



THE STATUS OF LESBIAN, GAY, BISEXUAL AND TRANSGENDER RIGHTS IN CAMEROON

A SHADOW REPORT

Submitted to the Human Rights Committee by:
Alternatives Cameroun
Centre for Human Rights at the University of Pretoria
Global Rights
International Gay and Lesbian Human Rights Commission

June 2010

INTRODUCTION

The Republic of Cameroon, a unitary republic and member of the African Union, acceded to the International Covenant on Civil and Political Rights¹ (ICCPR) on 27 June 1984 without reservations. On 25 November 2008, Cameroon submitted its fourth periodic review to the United Nations Human Rights Committee for evaluation.²

Though Cameroon, through its accession to the ICCPR, agreed to meet all obligations, it actively discriminates against people on grounds of sexual orientation and a gender identity particularly by outlawing sexual relations between people of the same sex. The ICCPR explicitly prohibits discrimination based on sex. In the landmark case of *Toonen v. Australia*,³ it was asserted that the prohibition of discrimination on the grounds of sexual orientation is included in the references to sex within the ICCPR. Therefore, discrimination on the basis of sexual orientation is a violation of Articles 2(1) and 26 (non-discrimination) of the ICCPR. State actors in Cameroon, however, seek out, violate the privacy of and arrest men who have sex with men (MSM) and women who have sex with women (WSW). After arrests take place, these individuals often face lengthy and illegal imprisonment and degrading treatment. Not only is this tolerated by the government, but the active rhetoric within political institutions and society views these violations of ICCPR as moral and necessary.

This shadow report on lesbian, gay, bisexual and transgender rights in Cameroon was a collaborative effort of Global Rights, the International Gay and Lesbian Human Rights Commission (IGLHRC), the Centre for Human Rights at the University of Pretoria and Alternatives Cameroun.

¹ U.N. General Assembly, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force 23 March, 1976.

² CCPR/C/CMR/4.

³ Communication no. 488/1992.

EXECUTIVE SUMMARY

In violation of its obligations under the ICCPR, Cameroon has maintained legal provisions that criminalize same-sex sexual conduct between consenting adults. In *Toonen v. Australia*,⁴ it was determined that the prohibition of discrimination based on sex included sexual orientation. The Constitution of the Republic of Cameroon forbids discrimination on the grounds of sex; also Article 45 states that international treaties supersede Cameroonian domestic law, yet the discriminatory ban on same-sex sexual conduct is enforced. The ban has led to discrimination, stigmatization and other serious human rights violations on the grounds of real or perceived sexual orientation.

Using article 347a of the Cameroonian Criminal Code that outlaws same-sex sexual conduct, individuals are commonly arrested without evidence because of their real or perceived sexual orientation. After these arrests, many are held for lengthy time periods and even subjected to multiple trials in violation of the Cameroonian Criminal Procedure Code and subsequently the ICCPR. While in custody, detainees undergo degrading treatment such as anal examinations with no medical validity.

The stigmatization that results from the discriminatory ban on same-sex sexual conduct also creates inequity in access to HIV/AIDS treatment. A man who was detained by Cameroonian authorities for nearly a year and was subjected to two trials after the prosecution refused to sign a release order when he was acquitted, died shortly after being released from custody from HIV complications that resulted from his lack of access to medication during his detention.

Many individuals are physically abused while in custody. Cases of discrimination involving minors within the education system have also been reported. Even after the UN Working Group on Arbitrary Detention condemned the nation's law regarding same-sex sexual relations and sexual orientation, Cameroon defended its law and actions. Cameroon has failed to meet its obligations under ICCPR.

⁴ Communication no. 488/1992.

SUBSTANTIVE VIOLATIONS OF ICCPR

ARTICLE 2 AND ARTICLE 26 – NON DISCRIMINATION

Under Article 2(1) of the ICCPR, states are required to “undertake to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property birth or other status.” Article 26 guarantees the right of all people to equality before the law and equal protection of the laws and legal systems of each signatory country. Discrimination in the law “on any ground such as race, color, [or] sex” is likewise prohibited. In *Toonen v. Australia*,⁵ the notion of sex as enshrined in articles 2 and 26 of the Covenant has been interpreted as to include sexual orientation. In 1994 when the case was heard, the Human Rights Committee considered the criminalization of private sexual activity between consenting same-sex adults and found that such provisions violated Articles 2(1) and 26 of the Covenant.

In the preamble of the Constitution of Cameroon, the right of equality and non-discrimination is guaranteed:

Declare that the human person, without distinction as to race, religion, sex or belief, possesses inalienable and sacred rights... all persons shall have equal rights and obligations. The State shall provide all its citizens with the conditions necessary for their development... the home is inviolate. No search may be conducted except by virtue of the law... the State shall guarantee all citizens of either sex the rights and freedoms set forth in the Preamble of the Constitution.⁶

According to Article 65 of the Constitution of the Republic of Cameroon, “The preamble shall be part and parcel of the Constitution,”⁷ meaning that the rights guaranteed in the preamble are legally binding. Furthermore, according to Article 45, “Duly approved or ratified treaties and international agreements shall, following their publication, override national laws, provided the other party implements the said treaty or agreement.”⁸ The Republic of Cameroon acceded to the ICCPR which, according to the nation’s Constitution, overrides national law. Given the findings of the Human Rights Committee in *Toonen v. Australia*, any law that criminalized same-sex sexual conduct would be a violation of the Cameroonian Constitution. However, Cameroon actively discriminates on grounds of sexual orientations by upholding its ban on consensual same-sex sexual relations between adults.

