



CONSTITUTIONAL OPTIONS PROJECT

www.constitutionaloptionsproject.org

LEGISLATIVE ADVOCACY BRIEF TO CRIMINALIZE GRAVE CRIMES UNDER INTERNATIONAL LAW

Does Cameroon have the laws in place to prosecute the gravest crimes committed during armed conflict or violence, namely War Crimes, Crimes against Humanity, and Genocide?

Questions and Answers

03 December 2020

-
- 1. In the simplest terms, what is the meaning of War Crimes, Crimes Against Humanity, and Genocide? Why are they called gravest international crimes?**

War crimes refer to the most serious violations of the laws of war (otherwise known as *international humanitarian law*). The laws of war have been progressively developed by Nations over more than a century, in order to reduce the harmful effects of wars on the civilian population, and on persons not taking part in the fighting. They specify certain actions that are forbidden for those taking part in war; serious breaches of these rules constitute *war crimes*. *Crimes Against Humanity* refer to a number of forbidden actions, when they are committed as part of a widespread or systematic attack against a civilian population. These acts include murder, extermination, enslavement, deportation or forcible transfer of population, torture, persecution, rape, sexual slavery, enforced prostitution and similar crimes, as well as enforced disappearances of persons.

Genocide is probably the gravest of international crimes and refers to certain acts committed with intent to destroy, in whole or in part, a national, ethnic, racial, or religious group, as such. Together, these three crimes are considered as among the gravest crimes under international law. The severity of sanctions for these crimes is due to their often large-scale (not one or a few victims), and the untold suffering they inflict, since they are often (but not exclusively) committed during periods of armed violence or conflict. The first major criminal trials in the world for these

crimes began just after World War II, to mete out justice for the transgressions committed, including during the Holocaust.

- 2. Are actions such as committing shootings, attacks, and killings in schools, or directed against hospitals, or places of worship during an armed conflict, considered part of these gravest crimes?**

Yes. Most standard definitions of *war crimes* include in this category of offences, the act of intentionally directing attacks against buildings dedicated to *religion* (such as Churches, Mosques, and Temples), *education* (such as schools and Universities), *art* (such as Museums), science or charitable purposes, *historic monuments*, *hospitals*, and places where the sick or wounded are collected. The reason these actions are criminalized by the global community of Nations, is that the laws of war emphasize the *principle of distinction*. Under this principle, combatants (those fighting) must distinguish other combatants from the civilian population. The latter should never be the target of attacks. Similarly, it is also prohibited to attack *civilian objects*, meaning facilities which are being used by the civilian population, and not by the adversary, and which serve no military purpose.

- 3. Are War Crimes, Crimes Against Humanity, and Genocide punished under Cameroon's criminal laws (Penal Code, Military Justice Code)? What about the texts that govern discipline among the Security and Defence Forces?**

No, they are not punished under Cameroon's criminal laws. As a basic rule of criminal laws, when a given form of conduct is to be punished as a crime in Cameroon, the Legislator lays down a *definition* of the said offence (the specific actions, or elements that constitute the offence), and also the *specific penalties* or punishments. However, Cameroon's laws which could have contained the said definition and penalties for these 3 gravest international crimes, do not do so. These include: Law No. 2016/007 of 12 July 2016 relating to the *Penal Code*, which defines and punishes a total of 259 other offences in its Book II, Law No. 2017/012 of 12 July 2017 to lay down the *Code of Military Justice*, which defines and punishes a total of 35 other military offences (which may be committed by members of the defence and security forces) in its Part III, and Decree No. 2007/199 of 7 July 2007 laying down the *General Disciplinary Regulations of the Cameroon Defence Forces*.

- 4. Has Cameroon ratified the key international treaties that lay down the rules of the laws of war? Has it then created the means to ensure compliance with, and also prosecute serious violations of the said laws as crimes in Cameroon? Which courts will try these crimes?**

Cameroon has ratified the principal international treaties that spell out the laws of war and prohibit the worst forms of conduct during armed conflicts. These include non-exhaustively, the 1949 Geneva Conventions (ratified by Cameroon in 1963) as

well as the 1977 Additional Protocols to the Geneva Conventions (ratified by Cameroon in 1984). Cameroon has signed (1998) but has not ratified the Rome Statute of the International Criminal Court, so it is not a party to that treaty.

Cameroonian laws are not totally silent on, and by implication, recognize the existence of these gravest crimes under international law. In the above-mentioned 2007 Decree on the General Disciplinary Regulations of the Cameroon Defence Forces (*applicable only to the regular army and not to non-State armed groups*) under the heading “*Laws and Customs of War*”, Sections 30 to 35 contain an elaborate presentation of the obligations of the national defence forces, as to compliance with the laws of war (international humanitarian law); and in Section 35 of the Decree goes as far as to explicitly remind soldiers that grave violations of these rules could constitute one of the 3 grave international crimes, triable before national or international courts.

