

Decolonising retributive sentencing practices in Cameroon by upholding the value of Ubuntu: A focus on the death penalty

Windell Nortje

https://doi.org/10.29053/978-1-0672373-9-4_9

1	Introduction.....	230
2	German colonialism and retributive justice in Cameroon: A lasting legacy.....	232
2.1	German colonialism and retributive sentencing practices	232
2.2	The current sentencing regime in Cameroon: Examining the death penalty.....	235
3	Understanding decolonisation through the lens of Ubuntu.....	238
3.1	Decolonisation.....	239
3.2	Ubuntu.....	240
4	Abolition of the death penalty in South Africa: Lessons for Cameroon	241
4.1	<i>S v Makwanyane</i>	242
4.2	Lessons for Cameroon	245
5	Conclusion	247

Abstract: *Agenda 2063 of the African Union (AU) aspires towards an Africa free from the shackles of colonialism. Many African countries remain bound to colonial retributive practices imposed upon them by the former colonisers. Cameroon was a German colony between 1884 and 1919. Retributive sentencing practices were enforced by the German Empire while traditional restorative forms of justice were disregarded. These practices have shaped the current sentencing framework which is largely retributive. This chapter argues that a retributive system is colonial and not African. Most African countries, including Cameroon, subscribed to community-based justice practices*

prior to colonialism. The German Empire introduced a system of oppression and individualism, the antithesis of pre-colonial Cameroon. This chapter calls for a reform of sentencing practices in Cameroon. This is important on a continent where Africans have been subjected to retributive practices for centuries. The chapter also focuses specifically on the most severe form of sentencing, namely, the death penalty. I argue that the African value of Ubuntu, which calls for a common humanity among people, could be used to aid in sentencing reform. The landmark South African case of Makwanyane is used to illustrate the value of Ubuntu and sentencing reform. This chapter adopts a qualitative desktop analysis to examine the retributive methods adopted by the German Empire in relation to the current Cameroonian sentencing regime. The theory of decolonisation provides the justification for the call for law reform. This is one of the first legal studies to address the decolonisation of Cameroonian sentencing based on German colonisation. It adds to the current debate on the decolonisation of retributive sentencing practices in Africa. It also makes an important contribution towards the current literature addressing the impact of German colonialism on post-colonial African law reform.

1 Introduction

The legal system in Cameroon is bijural, a direct consequence of the colonisation by the French and the English.¹ However, prior to these periods of colonisation, Cameroon was subject to colonisation by the German Empire, a matter that is not often discussed with particular reference to its effects on the criminal justice system in Cameroon.² This chapter fills this gap by focusing exclusively on the German colonisation of Cameroon and excluding the colonisation of France and England.³ It also focuses specifically on the sentencing regime of Cameroon as this is an area that the author argues is still resembling certain characteristics of German colonialism. With German colonialism came severe forms of

1 HI Fonachunè 'The criminal justice system in cameroon: Problems faced with regard to corruption and suggested solutions' 76 *UNAFEI Resource Material Series* 145.

2 See, eg, S Conrad *German colonialism* (2011).

3 The impact of French and English colonisation on the criminal justice system in Cameroon is a research study that should be conducted in the future.

retributive sentencing practices.⁴ It will further be argued in this chapter that it was the practices of the German Empire that have played a role in creating the current retributive sentencing regime in Cameroon. The research question therefore is the following: How did the German Empire colonise Cameroonian sentencing practices and to what extent are these practices still evident in current day sentencing in Cameroon? It will focus mainly on the death penalty as this is the most severe sentence still being practised in Cameroon today. This chapter adopts a qualitative desktop analysis to examine the retributive methods adopted by the German Empire in relation to the current Cameroonian sentencing regime. Yet, why is it important to address the decolonisation of sentencing in Cameroon? Since most African countries gained independence from colonialism over the last few decades, there has been a move towards pan-Africanism.⁵ The 'Agenda 2063: The Africa we want'⁶ provides that Africa should break free from the last vestiges of post-colonial and neo-colonial rule.⁷ I will argue in this chapter that Cameroon has not yet done so, by examining aspects of its current sentencing regime. I will use the important African value of Ubuntu, which refers to a common humanity among Africans, and which was eloquently analysed by the South African Constitutional Court in its abolition of the death penalty, as an example of how decolonisation can be advanced through Ubuntu.

The chapter will be analysed in four parts. First, a historical reflection on German colonialism in Cameroon is necessary to understand the extent to which its sentencing regime was colonised and still has not been decolonised. Second, the chapter examines the theory of decolonisation by adopting the value of Ubuntu. This is followed by an analysis of the use of Ubuntu in South African sentencing reform and, finally, the chapter concludes.

4 See, eg, J Zollmann 'German colonial law and comparative law, 1884-1919' in T Duve (ed) *Entanglements in legal history: Conceptual approaches* (2014) 276.

5 See generally T Sithole & K Tsholo 'Pan-Africanism as responsibility': A building block for African unity?' (2023) 12 *Journal of African Union Studies* 13-35; F Chipato 'The global politics of African identity: Pan-Africanism and the challenge of Afropolitanism open access' (2023) 3 *Global Studies Quarterly* 1-10.

6 African Union 'Agenda 2063: The Africa that We Want' September 2015, https://au.int/sites/default/files/documents/36204-doc-agenda2063_popular_version_en.pdf (accessed 2 December 2024).

