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GUILTY BY ASSOCIATION

Human Rights Violations in the Enforcement of Cameroon's
Anti-Homosexuality Law



Guilty by Association

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Anti-Homosexuality Law**

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Summary	1
Methodology	5
I. Recommendations	6
To President Paul Biya and the Government of Cameroon.....	6
To the Parliament of Cameroon.....	6
To the Legal Department (Ministère Public)	6
To the Supreme Court	6
To the National Commission on Human Rights and Fundamental Freedoms	6
To the Special Rapporteur on Prison Conditions and Pre-Trial Detention at the African Commission on Human and People’s Rights, and to the UN Special Rapporteur on Torture.....	7
To the United Nations Human Rights Council.....	7
II. Background	8
A Homophobic Environment	9
A Victimless “Crime”	10
Inadequate Legal Framework for Handling Rape, Sexual Assault, and Offenses against Minors.....	11
Law Enforcement Structures and Criminal Procedure in Cameroon	13
Anti-Homosexuality Laws and International Law	14
III. Case Studies	16
Cases That Have Been Finalized.....	17
<i>Case Study 1: Jonas K., Franky D., and Hilaire N.</i>	17
<i>Case Study 2: E.A. and F.M.</i>	19
<i>Case Study 3: Jean Jacques E., Stéphane M., and John V.</i>	20
Cases with Pending Appeals Following Convictions.....	22
<i>Case Study 4: Marc-Henri B. and Bruno E.</i>	22
<i>Case Study 5: Roger M.</i>	26

Cases Pending Before Trial Court or Pending Appeals into Preliminary Matters	28
<i>Case Study 6: L.I.</i>	28
<i>Case Study 7: Samuel A. and A.N.</i>	30
<i>Case Study 8: Esther B. and Martine A.</i>	32
<i>Case Study 9: Joseph O., Séraphin N., N.N., and E.L.</i>	33
<i>Case Study 10: E.F., G.M., L.N., and R.X.</i>	35
Cases of Arrests and Summonses Not Resulting in Prosecutions	37
<i>Corruption and Extortion Rackets</i>	37
<i>Law as Pretext for Suppressing Freedom of Association</i>	40
IV. Torture and Ill-Treatment	41
Torture and Ill-Treatment by Gendarmes	41
Torture and Ill-Treatment by Police	42
Torture and Ill-Treatment by Intelligence Agents.....	43
Torture and Ill-Treatment by Prison Personnel	43
Anal Examinations	44
V. Other Common Due Process Violations.....	45
Extended Stays in Custody Before Being Charged	45
Denial of Access to Counsel.....	45
Denial of Contact with Family.....	46
Biased Law Enforcement and Judicial Officials	46
Use of Confessions.....	47
Corruption	47
VI. Beyond “Guilty or Not Guilty:” Impacts of Cases on the Defendants.....	49
VII. Threats to Defense Lawyers.....	52
VIII. Conclusion.....	53
Acknowledgements	54
Appendix: Ministry of Justice Statistics on Homosexuality Arrests	55

Summary

They got Joseph at the bar. They took him to the army camp. He was stripped naked and tortured. He was molested for four hours. They beat him with an iron belt, asked him to swim in the gutter, and burned plastic bags on his chest....

The next morning I took him to the hospital. I asked him not to file a complaint, because there are no rights. We gays don't have any backup.

—Friend and housemate of Joseph, a gay man in Southwest Region,
October 2012

Cameroon prosecutes people for consensual same-sex conduct more aggressively than almost any country in the world. Unlike many of the 76 countries that currently have such laws on the books, but which rarely enforce them, Cameroonian prosecutors have brought charges against at least 28 people for homosexual conduct over the last three years.

In most cases, the accused are convicted, often on the basis of little or no evidence. Investigators frequently rely on torture or ill-treatment to extract confessions. Although Cameroon's Criminal Procedure Code contains provisions to the effect that confessions must be accompanied by other forms of evidence, these provisions are not respected.

