



Terrorism, Insurgency and National Liberation Movements: Conceptualising in the Context of the Crisis in the North West and South West Regions of Cameroon

Sona Mukete Gerald

(PhD in Law, Assistant Lecturer, Department of Public Law and Public Administration, Faculty of Laws and Political Science, University of Buea)

ABSTRACT

From time memorial, groups have made formal demands from controlling authorities. Others rather than making a formal demand, take upon themselves to change the status quo. Such demands and desires inevitably culminates into violence which take various forms.

ARTICLE INFO

Received:13th February 2022

Revised: 14th March 2022

Accepted:18th April 2022

KEY WORDS

Introduction

From time memorial, groups have made formal demands from controlling authorities. Others rather than making a formal demand, take upon themselves to change the status quo. Such demands and desires inevitably culminates into violence which take various forms.

The French Revolution of the 18th century was characterized by terror unleashed by Maximilien Robespierre.¹ He was one of the leaders of the French Revolution. The Republic that was newly established confronted internal conflicts. He was made prosecutor in February 1792. From 1793-1794 the Jacobins who dominated the government² resorted to terror in order to suppress the revolts and civil wars that escalated after they took power and to establish revolutionary ideology in the minds of the people.³

Anarchism emerged in the mid-nineteenth century and was manifested in assassinations as instruments of political change.⁴ The deep dissatisfaction of anarchists with the governance of societies led to the violence described as the anarchist wave of terrorism. It was characterized by the assassination of prominent leaders or Ministers in Europe.⁵ In the United States of America (hereafter referred to as US), the former President John Kennedy was assassinated in 1963.⁶ The activities of anarchist groups caused bomb attacks across

¹ Y., Gani, "Defining and Mapping Threats of Terrorism in Africa", in W., Okumu and A., Botha edited, *Understanding Terrorism in Africa: In Search for an African Voice*, Institute for Security Studies, 2007,

² L., Marisa, Linton, Kingston University, UK, The Terror in the French Revolution, <http://www.port.ac.uk/special/france1815to2003/chapter1/interviews/filetodownload.20545.en.pdf>, visited, 28/04/2018, p.1.

³ *Ibid.* p.2. Robespierre in the height of chaos, advocated for the creation of public safety committee as a machinery to eradicate those who pose threat to his government. See A., Oehmichen, Terrorism and Anti-Terror Legislation: The Terrorised Legislator? PhD Thesis, Department of Criminal Law, Faculty of Law, Leiden University, 2009, p.48

⁴ Introduction to International Terrorism, Education For Justice University Module Series Counter-Terrorism, available at https://www.unodc.org/documents/e4j/18_04932_CT_Mod_01_ebook_FINAL.pdf, visited, 07/02/2022.

⁵ See B., János, "The birth of modern terrorism in Europe", *AARMS*, vol. 6, No. 3, 2007, p.454.

⁶ S., Bruno, A Rational Choice Analysis of Political Assassinations, Institute for Empirical Research in Economics University of Zurich Working Papers Series N0.324, 2007, p.3.

Western Europe and the United States. Serious occurrences were in Paris, Barcelona, London, New York and Milan.⁷

In 1979, violence described as the 'religious wave of terrorism'⁸ emerged and was grounded on Islam. The genesis was the events that occurred in that year, notably the Iranian revolution and the invasion of Afghanistan by the Soviet.⁹ During this wave of terrorism, terrorist acts were perpetrated prominently through suicide missions. Large scale suicide bombings were launched by the group Hezbollah in collaboration with Iran in 1983 against US Marines and French paratroopers in Lebanon.¹⁰ As a result of the attacks lives were lost and the US and France had to withdraw their troops.¹¹

The series of attacks carried out by the Al-Qaeda terrorist group on the 11th of September 2001 really shocked the world. The attacks were suicidal in nature on symbolic U.S. landmarks. In the first attack, two passenger airliners heading to California were hijacked by 19 Al-Qaeda and crashed into the North and South towers, respectively, of the World Trade Center complex in New York City¹² causing the building to collapse and serious damage to surrounding structures.¹³ Another attack was in Arlington County, Virginia where American Airlines Flight 77, was crashed into the Pentagon,¹⁴ resulting to a partial collapse in the Pentagon's western side.¹⁵ The final attack occurred in Pennsylvania where a plane, United Airlines Flight 93, heading towards Washington, D.C., was crashed into a field near Shanksville. The loss of lives recorded in the attacks amounted to 2,996 people (including the 19 hijackers) and the loss in terms of property and infrastructure was at least \$10 billion and the total costs were up to \$3 trillion.¹⁶

Violence has equally been perpetrated in Africa. In Kenya for example, members of the "Mau Mau," resolved to kill Europeans and send them out of Africa. The British undertook ruthless attacks in their war against the rebels on the basis that they were terrorists. In 1952, British troops arrested over 70,000 suspected Mau Mau activists and in October 1955 over 13,000 people were killed and some held at Hola Camp in Kenya were murdered in the course of the rebellion.

Unlike the situation in Kenya which was violence against colonialists, violence has equally been perpetrated by Africans against Africans. This was the case in different countries such as Nigeria,¹⁷ Angola, Congo, Rwanda and Sudan. Here, Africans were the targets, so, it was therefore violence between Africans. In Somalia, the 1991 civil war paved the way for the emergence of violence. Violence during the civil war was

⁷ T., Parker & N., Sitter, *op cit.*, p.206.

