

# Lawyers' Rights Watch Canada

*NGO in Special Consultative Status with the Economic and Social Council of the United Nations*  
Promoting human rights by protecting those who defend them

[www.lrwc.org](http://www.lrwc.org) – [lrwc@portal.ca](mailto:lrwc@portal.ca) – Tel: +1 604 736 1175 – Fax: +1 604 736 1170  
3220 West 13<sup>th</sup> Avenue, Vancouver, B.C. CANADA V6K 2V5

## **In the Matter of Mancho Bibixy Tse**

### **Lawyers' Rights Watch Canada (LRWC) Reply to The Republic of Cameroon (Cameroon) letters dated 24, 27 & 28 January 2019**

**To**

#### **The United Nations Working Group on Arbitrary Detention (WGAD)**

#### **Re Letter from Cameroon dated 24 January 2019**

1. Accusatory references to Mancho Bibixy Tse in: para. 2 (instigators of deadly events); para. 3 (previously identified as a main instigator for these events); and, para. 4 (exemplified by his overflowing (calls for a public uprising), are not supported by evidence. The accusations themselves cannot be accepted as evidence of criminal wrongdoing.
2. Similarly, the statement in para. 3 of the 24 January 2019 letter suggests the occurrence of criminal acts on 21 November and 8 December 2016 but provides no evidence or references to evidence of such events occurring or of the criminal involvement of Mancho Bibixy Tse.
3. The International Crisis Group (ICG) report of 2 August 2017 indicates that secession groups emerged and violent acts increased after the January 2017 arrests and internet blockade in the Northwest and Southwest regions.<sup>1</sup> The recommendations made by the International Crisis Group do not recommend the arrest or prosecution of people advocating for Anglophone rights.
4. Of the 21 November teachers' strike the ICG reports, "The police and the army violently dispersed the demonstrators. Several people were severely beaten, dozens of others were arrested and at least two people were shot dead, according to a report by the National Commission on Human Rights and Freedoms the (Commission nationale des droits de l'Homme et des libertés, CNDHL)."
5. The 8 December conflict in Bamenda is described in the ICG report as the most violent confrontation when a crowd sought to prevent a pro-government rally organized by the Cameroon People's Democratic Movement. During the confrontation four died, several were wounded, demonstrators set fire to buildings and vehicles and approximately 50 people arrested.
6. Identified as immediately needed in the ICG Executive Summary are measures to:

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<sup>1</sup> See "Cameroon's Anglophone Crisis at the Crossroads," 2 August 2017, International Crisis Group. Executive Summary, at <https://www.crisisgroup.org/africa/central-africa/cameroon/250-camerouns-anglophone-crisis-crossroads>, and

- sanction members of the security forces who have committed abuses;
- release (provisional) of leaders of the Anglophone movement;
- stop “criminalising the political debate on Anglophone Cameroon, including on federalism, in particular by ceasing to use the anti-terrorism law for political ends;
- consider recourse to a third-party mediator;
- immediately put in place the measures announced in March 2017;
- re-organize government and senior administration to reflect the importance of the Anglophones.

7. On 30 August 2017, President Biya announced the release and withdrawal of charges against Nkongo Félix Agbor, Fontem Afortek’a Neba, (and approximately 55 others arrested in connection with protests for recognition of Anglophone rights in the legal, education and employment sectors. As noted in the previous LRWC response, the release of others alleged in Cameroon’s replies, to be other “instigators” cannot be reconciled with the continuation of the prosecution and deprivation of liberty of Mancho Bibixy Tse. It is indicative of the arbitrary, discriminatory, and political nature of that deprivation of liberty.

8. LRWC is not aware any action taken on other recommendations by the ICG. However, on 30 November 2017, President Biya reportedly announced that Cameroon was at war and that he considered Anglophones to be “terrorists”.<sup>2</sup>

9 In para. 6 Cameroon refers to as “illegals” Mancho Bibixy Tse and others for taking part in a protest not authorized by Article 3 of Law No. 90/055 of December 19, 1990. The International Covenant on Civil and Political Rights obliges (ICCPR) Cameroon to recognize the right to peaceful assembly and prohibits restrictions other than those set out in Article 21.

