

The Non-Repeal of Section 347 (BIS) of the Cameroon Penal Code on Cameroon's Vis-À-Vis International Treaty Commitments Pertaining to LGBT Rights

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Abstract- Exasperating to note, pertaining to the provisions of section 347 bis of the Cameroon Penal Code, is the unchallenged and uncontroverted fact that, the application of aforesaid section in any criminal proceedings touching the LGBT domain, contravenes not only Cameroon's international treaty commitments as enshrined in its section 45 of Law N^o: 96/06 of 18th January 1996 to amend the Constitution of 2nd June 1972¹ but equally the preamble to the said constitution and that of the International Human Rights Charter, hereinafter referred to as the United Nations Charter² and specifically, its Article 55 (c)³.

Equally vexatious to note, is the fact that, despite national⁴ and international pressure to reform Cameroon's anti-LGBT law(s) - section 347 bis, the government has remained intransigent, as would have appeared in its revised Penal Code, cited as Law N^o: 2016/007 of 12 July 2016.

The Research, has expressed grave concern about human rights violations and abuses sustained by LGBT people and others accused of participating in consensual same-sex activity in Cameroon, driven by said section 347 bis in total violation to Cameroon's international treaty commitments/obligations.

Index Terms- Cameroon, penal code, law, human rights, violation, LGBT rights, criminal proceedings, international treaty and or agreement.

¹ 'Duly approved or ratified treaties and international agreements shall, following their publication, override national laws, provided the other party implements the said treat or agreement' (Law N0:96/06 of 18th January 1996 to amend the Constitution of 2nd June 1972)

² ... to save succeeding generations ... and to reaffirm faith in fundamental human rights... and to establish conditions under which justice and respect for obligations arising from treaties and other sources of international law can be maintained,

³ Universal respect for, and observance of, human rights and fundamental freedom for all without distinction as to race, sex, language, or religion.

⁴ 'Cameroon Lawyer: it's time to repeal our anti-gay law', posted by Colin Stewart Publisher/Editor of ERASING 76 CRIMES

I. INTRODUCTION

It is conventionally verified that homosexuality is a crime in 38 out of 55 African nations with Cameroon inclusive. With regard to Cameroon specifically, the Research is of the opinion that, Cameroon's law criminalizing same-sex conduct, as contained in section 347⁵bis of the Penal Code violates its international treaty commitments, as well as its own constitution. Reports inclusive, FONYA CORNELIUS⁶ who was convicted and sentenced to nine (9) years imprisonment for same-sex conduct by the Court of First Instance Limbe-Cameroon, shows that between 2010 and 2013 Cameroon initiated prosecutions against at least 28 people for homosexual conduct and at least 12 were convicted. At least seven people are in pre-trial detention on charges of homosexuality, while at least one lesbian, has been convicted and is serving a five-year prison term and at least eight others have been released on bail.⁷

It is absolutely sickening and ridiculous that in the 21st century a homosexual act gets a person in Cameroon six (6) months to five (5) years imprisonment (and fine). It is equally disturbing and saddened to know that, in Cameroon and many other countries within the globe defenders of LGBT persons are being targeted with death threats via anonymous telephone calls, letters threatening to eliminate their families for failure to give up court cases and advocacy for LGBT persons. Notwithstanding reports on a remarkable drop in the number of cases of imprisonment in Cameroon for homosexuality, Cameroon remains hostile and dangerous to LGBT persons.

According to the annual report from HUMANITY FIRST, a Yaoundé based Organization seeking improved health care for LGBT Cameroonians and recognition of their human rights, In 2015, HUMANITY FIRST's team of twelve (12) Observers had recorded ninety-one (91) human rights violations, relating to physical violence, assault, degrading treatments, torture,

⁵ 'Whoever has sexual relations with a person of the same sex shall be punished with imprisonment for from six months to five years and fine from 20.000 to 200.000 francs'

⁶ Charge N0: CFIL/702C/2013 (on appeal, pending hearing and determination in the South West Court of Appeal, Buea Cameroon) unreported.

⁷ Human Rights Watch reports (2014)

imprisonment, convictions, and trials based on hear-say evidence, amongst others, against LGBT people in Cameroon in complete violation to Cameroon's international treaty commitments.