⁵ Communication no. 488/1992.

⁶ Constitution of the Republic of Cameroon.

⁷ *Id.*

⁸ *Id.*

Ordinance N°72-16 of 28 September 1972 introduced article 347a of the Criminal Code of Cameroon criminalizing sexual relations between persons of the same sex. The law punishes “sexual relations with a person of the same sex” with imprisonment from six months to five years, and a fine of 20,000 to 200,000 CFA francs [US\$ 40-400]. The law is actively upheld by police forces and political institutions (many cases are listed in the following sections). The enforcement of this law is an egregious violation of the ICCPR.

The UN Human Rights Council recommended that same-sex sexual conduct be decriminalized during Cameroon’s Universal Periodic Review (UPR) in December 2008, but Cameroon did not accept this recommendation.⁹

Furthermore, Alice Nkom, a prominent Cameroonian lawyer, argues that the ordinance criminalizing sexual relations between consenting adults is in fact unconstitutional because it did not pass through the legislative channels to become criminal law.¹⁰ The ordinance was actually issued by the president of the republic, Amadou Ahidjo, in 1972. This violates the separation of powers within the constitution. Ms. Nkom has continued to fight the law on this basis; however stigmatization on the basis of sexual orientation and gender identity makes it difficult to challenge the law that is viewed as a protection of Cameroonian morality. According to Article 26, “the definition of felonies and misdemeanours and the institution of penalties of all kinds, criminal procedure, civil procedure, measures of execution, [and] amnesty” is reserved for the legislative power. The president, issuing this ordinance, violated both the preamble and Article 26 of the Constitution of Cameroon.

The existence of the ban of same-sex sexual relations leads to discrimination based on gender expression and perceived or real sexual orientation. Stereotypes about how an individual of a certain gender should behave can lead to discriminatory behavior that has lasting consequences. The criminalization of same-sex sexual conduct in Cameroon has even led newspapers and magazines to publish articles accusing

⁹ Human Rights Council, *Report on the Working Group on the Universal periodic Review*, A/HRC/11/21, October 12, 2009, paras. 20, 22, 25, 28, 29, 32, and 46, available at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/CMSession4.aspx> (accessed on March 1, 2010). “Argentina recommended Cameroon considering the possibility of reforming the laws criminalizing homosexuality and adapting them to international standards.” Canada asked Cameroon to “... (b) amend its Criminal Code to abolish the criminalization of homosexual acts to conform to the provisions of the ICCPR, particularly articles 2 and 26, and the provisions of the African Charter of Human Rights and Peoples’ Rights.” France recommended “...respect international provisions in the area of protection of minorities and vulnerable groups... (c) and non-discrimination against homosexuals.” Luxemburg joined the others recommending Cameroon to “...(c) reform its legislative arsenal on this point and establish effective protection of homosexuals against discrimination and attacks.” Czech Republic recommended “...(d) the decriminalization of same-sex activity between consenting adults and adoption of measures to promote tolerance in this regards, which would also facilitate more effective educational programs for the prevention of HIV/AIDS.” Brazil recommended “... (c) to amend domestic law regarding homosexuality, with a view to decriminalize it;” Mexico asked that “... (b) that all national legislation that criminalized homosexuality be brought into line with the Universal Declaration on Human Rights and other relevant instruments;”

¹⁰ http://www.bonaberi.com/ar,l_avocate_Cameroonaise_alice_nkom_se_livre_sur_yagg,7709.html (Accessed 24 June 2010).

individuals of “homosexual behavior.”¹¹ Newspapers and magazines have gone as far to accuse high ranking government officials of same-sex sexual conduct. The government has denounced these accusations as unfounded and false, but the newspapers insist they have reliable sources. The publications printed regarding these applications were so wildly popular that they sold out and required several printings to meet demand. The continued existence of laws criminalizing same-sex sexual conduct only contribute to the climate of stigmatization, even though the government insisted, “Whether it is heterosexual or homosexual, sexual intercourse takes place in an intimate environment between two persons.”¹² The current legal framework only encourages discrimination and inflammatory journalism.

Exclusion of a player of the national soccer team in Cameroun – 2008

A player alleged to be lesbian was excluded from the national football team in 2008. In this case, where no actual evidence of homosexual practice was brought, the argument made by the National Team was based on a complaint filed by another player.¹³ The press was quick to pick up the story, feeding the imagination of readers. “The morphology of the girls that approaches that of men, and also the lack of intimacy [with men] are factors favorable to deviation”, stated the Anecdote magazine in its issue number 348 from January 14, 2008. At the time of the scandal, the parents of the excluded player threatened to complain to court if the technical staff of the national team did not give any clarification on the case. “We will go to court... The identity of the girl said to having been harassed was not revealed,” said one of those parents on the airwaves of an FM radio station. Currently, no information of subsequent events is available.