10. Regarding non-authorized assemblies or protests, State Parties to the ICCPR can require notification of a protest but cannot require prior authorization or proscribe protests or assemblies without authorization. The purpose of notification is to allow state officials to enable the assembly and a failure to notify cannot legitimately result in criminal or civil sanctions for participants.<sup>3</sup> In addition, participants cannot legitimately be held liable for the unlawful conduct of others at an assembly.<sup>4</sup>

11. The UN Human Rights Committee (HR Committee) has rejected legislation as a mean of legitimizing arbitrary arrests and detentions and concluded that states...

...should ensure that the right of persons to peacefully participate in social protests is respected and ensure that only those committing criminal offences during demonstrations are arrested. [...]<sup>5</sup>

12. The African Commission on Human and Peoples Rights (ACHPR) recommends that national constitutions guarantee the right to freedom of assembly, “which must be understood in

<sup>2</sup> Just In: Biya Declares War on Anglophones upon return from Ivory Coast 30 November 2017. Cameroon Concord, <http://cameroon-concord.com/headlines/just-in-biya-declares-war-on-anglophones-upon-return-from-ivory-coast>  
<sup>3</sup> *Ibid*, para. 29

<sup>4</sup> *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai*, 20th session, A/HRC/20/27, 21 May 2012, para. 31, online at:

[http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A.HRC.20.27\\_En.pdf.PDF](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A.HRC.20.27_En.pdf.PDF)

<sup>5</sup> *Concluding Observations of the Human Rights Committee: Canada*, CCPR/C/CAN/CO/5, 85<sup>th</sup> session, 20 April 2006, para. 20, online at:

[http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/7616e3478238be01c12570ae00397f5d/\\$FILE/G0641362.pdf](http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/7616e3478238be01c12570ae00397f5d/$FILE/G0641362.pdf)

a broad manner consistent with international human rights law; where a constitution states that the essence of this right shall be defined by law, this should in no way be interpreted to allow improper limitation of the right”.<sup>6</sup>

13. The HR Committee Concluding Observations on a periodic report<sup>7</sup> identified a lack of a domestic legal framework regulating peaceful events and the application by domestic courts of outdated regulations that severely restrict freedom of assembly and are not consistent with international standards. The HR Committee recommended that the State adopt a law regulating the freedom of assembly, imposing only restrictions that are in compliance with the strict requirements of *ICCPR* Article 21.<sup>8</sup>

14. In para. 10 Cameroon refers to domestic restrictions on the place of debate, assembly and protest. Such restrictions are inconsistent with freedoms of expression and assembly. Even if protests may cause disruption to daily life, the State must be tolerant and regard them as equally legitimate uses of public space as other, more routine activities.<sup>9</sup>

#### **Re Letter from Cameroon dated 28 January 2019 (OHCHR stamped 28 January 2019)**

15. Generally Cameroon conflates dissemination of information about human rights violations and advocacy for remediation, with criminal acts and intentions. Cameroon then seeks to hold advocates and information providers liable for the conflict resulting from the failure of dialogue and protests to achieve remedies.

16. Regarding para. 6, our source in Cameroon advises that Mancho Bibixy Tse was lawfully condemning the government for neglecting the people of Southern Cameroon and calling on people to join the protest for basic necessities in Bamenda. LRWC knows of no evidence that he was exhorting people to commit criminal offences or threatening harm to opponents.

17. Regarding paras. 7 and 8, LRWC knows of no evidence or reliable reports indicating that Mancho Bibixy Tse was criminally responsible for the deaths, injuries or destruction of property.

18. Regarding paras 12 and 13, LRWC is informed by Nkongho Felix Agbor that when he was being tried with Mancho Bibixy Tse there were many adjournments granted at the request of the prosecution. Adjournments requested by the defense may have been in response to receiving late disclosure from the Prosecution and requiring time to review.

19. Regarding para. 14, LRWC understands that Mancho Bibixy Tse did and does not have the funds to hire a lawyer and has not been offered legal aid.