With such violations as mentioned herein, one question comes begging for an answer. What do we do as a community to protect LGBT persons who are the minorities in every given society? As earlier noted, the Research centers or demonstrates the impact of the said section 347 bis on Cameroon's international treaty commitments with regard to the rights of LGBT people.

II. RESEARCH ELABORATION AND FINDING(S)

1) INTERNATIONAL TREATIES/AGREEMENTS TO WHICH CAMEROON IS A PARTY AND COMMITMENTS IMPOSED ON HER BY THE SAID TREATIES/AGREEMENTS:

The Republic of Cameroon is a party to several international treaties with obligatory commitments pertaining to each of these treaties imposed on her as a nation state and member of the international community. However, the continuous application of section 347 bis of the Penal Code within its criminal justice system completely vitiates her commitments to these treaties/agreements as required, as we shall observe herein below. For the sake of this research paper, we shall examine the following international agreements and the impact of said section 347 on them pertaining to the rights of LGBT people and to wit: -

- (a) The United Nations Charter,
- (b) International Covenant on Civil and Political Rights and finally
- (c) The African Charter on Human and Peoples' Rights and the African Commission on Human and Peoples' Rights.

a) THE UNITED NATIONS CHARTER

The United Nations Charter was signed at San Francisco (U. S. A) on 26 June 1945 and came into force on 24 October 1945 with the purpose(s) of '**... to save succeeding generations ... and to reaffirm faith in fundamental human rights... and to establish conditions under which justice and respect for obligations arising from treaties and other sources of international law can be maintained...**', amongst others. The said international treaty was adopted by the state of Cameroon on 20 September 1960.

The Research, is specifically concerned with its Article 55 (c) which reads, '**with a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote ...**' '**...Universal respect for, and observance of, human rights and fundamental freedom for all without distinction as to race, sex, language, or religion.**

Going by the spirit or wordings of section 45 of Law N^o: 96/06 of 18th January 1996 to amend the Constitution of 2nd June 1972 (supra);

Mindful of the fact that, Cameroon is a signatory/member of the Charter, she is consequently treaty bound to follow and respect the terms and conditions stipulated or contained therein

to the latter, without any reservations. To this effect, it remained incontrovertible and undeniable that, the application of said section 347 bis in criminal proceedings in Cameroon against LGBT people violates Cameroon's international treaty commitments pertained to the Charter since same has restrained or outlawed any form of discrimination based on same-sex sexual orientation or gender identity. Cameroon is and remains hostile to the LGBT community, as we shall observe later in the course of the Research.

Summing up the contempt by Cameroon relating to her international treaty commitments and that of the United Nations Charter, the Research opines that, the application of said section within the criminal justice system in Cameroon brings to mind the conclusion that, complete adherence by Cameroon to the Charter is shrouded in mystery as could be witnessed by the continuous arrests, detentions, tortures, trials, convictions and sentences of many LGBT persons and those perceived to be same by our judiciary based often times on hear-say evidence and in absentia of prosecution witnesses.

b) INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Cameroon is a signatory to the International Covenant on Civil and Political Rights (ICCPR)⁸, going by its **Article 26** vis-à-vis the application of section 347 bis of the Penal Code, the Research noted with disgust that, the application of the former in any criminal proceedings violates Cameroon's international treaty commitments pertaining to the latter. Section 347 bis penalizes people for same-sex sexual orientation whereas, the ICCPR restrains its members (Parties) from such criminalization. The Research is of the opinion that, Cameroon's law criminalizing same-sex conduct, as contained in section 347 bis of the Penal Code violates its international treaty commitments, as well as its own constitution. The ICCPR⁹, provides for equal protection, non-discrimination, and the right to privacy. It was on the strength of the above that, the UN Human Rights Committee critiqued and ruled that criminalization of consensual same-sex conduct between adults violates the ICCPR.

Furthermore, it should be noted, that at the May 2013 Universal Periodic Review (UPR)¹⁰⁻¹¹ of Cameroon at the

⁸ 'Adopted and opened for signature, ratification and accession by General Assembly Resolution A/RES/2200 A (XXI) of 16 December 1966, entry in force: 23 March 1976, in accordance with Article 49, Adhesion by the State of Cameroon on 27 June 1984'

⁹ Article 26 ICCPR

¹⁰ Cameroon: Letter to the Government regarding 2013 UPR Recommendations, dated 12 September 2013.

