

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

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Wednesday, January 16, 2013

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Dear Mr. President, Prime Minister and Minister of Justice,

Re: International obligations of Cameroon to protect lawyers and decriminalize homosexuality

I write on behalf of Lawyers Rights Watch Canada (LRWC), a committee of Canadian lawyers who promote human rights and the rule of law internationally. LRWC also provides support to lawyers and other human rights defenders in danger because of their advocacy.

LRWC is deeply concerned that lawyers defending persons accused of homosexuality have been threatened with injury and death. We wrote to you on November 16, 2012 outlining threats against the lives of lawyers Alice Nkom, Michel Togue, and Saskia Ditisheim and have received no reply. The gravity and persistence of the threats against these lawyers and their client Jean-Claude Roger Mbédé, which have included threats of harm to family members, put them at risk in their offices, their homes, and in court. It is our understanding that the Government of Cameroon has not provided adequate, or any, protective measures to ensure the safety of the lawyers, their families, or their client. In addition, those authoring and delivering the threats have not been apprehended or charged.

LRWC calls on the Government of Cameroon to repeal Article 347bis of the Penal Code that criminalizes “sexual relations with a person of the same sex” and punishes such acts with a penalty of up to five years imprisonment and a fine of 20,000 to 200,000 CFA. These provisions violate Cameroon’s international legal obligations and also provide a platform for vigilantism

that threatens the safety of accused persons, their lawyers, and the integrity of the Cameroon legal system.

International legal obligations to decriminalize homosexuality

As a party to the *International Covenant on Civil and Political Rights* (ICCPR), Cameroon has legal obligations to adopt measures that effectively ensure rights to non-discrimination, privacy, and life. In accordance with the *Constitution of the Republic of Cameroon* (Constitution) these legal obligations override national law. The Preamble to the Constitution affirms “attachment to the fundamental freedoms enshrined in the Universal Declaration of Human Rights, the Charter of the United Nations and The African Charter on Human and Peoples' Rights, and all duly ratified international conventions.” Article 45 of the Constitution stipulates that “duly approved or ratified treaties and international agreements shall, following their publication, override national laws.” That traditional values must conform to and not displace internationally protected rights is made clear by Article 1(2), which requires Cameroon to “...recognize and protect traditional values that conform to democratic principles, human rights and the law.”

Article 347*bis* of the Penal Code contravenes Cameroon’s duties under the ICCPR and the Universal Declaration of Human Rights (UDHR) to ensure non-discrimination and privacy. Articles 2(1) and 26 of the ICCPR prohibit discrimination on the basis of, *inter alia*, “sex” which the United Nations Human Rights Committee (the “Committee”) has interpreted as encompassing sexual orientation.¹ Therefore the above noted articles of the ICCPR prohibit discrimination on the basis of sexual orientation.

The Committee also ruled that “adult consensual sexual activity in private” is protected from interference by Article 17, which protects privacy rights.² The Committee rejected moral considerations as a justification, stating that it could not “...accept either that for the purposes of article 17 of the Covenant, moral issues are exclusively a matter of domestic concern, as this would open the door to withdrawing from the Committee's scrutiny a potentially large number of statutes interfering with privacy.”³ The Committee also rejected political, social, cultural, or economic considerations as a justification for a state’s failure to adopt measures that give effect to protected rights.⁴

These interpretations of ICCPR obligations are shared by the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Discrimination against Women, the Human Rights Council, and the Working group on Arbitrary Detention.

Decriminalization of homosexuality in Cameroon has been recommended:

- By the Working Group on Arbitrary Detention, which concluded that criminalization of homosexuality is incompatible with Articles 17 and 26 of the ICCPR, and recommended reform;⁵

¹ *Toonen v. Australia*, Communication No. 488/1992, U.N. Doc CCPR/C/50/D/488/1992 (1994), para. 8.7.

² *Ibid*, para. 8.2.

³ *Ibid*, para. 8.6.

⁴ *General Comment No. 31 [80] Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, 05/26/2004, CCPR/C/21/Rev.1/Add.13. (*General Comments*), para. 14.

⁵ Implementation of General Assembly Resolution 60/251 of 15 March 2006 Entitled “Human Rights Council, Opinions adopted by the Working Group on Arbitrary Detention, A/HRC/4/40/Add.1A/HRC/4/40/Add.1, 2 February 2007, page 94, paras. 19 & 23.

- During the Universal Periodic Review of Cameroon;⁶ and
- By the Committee, which recommended the following:

[Cameroon] should take immediate steps towards decriminalizing consensual sexual acts between adults of the same sex, in order to bring its law into conformity with the Covenant. The State party should also take appropriate measures to address social prejudice and stigmatization of homosexuality and should clearly demonstrate that it does not tolerate any form of harassment, discrimination and violence against individuals because of their sexual orientation.⁷

By failing to prevent and punish threats of death and bodily harm against the above-named lawyers and their client, Cameroon is violating ICCPR duties to ensure the right to life (Article 6) and the right to security of person (Article 9). The ICCPR imposes the duty “to respect and ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present covenant [ICCPR]” (Article 2(1)).

