BAR HUMAN RIGHTS COMMITTEE OF ENGLAND & WALES

TRIAL OBSERVATION REPORT

Nkongo Felix Agbor-Balla and Others
Cameroon

27 April 2017

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Bar Human Rights Committee

Bar Human Rights Committee of England and Wales

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About the Bar Human Rights Committee

The Bar Human Rights Committee ("BHRC") is the international human rights arm of the Bar of England and Wales. It is an independent body, distinct from the Bar Council of England and Wales, dedicated to promoting principles of justice and respect for fundamental human rights through the rule of law. It has a membership of lawyers, comprised of barristers practicing at the Bar of England and Wales, legal academics and law students. BHRC's fifteen Executive Committee members and general members offer their services *pro bono,* alongside their independent legal practices, teaching commitments and/or legal studies. BHRC also employs a full-time Coordinator.

BHRC aims:

- to uphold the rule of law and internationally recognised human rights norms and standards;
- to support and protect practicing lawyers, judges and human rights defenders who are threatened or oppressed in their work;
- to further interest in and knowledge of human rights and the laws relating to human rights, both within and outside the legal profession;
- to advise, support and co-operate with other organisations and individuals working for the promotion and protection of human rights; and
- to advise the Bar Council of England and Wales in connection with international human rights issues.

As part of its mandate, BHRC undertakes legal observation missions to monitor proceedings where there are reasons to believe that the judiciary may not be independent or impartial and/or the defendant might otherwise be denied the right to a fair trial.

The remit of BHRC extends to all countries of the world, apart from its own jurisdiction of England and Wales. This reflects the Committee's need to maintain its role as an independent but legally-qualified observer, critic and advisor.

Executive Summary

BHRC sent a trial observer to Cameroon for the trial of Nkongo Felix Agbor-Balla, which was listed for a hearing on the 27th April 2017. Mr Agbor-Balla is a barrister who appeared to have been arrested in the course of calling for preservation of the Anglophone common law system in Cameroon. A request had been received from a member of the defence team to attend due to concerns as to fairness of trial proceedings taking place in the Yaounde Military Tribunal. We considered the statements and reports of other international organisations on the situation and decided that an independent observation was necessary.

Cameroon is a bi-lingual and bi-jural country as a consequence of its colonial past. In reality, the Anglophone system is confined to two regions out of ten in the North West and South West of Cameroon. Concerns have increasingly been expressed by the public and professionals in these regions, in particular, barristers, teachers and journalists that the Anglophone system and English language is receding due to the increasing appointment of public officials in local administration that speak only French and are not familiar with the Anglophone legal or educational systems.

In November 2016, barristers and teachers went on strike and held protest marches in cities in the Anglophone regions but were met with excessive force by law enforcement officers. The establishment of the Cameroon Anglophone Civil Society Consortium was intended to speak as a collective public advocacy group for the interests of people in the Anglophone regions. Talks were held with Government and the National Assembly in December and January. However, on 17th January, the Government banned the organisation and disconnected the internet to the Anglophone regions. Mr Agbor-Balla and Fontem Aforteka'a Neba, leaders in the Consortium, were arrested. Other barristers went into hiding in fear of arrest. Many others were arrested, including journalist Mancho Bibixy and 25 other teachers and members of the public that stand trial in this same case. Other trials are progressing against multiple individuals.

The Government of Cameroon has since recognised the issue raised by the Anglophone lawyers in the North West and South West regions and we understand is taking steps to address the situation by commencing programs of training for English speaking, common law judges and an increase in interpreters in the interim period. The internet was re-connected on 20th April 2017.

The charges against Mr Agbor-Balla, Mr Neba and Mr Bibixy are all related to actions against the state. The charges against the other 25 individuals are unknown.

The trial hearing took place on 27th April 2017, with witnesses present at court, but did not fully commence. Applications for joinder of civil parties and for the release from pre-trial detention of the 28 accused were made, following which the Tribunal adjourned the

case until 24th May 2017.

Taking into account what we witnessed during these proceedings, together with the information gathered from our meetings and other sources, we have drawn the conclusion that the trial proceedings to date are in violation of the right to a fair trial and the right to liberty for the following reasons:

- The very use of the military tribunal in Yaounde to hear the case is a violation of the right to an independent and impartial tribunal, irrespective of the procedure then followed in the course of the proceedings. The majority of the charges that the three original accused face do not appear to warrant trial in the military tribunal even under domestic law;The offences are broadly defined and imprecise. It is unclear what specific acts of the accused are considered to constitute criminal offences;

- The accused have not been made aware of the nature of the allegations against them, nor have they been given access to the case file in clear violation of the right to prepare their defence;

- Some of the 25 additional accused allege ill-treatment during police custody and lack of access to legal assistance when making their statements to the police, risking wrongful confessions;

- The proceedings are being conducted in French with no effective interpretation, nor translation of relevant documents. The majority of the accused do not speak French and are not able to understand the proceedings against them;

- The accused have been remanded in custody since January with the first effective application for release only taking place at the 27th April hearing, which was then adjourned for a further month prior to a decision being given. This has not provided a decision on the lawfulness of the detention within a reasonable period of time and has therefore clearly infringed the right to liberty.

It is possible for the procedural errors to be addressed as the case progresses and we call on the Ministry of Justice and State Prosecutor to consider carefully the recommendations at the end of this report for their rectification.

BHRC expresses particular concern that the circumstances leading to the arrest of Felix Agbor-Balla and Fontem Neba and Mancho Bibixy indicate that this trial is wholly connected with the exercise of their rights to freedom of expression and assembly, guaranteed by multiple international human rights instruments, the Constitution of Cameroon and particular national laws. However, the multiple counts on the indictment with which the accused have been charged are more appropriate for a terrorist incident involving a clear attempt to disrupt the stability of the state and cause loss of life or threat to the public. As the National Commission on Human Rights and Freedoms recommended in reviewing the Anglophone crisis, the Government must distinguish between genuine threats to the safety of the nation and its people through terrorism and the requests of

professional and official bodies for resolution of problems. Although it is premature to draw a conclusion, if no further evidence is presented at the trial to link the accused with specific criminal acts, it would appear that their actions have been nothing more than the promotion of the historical and established administration of justice.

We urge the State Prosecutor to review the charges and consider whether the acts of terrorism intended by these criminal offences meet the threshold for prosecution. We also urge the Government to consider presenting amending legislation for more clearly defined criminal offences to the National Assembly, to prevent the over-broad use of such charges.

BHRC welcomes the Government's efforts to resolve the Anglophone concerns and urges that steps be taken as soon as possible to ensure provision of English speaking, common law magistrates and court personnel in the Anglophone regions.

We also call on the Government to ensure that the actions of law enforcement officers in response to the public protests during November and December are fully investigated and perpetrators of criminal acts are disciplined and tried through the criminal courts where appropriate.

Methodology

Jodie Blackstock, BHRC Treasurer and barrister at the Bar of England and Wales, travelled to Yaounde, Cameroon between 24th and 30th April 2017 in order to conduct an independent observation of the trial of Nkongo Felix Agbor-Balla, a barrister at the Bar of Cameroon and his co-accused. BHRC had received a request to attend from a member of the defence team and had been monitoring reports concerning the unrest in Anglophone Cameroon and subsequent arrests of Anglophone persons allegedly connected with those incidents. The trial observation is conducted as an impartial and independent review in order to ascertain whether the internationally recognised right to a fair trial has been complied with.

While in Cameroon, Ms Blackstock met with members of the defence team before and after the trial. She also met with defence lawyers instructed in other related trials and spoke with Anglophone barristers that were in hiding as they feared arrest.

She also met with the President of the Military Tribunal, Colonel Mrs Abega Mbezoa, who explained the procedure of the Court.

Ms Blackstock attempted to meet with the State Prosecutor, the Minister of Justice and the Minister of Defence. The State Prosecutor advised that permission to speak with him was required from either the Ministry of Justice and/or the Ministry of Defence. She also attempted to visit Kondengui Central Prison in Yaounde where the accused were being detained, but the Governor of the prison contacted the State Prosecutor concerning the visit, who again advised that permission for international visitors is required from either the Ministry of Justice and/or the Ministry of Defence. She visited these ministries. Each of the Ministers suggested that the other should be contacted in this regard because it was either a military matter due to the trial being in the Military Tribunal or it was a justice matter because of the criminal trial.

Most of these meetings were also attended by independent observers from the Law Society of England and Wales and the American Bar Association.

In this report, we set out the historical background and matters relevant to the trial and draw on reports of other international and local organisations as well as media reports to assist in understanding the information received during the various meetings in Yaounde.

We set out an account of the pre-trial proceedings received from the defence team, our observations of the hearing on 27th April 2017 in the Military Court in Yaounde and information received from our meetings.

We then evaluate the trial proceedings against international human rights laws that apply in Cameroon. Where possible we set out relevant national law.

The report contains the observations and opinions of Ms Blackstock, save for the Conclusions and Recommendations, which are adopted by BHRC.

In the report we refer to barristers and lawyers. Barristers are Cameroonian legal professionals trained in the English-rooted common law system. We use the term lawyers when referring to the collective appearance, actions or opinions of both barristers and Cameroonian avocats trained in the French-rooted civil law system, both of which practice in bi-jural Cameroon.

Background information

Historical information

After the First World War, Cameroon was divided into two zones. The western zone (comprising two separate areas, later known as the Northern and Southern Cameroons) was administered by Britain under a League of Nations mandate. The rest of the country (comprising four-fifths of the total) was administered by France, directly from Paris. In the British area, there was local participation in government, and both Northern and Southern Cameroons were joined to parts of Nigeria for administrative purposes. After 1945, the UK and France continued to administer the country as UN Trust Territories. After the emergence of political parties, the French part of the country proceeded to partial self-government in 1957 and full independence on 1 January 1960. A UN plebiscite in 1961 resulted in Northern Cameroons choosing union with Nigeria, as part of the Northern Region. Southern Cameroons (now known as the North West and South West Anglophone regions) joined Cameroon in October 1961. The country became a federal republic in the same year, with both components retaining their local parliaments. In 1972 the federation was dissolved and the country became a unitary republic (the United Republic of Cameroon), the name changing once again to the Republic of Cameroon in 1984. [1]

Following independence, the country has had two presidents, Ahmadou Ahidjo (from 1960 to 1982) and then by President Paul Biya, who took office as President in 1982 and has been in office ever since, following a number of re-elections. In April 2008, Cameroon's parliament approved a constitutional amendment allowing the President to serve for more than two terms.[2] The 1996 Constitution provides that the President appoints the Prime Minister and council of ministers. The President also appoints the provincial governors, the judges and government delegates in main towns.

Protest against the one party system was widespread in the 1990s, culminating in villes mortes or 'ghost towns.' In the 1992 elections to the National Assembly, multiple political parties stood, establishing a ruling party by coalition and opposition parties.[3] Nevertheless, the Cameroon People's Democratic Movement continued to be the ruling party, and at each subsequent election substantially increased its majority.[4] The main opposition party is the

[1] The Commonwealth, http://thecommonwealth.org/our-member-countries/cameroon/history

[2] See http://thecommonwealth.org/our-member-countries/cameroon/constitution-politics

[3] Ibid.