7 African Union (n 6) para 22.

2 German colonialism and retributive justice in Cameroon: A lasting legacy

While the French and English colonialism of Cameroon is widely known, it was Germany that in fact colonised Cameroon first between 1884 and 1919.⁸ In July 1884, a formal treaty was signed by chiefs in Douala and Gustav Nachtigal, who acted on behalf of Chancellor Otto von Bismarck.⁹ The treaty gave the Germans access only to the area surrounding the Douala coast and the mouth of the Cameroon river, but later ended up in German forces occupying the entire country.¹⁰ This enabled Germany to exploit Cameroonian wealth. Cameroon became Germany's most important economic colony with substantial rubber and cocoa exports.¹¹ During this time, numerous acts of forced labour, abuse of power, brutal killings and other crimes were committed against several kings and civilians who stood defiant against German rule.¹² This part analyses, first, the sentencing practices that were introduced by the German Empire at the time and, second, the extent to which these practices, in particular the death penalty, have remained in practice.

2.1 German colonialism and retributive sentencing practices

On 22 April 1896, an executive order was signed by the *Reich* Chancellor entitled 'Exercise of Criminal Jurisdiction and Disciplinary Authority vis-à-vis the Natives.'¹³ It was passed to set forth responsibilities and forms of punishments in German colonies, including Cameroon.¹⁴ Various punishments were introduced, including floggings, compulsive labour, fines, the death penalty and other sentences.¹⁵ Some passages were copied *verbatim* from the Criminal Code Ordinance of the Gold

8 Conrad (n 2) 36. See generally also K Bachmann *Genocidal empires: German colonialism in Africa and the Third Reich* (2018).

9 Conrad (n 2) 42.

10 A Jalata 'Colonial terrorism, global capitalism and African underdevelopment: 500 Years of crimes against african peoples' (2013) 5 *The Journal of Pan African Studies* 22.

11 Conrad (n 2) 45.

12 See Jalata (n 10) 22-23. See generally also Conrad (n 2).

13 Zollmann (n 4) 276.

14 As above.

15 As above.

Coast (1892) for the purpose of executing floggings.¹⁶ The procedure for executing criminal punishments and the type and size of the punishment instruments were set out in precise detail.¹⁷ However, many crimes were not well defined, which invited pseudo-legalised violence and gave German officials the ability to abuse power and enforce corporal punishment as they wished.¹⁸ It is submitted that the German Empire introduced retributive punishment to further enforce their will on the people of Cameroon.

The colonised judiciary had separate courts for Africans and Germans and included discriminate sentencing practices.¹⁹ Very few whites were prosecuted. Approximately 114 German accused appeared before the courts between 1909 and 1910, but almost all of these accused were acquitted.²⁰ Conversely, Cameroonian accused grew from 773 in 1900 to 1901 to 11 229 in 1912 to 1913.²¹ Customary law was only used in civil cases and minor offences, whereas German law was applied in serious crimes.²² This new criminal justice system, therefore, was designed to disrupt pre-colonial justice and enforce the power of the German Empire on the people of Cameroon.

In the case of the rape of an African woman, a Cameroonian offender could be sentenced to death, while a German would only be given ten years' imprisonment.²³ The Supreme Court was in Buea, while three other major courts were in Lomie, Kribi and Douala.²⁴ The most common form of punishment was flogging, also known as whipping.²⁵ The death sentence was often imposed in the following situations and cases; All cases punishable in Germany with ten years' imprisonment; the rape of a European; endangering a railway train; armed resistance to a German official during work and other offences.²⁶ Rudin reported that death was

16 As above.

17 As above.

18 As above.

19 D Kingah & J Tazifor *A junior history for secondary schools* (2000) 99.

20 HR Rudin *Germans in the Cameroons 1884-1914: A case study in modern imperialism* (1938) 203.

21 Rudin (n 20) 204.

22 Rudin (n 20) 200.

23 Kingah & Tazifor (n 19) 99.

24 As above.

25 As above.

26 As above.

often imposed as a penalty.²⁷ The number of natives sentenced to death exceeded 33 times between 1900 and 1913, while whippings numbered 351 in 1900 to 1901 and 4 800 in 1912 to 1913.²⁸ The above examples provide clear evidence of retributive sentences imposed on Cameroonian citizens. Retributive punishment focuses on maintaining social order through imposing harsh penalties and lengthy sentences.²⁹ Retribution punishes the offender in proportion to the unlawful conduct.³⁰ While retribution protects the society against dangerous offenders, it fails to address the root causes of crime and does not involve the victim or community in the imposition of the sentence.³¹

The question arises as to whether the German Empire introduced retributive sentencing to Cameroon, or whether it was already in place. Put differently, did the German Empire colonise and transform the sentencing regime for the worst, or did they simply adapt an already retributive system? In pre-colonial Cameroon, territorial space was occupied by chiefdoms and kingdoms.³² Each chiefdom or kingdom knew the boundaries of its command territory, while disputes over territorial spaces across the borders were known to all.³³ Atabong explains that '[t]he colonial legacy – particularly the forced imposition of artificial borders that disregarded ethnic and cultural realities – disrupted natural state formations, divided families and fostered tensions that persist today.'³⁴ Chiefdoms and kingdoms were surrounded by beautiful landscapes, including agricultural terraces, tombs and places of worship, which reflected a long-standing spiritual and cultural connection between the people and their environment.³⁵ It is submitted that these environments

27 Rudin (n 20) 204.

28 Rudin (n 20) 205.

29 T Brooks *Punishment* (2012) 17.

30 Brooks (n 29) 16.

31 See generally L Kerr 'How the prison is a black box in punishment theory' (2019) 69 *The University of Toronto Law Journal* 85-116.