This report focuses largely on due process violations and other human rights violations committed in Cameroon in the process of arresting and prosecuting people for consensual same-sex conduct. The magnitude of the abuses makes urgent the call for an end to arrests under article 347 bis of the penal code, which penalizes "homosexuality," defining the term as "sexual relations with a person of the same sex." However, even if Cameroon's own criminal procedure were respected fully when enforcing article 347 bis, the article itself would still contravene international human rights law.

Police and government officials have claimed on several occasions that article 347 bis only applies to those who are caught in the act of having sex. The chief of Cameroon's police force told Human Rights Watch and the Cameroonian Foundation for AIDS (CAMFAIDS) that it only applies to those who engage in same-sex conduct publicly. But among the eight

people we identified who were convicted for homosexuality between 2010 and 2012, in no case was there even a suggestion in the evidence presented in court that the accused engaged in sexual intercourse publicly. At least three recent cases that law enforcement officials claim constitute *flagrant délit*—being caught in the act of a crime—were in fact set-ups: a person who claims to have received unwanted advances from a person of the same sex complains to the security forces, who encourage the complainant to make a date with the “suspect,” and then arrest him for “attempted homosexuality,” which is equivalent to the crime of homosexuality under Cameroonian law.

The law criminalizes same-sex activity between both men and women. Most of those who have been arrested to date under article 347 bis are men. However, in one case, documented in Section II, below, two women were also charged with homosexuality.

In one of the most egregious cases documented within this report, in terms of the sheer lack of evidence, two men in Yaoundé were arrested on homosexuality charges in 2011 because gendarmes found a sack of condoms and lubricant in their house while purportedly searching for a stolen laptop. The men were convicted and sentenced to six months in prison. Another man was convicted of homosexuality and attempted homosexuality in 2011 after sending a text message to an acquaintance, saying, “I’ve fallen in love with you.” In Kribi, when intelligence officials heard that a village chief had propositioned a man, in the absence of any complaint or evidence that any crime had been committed, they set up the chief. They convinced the man to make a date with the chief on a secluded beach; according to his lawyer, they then jumped out, arrested him, forced him to strip, took pictures, and made him walk to the intelligence office stark naked. The case was still in progress at time of writing.

Cameroon’s anti-homosexuality law is easily subject to abuse, and can be used by virtually anyone as a method of settling scores. It is also a recipe for extortion: CAMFAIDS has received complaints from its members about several men in Yaoundé who make money by scouting gay web sites, making dates with other men, and then threatening to turn them in for homosexuality if they do not pay up. Given the large number of abusive arrests and the high rate of convictions, many extortion victims do not test their luck, readily handing over money to these predators.

This report is the result of a collaboration between four organizations: Alternatives-Cameroun, a Douala-based organization that provides health services to lesbian, gay, bisexual, and transgender (LGBT) people and advocates for their rights; the Association for the Defense of Gays and Lesbians (*Association pour la Défense des Homosexuel-le-s*, ADEFHO), a Douala-based group of lawyers and human rights monitors that represents clients accused of homosexuality; Cameroon Foundation for AIDS (CAMFAIDS), a Yaoundé-based advocacy organization that provides legal advice to LGBT people and denounces abuses against them; and Human Rights Watch, an international organization.

The organizations sought to document recent cases of arrests, prosecutions, and convictions under article 347 bis. All four organizations oppose the criminalization of homosexuality, given that arrests for consensual same-sex conduct violate Cameroon's international human rights commitments, as well as its own constitution. However, even supporters of laws against homosexuality should be seriously concerned about the way in which the law is currently being applied. Homosexuality cases are marked by a staggering number of due process violations and other rights abuses, comprising torture and ill-treatment (including anal examinations), violations of privacy, and blatant homophobia on the part of judges and law enforcement officials.

Unfortunately, some people who are accused of homosexuality lack any legal representation, and when due process violations occur in cases against them, they may never come to light. Ministry of Justice records showed that 22 people were convicted for homosexuality in 2010 and 2011, but the organizations that drafted this report were only aware of eight convictions during the same period—generally, those in which defendants lived in urban centers and had legal representation.