ARTICLE 6 – RIGHT TO LIFE

Article 6 of the ICCPR states: “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.” The government of Cameroon, through its actions and omissions, as shown below, failed to meet its obligations under article 6 of the ICCPR.

Mr. Alim Mongoche, along with 10 other men, was arrested in June 2005 in Yaoundé.¹⁴ The full details of the arrest of the group and subsequent violations to other rights guaranteed under ICCPR will be covered in the following sections. Alim Mongoche remained in the custody of police forces while undergoing investigation and two trial before finally being released a year later in June 2006. Mongoche was infected with HIV and during his detainment did not receive the necessary treatment to maintain good health. Shortly after being released from custody, Mongoche died at the Central Hospital in Yaoundé. His death was attributed to the lack of HIV-related treatment

¹¹ Row over Cameroon ‘gay’ witchhunt. <http://news.bbc.co.uk/2/hi/africa/4685298.stm> (Accessed 25 June 2010).

¹² *Id.*

¹³ E-mail communication with Steave Nemende, 9 June 2010. On file with Global Rights.

¹⁴ A/HRC/4/40/Add.1

provided while awaiting his two trials. Unable to pursue treatment on his own while in custody, Cameroon denied Mongoche the right to life through denial of medical treatment. By enforcing article 347a, Cameroon infringed on the right to life by inadequate medical care provided for detainees imprisoned on the grounds of real or perceived sexual orientation.

ARTICLE 7 – RIGHT TO FREEDOM FROM TORTURE AND OTHER CRUEL, INHUMAN, DEGRADING PUNISHMENT OR TREATMENT

Article 7 of the ICCPR reads: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.” Authorities of Cameroon consistently arrest LGBT individuals and subject them to inhumane and degrading treatment contravening article 7 of the ICCPR.

The International Gay and Lesbian Human Rights Commission (IGLHRC)¹⁵ learned of the arrest of a woman who was abused by police officers in Douala in March 2010. Sophie, a lesbian living in Yaoundé, met a girl and they had sexual intercourse. In circumstances unknown to IGLHRC, she was arrested and taken into custody. At a police station in the capital, she was severely beaten by police officers. She was sexually assaulted and then released after evidence of a “guarantor” of 450,000 CFA francs (€686, \$1,022). She has not officially complained because her partner was 18 years old and in Cameroon the age of consent is 21.

On March 28, 2009, Amadou Arouna was swimming in a lake near the Douala airport.¹⁶ While swimming, a group of thugs arrived and tried to steal his money. When police intervened, the thugs accused him of being a homosexual. Police took Amadou Arouna and the thugs to the police station. The thugs were quickly released though Amadou Arouna was charged under article 347 on the grounds of “flagrant homosexuality.” Amadou Arouna remained in a prison cell for approximately one week, permitted to wear nothing more than his underwear. Over the course of the week, police repeatedly beat him. On April 5, Amadou escaped the police station in the Nganguè neighborhood with help of other detainees. Since his escape he has been in hiding.

Forced anal examinations, a form of degrading and inhuman treatment prohibited under article 7, is administered by Cameroonian authorities. Scott Long, the director of the LGBT program at Human Rights Watch, wrote of the practice, “The naked, humiliated subject is made to bend, while multiple doctors pursuing ‘marks’ of ‘sodomy’ dilate, peer into, and in some cases insert objects into his anal cavity. These examinations are profoundly intrusive, invasive, and abusive: they are medically valueless, and, by international standards, a form of torture.” Auguste Ambroise Tardieu, a French doctor from the mid-nineteenth century, developed techniques of anal examination to supposedly identify evidence of sodomy. Long writes, “Tardieu's beliefs on the effects of

¹⁵ E-mail communication with Steave Nemande, 9 June 2010. On file with Global Rights.

¹⁶ *Id.*

homosexual conduct are recognized today, when remembered, as without medical worth.”¹⁷ One-hundred fifty years later, his practices are still used in Cameroon, among other places. The case of the nine, highlighted in the following section, shows prosecutors threatening to force an anal examination on detained individuals.¹⁸ Another example involving Yves Noé Ewanè, who was arrested after being assaulted and molested in his neighborhood (case highlighted in the following section), was subject to a forced anal examination at the request of the investigators.¹⁹

ARTICLE 9 – RIGHT TO LIBERTY AND SECURITY OF THE PERSON

Article 9 of the ICCPR guarantees rights to individuals from arbitrary arrests and to a speedy judicial trial after arrests take place.

Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention... Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release.²⁰

The right to security places an obligation upon the state to protect individuals against threats of physical violence.