20. Regarding para. 29, Cameroon does not provide enough details about the impugned messages to allow a response. Missing are the date, content, means of distribution. LRWC understands there is no evidence that the impugned messages were (or could have been) sent or

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<sup>6</sup> AU, ACHPR, *Report of the Study Group on Freedom of Association and Assembly in Africa*, (ACHPR 2014), p.60.

<sup>7</sup> UN HR Committee, *Concluding observations on the seventh periodic report of Ukraine*, 22 August 2013, CCPR/C/UKR/CO/7.

<sup>8</sup> *Ibid*, para. 21.

<sup>9</sup> See, for example, ECtHR, *Case of Patyi and Others v. Hungary*, App. no. 5529/05, Judgment of 7 January 2009 (Final), paras. 42-43; ECtHR, *Case of Balçik and Others v. Turkey*, App. no. 25/02, Judgment of 29 February 2008 (Final), para. 52; ECtHR, *Case of Ashughyan v. Armenia*, App. no. 33268/03, Judgment of 1 December 2008 (Final), para. 90.

authorized by Mancho Bibixy Tse. There is also no evidence that people invited to give evidence against Mancho Bibixy Tse did not testify because of fear of reprisals. A report received by LRWC indicates at least one witness who declined to testify because of having no knowledge of the events.

21. Regarding paragraph 33, our sources close to Mancho Bibixy Tse inform us that visitor access to him is limited by the requirement to apply and pay for a permit to visit him, which must be renewed, and paid for, monthly. The requirement to pay is an obstacle for supportive visitors, including family, friends and advocates who have limited resources.

### **Re: Mancho Bibixy Tse as a human rights defender**

22 LRWC has previously stated that Mr. Mancho Bibixy is a journalist newscaster of *Abakwa*, a local radio programme aired on the channel *BamendaFM*. He used his program to report on the rights of the Anglophone minority in Cameroon, often focusing on their economic and social marginalization. Mancho Bibixy had also been working closely with the Anglophone Civil Society Consortium to document human rights violations in North-West Cameroon and to protect vulnerable people in the Anglophone regions of Cameroon.

23. The letters from Cameroon do not dispel the perception that Mancho Bibixy Tse was prosecuted and convicted before a military tribunal because he was a popular radio personality who reported on injustices suffered by Anglophones Cameroonians and an eloquent advocate for reform.

24. It is accurate to describe him, not as a terrorist, but as a human rights defender. Section 2 of the *Model Law for the Recognition and Protection of Human Rights Defenders* defines “human rights defender” as “any person who, individually or in association with others, acts or seeks to act to promote, protect or strive for the protection and realization of human rights and fundamental freedoms, at the local, national, regional and international levels.”<sup>10</sup>

25. In 1998, the United Nations (“UN”) General Assembly adopted the Declaration on Human Rights Defenders, which recognized the important role of human rights defenders in advancing human rights and exposing human rights violations.<sup>11</sup> Yet for doing this work, human rights defenders are increasingly targeted and suffer violations themselves.

26. In the following decades, the UN General Assembly repeatedly called upon States to take concrete steps to prevent and put an end to the arbitrary detention of human rights defenders.<sup>12</sup>

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<sup>10</sup> *Model Law for the Recognition and Protection of Human Rights Defenders* (New York: International Service for Human Rights, 2016) at 2.

<sup>11</sup> *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, GA Res 53/144, UNGAOR, 53rd Sess, UN Doc A/RES/53/144 (1998) [*Declaration on Human Rights Defenders*].

<sup>12</sup> See *Twentieth anniversary and promotion of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, GA Res 72/247, UNGAOR, 72nd Sess, UN Doc A/RES/72/247 (2017) at 4; *Human rights defenders in the context of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, GA Res 70/161, UNGAOR, 70th Sess, UN Doc A/RES/70/161 (2016) at 4. See also *Promotion of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms: protecting women human rights defenders*, GA Res 68/181, UNGAOR, 68th Sess, UN Doc A/RES/68/181 (2013) at 5; *Promotion of the Declaration on the Right and Responsibility of*

The UN Human Rights Council condemned the arbitrary detention of human rights defenders, calling on States to end impunity for reprisals against human rights advocacy.<sup>13</sup>

