

THE PROTECTION OF HUMAN RIGHTS DEFENDERS IN CAMEROON: A LEGAL APPRAISAL

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ABSTRACT

Human rights defenders are individuals or organizations who work to promote and protect human rights and democracy using peaceful means. Although most work in some specific thematic areas, they promote and protect human and people's rights on basis of equality and non-discrimination and serve as watchdogs to government actions. Ironically, although, they work to protect the rights of others, they are most often abandoned and not protected by anybody, thus making them vulnerable to attacks, kidnaps, arbitrary arrest and detention and at time killed. The situation of human rights defenders in Cameroon is further exacerbated by the conflict or crisis in Northwest, South west and Far North regions of Cameroon. The situation becomes precarious on women human rights defenders and defenders working on LGBTQI rights. This article critically examines the effectiveness of the protection of human rights defenders in Cameroon given the slippery nature of the legal and political environment. The research relies on the appraisal of existing legal, institutional and political initiatives taken to protect human rights defenders as well as the shortcomings of the initiatives. Thus, reference is made to case law jurisprudence of Cameroonian courts, African commission and other relevant decisive human rights bodies on human rights defenders. This paper concludes that, although enactment of a specific law on the situation of human rights defenders in Cameroon does not guarantee effectiveness in the protection of defenders, it is however a necessary step towards protection and adherence to treaty obligations in promotion and protection of human rights generally and a measure of ensuring accountability and means of bring perpetrators to book. Thus, the papers opts for adoption of positive affirmative measures to create an enabling legal and political environment for human rights defenders as they remain a necessary evil to checking government action and policies.

Keywords: Protection, Human Rights, Defenders,

INTRODUCTION

Globally the champions of human rights have most often been citizens not government officials. In particular, Human Right Defenders (HDRs) working with Non-Governmental Organizations (NGOs) have played a cardinal role in focusing the international community on human rights issues. For example, NGO activities surrounding the 1995 United Nations Fourth World Conference on Women in Beijing, China, drew unprecedented attention to serious violations of the human rights of women. NGOs such as Amnesty International, the Anti-slavery Society, the International Commission of Jurists, the International Working Group on Indigenous Affairs, Human Rights Watch, Minnesota Advocates for Human Rights, and Survivors International, monitor the actions of governments and pressured them to act according to human rights principles.

Government officials who understand the human rights framework can also effect far reaching changes for freedom. Many United States Presidents such as Abraham Lincoln, Franklin Roosevelt, and Jimmy Carter had taken strong stands for human rights. In South Africa, leaders like Nelson Mandela and Vaclav Havel brought about great changes under the banner of human rights. These Presidents are regarded as prominent HRDs around the globe and serve as role models to emerging young HRDs in most States.ⁱ

Internationally, the number of legal instruments which contribute to the advancement of HRDs rights and their protection has increased enormously since the emergence of the United Nations Organization in 1945. These developments have been linked to the enormous expansion of Human Rights Law, at all levels, and fall under the umbrella principle of respect for human dignity and the prohibition of torture, cruel, inhuman or degrading treatment or punishmentⁱⁱ.

Beside the UN Declaration on the protection of HRDs, there is a general body of international human right treaties which protect HRDs. This spans from the international bill of rightsⁱⁱⁱ to other specific human rights instruments^{iv}. Against the backdrop of these instruments, member states of the United Nations pledged to promote respect for the human rights of all.

At the regional level, the African Charter on Human and Peoples Rights (ACHPR) 1986 has no provisions that specifically refer to human rights defenders. These rights are implied from reading the charter and interpreting the rights contained therein in relation to HRDs. For example, the right to dignity and the prohibition of torture, cruel, inhuman or degrading treatment or punishment, the right to have his cause heard, non-discrimination, equality before the law and freedom of conscience and religion also aptly apply to HRDs.

On similar basis, several resolutions have been adopted at the African regional level to ensure the protection of Human Rights Defenders. They include; the Great Bay Declaration in Mauritius, 1999; The Declaration of Principles on Freedom of Expression in Africa, Declaration and Plan of Action, 2002; The Kigali Declaration, 2003; The ACHPR Report on Female Human Rights Defenders, 2013 and Recommendations for their protection; Resolution 69 of the ACHPR on the Protection of Human Rights Defenders in Africa, 2004; Resolution 104 of the ACHPR on the Situation of Human Rights Defenders in Africa, 2007; Resolution 275 of the ACHPR on Protection from Violence and Other Human Rights Violations on the Basis of Their Identity or Real or Assumed Sexual Orientation, 2014; Resolution 336 of the ACHPR on Measures to Protect and Promote the Work of Female Human Rights Defenders in Africa, 2016; Resolution 362 of the ACHPR on the Right to Freedom of Information and Expression on the Internet in Africa, 2016 ; Resolution 376 of the ACHPR on the Situation of Human Rights Defenders in Africa, 2016; Resolution 381 of the ACHPR on the Appointment of a Special Rapporteur on Human Rights Defenders and Focal Point on reprisals in Africa, 2017; and Guidelines on Freedom of Association and Meeting, 2017. With all these resolutions, it is evident that Africa's concern for the protection and promotion of the works of human rights defenders is not an understatement.

Coming to the normative framework for the protection of human rights defenders in Cameroon, there are constitutional and legislative frameworks^v. In addition to these local statutes, Cameroon has ratified some UN human rights instruments patterning to HRDs and thus have made binding international commitments to adhere to the laid down principles in these documents. This is in conformity with article 45 of the 1996 Constitution of the Republic of Cameroon^{vi}, which is to the effect that duly approved or ratified treaties and international agreements shall, following their publication, override national laws, provided the other party implements the said treaty or agreement. The rights which HRDs enjoy are therefore contained

in the preamble of the 1996 constitution and the preamble has been given force through the provisions of article 65 of the same constitution that recognizes the preamble as part and parcel of the said constitution.

The need for the protection of HRDs is engineered by the fact that Cameroon human rights space has come under serious attack from diplomatic bodies and international human rights bodies. A context dominated by the restriction of the civic space, reprisals, threats, arbitrary arrests and detentions, kidnappings, forced disappearances, summary and extrajudicial executions, media lynching, online surveillance of human rights defenders. Human Rights Defenders therefore strive in an environment that is unfavorable to the exercise of their activities and to the protection of their security and that of the public in general. Yet, the UN Declaration on Human Rights Defenders states that the protection of Human Rights Defenders is the primary responsibility of the state.