Cameroonian citizens have been arrested and detained for their real or perceived sexual orientation, held for extended periods of time without charges being made before a judge and have been mistreated in custody in violation of articles 7 and 10 of the ICCPR. In a 2007 report, Alternatives-Cameroun found that 78 people had been imprisoned in Douala central prison for engaging in same-sex sexual relations or “indecency to minors” from 1997 to 2007.²¹

The UN Working Group on Arbitrary Detention issued an opinion on Cameroon’s illegal arrests and detentions, criticizing the government’s defense of its criminalization of same-sex sexual relations.²² The government claims that “since the persons in question are not denied a right or service on the ground of their presumed sexual orientation,”

¹⁷ Scott Long. *Health and Human Rights*, Vol. 7, No. 2, Sexuality, Human Rights, and Health (2004), pp. 114-140

¹⁸ A/HRC/4/40/Add.1

¹⁹ E-mail communication with Steave Nemande, 9 June 2010. On file with Global Rights.

²⁰ Article 9 of the International Covenant on Civil and Political Rights.

²¹ Same-sex sexual relations, as well as other “indecent” conducts are criminalized by the Cameroonian Penal Code under the chapter of “Felonies and Misdemeanors against Private Interest.” Article 295 criminalizes “private indecency;” article 346 condemns “indecency to child under sixteen;” article 346 criminalizes “indecency to minor between sixteen and twenty-one;” and article 347 condemns “sex with the person of the same sex.” See Alternatives-Cameroun, “*Projet Atteintes aux bonnes mœurs* (Project 347 bis),” The report on the project was released in December 2007 (in file with Alternatives-Cameroun).

²² Working Group on Arbitrary Detention, AVIS No. 22/2006 (Cameroon), August 31, 2006, A/HRC/4/40/Add.1

obligations regarding discrimination under articles 2 and 26 would not be applicable.²³ The argument is inaccurate as individuals are subjected to arbitrary arrests and detention on grounds of real or perceived sexual orientation, which violates the guarantee to protection from discrimination under the ICCPR. The UN Working Group on Arbitrary Detention rejects such an argument based on the findings of *Toonen v. Australia* and declares that the detention of individuals on the basis of the Cameroonian sodomy law contravened Articles 17 and 26 of the ICCPR.²⁴

The following cases are the most documented and publicized that show the government's violation of the Covenant.

The case of the nine – 2005

Eleven men were arrested in a June 2005 crackdown at a club in Yaoundé,²⁵ and they spent nine months in pre-trial detention at Kondengui Central Prison in violation, inter alia, of article 114 of the Cameroonian Criminal Procedure Code allowing only six months of pre-trial detention before sentencing and subsequently article 14 of the ICCPR as explained below. In November 2005 the prosecutor threatened them with an anal examination to prove they engaged in homosexual conduct. These men were held until the trial began in March. No evidence or witnesses were presented against the accused, and several days after the trial began, two were released, leaving only nine. Instead of dismissing the evidence because of a lack of evidence, the judge scheduled a further hearing in April. At the trial in April, the judge found all not guilty because no witnesses or evidence was presented by the prosecution. The public prosecutor refused to sign their release orders, insisting that they had to be retried. All the detainees were finally released in June 2006 after seven were convicted, but since their sentencing was less than the time they had been in custody already, they were all immediately released. One detainee, Mr. Alim Mongoche, died in a hospital a week later of issues directly attributable to the “dreadful conditions” of the detention period.²⁶ The UN Working Group on Arbitrary Detentions concluded that the detention in 2005 of the eleven men was unlawful.²⁷

The Director of Public Prosecutions of Cameroon against Yves Ewane and others – 2007²⁸

Six men were arrested on July 20 and 21 and put into police custody after a woman complaining of theft had brought two of her nephews to the Douala central police office number three. The police custody lasted five to six days (while according to Cameroonian Law imprisonment must be no more than 48 hours and only renewed once). The accused were then referred to the Wouri Crown Court and put by the

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ E-mail communication with Steave Nemande, 9 June 2010. On file with Global Rights.

Attorney General on pre-trial detention on July 30, 2007, on the basis of article 347a as well as the provision regarding indecent assault. On March 6, 2008, the Attorney General ordered the provisional release of the detainees with regards to the procedure the lawyer had started. The decision (signed on March 6, 2008) was motivated by the violation of procedures by officers of the police who arrested the accused outside their jurisdiction. Article 19 of the Cameroonian Criminal Procedure Code,²⁹ which states that individuals arrested with a warrant may only be held for a maximum of 96 hours before appearing for a judge, as well as article 114³⁰ were violated. In this case Cameroon has not met its obligations under articles 9 and 14 of the ICCPR allowing anyone arrested or detained to respectively appear before a judge and receive a fair and speedy trial.

*The Director of Public Prosecutions of Cameroon against
Baeeg Lazar, Balep Emmanuel and Dikongue Tony Raoul – 2007³¹*

On August 30, 2007, three men were arrested by the police after Emmanuel Balep complained of robbery. On August 30, 2007, Baeeg Lazar, Balep Emmanuel and Dikongue Tony Raoul were charged by Mrs. Mbangue Dicky Ndoumbe, Attorney General at Douala Public Prosecutor's Department, for same-sex conduct and were arrested. A committal order was signed on August 31, 2007, at 7:30 a.m., despite the fact that the accused pleaded not guilty.