¹¹ The Universal Periodic Review (UPR) is a unique process which involves a review/critique of the human rights records of all U.N member states. It was created on 15 March 2006, through the U.N General Assembly by resolution 60/251. The ultimate

United Nations Human Rights Council, 15 UN member states made recommendations to Cameroon related to its obligations to uphold basic and or rudimentary human rights for LGBT people. Several states recommended that Cameroon should decriminalize same-sex conduct, protect LGBT people from violence, and adopt measures to eliminate social prejudices and stigmatization on the basis of sexual orientation or gender identity¹². With such critics as noted herein above the Research did expect a revision of the said Penal Code repealing the section under consideration but to its greatest dismay same was revised or reviewed by the drafters and promulgated into law by the President of the Republic of Cameroon cited as Law N°: 2016/007 of 12 July 2016, without repealing the said 347 bis. The Research finds this act strange and cynical, for Cameroon to disrespect its international treaty commitments to such a level being a member of the international community.

Cameroon has remained indifferent, apathetic towards calls from the U.N, several identified and anonymous national/international Organizations such as Pro Bono Group¹³, the Association for the Defense of Homosexuals (ADEFHO), International Gay and Lesbian Association and Human Rights Watch, for an end to discrimination, hatred, and violence against lesbian, gay, bisexual, transgender, and intersex (LGBTI) people. Hurtful to note, would have appeared to be the declarations of the Cameroon government spokesperson, when asked about decriminalization of same sex conduct by the media, he averred inter alia that, ***“between 95% and 99% of the Cameroonians today are believers, they are Catholics, Protestants, animists***

aim of this instrument or mechanism is to improve/advance human rights situation in all countries and address human rights violations wherever they occur. It is a mechanism used to remind states of their responsibility to fully respect and implement all human rights and fundamental freedoms, and it is designed to ensure equal treatment for every country when their human rights situations are evaluated. Ban Ki-Moon, UN Secretary General, did describe same as, the Universal Periodic Review ***‘has great potential to promote and protect human rights in the darkest corners of the world’***. UPR operates under the auspices of the Human Rights Council.

¹² See research conducted in Cameroon in 2009 and 2010 by ADEFHO, Alternatives Cameroon, Human Rights Watch and IGLHRC.

¹³ Is a Human Rights non-political and non-profit making Organization that, renders pro bono legal services to persons, specifically LGBTI persons who cannot afford for legal assistance. Pro Bono Group equally institutes public interest litigations. Created in 2011, mindful of Prefectorial Order Ref: No.39/D14/5/506 OF 08/11/2011.

and Muslims. All of them are against homosexuality because their religions are against homosexuality”, and he added, ***“It is the duty of the President of the Republic to respect the will of his people and, above all, to ensure that the current provisions of the law are applied. Maybe in 50 years from now things will be different”***. In another press briefing, on 23 January 2014, he said that the great majority of the Cameroonians strongly reject homosexuality. They are not ready to accept it, not even to tolerate it. And, he added: ***“President Paul Biya won’t give in (...) he is a practicing Catholic Christian”***¹⁴

The above mentioned facts, demonstrates significantly Cameroon’s indifference towards her international treaty commitments and calls for the repealing of section 347 bis of its penal law in order to work in conformity with the provisions contained in many of the international treaties in which she is a party.

c) **THE AFRICAN CHARTER ON HUMAN AND PEOPLES’ RIGHTS AND THE AFRICAN COMMISSION ON HUMAN AND PEOPLES’ RIGHTS.**

The African Charter on Human and Peoples’ Rights¹⁵, herein after referred to as the African Charter, was established to promote and protect human and peoples’ rights inter-alia in Africa, its Article 2¹⁶ prohibits discrimination in any form whatsoever.

While the African Commission on Human and Peoples’ Rights¹⁷, hereinafter referred to as the African Commission - a sub-sect of the African Charter, created to promote, protect and interpret the rights enshrined under the African Charter. Cameroon is a signatory to both the African Charter and African Commissions. Concerned about Resolution 275 of the said African Commission, that, ***‘condemns (1) the increasing incidence of violence and other human rights violations, including murder, rape, assault, arbitrary imprisonment and other forms of persecution of persons on the basis of their imputed or real sexual orientation or gender identity, (2) the situation of systematic attacks by State and non-state actors against persons***

¹⁴ International Federation for Human Rights, Cameroon

Homophobia And Violence Against Defenders Of The Rights Of LGBTI Persons International Fact-Finding Mission Report, February 2015, https://www.fidh.org/IMG/pdf/report_cameroun_lgbti_eng_final.pdf

¹⁵(Adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986)

¹⁶ ‘Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status’.

