

OPINION No. 22/2006 (CAMEROON)

Communication: addressed to the Government on 23 January 2006.

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

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

1. (Same text as paragraph 1 of Opinion No. 38/2005.)
2. The Working Group conveys its appreciation to the Government for having provided the requested information in good time.
3. (Same text as paragraph 3 of Opinion No. 38/2005.)
4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The Working Group transmitted the reply provided by the Government to the source, which made comments on it. The Working Group believes that it is in a position to render an Opinion on the facts and circumstances of the cases, in the context of the allegations made, the response of the Government thereto and the comments of the source.
5. The communication concerns the following 11 persons:
 - (a) Mr. François Ayissi, born in 1976, of Cameroonian nationality, hotelier;
 - (b) Mr. Emeran Eric Zanga, born in 1986, of Cameroonian nationality, hotelier;
 - (c) Mr. Didier Ndebi, born in 1986, of Cameroonian nationality, student;
 - (d) Mr. Pascal Atangana Obama, born in 1956, of Cameroonian nationality, fashion designer;
 - (e) Mr. Alim Mongoche, born in 1976, of Cameroonian nationality, fashion designer;
 - (f) Mr. Marc Lambert Lamba, born in 1974, of Cameroonian nationality, computer specialist;
 - (g) Mr. Christian Angoula, born in 1988, of Cameroonian nationality, dancer;
 - (h) Mr. Blaise Yankeu Yankam Tchatchoua, born in 1980, of Cameroonian nationality, student;
 - (i) Mr. Stéphane Serge Noubaga, born in 1983, of Cameroonian nationality, hotelier;
 - (j) Mr. Balla Adamou Yerima, of Cameroonian nationality, fashion designer;
 - (k) Mr. Raymond Mbassi Tsimi, born in 1970, of Cameroonian nationality.

6. According to the source, officers from the Nlongka gendarmerie squad, acting without a warrant, arrested the above-mentioned 11 persons in the Elise Night Club in Yaoundé on 1 June 2005. The arrestees were taken to the Nlongka gendarmerie station, where they were held until 13 June 2005, on which date they were transferred to the Kondegui central prison in Yaoundé, where they are still detained.

7. The source states that the above-mentioned 11 persons were arrested with six other persons (17 in all) in a bar known to be frequented by homosexuals. The arrests were widely covered in the press and by local television channels, which showed pictures of them. The source adds that some of the arrestees have been released, but that the above-mentioned 11 of them are still in detention.

8. These 11 persons have been charged under article 347 (bis) of Order No. 72-16 of the Cameroonian Criminal Code of 28 September 1972, which provides for a penalty of 6 months' to 5 years' imprisonment and a fine of 20,000 to 200,000 CFA francs for anyone guilty of having sexual relations with a person of the same sex. In September 2005, their lawyer obtained the transfer to the juvenile offenders' section of the only minor in the group; he (aged 17) had previously been held with the other adult detainees. In October 2005 the lawyer applied for the pretrial release of all 11 accused, but the application was denied.

9. The trial was scheduled to begin on 17 March 2006. A few days after it started, Mr. Emeran Eric Zanga and Mr. Didier Ndebi were released, apparently for lack of evidence. The source states that when the trial began the prosecution was badly prepared and did not present any witnesses. Instead of dismissing the proceedings, the judge scheduled a further hearing for 21 April 2006.

10. At that hearing, the prosecution presented neither witnesses nor other evidence to support its case against the nine remaining defendants. The judge therefore found them not guilty of the offence with which they had been charged.

11. However, instead of being released, they were returned to and again detained in the detention centre. The Office of the Public Prosecutor refused to order their release and said that they had to be retried. On 10 May 2006 the source informed the Working Group's secretariat that Mr. Ndebi and Mr. Zanga were no longer in detention.

12. The source later reported that all the remaining detainees were released on 26 June 2006. Seven of them had been convicted, but they were released because the time they had spent in detention exceeded the term of imprisonment to which they were sentenced.

13. The source stated that Mr. Alim Mongoche died in hospital a week after leaving prison and that his death was directly attributable to the dreadful conditions in which he had been detained for over a year.