27. The Special Rapporteur on the situation of human rights defenders has stated “the rights and security of defenders have increasingly been disregarded and indeed endangered.”<sup>14</sup> He has described human rights defenders as, “stigmatized, defamed and ostracized ... threatened, harassed and subjected to surveillance ... assaulted, raped, murdered and made to disappear. They are often subjected to arbitrary arrest and detention, accused and sentenced on false charges.”<sup>15</sup>

25. The UN Working Group on Arbitrary Detention (WGAD) characterizes the prohibition of arbitrary detention as a peremptory or *jus cogens* norm of international law and therefore a fundamental rule of international law<sup>16</sup> and has identified deprivation of liberty as arbitrary under customary international law when, *inter alia*:<sup>17</sup>

- it is “clearly impossible” to invoke any legal basis for the deprivation (“Category I”);
- the deprivation results from the exercise of the rights and freedoms guaranteed by articles 7, 13, 14, and 18—21 of the *UDHR* and, insofar as States parties are concerned, by articles 12, 18—22, and 25—27 of the *ICCPR*, including freedoms of expression and association and the right to peaceful assembly (“Category II”);
- violation of the right to a fair trial is of such gravity as to give the deprivation an arbitrary character; and
- the deprivation of liberty is for reason of discrimination based on, *inter alia*, political or other opinion that aims toward or can result in ignoring the equality of human beings.

26. Category I – no legal basis for detention – recognizes that detention in violation of the principle of legality is arbitrary. The principle of legality holds that nothing is a crime and no punishment may be imposed except as provided by law at the time of the alleged offence. It is provided for in international and regional treaties.<sup>18</sup>

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*Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, GA Res 66/164, UNGAOR, 66th Sess, UN Doc A/RES/66/164 (2012) at 3.

<sup>13</sup> See *Protecting human rights defenders, whether individuals, groups or organs of society, addressing economic, social and cultural rights*, HRC Res 31/32, UNHRCOR, 31st Sess, UN Doc A/HRC/RES/31/32 (2016) at 4. See also *Protecting human rights defenders*, HRC Res 22, UNHRCOR, 2nd Sess, UN Doc A/HRC/22/L.13 (2013) at 3.

<sup>14</sup> See Special Rapporteur on the situation of human rights defenders, *Report of the Special Rapporteur on the situation of human rights defenders*, UNHRCOR, 31st Sess, UN Doc A/HRC/31/55 (2016) at para 26.

<sup>15</sup> See Special Rapporteur on the situation of human rights defenders, *Report of the Special Rapporteur on the situation of human rights defenders*, UNHRCOR, 31st Sess, UN Doc A/HRC/31/55 (2016) at para 26 [emphasis added].

<sup>16</sup> See El Hadji Malick Sow, *Report of the Working Group on Arbitrary Detention, Deliberation No. 9 concerning the definition and scope of arbitrary deprivation of liberty under customary international law*, UNHRCOR, 65th Sess, UN Doc A/HRC/22/44 (2012) at para 75. See e.g. WGAD, Opinion No 47/2012 (Democratic People’s Republic of Korea), UNHRCOR, 65th Sess, UN Doc A/HRC/WGAD/2012/47 (2012) at para 22.

<sup>17</sup> See El Hadji Malick Sow, *Report of the Working Group on Arbitrary Detention, Deliberation No. 9 concerning the definition and scope of arbitrary deprivation of liberty under customary international law*, UNHRCOR, 65th Sess, UN Doc A/HRC/22/44 (2012) at para 38.

<sup>18</sup> See *International Covenant on Civil and Political Rights*, 19 December 1966, 999 UNTS 171, art 15 (entered into force 23 March 1976); *Universal Declaration of Human Rights*, GA Res 217A (III), UNGAOR, 3rd Sess, Supp No 13, UN Doc A/810 (1948), art 11; *Convention on the Rights of the Child*, 20 November 1989, 1577 UNTS 3, art 40(2)(a) (entered into force 2 September 1990). See e.g. Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms*, 4 November 1950, 2889 UNTS 222, art 7 (entered into force 3