WHO IS A HUMAN RIGHTS DEFENDER?

There is no specific definition of who is or can be a human rights defender. The Declaration on human rights defenders refers to “individuals, groups and association contributing to the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals”.

In accordance with this broad categorization, human rights defenders can be any person or group of persons working to promote human rights, ranging from intergovernmental organizations based in the world’s largest cities to individuals working within their local communities^{vii}. Defenders can be of any gender, of varying ages, from any part of the world and from all sorts of professional or other backgrounds. HRDs are not only found within NGOs and intergovernmental organizations but might also, in some instances, be government officials, civil servants or members of the private sector.^{viii}

“Human rights defender” is a term used to describe people who, individually or with others, take action to promote or protect human rights. They are identified by what they do, and the term can therefore best be explained by describing their actions and some of the contexts they work in. They can be journalists, environmentalists, whistle-blowers, trade unionists, lawyers,

teachers, housing campaigners, or just individuals acting alone. Human rights defenders' work is legal and legitimated by the civil society they represent.

THE NEED TO PROTECT HUMAN RIGHTS DEFENDERS IN CAMEROON

Not all human rights work places human rights defenders at risk. In some States and regions like South Africa, HRDs are generally well protected. However, the severity and scale of reprisals committed against defenders were one of the primary motivations behind the adoption of the Declaration on human rights defenders and the establishment of the mandate of the Special Representative of the Secretary-General on human rights defenders. The Special Representative has expressed concern for the situation of human rights defenders in all countries, including both emerging democracies and countries with long-established democratic institutions, practices and traditions. Nevertheless, special emphasis has been placed on countries where: internal armed conflict or severe civil unrest exists and the legal and institutional protections and guarantees of human rights are porous^{ix}.

Human Rights Defenders, in every region of the world, have been subject to violations of their rights. They have been the target of executions, torture, beatings, arbitrary arrest and detention, death threats, harassment and defamation, as well as restrictions on their freedoms of movement, expression, association and assembly as the case in Cameroon. Defenders have been the victims of false accusations and unfair trial and conviction. Violations are directed against HRDs themselves, the organizations and mechanisms through which they work, defenders' families, as a means of applying pressure to the defender. Some human rights defenders are at greater risk because of the nature of the rights they seek to protect as the case with LGBTQI defenders. Women Human Rights Defenders sometimes confront risks that are gender specific and require particular attention because of their vulnerability^x.

In most cases, acts committed against human rights defenders are in violation of both international and national law. In some countries, as the case in Cameroon, domestic legislation which itself contravenes international human rights law is used against defenders like the 2014 anti-terrorism law in its section 1(2).

A. Acts committed against Human Rights Defenders

While some acts may occur only once, they often continue to have an impact on defenders and their families for months or even years afterwards. Death threats, for example, can oblige human rights defenders to change their daily routines completely, as well as those of their immediate family, or even to leave their country to seek asylum abroad. Many human rights defenders have been the victims of killings as a direct response to their human rights work. They have been abducted by unidentified persons and sometimes by confirmed members of security forces and later been found dead or made to disappear completely. Assassination attempts have left defenders seriously injured and requiring hospitalization and surgery.^{xi}

Death threats are used widely as a means of threatening and intimidating human rights defenders into stopping their work. Threats are often anonymous, made by telephone or letter. In some instances, however, the threats are made by persons known to the defenders, but who are not investigated or charged by the police. The lack of effective police or judicial response to killings and death threats creates a climate of impunity that encourages and perpetuates these violations.^{xii} Human rights defenders are sometimes kidnapped, for short or long periods, and beaten during their captivity. Military personnel, police and security forces have resorted to severe beatings in attempts to torture defenders into making false confessions or in reprisal for a defender's denunciation of violations committed by security forces. Arbitrary arrest and detention of human rights defenders are common, and most often conducted without arrest warrants and in the absence of any official charge. Periods of preventive detention, without any judicial review, are sometimes very long and occur in very poor conditions of detention.

In some instances, human rights defenders are the object of criminal or other charges leading to prosecution and conviction^{xiii}. Peaceful demonstrations, lodging an official complaint against ill-treatment by police, participation in a meeting of indigenous rights activists or unfurling a banner commemorating victim of human rights violations have all led to prosecution on charges as varied as bribery, public disturbance and hooliganism. Harassment of human rights defenders is commonplace and often goes unreported. It is committed by authorities and can involve a wide variety of circumstances. Human rights defenders are kept under surveillance and have their telephone lines cut or tapped or bank accounts frozen^{xiv}. They have their travel and identity documents confiscated, preventing them from going abroad to address human rights forums. Defenders have suffered administrative harassment, for example being forced to pay heavy fines for trivial administrative transgressions or to report repeatedly

over extended periods to an administrative office for no clear reason. Judges have been removed from presiding over particular cases or have been suddenly transferred from one jurisdiction to another, requiring the whole family to move to another part of the country.^{xv}

Human rights defenders have been the victims of defamation campaigns, with slanderous allegations appearing in State-controlled media attacking their integrity and morals. Complaints have been fabricated to discredit independent non-governmental organizations and journalists exposing human rights abuses. Defenders and their work have been publicly misrepresented, being described as, among other things, terrorists, rebels, subversives or actors for opposition political parties. Policies, legislation and procedures described as “security” measures are sometimes applied in such a way as to restrict the work of human rights defenders and sometimes target the defenders themselves. Under the pretext of security reasons, HRDs have been banned from leaving their towns, and police and other members of security forces have summoned defenders to their offices, intimidated them and ordered the suspension of all their human rights activities.^{xvi} Defenders have been prosecuted and convicted under vague security legislation and condemned to harsh sentences of imprisonment^{xvii}.