32 JR Ze Edo'o 'The borders of Cameroon from the origins to the present day: Stakes and challenges' (2017) 5 *Scholars Journal of Arts, Humanities and Social Sciences* 818.

33 As above.

34 Atabong 'The colonial partition that keeps Cameroon split along "artificial lines"' *Aljazeera* (web blog), 25 February 2025, <https://www.aljazeera.com/features/2025/2/25/the-colonial-partition-that-keeps-cameroon-split-along-artificial-lines> (accessed 8 September 2025).

35 South African History Online 'Cameroon' 12 April 2016, <https://sahistory.org.za/place/cameroon> (accessed 8 September 2025).

were corrupted by the imposition of institutional violence and bloodshed brought about by the German Empire.

Experiences from other African countries can also assist in better understanding whether or not colonisers introduced retributive sentencing practices. In Zimbabwe, an organisation of traditional chiefs called for the abolition of the death penalty in 2016, arguing that their ancestors never engaged in this inhumane and cruel practice.³⁶ In South Africa, the Constitutional Court held that the death penalty was introduced only after Colonial Rule in 1652.³⁷ By contrast, a court in Botswana held that the death penalty has been with us since time immemorial and should not be abolished.³⁸ In a captivating study by Novak on the use of capital punishment in pre-colonial Africa, he explains that 'the practice of capital punishment in the period before European colonisation varied widely across the continent',³⁹ which makes it difficult to determine exactly whether it was used in pre-colonial Cameroon. If it was used, it was not widely practised, as Chenwi argues that the death penalty was the exception rather than the rule during pre-colonial times.⁴⁰ Germany institutionalised the death penalty and various other retributive sentencing practices to exert their power over the vulnerable people of Cameroon.

2.2 The current sentencing regime in Cameroon: Examining the death penalty

This part specifically analyses the death penalty in Cameroon considering that it was Germany that introduced it as a sentence in Cameroon. The British and the French regulated it further until independence, but the argument here is that it was Germany that first institutionalised it. It is therefore not necessary to examine the entire development of the sentence, but only the most recent regulations governing the death

36 A Chibamu 'Zimbabwe: Traditional leaders call for abolition of death penalty' 19 January 2016, <https://allafrica.com/stories/201601200167.html> (accessed 8 September 2025).

37 *S v Makwanyane & Another* 1995 (6) BCLR 665 para 333.

38 *Kgafela & Another v Attorney General & Others* 2012 (1) BLR 699 (CA).

39 A Novak 'Capital punishment in pre-colonial Africa: The authenticity challenge' (2018) 50 *The Journal of Legal Pluralism and Unofficial Law* 72.

40 L Chenwi *Towards the abolition of the death penalty in Africa: A human rights perspective* (2007) 18-20. See also Novak (n 39) 72.

penalty. Importantly, Cameroon is a *de facto* abolitionist state since the last execution of a death penalty was carried out in 1997 when Antoine Vandi Tize was executed by firing squad in Mokolo for murder.⁴¹ However, despite the pause in imposing the death penalty since 1997, in 2021 the Military Tribunal in Buea sentenced four men to death for a school shooting.⁴² Parliamentarians for Global Action reported that at least 220 individuals remain on death row.⁴³ It therefore remains an active sentence in Cameroon and is challenged in the chapter based on the argument that it is a sentence introduced initially by a colonial power.

Before 2006, West Cameroon applied common law comprising East Nigerian laws and English law, while East Cameroon applied civil law in line with French laws.⁴⁴ These systems coexisted until 2005, when the criminal law system of Cameroon underwent a restructuring.⁴⁵ The Criminal Procedure Code was enacted in 2005.⁴⁶ The Code does not regulate the death penalty as a sentence but refers to it on several occasions as a sentence.⁴⁷ In 2016, the Cameroon Penal Code was enacted, which regulates the death penalty.⁴⁸ Section 18(a) provides for three principal penalties, namely, the death penalty, imprisonment and fines. Section 21, which deals with the classification of penalties, states that ‘a felony shall mean an offence punishable with death or with loss of liberty for a maximum of more than ten years and fine where the law so provides.’⁴⁹ The death penalty is not classified as a sentence for misdemeanours and simple offences.⁵⁰

Sections 22 and 23 regulate the death penalty in detail and provide as follows:

41 See R Ntoko Ntonga and others ‘A legal appraisal of the application of the death penalty in Cameroon’ (2024) 3 *Studies in Law and Justice* 42.

42 OMCT ‘Cameroon: Death sentence marks a new turn in the Anglophone crisis’ 7 October 2021, <https://www.omct.org/en/resources/statements/cameroon-death-sentence-marks-a-new-turn-in-the-anglophone-crisis> (accessed 9 September 2025).

43 Parliamentarians for Global Action ‘Cameroon and the death penalty’, <https://www.pgaction.org/ilhr/adp/cmr.html> (accessed 9 September 2025).

44 See generally ME Nkafu ‘A critical analysis of sentencing in criminal law’ (2022) 5 *Scholars International Journal of Law, Crime and Justice* 46.

45 As above.

46 Act 2005/007 of 27 July 2005 on the Criminal Procedure Code of Cameroon.

47 See, eg, secs 21, 224(2), 417(2), 426, 490.

48 Act 2016/007 of 12 July 2016 relating to the Penal Code of Cameroon.

49 Sec 21(1) of the Cameroon Penal Code, 2016.

50 As above.

Section 22: Conditions Precedent to Execution

- (1) Every sentence of death shall be submitted to the President of the Republic for his decision on commutation.
- (2) No death sentence may be executed until the President shall have signified his decision not to commute.
- (3) No woman with child may be executed until after her delivery.
- (4) No execution may take place on Sunday or on a public holiday.