27. The WGAD has characterized legality as “a cardinal principle of international human rights law”<sup>19</sup> and of “modern criminal law”<sup>20</sup> that is “required by the rule of law.”<sup>21</sup> It is a fundamental guarantee of due process in criminal proceedings.<sup>22</sup>

28. According to the WGAD, legality is essential to the Category I classification of arbitrary detention:

Category I applies when it is clearly impossible to invoke any legal basis justifying the deprivation of liberty. Category I embodies a principle of legality. This requires a legal base for detention in domestic law that complies with international law.<sup>23</sup>

29. International tribunals have stated that a criminal provision violates the principle of legality if the law is neither sufficiently foreseeable in its effects nor sufficiently accessible to the public at the time of the alleged offence, such that an individual cannot regulate his or her conduct accordingly.<sup>24</sup>

30. The Inter-American Court of Human Rights has held that the principle of legality requires a clear definition of the illegal conduct, which sets forth its elements and makes it possible to distinguish it from non-punishable behaviour or illegal activities punishable with non-criminal measures.<sup>25</sup>

31. Arbitrary detention on the basis that it lacks any legal basis has particularly affected human rights defenders. Many States charge human rights defenders with offences based on vague and overbroad provisions that violate the principle of legality.

32. Criminal provisions in violation of the principle of legality lack the certainty required to provide foreseeability of their effect and the ambit of their reach. Such offences are often based on criminal defamation and sedition laws, and include:

- insulting the king (*lèse majesté*), president, or statutory body;
- discrediting, denigrating, or subverting State legitimacy or power;

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September 1953), as amended by Protocols Nos 11 and 14; European Union, *Charter of Fundamental Rights of the European Union*, 26 October 2012, 2012/C 326/02, art 49; *American Convention on Human Rights*, 21 November 1969, 1144 UNTS 123, arts 7–9 (entered into force 18 July 1978); *African Charter of Human and Peoples’ Rights*, CAB/LEG/67/3 rev 5, 21 ILM 58 (1982), art 7(2); *Arab Charter on Human Rights*, 15 September 1994, art 15.

<sup>19</sup> See WGAD, Opinion No 61/2016 (Saudi Arabia), UNHRCOR, 77th Sess, UN Doc A/HRC/WGAD/2016/61 (2016) at para 49.

<sup>20</sup> See WGAD, Opinion No 27/2011 (Bolivarian Republic of Venezuela), UNHRCOR, 61st Sess, UN Doc A/HRC/WGAD/2011/27 (2011) at para 38.

<sup>21</sup> See WGAD, Opinion No 32/2016 (New Zealand), UNHRCOR, 76th Sess, UN Doc A/HRC/WGAD/2016/32 (2016) at para 62.

<sup>22</sup> See WGAD, Opinion No 10/2018 (Saudi Arabia), UNHRCOR, 81st Sess, UN Doc A/HRC/WGAD/2018/10 (2018) at para 50.

<sup>23</sup> See WGAD, Opinion No 10/2013 (United States of America), UNHRCOR, 66th Sess, UN Doc A/HRC/WGAD/2013/10 (2013) at para 37.

<sup>24</sup> See *Prosecutor v Milutinović*, IT-99-37-AR72, Decision on Dragoljub Ojdanić’s Motion Challenging Jurisdiction – Joint Criminal Enterprise (21 May 2003) at paras 37 and 41 (International Criminal Tribunal for the Former Yugoslavia, Appeals Chamber); *GIEM SRL and Others v Italy*, Applications Nos 1828/06, 34163/07 & 19029/11, Judgment (Merits) (28 June 2018) at para 242 (European Court of Human Rights, Grand Chamber).

<sup>25</sup> See *Castillo-Petruzzi v Peru* (1999), Judgment (Merits, Reparations, and Costs), Inter-Am Ct HR (Ser C) No 52, at para 121.

- publishing information that would disrupt civil peace or distort the reputation of or undermine the prestige of the country; and
- provoking disturbances, disrupting public order, or inciting public opinion.

