

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 – lrwc@portal.ca – Tel: +1 604 736 1175 – Fax: +1 604 736 1170
3220 West 13th Avenue, Vancouver, B.C. CANADA V6K 2V5

Thursday, 12 July, 2018

His Excellency Paul Biya
President of the Republic of Cameroon
Office of the President
PO Box 100
Yaoundé, Cameroon
Email: cell.com@prc.cm;
contact@presidenceducameroun.com
Fax: +237 22 22 08 70

His Excellency Mr. Philemon Yang
Prime Minister and Chief Head of the
Government of Cameroon
Office of the Prime Minister
Yaoundé, Cameroon
Email: spm@spm.gov.cm

Mr. Laurent Esso
Minister of State and Minister of Justice, Cameroon
BP 466
Yaoundé, Cameroon
E mail: hkembo@yahoo.com
Fax: +237 22 23 00 05

Dear President Biya and Honourable Ministers:

Re: Conviction, Sentencing and Ongoing Arbitrary Detention of Mr. Mancho Bibixy Tse

I write on behalf of Lawyers' Rights Watch Canada (LRWC) - a committee of lawyers and others who promote human rights and the rule of law through advocacy, education and research. LRWC is a non-governmental organization in Special Consultative Status with the Economic and Social Council of the United Nations.

LRWC is concerned about the recent sentencing and ongoing arbitrary detention of Mr. Mancho Bibixy Tse. 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 Constorium to document human rights violations in North-West Cameroon and to protect vulnerable people in the Anglophone regions of Cameroon.

LRWC wrote in March of 2017 to His Excellency President Biya and to His Excellency Prime Minister Philemon Yang to express its concerns about the misuse of criminal law powers to arrest and detain prominent Anglophone activists, including Mancho Bibixy. These concerns continue, and

are now more serious in light of the prosecution, sentencing and continued detention of Mancho Bibixy.

Background

Arrest, Imprisonment and Trial

On 9 January 2017, Mancho Bibixy was arrested while at a friend's house. We understand that armed soldiers climbed the house's fence and forcibly opened two doors before arresting him. He was taken away to a vehicle wearing a hood, without shoes or his identification card.

We believe that his arrest was in response to his public speech in November 2016 in the Anglophone city of Bamenda during an uprising, protests and strikes by Anglophones in western Cameroon against the marginalization of English-speaking Cameroonians. The uprising is colloquially known as the "Coffin Revolution" because Mancho Bibixy gave the speech while standing inside a coffin.

Following his arrest, Mancho Bibixy was arbitrarily detained for 18 months. His health deteriorated and he currently suffers from back pain. He has been further weakened by a one-week hunger strike that he started in June to protest the poor conditions of his detention. Mancho Bibixy is currently being held at the Kondengui central prison, a maximum-security prison in Yaoundé. He does not have regular access to his family. He is being held in an overcrowded cell with fifteen other inmates.

During his trial, hearings were postponed more than fourteen times for different reasons, including a request from the Prosecutor for more time to gather evidence, bank holidays, and the absence of judges.

Sentencing

We have been reliably informed that on 25 May 2018, the Military Tribunal in Yaounde sentenced Mr. Mancho Bibixy to 15 years in prison and a fine of 268 million francs CFA (which we understand is approximately 408,564 Euros), requiring him to pay sixty four million francs in damages requested by the civil party to these proceedings, and 204 million as damages requested by the state. This sentencing followed his conviction by the Military Tribunal in Yaounde on 25 April 2018, on charges of "acts of terrorism", "secession", "propagation of false information", "revolution", "insurrection", "contempt of public bodies and public servants", and "hostility against the homeland". He was apparently cleared of other charges – "rebellion", "civil war", "destruction of public property", "looting", "spreading of false information by electronic means", "failure to hold a national ID card", and "murder". The charges against him are found under the Law on the Suppression of Acts of Terrorism No. 28 of 2014, and the Cameroonian Criminal and Penal Codes.

International Human Rights Obligations of Cameroon

The arrest and lengthy and arbitrary detention of Mancho Bibixy, the charges against him, and his protracted trial before a military court contravene provision of the *Universal Declaration of Human Rights* (UDHR), the *International Covenant on Civil and Political Rights* (ICCPR) and the *African Charter on Human and Peoples' Rights* (the Banjul Charter)¹. They constitute an illegitimate use of criminal law powers in apparent retaliation for peaceful and legitimate human rights and advocacy activities, particularly in the context of the deepening Anglophone crisis in Cameroon, in which

¹ Cameroon ratified the Banjul Charter on June 20, 1989, and the ICCPR on January 24, 1984.

Mancho Bibixy – a prominent journalist - led peaceful protests demanding respect for the rights of the Anglophone population.

