

# 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

October 30, 2017

His Excellency Paul Biya  
President of the Republic of Cameroon  
Office of the President  
P.O. Box 100  
Yaoundé, Cameroon  
By email: [cellcom@prc.cm](mailto:cellcom@prc.cm)

His Excellency Philemon Yang  
Prime Minister of the Republic of Cameroon  
Office of the Prime Minister  
Yaoundé, Cameroon  
Email: [spm@spm.gov.cm](mailto:spm@spm.gov.cm)

Dear President Biya and Prime Minister Yang;

## **Re: Release Anglophone activists from arbitrary detention and unlawful military tribunal proceedings**

Lawyers' Rights Watch Canada (**LRWC**) is a committee of lawyers and others who promote human rights and the rule of law through advocacy, research, and education. LRWC has Special Consultative Status with the Economic and Social Council of the United Nations.

LRWC commends the recent release and withdrawal of charges for between 50 to 70 detainees, including:

- Nkongho Felix Agbor, a lawyer;
- Dr Aforteka'a Fontem Neba; and
- Justice Paul Ayah Abine, Deputy Attorney General for Yaoundé.

LRWC writes in response to information obtained from reliable sources that at least 150 people charged in relation to the Anglophone (**Anglophone activists**) crisis remain in detention, charged with criminal offences arising from their advocacy for recognition of Anglophone rights to essential services and subject to determination of charges by military tribunals.

LRWC objects to the misuse of criminal law powers to arrest, detain, and prosecute jurists, educators, and other members of English-speaking communities in Cameroon for exercising their democratic rights to engage in dissent and protest. The arrest, continued detention, prosecution, and trial of Mancho Bibixy, radio show host who was arrested, amongst others, on 19 January

**Re: Release Anglophone activists from arbitrary detention and unlawful military tribunal proceedings**

2017, is, according to the facts and law summarized below, arbitrary and in violation of Cameroon's domestic law and international law obligations. The Government of Cameroon appears to be wrongly using criminal law powers to silence and punish leading community members calling for reforms to address unequal access by members of the English-speaking minority in Cameroon to education, employment, access to courts and legal remedies, and other essential services. Other prominent Anglophones believed to have been similarly arbitrarily arrested, charged and brought before a military court are:

- Justice Sokem Ngale Mborh, Attorney General for the South West Region arrested 21 January 2017; and
- Robert Fon, lawyer arrested 16 March 2017.

## **Background**

The arbitrary arrests and prolonged detentions of Anglophone activists arose in October 2016 where people in the predominantly English-speaking South West and North West regions of Cameroon had publicly voiced opposition to being treated as second-class citizens by the central government, which operates from the mainly French-speaking capital of Yaoundé and to the resulting marginalization and underdevelopment. The people of these regions have seen central government action as systemic discrimination and marginalization of the English-speaking population and violations of the agreement made at unification (1961). The Cameroon Anglophone Civil Society Consortium (CACSC), an organization promoting Anglophone rights in Cameroon had been meeting with government authorities to discuss the reforms needed to comply with the requirements of the 1961 unification agreement to ensure the following: English and French as equal entities, two official languages, legal and education systems in English and French.

Lawyers in Bamenda held protests on 11 October 2016 over the imposition of French courts (i.e. the failure to use the common law and the English language) in the Anglophone region. The protestors demanded the translation of the *Code of the Organisation for the Harmonisation of Business Law in Africa* and other legal texts into English. Following this, educators and students undertook sit-in protests on 21 November 2016 in regard to French speakers, with poor English skills, being hired in Anglophone schools. Several protesters were severely beaten, and dozens were arrested.

A protest in Bamenda on 8 December 2016, in response to a meeting by the ruling party, left at least four people killed, apparently as a result of use of force (shooting live bullets, water-cannons, and teargas) by police and security forces to prevent and disperse the gathering of protesters. Amnesty International called for an immediate investigation of the use of "excessive force" and urged the Government of Cameroon to "refrain from the use of unlawful force in its response to the protests."<sup>1</sup> Protests have been ongoing in the Anglophone regions and further deaths have occurred at protests in February 2017.