¹⁷ established in 1987 with its headquarter in Banjul, Gambia

*on the basis of their imputed or real sexual orientation or gender identity, [the commission calls on] (3) State Parties to ensure that human rights defenders work in an enabling environment that is free of stigma, reprisals or criminal prosecution as a result of their human rights protection activities, including the rights of sexual minorities; (4) and States to end all acts of violence and abuse, whether committed by State or non-state actors, including by enacting and effectively applying appropriate laws prohibiting and punishing all forms of violence including those targeting persons on the basis of their imputed or real sexual orientation or gender identities, ensuring proper investigation and diligent prosecution of perpetrators, and establishing judicial procedures responsive to the needs of victims...*¹⁸

It is germane to mention herein that, Resolution 275 of the African Commission, a landmark decision in Africa and in favor of LGBT persons, came as a direct result of the deteriorating incidence of discrimination and assaults against LGBT people and LGBT rights defenders in many parts of Africa, much of which has been eaten up by anti-homosexuality laws.

Furthermore, Resolution 275, equally discards the conviction of many that, LGBT rights are 'un African'. Further to note and cynical, is the fact that, preceding Resolution 275, the Research did envisage that Cameroon in particular and Africa in general would have appeared friendly towards LGBT People but there seem to be a continuous and frequent attacks against LGBT persons and their defenders. Cameroon revised its penal law [in 2016] without repealing section 347 bis that criminalizes same-sex conduct. Nevertheless, the Research salutes this resolution and congratulates the commission and its commissioners who showed their personal commitment on this issue of homosexuality.

Considering the provisions contained in both the African Charter and the African Commission, specifically Resolution 275, pertaining to the rights of LGBT persons as stated herein above, Considering the fact that Cameroon is a party to these treaties, Considering the fact that Cameroon is obliged to adhere to these provisions as enshrined therein,

Considering that the provisions of said section 347 bis is at variance with the spirit and wordings of these international treaties [the provisions outlaws the criminalization of same sex conduct, amongst others], the Research is of the considered opinion that, section 347 bis of the said Penal Code and its application in criminal proceedings in Cameroon, exposes

¹⁸Adopted at the 55th Ordinary Session of the African Commission on Human and Peoples' Rights in Luan(Adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986) da, Angola, 28 April to 12 May 2014

Cameroon's neglect towards her international treaty commitments.

III. FINDING (S)

The criminalization of same-sex sexual activity against the spirit and wordings of the aforementioned treaties [driven by section 347 bis of the Penal Code] combined with the sensitive social and political pressure on the issue means that it is effectively impossible for LGBT people, or those accused of so being, to secure protection from the authorities, as this would make them vulnerable to suspicion or arrest for criminal activity. The Cameroonian Judicial Police Officers has many institutional flaws and is in itself accountable for serious and many human rights abuses, including but not limited to endemic corruption and the use of torture, but it has notably failed to properly investigate crimes committed against those perceived as LGBT or to provide protection against intimidation and attacks. Moreover, the Cameroonian National Commission for Human Rights and Freedoms has had a problematic approach to the human rights issues of the LGBT community contrary to its functions, for instance, in its June 2013 report on the state of human rights in Cameroon in 2012, the Commission did not hide its refusal and indifference or apathy to protect LGBTI people "...as long as sexual relations between people of the same sex is considered illegal...". Furthermore, the Commission declared that "...homosexuals living in Cameroon are not stigmatized nor systematically sanctioned because of their sexual orientation..." In the January-March 2013 issue of the Commission's magazine Born Free, Jacques Doo Bell, a member of the Commission, compares homosexuals to "...highway bandits and chicken thieves [who are] systematically lynched by the crowd..." and therefore "...recommends that they should be extremely careful and discreet..."¹⁹

It is relevant to note further that, the entrenched social stigma and discrimination against perceived LGBT people has also resulted into mob violence, in some instances including murder. Notedly in recent years has been the killing of Eric Lembembe- Executive Director of the Cameroonian Foundation for AIDS (CAMFAIDS) who was found dead on 15th July 2013. As Human Rights Watch have reported,