⁸ Religious terrorism has been described as the use of terrorism for a religious purpose. The basis of acts of religious terrorism is the belief that they are sanctioned to restore 'good' in accordance with the principle of the separation of 'good' from 'evil'. There are variations in the manifestation of this phenomenon given the different religions and cultures. However, religious terrorism has been considered more deadly owing to the fact that violence is legitimize or justified on religion. A., Botha, "Religious Extremism and Terrorism: Causes, Impact and Counter Strategy", *African Journal for the Prevention and Combating of Terrorism*, 2013, vol.4, N0.2, p.60.

⁹ Besides the Iranian revolution and the Afghan war, other factors responsible for the development of Islamic terrorism include: the fall of the Ottoman Empire, the emergence of Israel as a state and the implication on the Gulf War in 1991. These incidents actually set the stage for extremist elements in like Usama bin Laden whose movement negatively affected stability in Africa. A., Botha *ibid.* p.65.

¹⁰ J., Phillips, The 1983 Marine Barracks Bombing: Connecting the Dots, The Heritage Foundation, 2009, available at <https://www.heritage.org/defense/commentary/the-1983-marine-barracks-bombing-connecting-the-dots>, visited, 07/02/2022.

¹¹ *Ibid.*

¹² How much did the September 11 terrorist attack cost America?, Institute for the Analysis of Global Security, 2004.

¹³ Smith, Aaron (November 3, 2014). "One World Trade Center Opens Today", *CNN Money*, 2014.

¹⁴ Pentagon is the headquarters of the United States Department of Defense.

¹⁵ Smith, Aeron *op cit.*

¹⁶ *Ibid.*

¹⁷ For in Nigeria for example, the immediate cause of the civil war was that Lieutenant Colonel Ojukwu's declared the state of Biafra on May 30, 1967. The Federal government retaliation against the secessionists' movement started the civil war. See F., Adewunmi, "The Nigerian Civil War, 1967-1970: A Revolution?", *African Journal of Political Science and International Relations* Vol. 5(3), pp. 120-124, March 2011, p.120.

characterized by clan warfare and humanitarian catastrophe.¹⁸ It is said that amongst all the civil wars experienced by African governments, it was that under the regime of Mengistu Haile Mariam of Ethiopia that made it clear that it was using terror against its opponents.¹⁹

In Cameroon the people of the North West and South West Regions or the Anglophones (English speaking) have agitated against their marginalization by the French dominated government. This agitation can be traced to 1961 which saw the formation of a Federal state championed by the political elites of British and French background.²⁰ The union however did not work as expected because the government controlled by the French majority attempted to assimilate the English speaking people to a centralized, unitary state. In consequence, the English speaking peoples' consciousness of being marginalized and assimilated by the French speaking emerged hence, the genesis of the conflict.

The agitations of the people of the North West and South Regions resurfaced in 2016 and violence and unrest escalated in late 2016 after a series of strikes and protest against what teachers and lawyers viewed as further discrimination of the English speaking people. By 2019 the agitation escalated to an armed conflict characterized by killings, gun battles between the separatist fighters and Cameroonian army and kidnappings. The separatist fighters have used violence to pursue their quest of independence of the people of former 'Southern Cameroon.

The various forms of violence described above can be classified under terrorism, insurgency and national liberation movements. This paper therefore seeks to analyse these concepts in the prism of the Anglophone crisis in Cameroon.

Terrorism

In 1994, the General Assembly adopted the Declaration on Measures to Eliminate International Terrorism.²¹ Terrorism as defined in this instrument constitutes:

*Criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes. These acts are in any circumstances unjustifiable, whatever the considerations of a problem.*²²

The definition of terrorism in this resolution resolves the problem of the subjective view surrounding the definition of terrorism. It has often been said that what constitutes terrorism lies in the mind of the beholder; hence the phrase 'one man's terrorist is another man's freedom fighter'. The resolution makes it clear that terrorist acts cannot be justified whatever the situation. This implies that acts committed in pursuit of the right to self-determination and national liberation movements and oppressive regimes are not excluded from the crime of terrorism.

De Brenna²³ states that:

The position of the United Nations on terrorism has transformed over the last three decades from one that at least arguably permitted terrorism in support of the struggle for self-determination, to one that condemns terrorism as criminal and unjustifiable in all circumstances wherever and by whomever committed.

It can therefore be deciphered that there are no justifications for terrorism in the UN Conventions on terrorism. Whereas in Africa, activities relating to self-determination, armed struggle against colonialism, occupation, aggression and domination by foreign forces are excluded from the scope of a terrorist act. The

¹⁸ V., Gatuiku, Countering Terrorism in the Horn of Africa: A Case Study of Kenya, Unpublished Master's Thesis, University of Nairobi, 2016, p.3.

¹⁹ S., Makinda *op cit.* p.17.

²⁰ P., Konning and F.B., Nyamjoh, "The Anglophone Problem in Cameroon", *The Journal of Modern African Studies*, 1997, p.35.

²¹ A/RES/49/60, 9 December 1994.

