

**International**



## **Universal Periodic Review - Cameroon**

**30th Session (May 2018)**

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## A. Lack of Implementation of Recommendations by Cameroon

1. The following recommendations made during the first and second cycles of Cameroon's UPR are relevant to this submission and were *supported* by Cameroon, but have yet to be implemented:

**a) Ratify and implement effectively the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OP-CAT)** (Mexico, Luxembourg); sign (United Kingdom) and ratify the OP-CAT (United Kingdom, Brazil, South Africa, Djibouti); accede to OP-CAT and establish a national preventive mechanism provided by the Protocol (Estonia, Czech Republic) - UN Doc. A/HRC/11/21, 12 October 2009, HRC 11th session, para. 76.1.

- Repeated: UN Doc. A/HRC/24/15131.24, 5 July 2013, HRC 24th session, para. 131.24 (Haïti).

**b) Ratify (France) or consider ratifying (Djibouti) the International Convention for the Protection of All Persons from Enforced Disappearance (CED)**, - UN Doc. A/HRC/11/21, 12 October 2009, HRC 11th session, para. 76.4.

- Repeated: UN Doc. A/HRC/24/15131.24, 5 July 2013, HRC 24th session, para. 131.13 (Argentina); para. 131.28 (Hungary).

**c) Ratify the Convention on the Prevention and Punishment of the Crime of Genocide** (Brazil) - UN Doc. A/HRC/11/21, 12 October 2009, HRC 11th session, para. 76.5.

- Repeated: UN Doc. A/HRC/24/15131.24, para. 131.14 (Armenia); para. 131.15 (Estonia)

**d) Continue its work to strengthen independence and authority of the national judicial system** (Belarus), - UN Doc. A/HRC/11/21, 12 October 2009, HRC 11th session, para. 76.22.

**e) Accelerate the judicial reform, reduce the number of preventive detentions and strengthen efforts to put an end to impunity for police and security forces for any illegal act committed by their members** (Canada); continue the reform of the judicial system, to improve conditions of detention in prisons, **and better separate civil and military jurisdictions** (France), UN Doc. A/HRC/11/21, 12 October 2009, HRC 11th session, para. 76.23.

- Repeated: UN Doc. A/HRC/24/15131.24, 5 July 2013, HRC 24th session, para. 131.99 (Sierra Leone); para. 131.101 (Cape Verde); para. 131.106 (United States of America).

**f) Take steps to ensure the independence of Elections Cameroon (ELECAM),** including through allocation of sufficient budget (United Kingdom) - UN Doc. A/HRC/11/21, 12 October 2009, HRC 11th session, para. 76.28.

**h) Continue to investigate acts of threats and aggression against human rights defenders and journalists and bring to justice those perpetrators** (Spain); UN Doc. A/HRC/24/15131.24, 5 July 2013, HRC 24th session, para. 131.111; See also: para. 131.112 (United Kingdom of Great Britain and Northern Ireland); para. 131.113 (Czech Republic); para. 131.115 (Ireland)

2. The following recommendations made during the first and second cycles of Cameroon's UPR are relevant to this submission, but were *not supported* by Cameroon:

**a) Abolish the death penalty,** UN Doc. A/HRC/11/21, 12 October 2009, HRC 11th session, para. 77.5 (Slovenia)

- Repeated: UN Doc. A/HRC/24/15131.24, 5 July 2013, HRC 24th session, para. 131.5 (Spain); para. 131.6 (Australia); para. 131.7 (Czech Republic); para. 131.8 (Estonia); para. 131.9 (Montenegro); para. 131.10 (Uruguay); para. 131.29 (Belgium); para. 131.92 (Slovakia); para. 131.93 (Slovenia); para. 131.94 (Togo); para. 131.95 (Belgium); para. 131.96 (France); para. 131.97 (Rwanda).

**b) Abide by its UPR engagements made in 2009 by fully respecting and protecting the rights and freedoms of Human Rights Defenders and journalists and that no fines or prison sentences are imposed on persons for expressing political views or opposition to the current government** - UN Doc. A/HRC/24/15131.24, 5 July 2013, HRC 24th session, para. 131.114 (Hungary). See also: para. 131.116 (Tunisia); para. 131.139 (United States of America).