[4] See http://thecommonwealth.org/our-member-countries/cameroon/constitution-politics

Social Democratic Front, which receives most of its support in the Anglophone regions.[5] However, there are over 298 political parties in Cameroon.[6]

Of significance, since the current President came to power 34 years ago there have been efforts to unify the country in the interests of development. However, people living in the Anglophone regions allege a lack of investment in the preservation of their distinct identity, or the regions generally. Over the years they have alleged that this manifests in the vast majority of local administrative posts being appointed to Francophone officials rather than Anglophone applicants from those regions, basic infrastructure remaining poor, under representation in national institutions, unemployment and illiteracy. The Anglophone people allege discrimination against them in this regard. This is particularly noted in the appointments of French speaking teachers to schools who are trained in the Francophone educational system, and French speaking judges to the courts who are trained in the civil justice system. This makes the education of children undertaking an English schooling system and the functioning of the common law justice system impossible to administer effectively. There are similar difficulties in other areas of public administration and in hospitals, where the officials and professionals speak in French. Although Cameroon is officially bi-lingual, the reality is that most people are not. In Francophone regions, English is taught as a foreign language in schools, which means that most people do not speak it well or at all. The same is true of French competence in the Anglophone regions. Frustration with this state of affairs has led some people to call for a federal state and others for secession of the Anglophone regions entirely.[7]

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[5] Immigration and Refugee Board of Canada, *Cameroon: The Social Democratic Front (Front social démocrate, SDF), including its current status, its organization and structure, its membership card and the treatment of its members by the state authorities*, 17 April 2012, CMR104018.FE, available at: http://www.refworld.org/docid/4f9e36172.html [accessed 21 May 2017]

[6] See http://www.globalsecurity.org/military/world/africa/cm-political-parties.htm

[7] Case 266/2003 *Kevin Mgwanga Gunme et al/Cameroon*, 45th Ordinary Session, African Commission, EX.CL/529(XV) 13-27 May, 2009, http://old.achpr.org/english/Decison_Communication/Cameroon/Comm.%20266-03.pdf , finding violations of articles 2, 3, 4, 5, 6, 7.1, 9, 10, 11, 19 of the African Charter on Human and People's Rights. See also Rita Izsák, *Report of the UN Independent Expert on minority issues*, A/HRC/25/56/Add.1, 31st January 2014, available at http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session25/Documents/A_HRC_25_56_Add.1_ENG.DOC which records that there are more than 250 ethnic groups speaking many different languages and representing different faith groups. While Cameroon is rightly proud of its record of stability and peaceful coexistence of such diverse communities, and most challenges relate to the preservation of indigenous languages, English is also being neglected, and the predominance of French as the language of Government and administration in most regions was highlighted. One commentator stated, "even in this anglophone region, we are served in French," at para 73. The defence lawyers I spoke to and newspapers I observed while in Cameroon reflected these concerns.

Activities relevant to the trial proceedings

Concerns amongst lawyers for the proper administration of justice in the Anglophone regions led to a conference of Anglophone lawyers held in Bamenda in 2015, which agreed a memorandum that was sent to the Government and other official organisations requesting that their concerns for the preservation of the common law system be addressed. This was not responded to. The requests to the Government were, firstly, to create an ad hoc commission to address the issues raised in the Bamenda memo and secondly, to employ English speaking, common law magistrates in the common law system.[8] A further conference of lawyers was held in February 2016. A lack of meaningful response to their concerns led to agreements amongst the Bar in the Anglophone cities of Bamenda and Buea to hold strike action, which took place on the 8th and 10th November 2016 in Bamenda and Buea respectively. On these days, the barristers did not attend court, but marched in peaceful protest through the towns in their robes.

BHRC spoke with a barrister who attended the protest on 8th November who explained that the police and regional authorities allowed the march, which passed for two hours entirely peacefully until its conclusion at Liberty Square in Bamenda. The police had flanked the march on both sides and some public had gathered to watch. At the point when the president of the North West Lawyers Association was thanking the police for enabling it to pass smoothly, an officer fired tear gas into the group of barristers and other officers followed suit. This led to mass panic as the lawyers and public fled. There were around 500 people present. Many were holding their faces from the effects of the tear gas. Five young people were arrested and then released at 8pm. It was unclear why the officer had fired the tear gas as many officers were in fact clapping and congratulating the event at the time. In Buea, on 10th November when the barristers held their protest march, officers seized their robes and allegations of assault were made. Media reports and footage confirm these incidents.[9]

Further protests were then held by teachers, students, journalists and the public in response to the approach taken by law enforcement to the lawyers' protest. Teachers have been on strike since 21st November 2016.[10] On that same day, activist Mancho Bibixy embarked on a solo protest centred on the poor state of roads in Bamenda. He marched

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[8] See *STV,* 'Lawyer Dr Nkongho Felix Agbor Balla discusses issues leading to strike', 29th November 2106, available on https://www.youtube.com/watch?v=02QAoz2rQnA

[9] *Africa Times,* 'Cameroon citizens join lawyers' protest in streets of Bamenda,' 8th November 2016, available at, http://africatimes.com/2016/11/08/cameroon-citizens-join-lawyers-protest-in-streets-of-bamenda/; *Cameroon Concord,* 'Cameroon: Common Law Lawyers Storm the Premises Of Bamenda Court,' available at, http://cameroon-concord.com/headlines/item/7252-cameroon-common-law-lawyers-storm-the-premises-of-bamenda-court; *Cameroon concord,* 'Cameroon Lawyers Protest: Police Injure Dozens, Raid Law Offices…American Diplomat Steps In…', available at http://cameroon-concord.com/headlines/item/7265-cameroon-lawyers-protest-police-injure-dozens-raid-law-offices-american-diplomat-steps-in

[10] "School Strike in Cameroon Looks Set to Carry On," *Newsweek,* 12th April 2017, available at http://www.newsweek.com/english-cameroon-strike-583068

carrying a coffin, in what has since been termed the 'coffin revolution' and saying he was ready to die for his cause. En route he picked up support from the public who joined his march. Eventually, security forces intervened, leading to "bloody clashes and the death of one protester."[11]

Allegations of killings, rape, arbitrary detention, and kidnapping have been made across the protest incidents. The reactions of law enforcement officers have been heavily criticised as disproportionate.[12]

As a consequence, the Cameroon Anglophone Civil Society Consortium was established for professionals from the Anglophone regions to organise their efforts to address the problems in the region.[13] Nkongho Félix Agbor Balla, was appointed as the President of the Consortium[14] and Fontem Aforteka'a Neba was appointed as the Secretary General.[15] I was informed by lawyers that members of the Consortium, members of the Cameroon Bar Council and others with concerns were invited to meetings with the National Assembly and Ministry of Justice to discuss the strike action. The talks did not result in any commitment to resolve the problems. On 13th January, the CACSC issued a press briefing as follows:

> *Our Fellow West Cameroonians.*

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[11] 'Cameroon: Anglophone activists call for month of "ghost towns" moments before arrests and Internet shutdown,' *African Arguments,* 18th January 2017, http://africanarguments.org/2017/01/18/cameroon-anglophone-activists-call-for-month-of-ghost-towns-before-arrests-and-internet-shutdown/

[12] *ACHPR*, 'Press Release on the Human Rights Situation in Cameroon Following strike actions of Lawyers, Teachers and Civil Society,' 12th December 2016, available at http://www.achpr.org/press/2016/12/d340/

UNOHR, 'Cameroon: UN experts urge Government to halt violence against English-speaking minority protests', 21st December 2016, available at, http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21054&LangID=E#sthash.KcIKjfre.dpuf; *Amnesty International,* 'Cameroon: Excessive force that led to deaths of protesters must be urgently investigated,' 9th December 2016, available at https://www.amnesty.org/en/latest/news/2016/12/cameroon-excessive-force-that-led-to-deaths-of-protesters-must-be-urgently-investigated/

[13] Cameroon Anglophone Civil Society Consortium https://www.ca-csc.org/index.html

[14] The CACSC website describes Barrister Agbor-Balla working previously as a Doctoral Researcher at the Centre for International Law University of Brussels, Associate Legal Officer at the International Criminal Court for Sierra Leone, Legal Adviser Trial Chamber International Criminal Court for Sierra Leone, Human Rights Officer United Nations mission in Afghanistan, Legal Adviser United Nations Police in Congo and Legal Adviser UN Mission in Afghanistan. He is the Founder and Executive Director of Centre for Human Rights and Democracy in Africa., see https://www.ca-csc.org/felix-nkongho-agbor-balla.html

[15] The CACSC website describes Dr Fontem Neba as a linguist, lecturer and author. He currently lectures English lexicology and language pedagogy in the Department of English, University of Buea, Cameroon. He is also the CoordinatMembers of or of the Use of English Programme, Senior Programmes Officer of the University Group for English Language and Educational Research (UGELER) and has coordinated the University of Buea English Language Proficiency Examination and Intensive English language Course, see https://www.ca-csc.org/fontem-neba.html

In the last two days, Consortium representatives, Union leaders. Parents and the Clergy from the Northwest and Southwest Regions met with representatives of the govenunent(sic) in the conference room of the Govemor(sic) of the Northwest Region to discuss the issues that prompted West Cameroon teachers to go on strike on the 21st of November 2016.

At the start of the talks.(sic) our history was evoked and the treacherous path West Cameroon has gone through in this tiresome union with La Republique du Cameroun. A plethora of issues was discussed ranging from the future form of the union, admission into professional schools, the non respect of certain laws to the creation of institutions to serve West Cameroon.

The talks were frank, heated and occasionally cordial.. Infact (sic) most participants at the dialogue appreciated the process and hoped that it might lead to an eventual resolution of the crisis.

In spite of the non release of those children kidnapped and taken to Yaounde where they have been tortured mercilessly, the Unions still accepted to talk to govenunent (sic) in the hope that reason might prevail. While the teachers were preparing to educate the public on the discussion and the resolutions, today 14th January, elements of the police and gendarmerie went on rampage at about midnight yesterday shooting four unarmed young men and severely wounding them.

The Consortium hereby:

- *Denounces the continuous militarisation of the Northwest and Southwest Regions*
- *Condemns the continuous disproportionate use of force against unarmed civilians*
- *Condemns government hypocrisy evident in the simultaneous use of dialogue and lethal force against West Cameroonians*
- *Calls on all West Cameroonian to rise up in unity and pursue our freedom from oppression through peaceful resistance*
- *Declares a* ***GHOST TOWN IN THE ENTIRE WEST CAMEROON FROM MONDAY 16 TO TUESDAY 17 JANUARY 2017 FROM 6:00AM — 6:00PM*** *to protest against the continuous shooting, arbitrary arrest and maiming of our people by Cameroon police and gendarmes.*
- *Urges everyone to avoid burning of tires, confrontation, provocation, violence and the destruction of our own property. Preferably everyone should stay at home with their families*

The Consortium demands:

- *That the government should organise a referendum without further delay so that West Cameroonians can effectively return to the two State Federation*

- *The UNCONDITIONAL RELEASE of all West Cameroonian youths kidnapped, abducted or arrested from their homes and taken to unknown destinations.*

Our people are determined to peacefully resist the sadistic unlit, occupation which has continued unabated for half a century.

Due to general insecurity in town, the Press Conference scheduled for the 14th of January 2017 at am at the Presbyterian Church Center has been cancelled.

The Consortium wants to cease [sic] this opportunity to remind all West Cameroonians to go to their respective places of worship this weekend to. [sic] God for delivering us from the yoke of oppression.

God is our strength.