Cameroon has also signalled its intention to prosecute these crimes through the 2017 Military Justice Code, which provides that Military Tribunals shall have “exclusive jurisdiction” to hear and determine a number of crimes, which includes *war crimes, crimes against humanity, and genocide* – Section 8 (a) and 8(b), Military Justice Code. So, the Cameroonian Legislator has indicated *where* these crimes should be tried but has not defined them under national laws.

5. Is there an obligation on States to investigate or prosecute (as such) a war crime that may have been committed on their territory? For Cameroon, where does such an obligation come from?

Yes. States do have an obligation to investigate and prosecute war crimes, when they occur on their territory. Cameroon ratified the 1949 Geneva Conventions which lay the essential foundations of the law of armed conflict, in 1963. Under the Geneva Conventions, the signatory States undertake “*to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches*” of the said Convention. Signatory States shall also be “*under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons ... before its own courts*” (Article 146, Geneva Convention IV relative to the Protection of Civilian Persons in Times of War).

The said Convention defines “grave breaches” of the laws of war to include amongst others : wilful killing, torture or inhuman treatment, wilfully causing great suffering or serious injury to body and health, as well as taking of hostages, and extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly (Article 147, Geneva Convention IV). Therefore, when a State ratifies these treaties specifying the laws of war, it is required to ensure that its national laws criminalize these actions – this provides a basis for its justice system to investigate and prosecute these crimes. Even outside their treaty

obligations, it is now considered a [rule of customary international law](#), (meaning the rules of international law applicable to all countries) that States should investigate and prosecute these offences. Note that Cameroon has not ratified the 1948 Genocide Convention (which creates an obligation on States to prosecute the said offence), although reference to the offence in national texts such as the 2017 Military Justice Code, and the 2007 General Disciplinary Regulations for the Defence Forces suggest the State recognizes the existence of the offence.

6. Why can the State not just prosecute persons who commit these offences linked to armed violence and conflict with *ordinary criminal law offences* such as murder (section 275), grievous harm (section 277), assault (sections 278, 279), or assault on children (section 350) presently in the Penal Code?

It must be remembered that offences such as war crimes (e.g. the act of intentionally directing attacks at schools or hospitals during an armed conflict) are *specialised offences* which derive from the laws regulating armed conflict. They are thus different from *ordinary criminal* offences, such as murder, or grievous bodily harm. In law, faced with a choice between the ordinary and the specialised offence, the principle *lex specialis derogat legi generali* would apply. This principle states that if two laws could be applied to a given situation, the law governing a specific subject matter (*lex specialis*) overrides the law governing only general matters (*lex generalis*).

Although the basic facts of the two types of offences may appear the same (such as killing or maiming a person, destroying a building), it is the *context of their commission* that may make some acts a war crime (committed within an armed conflict) or crime against humanity (committed as part of a widespread or systematic attack against a civilian population).

These international crimes are generally considered more serious offences than ordinary criminal offences. For instance, they are not subject to the *Statute of Limitations*. This means that no matter how many years elapse, their perpetrator can still be prosecuted – whereas for ordinary offences, after the passage of the limitations period, their prosecution is time-barred. (Cameroon as far back as 1972, already ratified the 1968 International Convention on the *Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity*, under which Cameroon undertakes that the prosecution of these crimes shall never be time-barred).

Secondly, these international crimes cannot be *amnestied*. In many conflicts, those who have committed the gravest offences often seek, during peace processes, to have all investigations and potential charges against them dropped, through an amnesty. The current consensus under international law is that *no amnesty shall be granted or considered valid* for these 3 gravest international crimes. This is to put all on

notice, not to commit them. By contrast, ordinary law offences *can* in principle, be amnestied.

7. What about the offence of terrorism? Are persons who commit such acts (attacks against schools, hospitals, places of worship, or other grave violations of the laws of war) not terrorists, and should they not just be prosecuted under the December 2014 Anti-Terrorism law instead ?

Under Cameroon's laws, the *offence of terrorism* punishes anyone who commits or threatens an act capable of causing death, endangering physical integrity, causing bodily or material harm, or damage to natural resources, the environment or cultural heritage, *when such act is committed with the intention* : (i) to intimidate the population, provoke a situation of terror, or to compel the victim, the Government, or a national or international organisation, to act or abstain from a specific action, or to adopt or renounce a specific position, (ii) to disrupt the normal functioning of public services, the delivery of essential services, or to provoke a crisis situation among the population, or (iii) to provoke a general insurrection in the country.

However, while this offence may be used against insurgents who resort to certain acts in order to advance a specific (political) agenda, it does not cover the situation where elements of the State defence and security forces commit acts incriminated by the laws of war. And recent events, investigated and/or tried by the State, show that incidents in the latter category have occurred in the Far North and Northwest regions of the country. The 3 grave international crimes constitute the most appropriate expression *in criminal law* of certain offences committed during periods of armed conflict or crisis and should therefore be in the national criminal laws.