Instead of mounting investigations into the use of excessive force and the deaths of protesters, the Government of Cameroon responded, on 17 January 2017, by banning the activities of

---

<sup>1</sup> Cameroon: Excessive force that led to deaths of protesters must be urgently investigated, 9 December 2016. Available at <https://www.amnesty.org/en/latest/news/2016/12/cameroon-excessive-force-that-led-to-deaths-of-protesters-must-be-urgently-investigated/>.

CACSC and arresting a number of prominent Anglophone leaders without an arrest warrant and without informing them of the reason for their arrest.

There are no credible reports that any of the people charged advocated or engaged in violence.

Since the arrests made between December 2016 and March 2017, the protesters have been denied access to a “fair and public hearing before a competent, independent and impartial tribunal”. In violation of the right to fair trial by a civilian court, the criminal charges against the Anglophone activists are to be determined by a military tribunal in Yaoundé. The military tribunal proceedings have been postponed on a number of occasions with the victims remaining in detention. The military tribunal proceedings have since been set to continue on 26 October 2017 for a “continuation of the debates”. If convicted, Mr. Mancho, Mr. Mborh, Mr. Fon and other Anglophone activists could face the death penalty.

### **International Human Rights Obligations of Cameroon**

As a member of the respective international bodies, Cameroon has agreed to respect rights guaranteed and set out in the following documents:

- the Universal Declaration of Human Rights (**UDHR**), the United Nations<sup>2</sup> (ratified on 20 September 1960);<sup>3</sup>
- the International Covenant on Civil and Political Rights (**ICCPR**), the United Nations (ratified on 24 January 1984);<sup>4</sup> and
- the African Charter on Human and Peoples’ Rights (**Banjul Charter**),<sup>5</sup> the African Union<sup>6</sup> (ratified on 20 June 1989).

Pursuant to the above, Cameroon has legal obligations to adopt measures that effectively ensure rights to liberty, freedom from arbitrary detention, freedoms of expression, association and assembly, rights to participate in public affairs, to the presumption of innocence, pre-trial release and the right to fair trial by a competent, impartial and independent civilian court.

The *Constitution of the Republic of Cameroon (Constitution)*,<sup>7</sup> provides that the legal obligations arising from the Banjul Charter and the ICCPR override any conflicting 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.

---

<sup>2</sup> Cameroon joined the United Nations on 20 September 1960.

<sup>3</sup> UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III), Articles 7-11, available at: <http://www.refworld.org/docid/3ae6b3712c.html> [accessed 12 December 2014].

<sup>4</sup> UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations Treaty Series, vol 999, p. 171, available at: <http://www.refworld.org/docid/3ae6b3aa0.html> [accessed 12 December 2014].

<sup>5</sup> African (Banjul) Charter on Human Rights and People’s Rights, June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M 58 (1982), entered into force 21 October 1986, available at: <http://www.achpr.org/instruments/achpr/> [accessed 27 October 2017].

<sup>6</sup> Cameroon joined the African Union on 25 May 1963.

<sup>7</sup> Constitution of the Republic of Cameroon, Law No. 96-06 of 18 January 1996 to amend the Constitution of 2 June 1972, available at: <http://confinder.richmond.edu/admin/docs/Cameroon.pdf> [accessed 27 October 2017].

**Re: Release Anglophone activists from arbitrary detention and unlawful military tribunal proceedings**

Further, 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.”

Given Cameroon’s international human rights obligation, as set out above, the arrests, detentions, charges, and military tribunal proceedings constitutes an illegitimate use of criminal law powers and contravene provisions of the UDHR, ICCPR, the Banjul Charter, and the Constitution. Protected rights violated by the arrests, detentions, prosecution, and military tribunal proceedings are rights to: liberty, freedoms of expression, association, assembly and to participate in public affairs, pre-trial release, freedom from arbitrary detention, the presumption of innocence, representation by legal counsel, and fair trial by a properly constituted civilian court that is impartial, competent, and independent.