For the CONSORTIUM

Barr. Nkongho A. Felix
Dr. Fontem A Neba
Wilfred Tassang[16]

The CACSC and another organisation, the Southern Cameroon's National Council (which seeks secession of the former Southern Cameroons) were declared illegal by ministerial order of the Minister of Territorial Administration on 17th January 2017. All meetings, activities and demonstrations are prohibited by the ban throughout Cameroon.[17] On the same day, the internet was disconnected in the North West and South West regions of Cameroon[18] and not restored until 20th April 2017, affecting all businesses and services in the regions.[19] The CACSC issued another press release that day explaining that the organisation had been banned and the leaders expected to be arrested. It called for the continued operation of the non-violent ghost towns and transferred operational control to

[16] Available at, https://www.facebook.com/cameroon.anglophone.consortium/photos/pcb.369119386795882/369118916795929/?type=3&theater

[17] *CRTV,* 'SCNC and the Cameroon Anglophone Civil Society Consortium banned,' 18th January 2017, http://crtv.cm/fr/latest-news/top-news-24/scnc-and-the-cameroon-anglophone-civil-society-consortium-banned--18545.htm

[18] *UNOHR,* 'UN expert urges Cameroon to restore internet services cut off in rights violation', 10th February 2017, available at http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21165&LangID=E

[19] *Africa* News, 'Cameroon restores internet in 2 Anglophone regions after 93-days offline,' 20th April 2017, available at http://www.africanews.com/2017/04/20/cameroon-lifts-internet-blackout-in-2-anglophone-regions-after-93-days-offline//

members outside of Cameroon.[20] Fontem Aforteka'a Neba and NKongho Felix Agbor were arrested that night.

BHRC were informed that mass arrests have been made in connection with what has been termed the "Anglophone crisis,' with four trials currently underway. First, this one, described below, second, of five accused, involving a teacher, third of three accused, which commenced on 25th April 2017, and fourth, which has 34 accused on the indictment. On the 11th February journalists were also arrested for calling for boycotts.

BHRC were also informed that around 40 barristers are in hiding as they were informed that they were also due to be arrested. I spoke to two of these people who, in common with the defence lawyers in this case, told me that many have had their bank accounts frozen, their offices searched and phones tapped. They are concerned for their safety and that of their families. Another lawyer has also been arrested and charged with crimes related to the protests. I also understand that Justice Ayah Paul Abine, Deputy Attorney General of the Supreme Court was arrested on the 21st January and taken to the national gendarmerie where he continues to be held without charge, despite his defence lawyers making applications for his release to the court, which have so far been denied.[21]

Government steps taken in response to the crisis

A National Commission for the Promotion of Bilingualism and Multiculturalism was set up in January 2017 to look at the functioning of bilingualism in Cameroon, with 15 commissioners appointed for five-year terms.[22] On 30th March 2017 a press conference was held by the Minister of Justice and Keeper of the Seals, Laurent Esso in which he set out steps that the President aimed to take to address concerns raised by the Anglophone lawyers. While underlining that the common law and civil law in Cameroon co-exist, he explained that a committee had been set up to examine the proposals of the Anglophone lawyers. A common law section of the Supreme Court is to be established so that cases can be heard in English and in compliance with the common law where necessary, with a review of the number of judges available to hear those cases. He noted that some high ranking judicial and legal officers had already been transferred to the North West and

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[20] Available at, https://www.facebook.com/photo.php?fbid=146471869185817&set=pcb.146477439185260&type=3&theater

[21] *Sahara Reporters,* 'Cameroon Judge Arrested In Crackdown,' 22nd January 2017, available at http://saharareporters.com/2017/01/22/cameroon-judge-arrested-crackdown

[22] *All Africa*, 'Cameroon: Bilingualism, Multiculturalism - Commission Begins Work Tomorrow,' 26th April 2017, available at http://allafrica.com/stories/201704260689.html The Commission is tasked with "promoting bilingualism and multiculturalism with a view to maintaining peace, consolidating the country's national unity and strengthening its people's willingness and day to day experience with respect to living together," article 3(1), Decree No. 2017/013 of 23rd January 2017 available at http://www.cameroon-embassy.nl/wp-content/uploads/2017/02/comission_for_bilingualism_english.pdf

South West regions and that officers will be redeployed on their mastery of the official language predominantly used in the jurisdiction to which they are transferred. A Faculty of Legal and Political Sciences is to be established at the University of Buea, as well as departments of English Law at a number of universities. Training will be made available for English speaking judges and legal officers. Recruitment of a larger number of Anglophone teachers for judicial and legal training is planned and the setting up of a common law section at the training school. While waiting for the training to be implemented and undertaken, recruitment of interpreters to provide services at courts will take place. An Institute of Judicial Studies is also planned to train advocates, notaries and bailiffs.[23]

The National Commission on Human Rights and Freedoms conducted a mission to the regions to investigate the allegations of human rights violations and explore solutions to the problem. Although the report does not make any particular findings of fact, from the meetings held, it does report that the rights of freedom of expression and assembly have not been respected in the North West and South West regions, that fear and panic were caused by an apparent state of emergency, disproportionate use of force and physical aggression was perpetrated by law enforcement officials, loss of life and property occurred, torture, inhuman and degrading treatment was used against arrested persons, unlawful detention purportedly under the Law on Terrorism was conducted, and it condemns the detention of minors and lack of medical assistance provided to some people. The Commission makes a number of recommendations in relation to respecting the law and due process in respect of the legal violations that have been committed, and also for dialogue through an appointed mediator to resolve the crisis. In particular it recommends that the Minister of Defence examine favourably the possibility of ending judicial procedures before the Military Tribunal against persons arrested in connection with the crisis and an end to the confusion between the request for federalism made by professional bodies and recognised groups and the fight for separation expressed by other organisations.[24]

The strike action of the barristers continues.

Legal provisions

Cameroon is a party to the Universal Declaration of Human Rights ("UNDHR") and the six principal international human rights instruments adopted by the United Nations:

a) International Covenant on Civil and Political Rights ("ICCPR") and its First Optional Protocol (accession 27 June 1984);

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[23] *Cameroon Tribune,* 'Claims by Anglophone Lawyers: Government Presents Actions To Be Taken,' 31dt March 2017, available at, http://www.cameroon-tribune.cm/articles/7272/fr/

[24] NCHRF, *Observation and investigation mission of the NCHRF in connection with cases of human rights violations during the strike actions in the North West and South West regions,* 1-4 February 2017, available at, http://www.cndhl.cm/index.php/repository/func-startdown/42/

b) International Covenant on Economic, Social and Cultural Rights (accession 27 June 1984);
c) International Convention on the Elimination of All Forms of Racial Discrimination (ratification 24 June 1971);
d) Convention on the Elimination of All Forms of Discrimination against Women (ratification 23 August 1994) and its Optional Protocol (accession 1 November 2004);
e) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (accession 19 December 1986);
f) Convention on the Rights of the Child (signature 27 September 1990, ratification 11 January 1993).

Cameroon is also a party to the major African regional and subregional human rights instruments, including:

a) African Charter on Human and Peoples' Rights ("African Charter") (ratification 21 October 1986);
b) Central African Economic and Monetary Community (CAEMC) Accord on Non-Aggression and Mutual Assistance in Defence (adoption 28 January 2004);
c) CAEMC agreement on judicial cooperation (ratification 25 December 2005); (d) CAEMC extradition agreement (ratification 30 January 2006).

The preamble to the Cameroonian Constitution declares the Cameroonian people's commitment to the following universal values and principles, which are guaranteed to all citizens by the State without distinction based on sex or race:

- Equal rights and obligations for all
- Protection of minorities
- Protection of indigenous peoples
- Freedom and security for all
- Right to settle in any location and freedom of movement
- Inviolability of the home
- Inviolability of private correspondence
- Prohibition of all illegal orders or command
- Legality of offences and penalties
- Non-retroactivity of the law
- Right to a fair trial
- Presumption of innocence
- Right to life and to physical and moral integrity
- Right to security
- Freedom of opinion and of belief
- A secular State
- Freedom of worship
- Freedom of communication, expression and the press

- Freedom of assembly and of association
- Right to organize and join trade unions and to strike
- Protection of the family
- Protection of women, young people, the elderly and persons with disabilities
- Children' s right to an education
- Compulsory primary education
- Right to own property
- Right to a healthy environment
- Right to work

In addition to the preamble, a number of legislative and regulatory measures strengthen and ensure the realisation of the rights and freedoms set out in the Constitution and the international and regional instruments mentioned above, such as:

- Act No. 90/052 of 19 December 1990 concerning the freedom of social communication, amended by Act No. 96/0 of 16 January 1996;
- Act No. 90/053 of 19 December 1990 concerning freedom of association;
- Act No. 90/055 of 19 December 1990 regulating public meetings and demonstrations;
- Act No. 90/056 concerning political parties;
- Act No. 97/009 of 10 January 1997 inserting new article 132 bis, entitled "Torture", into the Criminal Code;
- Act No. 2004/016 of 22 July 2004 on the creation, organization and functioning of the National Commission on Human Rights and Freedoms and its implementing Decree No. 2005/254 of 7 July 2005.

The right to a fair trial is substantially guaranteed by the following texts: the Constitution of 18 January 1996; the Code of Criminal Procedure, adopted under Act No. 2005/007 of 27 July 2005; and Act No. 2006/015 of 29 December 2006 concerning the organization of the judicial system.[25]

Article 45 of the Constitution of Cameroon affirms that duly approved or ratified treaties or international agreements shall override national law.

[25] Information for this section is set out in the National Report Submitted in Accordance With Paragraph 15 (A) of the Annex to Human Rights Council Resolution 5/1, Working Group on the Universal Periodic Review Fourth session, Cameroon, UN Doc A/HRC/WG.6/4/CMR/1, 11th December 2008.

The Trial

The Court

The Yaounde Military Tribunal has jurisdiction over the first instance trial proceedings. The court has special jurisdiction to hear some of the charges pursuant to Law No. 2014/28 of 23rd December 2014 on the Suppression of Acts of Terrorism in Cameroon. The Court has national jurisdiction, which can be exercised where there is concern about a case being tried in the local vicinity.

The Court sits in the military barracks in the centre of Yaounde, capital city of Cameroon. The bench comprises an army colonel magistrate, who is the President of the tribunal and two lay assessors from the navy and air force.

The charges

The proceedings originally indicted three accused persons, Mancho Bibixy, also known as BBC; Fontem Aforteka'a Neba (who I will refer to as Fontem Neba) and Nkongho Félix Agbor-Balla (who I will refer to as Felix Agbor).

The indictment, which is in French, appears to record that the

"Yaounde Military Tribunal has jurisdiction for the purposes of prosecution over the acts during November and December 2016, since according to the report of the Central Service for Judicial Research and its accompanying documents, there is sufficient indication that:

Mancho Bibixy together and in concert [presumably with others and in particular with the two other accused, though this is not specified] did:

1) *commit an act likely to cause death, endanger physical integrity, cause bodily injury or material damage, destroy natural resources, the environment or cultural heritage with intent to:*
    a) *Intimidate the public, provoke a situation of terror or face the victim, the government and/or a national or international organisation to carry out or refrain from carrying out an act, adopt or renounce a particular position;*
2) *Take part in hostilities against the Republic of Cameroon;*
3) *Begin to violate the integrity of the state by claiming the partition of Cameroon through the creation of the State of Ambazonia;*
4) *Attempt by violence to modify the constitutional laws, in particular by claiming federalism;*
5) *Provoke the gathering of insurgents and destroyed public and private buildings;*
6) *Defame the President of the Republic and members of the Government;*

7) *By violence prevent the enforcement of laws regulations and legitimate orders of the public authorities;*
8) *Fail to produce his national identity card.*

Fontem Neba and Félix Agbor:

1) *were accomplices in offences, acts of terrorism, hostility to the homeland, insurrection, secession, and wide spread assault and mass rebellion in a group with Mancho Bibixy and others;*
2) *Incited civil war by calling upon the inhabitants of the South West and North West to take up arms against other citizens;*
3) *Attempted by violence to modify the constitutional laws, in particular the institution of federalism."*

And all three are further charged with spreading false news through electronic communications.

The charges are not particularised to be contrary to a specific law. Rather at the end of the indictment all charges are said to be contrary to articles 74, 97, 102, 111, 112,113, 114, 116, 154, 158 of the Penal Code; article 2 of the Law on the Suppression of Terrorism, article 5 of Law no. 90/042 of 19th December 1990 establishing national identity cards and article 78 of Law no. 2010/012 of 21st December 2010 on cyber security and cyber criminality in Cameroon.