²² *Ibid.*

²³ S., Brennan, "The Internationalisation of Terrorism: Winning the War, While Preserving Democratic Rights - A Balance Gone Wrong", *Australian Journal of International Law*, 2004, p.70.

Organisation of African Unity (OAU) Convention on the Prevention and Combating of Terrorism, 1999²⁴ article 3(1) excludes from its application the struggle waged by peoples in accordance with the principles of international law for their liberation or self-determination, including armed struggle against colonialism, occupation, aggression and domination by foreign forces shall not be considered as terrorist acts.

It is therefore clear that the dictum ‘one man’s terrorist is another’s freedom fighter’ has a place in Africa. There is no generally accepted definition for the term ‘terrorism’. Chukwuma²⁵ observes that there is no single view of acts of terrorism. Armed groups that a state may condemn as terrorist may label military crackdown on them as terrorism. He defines terrorism as “the threat of or use of violence by person, group or state against another person, group, or state for political, religious or other selfish reasons or paradigm change”.²⁶ Terrorism has been defined as violent acts directed towards civilians in the pursuit of political or religious aims²⁷.

Terrorism refers to acts of violence directed primarily to the population as a means of achieving a political or religious aim.

The Law on the Suppression of Acts of Terrorism in Cameroon 2014 does not define terrorism *per se*. Article 2(1) of the law merely describes terrorism as follows:

Action likely to cause death; to endanger or damage the physical integrity of another; or to do damage to the nation’s natural resources, environment, or cultural heritage, when done with the intent of: a) intimidating the population, provoking a situation of terror or forcing the victim, the government and/or an organization, national or international, to accomplish or abstain from accomplishing any act whatsoever, to adopt or renounce a particular position, or to act according to certain principles; b) disturbing the normal functioning of the public services, the provision of essential services to the population, or creating a situation of crisis within the population; c) creating a general uprising in the country.

The description of terrorism in this law is general rather than specific.²⁸ In this light, it is similar to that provided in the General Assembly Resolution of 1994 on the Declaration on Measures to Eliminate International Terrorism.

The above definition of terrorism has been considered a state’s instrumentality that infringes on human rights.²⁹ It is important to point out that counter terrorism measures by states should not violate human rights. Niven³⁰ asserts that anti-terrorism and the protection of human rights compliments and mutually reinforces each other. To him, “measures to deter terrorism can operate effectively only in environments that respect and safeguard human rights”.....³¹

²⁴It was adopted at Algiers on 14 July 1999 and entered into force on December 06, 2002. The drafters of this Convention were concerned with the following: the scope and seriousness of the phenomenon of terrorism and the dangers it poses to the stability and security of states; the desired need of strengthening cooperation among Member States in order to forestall and combat terrorism; how the lives of innocent women and children are seriously adversely affected by terrorism; the violation of human rights caused by terrorism especially the rights to physical integrity, life, freedom and security and the hindrance of socio-economic development caused by terrorism; terrorism should be addressed in all its forms without exceptions and the connection between terrorism and organized crime, including the illicit traffic of arms, drugs and money laundering.

²⁵ O., Chukwuma, Combating Terrorism: A Case Study of Nigeria Against Boko Haram Terrorist Group, Masters Thesis, Faculty of the U.S. Army Command and General Staff College, 2002, p.14.

²⁶ *Ibid.* p.10.

²⁷E., Muma, “The Impact of Anti-Terrorism Laws on Religious Freedom: Cameroon’s Approach in Combating Terrorism and the Role of the Church”, *Research Association for Interdisciplinary Studies*, 2017, p.206.

²⁸ This means it is not specific to a particular terrorist act like hostage taking, aircraft or ship hijacking to name a few.

²⁹ E., Muma, *op cit.*, p.209.

³⁰M., Niven, “Anti-terrorism measures in South Africa: Suspicious transaction reporting and human rights”, 15 *African Human Rights Law Journal*, 2015, p.522.

³¹ He adds that human rights are the bedrock of the fight against terrorism. In particular, the relationship between human rights and anti-terrorism measures promotes the establishment of a framework which uplifts respect for the

Insurgency

Insurgency is a structured movement that aims to oust a recognised government with the use of a rebellion or armed conflict".³² What constitutes insurgency is not clear, one can say it is a civil disturbance which is concentrated on a specific area of the country's territory and is organised to an extent. Insurgency is not confined to domestic law and as such they have a quasi-international law status.³³

Considering the law pertaining to insurgency, rebels must possess certain characteristics to be termed insurgents; for example, they must have sufficient control over territory and the military force necessary to affect foreign states thus getting them involved.³⁴ Insurgents mostly strike when the enemy is weak and decline when the enemy is superior.³⁵ They are vigilant to evaluate the level of armed struggle and prefer to 'live to fight another day rather than exposing themselves to be destroyed by their superior enemy.'³⁶ Mustafa³⁷ reiterates the difference between terrorism and insurgency. To him, terrorism is considered a 'pejorative term' while insurgency have a great degree of legitimacy because they are often predicated on liberation, freedom fighting to name a few.

In the Anglophone regions of Cameroon, violence is perpetrated by armed groups.³⁸ Whether the separatist fighters fighting for the independence of 'Southern Cameroons' are terrorists or insurgents is a crucial issue for deliberation.

