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OPINION No. 22/2006 (CAMEROON)

Communication: addressed to the Government January, 23, 2006

Concerning: Francois Ayissi, Emeran Eric Zanga, Didier Ndebi, Pascal Atangana Obama, Alim Mongoche, Marc Lambert Lamba, Christian Angoula, Blaise Yankeu Yankam Tchatchoua, Stéphane Serge Noubaga, Balla Adamou Yerima, Raymond Mbassi Tsimi

The State is a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was created by the resolution 1991/42 of the United Nation Commission on Human Rights which clarified its mandate by the resolution 1997/50 and renewed it by the resolution 2003/31. The Human Rights Council assumed the mandate by the decision 2006/102. Acting according to its methods of work, the Working Group has forwarded to the Government the above-mentioned communication.

2. The Working Group expresses his gratitude to the Government for having given the information required in time.

3. According to the Working Group, deprivation of liberty is arbitrary if a case falls into one of the following three categories:

I) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his sentence or despite an amnesty law applicable to him)(Category I);

II) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 10 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (Category II);

III) When the total or partial non-observance of the international norms relating to the right to a fair trial, spelled out in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (Category III).

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The reply of the Government was forwarded to the source, which provided the Working Group with its comments. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case.

5. The communication is concerning the following people:

a) M. François Ayissi, born in 1976, Cameroonian, hotel-keeper ;
b) M. Emeran Eric Zanga, born in 1986, Cameroonian, hotel-keeper;
c) M. Didier Ndebi, né en 1986, Cameroonian, student;
d) M. Pascal Atangana Obama, born in 1956, Cameroonian, tailor ;
e) M. Alim Mongoche, born in 1976, Cameroonian, tailor;
f) M. Marc Lambert Lamba, born in 1974, Cameroonian, computer programmer;
g) M. Christian Angoula, born in 1988, Cameroonian, dancer;
h) M. Blaise Yankeu Yankam Tchatchoua, born in 1980, Cameroonian, student;
i) M. Stéphane Serge Noubaga, born in 1983, Cameroonian, hotel-keeper ;
j) M. Balla Adamou Yerima, Cameroonian, tailor;
k) M. Raymond Mbassi Tsimi, born in 1970, Cameroonian.

6. According to the information submitted to the Working Group by the source, the 11 persons mentioned above were arrested without any mandate by the policemen of the Brigade of Nlongka on June 1st, 2005 while they were in the Elise Night Club in Yaounde and have been led to the Brigade of Nlongka where they have been detained until June 13th, 2005, date in which they were transferred to the central prison Kondegui in Yaounde where they are still detained.

7. The source mentions that the 11 persons mentioned above were arrested among others (17 in total) in a bar known to be frequented by homosexuals. These arrests were highly coverage by the media which showed images of these persons after their arrest. Although certain persons were released these 11 persons were still in detention.

8. The 11 persons mentioned above were accused on the basis of the article 347 (bis) of the prescription no 72-16 of the Code of September 28th, 1972 which foresees a punishment of detention from 6 months to 5 years and a fine from 20 000 to 200 000 CFA francs for whoever has a sexual relation with someone of the same sex. In September, 2005, their lawyer obtained the investment with minors of the only minor person (17 years) while this one was previously placed in detention with the rest of the grown-up prisoners. During October 2005, their lawyer asked for the temporary release for every 11 persons, but his request was rejected.

9. The audience was scheduled to begin March 17th, 2006. Some days after the audience started, Mr. Emeran Eric Zanga and Mr. Didier Ndebi were released, probably for lack of proofs. At the beginning of the audience, the Prosecution was badly prepared and did not present witnesses. Instead of archiving the case, another date for the audience, on April 21st, 2006 was scheduled.

10. This day, the Prosecution did not present either witnesses nor other proof to establish the charge against the nine accused persons. As a consequence, the judge decided that they were non-guilty.

11. However, instead of being released, these persons returned to the detention facility where they remained deprived of their freedom. The Office of the Prosecution refused to order their freedom and declared that these nine persons must be judged again. On May 10th, 2006, the source informed the secretariat of the Working Group that Misters Ndebi and Zanga were not in detention.

12. The source also informed that on June 26th, 2006, all these persons were outside of the prison. Seven of them had been convicted, but they were released because they had spent in detention a time longer than it was established by their judgment.

