

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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Lucie Viersma
Secretary Working Group on Arbitrary Detention
United Nations Human Rights
Office of the High Commissioner for Human Rights
Palais des Nations, 121 Geneva 10, Switzerland

Tuesday, February 5 2019

Dear Madam:

Thank you for your letter of 22 January 2019, concerning our submission to the Working Group on Arbitrary Detention (WGAD) regarding the deprivation of liberty of Mancho Bixiby Tse, and the response of the Government of Cameroon (Cameroon). We appreciate the opportunity to review the Government's response, and provide further information. We offer the following by way of additional comments and observations for your consideration:

Re Anglophone minority

Cameroon's denial of the existence of an Anglophone Minority is shocking, and defies fact and logic. Cameroon was founded as a *federation* of two peoples – Anglophone and Francophone in which the rights of both Anglophones and Francophones were specifically recognized and guaranteed in its initial 1961 Constitution. Some of the grievances of the current Anglophone population stem from the failure of the subsequent and current unitary state to honour the guarantees of the rights of the Anglophone population that were central to the foundation of the Republic.

Despite the non-acknowledgement and denial of the Anglophone problem from Francophone Government leaders, there exists profound discontent on the part of the Anglophone population of Cameroon. It is precisely the failure to acknowledge the problem and the existence of the Anglophone minority that exacerbates this discontent. In December 2016, in a letter to President Paul Biya, the Anglophone Bishops of Southern Cameroon defined the historic political roots of the discontent of the Anglophone minority as follows:

1. The failure of successive Governments of Cameroon, since 1961, to respect and implement the articles of the Constitution that uphold and safeguard what British Southern Cameroons brought along to the Union in 1961
2. The flagrant disregard for the Constitution, demonstrated by the dissolution of political parties and the formation of one political party in 1966, the sacking of Jua and the appointment of [Muna](#) in 1968 as the Prime Minister of West Cameroon, and other such acts judged by West Cameroonians to be unconstitutional and undemocratic
3. The cavalier management of the 1972 Referendum which took out the foundational element (Federalism) of the 1961 Constitution

4. The 1984 Law amending the Constitution, which gave the country the original East Cameroon name (The Republic of Cameroon) and thereby erased the identity of the West Cameroonians from the original union. West Cameroon, which had entered the union as an equal partner, effectively ceased to exist.
5. The deliberate and systematic erosion of the West Cameroon cultural identity which the 1961 Constitution sought to preserve and protect by providing for a bi-cultural federation.

The failure of Cameroon to recognize the existence of the genuine grievances of an Anglophone minority within the country is evident on the face of its reply. It is this failure that has made it necessary for Anglophone Cameroonians to publically advocate changes needed to ensure equality and to protest continuation of both inequality and Cameroon's refusal to discuss or entertain change. Failure by Cameroon to acknowledge or address inequality and its refusal to engage in dialogue and negotiation led Mancho Bibixy Tse and other Anglophone advocates to exercise their right to engage in public protests as a means of advancing the human rights of Anglophone Cameroonians. Rights to engage on protests and the accompanying state duties to protect are recognized by the Universal Declaration of Human Rights (UDHR), Articles 19, 20 and 21 and guaranteed by the International Covenant on Civil and Political Rights (ICCPR), Articles 19, 21, 22 and 25. As stated by the UN Special Rapporteur on rights to peaceful assembly and association,

The rights to freedom of peaceful assembly and of association and not always the most popular of rights for people who are not actually exercising them. But there is a reason that the international community has collectively enshrined them as fundamental rights.

They are among the best tools to address social conflict. They allow underrepresented groups to amplify their voices: they give dispossessed people a channel for engagement and a stake in society; and above all they allow us to thrash out our disagreements in a peaceful—even if messy—manner.²

International Human Rights Law requires states to ensure minority rights and accommodation for minorities.³ Anglophone Cameroonians have the right under this law to advocate for equal access to the law, equal protection of the law, and for equal rights and access to participation in the Government of the state, and state services including legal, education, medical, and social systems.

Moreover, as Cameroon itself noted to in its response to the WGAD, English is recognized as an official language in the Constitution of the Republic of Cameroon, as is the duty of the state to promote a bilingual country.⁴ Surely this in and of itself is recognition, both explicit and

¹ Cameroon: Bamenda Provincial Episcopal Conference Memorandum to President Paul Biya, 29 December 2016 at <http://www.cameroon-info.net/article/cameroon-bamenda-provincial-episcopal-conference-memorandum-to-president-paul-biya-on-the-current-situation-in-278001.html>

² Statement by the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association at the conclusion of his visit to the Republic of Korea, Seoul, 29 January, 2016.