The environment in which human rights defenders operate in Cameroon is shrinking daily. Efforts to register an organization with a human rights mandate are delayed by intentional bureaucracy or rejected. State authorities obstruct the holding of meetings between human rights defenders and prevent defenders from travelling to investigate human rights concerns. Some efforts to hinder the work of human rights defenders have focused on their place or means of work. The offices and homes of defenders are the subject of attacks, burglary and unauthorized searches. Their equipment and files, including computers, documents, photographs and diskettes are often confiscated. All the above violations of the rights of HRDs have been compounded by a culture of impunity which exists in many countries in relation to acts committed against human rights defenders.^{xviii}

MECHANISMS PROTECTING HUMAN RIGHTS DEFENDERS IN CAMEROON

The protection of HRDs in Cameroon is embedded in the Constitution^{xix} and the constitution remains the *grund norm* whereby other efforts to protect HRDs originate^{xx}. This constitution, for the first time in the history of Cameroon Human Rights, came up with some human rights

stipulations as provided in the preamble. Although as a general rule, preambles do not form part of State Constitutions, Cameroon provides the exception by upholding the preamble as part and parcel of the constitution by virtue of the provisions of Section 65 of the same constitution.^{xxi}

HRDs have both first generation rights^{xxii} which are civil and political in nature and second generation rights^{xxiii} which are economic, social and cultural in nature. These two generations of rights are guaranteed in the constitution of Cameroon without specific distinction base on their indivisibility and interrelatedness. However, the constitution does not have clear provision on the protection of HRDs. Even though it declares that the human person, without distinction as to race, religion, sex, or belief possesses inalienable and sacred rights.^{xxiv}

The following rights that apply to the protection of HRDs are enumerated in the preamble of the Constitution:

All persons shall have equal rights and obligations^{xxv}. The state shall provide all its citizens with the conditions necessary for their development; right to life; right to dignity of the human person; right to fair hearing; right to liberty; freedom of expression; association; assembly; demonstration; freedom from torture;

Nevertheless, to add force to the rights provided in the preamble of the constitution, article 1, paragraph 3 of the constitution upholds the need for recognition of general human rights by stating that ‘the State shall ensure the equality of all citizens before the law’. This is very relevant to the protection of Human Rights Defenders as the concept of equality and non discrimination form the backbone to enjoy of other rights. Thus, the rationale for the protection of the rights of HRDs based on the preamble to the constitution rest on the fact that human rights defenders are human beings and must therefore be protected as such.

The Penal Code^{xxvi} is one of the laws regulating the state of human rights in Cameroon. Although its scope is defined in terms of prescribing penalties for offences committed within the territory of Cameroon, it provides a convenient atmosphere to promote respect of human rights. The application of this code on the protection of human rights is however not expressly provided but construed implicitly. For instance, it protects the right to life by punishing murder and capital murder^{xxvii}; implying that anybody charged to have committed murder or

capital murder against a HRD is presumed to have violated the right to life of the deceased. Section 1(1) of the Penal Code provides that ‘all persons shall be subject to the criminal law’. This section vividly corroborates the opening words of the constitution ‘that the constitution shall apply to all Cameroonians without any distinction as to race, sex, colour, status, nationality, religion or ethnic background’.

The penal code regulate the functions of human rights defenders by prohibiting certain acts. For instance, section 231(1) of the code forbids unlawful public meetings and processions. It states “ whoever takes part in the organization of any public meeting which has not been the subject of a prior declaration...shall be punished with imprisonment for from fifteen days to six months and with fine of 5000XAF to 100.000XAF. This section has a direct effect on the work of HRDs who most at times seek to advocate for the promotion and respect of human rights through serminars, workshops and conferences. On similar grounds, the code in section 232 prohibit riot by asserting that any assembly on the high way of five or more persons in a manner liable to disturb public peace and does not withdraw on the first call of the proper authority shall be punished with imprisonment for from 15 days to 6 months. This is a clear feature of undemocratic practices whereby autocratic leaders finds peaceful public manifestation as a threat to their position mineless of the delapitating state of human rights in the country. It is trite to state that, where there is democracy and respect for the rule of law, riot is perceived as a means of persuading states to promote respect of human rights and improvement in state mechninery. It is rather unfortunate that the reverse is the general rule in Cameroon.

Similarly, human rights defenders whose principal function is the monitoring, reporting and documenting of human rights artocities are most often painted as enemies to the state and as such their reports seen to be biased at the detriment of government. To regulate their activity, the Cameroon Penal code in section 241 punishes false news. The criminalization imposed in section 241 is just one of many provisions to continuously shrink the civic space in Cameroon.

In the same vain, human rights defenders are victims of force arrest. To protect their right to liberty, section 291 of the penal code prohibits the act. It provides that whoever in any manner deprives another of his liberty shall be punished with imprisonment for from 5 to 10 years and with fine of from 20.000 to 1.000.000XAF. The punishment shall be imprisonment for from 10 to 20 years where the deprivation of liberty lasts for more than a month or where it is accompanied with physical or mental torture or where the arrest is effected with the aid of a forged order from a public authority or if a uniform unlawful worn, or pretending an

appointment not held. This section of the code remain almost useless as the principal violator of the rights of defenders is the State through its agents. Prominent human rights defenders like Albert Mukong was a victim of force arrest and detention for over 12 years without the perpetrators being indicted. The case of ‘Samuel Wazizi’ who lost his right to life through the complicity of forces of law and order is just one of many atrocities by Cameroon and a violation of section 291 of the penal code. Many journalist, lawyers and human rights activists have been victims of force arrest but have never enjoyed the protection of this section of the code.

The Criminal Procedure Code^{xxviii} (CPC) is one of the legal instrument that guarantee a fair justice system in Cameroon. Relating to general provisions of the code, Section 2 of the CPC states that ‘the CPC shall be of general application except where there is provision to the contrary as provided in the code of military justice or in any special law’. There are several rights of HRDs protected in the Cameroonian Criminal Procedure Code. These include; the right to fair trial^{xxix}; right to visits^{xxx}; the right to feeding^{xxxi}; the right to a decent physical and mental treatment^{xxxii}; and the right to medical treatment^{xxxiii} while under detention. The enforcement of these rights is underpinned by section 122(5) which states that whoever violates or fails to comply with the provisions of section 122(1)-(4) or prevents their compliance with, shall be liable to prosecution without prejudice, where necessary, to disciplinary sanctions.