This will necessitate drawing a line between insurgency and terrorism. Terrorism is an indirect way to reach a political end, as opposed to insurgency and NLM which directly attacks the defined enemy with asymmetric war tactics. From the action-based approach, the highest distinction between terrorism and insurgency is the selection of the targets. It would be considered as terrorism where, non-combatant civilians are deliberately threatened or targeted as part of an indirect challenge to convey the perpetrators' message.³⁹ While terrorism is deemed to be a pejorative term, on the other hand, insurgency by virtue of the fact that it is predicated on liberation, freedom fighting to name a few, has a greater degree of legitimacy and as such is considered justification for terrorism in political disputes between conflicting parties.⁴⁰ Greenwood⁴¹ argues that "a group like Al-Qaeda cannot be a belligerent. It is merely a band of criminals, and to treat it as anything else risks distorting the law while giving that group a status which to some implies a degree of legitimacy".

The separatists' movement in the North West and South West Regions of Cameroon can be situated within this context. It constitutes 'acts of war' and in this way, it can be said that the armed fighters enjoy 'combatant privilege'.⁴² A discussion with Professor Nsoh Christopher⁴³ reveals that the separatist movement began with legitimate claims by the 'Anglophones' in 2016 and in the course of the protest and

rule of law, good governance and human rights. He also cites the erstwhile UN Secretary General Koffi Annan's statement at a Summit on terrorism and democracy held in, Madrid on 10 March 2005 which is to the effect that counter terrorism measures must take into consideration human rights protection. M., Niven *op cit*, p.524.

³² M., Christopher, Of Shoes and Sites: Globalization and Insurgency, "Military Review", 2007, p.85.

³³ *Ibid.*

³⁴ N., Higgins, "The Application of International Humanitarian Law to Wars of National Liberation", *Journal of Humanitarian Assistance*, 2004, p.8.

³⁵ S., Stewart, the Difference Between Terrorism and Insurgency, *Security Weekly*, 2014, p.2.

³⁶ *Ibid.*

³⁷ C., Mustafa, Terrorism Versus Insurgency: A Conceptual Analysis, *Crime Law Soc Change*, 2016, available at <https://iusgentium.ufsc.br/wp-content/uploads/2017/03/1-3-Terrorism-versus-insurgency-a-conceptual-analysis.pdf>, visited, 07/02/2022.

³⁸ Newspapers, the national commission of human rights and freedoms, Non-governmental organizations and the civil society have reported such acts which include: murder, destruction of property, kidnapping and assault.

³⁹ *Ibid.* p.9.

⁴⁰ C., Mustafa, "Terrorism versus insurgency: A Conceptual Analysis", *Crime Law Soc Change*, 2016, p.2-6.

⁴¹ C., Greenwood, War, Terrorism and International War, 2004, cited by A.I., Abubakar, *Anti-Money Lundering and Counter-Terrorism: Law and Practice in Nigeria* (Lagos: Malthouse Press, 2015) p.41.

⁴² Belligerents enjoy 'combatant privilege.' This implies that they cannot be punished for intentionally killing the enemy. A., Abubakar., *ibid.*

⁴³ An expert in conflict resolution in the University of Buea.

agitation, they were unarmed.⁴⁴ Due to the poor management of the dispute, they had to resort to armed struggle as a means of achieving their agenda. So whatsoever, acts of violence are perpetrated by these fighters are covered by the Geneva Conventions 1949 and Additional Protocols 1977.⁴⁵

Pursuant to some UN Conventions on terrorism, acts of terrorism committed by national liberation movements pursuing the right to self-determination within armed conflict are not covered by the terrorism Conventions but by the Geneva Conventions and Additional Protocols. The hostage taking Convention does not apply to the taking of hostages within an armed conflict defined in the Geneva Conventions and Additional Protocols.⁴⁶ It can therefore be understood that, secessionists or separatists perpetrating these acts outside "armed conflict" defined in Geneva Conventions and Additional Protocols commit acts of terrorism.⁴⁷ This is the actor-based approach to terrorism which is to the effect that terrorism is a particular form of political violence committed by non-state actors who attack civilians".⁴⁸

By this approach, it becomes difficult to distinguish terrorism from other forms of political violence like insurgency. By this approach, terrorism is committed by any non-state actor engaged in political violence regardless of the wider political, social or economic aims.⁴⁹ The actor-based approach suggests that acts such as hostage taking, kidnapping perpetrated by the separatists in the North West and South West Regions of Cameroon constitutes terrorism.⁵⁰

Contextualising this approach within the Hostage Taking Convention, hostage taking and kidnapping by the armed fighters in the North West and South West Regions can be considered terrorism only if first, the acts have a transnational element and do not apply to purely domestic acts.⁵¹ Second, the hostage-taking and kidnapping is not committed in armed conflicts governed by the Geneva Conventions of 1949 and its Additional Protocols of 1977.⁵² With regard to the first, kidnappings perpetrated by the armed fighters in the North West and South West Regions are pure domestic acts covered in the Cameroon Penal Code.⁵³ Concerning the second issue, it goes without saying that the Anglophone crisis has escalated to an armed conflict. Thus; excesses such as kidnappings are sanctioned by the Geneva Conventions and Additional Protocols.