³ See for example: *Declaration of the Rights of Persons Belonging to National or Ethnic, Religious and Ethnic Minorities*, Adopted by the General Assembly of the United Nations resolution 47/135 of 18 December, 1992 and *International Covenant on Civil and Political Rights (ICCPR)*, Adopted and opened for signature, ratification and accession by United Nations General Assembly Resolution 22001 XXI – 16 December, 1966, ratified by the Government of Cameroon in 1984.

⁴ *Constitution of the Republic of Cameroon*, Article 3.

implicit, of an Anglophone population within Cameroon. It is difficult to understand how Cameroon can deny this.

Re Cameroon's portrayal of Mancho Bibixy Tse

Cameroon has gone to some lengths to portray Mancho Bibixy Tse as a terrorist, extremist, secessionist, threat to public safety and an enemy of the State of Cameroon. In fact, he is none of these.

As noted in our original correspondence to Cameroon, Mancho Bibixy Tse is a legitimate and highly regarded broadcast journalist whose messages have focused on the economic and social marginalization of Anglophone Cameroon populations. Cameroon does not deny that his arrest and detention are at least in part in response to his public speech in 21 November 2016 during protests by Anglophones in western Cameroon against their marginalization and the failure of the Government to address their grievances. The African Commission on Human and People's Rights, in a January 2018 Press Release, deplored Cameroon's crackdown and use of force against Anglophones, the Commission described these 2016 activities as:

...legitimate and peaceful protests by lawyers, teachers and members of civil society of the English-speaking regions of North-West and South-West, who called for the preservation of the Anglophone legal and educational systems in their regions, an end to marginalisation, and for better management of the regions by the State in terms of development and infrastructure.⁵ (Emphasis added)

The speech made by Mancho Bibixy Tse on 21 November 2016 was not an incitement to violence, insurrection, or even to secession as Cameroon has suggested. There was, no doubt, a political message that called for the re-establishment of Cameroon as a Federation, with appropriate equality guarantees for Anglophone minorities. The message called attention to long held grievances and the need for remedial action by Cameroon. Mancho Bibixy Tse did not commit, advocate or counsel the use of violence or other illegal action.

Subsequently events have taken a turn for the worse in Cameroon. There are secessionist forces that have resorted to violence, and there is indeed a state that approaches civil war in some of the Anglophone territories of Cameroon. Mancho Bibixy Tse was arrested on 9 January, 2017. At the time, there was no resort to violence on the part of Anglophones. The armed struggle situation emerged subsequent to and well after the arrest of Mancho Bibixy Tse.

Mancho Bibixy Tse and other Anglophone rights advocates were, immediately prior to the January 2017 arrests, attempting a moderate course of peaceful protest with a moderate message of reengagement of civil society for Anglophones. Neither Mancho Bibixy Tse or other Anglophone rights advocates posed a danger to public safety and order as stated by Cameroon in order to justify the deprivation of liberty of Mancho Bibixy Tse and others. The arrest of Mancho Bibixy Tse in January 2017 pre-dated the "crisis" of public safety described in Cameroon's response.

⁵ African Commission on Human and People's Rights; *Press release on human rights situation in Cameroon*; January, 2018.

This is confirmed by the fact that Anglophone minority advocates arrested at or about the same time as Mancho Bibixy Tse were subsequently released⁶. If the arrest and detention of Anglophone minority leaders were indeed necessary to prevent a threat to Cameroon civil society as Cameroon now alleges, it is difficult to understand why Anglophone minority leaders were subsequently released.

Mancho Bibixy Tse was and is not a terrorist. Cameroon's use of domestic anti-terrorism and penal law against him is unfounded, and a misuse of that law for political ends. In addition the deprivation of liberty is not consistent with international human rights law⁷.

Cameroon subjected Mancho Bibixy Tse and others lawfully promoting Anglophone rights to grave abuse of rights to: liberty, pre-trial release, timely and confidential access to legal counsel, notice of charges, freedom from ex post facto charges, legal aid, fair trial and access to an independent, impartial and competent civil tribunal to determine charges and rights. Cameroon has used domestic law to criminalize the peaceful exercise of internationally protected rights and punish opposition. The treatment of Mancho Bibixy Tse coupled with Cameroon's use of force against protesters likely contributed to mounting dissatisfaction which in turn may have fueled later calls for secession and resort to armed struggle.⁸ The current crisis is the product of Cameroon's refusal to comply with its international human rights law duties to ensure equality for Anglophones, allow citizens' rights to engage in peaceful protests and to address the legitimate and long-standing inequality of Anglophones.