In a climate marked by pervasive homophobia, where media publish sensational stories “outing” public figures as alleged homosexuals and where workshops and other events aimed at advancing LGBT rights have been shut down by both government officials and vigilante mobs, few lawyers are willing to take up such cases.

During the period in which this report was being researched, an alarming new development took place: since late 2012, two lawyers that have defended clients charged with homosexuality have received a series of threats, by text message and email, menacing the lawyers and their children with violence. At time of writing, Cameroonian

authorities had taken no action to publicly denounce the threats, although the lawyers had reported them, and no one had been apprehended in relation to these threats.

Arrests in Cameroon on the basis of consensual same-sex conduct not only involve various human rights abuses, they violate the country's international human rights commitments. Cameroon is party to the International Covenant on Civil and Political Rights (ICCPR), which has been interpreted as prohibiting arrests and discrimination based on sexual orientation. The constitution integrates this covenant and other treaties that Cameroon has ratified into national law. According to article 45 of the constitution, in case of conflicts, international treaties that Cameroon has ratified override national law.

The privacy of the home is protected under the preamble of Cameroon's constitution, which states that "the home and privacy of correspondence is inviolate." The constitution ensures that "All human beings are born equal;" it guarantees equal rights to all, as well as "the protection of minorities." It proclaims that the state shall be secular, independent, and neutral.

In 2010, the Ministry of Justice began a process of revising the 1967 penal code. A draft revision, made public during a 2011 validation process, left the provision on homosexuality unchanged. However, the minister of justice was replaced shortly afterwards. Justice officials told Human Rights Watch and CAMFAIDS that the draft is being reworked under the new minister, but provided no timeline for the revision.

In early 2012, President Paul Biya told diplomats that although he was not prepared to call for the decriminalization of homosexuality in Cameroon, he would seek to impose a moratorium on arrests under article 347 bis. However, no progress had been made to substantiate this commitment at time of writing. In January 2013, during a press conference in France, Biya spoke of a "change of mind" in Cameroon regarding homosexuality, but did not commit to taking any specific steps to decriminalize.

Being attracted to someone or having consensual sex should never be grounds for discrimination and abuse. Cameroon should take immediate steps toward decriminalizing homosexuality and remove article 347 bis—a contravention of international law—from the nation's penal code.

Methodology

This report was researched by three Cameroonian organizations – Alternatives-Cameroun, Association for the Defense of Gays and Lesbians (ADEFHO), and Cameroon Foundation for AIDS (CAMFAIDS) – and by an international organization, Human Rights Watch.

Primary research took place in October 2012 and from January to February 2013. Researchers visited Yaoundé, Douala, Buea, Kumba, and Limbe and interviewed 14 of the 26 people we knew to have been prosecuted for homosexuality between 2010 and 2012, including five who had been convicted. One person was interviewed in a country outside Cameroon where he had sought asylum. Researchers also spoke to police and Ministry of Justice officials, lawyers, academics, Cameroonian and international nongovernmental organizations, UN officials, and foreign diplomats.

Interviews were conducted in French or English by researchers fluent in those languages. All interviews were voluntary. No one was paid for providing information for this report.

The names of victims are provided in the report in some instances, where there are judicial proceedings against them that are already a matter of public record and that have received significant media attention. However, some of these victims also provided information that is not on the public record, on issues such as mistreatment in custody and efforts by the security forces to seek bribes. In these cases, and where the victims are minors, their names have been withheld or changed. Names of other victims—those who were not the subjects of public court proceedings or have not been subject to media attention—have been withheld to preserve their anonymity.

One limitation to this research is that researchers were only able to visit three of Cameroon's 10 regions: Central, Littoral, and Southwest. We also received information and interviewed the accused from one case in South province. It is unclear whether prosecutions on the basis of article 347 bis have taken place in the other six regions, which are primarily rural.

The Ministry of Justice did not respond to repeated requests from Human Rights Watch to provide further information on the cases referenced in its annual human rights report.

I. Recommendations

To President Paul Biya and the Government of Cameroon

- Ensure that article 347 bis is removed from the revised penal code, or take steps to push for decriminalization of same-sex conduct through legislative means.
- Inform law enforcement officials and prosecutors that they should immediately suspend arrests and prosecutions on the basis of article 347 bis.
- Release all prisoners who are currently detained for consensual adult same-sex conduct.
- Ban the practice of anal examinations to determine homosexuality.