The actor-based approach has however been criticized. Ganor⁵⁴ opines that terrorism is a strategy and therefore not a defining feature of the actor carrying out the violence. This means political violence does not amount to terrorism because terrorism is a strategy.⁵⁵ He was concerned with the intended victims of terrorism. In this light he points out that civilians are the intended victims of terrorism while the military are

⁴⁴ Discussion with Professor Nsoh Christopher expert in Conflict Resolution, June 2019.

⁴⁵ It means that in insurgency and national liberation movements, there are possibilities of violations of international humanitarian laws as well as human rights law whereas in terrorism, there are no violations of international humanitarian law but international human rights law. See A., Abubakar *op cit.* p.44. The former U.S President W. Bush had said that none of the provisions of the Geneva Conventions apply to their conflict with Al-Qaeda in Afghanistan or elsewhere throughout the world. W.B., Bush, Memorandum on Human Treatment of Taliban and Al-Qaeda Detainees; 7 February, para.26, available at <http://www.pego.nolp.info/whitehouse/bushmemo200220207ed.pdf>, cited in A., Aboubakar *op cit.* p.44.

⁴⁶ Article 12 of the International Convention Against the Taking of Hostages 1979.

⁴⁷ A., Clapham, Secession, terrorism and the right of self-determination, Marcelo G. Kohen (edn) *Secession International Law Perspectives*, (New York: Cambridge University Press, 2006), p.53.

⁴⁸ R., Jackson, An Argument for Terrorism, *Perspectives on Terrorism*, 2008, vol.2 no.2, p.26.

⁴⁹ *Ibid.*

⁵⁰ Human rights Watch has documented kidnapping of Principals, attacks on student and teacher, arson attacks on schools and threats to students, parents and teachers. Human Rights Watch, "These Killings Can Be Stopped" Government and Separatist Groups Abuses in Cameroon's Anglophone Regions, 2018.

⁵¹ Article 13 states that the Convention "shall not apply where the offence is committed within a single State, the hostage and the alleged offender are nationals of that State and the alleged offender is found in the territory of that State".

⁵² Article 12 Hostage Taking Convention.

⁵³ Kidnapping is prohibited in the Cameroon Penal Code. Section 352 and 353 and section 354 of the Penal Code.

⁵⁴ B., Ganor, "Defining Terrorism: Is One Man's Terrorist another Man's Freedom Fighter?" *Police Practice and Research*, 2002, 3 (4), p.298.

⁵⁵ A., Richards, "Conceptualizing Terrorism", *Studies in Conflict & Terrorism*, 2014, 37(3), p.221.

the intended victims of insurgency.⁵⁶ As such, any attack that is politically motivated falls under the category of terrorism.

However, it has been said that actors including insurgents engage in terrorist attacks to enable them accomplish their objective.⁵⁷ In this case, terrorism is not an end itself but a means to an end.⁵⁸ Mustafa⁵⁹ notes:

In certain cases, insurgencies do not explicitly employ terrorism and deliberately renounce it due to legitimacy concerns, mostly in anti-colonial insurgencies. In others, the insurgency reflects a concern for broad, publicly acknowledged legitimacy for a declared goal.

This assertion by Mustafa fits in the 'Anglophone conflict'. On several occasions the separatist fighters have renounced involvement in terrorist acts. For example, the separatist fighters denied involvement in the killing of seven children in Mother Francisca Bilingual Academy Kumba on the 24th of October 2020. One can therefore say that a group that explicitly acknowledges employing terrorism are terrorists whereas those that denounce such acts posed a problem in determining whether they are terrorists or not.

It is worth noting that the government of Cameroon has termed them terrorist especially as the subjective view of terrorism is to the effect that it lies in the minds of the beholder. This is usually expressed by the dictum: "one man's terrorist is another man's freedom fighter".⁶⁰ The group maintains an opposing view of the situation. To them, their cause is a liberation movement and they are fighting to put an end to the French speaking domination and marginalisation of the English speaking by restoring their statehood.

It seems Cameroonian jurisprudence has confirmed them terrorists. In the case of the *People of Cameroon v. Sisiku Ayuk Julius Tabe and 8 Others*.⁶¹ The accused who were leaders of the 'Separatist movement' in the North West and South West Regions of Cameroon were charged for terrorism, hostilities against the fatherland, secession, revolution, propagation of false information, insurrection and non-possession of national identity cards. On the 20th of August 2019, the Yaounde Military Tribunal sentenced the accused to life imprisonment with heavy fines of FCFA 250billion for these charges.

It can therefore be understood from this case that the independence struggle of the 'armed fighters' in the North West and South West Regions of Cameroon has no legitimacy in the eyes of the Cameroon government and any person connected with their activities can be convicted for terrorism. Such a position however has human rights concerns as it calls into question the right to fair hearing.⁶² This is so because the hands of the judiciary are often tied in the face of matters that touch the security of the state. When the regime has already branded a person or group as terrorists, it is difficult for the judiciary to adjudge the contrary. Yan-Ho⁶³ in analysing the conviction of Tong Ying-Kit for secession and terrorism under the Security Law of Hong Kong, observes that the Court sided with the prosecution and upheld government's position on the matter. He further notes that Tong Ying-Kit's conviction for terrorism was not in accordance with the international standard of the definition of terrorism and constitutes an 'abuse of counter-terrorism law'.⁶⁴

National Liberation Movement

⁵⁶ B., Ganor, *op cit.*

⁵⁷ I., Hunstad, Implications of power of definition: Terrorism, insurgency and al-Shabaab, Masters Thesis, Norwegian University of Life Sciences (NMBU), 2008, p.38.