Section 8 of the Criminal Procedure Code is outstanding in the protection of HRDs in Cameroon. The CPC protects the right to a fair trial by asserting the presumption of innocence of any HRD under detention^{xxxiv}. Their guilt must only be established after they have been given all necessary guarantees necessary for their defence.^{xxxv} The rights asserted by section 8 of the code are the right to consult a lawyer, the right to have a reasonable time to prepare his or her defence, right to legal aid in situations that the defender cannot afford the services of a lawyer. As such, the spirit of th CPC appears to support the expeditious determination of cases. For instance, before the examining magistrates, the HRD appearing before them as well as trial judges have the right to a speedy trial, especially when in detention in prison as Justice V.B. Chi held in *The People v. Ashu Tande Daniel*.^{xxxvi} In this case, the first accused had been in prison custody for over two years while the prosecution claimed that they were unable to serve their witnesses. This is a violation of the right to be tried within a reasonable time.

The CPC further accords HRDs awaiting trial or final verdict the right to be granted bail. The customary norm is that, it shall not be the general rule that persons awaiting trial shall be detained in custody^{xxxvii}. Thus, suspects and defendants shall continue to enjoy the right to interim release. This emanates from the principle of presumption of innocence. As Yanou puts it, ‘the general principle flowing from the presumption of innocence in favour of the HRD during investigation, HRD during preliminary inquiry and HRD during trial is to grant bail’.^{xxxviii} Right to bail or bail has been defined as ‘sureties taken by a person duly authorized for the appearance of a detained person at a certain day and place to answer and be justified by law’.^{xxxix} Bail here means the right of the detainee to be temporarily released from detention based on the understanding that he or she shall appear when needed to answer charges made against him or her. In this respect, it is held to fulfill the constitutional provisions prescribing the presumption of innocence which is re-enacted by section 8 of the CPC. The CPC takes bail further by holding that it can be granted as of right or on conditional basis.^{xl} The courts have sought to apply this right with certain restrictions or conditionalities. In *The People of Cameroon v. Ufetigo Celestine Endangume*^{xli}, the accused was remanded for 10 months pending the procedures for preliminary investigation and was committed to trial after 10 months. Upon application for bail by the accused on grounds of sections 224 and 246(g) of the C.P.C, the court rejected the application. This constitute a violation of the detainee’s right to bail whether as of right and law as provided in the CPC.

This law on cyber security and criminality in Cameroon governs the security framework of electronic communication networks and information systems, defines and punishes offences related to the use of information and communication technologies in Cameroon. Accordingly, it seeks notably to: build trust in electronic communication networks and information systems; - establish the legal regime of digital evidence, security, cryptography and electronic certification activities; - protect basic human rights, in particular the right to human dignity, honour and respect of privacy, as well as the legitimate interests of corporate bodies.

This law safeguards that every individual shall have the right to the protection of their privacy. Judges may take any protective measures notably, sequestration or seizure to avoid or end the invasion of privacy.^{xlii} Today, the work human rights defenders are largely seen through the social media be it Facebook, WhatsApp, Instagram, twitter or YouTube. Thus, HRDs use these platforms to carryout human rights advocacy, sensitization, and education and to publicise violations of human rights.

THE EFFECTIVENESS OF THE PROTECTION OF HUMAN RIGHTS DEFENDERS IN CAMEROON

a. The Creation of the Cameroon Human Rights Commission

The national committee on human rights and freedoms was established in 1990 with a clear aim to protect and promote human rights in Cameroon. It was later renamed the National Commission on Human Rights and Freedoms.^{xliii} Recently, the name was changed to the Cameroon Human Rights Commission.^{xliv} As far as human rights protection is concerned, the commission is the principal institution with a mandate coined to protect and promote human rights in Cameroon, as opposed to other institutions which simply adopts human rights protection as one of their programs.^{xlv}

The commission operates as an independent institution for consultation, monitoring, evaluating, dialogue, conciliation and deliberation in the promotion and protection of human rights.^{xlvi} The commission contribute to the strengthening of the role of law and combating impunity in the domain of human rights, in particular by;

- Handing petitions and denunciations of alleged human rights violations, spontaneously examining allegations which may constitute serious and recurrent human rights violations brought to its knowledge.
- Monitoring human rights situations and
- Providing human rights advice and guidance.^{xlvii}

b. The Courts

The judicial system in Cameroon is regulated by the law on judicial organisation,^{xlviii} which lays down the organisation of courts in Cameroon, from the Supreme Court being the highest court to the customary law courts as the lowest. The courts have the mandate to hear matters of human rights violations of all without any exception.

The presence and availability of courts together with its powers to adjudicate, provides an opportunity for victims of human rights violations to effectively seek legal redress. A great area where the courts have been able to advance human rights in Cameroon, is with women land rights in the famous case of *Lum v. Fru*.^{xlix}

In *Forgum Gorji Dinka v. Cameroon*, a lawyer and human rights defender, the courts in Cameroon failed to protect the defenders' rights as he was detained under deplorable conditions. On these bases, he had to seek international remedies after exhausting local remedies based on article 56 of the charter of the African commission. Dinka^l complained that he had been detained in a 'wet and dirty cell without a bed, table or any sanitary facilities. In this light, the HRC reiterated that persons deprived of their liberty may not be subjected to any hardship or constraint other than that resulting from the deprivation of liberty and that they must be treated in accordance with, inter alia, the Standard Minimum Rules for the Treatment of Prisoners^{li}, and concluded that the said detention conditions were in breach of Article 10(1) ICCPR.

On similar basis, in *Albert Mukong v. Cameroon*^{lii}, the Human Rights defender was held under detention for up to 12 years without a remedy. This amounted to a violation of his right to a fair and speedy trial within a reasonable time. In a nutshell, it amounted to a violation of the right to a fair trial and due process. When the matter was brought before the Human rights commission, the HRC found that the authorities' refusal to feed an inmate for several days violated article 7 and 14 of the ICCPR.

In the case of *Barrister Edward Lyonga Ewule (on behalf of Abuwe Samuel Ajiékha alias Wazizi) v. The Regional Delegate of National Security and Commander of 21st Motorized Infantry Battalion Buea*^{liii}, the applicant application for *Habeas corpus ad subjiciendum* was rejected in violation of deceased right to life. The journalist, a human rights defender was arrested on 2nd august 2019 in Muea by elements of the 3rd District police Muea, Buea in violation of due process. All attempts by the applicants' lawyers to release the HRD proof futile. To make things worse, the applicant was transferred from one detention centre to another and was finally transferred to Yaoundé where he died in detention as a result of torture. This all happened in violation of his right to be tried in Buea and in a language he understands. Again, the courts failed to protect a human rights defender exercising his profession based on prescribed ethics of the profession.