14. In its response, the Government stated that the 11 persons had been placed in preventive detention for the purposes of proceedings against them by the Court of First Instance of

Yaoundé-Centre Administratif. The detention had been founded on a gendarmerie investigation that had brought to light substantial evidence against them. Homosexuality is an offence under article 347 bis of the Cameroonian Criminal Code.

15. On 21 April 2006, all the accused were brought before the competent court, which found, in the light of the relevant legislation, that the case had been improperly referred to it. In the Government's view, the basis for the court's finding was Law No. 90/45 of 19 December 1990, which provides that persons accused of certain offences, including the offence to which article 347 bis of the Criminal Code relates, must be brought directly before the competent court. In consequence of the finding, all the accused were returned to custody under a committal order on 24 April 2006 and, on 8 May 2006, brought before the court, which then proceeded on the basis of the prosecution service's record of questioning on arrest *flagrante delicto*.

16. The Government asserts that the criminalization of homosexuality is contrary neither to article 12 of the Universal Declaration of Human Rights nor to article 26 of the International Covenant on Civil and Political Rights, since the persons in question are not denied a right or service on the ground of their presumed sexual orientation. What is involved is prosecution for practices contrary to law and to the moral standards of Cameroonian society.

17. The Government also states that, even should criminalization not be consistent with article 26 of the International Covenant, justification for it can be found in article 29, paragraph 2, of the Universal Declaration of Human Rights, which provides that a State may limit a right or freedom "for the purposes of securing due recognition for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society".

18. In its comments on the Government's response, the source invokes the leading opinions expressed by the Working Group in earlier cases, in particular the determination that the references to "sex" in the first paragraph of article 2 of the Universal Declaration of Human Rights and in article 2, paragraph 1, and article 26 of the International Covenant on Civil and Political Rights can be considered as including "sexual orientation". It also refers to the views of the Human Rights Committee, particularly those concerning the case of *Nicholas Toonen v. Australia* (CCPR/C/50/D/488/1992), in which the Committee held that the criminalization of homosexual practices was incompatible with article 17 of the International Covenant. The source adds that the Government's contention that issues of morality are solely within the jurisdiction of States themselves is unacceptable: to agree to it would be to open the door to the removal from international control of a potentially considerable number of domestic laws that could give rise to interference in people's private lives. The source reasserts that the deprivation of liberty of the above-mentioned 11 persons was, for all those reasons, arbitrary.

19. Ever since the Human Rights Committee adopted its View in *Toonen v. Australia* and it itself adopted its Opinion 7/2002 (Egypt), the Working Group has followed the line taken in those cases. That means that the existence of laws criminalizing homosexual behaviour between consenting adults in private and the application of criminal penalties against persons accused of such behaviour violate the rights to privacy and freedom from discrimination set forth in the

International Covenant on Civil and Political Rights. Consequently, the Working Group considers that the fact that the criminalization of homosexuality in Cameroonian law is incompatible with articles 17 and 26 of the International Covenant on Civil and Political Rights, which instrument Cameroon has ratified.

20. The Working Group concludes that the deprivation of liberty of the above-mentioned 11 persons was arbitrary, and that regardless of the fact that they were ultimately released.

21. In accordance with paragraph 17 (a) of its methods of work, the Working Group considers that the case in question warrants the rendering of an Opinion even though the persons concerned were released. The reasons for this position are the Group's wish to restate its jurisprudence on a matter of importance and the fact that one of the accused in the case died, apparently as a result of the conditions of his arbitrary detention.

22. In the light of the foregoing, the Working Group renders the following Opinion:

The deprivation of liberty of Messrs. François Ayissi, Pascal Atangana Obama, Alim Mongoche, Marc Lambert Lamba, Christian Angoula, Blaise Yankeu Yankam Tchatchoua, Stéphane Serge Noubaga, Balla Adamou Yerima and Raymond Mbassi was arbitrary, as contravening the provisions of articles 17 and 26 of the International Covenant on Civil and Political Rights and falling under category II of the categories applicable to the consideration of cases submitted to the Working Group.

23. The Working Group, having rendered this Opinion, requests the Government to take the necessary steps to remedy the situation by considering the possibility of amending domestic law to bring it into line with the Universal Declaration of Human Rights and the other relevant international standards accepted by the State.

Adopted on 31 August 2006.