Section 23: Execution

- (1) Execution of a death sentence shall be by shooting or hanging as may be ordered by the judgment and shall be public unless otherwise ordered in the decision not to commute.
- (2) The bodies of persons executed shall be returned to their families at their request, but on condition of a quiet funeral.
- (3) Nothing may be published by the press beyond the official record of the execution and any official communiqué that may be released.
- (4) The detailed application of this section shall be prescribed by decree.

These sections raise several concerns. First, it is not clear from section 22 whether children are exempted from the death penalty. However, article 3 of the Economic and Social Council Resolution 1984/50 on Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty,⁵¹ which Cameroon signed, states that children are exempted from the death penalty. Similarly, article 37 of the Convention on the Rights of the Child (CRC), to which Cameroon is a state party, prohibits the imposition of the death penalty in children's matters.⁵² This was an opportunity missed for Cameroon to include this exemption in the Code. Second, the retributive and brutal nature of the death penalty is clearly spelled out by how it can be executed: shooting or hanging. While there is not much data on how the death penalty was carried out in Cameroon during the period between 1884 and 1919, the main form of execution was death by hanging.⁵³ In 2025, the same form of execution remains, with the added brutal form of shooting.

In 2017 Cameroon rejected 13 recommendations of the Human Rights Council in relation to the abolition of the death penalty.⁵⁴

51 UN Economic and Social Council, Resolution 1984/50, E/RES/1984/50 (1984).

52 UN General Assembly, Resolution 44/25, A/Res/44/25 (1989).

53 R Ndille 'Shaping remembrance through history education: How is German colonialism depicted in Cameroonian textbooks, and to what end?' 21 January 2022, <https://www.rosalux.de/en/news/id/45997/shaping-remembrance-through-history-education> (accessed 9 September 2025).

54 See The Advocates for Human Rights 'Cameroon, Human Rights Council, death penalty October 2017' 4 October 2017, <https://www.theadvocatesforhumanrights.org>.

Cameroon argued that the public supported the death penalty, although no study has documented such support.⁵⁵ I argue that Cameroon is not considering that the death penalty is a Eurocentric and institutionalised retributive punishment, a concept that was foreign to the chiefdoms and kingdoms in pre-colonial times. It will be argued in the following parts that Cameroon should consider the decolonisation of its sentencing regime, particularly regarding the abandonment of the death sentence, by adopting the value of Ubuntu.

3 Understanding decolonisation through the lens of Ubuntu

The author of this chapter argues that the sentencing regime in Cameroon, and particularly the death penalty as a sentence, is a colonial remnant of the past. This should be addressed by Cameroon especially as one of the purposes of the Organisation of African Unity (OAU) Charter is 'to eradicate all forms of colonialism from Africa.'⁵⁶ Also, Agenda 2063 promotes pan-Africanism by providing that

Africa will witness the rekindling of solidarity and unity of purpose that underpinned the struggle for emancipation from slavery, colonialism, apartheid and economic subjugation. By 2020 all remnants of colonialism will have ended and all African territories under occupation fully liberated. We shall take measures to expeditiously end the unlawful occupation of the Chagos Archipelago, the Comorian Island of Mayotte and affirm the right to self-determination of the people of Western Sahara. The Assembly of the African Union re-affirm that Agenda 2063 builds on past achievements and challenges and takes into account the continental and global context and trends in which Africa is reali[s]ing its transformation, including (a) the pan-African vision and project, which guided struggles of African people and their descendants against slavery, colonialism.⁵⁷

In 2025, 'all remnants of colonialism' in Cameroon have not been removed. I argue that the theory of decolonisation should be adopted in Cameroonian sentencing reform to rid itself from the remaining shackles of colonial oppression. Yet, how is decolonisation defined?

org/International_Submissions/A/Index?id=98 (accessed 9 September 2025).

55 See The Advocates for Human Rights (n 54).

56 Art 2(1)(d) of the Organisation of African Unity Charter, 1963.

57 African Union (n 6) para 22.

3.1 Decolonisation

Decoloniality arises from the recognition that colonial power structures still shape the world, often leaving Africans feeling alienated, taught to reject the continent that supports them while admiring America and Europe, which in turn dismiss them.⁵⁸ Kessi, Marks and Ramugondo define decolonisation as 'a political and normative ethic and practice of resistance and intentional undoing – unlearning and dismantling unjust practices, assumptions, and institutions – as well as persistent positive action to create and build alternative spaces.'⁵⁹ Nyawasha states that '[f]or decolonisation to achieve its desired outcomes, it needs to be a wholesale project with the potential of addressing the damage, destruction and violence of colonialism.'⁶⁰ Decolonisation confronts coloniality head-on and unapologetically.