Contravened are provisions guaranteeing 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, and fair and timely trial by a civilian court that is impartial, competent, and independent.

As a member of the United Nations (20 September 1960), Cameroon has agreed to respect the rights guaranteed by the UDHR. As a member of the African Union, and as a party to the Banjul Charter, and the ICCPR, 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 fair trial by a competent, impartial, and independent civilian court.

According to the *Constitution of the Republic of Cameroon*, (Constitution), 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”. Article 45 of the Constitution stipulates, “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”.

International law prohibits the use of military courts to try civilians

Mancho Bixby was tried, convicted, and sentenced before a military court. Military courts² are sometimes used to prosecute or determine the rights of civilians for the purpose of asserting executive control over independent judicial decision-making and allowing for procedures that deviate from standards applied by regular civilian courts. Exceptional circumstances are often cited as justification. There is international consensus that trials of civilians by military tribunals contravene the non-derogable right to a fair trial by a competent, independent, and impartial court to the extent that they violate rights guaranteed by instruments such as the UDHR, ICCPR and the Banjul Charter. The African Commission on Human and Peoples’ Rights (ACHPR) has determined that military tribunals lack authority to try civilians.³

² This text on the right to trial by civilian courts has been taken from, *Right to Trial by Civilian Courts: International law on the use of military tribunals to determine the rights of civilians*, Working Paper, Prepared by Erica Chan, Gail Davidson, and Catherine Morris, 2015

³ 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*] – paragraph 21 - Available at: [http://www1.umn.edu/humanrts/instree/Decaux Principles.html](http://www1.umn.edu/humanrts/instree/Decaux_Principles.html)

Military courts are a division of the armed services and thus part of the executive branch of government and are not part of the independent judicial branch of government. Without access to competent, independent, and impartial tribunals, there is no means of enforcing state duties to ensure internationally protected rights in accordance with treaty obligations, and no meaningful access to remedies for violation. As the *Basic Principles on the Independence of the Judiciary*⁴ states:

Everyone has the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals.

The UN Human Rights Committee (HR Committee) through Concluding Observations on States' reports, General Comments interpreting the ICCPR and Views regarding complaints, agrees that "the jurisdiction of military tribunals is restricted to offences of a strictly military nature committed by military personnel"⁵. In 1984, the HR Committee affirmed in its General Comment 13 that military tribunals are prohibited from trying civilians except in extraordinary, objectively determined and narrowly defined circumstances such as cases where fair, independent, and impartial civilian courts are unavailable.⁶

In July 2014, the UN Working Group on Arbitrary Detention (WGAD) stated that in its experience "military tribunals are often used to deal with political opposition groups, journalists, and human rights defenders"⁷ The WGAD concluded that, "Judges should always be independent and impartial. In contrast, two of the core values of a military officer are obedience and loyalty to her or his supervisors. Under international law, military tribunals can only be competent to try military personnel for military offences."⁸

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".⁹

⁴ *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>

⁵ *Decaux Principles*, *supra* note 3.

⁶ 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>

⁷ UN Human Rights Council, *Report of the Working Group on Arbitrary Detention*, 30 June 2014, A/HRC/27-48, para available at: <http://www.refworld.org/docid/53eb29a04html>.

⁸ *Ibid*, para.85

⁹ *Media Rights Agenda v. Nigeria*, Comm. No. 224/98, paras. 60-66 (ACHPR 2000); <http://www.lunm.edu/humanrts/africa/comcases/105-93> 128-94 130-94 152-96.html.

The ACHPR confirmed the prohibition in the *Resolution on the Right to a Fair Trial and Legal Aid in Africa*¹⁰ that states in Principle L:

L: RIGHTS 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 that fall within the jurisdiction of regular courts.

Charges and subsequent convictions and sentencing constitute a violation of right to freedom of expression

The arrest, detention, prosecution, conviction of Mancho Bibixy and the lengthy and punitive sentence imposed on him violate international law in that they are based on his exercise of freedoms of expression to engage in public debate about and opposition to practices and policies seen to marginalize and discriminate against the Anglophone minority.

International law outlines a cumulative three-part test that must be met for the legitimate and legal restriction of the right to freedom of expression. Any restriction must:

- be provided by law;
- pursue one of the fundamental values or interests identified as a legitimate ground for restriction set out in the respective treaty; and
- be “necessary” to protect that fundamental value or interest¹¹

A limitation must be narrowly interpreted and the necessity for any restrictions must be convincingly established. A limitation that is in accordance with a clear law serving a legitimate aim will not pass the test unless it can be demonstrated that it is truly necessary to achieve that aim. The necessity for any limitation is judged within the context of the needs of a democratic society and its institutions. A limitation must be directly related to the specific need on which it is predicated and must be proportionate to that need and applied in an objective a non-discriminatory manner. In exercising its supervisory jurisdiction, the court must look at the interference in light of the case as a whole, including the content of the impugned statements, and the context in which they were made.