⁵⁸ *Ibid.*

⁵⁹ C., Mustafa *op cit.*, p.6.

⁶⁰ This statement was made by Yasser Arafat, late Chairman of the PLO (the Palestine Liberation Organization), in his speech before the United Nations in 1974.

⁶¹ Suit No. OMDJ No. 669 of 29/11/2018.

⁶² The right to fair hearing is protected in article 10 of the Universal Declaration of Human Rights 1948, article 14(1) International Covenant on Civil and Political Rights 1966 and the Preamble of the Cameroon Constitution 1996 as amended in 2008.

⁶³ K., Yan-Ho, The Tong Ying-kit Nsl Verdict: An International and Comparative Law Analysis A Gcal Briefing paper, 2021, p.5. available at <https://www.law.georgetown.edu/law-asia/wp-content/uploads/sites/31/2021/10/TongYingKitVerdictGCAL.pdf>, visited, 29/03/2022.

⁶⁴ *Ibid.*, p.26.

National Liberation Movements (hereafter referred to as NLMs) use violence as a last resort and based their actions on moral or legal justification. In this light, it is important to ascertain if national liberation movements are legitimate. In attempting to legitimize NLMs, on December 14, 1974, the UN unanimously defined aggression to exclude terrorist activity committed in pursuance to the right to self-determination or directed against colonial and racist regimes.⁶⁵ Article 1 of Protocol II of the 1977 Protocols Additional to the Geneva Conventions of 1949 recognizes armed conflicts by people against colonial domination, foreign occupation and against racist regimes in pursuance of their right to self-determination”.⁶⁶

It can be deciphered from the above provision that national liberation movements are premised on the right to self-determination. The right to self-determination is enshrined in the UN Charter⁶⁷ and other legal instruments.⁶⁸ The UN General Assembly’s Declaration on the Granting of Independence to Colonial Countries and Peoples 1960 provides that “the subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental rights, is contrary to the Charter of the United Nations”.⁶⁹ Self-determination is a right which people considered as colonies are entitled to even though it is now settled that this right extends beyond colonialism.⁷⁰ This means ‘people’ other than those of colonies have the right to self-determination. This is true if we consider the conceptual categorization of this right which is internal and external self-determination. The former is the right of a nation already constituted as a State to choose its form of government and to determine its own policy and the latter is the right of a group which believed it constitutes a nation to form a State of its own.⁷¹

Internal self-determination is a well-recognized right in the jurisprudence of courts. For example, in its *opinion concerning the secession of Quebec*, Supreme Court of Canada, recognizes the right of people to internal self-determination which includes asserting their own political, economic, social and cultural development within a constituted state.⁷²

The ICJ has also given recognition to this right in its 1971 *Advisory Opinion on Namibia*⁷³ and in its *Advisory Opinion on the Western Sahara*, 1975.⁷⁴ In these cases, the Court regarded the right to self-determination as “the need to pay regard to the freely expressed will of peoples”.⁷⁵

In Africa, the right to internal self-determination was reiterated in the *Katangese Peoples’ Congress v. Zaire (the Katangese) case*.⁷⁶ In this case, the President of the Katangese Peoples’ Congress, alleged the violation of the self-determination of the people of Katanga under article 20(1) of the Banjul Charter.⁷⁷ The means of expressing this right was qualified by the African Commission on Human and to include: independence, self-government, local government, federalism, confederalism, unitarism or any other form of relations. However, the African commission did not disregard the state sovereignty and territorial integrity of Zaire.

⁶⁵ See Definition of Aggression, G.A. Res. 3314, 28 U.N. GAOR Supp. (No.30a) 142, U.N. Doc. A/9030/Add. 1 (1974).

⁶⁶ Self-determination is a fundamental right in international law. The International Court noted in the *East Timor* case, ICJ Reports 1995, para. 2 that it constitutes a vital principle in international law which the international community must adhere to.

⁶⁷ Articles 1(2) and (3) of the UN Charter.

⁶⁸ Such as the International Covenant on Civil and Political Rights 1966 article 1(1).

⁶⁹ GA Res 1514 (XV), 14 December 1960, paras 1 and 2.

⁷⁰ See M., Saul, “The Normative Status of Self-Determination in International Law: A Formula for Uncertainty in the Scope and Content of the Right?”, *Human Rights Law Review*, 2011, vol.11(4), p.614,

⁷¹ See K., Senaratne, “Internal Self-Determination in International Law: A Critical Third-World Perspective”, *Asian Journal of International Law*, Vol.3, Iss.2, 2013, p.305.

⁷² *Reference re Secession of Quebec*, Supreme Court of Canada, 161 Dominion Law Reports (1998), 4th Series, p.385, Cited in K., Senaratne, “Internal Self-Determination in International Law: A Critical Third-World Perspective”, *Asian Journal of International Law*, 3, 2013, p.307.