### ***International law prohibits use of military courts to try civilians***

Under international law binding on Cameroon, all civilians have the right to be tried by civilian courts or tribunals using established legal procedures.<sup>8</sup> The long accepted consensus that a civilian cannot be trialed by a military tribunal is founded on the non-derogable rights to a fair trial by a competent, independent, and impartial court.<sup>9</sup> As military tribunals are a division of the armed services, and thus part of the executive branch of government, they are not a part of the independent judicial branch of government. Without access to competent, independent and impartial courts, there is no means of preventing the arbitrary use of power by the state, enforcing state duties to ensure internationally protected rights in accordance with treaty obligations, and no meaningful access to remedies for violations.

The African Commission on Human and Peoples’ Rights (**ACHPR**) are unanimous that military tribunals lack authority to try civilians.<sup>10</sup> The ACHPR has interpreted the Banjul Charter as prohibiting the use of military tribunals to determine the rights of civilians. In the case of *Media Rights Agenda v. Nigeria*, the ACHPR found that special tribunals set up by the military regime with an ouster of the jurisdiction of the ordinary courts “violates the right to have one’s cause heard, under Article 7.1.”<sup>11</sup> [13]

The ACHPR also confirmed the prohibition in the *Resolution on the Right to a Fair Trial and Legal Aid in Africa*,<sup>12</sup> which states in Principle L:

---

<sup>8</sup> Basic Principles on the Independence of the Judiciary, Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, Principle 5, para 21, available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/IndependenceJudiciary.aspx> [accessed 27 October 2017].

<sup>9</sup> *Supra* at n3 and n4.

<sup>10</sup> Draft Principles Governing the Administration of Justice Through Military Tribunals, U.N. Doc. E/CN.4/2006/58 at 4 (2006), Report submitted by the Special Rapporteur of the Sub-Commission on the Promotion and Protection of Human Rights, Emmanuel Decaux to the UN Commission on Human Rights in 2006 [*Decaux Principles*]. Available at: <http://www1.umn.edu/humanrts/instree/DecauxPrinciples.html>.

<sup>11</sup> *Media Rights Agenda v. Nigeria*, Comm. No. 224/98, paras. 60-66 (ACHPR 2000); [http://www1.umn.edu/humanrts/africa/comcases/105-93\\_128-94\\_130-94\\_152-96.html](http://www1.umn.edu/humanrts/africa/comcases/105-93_128-94_130-94_152-96.html).

<sup>12</sup> ACHPR *Resolution on the Right to a Fair Trial and Legal Aid in Africa*, 2003, available at: <http://www.achpr.org/instruments/principles-guidelines-right-fair-trial/>.

**Re: Release Anglophone activists from arbitrary detention and unlawful military tribunal proceedings**

## L. RIGHT OF CIVILIANS NOT TO BE TRIED BY MILITARY COURTS:

- a) The only purpose of Military Courts shall be to determine offences of a purely military nature committed by military personnel.
- b) While exercising this function, Military Courts are required to respect fair trial standards enunciated in the African Charter and in these guidelines.
- c) Military courts should not in any circumstances whatsoever have jurisdiction over civilians. Similarly, Special Tribunals should not try offences which fall within the jurisdiction of regular courts.

In subjecting the detained citizens to military trial, Cameroon is contravening international law and breaching those citizen's rights which are guaranteed under the UDHR,<sup>13</sup> the ICCPR<sup>14</sup> and the Banjul Charter.<sup>15</sup> In addition, Cameroon is required to provide objective reasons for trying civilians in a military court and why ordinary courts cannot be used.<sup>16</sup>

### *Arrests, detentions contravene rights and are arbitrary*

The UN Working Group on Arbitrary Detention (**WGAD**) has defined detention as arbitrary when one of more of the following conditions exists.<sup>17</sup>

- Category I – It is clearly impossible to invoke any legal basis justifying the deprivation of liberty;
- Category II – The deprivation results from the exercise of the rights or freedoms guaranteed by, *inter alia*, Article 19 of the UDHR and ICCPR;
- Category III – When the total or partial non-observation of international norms relating to the right to a fair trial as specified by the UDHR and ICCPR are of such gravity as to render the deprivation of liberty arbitrary.

The UN Human Rights Committee (**HR Committee**) has determined that '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 ..."<sup>18</sup>

Cameroon's arrests and detentions of the Anglophone activists are arbitrary in that they result solely from the exercise of rights to expression, association, assembly, and to participate in public affairs which are rights guaranteed by the UDHR, ICCPR, and the Banjul Charter. Hence, the detentions meet the condition of arbitrary detention and are classified as arbitrary under Category III.