'Lembembe's friends discovered his body on Monday evening after being unable to reach him by telephone for two days, and went to his home. They found his front door padlocked on the outside, but could see Lembembe's body lying on his bed through the window. Lembembe's friends alerted the police, who broke down the door. According to one friend,

¹⁹ Amnesty International, Living for love, dying because of hate: the rising tide of homophobia in Africa, January 2014, <https://www.amnesty.org/en/latest/campaigns/2014/01/living-for-love-dying-because-of-hate-the-rising-tideof-homophobia-in-africa/>

Lembembe's neck and feet appeared to have been broken, and his face, hands, and feet had been burned with an iron'²⁰

It should be noted herein that, the social stigma attached to LGBT people also has a grave effect on many family relationships and the ability to secure familial support away from the authorities. In 2014 Amnesty International, reported on the death of Mr Jean-Claude Roger Mbede, a Cameroonian man who had previously been arrested, convicted and sentenced to three years in prison for ***"homosexuality and attempted homosexuality"***, after being found to have sent a text message to another man stating "...I'm very much in love with you..."²¹ His family prevented him from receiving necessary medical treatment for a hernia, reportedly stating that ***'he was a curse for them and that we should let him die'***²².

These findings as earlier noted, further shows the impact of section 347 bis of the Cameroon Penal Code on Cameroon's international treaty commitments and how the section negatively impact on the lives of LGBT persons in Cameroon.

IV. CONCLUSION

In conclusion, the Research opines that section 347 bis of the Cameroon Penal Code which penalises same-sex conduct in total contravention to Cameroon's international treaty commitments be repealed and urges on Governments particularly that of Cameroon, Non-Government Agencies, Organizations and Defenders of LGBT persons alike to, (1) tackle or combat Homophobia, (2) organize sessions or seminars on human rights

²⁰ Human Rights Watch, Cameroon: LGBTI Rights Activist Found Dead, Tortured, July 2013, <https://www.hrw.org/news/2013/07/16/cameroon-lgbti-rights-activist-found-dead-tortured>

18 Amnesty International, Living for love, dying because of hate: the rising tide of homophobia in Africa, January 2014, <https://www.amnesty.org/en/latest/campaigns/2014/01/living-for-love-dying-because-of-hate-the-rising-tideof-homophobia-in-africa/>

19 The Guardian, Gay man jailed in Cameroon has died, says lawyer, January 2014, <http://www.theguardian.com/world/2014/jan/13/gay-man-jailed-cameroon-died-lawyer-mbede>

20 The Guardian, Gay man jailed in Cameroon has died, says lawyer, January 2014, <http://www.theguardian.com/world/2014/jan/13/gay-man-jailed-cameroon-died-lawyer-mbede>

relating to the rights of LGBT persons, (3) ensure that arrests are predicated upon substantiated or corroborated facts, and in compliance with the law or rule of law, (4) Advocate in favor of minority rights and (5) for the international community, specifically, Africa, to put in place robust mechanisms and or institutions to encourage total compliance by states governments to international agreements to which they are a party.

The Research further states that, the premise of the above mentioned conclusion, stems from the fact that, It would have appeared the study of geo-politics, crisis management, international political economy and international negotiations, to mention a few, can hardly guarantee or facilitate absolute resolutions to conflicts of international laws, treaties/agreements within the international community without adherence to the prescribed and approved norms spelled out by the very community in which we belong. The Research holds that, we are operating within a frame work of legality and norms prescribed and approved by the international community and that, the provisions contained in ***section 45 of Law no: 96/06 of 18 January 1996 to amend the constitution of 2nd June 1972*** supra is as a direct result of said opinion.

Finally, the Research, is seeking recognition of the rights of LGBT people not only in Cameroon but the world at large, with absolute view that, there are still real chances of an amended anti-homosexuality bill being brought to Cameroon's parliament as well as to other parliaments in the region where sex same is equally outlawed, realist theories or realism, which suggests that, there is no authority above states capable of regulating their interactions, that states must arrive at relations with other states on their own rather than it being dictated to them by some higher controlling entity, such as the U.N (the United Nations Charter, the ICCPR amongst others) shouldn't be invoked as a barrier to adherence by nation states towards their respective international treaty/agreement commitments, superficially pertaining to the above mentioned, which list has not being exhausted but the few for the sake of the Research. ***'Gays rights are human rights, human rights are gay rights'***

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