⁷³ [1971] ICJ Rep 16.

⁷⁴ *Western Sahara* [1975] ICJ Rep 12, 43-44.

⁷⁵ M., Batistich, “The Right to Self-Determination and International Law”, *Auckland University Law Review*, p.1021.

⁷⁶ Communication No 75/92 (Application No) IHRL 174 (ACHPR 1995).

⁷⁷ E., Demir, “The Right to Internal Self-determination in Peacebuilding Processes: A Reinterpretation of the Concept of Local Ownership from a Legal Perspective”, *The Age of Human Rights Journal*, 2017, p.20.

To the Commission, this can only be disregarded in the presence of substantive evidence of human rights violations the exclusion of the Katangese people from participation in Government enshrined in article 13(1) of the African Charter. The commission held that there were no violations of human rights protected in the African Charter and the allegations held no water.⁷⁸

National liberation movement is distinguished from terrorism if we consider Sulyok⁷⁹ who opines that excesses or atrocities committed by national liberation movements during armed conflict do not constitute terrorism but a breach of international humanitarian law even if the acts constitute terrorist acts by their nature. The author further notes that the attacks carried out by the Kosovo Liberation Army in fighting Serbian armed forces were not acts of terrorism, but “acts of war,” which constituted grave breaches of international humanitarian law and were under the jurisdiction of the International Criminal Tribunal for the Former Yugoslavia (ICTY).⁸⁰

The same is true with the separatist movement in the Anglophone regions of Cameroon. One may only wonder if the movement is a national liberation movement. Chiatoh⁸¹ notes that the distinct peoplehood with the right to self-determination of the people of former Southern Cameroons was maintained owing to their association with the Republic of Cameroon. To him, the English speaking regions have the right to self-determination and the right has been violated by the French dominated government’s attempt to assimilate this people.⁸²

It is a fact that “people” have the right to self-determination.⁸³ Can the “Anglophones” in Cameroon be considered as a people? A non-authoritative but persuasive⁸⁴ definition of a people was given in the case of *Kevin Mgwanga Gunme et al and Cameroon*.⁸⁵ It was said that a ‘people’ possess the same historical background, racial or ethnic identity, same culture, one language, ideological affinities, link to the territory and the same economic life.

It goes without saying that the people of the English speaking regions of Cameroon (former west Cameroon) possess these attributes and as such it would not be erroneous to consider them “a people”. It therefore means they have the right to self-determination and can challenge the violation of this right before the African Commission. The problem however are the bars put by the African Commission in the recognition of this right such as: evidence of human rights violation to warrant disregarding the sovereignty and territorial integrity of the state (Central state) and denial of the right of the ‘people’ (that is, seeking self-determination) to participate in government.

Conclusion

It has been seen that terrorism, insurgency and national liberation movements are different concepts altogether even though separating them is a tedious task. In the context of the Anglophone crisis, acts that constitute terrorist acts by nature are committed by the parties to the conflict. These acts cannot be considered as terrorism because even the Conventions on terrorism exclude from their application armed conflict defined in the Geneva Conventions and Additional Protocols. In short, the acts are covered by

⁷⁸ *Ibid.*

⁷⁹ G., Sulyok, Terrorism or National Liberation: Remarks on the Activities of the Kosovo Liberation Army During the Kosovo Crisis, p.6., available at http://www.uni-miskolc.hu/uni/res/e_publications/pdf/sulyok.pdf, visited, 13/09/2019.

⁸⁰ *Ibid.* p.9.

⁸¹ V., Chiatoh, “Recognition of Minority Groups as a Prerequisite for the Protection of Human Rights: The Case of Anglophone Cameroon”, 19 *African Human Rights Law Journal*, 2019, p.684.

⁸² *Ibid.*

⁸³ This right is enshrined in article 20 of the African Charter on Human and Peoples Rights 1986. It states: “all peoples shall have the right to existence. They shall have the unquestionable and inalienable right to self-determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen”. This right to self-determination is excluded among the guarantees provided in the Cameroon Constitution of 1996 as amended in 2008.

⁸⁴ It is considered non-authoritative because it was given by international law experts commissioned by UNESCO and the African Commission on Human and Peoples Rights made it clear that is bound by the definition.

⁸⁵ Communication N0.266/03.

international humanitarian law. This does not mean these acts are excused, they remain illegal and prohibited. Going by Cameroonian law, terrorism is not justified. This means violent acts carried out by the armed fighters in the North West and South West Regions are considered terrorism. The case of the *People of Cameroon v. Sisiku Ayuk Tabe and 8 Others* is illustrative. As already pointed out, this has human rights implications.

There is a need for a line to drawn between terrorism, insurgency and national liberation movement in Cameroon. The right to self-determination should be therefore given constitutional recognition in Cameroon. The law on the suppression of terrorism 2014 should be amended to exclude violent acts that constitute a breach of international humanitarian law.

