armed conflict in the NW and SW regions of Cameroon 2018.

⁸ Robert Kogod Goldman, “International Humanitarian Law and the Armed Conflicts in El Salvador and Nicaragua”, *American University International Law Review*, Volume 2, No. 2, 1987, pp. 539 -579.

conflict, it would not be so considered [9]. And this seems to be the reason why the conflict in the NW and SW regions, though has meet all the criteria for internal armed conflict has not yet been so classified. Incorrect classification may affect IHL scope of application and negatively affect fair trial rights under international law. Thus, the claim for self-determination which is recognized by international law [10], has not been considered seriously by the international community. This is a serious drawback of the application of IHL. However, this brings us to the question whether the claim to self-determination as a right by armed separatist can be exercised without committing the offence of secession or terrorism under Cameroonian law.

The Concept of Self Determination

The end of the Cold War brought about new secessionists aspirations and the strengthening and re-awakening of existing or dormant separatists' claims everywhere in the world, as such the creation of new states through the separation of part of the territory and population of an existing state raising serious difficulties as to the role of international legal order [11]. This is so given that the right to self-determination is an essential component of international law, which is reflected in both treaty law and International Customary Law. Although primarily exercised during the decolonization epoch through the creation of new independent states, this right still remain applicable even till date. Normally, a right to self-determination is realised through so-called "internal self-determination" (a people's pursuit of its political, economic, social and economic development within the framework of an existing state) [12]. Such exercise of the right is compatible with territorial integrity of the state.

However, a right to an "external self-determination" arises only in exceptional situations. It is common consensus that the right to external self-determination can be exercised by a colonised or occupied people. There is no consensus whether there is a right to external self-determination outside situations of colonized or foreign occupation [13]. If they would be a right to external self-determination by other people, this would mean a unilateral separation from an incumbent state and therefore shattering the territory of the mother state in question. However, the question that still lingers is, would that state-which is an author of international law allow such dismemberment in certain cases?

⁹ Marcelo, G. Kohen, *Secession: International Law Perspectives*, Cambridge University Press, New York, 2006, p. 3.

¹⁰ See Article 55 of the UN Charter of 1945.

¹¹ Marcelo, G. Kohen, *Secession: International Law Perspectives*, Cambridge University Press, New York, 2006, p. 3.

The Right to Self-Determination of Peoples

Self-determination right is first anchored on the UN Charter of 1945. In the Charter, self-determination is mentioned twice: in article 1(2) and article 55, which stipulates that the main purpose of the UN is to maintain friendly relations, respecting the principles of equality and self-determination of people. Though self-determination was not defined as a legal principle, the subsequent resolutions adopted by the UN General Assembly provided clarifications, defining the principle of self-determination as a right of colonised entities. The UN General Assembly adopted resolution 1514 in 1960 on the granting of independence to Colonial Countries and Peoples and Resolution 1541 [14], which stipulated that all peoples are subject of self-determination and they have the right to self-determination, which denial is contrary to the charter. Furthermore, with the adoption of the ICCPR and ICESCR of 1966, this right was further adumbrated. As article 1(1) and 1 (3) of these texts recognized the right to self-determination.

Subjects of the Right of Self Determination

It is necessary to identify the subject of a right. Where there is a right there is a holder of that right. But determining the holder of the right to self-determination is as controversial as determining the content of it. UNGA Resolutions 1514 and 1541 as cited above refer only to territorial units. So one is tempted to ask the question, whether people can be equated to territories. McCorquodale argues that "territorial approach" to self-determination shows a "reckless indifference" to the concept of peoples and should be rejected. Crawford thinks that « the question of ambit of self-determination to the territory, to which it applies, has arguably remain a question of politics of law". However, it is clear that the right to self-determination belongs to a people as the various legal texts expressly refer to people as the subject of the right. Though international law has not defined which group constitute a people, it is generally agreed that the term "people" is a question of fact than a question of law. But the determination of this fact is so important for the application of the law. Therefore only a people can be a subject of self-determination. This brings to mind the necessity to distinguish the various armed separatist, terrorist and secessionist within the context of conflict in the NW and SW regions of Cameroon.

Armed Separatist, Terrorist and Secessionist distinguished

An armed group is the armed wing of a non-state party to an internal armed conflict and may be

¹² See the Secessionist Case of Quebec, Security Council Resolution 217, para 126 (Supreme Court of Canada 1998)

¹³ Ieva Vezbergaite, *Remedial Secession as an Exercise of the Right to Self-Determination of Peoples*, Master's Thesis, Central European University, Department of Legal Studies, Budapest, Hungary 2011, p. 1.