## **B. The Development of the Human Rights Situation in Cameroon**

### *1. Military Jurisdiction being exercised over civilians*

3. The UPR recommendations set out above have not been implemented by Cameroon, which has had a detrimental impact on the enjoyment of human rights in that country. The negative effect of this lack of implementation has become increasingly noticeable between July 2013, when Cameroon's previous UPR took place, until today.

The lack of ratification of international treaties on torture, enforced disappearance, and genocide; the maintenance of the death penalty (although a moratorium applies in practice); the lack of judicial reform, especially regarding the length of pre-trial detention and military jurisdiction; the lack of independence of the judiciary; the failure to protect human rights defenders; and the lack of respect for the rights to freedom of assembly and association, have led to a situation in which human rights defenders and other Cameroonian citizens have been arbitrarily arrested and held in pre-trial detention for excessive periods of time.

4. This situation has been exacerbated by the regressive actions of the Cameroonian State, since its second UPR cycle in 2013, especially the adoption of Law No. 2014/028 of 23 December 2014 on the Suppression Acts of Terrorism (the “2014 Terrorism Law”). This Law is now regularly used to bring proceedings against human rights defenders and others before Military Tribunals on terrorism-related charges that carry the death penalty. The widespread practice of exercising military jurisdiction over civilians to suppress civil dissent in Cameroon is an important and worrying development.

5. In response to the Recommendation made by France in 2009, see paragraph 1e) above, to “better separate civil and military jurisdictions”, Cameroon’s response was that: “[w]hile it accepts this recommendation, Cameroon wishes to clarify that the civil and military systems of justice are two separate systems independent of each other” (UN Doc. A/HRC/11/21/Add.1, 9 June 2009, page 4).

6. It is true that the civil and military justice systems are “two separate systems” in the sense that they are governed by different legislation. The former is governed by Law No. 2016/007 of 12 July 2016, relating to the Penal Code (the “Criminal Code”) and Law N°2005 of 27 July 2005 on the Criminal Procedure Code (the “Criminal Procedure Code”). The latter is governed primarily by Law No. 2017/012 of 12 July 2017 (the “Military Justice Code”, formerly Law No. 2008/015 of 29 December 2008 To Organize Military Justice and Lay Down Rules of Procedure Applicable Before Military Tribunals) and the 2014 Terrorism Law.

7. However, what matters is not that the civil and military justice systems are governed by different types of legislation, but that - on the basis of that legislation - civilians can be tried by military tribunals. As reflected in international and regional instruments, military tribunals should generally only exercise jurisdiction over military officers and only regarding acts carried out in the line of duty (which means that, e.g., military officers committing human rights violations need to be judged by ordinary criminal courts). The exercise of military jurisdiction over civilians constitutes a violation of Article 7(1)(d) of the African Charter on Human and Peoples’ Rights (the “African Charter”) and Article 14(1) of the International Covenant on Civil and Political Rights (the “ICCPR”). See also: United Nations Human Rights Committee (the “UNHRC”), General Comment No. 32 (23 August 2007), UN Doc. CCPR/C/GC/32, para. 22; UNHRC, Communication No. 1172/2003, *Abbassi Madani v. Algeria* (21 June 2007), UN Doc. CCPR/C/89/D/1172/2003, para. 8.7; African Commission on Human and Peoples’ Rights (the “ACHPR”), *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa 2003*, Principle A.2.1.(e) and G; ACHPR, 222/98-229/99, *Law Office of Ghazi Suleiman / Sudan*.

8. The Military Tribunal in Cameroon exercises jurisdiction regarding an excessively wide range of offences. Section 8 “On Jurisdiction” of the Military Justice Code establishes that the Military Tribunal is competent to hear cases on, e.g. (i) war crimes, crimes against

humanity and genocide, (ii) terrorism-related offences, and (iii) offences of any nature if certain arms are used in committing them.