33. Under Category II, detention resulting from a human rights defenders' legitimate exercise of protected rights is also arbitrary. International human rights instruments provide for protection of human rights defenders to, *inter alia*, peacefully protest, gather and organize in groups, and seek and impart information.<sup>26</sup>

34. The HR Committee is the *ICCPR* treaty monitoring body. It has stated that, while the right to liberty guaranteed by article 9 of the *ICCPR* is not included in the list of non-derogable rights of article 4(2), the “fundamental guarantee against arbitrary detention is non-derogable...”<sup>27</sup> In other words, in no circumstances is arbitrary detention justified.

35. The HR Committee has confirmed that arrest or detention that lacks any legal basis is arbitrary.<sup>28</sup> Such legal basis is not justified simply by its authorization under domestic law but must comply with international law.<sup>29</sup> The notion of “arbitrariness” is to be interpreted broadly:

[t]he notion of ‘arbitrariness’ is not to be equated with ‘against the law’ but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality.<sup>30</sup>

36. The HR Committee has stated that “[a]rrest or detention as punishment for the legitimate exercise of the rights as guaranteed by the Covenant is arbitrary...”<sup>31</sup> Reprisals for human rights defenders' legitimate exercise of protected rights is an arbitrary exercise of State authority.

37. The above international human rights law framework, based on applicable treaty law, informs the legal basis and due process requirements of detention under international criminal law.

**Re: the criminal charges referred to in para. 13 of the 28 January letter from Cameroon**

38. Cameroon states that Mancho Bibixy Tse was convicted of seven Articles of the Penal Code. These charges in English translation are set out in the Appendix. Except for Article 114 “Whoever by force...”) and Article 157(1)(b) “by force...”, the charges fail to comply with the principle of legality and therefore cannot form a justification for conviction, punishment of deprivation of liberty

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<sup>26</sup> See *International Covenant on Civil and Political Rights*, 19 December 1966, 999 UNTS 171, arts 19, 21, and 22 (entered into force 23 March 1976); *Universal Declaration of Human Rights*, GA Res 217A (III), UNGAOR, 3rd Sess, Supp No 13, UN Doc A/810 (1948), arts 19 and 20.

<sup>27</sup> See *General Comment No 35, Article 9: Liberty and Security of Person*, Human Rights Committee, 112th Sess, UN Doc CCPR/C/GC/35 (2014) at para 66.

<sup>28</sup> See *General Comment No 35, Article 9: Liberty and Security of Person*, Human Rights Committee, 112th Sess, UN Doc CCPR/C/GC/35 (2014) at para 11.

<sup>29</sup> See *General Comment No 35, Article 9: Liberty and Security of Person*, Human Rights Committee, 112th Sess, UN Doc CCPR/C/GC/35 (2014) at para 12.

<sup>30</sup> See *General Comment No 35, Article 9: Liberty and Security of Person*, Human Rights Committee, 112th Sess, UN Doc CCPR/C/GC/35 (2014) at para 12 [citation omitted].

<sup>31</sup> See *General Comment No 35, Article 9: Liberty and Security of Person*, Human Rights Committee, 112th Sess, UN Doc CCPR/C/GC/35 (2014) at para 17.

39. The rest of the charges are vague and overbroad and fail to comply with the principle of legality with respect to certainty. The requirement for legality in criminal law is contained in the *Universal Declaration of Human Rights*,<sup>32</sup> the ICCPR and the *African Charter of Human and Peoples' Rights*,<sup>33</sup>

40. The principle of legality with respect to certainty requires a clear definition of the illegal conduct, which sets forth its elements and makes it possible to distinguish it from non-punishable behavior or illegal activities punishable with non-criminal measures.<sup>34</sup> The WGAD has characterized legality as “a cardinal principle of international human rights law”<sup>35</sup> and of “modern criminal law”<sup>36</sup> that is “required by the rule of law”.<sup>37</sup> It is a fundamental guarantee of due process in criminal proceedings.<sup>38</sup>

41. A criminal provision violates the principle of legality if the law is neither sufficiently foreseeable in its effects nor sufficiently accessible to the public at the time of the alleged offence, such that an individual cannot regulate his or her conduct accordingly.<sup>39</sup> The factual circumstances that constitute the crime cannot reasonably be construed as within the ambit of definition of crime existing at the time of the act (whether statutory, common law, or international law).<sup>40</sup>