Furthermore, in *The People v. Barrister Tamfu & Co*, the prominent human defender based in Douala was arrested at the High Court in Ndokoti after a dwell with security forces. They Human Rights defender was detained at the Douala Central prison without being charged of any crime against the presumption of innocence provided for in section 8 of the CPC and the

preamble to the Cameroon constitution. After legal proceedings, he was given a suspended sentence and placed under judicial investigation for one year to serve the sentence provided he commits a crime within his period of suspension. This has greatly stifled the work of this lawyer who is known for his human rights advocacy.

On similar basis, in *The People v. Mimi Mefo*, a prominent journalist with Equinox television and human rights defender for victims of Anglophone crisis, she was arrested following her reports on atrocities committed by the regular government forces in the English-speaking regions of Cameroon^{liv}. This amounted to a violation of his right to freedom of expressions and communication base on professional ethics governing the journalism profession. Without presumption of innocent and proper investigation, she was detained and later on released without reasons for being released. This intimidation on the part of investigators and the courts prompted the human rights defender to stop reporting on the crisis. Several of these human rights abuses by the courts have caused human rights defenders to remain vulnerable and not perform their functions as provided under international human rights law.

CHALLENGES FACED TO EFFECTIVELY PROTECT HUMAN RIGHTS DEFENDERS

1. Non separation of powers among arms of government

Respect of human rights is high in societies where there is strict separation of powers and on the other hand very poor in states where there is little or no separation of powers. While the first is a feature of developed countries with respect for the rule of law, democracy and good governance, the latter is a feature of less developed countries and the state of human rights remain bleak. Thus, the work of human rights defenders flourishes well in modern societies whereby each arm of government is given room to play its rule in protecting human rights. The case of George Floyd is an example whereby the judiciary acted independently without intervention. In countries like the USA, Britain, and Germany among others, HRDs openly criticise human rights abuses and go unpunished. They are seen as social engineers in fighting for human rights everywhere. Regrettably, this is not the case in developing countries and Cameroon in particular. Human rights defenders are never seen as positively contributing to nation building and have been brandish as enemies of the state. They are prone to illegal arrest

and detention, without trial in violation of due process of law. Some even go to the extent of losing their life such as Bibi Ngota a journalist and human rights defender who died while in detention. This is the similar situation with Samuel Wazizi. These acts happen through executive influence and promoted by the judiciary who cannot act based on the law and their conscience^{lv}.

2. Corruption of the judicial system

There is no comprehensive definition of the concept of corruption. However, most definitions emphasize the concept as a crime of economic calculation, abuse of public power or position for personal benefits. It entails misusing one's office for a private gain or unofficial end. It involves both a monetary and non-monetary benefit. Bribery, extortion, influence peddling, nepotism, scams, fraud, 'grease money', and opportunism readily spring to mind. Giving or obtaining advantage through means which are illegitimate, immoral, and/or inconsistent with one's duty or the rights of others. Professor Ndiva Kofele Kale opines that a corrupt state creates a vicious circle in which the state quickly loses its authority and ability to govern for the common good. To him, corruption makes it possible for critics to be silenced, for justice to be subverted and for human rights abuses to go unpunished. When corruption reigns, basic human rights and liberties are threatened and social and economic contracts become unpredictable. In the foreword to the UNCAC, Kofi Annan made clear that 'corruption is an insidious plague that has a wide range of corrosive effects on societies. 'It undermines democracy and the rule of law, leads to violations of human rights.

Corruption in the Administration of Justice endangers the basic rights to judicial protection, including the right to a fair trial without undue delay (Article 14 ICCPR). There are a number of human rights which are instrumental in the fight against corruption, in particular the rights to information, freedom of expression and assembly, an independent judiciary, and participation in public affairs. This is the challenge that HRDs face in denouncing this vice and in protecting and promoting human rights generally and theirs in particular.

3. Lack of adequate resources

The protection and promotion of human rights entail the use of both materials, human and financial resources. However, this is not the case in Cameroon. Thus, this implies the duty to

fulfil human rights as provided under the triple pronged theory that states must put administrative, financial and human resources to ensure the realization of human rights. Taking the case of the courts, the courts are not found in all subdivisions as provided for under the 2006 law on judicial organization as amended in 2011. This creates a problem of access to courts by human rights defenders in areas like Akwaya, and Fru-Awa where there are no courts. On similar basis, the principal body charged with the protection and promotion of human rights in Cameroon (CHRC) is largely decentralized as it is found only in regional headquarters. Is this to give the impression that human rights exist only in main towns or human rights violations take place only in major towns? Definitely not as gross human rights violations happened in divisions and sub divisions and most go unreported because of the absence of this commission. This is a major challenge human rights defenders who operate in rural area face as they cannot easily report such violations nor indict perpetrators to court. The Human rights commission is further understaffed especially in regional offices. In the context of Anglophone conflict, many human rights violations occur but this commission is not seen in action because of the lack of man power. They are supposed to work with local CSO in investigating, documenting and reporting these abuses but it is not known by the local population.

4. Lack of political will

Human rights defenders are regarded as primary enemies of the state because of the nature of their work. As earlier stated in chapter two, HRDs are charged with the duty to investigate, educate, document, report human rights violations, hold government accountable and pressurize government to ratify some international conventions protecting human rights. Thus, where and whenever there is human rights violations involving the state, these HRDs have to name and shame the government. As a result, the government sees them as a threat to state security and peace and as such, they pay no particular attention to enact a law or ratify international instruments protecting such endangered species of persons. The complete lack of political will is clear proof why Cameroon has not enacted a law protecting human rights defenders. Instead, they continue to enact laws that have shrink the civic space to ensure that the environment is unfriendly for HRDs. Examples of such laws include the 2010 law on cyber criminality and the 2014 anti-terrorism law. The penal code has worsened the situation with the criminalization of any form of riot as an offence. This is clear proof of lack of political will to protect human rights defenders in Cameroon^{lvi}.