Decolonial theory makes a radical and loud challenge, as well as a protest and direct confrontation with existing practice, such as the death penalty in Cameroon.⁶¹ Noxolo explains that decolonisation 'is focused on an epistemic challenge to colonialist thinking, with an emphasis on radical delinking from the sources of ongoing inequalities that have deep historical roots in European imperialism.'⁶² Mamdani explains that decolonisation invites a challenge of inclusion on every level.⁶³ Wa Thiong'o defines decolonisation as a project and process of reimagining and reawakening.⁶⁴ It is argued that Cameroon should be radical in its transformation of its sentencing regime. I argue that the antithesis of colonisation is positioned in breaking down the barriers of oppression by cultivating indigenous opportunities for the original peoples. Decolonisation, therefore, provides the foundation for change in the

58 SJ Ndlovu-Gatsheni 'Decoloniality as the future of Africa' (2015) 13 *History Compass* 489.

59 S Kessi, Z Marks & E Ramugondo 'Decolonising African studies' (2020) 12 *Critical African Studies* (2020) 271.

60 TS Nyawasha 'Decolonisation and multiculturalism: Navigating a theoretical cul-de-sac' (2025) 19 *Journal of Multicultural Discourses* 122.

61 P Noxolo 'Decolonial theory in a time of the re-colonisation of UK research' (2017) 42 *Transactions of the Institute of British Geographers* 342.

62 As above.

63 M Mamdani 'Decolonising universities' in J Jansen (ed) *Decolonisation in universities* (2019) 25.

64 N Wa Thiong'o *Decolonising the mind: The politics of language in African literature* (1986) 87.

Cameroonian sentencing regime. Years of oppression have left lifelong scars that can be remedied by uprooting colonial structures planted by the German Empire.

By adopting the theory of decolonisation in Cameroon, the people of Cameroon can unpack the colonial past and move towards a system that recognises indigenous knowledge and the voice of the original peoples. From 1884, the German Empire introduced several sentences in Cameroon that radically changed the sentencing landscape. It is argued here that it is time to radically decolonise the sentencing regime and recover the essence of indigenous sentencing practices often rooted in the value of Ubuntu.

3.2 Ubuntu

The value of Ubuntu serves as an ideal vessel for decolonial change in the Cameroon sentencing regime, but why? Ubuntu is an African value directly translated to 'I am because we are.'⁶⁵ In indigenous African languages, Ubuntu is known in full as: *umuntu ngumuntu ngabantu* (in the Nguni language) and in Sotho: *mothokemotho ka batho*.⁶⁶ The direct translation of these expressions is 'a human being is a human being because of other human beings.'⁶⁷ The Court in *Makwanyane* provides:

The need for Ubuntu expresses the ethos of an instinctive capacity for and enjoyment of love towards our fellow men and women; the joy and the fulfilment involved in recogni[s]ing their innate humanity; the reciprocity this generates in interaction within the collective community; the richness of the creative emotions which it engenders and the moral energies which it releases both in the givers and the society which they serve and are served by.⁶⁸

While Ubuntu envelopes the key values of compassion, dignity, respect, group solidarity, collective unity and conformity to basic norms, fundamentally it denotes morality and humanity.⁶⁹ I argue that the death penalty is in direct contrast with Ubuntu as Ubuntu speaks about a common humanity and love among people. Sentencing a person to

65 See generally FL Hord, ML Okpara & JS Lee *I am because we are: Readings in Africana philosophy* (2016).

66 M Letseka 'In defence of Ubuntu' (2012) 31 *Studies in Philosophy and Education* 48.

67 As above.

68 *Makwanyane* (n 37) para 263.

69 *Makwanyane* (n 37) para 308.

death or to a severely retributive sentence means that everyone in the community must also bear the pain of that sentence, which is not the case. Ajitoni explains that Ubuntu often promotes reconciliation and collective healing to build a more inclusive and equitable society.⁷⁰ I argue that Ubuntu, therefore, is the glue that binds the broken pieces of communities together.

Ubuntu fulfilled this role in South Africa, especially during the Truth and Reconciliation Commission (TRC) which stated in its Act⁷¹ that 'there is a need for understanding but not for vengeance, a need for reparation but not for retaliation, a need for Ubuntu but not for victimisation.'⁷² The death penalty and life imprisonment, for example, often rely on vengeance and retaliation as justifications. Thus, I argue that the death penalty does not belong on a continent such as Africa, which was founded on many humane values, including Ubuntu.⁷³ The next part examines the lessons Cameroon can draw from South Africa's approach to its most retributive sentence at the time: the death penalty.

4 Abolition of the death penalty in South Africa: Lessons for Cameroon

South Africa presents an important country study, especially due to its substantial period of colonialism between 1652 and 1961. South Africa was colonised by the Dutch in 1652 and by the English in 1806. Decolonisation was not addressed for the period between 1961 and 1994 due to the rule of the apartheid government, which adopted its own form of inhumane control over the majority of South Africans, with many policies resembling colonial practices.⁷⁴ It was not until the dawn of democracy when aspects of the retributive sentencing regime of South Africa were systematically addressed and indirectly decolonised. I use the word 'indirectly' because at the time decolonisation was not discussed

70 BK Ajitoni 'Ubuntu and the philosophy of community in African thought' (2024) 7 *Journal of African Studies and Sustainable Development* 2.

71 Promotion of National Unity and Reconciliation Act 34 of 1995.

72 Preamble to the Promotion of National Unity and Reconciliation Act 34 of 1995.

73 Metz also argues that 'African values provide good reason to reject the death penalty'. See T Metz 'African values and capital punishment' in G Walmsley (ed) *African philosophy and the future of Africa* (2011) 83.

74 See generally A Hlongwane, A Lissoni & H Judini *In whose place? Confronting vestiges of colonialism and apartheid* (2024).

in the South African government. During this period, it revolved around rebuilding a nation by providing opportunities to the majority of the people. The Constitutional Court abolished the death penalty in *Makwanyane*,⁷⁵ mainly because it violated the human rights of offenders, which became increasingly important due to the establishment of the interim Constitution of the Republic of South Africa in 1993.⁷⁶ This Court in *Makwanyane* also engaged critically with Ubuntu, which makes this case essential when discussing how to use Ubuntu to decolonise a sentencing regime.