¹⁴ UN Res.1514 on Friendly Relations of States.

comprise of: either a) dissident armed forces (breakaway parts of State armed forces); or b) other organized armed groups which recruit their members primarily from the civilian population, but have developed a sufficient military organization to conduct hostilities on behalf of the party to the conflict [15]. In Cameroon these armed groups operating in the NW and SW regions of Cameroon have been tagged "Armed Separatist" by the Government because they are fighting for separation of NW and SW regions from the rest of Cameroon.

There is no generally acceptable definition of the term terrorist but Chukwuma notes that a terrorist is one whose impressions are often viewed from different perspectives by different people. Those considered terrorist by one group of people or government may be regarded as heroes or freedom fighters by some other people. The government of a state may label as terrorism all violence acts committed by their political opponents or anti-government extremist and as such, such persons may be termed terrorist. Thus, the term terrorist may depend on one's political standpoint [16].

Secessionists on the other hand are people who want their region or group to become separate from the country or larger group to which it belongs [17]. In order to ascertain the status of armed separatist in the light of the on-going armed conflict in the NW and SW regions of Cameroon, it would be necessary to examine the applicable laws.

The Applicable Legal Instruments

International legal law makes provision for the right to self-determination as an enforceable entitlement envisaged to be achieved either within the context where a people may seek to be detached from a state external self-determination or to achieve greater autonomy within an existing state i.e. internal self-determination [18]. By virtue of UN Resolution 1514, self-determination is a human right. By virtue of this right, all people are entitled to determine their political status and to freely pursue their economic, social and cultural development [19]. But in Cameroon the claim for this right seems to be criminal as by virtue of some Cameroon legal texts.

The Cameroon Penal Code of 2016 [20]

The Cameroon Penal Code enumerates certain offences that infringe the security of the state. The

activities of armed separatists may constitute certain of those offences.

- **Section 102:** Hostility against the fatherland. Any citizen taking part or assisting in hostility against the fatherland shall be guilty of treason and punished with death.

Internal Security

- **Section 111:** punishes with death whoever in time of war or emergency infringes on the territorial integrity of the state and to life imprisonment in ordinary times.
- **Section 112:** punishes with death whoever provokes a civil war by arming the people or by inciting them to take up arms against each other.
- **Section 114:** punishes with imprisonment for life any citizen who attempts a revolution against the constitution or political authorities or to render them incapable of exercising their powers.

What runs through these provisions is the notion of security of the nation- a conducive environment for normal functioning of public service.

Most of the persons arrested in connection with the armed conflict in the NW and SW regions of Cameroon have been investigated and charged with secession under section 111 of the Penal Code. Insurrection under section 116, Hostilities against the fatherland under section 102.

This is evidence by the case of *The People v. Anyingang Johnson W* [21], wherein the accused was arrested in Muyuka, investigated by the Gendarmarie Brigade of Muyuka, and charged before the Military Court on a four counts charge as follows; Count one: hostilities against the fatherland under S. 102(1) PC, Count two: secession under S.111 (1) PC, Count three: Insurrection under S.116 (a) PC, Count four: Terrorism under S. 2(1-b) of law No. 2014/028/2014 and later on was sentenced to serve ten years imprisonment. It should be noted that some of the offences in the Penal Code are also war crime offences like Torture under section 273, sexual crimes like Rape under section 296, Murder under Section 275 of the Penal.

¹⁵ See Armed Groups/ how does it work at casebook.icrc.org glossary ame, consulted at 9/01/2023.

¹⁶ Chukwuma O. *Combating Terrorism A case study of Nigeria Against Boko Haram Terrorist Groups*, Masters Thesis, Faculty of the U.S Army Command and General Staff College, 2002, p. 14.

¹⁷ Collins Cobuid Advanced Learners Dictionary available at www.collinsdictionary.com. 9/01/2023.

¹⁸ Carol Chi N. *Self-determination and the Southern Cameroon quest for sovereign statehood*, Edinburgh University Press, 2021. P 6.

¹⁹ Ibid.

²⁰ Law No 65-LT-24 of 12th November to institute the Penal code of Cameroon as amended and supplemented by Law No.2016/007 of 12th July 2016 on the Penal code
²¹*The People v. Anyingang Johnson W, (2019) Suit No. 199/RP/2018 of the Military Tribunal Buea.(Unreported)*

The 2014 Law on Terrorism [22]

Before the coming in place of this law Ordinance No.62/OF/18 of 12th March 1962 as amended by Ordinance No.63/30 of 25th October 1972 concerning the repression of subversive activities in Cameroon, was the only legislation regulating terrorist acts in Cameroon.