5. Lack of independence of the state institution

There are two principal bodies that holds the responsibility to protect peoples' rights generally and those of human rights defenders in particular. These bodies are the courts and the Cameroon Human rights Commission. Despite the work being done by these institutions, there is generally the common weakness between the two institutions, which that of lack of independence. These institutions are created by government but they are supposed to enjoy their independence in the exercise of their functions. In theory, the law provides for their independence but in practice it not. Personnel mounting these institutions have often decried the pressure meted on them by executive arm on government in most cases that attract public attention or the person being tried is seen as threat to the state. To buttress this fact, the case of Albert Mukong took over 12 years without a remedy because of executive intervention and threat to the independence of the courts. Equally, the laxity to order the production of the body of Wazizi when his lawyers filed for habeas corpus was due to executive influence and interruption into judicial affairs that stifled the judge opinion to grant an order for production of the detainee. To further buttress the lack of independence, on the part of the CHRC, the personnel have continuously decried the seizure of powers by the executive vested to them. As a result, some gross human rights violations involving the state or top officials are left unreported by this body for personal safety and security.

6. Weak and Politicised Institutions

To provide for human rights at the universal, regional and domestic levels is one thing and to implement such norms and standards is another. Human rights are held to be given considerable recognition at the international level when compared to domestic level. Regardless of this, these norms serve no purpose in the absence of vibrant, democratic, non-politicized institutions to implement them. This is a serious problem in Cameroon. The 1990 law reforms saw the introduction of institutions to introduce democracy in Cameroon. The Human Rights Commission is one of such institutions. Although this commission is created by the government, it is expected to uphold a certain level of independence and must be impartial in the exercise of its functions. Instead, the CHRC lacks the requisite independence in the exercise of its duties, and lacks the necessary resources. As such, it remains weak and because of government influence it lacks the capacity to openly criticize the most barbaric human rights

abuses occurring in Cameroon prisons^{lvii}. The reason is simple. The personnel are appointees of the Head of State and they pay allegiance to him rather than the population they are appointed to serve. Thus, the commission must be held to be accountable both to the detainees who are the focus of this study and to the entire Cameroonian community which is represented by parliament. The South African Human Rights Commission (SAHRC) and the Ugandan Human Rights Commission (UHRC) are glaring examples for the Cameroon NCHRF to emulate. Although set up and financed by their respective governments, these commissions enjoy a high degree of independence and possess judicial authority.

CONCLUSION

Human Rights Defenders play a key role in advocating for promotion and protection of human rights, democracy and good governance. They act as agents of change by calling attention to human rights violations and abuses, and identifying issues that prevent or obstruct positive change. This helps to hold governments to account for their actions. Human Rights Defenders contribute to long term reform and progress, helping bring about more stable, free, democratic, inclusive and prosperous societies. They support peace building and improve access to justice. They can contribute to the protection of the land and the environment, and thereby to people's livelihoods, protecting biodiversity and tackling climate change. They play a role in ensuring responsible action by the private sector on human rights which is good for business and communities. Human Rights Defenders are defined by what they do, not who they are. They may not identify themselves as human rights activists, and might instead be seen as, amongst other things, artists; lawyers; journalists; politicians; domestic workers; environmental activists; celebrities; NGO members; indigenous peoples' representatives, members of ethnic or religious groups, small holder farmers trade unionists; writers; health care workers; entrepreneurs; community leaders; students; bloggers or teachers.

Cameroon claims to support and protect the rights of Human Rights Defenders to carry out their activities, and continue with their professions (for example lawyers and journalists) and voice their opinions. Without this, Human Rights Defenders are unable to defend human rights effectively and peacefully. Human Rights Defenders play an essential role in promoting and protecting democracy, respect for human rights and the rule of law. Cameroon's policy is guided

by the “UN Declaration of the Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms” (commonly known as the “UN Declaration on Human Rights Defenders”), as well as international principles specific to certain issues (UN Guiding Principles on Business and Human Rights, and those specific to certain Human Rights Defenders, such as the UN Basic Principles on the Role of Lawyers. This non-legally binding Declaration reaffirms the rights of Human Rights Defenders and sets out the particular responsibility of states to protect Human Rights Defenders, including from attacks by non-state actors.

A ratification and domestication of the 1998 United Nations Declaration on Human Rights Defenders is recommended. Enhancing visibility for Human Rights Defenders and the legitimacy of their work: Recognition of Human Rights Defenders and their work can contribute to their safety and effectiveness. For example, drawing inspiration from the UK, UK missions might provide a meeting place for groups of Human Rights Defenders; visit Human Rights Defenders at their place of work; take part in seminars and meetings arranged by Human Rights Defenders; invite them to events hosted at the UK mission or in the UK; or give public recognition to Human Rights Defenders achievements. Consultation with Human Rights Defenders prior to any profile-raising activity is essential, as association with foreign diplomats can sometimes create new risks.

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2. A. Denis., *Prisoners of the International Community*. (The Hague: T.M.C. Asser Press, 2012) P.13
3. Composed of UDHR 1948, ICCPR 1966 and the ICESCR 1966.
4. Like the CEDAW, CAT, CERD, Etc
5. Law No. 2016/007 of 12 July 2016 relating to the Cameroon Penal Code.
6. Law No.96/6 Of 18 January 1996 to amend the Constitution of 2 June 1972
7. The term “human rights defender” has been used increasingly since the adoption of the Declaration on human rights defenders in 1998. Until then, terms such as human rights “activist”, “professional”, “worker” or “monitor” had been most common. The term “human rights defender” is seen as a more relevant and useful term.