4.1 *S v Makwanyane*

The two accused persons in this case were Themba Makwanyane and Mvuso Mchunu.⁷⁷ They were convicted of one count of robbery with aggravating circumstances, one count of attempted murder and four counts of murder.⁷⁸ The counts of murder included the killing of two police officers.⁷⁹ They were sentenced to death for the murder convictions, which was eventually confirmed by the Appellate Division.⁸⁰ At the time of this judgment in 1994, the Appellate Division, situated in Bloemfontein, was the highest court. With the establishment of the Constitutional Court in late 1994, which eventually opened its doors only in 1995, the Appellate Division determined that it was not the duty of the Appellate Division to determine the validity of the death sentence.⁸¹ It held that the Constitutional Court had this mandate and duty in terms of the Constitution.⁸²

The Constitutional Court eventually decided that the death penalty had to be abolished. The Court gave several reasons for its decision, of which only retribution and Ubuntu will be analysed considering

75 *Makwanyane* (n 37).

76 See the Constitution of the Republic of South Africa Act 200 of 1993.

77 *Makwanyane* (n 37) para 1. See also *S v Makwanyane & Another* 1994 (3) SA 868 (A) para 1.

78 *Makwanyane* (n 37) para 1.

79 *Makwanyane* (n 77) para 4.

80 *Makwanyane* (n 77).

81 *Makwanyane* (n 77) para 37.

82 As above. See also sec 98(2) of the Constitution of the Republic of South Africa Act 200 of 1993.

its relation to the research question and overall aim of this study.⁸³ In relation to retribution, the Court held:

The righteous anger of family and friends of the murder victim, reinforced by the public abhorrence of vile crimes, is easily translated into a call for vengeance. But capital punishment is not the only way that society has of expressing its moral outrage at the crime that has been committed. We have long outgrown the literal application of the biblical injunction of 'an eye for an eye, and a tooth for a tooth'. Punishment must to some extent be commensurate with the offence, but there is no requirement that it be equivalent or identical to it.⁸⁴

It was important for the Court to explain the danger that retribution often equates to vengeance because, as mentioned earlier, the TRC Act stated that there is a 'need for understanding but not for vengeance'.⁸⁵ The Court held that the state does not need to kill convicted murderers in order to express moral outrage at their violent conduct.⁸⁶ It was of the view that life imprisonment is also a way of expressing outrage and complying with the theory of retribution.⁸⁷ The Court finally held that for South Africa to fully embrace Ubuntu, our society should be one that 'wishes to prevent crime ... [not] to kill criminals simply to get even with them'.⁸⁸

The term 'Ubuntu' was mentioned no less than 30 times during the *Makwanyane* trial. I argue that this is partly attributable to the constitutional justices' understanding of South Africa at the time as a young democracy marked by deep pain and hatred, as well as the interim Constitution, which included Ubuntu as part of its Postamble, which provided that

[t]his Constitution provides a historic bridge between the past of a deeply divided society characterised by strife, conflict, untold suffering and injustice, and

83 See, eg, the analysis conducted by the Court regarding the death penalty and its violation of various human rights of the accused. See *Makwanyane* (n 37) paras 7-11, 26, 80-86.

84 *Makwanyane* (n 37) para 129.

85 Preamble to the Promotion of National Unity and Reconciliation Act 34 of 1995. See also *Makwanyane* (n 37) para 130.

86 *Makwanyane* (n 37) para 129. See also generally RF Schopp 'Retribution and revenge in the context of capital punishment' 28 March 2013, https://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID2239776_code33021.pdf?abstractid=2239776&mirid=1 (accessed 10 September 2025).

87 *Makwanyane* (n 37) 129.

88 *Furman v Georgia* 1972 (408) US 238 290 para 305. See also *Makwanyane* (n 37) para 131.

a future founded on the recognition of human rights, democracy and peaceful co-existence and development opportunities for all South Africans, irrespective of colour, race, class, belief or sex. The pursuit of national unity, the well-being of all South African citizens and peace require reconciliation between the people of South Africa and the reconstruction of society. The adoption of this Constitution lays the secure foundation for the people of South Africa to transcend the divisions and strife of the past, which generated gross violations of human rights, the transgression of humanitarian principles in violent conflicts and a legacy of hatred, fear, guilt and revenge. These can now be addressed on the basis that there is a need for understanding but not for vengeance, a need for reparation but not for retaliation, a need for Ubuntu but not for victimisation.⁸⁹

It was the feelings of hatred, revenge and loss of respect for dignity and human life, which attaches to every person, that created a spontaneous call among sections of the community for a return to Ubuntu.⁹⁰ The Court held that '[a]lthough South Africans have a history of deep divisions characterised by strife and conflict, one shared value and ideal that runs like a golden thread across cultural lines, is the value of Ubuntu.'⁹¹ Whereas apartheid dehumanised people, a characteristic of Ubuntu in a community sense is the value it puts on human dignity and life.⁹² 'The dominant theme of the culture is that the life of another person is at least as valuable as one's own.'⁹³ Respect for the dignity of human beings is critical to this concept.⁹⁴ Respect for the dignity of every person was incapacitated during the colonial periods in South Africa and Cameroon.