8. Do many countries have War Crimes, Crimes Against Humanity, and Genocide in their national Criminal or Penal Codes? Are there African countries that have these crimes in their laws? Where do countries get the definitions of these crimes from, and how are they introduced into criminal laws and procedure?

Yes. Many countries around the world have introduced these crimes into their national criminal laws. Countries use different bases to introduce these crimes into their national laws. Some use the internationally accepted definitions of these offences, such as those developed by bodies such as the International Criminal Tribunals (e.g. for Rwanda and the former Yugoslavia). Others introduce these crimes into their national laws after ratifying the Rome Statute of the ICC, in order to make the treaty applicable nationally. Cameroon is not a member State of the ICC (has not ratified the treaty), however, *it is not only ICC member States that have these crimes in their national laws.*

Generally, countries introduce *not only* the definition of the offences and their penalties, but also certain *well-established principles of international criminal law* that apply to these offences, into their own national laws. These include excluding statutes of limitations for these offences, establishing the principle of command responsibility (commanders' responsibility for actions of their subordinates in certain circumstances), and excluding defences such as obeying superiors' orders.

Furthermore, these gravest international crimes *should not be classified under national laws as "military offences"*. The reason is that this latter category of offences are those which can only be committed by members of the regular defence and security forces of the State, whereas since non-State armed groups (including their leaders) engage in armed activities, they may also commit these grave international crimes.

Illustratively, Cameroon's Military Justice Code defines *military offences* as any "serious breach of duty and military discipline" punishable under the said Code – Section 30(1). The military offences listed in the Code (Sections 32 to 67) are applicable only to "*servicemen (and women)*" whom the said Code defines as personnel of the National Gendarmerie, the Army, the Air Force, or the Navy (during peacetime) and in times of war or States of emergency, personnel of the mobilizable reserve and those corps who in their daily duties, carry defence or war weapons, including Police, Prison Administration, Forestry, and paramilitary Customs Officers – Section 31(1).

In Africa, and without being exhaustive, the following countries have introduced the grave international crimes into their national criminal laws:

1. Angola (Sections 367 to 374, [Penal Code](#))
2. Benin, (Sections 463 to 467, [Penal Code](#))
3. Burkina Faso (Sections 16 to 20, [Law on Jurisdiction and Implementation of ICC Rome Statute](#))
4. Central African Republic (Sections 152 to 162, [Penal Code](#))
5. Chad (Sections 285 to 299, [Penal Code](#))
6. Republic of Congo, (Sections 1 to 15, [Law on the definition and punishment of genocide, war crimes and crimes against humanity](#))
7. Democratic Republic of Congo ([Law modifying and completing the Penal Code](#))
8. Ethiopia (Articles 269 to 272, [Criminal Code](#))
9. Gabon (Sections 329 to 341, [Penal Code](#))
10. Republic of Guinea (Sections 192 to 201, 787 to 805, [Penal Code](#))
11. Kenya (Section 6, [International Crimes Act](#))
12. Mali (Sections 29 to 32, [Penal Code](#))
13. Mauritius (Sections 4 to 8, [International Criminal Court Act](#))
14. Mozambique (Sections 82 to 86, [Law on Military Offences](#))
15. Niger (Section 208.1 to 208.8, [Penal Code](#))

16. Rwanda ([Law punishing the crimes of genocide, crimes against humanity and war crimes](#))
 17. Senegal ([Law amending the Penal Code](#))
 18. Republic of South Africa ([Implementation of the Rome Statute of the ICC Act](#))
 19. Togo (Sections 143 to 164, [Penal Code](#))
 20. Uganda (Sections 7 to 9, [International Criminal Court Act](#))
- 9. Have national courts (as opposed to international tribunals) been able to prosecute these crimes? Where can more guidance be found about incorporating these grave international crimes such as war crimes, into national laws?**

It is important to remember that historically, since the end of World War II when these offences began getting prosecuted around the world, *national courts* have always prosecuted a larger number of persons for these grave crimes, than international tribunals. Even in more recent years, with the establishment of exceptional or permanent international courts to handle these types of crimes, their national counterpart courts have always handled a larger number of cases. International law on these crimes presently functions on the principle of subsidiarity, which means that national courts have the *primary* responsibility to prosecute them. Some additional resources on the technical aspects of national-level criminalization of grave international crimes, especially war crimes, provided by the ICRC, can be found [here](#).

References: [Penal Code](#), [Military Justice Code](#), General Disciplinary Regulations for the Defence Forces (attached).

END

About the Author: *Paul N. Simo, Esq.* specializes in international law, including international criminal law and humanitarian law, i.e., the laws of war. His professional experience includes advising national judiciaries in Africa on the prosecution of grave international crimes (war crimes, crimes against humanity) before national courts, and advice to prosecutors on the investigation and prosecution of the said crimes.