## 2. Deficiencies in the 2014 Terrorism Law

9. The 2014 Terrorism Law has significant deficiencies. Most importantly, (i) the offences that constitute "acts of terrorism" are not clearly defined, (ii) there is no time limitation that a person can be held in custody and no judicial decision regarding such custody - or its extension - is required, (iii) no preliminary inquiry is required to submit a person to the Military Tribunal for trial.

10. Section 1(2) of the 2014 Terrorism Law provides that: "[t]he offences provided for in this law shall fall exclusively under the jurisdiction of military tribunals" and Section 2 refers to "Acts of Terrorism", almost all of which carry the death penalty. The lack of a clear definition of "acts of terrorism" and the wide array of offences that are covered by the 2014 Terrorism Law leads to arbitrariness in its application. The UNHRC has pointed out that "laws" can only be understood as such if they are sufficiently precise. Such precision not only ensures foreseeability, i.e. a citizen can regulate his or her behaviour accordingly, but it also prevents abuse by State authorities. See: UNHRC, General Comment No. 34: Article 19: Freedoms of opinion and expression, UN Doc. CCPR/C/GC/34, 12 September 2011; ACHPR, *Good v Botswana* (2010) AHRLR 43 (ACHPR 2010), para. 178; ACHPR Communication 143/95, 150/96, Constitutional Rights Project and Another v Nigeria [(2000) AHRLR 235 (ACHPR 1999)], para 33.

11. Regarding the length of custody, the 2014 Terrorism Law deviates from the Military Justice Code and the Criminal Procedure Code. Section 11 "Remand in custody" establishes that "[f]or the purpose of this law, the duration of remand in custody shall be fifteen days renewable upon the authorisation of the State Prosecutor [*Commissaire du Gouvernement*]". This means that custody can be renewed indefinitely without charges being brought (which has happened, e.g. in the case of Deputy Attorney-General of the Supreme Court, Mr. Paul Ayah Abine), renewal does not need to be justified, and is not decided upon by a judge. Remand in custody without charge for excessive amounts of time constitutes a clear violation of Article 9(2) and (3) of the ICCPR. The ACHPR has established a violation of Article 6 of the African Charter in such cases, see e.g: ACHPR, *Article 19 v Eritrea* (2007) AHRLR 73 (ACHPR 2007), para. 94.

12. Under the 2014 Terrorism Law, no preliminary inquiry is required. Section 12 "Referral Before the Competent Court" provides that: "[f]or the purposes of this law, matters shall be referred to the military tribunal by a direct order to be placed on trial, issued by State Prosecutor". The lack of a preliminary inquiry violates a number of international standards, including Article 14(3)(b) of the ICCPR and Article 7(1)(c) of the African Charter, since it does not allow the accused or his or her legal representative to adequately prepare for the defence because of a lack of information on evidence that exists against the accused. It may also affect the duration of proceedings, when hearings are repeatedly adjourned (e.g. in the case of Felix Agbor Balla and others, see below) because the prosecution has not collected all the evidence for use during the trial. This could constitute a violation of Article 14(3)(c) of the ICCPR and Article 7(1)(d) of the African Charter.

13. The lack of correspondence between the domestic legislation of Cameroon in this regard with international and regional standards not only amounts to a violation of a particular substantive right, such as the right to a fair trial. It also constitutes a violation of Article 1 of the African Charter. The ACHPR has previously ordered that countries must bring their legislation and practices in line with the African Charter to prevent or remedy a violation of its treaty obligations. See e.g.: ACHPR, *Good v Botswana* (2010) AHRLR 43 (ACHPR 2010), para. 226, 228, 239, 241, 244; ACHPR, *Article 19 v. Eritrea* (2007) AHRLR 73 (ACHPR 2007), para. 105.