13. The source also informed that unfortunately Mr. Alim Mongoche died at the hospital one week after being released from the prison. He had been released during the week of 12 till 18 June 2006. The source asserts that his death was directly connected to the terrible conditions that he had to suffer in detention during more than a year.

14. The source asserts that the Working Group should apply to this case the jurisprudence established in these previous Opinions (Avis) Indeed, the Working Group established that the reference to the "sex" in the article 2 (1) of the Universal Declaration of Human Rights as well as in the article 2 (1) and 26 of the International Covenant on Civil and Political rights might be consider as “sexual orientation”.

15. Besides, the source supports that the Working Group should also take into account some Observations of the Human Rights Committee, in particular the case Nicholas Toonen v. Australia (CCPR / C / 50 / D / 488 / 1992), in whom the Committee decided that the qualification of homosexual practices as a penal infraction is incompatible with the article 17 of the International Covenant on Civil and Political Rights. Besides, the source considers that we cannot admit the argument of the Government which consists to say that the questions of morality are exclusively internal affairs of the States. This shall open the door to the retreat of the ballot international of an important number of regulations which can represent an intervention in the private life. For these reasons the source considers that the arrest and detention of these 11 persons was arbitrary.

16. In its reply, the Government declared that the eleven persons were placed in detention on remand within the framework of the pursuits engaged against them by the County court of Yaounde Administrative Centre. According to the Government this detention had an inquiry led by the police force which revealed serious indications against these persons. The Government also declared that the offence of homosexuality is ensconced in the national legislation, in the article 347 bis of the Penal Code.

17. According to the Government, the persons were conducted to the competent Court on April 21st, 2006, which declared itself badly seized in accordance with the relevant legislation. So, according to the Government, the Court made this decision by basing itself on the law n. 90/45 of December 19th, 1990 which establishes that in the case of certain offences, including the article 347 bis of the Penal Code, the accused must be tried in front of the competent jurisdiction by *Flagrante Delicto*. It is the reason for which these persons were placed under committal on April 24th, 2006; and later were conducted in the audience of May 8th, 2006, following the report of interrogation in the public prosecutor's department in case of *flagrante delicto*.

18. The Government asserted that the criminalization of homosexuality is not against the article 12 of the Universal Declaration of Human Rights, nor against the article 26 of the International Covenant on Civil and Political rights, because there is no refusal of the profits of a right or the service for these persons because of their sexual orientations. It is about what the Cameroonian civil society considers as good customs.

19. The Government finally declared that even in case that the incrimination would not be in accordance with the article 26 of the Pact, it would find support on the article 29 (2) of the Universal Declaration of Human Rights, which states that the State can restrict a right or a freedom " To assure the recognition and the respect for the rights and the liberties of others and to satisfy the right requirements of the morality, some law and order and the general well-being of a democratic society ".

20. Since the Human Rights Committee adopted its Observation in the case Toonen v. Australia and the Working Group adopted its Opinion (Avis) 7/2002 (Egypt), the Group follows the line elaborated in these opinions. This means that the existence of laws which criminalize the private homosexual relation-ships between consenting adults, as well as the application of penalties against these persons violates the protection of the private life and non-discrimination established by the International Covenant on the Civil and Political rights. As a consequence, the Working Group considers that the criminalization of homosexuality established in the Cameroonian penal legislation is incompatible with articles 17 and 26 of the International Covenant on Civil and Political rights.

21. The Working Group concludes that the privation of liberty applied against the 11 persons mentioned above was arbitrary.

22. Conforming to paragraph 17 (a) of its procedures, the Group considers this case deserves an Opinion from the working group, even if the persons were released. The Group considered the importance of the case and the fact that one of the prisoners died as a consequence of its arbitrary detention.

23. In the light of the information collected the Working Group returns the following opinion:

The privation of liberty of Francois Ayissi, Pascal Atangana Obama, Alim Mongoche, Marc Lambert Lamba, Christian Angoula, Blaise Yankeu Yankam Tchatchoua, Stéphane Serge Noubaga, Balla Adamou Yerima and Raymond Mbassi Tsimi was arbitrary in that it violates articles 17 and 26 of the International Covenant on the Civil and Political rights, and is part of category II of the categories applicable to the mandate of the Working Group on Arbitrary Detention.

24. The Working Group, having issueed this opinion, asks the Government to adopt the necessary measures to remedy the situation and to examine the possibility of amending the legislation to adapt it to the Universal Declaration of Human Rights as well as to the other relevant international standards accepted by the concerned State.

Adopted on 31 August 2006.

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