Section 74 of the Penal Code provides: Punishment and Responsibility

(1) *No penalty may be imposed except upon a person criminally responsible.*
(2) *Criminal responsibility shall lie on him who intentionally commits each of the ingredient acts or omissions of an offence with the intention of causing the result which completes it*
(3) *Save as otherwise provided by law, no criminal responsibility shall arise from the result, though intended, of an omission*
(4) *Save as otherwise provided by law, there shall be no criminal responsibility unless subsection (2) of this Section has been satisfied*

Provided that responsibility for a simple offence shall not require any intention to act or to omit or to cause the result.

Section 97 of the Penal Code provides: Accessories

(1) *An accessory shall mean a person who abets the commission of a felony or misdemeanor, that is:*
   a. *Who order or in any manner causes the commission of an act or omission so defined; or*
   b. *Who aids or facilitates the preparation or the commission of such an offence*

Section 102 of the Penal Code provides: Hostilities against the Fatherland

Any citizen:

a. *taking part in hostilities against the Republic;*
b. *or assisting or offering to assist the said hostilities;*

shall be guilty of treason and punished with death.

Section 111 of the Penal Code provides: Secession

(1) Whoever undertakes in whatever manner to infringe the territorial integrity of the Republic shall be punished with imprisonment for life

(2) In time of war, or in a state of emergency or siege, the penalty shall be death

Section 112 of the Penal Code provides: Civil War

Whoever provokes civil war by arming the people, or by inciting them to take arms against each other, shall be punished with death.

Section 113 of the Penal Code provides: Propagation of False Information

Whoever sends out or propagates false information liable to injure public authorities or national unity shall be punished with imprisonment for from three months to three years and with fine from CFAF 100 000 (one hundred thousand) to CFAF 2 000 0000 (two million)

Section 114 of the Penal Code provides: Revolution

Whoever by force attempts to alter the laws composing the Constitution, or to overturn the political authorities set up by the said laws or to render them incapable of exercising their powers shall be punished with imprisonment for life.

Section 116 of the Penal Code provides: Insurrection

Whoever during an insurrection:

a) instigates or encourages by whatever means the gathering of the insurgent; or
b) hinders by whatever means the summoning, the assembly or the operations of the forces of order, or usurps their command; or
c) invades or destroys any public or private building; or
d) holds or seizes any weapon, ammunition or explosives; or
e) wears any official uniform, garb or emblem, whether civil or military,

Shall be punished with imprisonment from ten to twenty years.

Section 154 of the Penal Code provides: Contempt of Public Bodies and Public Servants

(1) Whoever commits a contempt:

a. of any Court, of any of the armed forces, or of any public body or public administration; or

b. in relation to his office or position of any Member of Government or of Parliament or of any public servant;

Shall be punished, unless, in the case of defamation, he proves the truth of the defamatory matter, with imprisonment for three months to three years or with fine of from CFAF 100 000 (one hundred thousand) to 2 000 000 (two million) or with both such imprisonment and fine.

Section 152 of the Penal Code defines contempt as:

(1) A contempt shall mean any defamation, abuse or threat conveyed by gesture, word or cry uttered in any place open to the public, or by any procedure intended to reach the public.

(2) The exceptions defined by section 306 shall be applicable to contempt

(3) Prosecution shall be barred by the lapse of four months from the last step in preparation or prosecution

Section 157 of the Penal Code defines Resistance as:

(1) Whoever:

a. By any means whatever incites to the obstruction of the execution of any law, regulation, or lawful order of the public authority;

b. *By force or other interference obstructs the performance of lawful duty by any person engaged in the execution of any law, regulation, decision in the administration of justice or other lawful order shall be punished with imprisonment for from three months to four years*

Section 158 of the Penal Code provides: Collective Resistance

(1) Where the offence defined in the last foregoing Section is committed by 5 or more persons together the punishment shall be imprisonment from one to three years, and where at least two of them openly bear arms the imprisonment shall be for from five to fifteen years.

(2) Any co-offender who himself bears arms, open or concealed, shall be punished with imprisonment for from five to fifteen years.

Section 2 of the Law on the Suppression of Terrorism provides:

1) Whoever, acting alone as an accomplice or accessory, commits or threatens to commit an act likely to cause death, endanger physical integrity, cause bodily injury or material damage, destroy natural resources, the environment or cultural heritage with intent to:

a) Intimidate the public, provoke a situation of terror or face the victim, the

government and/or a national or international organisation to carry out or refrain from carrying out an act, adopt or renounce a particular position;

b) Disrupt the national functioning of public services, the delivery of essential services to the public to create a crisis situation among the public;

c) Create widespread insurrection in the country;

d) Shall be punished with the death penalty.

Section 78 of the law on cyber security and cyber criminality

(1) Anyone who publishes or propagates by means of electronic communications or an information system a news without being able to provide proof of veracity or justify that he had good reasons to believe the truth of this news is punishable by imprisonment from six months to two years and a fine of 5,000,000 (five million) to 10,000,000 (ten million) CFA francs or both.

(2) The penalties provided for in paragraph (1) above shall be doubled when the offense is committed for the purpose of prejudice to the public peace.

Although the charges are not attributed to the specific offences listed, it is possible to assume from the ingredients of the criminal offences set out in the legislation that Mr Bibixy's charges relate as follows:

(1) alleged offence(s) contrary to section 2 of the law on the suppression of terrorism
(2) alleged offence(s) contrary to section 102 of the Penal Code
(3) alleged offence(s) contrary to section 111 of the Penal Code
(4) alleged offence(s) contrary to section 114 of the Penal Code
(5) alleged offence(s) contrary to section 116 of the Penal Code
(6) alleged offence(s) contrary to section 154 of the Penal Code
(7) alleged offence(s) contrary to section 158 of the Penal Code
(8) an alleged offence contrary to section 5 of the law establishing national identity cards
(9) alleged offence(s) contrary to section 78 of the law on cyber security and cyber criminality.

And it is also possible to assume that Fontem Neba and Felix Agbor's charges relate as follows:

(1) alleged offence(s) as above in relation to Mr Bibixy's charges (1)-(8)
(2) alleged offence(s) contrary to section 112 of the Penal Code
(3) alleged offence(s) contrary to section 114 of the Penal Code.

Pre-trial Proceedings

Fontem Neba and Felix Agbor were arrested on 17th January 2017 in Buea in the South West region of Cameroon where they lived, and taken to Yaounde.[26] Mancho Bibixy was arrested in the early hours of 19th January in Bamenda in the North West region of Cameroon.[27]

The indictment charged Mr Bibixy, Mr Neba and Mr Agbor on the 20th January 2017, and asked for the Yaounde Military Court to take jurisdiction and pass judgment and to remand the three in pre trial detention.

1st February 2017

The case was due to be brought to court on 1st February but for reasons unknown was adjourned until 13th February. [28]

13th February 2017

A note of the hearing on 13th February was provided to me by the defence team. The hearing was also reported in the media.[29] This note records that the charges were read out to the accused in French. An interpreter was present to interpret into English but there were concerns that the interpretation was inaccurate. The defence barristers made representations that the problem was that despite being arrested in an English speaking region the court was constituted in the Francophone region with French speaking judges and it was unconstitutional to be charged in French when the accused are English speaking. There was some suggestion from one of the defence barristers that the interpreter was reading from the wrong charge sheet, rather than interpreting what they heard. The President of the Tribunal suggested that an adjournment would be necessary to obtain another interpreter. Felix Agbor asked that they continue but requested a more competent interpreter in future. The note further records that the State Prosecutor argued that the

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[26] *Frontline Defenders,* https://www.frontlinedefenders.org/en/case/nkongho-felix-agbor-balla-detained-and-charged-military-court-eight-counts; *Amnesty International,* 'Cameroon: Arrests and Civil Society Bans Risk Inflaming Tensions in English-Speaking Regions, 20th January 2017', https://www.amnesty.org/en/press-releases/2017/01/cameroon-arrests-and-civil-society-bans-risk-inflaming-tensions-in-english-speaking-regions/

[27] *All Africa Network,* 'Breaking news!!!: Mancho Bibixy arrested in Bamenda Northwest Cameroon,' 19th January 2017, http://www.alafnet.com/breaking-news-mancho-bibixy-arrested-in-bamenda-northwest-cameroon/

[28] *CRTV,* 'The Anglophone crisis: three front runners brought to trial,' 2nd February 2017, http://crtv.cm/fr/latest-news/top-news-24/the-anglophone-crisis-three-front-runners-brought-to-trial-18624.htm

[29] *Reuters,* 'Trial over Cameroon's Anglophone protests exposes national divide,' 13th February 2017, *Africa Times,* 'Cameroon: Lawyers call for justice in Anglophone activist trial,' 13th February 2017, http://www.reuters.com/article/us-cameroon-protests-idUSKBN15S1UH; http://africatimes.com/2017/02/13/cameroon-lawyers-call-for-justice-in-anglophone-activist-trial/

accused are perfectly bi-lingual and it would be bad faith if they alleged that they could not understand the proceedings. Furthermore, the country is bilingual and both languages can be used interchangeably. As such they decided to issue the charge sheet in French. He stated that both English and French are used in the North West and South West regions and so either of the two national languages could be used.

The charges were then put to the accused persons in English. All three pleaded not guilty.

The court then sought to confirm whether the accused were represented by counsel. Former Battonier (President of the Cameroon Bar Association) Ben Muna confirmed that a team of lawyers would be representing the accused out of the over 100 who were present in the courtroom. The note then goes on to detail that he and other presenting barristers made submissions about the political nature of the trial and compared it to the previous occasion in 1991 when another lawyer had been put on trial for sedition, Yondo Black, who had been critical of the one party system under President Biya and attempting to establish a multiparty system with others, nine of whom were also on trial. They were convicted of sedition and given sentences from two to five years, though some were acquitted.[30] On this occasion the demand had been for federalism and the second and third accused had been in negotiations with the Government to broker reforms at the point when their organization was banned and they were arrested. The defence argued that the accused persons were only exercising their rights as Cameroonians, as a journalist, a teacher and a lawyer to exercise their freedom of thought, conscience and speech. They also underlined the political realities that were taking place in the North West and South West regions, with the internet suspended and children not going to school. They called for dialogue to continue.

The barristers asked the State Prosecutor for a list of the State's witnesses and the evidence against the accused so that the case could proceed. The State Prosecutor argued that the accused were not arrested in the exercise of their professional duties. Further, that the Criminal Procedure Code enables secret police investigations and that only the Legal Department (the prosecution office) has access to the case file, which it will produce at the hearing as evidence. However, their list of witnesses was not complete and they were still undertaking investigations. He asserted that the Court was competent under article 12 of the Law on the Suppression of Terrorism.

The defence challenged this, referring to the Criminal Procedure Code in that once a person is brought before the court, the correct procedure should be followed and further investigations are not possible. They observed that this was the second hearing in the case, the accused were held in detention and the prosecutors should be ready to proceed on the charges that they have brought. They asserted that if witnesses were not already known, the defence will view any that are subsequently brought to court with suspicion. The prosecutor replied that many witnesses are reluctant and in hiding.

The Court adjourned proceedings to the 23rd March 2017.

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[30] For example, see blogger summary here, http://www.dibussi.com/2006/04/the_yondo_black.html

23rd March 2017

A note of the hearing on the 23rd March was also supplied by the defence team. The hearing was also reported in the media.[31] On this occasion 25 other accused persons were brought to court along with the three originally indicted accused. They were in court for the first time. It took over an hour for them to be identified and the dates and locations of their arrests to be clarified. Some had been arrested in Buea and Kumba on different dates when there were violent encounters between the police and people on the streets.

The State Prosecutor applied for the cases to be joined. All stood in the dock ,which had two seats that some alternated between but most were standing throughout the session.