42. Foreseeability is satisfied where the individual can know from the wording of the relevant provision and, if need be, with the assistance of the courts' interpretation of it, what acts and omissions will make him or her criminally liable.<sup>41</sup> However, the court cannot interpret existing law beyond the reasonable limits of acceptable clarification.<sup>42</sup> The resultant development in law must be reasonably foreseeable and consistent with the essence of the offence.<sup>43</sup> The WGAD has included the prohibition against uncodified criminal provisions in its definition of legality: “an act can be punished only if, at the time of its commission, the act was the object of a valid, sufficiently precise, written criminal law to which a sufficiently certain sanction was attached.”<sup>44</sup>

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<sup>32</sup> Art. 11.

<sup>33</sup> Art. 7(2).

<sup>34</sup> See *Castillo-Petruzzi v. Peru*, Judgment (Merits, Reparations, and Costs), Series C, No. 52 (30 May 1999), at para. 121. [*Castillo-Petruzzi v. Peru*]

<sup>35</sup> WGAD, Opinion No. 61/2016, at para. 49 (A/HRC/WGAD/2016/61).

<sup>36</sup> WGAD, Opinion No. 27/2011, at para. 38 (A/HRC/WGAD/2011/27).

<sup>37</sup> WGAD, Opinion No. 32/2016, at para. 62 (A/HRC/WGAD/2016/32).

<sup>38</sup> WGAD, Opinion No. 10/2018, at para. 50 (A/HRC/WGAD/2018/10). [*Waleed Abulkhair*]

<sup>39</sup> See *Prosecutor v. Milutinović*, Decision on Dragoljub Ojdanić's Motion Challenging Jurisdiction – Joint Criminal Enterprise, Case No. IT-99-37-AR72 (ICTY Appeals Chamber, 21 May 2003), at paras. 37, 41; [*Milutinović*] *G.I.E.M. S.R.L. and Others v. Italy*, Judgment (Merits), Applications Nos. 1828/06, 34163/07, and 19029/11 (ECHR Grand Chamber, 28 June 2018), at para. 242. [*G.I.E.M. S.R.L.*]

<sup>40</sup> See Kenneth S. Gallant, *The Principle of Legality in International and Comparative Criminal Law* (New York: Cambridge University Press, 2009) at p. 360; [Gallant] *Prosecutor v. Kordić*, Judgment, Case No. IT-95-14/2-A (ICTY Appeals Chamber, 17 December 2004), at para. 311. [*Kordić*]

<sup>41</sup> See *G.I.E.M. S.R.L.*, *supra*, at para. 242.

<sup>42</sup> See *Milutinović*, *supra*, at para. 38.

<sup>43</sup> See *S.W. v. The United Kingdom*, Judgment, Application No. 20166/92 (ECHR Chamber, 22 November 1995), at para. 36. [*S.W. v. The United Kingdom*]

<sup>44</sup> *Waleed Abulkhair*, *supra*, at para. 50.

43. The WGAD's requirements of legality are broad and include the appropriateness of the charges in light of respect for human rights:

[T]he principle of legality further requires the substance of penal law to be due and appropriate in a democratic society that respects human dignity and rights (*nullum crimen, nulla poena sine lege apta*). Hence, the penal punishment must, at the minimum, satisfy the principle of necessity (*nullum crimen, nulla poena sine necessitate*), the prerequisite of injustice (*nullum crimen, nulla poena sine injuria*) and the principle of guilt (*nullum crimen, nulla poena sine culpa*) in the interest of formal and material justice.<sup>45</sup>

44. The HR Committee has stated that art. 15 of the ICCPR, which is non-derogable, embodies elements of the principle of legality as applied to criminal proceedings.<sup>46</sup> The HR Committee has incorporated elements of legality into requirements of the restriction of freedom of expression. Under art. 19, para. 3 of the ICCPR, freedom of expression may be subject to only such restrictions as are "provided by law".

For the purposes of paragraph 3, a norm, to be characterized as a "law", must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly and it must be made accessible to the public. A law may not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution. Laws must provide sufficient guidance to those charged with their execution to enable them to ascertain what sorts of expression are properly restricted and what sorts are not.<sup>47</sup>

45. The HR Committee has also determined that certain forms of expression should not be penalized:

[T]he mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties, albeit public figures may also benefit from the provisions of the Covenant. Moreover, all public figures, including those exercising the highest political authority such as heads of state and government, are legitimately subject to criticism and political opposition.