References

1. Adewunmi, F., "The Nigerian Civil War, 1967-1970: A Revolution?", *African Journal of Political Science and International Relations* Vol. 5(3), pp. 120-124, March 2011.
2. Batistich, M., "The Right to Self-Determination and International Law", *Auckland University Law Review*, 1995.
3. Botha, A., "Religious Extremism and Terrorism: Causes, Impact and Counter Strategy", *African Journal for the Prevention and Combating of Terrorism*, 2013, vol.4, N0.2.
4. Brennan, S., "The Internationalisation of Terrorism: Winning the War, While Preserving Democratic Rights -A Balance Gone Wrong", *Australian Journal of International Law*, 2004.
5. Bruno, S., A Rational Choice Analysis of Political Assassinations, Institute for Empirical Research in Economics University of Zurich Working Papers Series N0.324, 2007.
6. Chiatoh, V., "Recognition of Minority Groups as a Prerequisite for the Protection of Human Rights: The Case of Anglophone Cameroon", *19 African Human Rights Law Journal*, 2019.
7. Christopher, M., Of Shoes and Sites: Globalization and Insurgency, "*Military Review*", 2007.
8. Cohan, J., Necessity, "Political Violence and Terrorism", *Stetson Law Review*, 2006, vol.35.
9. Chukwuma, O., Combating Terrorism: A Case Study of Nigeria Against Boko Haram Terrorist Group, Masters Thesis, Faculty of the U.S. Army Command and General Staff College, 2002.
10. Clapham, A., Secession, terrorism and the right of self-determination, Marcelo G. Kohen (edn) *Secession International Law Perspectives*, (New York: Cambridge University Press, 2006).
11. Demir, E., "The Right to Internal Self-determination in Peacebuilding Processes: A Reinterpretation of the Concept of Local Ownership from a Legal Perspective", *The Age of Human Rights Journal*, 2017.
12. Ganor, B., "Defining Terrorism: Is One Man's Terrorist another Man's Freedom Fighter?" *Police Practice and Research*, 2002, 3 (4).
13. Gani, Y., "Defining and Mapping Threats of Terrorism in Africa", in W., Okumu and A., Botha edited, *Understanding Terrorism in Africa: In Search for an African Voice*, Institute for Security Studies, 2007,
14. Marisa, L., Linton, Kingston University, UK, The Terror in the French Revolution, <http://www.port.ac.uk/special/france1815to2003/chapter1/interviews/filetodownload,20545,en.pdf>, visited, 28/04/2021.
15. Gatuiku, V., Countering Terrorism in the Horn of Africa: A Case Study of Kenya, Unpublished Master's Thesis, University of Nairobi, 2016.
16. Greenwood, C., War, Terrorism and International War, 2004, cited by A.I., Abubakar, *Anti-Money Lundering and Counter-Terrorism: Law and Practice in Nigeria* (Lagos: Malthouse Press, 2015).
17. Jackson, R., "An Argument for Terrorism", *Perspectives on Terrorism*, 2008, vol.2 no.2.
18. János, B., "The birth of modern terrorism in Europe", *AARMS*, vol. 6, No. 3, 2007.
19. Higgins, N., "The Application of International Humanitarian Law to Wars of National Liberation", *Journal of Humanitarian Assistance*, 2004.
20. Hunstad, I., Implications of power of definition: Terrorism, insurgency and al-Shabaab, Masters Thesis, Norwegian University of Life Sciences (NMBU), 2008.

21. Konning, P., and Nyamjoh, F.B., "The Anglophone Problem in Cameroon", *The Journal of Modern African Studies*, 1997.
22. Muma, E., "The Impact of Anti-Terrorism Laws on Religious Freedom: Cameroon's Approach in Combating Terrorism and the Role of the Church", *Research Association for Interdisciplinary Studies*, 2017.
23. Mustafa, C., "Terrorism versus insurgency: A Conceptual Analysis", *Crime Law Soc Change*, 2016.
24. Oehmichen, A., Terrorism and Anti-Terror Legislation: The Terrorised Legislator? PhD Thesis, Department of Criminal Law, Faculty of Law, Leiden University, 2009.
25. Parker, T., and Sitter, N., "The Four Horsemen of Terrorism: It's Not Waves, It's Strains", *Terrorism and Political Violence*, 28:197–216, 2016.
26. Phillips, J., The 1983 Marine Barracks Bombing: Connecting the Dots, The Heritage Foundation, 2009, available at <https://www.heritage.org/defense/commentary/the-1983-marine-barracks-bombing-connecting-the-dots>, visited, 07/02/2022.
27. Richards, A., "Conceptualizing Terrorism", *Studies in Conflict & Terrorism*, 2014, vol.37(3).
28. Saul, B., International Convention Against the Taking of Hostages, United Nations Audiovisual Library of International Law, 2014.
29. Stewart, S., The Difference Between Terrorism and Insurgency, Security Weekly, 2014.
30. Saul, M., "The Normative Status of Self-Determination in International Law: A Formula for Uncertainty in the Scope and Content of the Right?", *Human Rights Law Review*, 2011, vol.11(4).
31. Senaratne, K., "Internal Self-Determination in International Law: A Critical Third-World Perspective", *Asian Journal of International Law*, Vol.3, Iss.2, 2013.
32. Sulyok, G., Terrorism or National Liberation: Remarks on the Activities of the Kosovo Liberation Army During the Kosovo Crisis, p.6., available at http://www.uni-miskolc.hu/uni/res/e_publications/pdf/sulyok.pdf, visited, 13/09/2019.