An adjournment for 30 minutes was granted for the various defence counsel to discuss their position on the proposed joinder. The defence counsel then made submissions against joinder as the conditions under section 6 of the Criminal Procedure Code were not satisfied, namely the charges related to different offences, locations and persons. Even the objectives were different as some incidents related to a call for secession and others federalism. It was observed again that there had still not been access to the case file and that this was another delay tactic to find witnesses, who would now be necessary for all 28 accused. The adjournment until this date was supposed to be to enable the trial to proceed on the witnesses that the State Prosecutor had been seeking to find. Defence counsel asserted that the Legal Department had sent the list of witnesses in the original case yesterday and they were at court and should be heard. The application for joinder had been raised previously. A speedy trial would not be possible with so many accused persons.

The Tribunal adjourned the ruling on joinder until the 7th April 2017, which on that date it granted without reasons. The substantive matter was adjourned until 27th April 2017.

Prosecution case

Along with the observers from the Law Society and American Bar Association I sought to speak with the prosecution team concerning the case on the morning of the trial. The Commissaire du Governement (the State Prosecutor) explained that he could not speak with us unless he had permission to do so from the Ministry of Justice or the Ministry of Defence. Though we sought to speak with both the Ministry of Justice and the Ministry of Defence the next day, we were unable to obtain permission.

The prosecution case file was not available to review.

Thus the only information of which I am aware concerning the charges is that set out in the indictment.

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[31] http://en.rfi.fr/africa/20170323-cameroon-additional-suspects-added-terrorism-case-against-anglophone-activists; http://africatimes.com/2017/03/24/cameroon-trial-again-adjourned-in-anglophone-activist-case/

Defence case

I was able to speak with a number of the members of the defence team on three occasions while in Yaounde, before and after the trial to try to understand more clearly both the procedure and the defence being put forward.

The political context set out in the background section of this report underlies the serious nature of the charges that have been brought as indicated by the defence team. There were many lawyers involved, with a 15 strong list of defence counsel including five former presidents of the Cameroon Bar Association on record as defending the 28 accused who were supported by other barristers. The current President of the Bar is also formally on record for Felix Agbor but has not been as involved as the core team in the case. It was not possible to meet with the President of the Bar while I was in Cameroon because he was out of the country at that time. The defence team comprises English speaking barristers from the Anglophone common law system and French speaking advocates from the Francophone civil law system. The defence team explained that there is a strong sense of unity amongst the Bar with regard to this case, especially because it involves a lawyer, but also concern amongst the lawyers that they themselves could be arrested for seeking to address the political issues in their defence.

Given the large number of lawyers involved in the case it was not possible to discern who, if anyone, was assigned to each particular accused and was preparing their case, though I did understand that of the core team instructed by the three original accused, there were particular assigned counsel.

The defence team members that I met with explained that Felix Agbor. Fontem Neba and Mancho Bibixy had asked for defence counsel when they were arrested and Battonier Muna and others had gone to the police station to meet with them and were present while they were questioned. They had not been ill-treated, although they had been arrested without warrant and taken out of the jurisdiction to Yaounde.

However, the majority of the other accused were treated badly; many were beaten on arrest, some were taken naked to cells in Yaounde and kept in that state for three days. They were scared, tired and confused and were told by the police not to seek legal assistance, so made statements in interview without lawyers. The grounds of their arrests are not known, nor have their statements been seen yet. There was no opportunity for them to complain about their treatment. The procedure that should usually be followed was not. None were arrested with warrants.

Normally following arrest a suspect can be held for 48 hours but under the terrorism law, this is increased to 15 days and is indefinitely renewable.

I was informed that Mr Balla and Mr Neba were asked questions about statements that the Consortium had published, in particular the 13th January statement, and the incidents of violence that had erupted during November and December. Questions were posed such as "what was intended by the organisation?" "what did you expect people to do?" It was clear

that the police were trying to draw a connection between the establishment of the Consortium, and the violent incidents that had occurred. For Mr Bibixy there were further questions about his statements made standing in the coffin and what he intended that to mean. Mr Balla answered that there was no incitement to violence in anything that they had done, or the statements issued. The defence lawyers explained that the unrest and police response and arrests in November and December had created a broader problem that the accused were now being alleged to be associated with. However, the Consortium was a group of professionals – lawyers, teachers, business people who came together for a common goal, which was re-establishing the Anglophone systems, English language and the employment of professionals trained in the English rooted systems. Because of the problems that occurred during the marches in November, they stopped calling for demonstrations and protests and the press release from 13th January that they were being questioned about in fact asked people to stay at home.

The defence lawyers felt that the key problem is that the crimes in the Penal Code and Law on the Suppression of Terrorism are very widely drawn and are being applied to circumstances where they were never intended. The terrorism law was passed in 2014 to respond to the emergence of Boko Haram, but is being applied far more broadly. They were concerned that the Legal Department is using the law to stifle criticism of the Government, because the charges are so widely drawn.

The lawyers explained that they had requested access to the case file, but this had been denied for various reasons, such as the appropriate person not being there, the case file not being there as it was being worked on, it not being ready, or the defence lawyers simply were not allowed to see it. It was also underlined that all lawyers were working *pro bono* due to the lack of a functioning legal aid system in Cameroon. Now that there were 28 accused, this meant that the lawyers were spending a significant amount of time on the case to the detriment of their other cases and the cost of paying for a copy of the case file for each case, should they be allowed access to it, was prohibitive.

The lawyers confirmed that most of the 28 accused do not speak French, and do not understand French. The interpretation in the case so far has been very poor and the lawyers have continuously had to correct the interpretation provided but are reluctant to request an adjournment on this basis because the case needs to progress given that the accused are in detention.

Normally access to the clients in the Kondengui Central Prison is allowed at any time, but they have been advised that because this is a sensitive case, their requests must be approved. Although this means having to fill in requests, none of the lawyers have been denied permission to see their clients.

Now that they have the list of prosecution witnesses, they can see that most of these are police officers or might be those that have had property damaged in the incidents of unrest. Some are doctors who must have treated people at the hospital. The actual evidence that they will give is as yet unknown and since access to the case file is denied, the defence will have to wait until the witnesses give their evidence at the trial.

The Courtroom

The Military Tribunal sits in an old courtroom in the barracks comprising wooden benches and slat windows. It has three exits, two of which are public to the outside and can let in fresh air. There is no air conditioning in the courtroom and it becomes stiflingly hot during proceedings. The Presiding Magistrate and assessors sit on an elevated dais at the front of the room. A clerk's table sits below and in front of this. An open wooden dock for the accused faces the bench in the middle of the room. On either side along the walls of the room are long tables for the defence and prosecution teams respectively. The public gallery faces the bench, behind the dock with rows of seating in two halves across the room. A bar separates the public seating from the well of the court.

Hearing at the Military Tribunal in Yaounde: 27th April 2017

Introductions

Three cases were listed for hearing on this day. The trial of the 28 was heard first. The third didn't get on as the second sat until late.

The court filled up over the course of the morning until people were standing in the aisles, at the back and outside, looking through windows. Half were lawyers, many wearing their robes. There were lots of wigs and gowns denoting the Anglophone/common law contingent but there were also those in civil law robes denoting the Francophone.

There were three rows of chairs in front of the bar separating the public seating from the well of the court. The back rows were seated with lawyers; the first two mainly with law enforcement officers in uniforms, though some were in suits. These were confirmed by others in the public seating and later the defence lawyers to be the witnesses called to court in the case.

Four defendants arrived at around 10:45am. They were sat in the other half of the public gallery, flanked by military officers. Two of these were Fontem Neba and Felix Agbor. The two others were unknown. The 28 prisoners were kept in different prisons. FN and FB were in the prison principale, Kongui, which is for high security prisoners. The court awaited the arrival of the other 24 accused.

I briefly spoke with Fontem Neba and Felix Agbor to introduce myself. They looked in good health and reasonable spirits. Fontem Neba wore traditional dress and Felix Agbor a suit with his Cameroon Bar Association badge on the lapel. They thanked myself and other observers for attending the hearing and being interested in their case. They explained that this was a political issue of real concern.

The other trial observers present at the hearing were Marina Brilman for the Law Society of England and Wales, William Balume Kavebwa for the American Bar Association (from its

Rule of Law Initiative in the Democratic Republic of Congo), officers from the British High Commission, US Embassy, the Canadian High Commission and the UN Office of the High Commissioner for Human Rights field office in Cameroon.

The defence team consisted of Anglophone and Francophone barristers. Five appearing were former presidents of the Bar Council. Francophone barristers made submissions in French; Anglophone in English. There were 15 barristers on record as acting for the accused people, but many more juniors around the defence table.

The other accused arrived at 12 noon and were brought to sit in the other side of the public gallery alongside the four seated accused. As they left the prison van, some were defiant and waving and smiling to the crowd of people there watching. This included Mancho Bibixy. The accused generally looked to be in reasonable condition from a distance, none appeared unduly thin or appeared to be injured, although there are allegations of police ill treatment on their arrest three months ago. They were all fully clothed which may have hidden injuries.

Myself and the Law Society and ABA representatives were invited to an audience with the President of the Court where we explained who we were and that we were here to observe the trial, which she approved.

The proceedings commenced at 12:15pm.

As matters progressed there was increasing talk in the public gallery and amongst the lawyers in comment and response to what was being said by the parties, which made it difficult to hear. The majority of the representations were also made in French. The President of the Tribunal did not curb the talking, though she did comment from time to time on the rowdiness of the room.

An interpreter was present and made a few initial interpretations of what the President said, in relation to the commencement of the proceedings and that the lead prosecutor had no special submissions to make and was ready to commence the trial. He introduced his team.

The clerk then identified each accused (speaking in French). Each one answered “present” in English and moved to stand in the open dock. There wasn’t room for them all and it was difficult for the ones further back to see the court personnel.

Civil parties

Three lawyers who were sat in the rows in front of the public seating then stood up, walked to the bench and handed up documents of appearance for civil parties. The defence team objected and asked for whom they were appearing. Counsel submitted that to appear in opposition to another lawyer, who is one of the accused, there must be permission pursuant to Law No. 90/059 of 1980, which requires in articles 39 and 47 proof that they are advocates and that the appearance is in accordance with the laws of the Bar, which requires permission of the Bar President to appear against another lawyer.

There then followed lengthy submissions from multiple defence counsel in objection and responses from counsel for the civil parties. Most of this was in French. The interpreter did not interpret any of what was said or take any notes. She appeared uncomfortable and unsure of what she was supposed to do.

In essence, counsel for the civil parties explained that they had sought permission to appear from the President of the Bar, who by abstaining from a response was deemed to permit it according to the law. They sought an adjournment to look at the case file, which caused vocal uproar amongst the defence counsel who argued that no provisions had been cited to allow this, that their reasons to see the case file had not been explained and the civil party should know what their claim is. They reminded the Tribunal that since the defence had been refused sight of the case file, despite many requests, this was not a good reason to adjourn. The civil party counsel were criticized for being disorganised, late in their application and frivolous as well as providing a delay tactic. Defence counsel submissions become increasingly outraged by the application, culminating in the observation that if they are witnesses, they must be the witnesses there in court. So the civil parties were actually there and could proceed. This caused much comment, banter and laughter from the defence lawyers in the room. There appeared to be a similar piquant in the submissions and responses from the President though because these were in French and stated from the bench they were difficult to hear.

Counsel for the civil parties responded to these allegations on multiple occasions, citing the Criminal Code and arguing that they could not reveal their clients for fear of reprisals and made allegations which were increasingly objected to by all defence barristers in the room on the basis of it being hearsay evidence. The calling of “objection” is not usual in the civil system and indicates some of the difficulty between the two systems where the Tribunal allowed counsel for the civil party to continue.