8. Report of the Special Rapporteur on the situation of human rights defenders, Michel Forst, Human Rights Council, Twenty-eight Session, A/HRC/28/63, 29 December 2014:11-12; Situation of Human Rights Defenders, Note by the Secretary-General, General Assembly, Sixty-seventh session, A/67/292, 2012.
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11. *Ibid*
12. Interview with the executive founder of Nouveau Droit de l'Homme. (Yaounde, 08/03/2021)
13. Interview with the CEO of Human Is Right NGO, (Bonduma, Buea, 12/03/2021)
14. Interview with Justice Ayah Paul, RTD Judge of the Supreme Court of Cameroon (Bomaka, Buea, 15/03/2021)
15. United Nations, Human Rights Defenders: Protecting the Right to Defend Human Rights. Fact Sheet No. 29, (2004).
16. *Ibid*
17. Universal Declaration of Human Rights, adopted by General Assembly Resolution 217 A (III), proclaimed by the United Nations General Assembly in Paris on 10 December 1948.
18. Examples of these ratified conventions include the ICCPR 1966, ICESCR 1966, ACHPR 1986, CAT, CRC, CEDAW among others.
19. First generation rights are Civil and Political Rights and protected under the International Covenant on civil and Political Rights 1966, while second generation rights are economic, social and cultural rights protected by the International covenant on Economic, Social and Cultural Rights, 1966.
20. Law No. 2008/001 of 14 April 2008 to amend and supplement some provisions of Law No. 96/06 of 18 January 1996 to amend the constitution of 2 June 1972.
21. The constitutionalization of human rights is both ancient and recent. Ancient in that it is derived from the French Declaration of the Rights of Man and Citizens of 1789 and recent in that we witness how it grew in the 1990s. Generally, the constitution consecrates human rights and their arrangements or layout is of an infra constitutional order.
22. It provides that 'the Preamble shall form part and parcel of the Cameroon constitution'
23. These rights are protected under the International Covenant on Civil and Political Rights, 1966.
24. Rights that are protected under the International Covenant on Economic, Social and Cultural Rights 1966.
25. This ties with the philosophical approach to human rights conceived by Professor Frans Viljoen who views human rights as those moral claims which human beings possess by virtue of their humanity whereby such rights are inalienable and inherent in the human person.
26. Pursuant to the principle of equality of all citizens before the law, judicial institutions function without any discrimination. In principle, all citizens have equal access to justice. Hence, Article 6(1) of Ordinance No. 72/4 of 1972 to organize the judiciary states that, justice shall be free except for fiscal provisions relating to stamp duty and registration.

27. As earlier stated in chapter one of this thesis, natural law philosophers like Aristotle and John Locke holds the view that equality is a natural right that must be respected and recognized by all persons given that it is inherent and inalienable. nevertheless, their view has been subjected to opposition especially the view of Sandra Fredman who believes that in nature, there is the principle of rule and subordination in nature at large.
28. U.S. Constitution. Amendment. XIV, (1). It embodies equality of courts, fair and public hearing, by competent, independent and impartial tribunal established by law, right to compensation in cases of miscarriage of justice, and the prohibition of double jeopardy.
29. Law No.2016/007 of 12 July 2016 promulgating the Cameroon Penal Code.
30. Section 275 and 276 of the Penal Code; Law No.2016/007 of 12 July 2016 amending the Cameroon Penal Code of 1967.
31. Law No. 2005/007 of 27 July 2005 relating to the Criminal Procedure Code.
32. Section 8, 37 CPC Ibid.
33. Section 238 (1) Ibid.
34. Section 122(4) Ibid
35. Section 122(2) Ibid.
36. Section 123 Ibid
37. *Obiziako v. Commissioner of Police* (1964) NMLR 10; *Aruna v. The State* (1990) 6 NWLR 125.
38. For instance, the right to counsel, and right to appeal among others.
39. A suspect is any person against whom there exists any information which tends to establish that he may have committed an offence or participated in its commission; a defendant is any suspect whom an examining magistrate notifies that he is presumed henceforth either as offender or co-offender or as accomplice, while an accused is a person who must appear before the trial court to answer to the charge brought against him.
40. HCF/022^c/2011.
41. Faced with this scenario, it was further held that it amounted to an infringement of the criminal procedure code relating to the procedure for criminal actions which ought to attract a sanction of an absolute nullity under section 3 of the CPC. This decision is applauded as most judges intentionally keep accused persons in custody for inordinate length of time knowing quite well that it is a violation to human right to fair trial. The period of remand which did not appear in the various pieces of legislation which govern criminal procedure is now contained in section 221 of the CPC. Under this provision, the period of remand shall not exceed six months except by a reasoned ruling to 12 months in the case of a felony and six months for misdemeanour. Once these periods expires, the defendant must be released under pain of disciplinary sanctions against the examining magistrate under section 221(2) of the code.
42. ICCPR, 1966, Article 9(3)
43. M.A. Yanou., *Criminal Law and Procedure in Cameroon*. (Calabar: Excel publishers, 2014) page 52.
44. *Charles Metouck & Anor v. The People* (Suit No. CASWR/18/2013)
45. Section 221(1) and 224 of the CPC
46. (HCF/21c/2018) Unreported

47. Section 41, Law N° 2010/012 Of 21 December 2010 Relating to Cyber security and Cyber criminality in Cameroon
48. Article 9, ACHPR 1981
49. (App. No. 23168/94) European Court of Human Rights, 1999.
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57. <https://www.researchgate.net/publication/351097872>, accessed on 15 July 2021.
58. section 1(2)
59. Section 6.
60. Law No. 2006/015 of 29 December 2006, as amended and supplemented by law No. 2011/027 of 14 December 2011.
61. *See Zamcho Florence Lum v. Chibikom Peter Fru & others*. Supreme court judgment No. 14/1 of 14 February 1993, where the court rejected of discriminatory succession and inheritance of customary rules against women.
62. HRC, *Fongum Gorji-Dinka v. Cameroon*, views of 17 March 2005, communication 1134/ 2002, para 5.2.
63. Standard Minimum Rules for the Treatment of Prisoners (SMRTP), adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Geneva in 1955, and approved by the Economic and Social Council by its Resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1997.
64. *Mukong v. Cameroon*, Communication No. 458/1991, U.N. Doc. CCPR/C/51/D/458/1991 (1994).
65. Suit No. HCF/HB/004/2019, Appeal No. CASWR/13cr/2020.
66. Arrested of unfounded charges of publishing and propagating information that infringes on the territorial integrity of the republic of Cameroon.
67. Interview Barrister Ewule Lyonga Edward, Lawyer and Human Rights Defender in Buea, Southwest region of Cameroon on 21/08/2021.
68. Interview with a Human rights Officer of CHRDA at the centre for Human Rights and democracy in Africa on the 21/08/21

69. To further show how weak, politicized and executively influenced the Cameroon Human Rights Commission is, it took this institution 6 months for it to gain access to Barrister Agbor Balla, Dr Neba Fontem, Mancho Bibixy following their illegal detention at the Yaoundé central prison.