The list of the possible grounds for restricting the freedom under the ICCPR and the Banjul Charter is exhaustive. Domestic authorities may not legitimately rely on any other ground falling outside the grounds provided for under those treaties.

In addition, a law restricting freedom of expression must be of general application. The ACHPR has ruled that overly broad limitations are illegitimate.¹²

¹⁰ 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/>

¹¹ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, March 2011, A/HRC/17/27 at para 24.

In their *Joint Declaration on the Universality and the Right to Freedom of Expression*¹³ the Special Rapporteurs (SR) on Freedom of Expression of the UN, ACHPR, Organization of American States (OAS), and Organization for the Security and Cooperation of Europe's Representative on the Freedom of the Media stated that certain types of legal restrictions on freedom of expression can never be justified by reference to local traditions, culture and values, but rather constitute human rights violations:

- i. Laws which protect religions against criticism or prohibit the expression of dissenting religious beliefs
- ii. Laws which prohibit debate about issues of concern or interest to minorities and other groups which have suffered from historical discrimination or prohibit speech which is an element of the identity or personal dignity of these individuals and/or groups.
- iii. Laws which provide for special protection against criticism for officials, institutions, historical figures, or national or religious symbols.

The charges against Mancho Bibixy, and his subsequent conviction and sentencing on several of these charges create restrictions which fall under category ii – prohibiting debate about issues of concern or interest to minorities that have suffered from historical discrimination – and category iii- providing special protection against criticism for officials and institutions. As such the charges, conviction and sentencing constitute violations of Cameroon's international and domestic law obligations to protect and ensure rights to freedom of expression.

Conclusion:

LRWC calls on the Government of Cameroon to:

- i. Guarantee in all circumstances the physical and psychological integrity of Mr. Mancho Bibixy, as well as of all human rights defenders in Cameroon;
- ii. Immediately and unconditionally release Mr. Mancho Bibixy, as well as all human rights defenders detained in Cameroon
- iii. Put an end to all acts of harassment, including harassment at the judicial level, and particularly through the use of charges, trial, conviction and sentencing by military tribunals against Mr. Mancho Bibixy as well as all human rights defenders in Cameroon
- iv. Until all charges are dropped and convictions and sentences set aside, ensure that all judicial proceedings concerning Mr. Mancho Bibixy are carried out in full compliance with his rights to fair trial protected under international law
- v. Comply with Cameroon's international and domestic law obligations to respect and ensure the rights of people subjected to criminal proceedings, including Mr. Mancho Bibixy 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;
- vi. Ensure that Mr. Mancho Bibixy and others advocating for the rights of Anglophone minority populations in Cameroon are not arrested, detained, or prosecuted for

¹² ACHCR, *Constitutional Rights Project and Others v. Nigeria*, Communication Nos. 140/94, 141/94, and 145/95 (2000), para. 40.

¹³ UN, OAS, OSCE, ACHPR, *Joint Declaration on Universality and the Right to Freedom of Expression*, 6 May 2014.

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.

LRWC looks forward to your response.

Sincerely,



Robert Lapper, QC
Co – Monitor, Cameroon
Lawyers' Rights Watch Canada.

Copied to:

Mr. Rene Emmanuel Sadi, Minister of Territorial Administration and Decentralization
minatdcm@minatd.cm

Dr. Chemuta Divine Banda, Chairman of the National Commission on Human Rights and Freedoms
cndhl@iccnnet.cm; cdbanda26@yahoo.fr

Ms. Enonchong Annet, Protection Officer of the National Commission on Human Rights and Freedoms
annet_mbeng@yahoo.com

His Excellency Mr. Anatole Fabien Mario Nkou, Ambassador, Permanent Mission of the Republic of Cameroon to the United Nations Office in Geneva
mission.cameroun@bluewin.ch

His Excellency Mr. Daniel Evina Abe'e, Ambassador of Cameroon to Belgium and the European Union
ambassade.cameroun@skynet.be; embassy@cameroon.be

Working Group on Arbitrary Detention
wgad@ohchr.org

Mr. Michel Forst, Special Rapporteur on the Situation of Human Rights Defenders
defenders@ohchr.org

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

Felix Nkongho, Chairman of the Centre for Human Rights and Democracy in Africa
nkongho@chrda.org

Her Excellency Mrs. Nathalie O'Neil, High Commissioner of Canada to Cameroon
yunde@international.gc.ca

His Excellency Anu'a-Gheyle Solomon Azoh-Mbi, High Commissioner of the Republic of
Cameroon in Canada
cameroun@rogers.com