On January 2, 2008, the three detainees were sentenced to six months imprisonment, a 50,000 CFA francs fine each, and 27,000 CFA francs for attempted homosexuality. The pronounced sentence was based on Article 94 of the Criminal law procedure, which rules on attempted preparatory acts and on preparation to commission of offences. Considering that the detainees had spent nearly five months in prison, by the time the sentence was pronounced, they were released after two months.

*The Director of Public Prosecutions of Cameroon against
Constantin Tsimi Engame and Amour-Ramses Priso – 2007³²*

On August 16, 2007, at 4:00 a.m., two young men were taken to Nlongkak police station by a night patrol. They were said to be caught having sex at the time of their arrest. On August 18, 2007, at 6.15 p.m., Constantin Tsimi Engame and Amour-Ramses Priso received notice of the first extension of their police custody for 48 hours. The custody was extended by the officer of the Criminal Investigation Department from August 18 to 20, 2007, 10:00 a.m. On August 20, 2007, at 10:00 a.m., the custody came to an end, and the case was transferred to the Attorney General. After the court had decided to adjourn the trial several times, the detainees were heard on February 8, 2008, and the case was adjourned until March 13, 2008, when each received imprisonment and a 25,500 CFA franc fine for homosexuality. The men were arrested without a warrant and

²⁹ Cameroonian Criminal Procedure Code. Article 19, paragraph 2b.

³⁰ Cameroonian Criminal Procedure Code. Article 114; in this case the six men were held for eight months

³¹ E-mail communication with Steave Nemande, 9 June 2010. On file with Global Rights.

³² *Id.*

kept in custody for more than 48 hours before being presented to the prosecutor, in violation of article 19 of the Cameroonian Criminal Procedure Code.³³

*The Director of Public Prosecutions of
Cameroon against Yves Ewane – 2009*³⁴

Yves Noé Ewanè was assaulted and molested in his neighborhood on May 11, 2009, and taken to the police by a woman and two people that assaulted him. The woman accused him of abusing her 17-year-old son. Yves Noé was kept in custody of the judicial police in Bonanjo and then transferred to Douala central prison, where he was detained until 15 September 2010. Vincent Minokoa Nga, the commissioner heading the investigation, ordered the forensic doctors to conduct an anal examination on the plaintiff, which he underwent. On September 15, he was called into the office of the judge, Vieux M. Eyike, from where he came out with an order of dismissal.

*The Director of Public Prosecutions of
Cameroon against Alain Njependa – 2009*³⁵

Alain Njependa was arrested on November 8, 2009, after a neighbor filed a complaint against him for homosexuality. Njependa reported that he was having a drink with a neighbor in a bistro near the Douala airport at a place called "Village." His neighbor then invited him over to his house where they spent a couple of hours together. The neighbor left afterwards, leaving Njependa locked inside the house. A couple of hours later he returned with three of his friends. They asked for money, threatening to take Njependa to the police for homosexuality. He refused and they dragged Njependa to the police station. The neighbor told the police he was a homosexual and so the police took Njependa into custody, where he remained for 13 days. On November 20, he was put before the Attorney General and put on preventive detention at Douala central prison. At the hearing on November 28, Alice Nkom, the appointed lawyer, pled not guilty on his behalf and asked for his release. The Attorney General ordered the release of Njependa for lack of evidence. He was freed on December 30. Njependa was arrested without a warrant and kept for 13 days before appearing before the prosecutor, well beyond the maximum of 48 hours allowed under article 19 of the Cameroonian Criminal Procedure Code.³⁶

*The Director of Public Prosecutions of Cameroon against
Stéphane Maliedji, Jacques Yenguie, and John Vasseck – 2010*³⁷

On March 26, 2010, Stéphane Maliedji, a member of Alternatives-Cameroun, was arrested in the lobby of the Meridien hotel in Douala in company of Jacques Yenguie and John Vasseck.

³³ Cameroon Criminal Procedure Code. Article 114.

³⁴ E-mail communication with Steave Nemande, 9 June 2010. On file with Global Rights.

³⁵ *Id.*

³⁶ Cameroon Criminal Procedure Code. Article 114.

³⁷ E-mail communication with Steave Nemande, 9 June 2010. On file with Global Rights.

Stéphane Maliedji said, "Yesterday two friends (a Cameroonian and an Australian) invited me for lunch to the Meridien hotel in Douala. Around 11:00 a.m. they [the two friends] joined me at the lobby of the hotel where I was waiting for them. Soon after we had greeted each other, we were assaulted by men in civilian who said to be from the police of borders. We were told that our Australian friend is a pedophile. From the police of borders, we were led to the judicial police and kept locked in their cell. On several occasions, I was interviewed by a police officer (the *commissaire*) who told me that I was not his target. He asked me to sign that I had had sex with the Australian. When I refused, he threatened to send me to Douala central prison."³⁸

Ms. Alice Nkom, the appointed lawyer, wrote a letter to the prosecutor stating that the arrest of her clients was illegal. She finally asked the prosecutor to order their release. One can be held in custody only if he or she has not declared any address or legal residence, or in the case of flagrante delicto, and none of those situations applied to this situation.³⁹ The three arrested were released on March 29; the case is still pending before Douala Court.

