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Special Procedures Division
c/o OHCHR-UNOG
8-14 Avenue de la Paix
1211 Geneva 10
Switzerland

To the attention of:

Working Group on Arbitrary Detention
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Distinguished Experts:

The ICJ would like to bring to your attention the recent arrest in Cameroon of two men for suspected homosexuality. Bruno Afaaba (DOB 26/10/1984) and Marc-Henri Batta (DOB 3/9/1982) were arrested 27 September 2010 by officers of the First Squadron of the Gendarmerie in Yaoundé. The arrest came after a search of their house revealed a large batch of condoms and lubricant.¹ The two men were detained and on 4 October 2010 they were forced to undergo anal exams to confirm, in the words of the commander of the gendarmerie, their suspected sexual activity. According to one of their lawyers, Maître André Nlend, Mr. Afaaba and Mr. Batta were not advised of their right to remain silent or to counsel, and were in fact handcuffed during the medical exam. They are currently being held in Kodengui Prison.

They are being charged under Article 347bis of the Cameroon Penal Code, which criminalizes sexual contact between members of the same sex with a penalty of six months to five years in prison and a fine of CFA francs 20,000 to 200,000. The next hearing date is set for 12 November at the First Instance Tribunal of Central Yaoundé.

¹ Letter dated 12 October 2010 from Maître Alice Nkom, Association pour la défense de l'homosexualité (ADEFHO); Email dated 18 October 2010 from Dr. Steave Nemande, Alternatives-Cameroun.

Arbitrary Detention

The ICJ believes that the arrest and continued detention of Mr. Afaaba and Mr. Batta are arbitrary and thus contrary to international law. To detain a person solely on the grounds of consensual same-sex sexual activity constitutes a violation of Articles 17 (the right to privacy) and 26 (non-discrimination and equal protection) of the International Covenant on Civil and Political Rights (ICCPR), to which Cameroon is a party.² In the case of 11 persons detained in Cameroon under the same law, the Working Group on Arbitrary Detention previously concluded that their detention was arbitrary and contravened Articles 17 and 26 of the ICCPR.³ The Working Group reached a similar conclusion in the case of 55 men arrested in Cairo, Egypt in 2001.⁴

Torture

The ICJ further believes that forensic anal examinations are a form of torture or cruel, inhuman or degrading treatment or punishment under Article 7 of the ICCPR and Articles 1 and 2 of the Convention Against Torture, to which Cameroon is a party. Both the Committee against Torture and the Special Rapporteur on Torture have repeatedly drawn attention to the mistreatment of “sexual minorities.”⁵ In its Concluding Observations on Egypt in 2002, the Committee against Torture expressed concern about the “ill-treatment inflicted on men because of their real or alleged homosexuality” and recommended that Egypt take steps to “prevent all degrading treatment during body searches.”⁶ In his 2001 report, the Special Rapporteur on Torture listed as an example of cruel, inhuman and degrading treatment the practice of subjecting persons “suspected of homosexuality” to “compulsory, intrusive and degrading medical examinations of anus and penis in order to determine whether penetration had taken place.”⁷ In recent years, the Special Rapporteur on Torture has expressed concern about the use of forensic anal examinations in communications to the Governments of Egypt and the United Arab Emirates.⁸

Health

The use of condoms and lubricant as evidence to sustain criminal charges against Mr. Afaaba and Mr. Batta clearly implicates the right to health, which is guaranteed by Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), to which Cameroon is a party. In his latest report to the UN Human Rights Council, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health described laws that criminalize same-sex sexual activity as an infringement of Article 12. In particular, “the fear of judgement and punishment can deter those engaging in consensual same-sex conduct from seeking out and gaining access to health services.”⁹

² *Toonen v. Australia*, Communication No. 488/1992, UN Doc. CCPR/C/50/D/488/1992.

³ Opinion No. 22/2006 (Cameroon), adopted 31 August 2006, UN Doc. A/HRC/4/40/Add.1 at 91.

⁴ Opinion No. 7/2002 (Egypt), adopted 21 June 2002, UN Doc. E/CN.4/2003/8/Add.1 at 68.

⁵ See, e.g., *Report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment*, UN Doc. E/CN.4/2002/76, Annex III.

⁶ *Concluding Observations (Egypt)*, adopted 23 December 2002, UN Doc. CAT/C/CR/29/4.

⁷ *Report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, interim report*, UN Doc. A/56/156, 3 July 2001, at para. 24.

⁸ *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UN Doc. A/HRC/10/44/Add.4, 17 February 2009, at para. 61; *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UN Doc. A/HRC/4/33/Add.1, 20 March 2007, at para. 317.

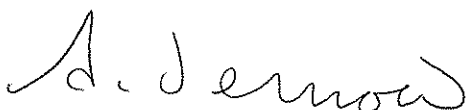
⁹ *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover*, UN Doc. A/HRC/14/20, 27 April 2010, at para. 18.

An obvious consequence of such laws and practices, and one of the impediments to the observance of the right to health in Cameroon, is the lack of data on HIV transmission, prevention and awareness among most at risk populations, including men who have sex with men (MSM). UNAIDS reports that Cameroon's country progress reports for the years 2003, 2005 and 2007 had absolutely no data on the knowledge and behavior of MSM. A survey of 168 men conducted in Doula in 2008-2009 revealed that less than 50 percent reported regular condom usage. One of Cameroon's stated public health goals is in fact to promote the availability of regular use of condoms especially among most at risk populations, including MSM.¹⁰ The arrest of Mr. Afaaba and Mr. Batta for the possession of condoms is not only a violation of rights under Article 12 but also undermines Cameroon's own health policies.

The ICJ recalls that in factually similar situations, the UN Special Procedures have taken urgent action. In the case of the men arrested in Egypt in 2001, where it was alleged that they were subjected to anal forensic medical examinations, the Special Rapporteur on Torture sent an urgent appeal.¹¹ When members of the Blue Diamond Society, a non-governmental organization in Nepal working with sexual minorities and on sexual health issues, were arrested after the organization had filed a complaint of police abuse, a joint urgent appeal was sent by a number of special procedures, including the Special Rapporteur on freedom of opinion and expression, the Special Rapporteur on the right of everyone to the highest attainable standard of physical and mental health, the Special Representative of the Secretary-General on human rights defenders, and the Special Rapporteur on torture.¹²

The ICJ respectfully requests that you consider sending an urgent appeal to the Government of Cameroon expressing your grave concern about the arrests and continued detention of these two men and requesting assurances that they will not be subjected to ill-treatment or other violations for which they may be at risk; and that you remind the Government of Cameroon of its obligations under international law and standards, including the ICCPR, the ICESCR, and the Convention against Torture.

Yours sincerely,



Alli Jernow
Senior Legal Advisor
Sexual Orientation & Gender Identity Project

¹⁰ République de Cameroun, *Rapport de Progres sur la Delcaration d'Engagement sur le VIH/SIDA UNGASS*, 26 March 2010, at pages 13 (reporting results of survey), 16 (promoting condom usage).

¹¹ *Report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment*, E/CN.4/2002/76/Add.1, 14 March 2002, at para. 507.

¹² *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, E/CN.4/2005/51/Add.1, 2 February 2005, at para. 50.