### *3. Example: Case of Felix Agbor Balla and others*

14. The case of Felix Agbor Balla and others serves to illustrate the negative impact of the lack of protection of human rights defenders; the exercise of military jurisdiction over civilians to stem civil protest; the failure to abolish the death penalty; the lack of judicial reform on pre-trial detention; and the lack of respect for the rights to freedom of association and assembly. From October to December 2016, lawyers, teachers, and other civil society actors held protests in the English speaking North and South West regions of Cameroon, particularly in their respective capital cities of Bamenda and Buea. These protests broke out because teachers educated in the French system and legal officers trained in civil law were carrying out functions in these regions, where a common law and British educational system exist. The protests seem to reflect, more generally, a growing dissatisfaction with the marginalisation of English speaking Cameroonians and their lack of political representation and participation in public life. These protests were suppressed by State authorities who exercised excessive use of force. Many were arrested and detained; all civilians who were subsequently charged with terrorism-related offences and tried before the Military Tribunal of Yaoundé.

15. The Law Society observed the hearing that took place on 27 April 2017 in the case of Felix Agbor Balla, a lawyer and leader of the protests, and others that took place before the Military Tribunal of Yaoundé. In our Trial Observation Report, we established that the following international human rights were being violated (see for the complete Trial Observation Report: <http://communities.lawsociety.org.uk/human-rights/news-and-events/trial-observation-report-cameroon/5061833.article>): (i) the right to be tried by an independent and impartial tribunal (Article 7(1)(d) of the African Charter and Article 14(1) of the ICCPR), (ii) right to defence (access to the case file - Article 7(1)(c) of the African Charter and Article 14(3)(b) of the ICCPR), (iii) right to an interpreter (Article 14(3)(f) ICCPR and the ACHPR's Principles on the Rights to a Fair Trial, Principle N.4(d)), (iv) right to be tried without undue delay (Article 14(3)(c) of the ICCPR and ACHPR's Principles on the Right to a Fair Trial, Principles A.2(i) and N.5(a)), (v) right to pre-trial release (Articles 1 and 6 of the African Charter and Article 9(3) of the ICCPR), and (vi) right to physical integrity (Article 5 of the African Charter and Article 7 of the ICCPR).

16. The UNHRC has established that a violation of the right to a fair trial in proceedings regarding offences that carry the death penalty also amounts to a violation of the right to life (Article 6 of the ICCPR). See UNHRC, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, UN Doc. CCPR/C/GC/32 (2007), para. 59; UNHRC, *Munguwambuto Kabwe Peter Mwamba v. Zambia*, UN Doc.

CCPR/C/98/D/1520/2006, 30 april 2010, para. 6.7; UNHRC, Paul Kelly v. Jamaica, Communication No. 253/1987, UN Doc. CCPR/C/41/D/253/1987 at 60 (1991), para. 7.

17. The UNHRC has also established that the right to be tried without undue delay is even more important in cases in which the accused is charged with offences carrying the death penalty, because he or she is held in a state of continuous uncertainty. The psychological impact of this uncertainty may itself constitute a violation of the right to physical integrity (Article 5 of the African Charter and Article 7 of the ICCPR). Moreover, a delay in proceedings may violate, apart from Article 14(3)(c) ICCPR, other rights such as the right to freedom of expression and the right to leave one's own country; see UNHRC, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, UN Doc. CCPR/C/GC/32, 23 August 2007, para. 63.

### C. Recommendations

- The Military Justice Code and 2014 Terrorism Law must be brought in line with international human rights and fair trial standards. Primarily to limit the jurisdiction of military tribunals to military officers and acts committed in the line of duty, as well as with regard to prolonged remand in custody and the absence of a preliminary inquiry.
- Defendants who are tried before a military tribunal (or any other tribunal) must be tried without undue delay. No multiple adjournments should be given that unnecessarily prolong pre-trial detention and delay proceedings. The overburdening of military tribunals with cases, mostly due to the wide range of offences over which they have jurisdiction, is not a justification for such delay.
- The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment, the International Convention for the Protection of All Persons from Enforced Disappearance, and the Convention on the Prevention and Punishment of the Crime of Genocide must be ratified by Cameroon.
- The rights to freedom of association and assembly must be respected and human rights defenders provided the protection required to carry out their functions.
- The death penalty must be abolished in Cameroon.



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