Other reported cases

Several other cases of arbitrary arrests and detentions were reported during the same period in different regions of Cameroon.⁴⁰ Citizens Nicolas Njocky and Patrick Yousseu; François Ayissi; Archille Kouam and Michel Monty; Alexandre Demanou was arrested and spent more than a year imprisoned without legal assistance. All were arrested in Yaoundé on the basis of simple denunciations. Citizens Joel Ndoumbe, Engolo Bitoumou Serge, Ekeh Augustin, and Bamou Zachary were arrested and imprisoned in Ebolowa central prison, in the South region. Citizen Hamidou was reported and subsequently arrested under the bridge over the Bénoué river, and he was placed into custody in the North region.⁴¹

Arrests of two alleged lesbians in Douala – 2008⁴²

An article published in the local press in early March reported the arrest of two young girls for homosexuality. The arrest followed a brawl in a hotel room of Douala, whose owners alerted the police. Unclear information gathered at police station number two, Logbaba, during the investigation of our researcher suggests that families of the girls had "begged the indulgence" of the prosecutor so that he abandons charges against them. The girls in question have been expanded at the prosecution. It was impossible to get information from the Court of First Instance of Douala because we did not have the identities of alleged lesbians.

³⁸ Statement released to Alternative Cameroun on March 27th, 2010, on file with Global Rights.

³⁹ Cameroon Criminal Procedure Code. Article 118 (2).

⁴⁰ See report July 25 and December 27, 2007 (on file with Alternatives-Cameroun).

⁴¹ See report July 5, 2007 (on file with Alternatives-Cameroun).

⁴² E-mail communication with Steave Nemande, 9 June 2010. On file with Global Rights.

Arrests and Abuse at “Formula 1” – 2009

The club named "Formula 1," now closed, was frequented by young homosexuals in the city of Douala and partnered with an association for the prevention HIV and STIs for club customers.⁴³ The club used to be target of frequent abusive raids by police officers from district nine. The owner was consistently subjected to blackmail and customers underwent verbal and physical abuse, many times being detained and taken to the police station.

In particular, prevention facilitators witnessed a raid on the night of June 7, 2009. Around 4:00 a.m., three officers of police district 9 burst into the club, demanding the manager pay them what they called "fuel money" or his customers would be apprehended. Being panicked, the manager gave the officers five thousand (5,000) francs CFA (8€ or \$12) which they pocketed and left the club.

A few minutes later, the manager was informed by the bouncer that a customer was beat by police for greeting the policeman. Police said, "they were well informed the existence of this club of fags." They asked the manager why all the customers were men and searched and arrested three customers that they deemed to be homosexual by their accoutrements. Three people were taken to police headquarters in Douala where they were released several hours later. They reported that they underwent degrading and humiliating treatment such as being forced to undress and undergo an anal inspection.

ARTICLE 10 – RIGHTS OF PRISONERS

Article 10 of the ICCPR states that “all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.” As highlighted in the previous sections, individuals arrested under the discriminatory provision that criminalizes same-sex sexual relations on grounds of real or perceived sexual orientation are not treated humanely during their detainment.

As previously highlighted, many individuals detained on the basis of 347a of the Criminal Code are mistreated in prison. As show in the section regarding article 7, individuals are forced to undergo anal examinations, a form of degrading treatment. Others are beaten while in custody or humiliated by being forced to show their genitals (such as the group arrested at “Formula 1,” highlighted in a previous section). In the Case of the Nine, Mr. Alim Mongoche died shortly after his detainment ended due to medical problems that directly resulted from his mistreatment and lack of health care attention while imprisoned.

⁴³ E-mail communication with Monica Mbaru, IGLHRC. 28 June 2010. On file with Global Rights.

The examples highlight the poor treatment of individuals in detention and the failure of Cameroon to meet its obligations to treat all prisoners “with humanity and with respect for the inherent dignity of the human person.”⁴⁴

ARTICLE 14 – RIGHT TO FAIR TRIAL

Article 14(3)(c) of the ICCPR establishes that everyone’s right “to be tried without undue delay.” Furthermore, Article 14(7) of the ICCPR guarantees that “no one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.” Cameroon, demonstrated not to meet these obligations.

The Case of the Nine listed previously⁴⁵, in which the judge found all not guilty because no witnesses or evidence was presented by the prosecutor, highlights an example of individuals arrested under the discriminatory law criminalizing same-sex sexual relations. Individuals were held in pre-trial detention for nine months (three months longer than allowed under the Cameroonian Criminal Procedure Code). The prosecutor also refused to sign a release order for those acquitted in the first trial and the detainees were tried again, breaking the guarantee under article 14 that an individual cannot be tried more than once for the same crime. In the retrial, seven of the individuals were convicted, though their time in custody had already surpassed their sentencing.⁴⁶

In many of the cases described above, individuals have been subjected to pre-trial detention for longer than the six-month period allowed by article 114 of the Criminal Procedure Code, violating their right to a speedy trial. For instance, in the case of Constantin Tsimi Engame and Amour-Ramses Priso⁴⁷, the two individuals were kept in pre-trial detention for nearly seven months before sentencing; in the case of Yves Ewane and others⁴⁸ the six men were subjected to pre-trial detention for eight months.