ENDNOTES

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ⁱⁱ A. Denis., *Prisoners of the International Community*. (The Hague: T.M.C. Asser Press, 2012) P.13

ⁱⁱⁱ Composed of UDHR 1948, ICCPR 1966 and the ICESCR 1966.

^{iv} Like the CEDAW, CAT, CERD, Etc

^v Law No. 2016/007 of 12 July 2016 relating to the Cameroon Penal Code.

^{vi} Law No.96/6 Of 18 January 1996 to amend the Constitution of 2 June 1972

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^x *Ibid*

^{xi} Interview with the executive founder of Nouveau Droit de l'Homme. (Yaounde, 08/03/2021)

^{xii} Interview with the CEO of Human Is Right NGO, (Bonduma, Buea, 12/03/2021)

^{xiii} The Cases of Felix Agbor Nkongho and Co. and Mancho Bibixy are exemplary in Cameroon

^{xiv} The case with Common Law Lawyers in Cameroons 2 English Speaking regions

^{xv} Interview with Justice Ayah Paul, RTD Judge of the Supreme Court of Cameroon (Bomaka, Buea, 15/03/2021); The Case of Fako Lawyers Association v. S.D.O of Fako

^{xvi} The one month suspension on The Post Newspaper by The National Communication Council and the indefinite suspension by the Governor of South west region on the same Newspaper is glaring.

^{xvii} United Nations, Human Rights Defenders: Protecting the Right to Defend Human Rights. Fact Sheet No. 29, (2004).

^{xviii} *Ibid*

^{xix} Law No. 2008/001 of 14 April 2008 to amend and supplement some provisions of Law No. 96/06 of 18 January 1996 to amend the constitution of 2 June 1972.

^{xx}The constitutionalization of human rights is both ancient and recent. Ancient in that it is derived from the French Declaration of the Rights of Man and Citizens of 1789 and recent in that we witness how it grew in the 1990s. Generally, the constitution consecrates human rights and their arrangements or layout is of an infra constitutional order.

^{xxi} It provides that 'the Preamble shall form part and parcel of the Cameroon constitution'

^{xxii}These rights are protected under the International Covenant on Civil and Political Rights, 1966.

^{xxiii} Rights that are protected under the International Covenant on Economic, Social and Cultural Rights 1966.

^{xxiv}This ties with the philosophical approach to human rights conceived by Professor Frans Viljoen who views human rights as those moral claims which human beings possess by virtue of their humanity whereby such rights are inalienable and inherent in the human person.

^{xxv} Pursuant to the principle of equality of all citizens before the law, judicial institutions function without any discrimination. In principle, all citizens have equal access to justice. Hence, Article 6(1) of Ordinance No. 72/4 of 1972 to organize the judiciary states that, justice shall be free except for fiscal provisions relating to stamp duty and registration.

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- xxvii Section 275 and 276 of the Penal Code; Law No.2016/007 of 12 July 2016 amending the Cameroon Penal Code of 1967.
- xxviii Law No. 2005/007 of 27 July 2005 relating to the Criminal Procedure Code.
- xxix Section 8, 37 CPC *Ibid*.
- xxx Section 238 (1) *Ibid*.
- xxxi Section 122(4) *Ibid*.
- xxxii Section 122(2) *Ibid*.
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- xxxiv *Obiziako v. Commissioner of Police* (1964) NMLR 10; *Aruna v. The State* (1990) 6 NWLR 125.
- xxxv For instance, the right to counsel, and right to appeal among others.
- xxxvi HCF/022^c/2011.
- xxxvii ICCPR, 1966, Article 9(3)
- xxxviii M.A. Yanou., *Criminal Law and Procedure in Cameroon*. (Calabar: Excel publishers, 2014) page 52.
- xxxix *Charles Metouck & Anor v. The People* (Suit No. CASWR/18/2013)
- xl Section 221(1) and 224 of the CPC
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- xlii Section 41, Law N^o 2010/012 Of 21 December 2010 Relating to Cyber security and Cyber criminality in Cameroon
- xliii Pursuant to law no. 2004/016 of 22 July 2004, as amended in 2010.
- xliv Law no. 2019/014 of 19 July 2019, relating to establishment, Organisation and Functioning of the Cameroon Human Rights Commission.
- xlv <https://www.researchgate.net/publication/351097872>, accessed on 15 July 2021.
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- xlvii n21 Section 6.
- xlviii Law No. 2006/015 of 29 December 2006, as amended and supplemented by law No. 2011/027 of 14 December 2011.
- xlix *See Zamcho Florence Lum v. Chibikom Peter Fru & others*. Supreme court judgment No. 14/1 of 14 February 1993, where the court rejected of discriminatory succession and inheritance of customary rules against women.
- ¹ HRC, *Fongum Gorji-Dinka v. Cameroon*, views of 17 March 2005, communication 1134/ 2002, para 5.2.
- ^{li} Standard Minimum Rules for the Treatment of Prisoners (SMRTP), adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Geneva in 1955, and approved by the Economic and Social Council by its Resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1997.
- ^{lii} *Mukong v. Cameroon*, Communication No. 458/1991, U.N. Doc. CCPR/C/51/D/458/1991 (1994).
- ^{liii} Suit No. HCF/HB/004/2019, Appeal No. CASWR/13cr/2020.
- ^{liv} Arrested of unfounded charges of publishing and propagating information that infringes on the territorial integrity of the republic of Cameroon.
- ^{lv} Interview Barrister Ewule Lyonga Edward, Lawyer and Human Rights Defender in Buea, Southwest region of Cameroon on 21/08/2021.
- ^{lvi} Interview with a Human rights Officer of CHRDA at the centre for Human Rights and democracy in Africa on the 21/08/21
- ^{lvii} To further show how weak, politicized and executively influenced the Cameroon Human Rights Commission is, it took this institution 6 months for it to gain access to Barrister Agbor Felix Nkongho, Dr Neba Fontem, Mancho Bibixy following their illegal detention at the Yaoundé central prison.