International law duties to protect life and liberty and independence of lawyers

Cameroon has the overarching duty under the ICCPR to investigate attempts and threats to violate the right to life. As observed by the Committee: “The State party should ensure that all allegations of attacks and threats against individuals targeted because of their sexual orientation or gender identity are thoroughly investigated.”⁸ The African Commission on Human and People’s Rights has affirmed this as a paramount duty arising also from the African Charter on Human and Peoples’ Rights, stating that “...a failure to exercise due diligence to prevent or remedy violation, or failure to apprehend the individuals committing human rights violations gives rise to State responsibility even if committed by private individuals.”⁹

The Office of the High Commissioner for Human Rights (OHCHR) and the Committee have emphasized the particular need for state action in cases involving discrimination on the basis of sexual orientation. The OHCHR explained that “...the State obligation to protect life requires that the State exercise due diligence in preventing, punishing and redressing deprivations of life by private parties, including in instances where the victim has been targeted on grounds of her or his sexual orientation and gender identity.”¹⁰

The Committee has recognized the threat of unchecked prejudice and called on states to “...take the necessary steps to put an end to prejudice and the social stigmatization of homosexuality and send a clear message that it does not tolerate any form of harassment, discrimination or violence against persons based on their sexual orientation.”¹¹

One of the steps necessary to end prejudice and vigilantism is public education, a state duty under both the UDHR and the ICCPR. The Committee has considered the primacy of human

⁶ Report of the Working Group on the Universal Periodic Review – Cameroon, 12 October 2009, A/HRC/11/21, paras. 20 (Argentina), 32 (Brazil) and 46 (Mexico).

⁷ Concluding Observations of the Human Rights Committee – Cameroon, 4 August 2010, CCPR/C/CMR/CO/4, para. 12

⁸ Concluding Observations of the Human Rights Committee – Poland, 15 November 2010, CCPR/C/POL/CO/6, para. 8.

⁹ Zimbabwe Human Rights NGO Forum / Zimbabwe, Reference: N° 245/02, 15 May 2006 – Zimbabwe, para. 141.

¹⁰ *Born free and equal* - Sexual Orientation and Gender Identity in International Human Rights Law, HR/PUB/12/06, 2012 United Nations, p.15.

¹¹ Concluding Observations of the Human Rights Committee – Tonga, CCPR/C/TGO/CO/4, para. 14.

rights education in promoting respect for human rights throughout all societies. Without widespread knowledge and respect for human rights, adherence, implementation, and enforcement are unlikely. The Committee has observed that:

It is very important that individual should know what their rights under the Covenant (and the Optional Protocol, as the case may be) are and also that all administrative and judicial authorities should be aware of the obligation which the State party has assumed under the Covenant. To this end, the Covenant should be publicized in all official languages of the State and steps should be taken to familiarize the authorities concerned with its contents as part of their training.¹²

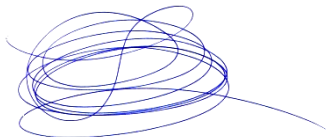
Conclusion

LRWC urges Cameroon to comply with domestic and international law obligations to protect rights to equality and non-discrimination, privacy, liberty, and life, and to ensure that lawyers receive the protection necessary for them to carry out their profession duties. LRWC calls on Cameroon to undertake the following steps:

1. Repeal Article 347*bis* of the Penal Code and carry out such other law reform that is necessary to decriminalize sexual acts between consenting adults;
2. Provide immediate protective measures to the above named lawyers that is adequate to ensure their personal and professional safety, and the safety of their families;
3. Publish statements from the Minister of Justice, the President, and the Prime Minister denouncing discrimination based on sexual orientation and promoting tolerance;
4. Publish a statement that threats against lawyers and accused persons will be punished in accordance with the law;
5. Ensure that the perpetrators of the threats against Alice Nkom, Michel Togue, Saskia Ditisheim, and their client, Jean-Claude Roger Mbédé, are identified and punished through investigations, prosecutions, and trial; and
6. Provide public education on the scope and purpose of the above-cited international law prohibiting discrimination on the basis of sexual orientation to members of the public and to administrative and judicial authorities.

Thank you for your attention on this matter. LRWC welcomes the opportunity for a discussion on these matters and looks forward to your reply.

Sincerely,



Gail Davidson, Executive Director



Marion Caussanel, LRWC

¹² General Comment 3 adopted by the Human Rights Committee on article 2, U.N.Doc. HRI/GEN/1/Rev. 1 of 4 (1994), para. 2, cited in *The right to know our rights, International law obligations to ensure international human rights education and training*, Lawyers Rights Watch Canada, 2012 at p. 23.

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