ARTICLE 17 – FREEDOM FROM ARBITRARY INTERFERENCE WITH PRIVACY, FAMILY, HOME

Article 17 of the ICCPR states, “No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.”

In the 1994 case of *Toonen v. Australia*,⁴⁹ the issue of sexual orientation was brought before the UN Human Rights Committee. The findings of the case determined, “Inasmuch as article 17 is concerned, it is undisputed that adult consensual sexual

⁴⁴ ICCPR. Article 10.

⁴⁵ See above, p. 9.

⁴⁶ A/HRC/4/40/Add.1

⁴⁷ See above, p. 10.

⁴⁸ See above, p. 9.

⁴⁹ Communication no. 488/1992.

activity in private is covered by the concept of 'privacy', and that Mr. Toonen is actually and currently affected by the continued existence of the Tasmanian laws."

The state delegation in the case argued that criminalizing same-sex sexual relations was a method of preventing HIV/AIDS. The Human Rights Committee replied, "...the criminalization of homosexual practices cannot be considered a reasonable means or proportionate measure to achieve the aim of preventing the spread of AIDS/HIV... [observing] that statutes criminalizing homosexual activity tend to impede public health programmes 'by driving underground many of the people at the risk of infection'. Criminalization of homosexual activity thus would appear to run counter to the implementation of effective education programmes in respect of the HIV/AIDS prevention. Secondly, the Committee notes that no link has been shown between the continued criminalization of homosexual activity and the effective control of the spread of the HIV/AIDS virus."

No action has been undertaken by the Cameroonian government to ensure equal access to HIV prevention treatment and care services for individuals having same-sex conducts, even though research has proven that men who have sex with men are five to twenty times more vulnerable than the general population in middle to low-income countries such as Cameroon. As a result, many men who have sex with other men die every year from AIDS in the total indifference. No action has been taken to prevent HIV in prisons and take care of prisoners living with HIV. "There is no sex in prison" say Cameroonian officials, but men and women are raped in prison on a daily basis. As a result of the state homophobia, as indicated above, 30-year-old Alim Mongoche arrested in 2005 along with ten other men died at the Central Hospital in Yaoundé from the lack of adequate health care during detention, ten days after their release in June 12, 2006.⁵⁰

In a memo advocating the repeal of article 347, the Centre for Human Rights at the University of Pretoria and Alternatives Cameroun argued that article 347 limits HIV/AIDS reduction.

"The African Charter, in article 16, and the [International Covenant on Economic, Social and Cultural Rights], in article 12, guarantee the right of everyone to 'the enjoyment of the highest attainable standard of physical and mental health'. Article 12(2)(c) of the ICESCR adds that state parties must take measures necessary for the 'prevention, treatment and control of epidemic, endemic, occupational and other diseases'.

Numerous studies conducted on access to prevention services, treatment and care in Africa show that due to their stigmatisation, their marginalisation and the criminalisation of actions arising from their sexual orientation, persons who have sexual relations with other persons of the same sex are often absent from national programmes in response to AIDS, and their specific needs in respect of

⁵⁰ E-mail communication with Steave Nemende, 9 June 2010. On file with Global Rights.

HIV services are ignored.⁵¹ A study conducted among men who have sex with men (MSM) in Cameroon has shown that participation in MSM-specific and directed prevention activities leads to a more systematic use of condoms.⁵²

The criminalisation of sexual relations between persons of the same sex by Cameroon runs the inevitable risk of reinforcing the stigmatisation of persons having sexual relations with other persons of the same sex and is likely to lead to the exclusion of members of this (already marginalized) group from prevention services, treatment and care. The exclusion of persons engaged in sexual relations with persons of the same sex from HIV services constitutes a threat not only to the members of this group but also to the national response to HIV more generally. The Human Rights Committee underlined that the provisions making homosexual practices a punishable offence tend to undermine the application of public health programmes and that they place many persons at risk, by enforcing secrecy, and run counter to the implementation of effective education programmes in respect of the HIV/AIDS prevention.

Recognising the potential negative effects of coercive and discriminatory measures, such as the criminalisation of sexual relations between persons of the same sex, on the response to AIDS, the Political Declaration on HIV/AIDS appeals to states to eliminate all forms of discrimination against vulnerable groups so as to ensure that these groups have access to HIV services.⁵³ Translating this provision into a concrete recommendation, the International Parliamentary Union calls on all Parliamentarians to abolish laws prohibiting homosexual acts between consenting adults in private and to adopt anti-discrimination legislation in order to reduce human rights violations based on sexual orientation.⁵⁴

According to the International Guidelines on HIV/AIDS and human rights :

States should review and reform criminal laws and correctional systems to ensure that they are consistent with international human rights obligations and are not misused in the context of HIV or targeted against vulnerable groups.⁵⁵

⁵¹ See, notably, C.A. Johnson, *Off the map: How HIV/AIDS programming is failing same-sex practicing people in Africa*, IGLHRC, 2007 (available at <http://www.iglhrc.org/binary-data/ATTACHMENT/file/000/000/6-1.pdf>) and AD Smith et al, 'Men who have sex with men and HIV/AIDS in sub-Saharan Africa' *The Lancet* (on line) (www.thelancet.com) (20 July 2009).