---

<sup>13</sup> *Supra* at n 1.

<sup>14</sup> *Supra* at n 1.

<sup>15</sup> *Supra* at n 5.

<sup>16</sup> UN Human Rights Committee (HR Committee), CCPR General Comment No. 13: Article 14 (Administration of Justice), Equality before the Courts and the Right to a Fair and Public Hearing by an Independent Court Established by Law, 13 April 1984, paragraph 4 [CCPR General Comment No. 13], available at: <http://www.refworld.org/docid/453883f90.html> [accessed 16 December 2014].

<sup>17</sup> Fact Sheet No. 26, The Working Group on Arbitrary Detention.

<sup>18</sup> *Mukong v. Cameroon*, Communication No. 458/1991, UN Human Rights Committee (HRC), 21 July 1994, at para. 9.8.

**Re: Release Anglophone activists from arbitrary detention and unlawful military tribunal proceedings**



### ***Detention violates rights to presumption of innocence and pre-trial release***<sup>19</sup>

International law standards state that a person may only be arrested and detained “pursuant to a warrant, on reasonable suspicion or for probable cause.”<sup>20</sup> In this instance, where individuals have been arrested without warrant or summons and kept in detention without a court order, it is likely that Cameroon would be found to have violated the right to freedom from arbitrary arrest and detention as set out in ICCPR Article 9(1) and the Banjul Charter, Article 6.<sup>21</sup>

Under international law, which has been confirmed by both the HR Committee and the ACHPR, pre-trial detention is considered an extraordinary measure that may only be used when a competent court has determined that there are established risks of flight, reoccurrence or interference with evidence and that detention is the *only* means to prevent the established risk(s) to release. Persons arrested on a criminal charge must not be kept in custody pending trial unless there is sufficient evidence that makes it necessary to prevent such person from fleeing, interfering with witnesses or posing a clear and serious risk to others.<sup>22</sup>

The ACHPR has interpreted indefinite detention as arbitrary and a violation of Article 6 of the *Banjul Charter*,<sup>23</sup> as it has the detention of persons without charge and without the possibility of bail.<sup>24</sup>

The Cameroon police and security forces conducted the arrests without warrants and the detainees have been denied access to a civilian court to determine the legality of detention and their right to pre-trial release. The manner of the arrests and detentions therefore violate rights to liberty, the presumption of innocence and to pre-trial release. The detainees have been held between their date of arrest and the present date, being of up to ten months, which is arbitrary and in violation of the Banjul Charter.

### **Conclusion**

LRWC calls on the Government of Cameroon to comply with its international law obligations arising from, *inter alia*, the UDHR, ICCPR and the Banjul Charter and to:

1. Immediately release from detention Bibixy Mancho, Justice Sokem Ngale Mborh, and Robert Fon and the other Anglophone activists still detained and facing determination of criminal charges before a military tribunal;
2. Discontinue all military court prosecutions and proceedings against Bibixy Mancho, Justice Sokem Ngale Mborh, and Robert Fon and the other Anglophone activists charged;

---

<sup>19</sup> See *Pre-Trial release and the right to be presumed innocent: A handbook on international law rights to pre-trial release*, Lois Leslie, LRWC, 2013. available at <http://www.lrwc.org/handbook-pre-trial-release-and-the-right-to-be-presumed-innocent/>

<sup>20</sup> African Commission on Human and Peoples’ Rights. *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa*. Banjul: African Commission on Human and Peoples’ Rights, 2003, at para. M(1)(b). Available at: [http://www.achpr.org/files/instruments/principles-guidelines-right-fair-trial/achpr33\\_guide\\_fair\\_trial\\_legal\\_assistance\\_2003\\_eng.pdf](http://www.achpr.org/files/instruments/principles-guidelines-right-fair-trial/achpr33_guide_fair_trial_legal_assistance_2003_eng.pdf).

<sup>21</sup> HR Committee: Communication No. 90/1981, *Luyeye Magana ex-Philibert v. Zaire*, at para. 8.