Re Failure to exhaust domestic remedies

Cameroon alleges that Mancho Bibixy Tse did not exhaust internal avenues of appeal before this matter came before the WGAD. We note that the WGAD's mandate does not require exhaustion of domestic remedies as a pre-condition to review of deprivation of liberty.

In any event, domestic remedies that might have been available from an independent civil tribunal are not available from the military tribunal. In addition to our knowledge Cameroon has not offered or provided legal aid to Mancho Bibixy Tse who lacks the financial resources to hire counsel.

Re The arbitrary deprivation of liberty

LRWC's letter of July 10, 2018 to Cameroon sets out the facts of Mancho Bibixy Tse's arrest, detention trial and sentencing. We remain of the view that these facts constitute an arbitrary deprivation of liberty for the reasons stated in that letter.

In partial reiteration of that letter, the deprivation of liberty of Mancho Bibixy Tse is arbitrary because:

1) His arrest, detention, and trial were based on the exercise of protected rights

Mancho Bibixy Tse was engaging in the peaceful exercises his rights to expression, assembly, association and to take part in the conduct of public affairs to promote the equality for Anglophones guaranteed by the Constitution of Cameroon, the UDHR, and the ICCPR. It was in this context that Mancho Bibixy Tse was arrested. The deprivation

⁶ See: *Cameroon President Orders Charges Dropped, Release of Anglophone Leaders*, Africa News, August 30, 2017

⁷ United Nations Human Rights Council, Working Group on Arbitrary Detention, Opinion 10/2018, Paragraph 39.

⁸ See footnote 4, above.

of his liberty while exercising these rights is therefore arbitrary, and a matter to be addressed under Category II of the mandate of the WGAD.⁹

- a. **2) His sentencing was imposed in significant contravention of fair trial rights:** His trial was conducted before a military tribunal. We refer you to our letter of 12 July 2018 and reiterate that the use of a military court to try, convict and sentence Mancho Bibixy Tse is a derogation from the right to a fair trial, for the reasons stipulated there. In addition we note that Cameroon, in its response to the WGAD, states that ministerial authorities, under the direction of the President of the Republic, can stop proceedings before the Military Tribunal where there is a deemed compromise to social interest or public peace. The possibility of political interference in its proceedings confirms that the military tribunal lacks the indicia of independence and impartiality that are required to determine charges and, in the case of conviction, impose sentence.
- b. Mancho Bibixy Tse was arrested without warrant. He was not promptly told of the reasons for his arrest. We note that the WGAD has elsewhere concluded that any deprivation of liberty without a valid arrest warrant issued by a competent, independent and impartial judicial authority is arbitrary and lacks legal basis.¹⁰
- c. Mancho Bibixy Tse was not able to retain counsel of his choice. Cameroon provided no legal aid, or assistance with retaining counsel. He was forced to rely on pro-bono counsel with limited experience in criminal matters. Especially considering the gravity of the nature of that some of the offences with which he was ultimately charged which potentially attracted a death penalty¹¹ it is clear that his right to counsel was, in all these circumstances, effectively denied.
- d. There was a significant delay in bringing him to trial. We have noted this in our earlier letter. Cameroon's response insinuates, without evidence, that some of this was delay caused by Mancho Bibixy Tse. Cameroon has however, failed to elaborate, or explain the full extent of that delay, or the reasons for continual postponement. As our letter noted, many of the delays were clearly not the result of anything within the control of Mancho Bibixy Tse.
- e. The trial was held in French, which is not Mancho Bibixy Tse's first language. Interpreters were provided, but colleagues present at the trial inform us that the translations were inaccurate, and lacking in legal nuance. Even the presiding military tribunal magistrate was moved to question the accuracy of some of the translation at different points in the trial.
- f. The sentence was disproportionately severe in all circumstances. Mancho Bibixy Tse's only "crime", if indeed it was a crime at all, was advocacy for minority rights. The Provisions of the Cameroon Law on the Suppression of Acts of Terrorism and its Penal Code that mandate the 15 year prison sentence, and the payment of over four hundred thousand Euros in damages are neither necessary to protect any alleged public or private interests against injury, nor are they proportionate to guilt. The Government has not demonstrated otherwise

⁹ United Nations, Human Rights Council, Working Group on Arbitrary Detention, Opinion 10/2018, Paragraph 3(b).