Prosecuting Counsel made submissions that they generally agreed with the defence interpretation of the criminal procedure code that it wasn’t appropriate to adjourn.

Because there was no interpretation, the accused looked vacant, confused and bored at what was happening. At this point they were beginning to struggle with standing in what was a very hot room.

After an hour and a half of submissions, the court refused the adjournment as not consequential on the proceedings.

It was later explained to me by some of the defence team that it is not usual to make a civil party application at this stage. Since this was a substantive hearing, even if the civil party was not there, the Court would not adjourn for them, they would come at a later time. The making of the application on the day of trial was seen as an effort to delay the proceedings.

Application for release from pre-trial detention

The defence team then asked if their application for release from detention had been considered. They sought a decision from the application filed on 23rd March. No copy of the application was in the court papers so a defence copy was taken to photocopy. This took around 15 minutes to organise. I was later informed that this was the second copy of the application to go missing as an earlier attempt to file the application had met with the same problem.

At 2pm Karim Khan QC, of the Bar of England and Wales who had an ad hoc appearance granted in the case, made the application on behalf of Mr Neba and Mr Agbor. This was all interpreted for the President but he had to regularly repeat his submissions for the interpreter to understand. He explained that an application for release was filed on 23rd March 2017 that had been before the court for more than a month. He argued that the only appropriate course was release and set out lengthy and respectful submissions to the Court as to why this was appropriate. He set out the educational and professional attainments of the accused, which made them, in his submission, extraordinary and for whom the nation should be proud rather than accuse as terrorists. He highlighted that they had been in custody for three months already and explained the hardship to their families. He highlighted that the Constitution of Cameroon and the Penal Code required precedence to be given to international treaties signed by Cameroon over domestic laws and argued the application of the UNDHR, ICCPR and African Charter and other ratified international instruments applied directly to the case.

He asserted that no grounds had been advanced by the Prosecution to justify detention of the two doctors. He acknowledged s. 224 of the Criminal Procedure Code, which states that bail cannot be granted where a person is charged with felonies punishable with life imprisonment or death. However, he argued that international conventions, in particular the ICCPR and the huge body of jurisprudence of the African Court, on the African Charter, prohibit incarceration based simply on the charges. He submitted that in order to prevent executive interference, any independent and impartial tribunal has the obligation to look into the individual circumstances of the case before it. He handed up copies of General Comment No. 35 of the Human Rights Committee of 16th December 2014 and the Tokyo Rules of the UN on Minimum Rules for Detention 1990.

He further submitted that s. 246 of the Criminal Procedure Code provides for release under judicial supervision, independent of the other provisions. He argued that this had been used in other cases carrying the same charges, such as Justice Soko Ngali Mobo, deputy secretary general of the Court of Appeal.

Throughout these submissions, I noted that the defendants were turned towards Mr Khan. They were attentive throughout. I can only assume that this was because he was speaking in English, and speaking clearly and persuasively. This was in clear contrast to the earlier and subsequent submissions in French as there was no interpretation.

Three other defence lawyers then made further, lengthy submissions in French, which adopted similar arguments to Mr Khan. Battonier Muna then requested in English that the same arguments be applied to all the other defendants. A defence lawyer then made further submissions in English on behalf of the other 25 accused. She sought to give some indication of the other 25 defendants present, which she described as mostly students; a baker; a journalist. She stated that the prosecution has still not provided the committal order or a list of witnesses, and the defence did not know what they were accused of. She raised medical concerns on behalf of one accused and submitted that the 25 persons were beaten for days and had all been held in detention for four or five months without explanation. She argued that they were arrested in different places and at different times and as such it was not clear why they were all here together.

At 3.15pm a defence lawyer requested that the defendants be able to sit down, which was granted. They all moved back to the seats in the public gallery where they had originally sat, except for Fontem Neba and Felix Agbor who remained seated in the dock. I was later informed by a defence lawyer that applications had been made before for accused to sit down but these were refused. Throughout the hearing accused left for comfort breaks in handcuffs with security officers. Proceedings were not suspended for them.

At 3.30pm a court official brought snack bars and water round for the witnesses, prosecution lawyers and bench, however I did not see the Tribunal eat these. No food or water was provided for the accused.

Defence submissions were completed at 16.12.

The Prosecutor responded that he needed to have access to the medical documents that were handed up and to be served with the second bail application for the 25 additional accused in order to respond to the application, while also objecting to the second application for bail in relation to the 25, as this had not been formally received. Some defence counsel reacted to this and shouted across the courtroom that it was sent on the same day as the first application. The Prosecution team also responded vigorously.

The President of the Tribunal intervened, saying that she was going to adjourn to decide on the application anyway so there was no need for the argument.

The Tribunal adjourned until 24th May 2017.

Evaluation of the Trial

This part of the report considers whether international, regional and national fair trial standards have been complied with in the case, organised under the following headings:

- the independence and impartiality of the court and/or judges
- the jurisdictional authority of the court
- observance of the principle of the presumption of innocence
- observance of the principle of legality in relation to the offences
- the conduct of the prosecuting body
- observance of the rights and judicial guarantees to which the defendant was entitled
- right to liberty

Independence and impartiality of the court and/or judges

Article 14 ICCPR(1)

…in the determination of any criminal charges against him or of his rights and obligations in a suit of law, everyone shall be entitled to a fair and public hearing before a competent, independent and impartial tribunal established by law

Articles 7(1)(d) and 26 of the African Charter and Article 37(2) of the Constitution reflect the principle of an independent and impartial judiciary. The preamble to the Constitution generally enshrines the right to a fair hearing before the courts.

The hearing took place in open court before a magistrate and two lay assessors. In this sense it was in principal independent. However, magistrates are appointed from the Legal Department in Cameroon, which comprises both prosecutors and magistrates, who may be posted to a position as either a prosecutor or a judge by the Ministry of Justice at any stage in their career. Furthermore, there is no obvious career progression or security of position in that a person appointed as a judge to the Court of Appeal could be posted as a prosecutor or to a lower court at any time. This raises concerns about the ability of judges to make impartial decisions in particularly sensitive cases, given that the Ministry of Justice could remove them from their position on the court and place them elsewhere if the decision reached by the court is unwelcome.

However, there were no particular concerns raised by defence lawyers about the partiality of this constituted court or no specific allegations that demonstrated partiality in the proceedings.

The jurisdictional authority of the court

Section 1 of the Law on the Suppression of Terrorism confers jurisdiction to the military tribunal of offences tried under that law. Section 3 of Law No. 2008/015 of 29th December 2008 to Organise Military Justice and Lay Down Rules of Procedure Applicable Before Military Tribunals provides that the Yaounde Military Tribunal may in the event of exceptional circumstances such as those specified in Article 9 of the Constitution exercise its powers throughout the national territory. Article 9 of the Constitution enables the President to declare by decree a state of emergency or state of siege where the nation's territorial integrity is under serious threat. The State Prosecutor and the Court rely on these provisions to explain why the trial is taking place in a military court in Yaounde and not a civilian court in either Buea or Bamenda.

This is problematic under national law for two reasons. Firstly, only count 1 on the indictment relates to an offence contrary to the Law on the Suppression of Terrorism. All other offences are contrary to the Penal Code or other legislation, which does not appear to allow for a military tribunal to hear the charges. Secondly, no state of emergency or state of siege has been declared to justify the transfer of the proceedings from where the alleged offences were committed to Yaounde a distance of over 300 km away.

It would seem, therefore, that under national law, the jurisdiction of the court to hear the charges is lacking.

Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa 2003, Principle A4(e)

Military or other special tribunals that do not use the duly established procedure of the legal process shall not be created to displace the jurisdiction belonging to the ordinary judicial bodies

L(c) Military courts should not in any circumstances whatsoever have jurisdiction over civilians.

Although the ICCPR and African Charter are silent on the use of military tribunals, the African Commission has in relation to a complaint against Cameroon for a previous removal of accused persons from the North West region to be tried in the Yaounde Military Tribunal stated that "[m]ilitary tribunals are not intended to try civilians. They are established to try military personnel under laws and regulations which govern the military."[32] In *Mgwanga Gunme et al/Cameroon* the Commission found a violation of Article 7 of the Charter in that, as in this case, the accused persons were not military personnel. "The offences alleged to have been

[32] *Mgwanga Gunme et al / Cameroon, supra,* at [127]

committed were quite capable of being tried by normal courts, within the jurisdictional areas the offences were allegedly committed."[33]

In my view, the right to a competent tribunal has been breached by the fact of the trial taking place before the Military Court in Yaounde.

Observance of the principle of the presumption of innocence

Article 14(2) ICCPR

Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

Article 7(1)(b) of the African Charter and the preamble to the Constitution protect the presumption of innocence.

I found no evidence that the presumption of innocence has been violated so far during this case.

Observance of the principle of legality in relation to the offences

Article 15(1) ICCPR

No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed.

The principle of legality is also protected by Article 7(2) of the African Charter and the preamble to the Constitution. It requires that in order to constitute an offence, the specific behaviour to be punished must be strictly classified and defined in law in a way that is clear, precise and unambiguous.[34] In particular in relation to terrorism offences, the UN Special Rapporteur has observed that it is essential for terrorism offences to be confined to conduct that is genuinely terrorist in nature. Terrorism offences should also plainly set out what elements of the crime make it a terrorist crime. Similarly, where any offences are linked to "terrorist acts", there must be a clear definition of what constitutes such acts.[35]

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[33] *Ibid,* at [128]

[34] Human Rights Committee, *General Comment 29, States of Emergency (article 4)*, UN Doc. CCPR/C/21/Rev.1/Add.11 (2001), para 7.

[35] Special Rapporteur on human rights and counter-terrorism: UN Doc. E/CN.4/2006/98 (2005), para 46.

The offences with which the accused have been charged in this case are very broadly defined, such that any act of criticism of the State could fall within them. This lack of specificity risks the offences being utilised against persons seeking to exercise their rights to freedom of expression, speech and assembly, also guaranteed in the Constitution.

For the reasons set out below, and since the trial was adjourned, it is not possible to say at this stage whether the charges have been properly brought in this case, or have been used to prevent the exercise of the accused persons' rights.

The conduct of the prosecuting body

UN Guidelines on the Role of Prosecutors, Guideline 12

Prosecutors shall, in accordance with the law, perform their duties fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights, thus contributing to ensuring due process and the smooth functioning of the criminal justice system.

The UN Guidelines on the Role of Prosecutors,[36] which are replicated at Principle F of the Principles and Guidelines on the Right to a Fair Trial in Africa[37], set out in detail how prosecutors should be organised to enable them to perform their functions in accordance with the rule of law.

Although it is concerning that the State Prosecutor is attached to the Military Tribunal, it is not possible to say whether the prosecutors, as a result of being military personnel are failing to undertake their role sufficiently independently and fairly. I also understand that some of the prosecution team are seconded civilian prosecutors. Since the State Prosecutor declined the request to speak with me, because permission was required from the Ministry of Justice and/or Defence to do so, I could not ascertain the precise qualifications and role of prosecutors in the Tribunal.

However, it is of concern that, as set out in more detail below, the charges are imprecisely particularised; the military jurisdiction was sought for a large range of offences; direct order for pre-trial detention was sought; and access to the case file has been withheld. These failures in procedure indicate that the prosecution has not, so far, been performing its duties fairly and in accordance with the law.

[36] Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

[37] Adopted by the African Commission on Human and Peoples' Rights.

Observance of the rights and judicial guarantees to which the defendant was entitled

i. Notification of the charges

Article 14(3) ICCPR

In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him

Principle N(1) of the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa preserves this right. It sets out that the information shall include details of the charge or applicable law and the alleged facts on which the charge is based sufficient to indicate the substance of the complaint against the accused.