<sup>22</sup> *Supra* at n 20, at para. M(1)(e).

<sup>23</sup> *Free Legal Assistance Group, Lawyers’ Committee for Human Rights, Union Inter africaine des Droits de l’Homme, Les Témoins de Jehovah v. DRC* (25/89-47/90-56/91-100/93), at para. 42.

<sup>23</sup> African Commission on Human and Peoples’ Rights, Communication No. 102/93, *Constitutional Rights Project v. Nigeria*, at para. 55.

<sup>24</sup> African Commission on Human and Peoples’ Rights, Communication No. 102/93, *Constitutional Rights Project v. Nigeria*, at para. 55.

**Re: Release Anglophone activists from arbitrary detention and unlawful military tribunal proceedings**

3. Withdraw current charges against Bibixy Mancho, Justice Sokem Ngale Mborh, and Robert Fon and the other Anglophone activists charged;
4. Ensure an independent investigation of the deaths that occurred and allegations of unnecessary and excessive use of force by police and security forces during the protests in Bamenda on 8 December 2016;
5. Ensure lawful prosecutions before civilian courts of all those identified by the investigation(s) as suspected perpetrators;
6. Comply with Cameroon's international and domestic law obligations to respect and ensure the rights of people subjected to criminal proceedings, including those named in this letter, to: liberty, freedom from arbitrary detention, the presumption of innocence, pre-trial release, trial before an independent, competent and impartial civilian court, and to be fully represented by counsel of choice;
7. Ensure that the people named and others are not arrested, detained or prosecuted for exercising internationally protected rights to freedoms of expression, association and assembly and the essential democratic right to participate in public affairs by engaging in protests.<sup>25</sup>

LRWC looks forward to your response.

Sincerely,



Maree Bullivant, Member, LRWC



Gail Davidson, Executive Director, LRWC

Copied to:

Jean Pierre Lavoie

The High Commission of Canada in Cameroon

“Les Colonnades” Building

New Bastos, 607 Road 1792

Yaoundé, Cameroon

Tel.: (+237) 222 50 39 00

Fax: (+237) 222 50 39 04; Email: [yunde@international.gc.ca](mailto:yunde@international.gc.ca)

---

<sup>25</sup> See *The Right to Dissent: A guide to international law obligations to respect, protect and fulfill the right of all persons to participate in public affairs by engaging in criticism, opposition and dissent*, Lois Leslie for LRWC, March 2017 [*The Right to Dissent*]. Available at: <http://www.lrwc.org/library/know-your-rights-index/right-to-dissent/>.

**Re: Release Anglophone activists from arbitrary detention and unlawful military tribunal proceedings**

The Honourable Chrystia Freeland  
Minister of Foreign Affairs of Canada  
Email: chrystia.freeland@parl.gc.ca

Mr Laurent Ezzo  
Minister of Justice and Keeper of the Seals  
Ministry of Justice, BP 466  
Yaoundé, Cameroon

Mr Martin Belinga Eboutou  
Director of Civil Cabinet  
Presidency of the Republic of Cameroon  
P.O. Box 100  
Yaoundé, Cameroon  
Email: cellcom@prc.cm

Mr Ferdinand Ngoh  
Secretary General of the Presidency  
PO Box 100  
Yaoundé, Cameroon  
Email: cellcom@prc.cm

Honourable Cavaye Yeguie Djibril Speaker of the National Assembly  
PO Box 4808  
Yaoundé, Cameroon  
Email: ndumjt@yahoo.com

Mr. Michel Forst  
Special Rapporteur on the Situation of Human Rights Defenders  
Email: urgent-action@ohchr.org

Mr. David Kaye  
Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and  
Expression  
Email: freedex@ohchr.org

Ms. Annalisa Ciampi, Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of  
Association  
Email: freeassembly@ohchr.org

Diego García-Sayán, UN Special Rapporteur on the Independence of Lawyers and Judges E-  
mail: SRindependenceJL@ohchr.org

Tony Fisher  
Chairperson, Human Rights Committee, Law Society of England and Wales  
Email: TFisher@fjg.co.uk

---

**Re: Release Anglophone activists from arbitrary detention and unlawful military tribunal  
proceedings**