During conflicts, members of society decry the loss of Ubuntu, as the commission of atrocities as seen during the colonial periods are the antithesis of Ubuntu.⁹⁵ Treatment that is inhuman, cruel or degrading is bereft of Ubuntu.⁹⁶ The death penalty rejects the theory of rehabilitation by dragging the convicted offender to the gallows and condemning them as 'no good', once and for all.⁹⁷ This begs the question of whether such rejection of rehabilitation accords with the concept of Ubuntu.⁹⁸ Because

89 Constitution of the Republic of South Africa Act 200 of 1993.

90 *Makwanyane* (n 37) para 227.

91 *Makwanyane* (n 37) para 307.

92 *Makwanyane* (n 37) para 225.

93 As above.

94 As above.

95 As above.

96 As above.

97 *Makwanyane* (n 37) para 241.

98 As above.

Ubuntu places emphasis on common humanity, the rehabilitation of the offender, which often leads to the offender ceasing to be a danger to society, fully accords with the concept of Ubuntu.⁹⁹

The Court in *Makwanyane* held that South African courts prior to 1995 had already started applying Ubuntu in their judgments despite the brutality with which the offence was perpetrated, indicating that offenders were worthy and capable of rehabilitation.¹⁰⁰ Marshall J held in *Furman v Georgia* that '[t]he measure of a country's greatness is its ability to retain compassion in time of crisis.'¹⁰¹ The Constitutional Court in *Makwanyane* further held that Ubuntu 'calls for a balancing of the interest of society against those of the individual, for the maintenance of law and order, but not for dehumanising and degrading the individual.'¹⁰² The Court held that the death penalty ran counter to the Constitution and the value of Ubuntu, which ultimately served as one of the reasons for abolishing the death penalty.¹⁰³

4.2 Lessons for Cameroon

This part explores whether Ubuntu can be used to decolonise the Cameroonian sentencing regime. It is important to note that Ubuntu is an African value, although it is not clear from the research to what extent Cameroon is adopting Ubuntu, especially within the criminal justice system. Fandi and Duala explain that Papiackum, a proverb in Cameroon, 'advocates for restorative justice where people who are indulged in crimes are transformed by impacting onto them certain norms and values that will permit them to abandon crimes and be active participants in every nation building process.'¹⁰⁴

Further research needs to be conducted on how traditional courts and mainstream courts in Cameroon apply African values such as Ubuntu and other African values during sentencing. The Preamble to the African

99 *Makwanyane* (n 37) para 243.

100 See *S v Bosman* 1992 (1) SACR 115 (A) 116G-117F; *S v Mbotshwa* 1993 (2) SACR 468(A) 468J-469F; *S v Ramba* 1990(2) SACR 334(A) 335H-336E; *S v Ngcobo* 1992(2) SACR 515(A) 515H-516A.

101 *Furman v Georgia* 1972 (408) US 238 290 para 371. See also *Makwanyane* (n 37) para 249.

102 *Makwanyane* (n 37) para 249.

103 *Makwanyane* (n 37) para 250.

104 MR Fandi & JS Duala 'Restorative justice discourses in Papiackum witticism' (2023) 5 *South Asian Research Journal of Arts, Language and Literature* 202.

Charter on Human and Peoples' Rights¹⁰⁵ importantly acknowledges that the values of African civilisation should characterise and inspire the concept of human and peoples' rights. It is submitted that this should be the starting point in transforming African criminal justice systems that are overly retributive. The question should be asked as to how important African values for African states are, and whether these values embody restorative justice as opposed to retribution.

Makwanyane also illustrated how crucial community is to Africa and that the pain and suffering of an individual is endured by the entire community. The Court made it clear that the death penalty, due to its rejection of rehabilitation as well as brutal foundation, did not accord with the value of Ubuntu. I believe that the same is true in current-day Cameroon. Including the punishment of death in the Criminal Code does not accord with the value of Ubuntu, but rather perpetuates the volatile retributive roots planted by the German Empire. These roots must be uprooted by planting the seed of Ubuntu. While South Africa still has a long way to go to fully decolonise their sentencing regime,¹⁰⁶ *Makwanyane* laid down an important marker: Evil colonial practices do not belong in a country practising Ubuntu.

The German Empire traumatised and scarred several generations of Cameroon. The English and French colonisation was not even touched upon in this chapter, which compounds the problem even further. The Court in *Makwanyane* deliberately expressed that the death penalty in South Africa was introduced by the colonisers. Additionally, Konaté further provides that the 1890s were a formative time for the introduction of the death penalty in German Africa.¹⁰⁷ Cameroon should, therefore, be encouraged to condemn the death penalty as well as other retributive sentencing practices originating from colonial times. This might be the first step in abolishing the death penalty. A counter argument could be that the public supports the death penalty, an argument questioned earlier by Advocates for Human Rights based

105 African Charter on Human and Peoples' Rights, adopted 27 June 1981, OAU Doc CAB/LEG/67/3 Rev 5, 21 ILM 58 (1982).

106 See generally W Nortje 'Decolonising the South African criminal procedure: Towards a critical approach to the use of Ubuntu in sentencing' (2024) 27 *Potchefstroom Electronic Law Journal* 1-35.