Section 122 of the Criminal Procedure Code provides that the suspect has a right to be notified of the allegations against them immediately upon arrest.

So far in this case, the only document relating to the charges is the indictment against the three originally charged accused. As set out above this is an imprecise list of broadly defined acts, not directly attributed to a criminal offence defined in law (though I have attempted to ascertain which offences these acts might be contrary to) without any actions, locations or timings specified to identify the acts that might constitute an offence. The indictment is also in French, contrary to the right to be informed in a language that the accused understands. The charges against the additional 25 accused are not known.

Without this information at any early stage of the case, it was impossible to effectively challenge detention or make representations concerning the allegations being brought. Although I understand from his defence team that police questioning of Felix Agbor concerned the 13th January press release, it is not clear how this specifically connects to the many charges proffered or the third to 28th accused persons.

Accordingly, and for those reasons, it is my view that the right to be notified of the charges has been violated.

ii. Adequate time and facilities to prepare a defence

Article 14(3)(b) ICCPR

To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing

Principle N(3)(e) of the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa provides further:

> *iii. The accused or the accused's defence counsel has a right to all relevant information held by the prosecution that could help the accused exonerate him or herself.*
>
> *iv. It is the duty of the competent authorities to ensure lawyers access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients. Such access should be provided at the earliest appropriate time.*[38]

"Adequate facilities" must include access to documents and other evidence held by the prosecution. "Access" must include to all materials that the prosecution plans to offer in court against the accused or that are exculpatory. Exculpatory material includes not only material establishing innocence but any other evidence that could assist the defence,[39] for example by undermining witness evidence.

Sections 167, 168, 179 and 172 of the Criminal Procedure Code set out the rights of the defence during the preliminary enquiries of the examining magistrate. In particular, section 172 specifies that access to the case file must be provided 24 hours prior to each interrogation or confrontation that takes place.

Since the Law on Suppression of Terrorism applies in this case, the preliminary investigation procedure did not take place and the case was sent straight to the Military Tribunal for trial pursuant to section 12. As a consequence, the usual opportunities for gaining a detailed understanding of the nature of the charges and to make representations concerning the progression of the case were not available, because of the application of the terrorism law.

However, section 413, which applies at the trial stage, provides that defence counsel may at any time obtain information from any document in the case file and that any document deposited in the case file must be brought to the attention of defence counsel, who may, if it is deemed necessary, request an adjournment to consider it.

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[38] This replicates Principle 21 of the Basic Principles on the Role of Lawyers, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

[39] HRC 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) at 33.

Although a preliminary enquiry did not take place, as far as I can discern from the legislation I have had access to and from the assertions of the defence team, the Criminal Procedure Code in other respects applies to the proceedings in the Military Tribunal, and in particular, affords a right to consult the case file at any time. Yet, the defence team assert that on each occasion that they have requested to do so, this has been refused by the prosecution. Although a list of witnesses has been provided, it is not clear what evidence these witnesses intend to give in the case or in respect of which alleged offence. Not even a witness list has been provided in relation to the 25 other accused.

It is also of concern that the 25 other accused have raised allegations of torture during police custody and a lack of access to legal assistance while giving a statement to the police. It is not known what statements were made by them at that stage, though members of the defence team assert that they were tired, confused, taken to the French jurisdiction and ill treated. It may be that certain recorded admissions, once disclosed, are rejected by the accused and in due course that the Tribunal will have to consider whether these statements were lawfully taken in accordance with the UN Convention Against Torture.

The right to adequate time to prepare the defence ensures the equality of arms between the parties and the opportunity to effectively counter the allegations being made. It cannot be possible to put forward an effective defence without having seen any of the prosecution evidence ahead of trial.

Accordingly, and for the reasons set out, I consider that the right to adequate time and facilities to prepare the defence has been violated.

iii. To be tried without undue delay

Article 14(3)(c) ICCPR

To be tried without undue delay

Article 7(1)(d) of the African Charter also protects the right to be tried within a reasonable time.

Factors relevant to what constitutes undue delay include the complexity of the case, the conduct of the parties, the conduct of other relevant authorities, whether an accused is detained pending proceedings, and the interest of the person at stake in the proceedings. [40]

The three original accused were arrested in January and have had three procedural hearings in the case. The other accused were arrested around this time, though I am not aware of the precise dates of their arrests. Given the number of accused persons and

40 Section N5(c) of the Principles on Fair Trial in Africa.

charges that are faced at least by the three original accused, it is clear that this case will take some time to try. At this stage, an unreasonable period of time has not passed in the trial.

However, it is concerning that the Tribunal has, without reasons, decided to join these cases together given the length of time it is likely the case will take with 28 accused and multiple charges. Furthermore, progress has not so far been made at the hearings that have taken place and each hearing is adjourned for a month. The Tribunal could have sat longer in this hearing since the witnesses were present in order to progress the case, rather than adjourn for another month before any witness testimony was heard.

That being said, this case does have to be balanced against the volume of cases being heard by the Tribunal. The President of the Tribunal explained, when I and the other trial observers spoke with her, that the court has a significant number of cases of this nature to try, all of which must be progressed. After this case was adjourned, another related trial did sit until 10pm at which the witness evidence was heard.

The length of the proceedings as the trial progresses will need to be kept under review, with fewer and shorter adjournments in order to hear the witness testimony as soon as possible.

iv. To defend himself in person or through legal assistance

Article 14(3)(d) ICCPR

To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing

Article 7(1)(c) of the African Charter also protects this right.

Defence lawyers must act freely and diligently in accordance with the law and recognised standards and ethics of the legal profession. They must advise their clients of their legal rights and obligations, and inform them about the legal system. They must aid their clients in every appropriate way, taking such action as is necessary to protect their clients' rights and interests, and assist their clients before the courts. In protecting the rights of their clients and in promoting justice, lawyers must seek to uphold human rights recognised by national and international law.[41]

All 28 accused persons were present in court and have been brought on each occasion. They are assigned *pro bono* counsel as a result of the organisation of the defence team for

[41] Principles 6, 13 and 14 of the Basic Principles on the Role of Lawyers, Principle 12 of the Principles on Legal Aid, Section I(i) of the Principles on Fair Trial in Africa.

Fontem Neba and Felix Agbor, which numbers 15 counsel on record and a larger group of approximately 100 lawyers. Although I was informed that lawyers must seek permission from the State Prosecutor to visit their clients in prison in this case where usually this is not required, this permission has not been refused. No complaints were made to me that lawyers could not meet with their clients confidentially. A number of lawyers expressed concern that their telephones were tapped and their offices had been searched, and generally that they felt concern for their own safety in defending the case. However, this did not extend to concerns that communications with their clients were being monitored, or had not resulted in any impact upon the proceedings so far.

It is commendable to see such willing support from the Anglophone and Francophone Bars in this case, particularly as they are acting *pro bono* and in light of the expression of concern for their own safety. However, given the number of lawyers involved and the number of accused persons, and given that the notification of charges and access to the case file is either limited or non-existent, it is not clear to me how the defence of all the accused is to be organised in an effective way. The defence team indicated that each accused is assigned a particular lawyer. However, they each seemed to speak on a collective basis about the case and in court, each made submissions without assigning these to a particular accused person. It is crucial that defence counsel acts on the instructions of their particular client and ensures that the accused can meaningfully participate in their defence.

Although criticism of the lack of disclosure has been made by defence counsel in court, no application to the President of the Tribunal to order gain access to the case file has been made. It would seem that this is an essential step in the trial in order to properly defend the case. However, such an application has to be balanced against causing further delay to the proceedings. Having observed the applications for adjournment for the civil parties and for release from detention take all of the court day, with a reserved judgment adjourned for another month, it is clear that taking this kind of decision is not straight forward.

Since all accused have been held in detention for a considerable period of time and the previous hearings have not progressed the trial with any expedition, in my view it would have been appropriate to organise submissions more succinctly during the 24th April hearing in order to progress onto witness evidence and see what it might reveal about the allegations in the case. I found it a cause for concern that so many counsel chose to make lengthy submissions on the civil party matter and on the application for release from detention when the point had been put clearly and persuasively already by senior counsel. I did not consider this to be in the best interests of their clients.

These concerns were compounded by the fact that, as set out below, almost the entire proceedings took place in French. The making of submissions in court in French when the accused cannot understand does not assist the participation of the accused in his own defence.

Likewise, although an application was made after three hours of court time for some of the accused to sit down, this should have been done much earlier.

Of course, the Tribunal could have better controlled the submissions of defence and prosecution counsel and of its own motion allowed the defendants to sit. The President of the Tribunal explained when I asked her that she was concerned to ensure all lawyers felt that they had had an opportunity to put their case forward and curbing their submissions might be seen as partial or lacking propriety. This is commendable. However, in order for the case to proceed at a reasonable pace, in the interests of ensuring a verdict within a reasonable time for the accused, some organisation of the allocated time could be necessary.

While the right to an effective defence has not been violated in this case, I do consider that better organisation of the defence case and focus on the best interests of each client through the division of labour would serve the accused's participation in the case more effectively.

v. Interpretation and translation

Article 14(3)(f) ICCPR

To have the free assistance of an interpreter if he cannot understand or speak the language used in court

> *"[I]t is a prerequisite of the right to a fair trial, for a person to be tried in a language he understands, otherwise the right to defence is clearly hampered. A person put in such a situation cannot adequately prepare his defence, since he would not understand what he is being accused of, nor would he apprehend the legal arguments mounted against him."*[42]

The interpretation or translation provided shall be adequate to permit the accused to understand the proceedings and for the judicial body to understand the testimony of the accused or defence witnesses.[43]

Sections 354 and 355 provide for interpretation in court, to be appointed by the Presiding Magistrate and where an interpreter does not give a true and faithful interpretation, either the parties to the proceedings or the court of its own motion may replace the interpreter.

The President of the Tribunal, when I had the opportunity to speak with her, said that the interpreter in this case was appointed at the request of the accused rather than the Tribunal, although it can be the case that the Tribunal also needs one. Cases are often heard

42 Mgwanga Gunme et al / Cameroon, at [129].

43 N4(e) of the Principles on Fair Trial in Africa.

with an interpreter because of the many indigenous languages spoken in Cameroon, and in particular the Boko Haram cases before the Military Tribunal.

In *Mgwanga Gunme* the African Commission recognised that Cameroon is a bilingual country. Its institutions including the judiciary can use either French or English:

"However, since not all the citizens are fluent in both languages, it is the State's duty to make sure that, when a trial is conducted in a language that the accused does not speak, he/she is provided with the assistance of an interpreter. Failing to do that amounts to a violation of the right to a fair trial."[44]

In this case, an interpreter was present, but having interpreted the first few announcements of the President, did nothing further until the application for release from detention made in English by Karim Khan QC, which she interpreted into French for the benefit of the Tribunal bench. Despite the suggestion that interpreters were regularly used, it seemed few of the court professionals were used to using an interpreter effectively. None, other than Karim Khan QC, broke down their submissions and waited for the interpretation to be given, which made it hard for the interpreter to know when to intervene. Initially she stood, waiting to provide interpretation but when no opportunity came to do so, she sat down and did nothing.

Although I understand that Felix Agbor understands some French, I was informed by the defence team that the accused do not speak French. It was clear from observing the accused standing in the dock that they did not understand what was happening. There was a marked contrast in their concentration on the proceedings between the submissions being made in French, where they were restless and uncomfortable standing in the heat of the room, and those in English, where they were attentive and interested. Although Cameroon is a bi-lingual country, as the report of the Special Rapporteur on Minorities found,[45] most people speak French. I observed from my time in Yaounde that few people could speak much, if any, English. This was true not only of the public generally that I came across, but all officials spoke in French and could not switch to English when requested to do so.