Offences under this law were tried initially before the Military Courts in, the then East Cameroon and in West Cameroon, by non-Military Courts. This law attracted lots of criticism especially as it did not provide an interpretation section to define the meaning of words in context. The phrase “subversive activities “in the law lacked a precise definition and was aptly described by A.N.T MBU, as “*a term of wide import*”. In the matter of, *Adamu Mba vs. Paul Neakoh and 5 others* [23], EKOH TARHJ. Said, “*Subversive Activities in our society is less understood by the many who use it. It is interpreted often to suit the purpose of the user or the receiver and so no standard definition can be attached to it*” [24].

These ambiguities are serious draw backs to the implementation of the law for any Judge gives his/her interpretation to meet or address the situation as he deems fit.

In 1997, there were terrorist attacks in the North West’s localities of Oku, Jakiri and Bali, leaving behind human and material casualties. In Oku, guns were reportedly taken away from the Brigade of the National Gendarmerie and one person lost his life at Ngwakan TV transmitters’ station. According to the Global Terrorism Database (GTD) University of Maryland about 28 major terrorist attacks took place in Cameroon between 1970 and 2011. The attack of 12 November 2007 where gun men in speed boats attacked a Cameroonian Military post in Bakassi killing 21 soldiers is amongst the many that took place that period [25].

It is further reported that between 2011 and November 2013, thirteen (13) terrorist attacks took place on Cameroonian soil. The bloodiest one took place on the 16th November 2013 at the border of Cameroon- Central Africa Republic at Gbit, leaving seven (7) people dead. Of the 13, attacks 8 were attributed to Boko Haram [26]. This sect intensified its attacks on Cameroon compelling the country to table a bill in Parliament to criminalize this act; which became law on 23/12/14 as Law No. 2014/028 of 23rd December 2014 on the Suppression of Acts of Terrorism. However, this law is

defective in that it does not define “terrorism” but enumerates terrorist acts [27].

The Code of Military Justice of Law No. 2017 Of 12 July 2017 Amending Law No. 2008/ 015 Of 29 December 2008 to Organize the Military Justice in Cameroon

This law lays down the organization of military justice, rules and procedure before the military tribunals [28]. The Military Tribunal is a court of special competence, set up at the headquarters of each region. Its legal department is charged with investigation and prosecution of military offences and war crimes, crimes against humanity and genocides, offences relating to terrorism and security of the state, offences of piracy and unlawful acts against the safety of maritime navigation and plate forms, offences committed by service men with or without civilian co-offenders or accomplices in the military establishment or in the exercise of their duties, offences against first, second and third category weapons, armed robbery, offences involving service men or persons considered as such committed at war times of in areas subjected to a state of emergence; offences committed in military establishment affecting military equipment or installations, or prejudicial to the physical integrity of a service man or disrupting normal service; offences relating to the purchase, importation, sale, production, distribution, wearing or keeping of military effects or insignia as defined by regulations in force [29].

It is worthy to note that unless provided by law, the procedure of investigation of these offences is that set out in the Criminal Procedure Code. A striking feature of this law is that it punishes war crimes and crimes against humanity and genocides which are common in areas of armed conflict. A serious lacuna left by the legislator is that these offences have not been defined in the context. Therefore what amounts to war crimes, crimes against humanity and genocides is not clearly defined within the Cameroon context. We may therefore, fall back to international conventions.

Conclusion and the Way Forward

It is clear that more often than not the people’s desire to self-determination has historically been accompanied by violence. It is also clear that the state in order to maintain its territorial integrity has to put in place penal laws that seek to secure its territory. Though the armed separatist in Cameroon may have a legitimate case under international law, it is an uphill task to claim the right without violating the penal code or other legal

²² Law No. 2014/028 of 23rd December 2014 on the Suppression of Acts of Terrorism in Cameroon

²³ *Adamu Mba vs. Paul Neakoh and 5 others*, Suit No.HCB/3/78 OF 16TH DAY OF JUNE 1979.(Unreported)

²⁴ A.N.T. Mbu (1986) *the Mill of Justice*, page 271.

²⁵ Martin Ewi (2013) *Terrorism and the threat radical Islam poses to Cameroon* ISS Pretoria.

²⁶ *Ibid.*

²⁷ See generally Section 2 of Law No.2014/028 of 23rd December 2014 on the Suppression of Acts of Terrorism.

²⁸ See Section 1 of the law.

²⁹ See generally Section 8 of the Military Code.

provisions that protect the integrity of the state. It is therefore clear that in Cameroon cannot be enjoyed without violating other criminal laws of the state. Therefore, there is the need for the real definition of penal laws that contradict the right to self-determination.

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