...

It is also inconsistent with paragraph 3 to prohibit a site or an information dissemination system from publishing material solely on the basis that it may be critical of the government or the political social system espoused by the government.<sup>48</sup>

## Conclusion

46. The detention of Mancho Bibixy Tse resulted from the violations of rights protected by the ICCPR, and UDHR to:

- a) Fair trial and determination of criminal charges and rights and was convicted and sentenced by a military tribunal lacking the required independence, impartiality and competence required;

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<sup>45</sup> *Ibid.*, at para. 53.

<sup>46</sup> See *Hicks v. Australia*, Communication No. 2005/2010, views adopted 5 November 2015, at para. 127 (CCPR/C/115/D/2005/2010); *Casafranca v. Peru*, Communication No. 981/2001, views adopted 22 July 2003, at para. 7.4 (CCPR/C/78/D/981/2001).

<sup>47</sup> Human Rights Committee, General Comment No. 34, Article 19: Freedoms of opinion and expression, at para. 25 (CCPR/C/GC/34).

<sup>48</sup> *Ibid.*, at paras. 38, 43 [footnotes omitted].

- b) freedom from prosecution based on charges that do not comply with the principle of legality;
- c) legal aid;
- d) freedom of expression to criticize government action and inaction; and the rights to association and assembly;
- e) engage in human rights advocacy and dissent through exercising rights to assembly, expression, thought and conscience and assembly, subject only to the lawful restrictions allowed by the ICCPR;

## **Appendix**

### **Penal Code of the Republic of Cameroon excerpt in English**

#### **Article 102 Hostilities against the Fatherland**

Any citizen;

- a) taking part in hostilities against the Republic
- b) or assisting or offering to assist the said hostilities shall be guilty of treason and punished with death

#### **Article 111: Secession**

(1) Whoever undertakes in whatever manner to infringe the territorial integrity of the republic shall be punished with imprisonment for life.

(2) In time of war, or in a state of emergency or siege, the penalty shall be death.

#### **Article 113: Propaganda of False Information**

Whoever sends out or propagates false information liable to injure public authorities or national unity shall be punished with imprisonment for 3 years and with fine of from CFAF 100,000 to CFAF 2,000,000.

#### **Article 114: Revolution**

Whoever by force attempts to alter the laws composing the Constitution or to overturn the political authorities set up by the said laws or to render them incapable of exercising their power shall be punished with imprisonment for life.

#### **Article 116: Insurrection**

Whoever during an insurrection:

- a) instigates or encourages by whatever means the gathering of the insurgent; or
  - b) hinders by whatever means the summoning, the assembly or the operations of the forces of order or usurps their command; or
  - c) invades or destroys any public or private building; or
  - d) holds or seizes any weapon, ammunition or explosives; or
  - e) wears any official uniform, garb or emblem, whether civil or military,
- shall be punished with imprisonment for from 10 to 20 years.

#### **Article 154: Contempt of Public Bodies and Public Servants**

(1) Whoever commits a contempt:

- a) of any Court, or any of the armed forces, or of any public body or public administration; or

b) in relation to his office or position, of any Member of Government or of Parliament, or of any public servant;  
shall be punished, unless, in the case of defamation, he proves the truth of the defamatory matter, with imprisonment for 3 months to 3 years or with fine from CFAF 100,000 to CFAF 2,000,000 or with both such imprisonment and fine.

(2) Whoever, whether in speech or in writing intended for the public, incites to revolt against the Government or institution of the Republic shall be punished with the penalties provided in subsection (1) above.

### **Article 157: Resistance**

(1) Whoever

- a) by any means whatever incites to the obstruction of the execution of any law, regulation, or lawful order of the public authority;
- b) by force or other interference obstructs the performance of lawful duty by any person engaged in the execution of any law, regulation, decision in the administration of justice or other lawful order shall be punished with imprisonment for from 3 months to 4 years.