¹⁰ United Nations Human Rights Council Working Group on Arbitrary Detention, Opinion 10/2018, Paragraph 46.

¹¹ Cameroon: *Law on the Suppression of Acts of Terrorism No. 28 of 2014*.

The UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, affirms the entitlement to legal aid in capital cases in Principle 3.20 which provides,

States should ensure that anyone who is detained, arrested, suspected of, or charged with a criminal offence punishable by a term of imprisonment or the death penalty is entitled to legal aid at all stages of the criminal justice process.

The UN Human Rights Committee, interpreting the right to counsel under the ICCPR, affirmed that

at a trial in which the death penalty can be imposed...the right to a defence is inalienable and should be adhered to at every instance and without exception. This entails the right to be tried in one's presence, to be defended by counsel of one's own choosing, and not to be forced to accept ex-officio counsel.¹²

In *Robinson v. Jamaica*,¹³ the HR Committee held that the requirement for legal assistance in capital cases applies even when the unavailability of private counsel is partly attributable to the accused himself and even if the provision of legal assistance would entail an adjournment of the proceedings.

It is clear that in all of these circumstances, Mancho Bibixy Tse's right to a fair trial were effectively denied. This renders his deprivation of liberty arbitrary, and merits consideration under Category III of the Working Group's mandate.

Re Discrimination

Mancho Bibixy Tse was only one of dozens of Anglophone rights advocates arrested in January and February 2017. A number of those arrested were subsequently released by presidential decree in August 2017. It is difficult to reconcile this differential treatment with any genuine apprehension of terrorism, or threat to the state or public order. It seems more likely that Cameroon has chosen to treat Mancho Bibixy Tse more harshly than the others arrested during the same period because of status and success as a journalist, his prominence and his ability to effectively convey the grievances of the Anglophone minority. In effect, Cameroon has tried to make an example of him to achieve the political end of silencing other journalists reporting the plight of Anglophones. His deprivation of liberty constitutes a violation of articles 2 and 7 of the UDHR on the grounds of discrimination based on political and other opinion, as well as his status as journalist advocate. It merits consideration under Category V of the WGAD's Mandate.

In summary, Cameroon has attempted, without any factual basis, to portray Mancho Bibixy Tse as a terrorist and to justify his conviction and sentencing on that basis. It remains the fact that he is not a terrorist, and his deprivation of liberty is arbitrary and unjustifiable under international law.

The WGAD stated that it:

...notes with concern frequent attempts by Governments to use normal legislation or to have recourse to emergency or special laws and procedures to combat terrorist and thereby to permit or at least increase, the risk of arbitrary detention. Such laws, either per se, or in their application, by using extremely vague and broad definition of terrorism, bring within their fold the innocent and the suspect alike, and thereby increase the risk of arbitrary detention,

¹² HR Committee: Communication No 623, 624, 626, 627/1995, *Domukovsky et al v Georgia* at para 18.9.

¹³ HR Committee: Communication No 223/2987, *Robinson v Jamaica*.

disproportionately reducing the level of guarantees enjoyed by ordinary normal persons in normal circumstances. Legitimate democratic opposition, as distinct from violent opposition, becomes a victim in the application of such laws.¹⁴

The facts of Mancho Bibixy Tse's detention fit squarely within the parameters of the WGAD's concern, expressed above. Mancho Bibixy Tse was arrested, prosecuted, denied a fair trial, wrongfully convicted and sentenced in reprisal for peacefully engaging in advocacy for the rights of the Anglophone minority in Cameroon.

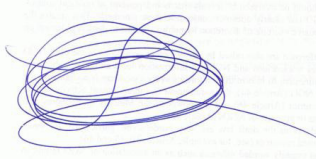
LRWC thanks the WGAD for its attention to this case and look forward to further opportunities to respond to questions.

Sincerely,



Robert G.W.Lapper Q.C.
Barrister and Solicitor
LRWC Cameroon Monitor

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Gail Davidson,
Executive Director, LRWC

¹⁴ United Nations Economic and Social Council, *Report of the Working Group on Arbitrary Detention*, E/CN.4/1995/31, 21 December, 1994.