It was also clear that the interpreter struggled to understand the legal language in English being used during the bail application and interpreted this with difficulty, regularly requiring each submission to be repeated.

An interpreter who is unable to interpret provides no assistance to the accused. The trial was of Anglophone people. It should have been held in English rather than French. To have no interpretation into English was a clear violation of the rights of the accused to understand the case against them.

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[44] *Ibid* at [130].

[45] *Supra.*

Principle N4(d) of the Principles on Fair Trial in Africa provides that the right extends to translation or interpretation of all documents or statements necessary for the defendant to understand the proceedings or assist in the preparation of a defence. The indictment against the three original accused is in French, which is also in violation of the rights of the accused to understand the case against them. Since there has been no access to the case file afforded, no other documents have yet been translated. The documents and statements being relied on by the prosecution must also be translated for the accused to understand them.

Right to liberty

Article 9(4) ICCPR

Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

While not expressly set out in the African Charter, the jurisprudence of the African Commission indicates that this right is inherent in Article 7(1) of the African Charter.[46]

The Principles on Fair Trial in Africa provide for a person to be brought before a judicial officer for trial within a reasonable time or release.[47] The purpose of the review before a judicial or other authority includes to:

i. assess whether sufficient legal reason exists for the arrest;
ii. assess whether detention before trial is necessary;
iii. determine whether the detainee should be released from custody, and the conditions, if any, for such release;
iv. safeguard the well-being of the detainee;
v. prevent violations of the detainee's fundamental rights;
vi. give the detainee the opportunity to challenge the lawfulness of his or her detention and to secure release if the arrest or detention violates his or her rights.

Unless there is sufficient evidence that deems it necessary to prevent a person arrested on a criminal charge from fleeing, interfering with witnesses or posing a clear and serious risk

[46] *Constitutional Rights Project v Nigeria* (153/96), African Commission, 13th Annual Report (1999) at [17]. It is set out expressly in Principle M4 of the Principles on Fair Trial in Africa.

[47] Principle M3(a) of the Principles on Fair Trial in Africa.

to others, States must ensure that they are not kept in custody pending their trial. However, release may be subject to certain conditions or guarantees, including the payment of bail. [48]

In this case, the accused have been in detention since January or even earlier. An order for pre-trial detention was requested in the order for direct proceedings from the State Prosecutor on 20th January 2017 in relation to the three original accused that has clearly been granted. However, there are no reasons upon which it is based. On the previous hearing on 23rd March, the defence submitted an application for bail for the three original accused prior to the joining of the indictment. That was not considered. At the hearing on 27th April, this application had not been seen in the court file and was renewed orally before the Tribunal. The Tribunal then adjourned until 24th May for a decision on the application and for the trial to proceed. No grounds for seeking bail were set out at the hearing by the prosecution, nor does it appear that these were set out at any prior hearing where the accused and their defence team were present.

The procedure for consideration of bail should be fair, adversarial and apply the principle of equality of arms.[49] The original decision to remand in custody was not made in accordance with this principle. The Tribunal heard the application for release in open court on 27th April, but did not request that the prosecution put forward its reasons for seeking detention. The submissions for release stated that no grounds for detention had been put forward. As such, defence counsel had to anticipate all the likely reasons there might be, extending the length of submissions and court time required to deal with this issue rather than progress the trial.

The speediness of the review of the detention is determined in the circumstances of each case.[50] It appears that no lawful review of detention took place until the Tribunal heard the application for release on the 27th April, some three months after the arrest of the three original accused. This is already an unacceptable delay. An administrative error resulting in the loss of the application does not excuse this as a review of detention could have been made on any of the occasions that the accused appeared before the Tribunal. However, in my view, to adjourn the proceedings for another month until 24th May, prior to making a decision, resulting in a full further month of detention compounds the violation of the right to a decision without unreasonable delay. The decision could have been made on the 27th April. An application for release should not surprise either the Prosecution or the Tribunal, which should already have known their reasons for detaining at the initial stage of the case in January.

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[48] Principle M1(e) of the Principles on Fair Trial in Africa.

[49] *A and Others v United Kingdom* (App no. 3455/05), European Court of Human Rights, Grand Chamber (2009) at [202-224]; *Rafael Ferrer-Mazorra et al v United States* (App no. 9903) Inter-American Commission, Report 51/01 (2001) at [213].

[50] See for example *Ameziane v United States* (P-900-08), Inter- American Commission Admissibility Decision (2012) at [39].

Conditions

I was denied entry to see the accused in the Central Prison in Yaounde as I had not submitted the correct application for international persons to visit, a procedure which was unknown to me. While I made efforts to seek permission from the Ministry of Justice and Ministry of Defence, each organ of Government required that I see the other for approval. As such, I was not able to review the conditions of detention in which the accused were held. I did understand that Felix Agbor was moved to a cell on his own which is considered more comfortable by his defence team and enables him to prepare better for the trial. There were initial concerns that the cell in which he was kept was too small for all detainees to put mattresses on the floor to sleep, and this was affecting his rest. UNCAT in 2010 made these observations concerning detention conditions in Cameroon:

> *The Committee has received reports of prison overcrowding; violence among prisoners; corruption (such as the renting of prison cells and sale of medical equipment); the lack of hygiene and adequate food; health risks and inadequate health care; the violation of the right to receive visits; and reports that some persons awaiting trial have been held in prison for a period longer than the sentence they face.*[51]

UNCAT also observed with concern the low number of prison visits by the National Commission on Human Rights and Freedom and the reported difficulties for accredited NGOs to gain access in order to carry out visits.[52]

While improvements may have been made to the prison conditions since the UNCAT report (and I am not in a position to comment on the conditions), I consider it imperative that an independent visit to the accused in prison be carried out as soon as possible to verify that their conditions are acceptable.

Moreover, the impact of the detention in a French speaking prison, far away from the accused's families can only add discomfort to their conditions during detention.

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[51] UN Doc CAT/C/CMR/CO/4, Concluding observations of the Committee against Torture on Cameroon, 19 May 2010, at [15].

[52] *Ibid* at [26].

Conclusions

Although the case against the 28 accused was listed for trial on 27th April, in the end no evidence was heard as the court time was taken in applications. This trial observation has therefore only been able to comment on the pre-trial procedures undertaken. Notwithstanding, BHRC considers that there have been a number of procedural violations during the pre-trial stages:

The jurisdictional authority of the court

The very use of the military tribunal in Yaounde to hear the case is a violation of the right to an independent and impartial tribunal, irrespective of the procedure then followed in the course of the proceedings. The majority of the charges that the three original accused face do not appear to warrant trial in the military tribunal even under domestic law.

Observance of the principle of legality in relation to the offences

The offences are broadly defined and imprecise. It is unclear what specific acts of the accused are considered to constitute criminal offences.

Observance of the rights and judicial guarantees to which the defendant was entitled

The accused have not been made aware of the nature of the allegations against them, nor have they been given access to the case file in clear violation of the right to prepare their defence. Some of the 25 additional accused allege ill treatment during police custody and lack of access to legal assistance when making their statements to the police, risking wrongful confessions.

The proceedings are being conducted in French with no effective interpretation, nor translation of relevant documents. The majority of the accused do not speak French and are not able to understand the proceedings against them.

Right to liberty

The accused have been remanded in custody since January with the first effective application for release only taking place at the 27th April hearing, which was then adjourned for a further month prior to a decision being given. This has not provided a decision on the lawfulness of the detention within a reasonable period of time and has infringed the right to liberty.

It is possible for these procedural errors to be addressed as the case progresses and we make recommendations below for their rectification.

However, one fundamental detail continues to raise doubts over the legitimacy of the trial. Since we have not heard or seen any evidence to explain what the specific allegations are in this case, the circumstances leading to the arrest of Felix Agbor and Fontem Neba on the 17th January 2017 and subsequently Mancho Bibixy do suggest that this trial is connected with their exercise of the rights to freedom of expression and assembly guaranteed by multiple international human rights instruments, the Constitution of Cameroon and particular domestic laws. The multiple counts on the indictment with which the accused have been charged are more appropriate for a terrorist incident involving a clear attempt to disrupt the stability of the state and cause loss of life or threat of harm to the public than the exercise of peaceful protest and criticism of Goverment. As the National Commission on Human Rights and Freedoms recommended in reviewing the Anglophone crisis, the Government must distinguish between genuine threats to the safety of the nation and its people through terrorism and the requests of professional and official bodies for resolution of problems.

The Government has since recognised the issue raised by the Anglophone lawyers in the North West and South West regions and is taking steps to address the situation by commencing programs of training for English speaking, common law judges and an increase in interpreters in the interim period.

If no further evidence than the background set out above is presented at the trial to link the accused with specific criminal acts, it would appear that their actions have been nothing more than the promotion of the historical and established administration of justice. At this stage it is premature to draw a conclusion in this regard.

Recommendations

In order to ensure that a fair trial is possible in this case, there are a number of specific procedural flaws that BHRC considers must be rectified immediately:

1. The proceedings should be transferred to an ordinary criminal court situated in the North West or South West regions. Since no evidence has yet been heard in the case, it is not necessary for this particularly constituted bench to sit in the proceedings. Indeed, civilian magistrates should be appointed to the case. There is no continuing disruption in the regions that would justify the trial taking place in Yaounde;

2. Full access to the case file must be afforded to the assigned defence counsel for all 28 accused;

3. Clear and specific charges detailing the acts alleged to have been committed that constitute criminal offences must be set out in writing for each of the accused persons;

4. Following (1) above, the trial now should be conducted in English, with French interpretation if necessary for the court professionals. At a minimum, proper and effective interpretation should be provided throughout the proceedings of everything said in French, with natural breaks in the statements to enable interpretation to be adequately provided. The key documents in the trial, such as the indictment and the witness statements relied on by the prosecution, if not already in English, should be translated;

5. The defence team must focus its efforts to ensure the best interests of the 28 clients are prioritised and to organise the case preparation so as to give effect to the rights of the accused to properly participate in the trial and prepare their defence. As a priority, the defence team must make every effort to gain access to the case file in order to prepare the defence, and to ensure the proceedings are conducted in or interpreted into English. It is likely that in order to ensure that the case is heard within a reasonable time, lead counsel will need to be appointed for distinct aspects of the case. However, without knowing the case against the accused, the defence team is wholly hampered in its efforts to efficiently prepare its defence.

6. The Tribunal must give its fully reasoned decision on the application made for release from pre-trial detention as soon as possible, and in any event at the next hearing of the case.

More broadly, we take this opportunity to call upon the State Prosecutor to review the evidence and the charges in this case, and to independently consider whether the conduct intended by the National Assembly to constitute the criminal offences charged has reached the threshold for prosecution in this case in respect of all 28 accused persons. Given the background to the case, it appears at least possible that the right to freedom of expression, and assembly has been mistaken for terrorist activities. The rights to free speech and assembly are important and necessary in a democratic society.

We also take this opportunity to call on the Government of Cameroon to review the Law on the Suppression of Terrorism and the Criminal Procedure Code to propose amendments to the National Assembly that would better define the conduct which is intended to form a criminal offence. In this way, it would be clearer to members of the public what conduct will result in the commission of a criminal act, and to the police and to prosecutors whether an offence has been made out.

This case falls against a backdrop of civil unrest in the Anglophone regions due to a lack of English speaking professionals in local administration, a lack of investment in the preservation of the Anglophone system, which the Government has since committed to rectifying, and a disproportionate response of law enforcement to public protest.

We welcome the Government's efforts to resolve the concerns raised by lawyers and recommend that steps be taken as soon as possible to ensure provision of English speaking, common law magistrates and court personnel in the Anglophone regions.

We also call on the Government to ensure that the actions of law enforcement officers in response to the public protests during November and December are fully investigated and perpetrators of criminal acts are disciplined and tried through the criminal courts where appropriate.

23 May 2017