⁵² Emilie Henry, Fabienne Marcellin, Yves Yomb, Lionel Fugon, Steave Nemande, , Charles Gueboguo, Joseph Larmarange, Emmanuel Trenado, Fred Eboko and Bruno Spire 'Factors associated with unprotected anal men (MSM) intercourse (UAI) among men who have sex with in Douala, Cameroon', *Sex Transm Inf*, sti.bmj.com, published online 24 August 2009.

⁵³ United Nations, Political Declaration on HIV/AIDS, 2 June 2006, A/RES/60/262, par 29.

⁵⁴ International Parliamentary Union, UNDP and UNAIDS, *Taking action against HIV: Practical guide to Parliamentarians*, 2007.

⁵⁵ OHCHR and UNAIDS, *International Guidelines on HIV/AIDS and human rights*, Guideline 4, p 17 ; available at http://www.ohchr.org/Documents/Publications/HIVAIDSGuidelines_en.pdf.

Article 347 by occasioning serious impediments to public health interventions with regard to MSM, violates the right to health.”⁵⁶

ARTICLE 24 – SPECIAL PROTECTION OF CHILDREN

Article 24 establishes that every child must be subject to any measure of protection required by his status, without discrimination. Children who are victims of discrimination on grounds of real or perceived sexual orientation or gender identity and expression can face stigmatization and serious consequences.

In Cameroon, persecution also takes place against minors.

Thirteen students (aged 16 to 22) of the College Eyenguè Nkongo in Douala were expelled on March 13 last from their secondary school after the disciplinary board was convinced they were lesbians.⁵⁷ Based on a complaint from a relative of one of the girls, four were arrested, held in New Bell prison in Douala, and sentenced on June 8 to a three-year suspended imprisonment and issued a fine of 25,000 CFA francs (\$50). Six months will be added to their sentence if they are caught "practicing lesbianism during this probationary period." The decision came after a trial in camera.

On May 8, 2008, six underage girls were arrested in Lomié in the Eastern Region.⁵⁸ Two of the girls were reportedly caught in the toilets of their secondary school, from where they were later expelled. At the police station and under pressure from the authorities, the two girls denounced four other girls who were said to be of the same sexual orientation. Three days later, all six girls were summoned by the sub-prefect of the region and forced to publicly confess their "sin." No further information was available regarding the situation.

The state, by upholding the discriminatory provision of its criminal code banning same-sex sexual conduct, fuels a climate of stigmatization that causes discrimination based on real or perceived sexual orientation and jeopardizes the well-being and rights of minors. Private school systems may place the burden of proof on the accused student, who is unable to prove his or her innocence, and under pressure perpetuate false claims. The expulsions described below and the arrests that followed show a serious failure to protect the rights of minors and meet the obligations under the ICCPR.

⁵⁶ *Why Should Cameroon Abolish The Criminalisation Of Consensual Sexual Relations Between Persons Of The Same Sex?* Centre for Human Rights (University of Pretoria) and Alternatives Cameroun. On file with Global Rights.

⁵⁷ E-mail communication with Steave Nemande, 9 June 2010. On file with Global Rights.

⁵⁸ *Id.*

RECOMMENDATIONS

The Government of Cameroon should:

1. Repeal article 347a of the Criminal Code criminalizing same sex conducts between consenting individuals, and publicly condemn all acts of violence and all homophobic speech by state officials against individuals on the grounds of perceived or real sexual orientation or gender identity and expression, in order to guarantee the full protection of the rights of all Cameroonians.
2. Stop arrests on the grounds of real or perceived “homosexuality” and take disciplinary action against police personnel found guilty of misconduct enabled by these legal provisions, including violence, extortion and ill-treatment.
3. Publicly denounce the abuse of vulnerable populations on the grounds of their real or perceived sexual orientation or gender identity and expression, and protect them from attacks, blackmails and harassment from the community in public and private spaces.
4. Ensure that provisions of the recently adopted Code of penal procedures are respected.
5. Adopt HIV/AIDS healthcare frameworks that include vulnerable groups including men who have sex with men, women who have sex with women, and prisoners.

PROPOSED QUESTIONS FOR THE GOVERNMENT DELEGATION

1. What measures will the state take to stop the arbitrary arrests and detentions of people based on real or perceived sexual orientation so as to meet the obligations of the ICCPR?
2. What measures will the state take to repeal article 347a of the criminal code regarding the criminalization of same-sex sexual relations to meet its obligations under ICCPR?
3. Why, in a case of acquittal, can an individual be tried twice for having committed same-sex sexual relations when the ICCPR specifically forbids such unfair trials?
4. What measures will the state take to ensure that the widespread culture of intolerance is reversed?
5. What measures will the state take to ensure that people have equal access to information, prevention material of HIV and STIs, and health care services regardless of their real or perceived sexual orientation?
6. What measures will the state take to ensure that people imprisoned for homosexuality are safe from torture and other ill treatment?