107 D Konaté 'For African nations, capital punishment is a grim colonial legacy that lingers on' 10 October 2021, <https://www.europe-solidaire.org/spip.php?article59788> (accessed 11 November 2025).

on the lack of empirical data.¹⁰⁸ However, colonial oppression often resulted in silencing the voices of indigenous peoples as the colonial system 'was designed to privilege white settler and Western ways, and elevate white race superiority.'¹⁰⁹ This is why the Organisation of African Unity (OAU) and now the African Union (AU) is encouraging African states to decolonise and address the horrors of the past. I argue that the people of Cameroon will remain silent if the government of Cameroon continues to ignore the calls for decolonisation and address the reform of its sentencing regime. It took the highest Court in South Africa and the TRC to ignite the Ubuntu fire, which has opened several pathways on how to address the historical injustices of the past. Cameroon should understand that the colonial past cannot be swept under the rug. Instead, it requires urgent reform.

5 Conclusion

The research question in this chapter was the following: How did the German Empire colonise Cameroonian sentencing practices and to what extent are these practices still evident in current day sentencing in Cameroon? Germany introduced several retributive sentences of which the death penalty is the most severe. Additionally, while the death penalty currently is not a sentence that is being imposed on a regular basis, it remains part and parcel of the sentencing regime of Cameroon. While Cameroon is a sovereign country, it is regrettable that it has ignored calls from the AU to fully decolonise. It is hoped that the future abolishment of the death penalty in Cameroon can be the catalyst for further decolonial change.

Bibliography

Ajitoni, BK 'Ubuntu and the philosophy of community in African thought: An exploration of collective identity and social harmony' (2024) 7 *Journal of African Studies and Sustainable Development* 1

108 See The Advocates for Human Rights (n 54).

109 A Schultz and others 'Historical and continued colonial impacts on heart health of indigenous peoples in Canada' (2021) 3 *Canadian Cardiovascular Society Open* 151.

- Bachmann, K *Genocidal empires: German colonialism in Africa and the Third Reich* (Peter Lang 2018)
- Brooks, T *Punishment* (Routledge 2012)
- Chenwi, L *Towards the abolition of the death penalty in Africa: A human rights perspective* (Pretoria University Law Press 2007)
- Chipato, F 'The global politics of African identity: Pan-Africanism and the challenge of Afropolitanism' (2023) 3 *Global Studies Quarterly* 1
- Conrad, S *German colonialism: A short history* (Cambridge University Press 2011)
- Fandi, MR & Duala, JS 'Restorative justice discourses in Papiackum witticism: A socio-pragmatic analysis' (2023) 5 *South Asian Research Journal of Arts, Language and Literature* 196
- Hlongwane, A, Lissoni A & Judini H *In whose place? Confronting vestiges of colonialism and apartheid* (Jacana Media 2024)
- Hord, FL, Okpara, ML & Lee, JS (eds) *I am because we are: Readings in African philosophy* (University of Massachusetts Press 2016)
- Jalata, A 'Colonial terrorism, global capitalism and African underdevelopment: 500 years of crimes against African peoples' (2013) 5 *The Journal of Pan African Studies* 1
- Kerr, L 'How the prison is a black box in punishment theory' (2019) 69 *The University of Toronto Law Journal* 85
- Kessi, S, Marks Z & Ramugondo E 'Decolonizing African Studies' (2020) 12 *Critical African Studies* 271
- Kingah, D & Tazifor, J *A junior history for secondary schools* (Evans Brothers 2000)
- Letseka, M 'In defence of Ubuntu' (2012) 31 *Studies in Philosophy and Education* 47
- Mamdani, M 'Decolonising universities' in Jansen, J (ed) *Decolonisation in universities: The politics of knowledge* (Wits University Press 2019) 15
- Metz, T 'African values and capital punishment' in Walmsley, G (ed) *African philosophy and the future of Africa* (Council for Research in Values and Philosophy 2011) 83
- Ndlovu-Gatsheni, SJ 'Decoloniality as the future of Africa' (2015) 13 *History Compass* 489
- Nkafu, ME 'A critical analysis of sentencing in criminal law: The case of Cameroon and France' (2022) 5 *Scholars International Journal of Law, Crime and Justice* 46

- Nortje, W 'Decolonising the South African criminal procedure: Towards a critical approach to the use of Ubuntu in sentencing' (2024) 27 *Potchefstroom Electronic Law Journal* 1
- Novak, A 'Capital punishment in pre-colonial Africa: The authenticity challenge' (2018) *The Journal of Legal Pluralism and Unofficial Law* 71
- Noxolo, P 'Decolonial theory in a time of the re-colonisation of UK research' (2017) 42 *Transactions of the Institute of British Geographers* 342
- Nyawasha, TS 'Decolonisation and multiculturalism: Navigating a theoretical cul-de-sac' (2025) 19 *Journal of Multicultural Discourses* 1
- Rudin, HR *Germans in the Cameroons 1884-1914: A case study in modern imperialism* (Greenwood Press 1938)
- Schultz, A and others 'Historical and continued colonial impacts on heart health of indigenous peoples in Canada: What's reconciliation got to do with it?' (2021) 3 *Canadian Cardiovascular Society Open* 151
- Sithole, T & Tsholo, K 'Pan-Africanism as responsibility: A building block for African unity?' (2003) 12 *Journal of African Union Studies* 13
- Wa Thiong'o, N *Decolonising the mind: The politics of language in African literature* (Heinemann 1986)
- Ze Edo'o, JR 'The borders of Cameroon from the origins to the present day: Stakes and challenges' (2017) 5 *Scholars Journal of Arts, Humanities and Social Sciences* 816
- Zollmann, J 'German colonial law and comparative law, 1884-1919' in Duve, T (ed) *Entanglements in legal history: Conceptual approaches* (Max Planck Institute 2014) 253