To the Parliament of Cameroon

- Initiate the process of repealing article 347 bis.
- Modify article 296 of the penal code, which criminalizes rape, by broadening the definition of rape to include both male and female victims.

To the Legal Department (Ministère Public)

- Withdraw the charges in homosexuality cases that are currently open.
- Investigate the cases of torture and ill-treatment documented in this report, and bring the perpetrators to justice.

To the Supreme Court

- Ensure that court decisions in homosexuality cases reflect adherence to Cameroon's constitution, which integrates into national law all international treaties that Cameroon has ratified.

To the National Commission on Human Rights and Fundamental Freedoms

- Publicly call for the revocation of article 347 bis.
- Conduct a nation-wide study of arrests and prosecutions on the basis of homosexuality, in order to highlight due process abuses and other human rights violations.

- Designate one commissioner to take responsibility for handling cases of arbitrary arrest or discrimination on the basis of sexual orientation or gender identity.

To the Special Rapporteur on Prison Conditions and Pre-Trial Detention at the African Commission on Human and People's Rights, and to the UN Special Rapporteur on Torture

- Conduct a fact-finding mission to Cameroon to investigate human rights abuses committed by state officials in the context of enforcing article 347 bis and publish a report on their findings.

To the United Nations Human Rights Council

- At the Universal Periodic Review (UPR) of Cameroon's human rights record to be held in Geneva in May 2013, evaluate Cameroon's compliance with recommendations emerging from the 2008 UPR, which called for decriminalizing homosexuality.

II. Background

Cameroon's anti-homosexuality law dates to 1972, when it was imposed by executive order by former President Ahmadou Ahidjo. Article 347 bis of the penal code, headed "Homosexuality," punishes "sexual relations with a person of the same sex" with a prison term of six months to five years and with a fine of 20,000 to 200,000 CFA francs (approximately US\$40-\$400).

In theory, the law only punishes homosexual conduct and not "homosexuality" per se (often understood as a homosexual identity). However, because the heading of the article uses the term "homosexuality," and because this is the term commonly used by law enforcement officials and in legal records in Cameroon, we use this term throughout the report when discussing criminal charges against those accused of consensual same-sex conduct.

Prosecutions based on the law appear to have been almost non-existent before 2005, according to research by Alternatives-Cameroun, which examined prison files in Douala: the oldest case file found for homosexuality dated to 1997.¹

It is not clear why a sudden wave of prosecutions began in 2005, but in May of that year, police arrested 32 people at a Yaoundé night club in the first of a series of high-profile arrests under this article. Eleven were prosecuted, and nine were convicted of homosexuality. The UN Working Group on Arbitrary Detention ruled in 2006 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," and that the arrests were therefore arbitrary.²

During Cameroon's Universal Periodic Review (UPR) in December 2008, the UN Human Rights Council recommended that homosexual conduct be decriminalized. Cameroon did not accept this recommendation. In 2009, Alternatives-Cameroun petitioned the National Assembly to decriminalize homosexuality. The assembly did not respond to the petition.

¹ Alternatives-Cameroun, "*Projet Atteintes aux bonnes mœurs*" (*Projet 347 bis*), 2006.

² François Ayissi et al. v. Cameroon, Working Group on Arbitrary Detention, Opinion No. 22/2006, U.N. Doc. A/HRC/4/40/Add.1 at 91 (2006), on file with Human Rights Watch.

Arrests appeared to continue at a steady pace between 2005 and 2010, but human rights organizations in Cameroon documented a surge in arrests in 2010 and 2011. Since January 2010, at least 28 persons have had homosexuality prosecutions initiated against them; at least eight have been convicted, although two were subsequently acquitted on appeal.

As of February 2013, at least three people were in prison awaiting trial on the same charges. At least nine others were free on bail but had ongoing cases against them. In all, ADEFHO has documented 51 arrests for homosexuality since 2005, though many cases likely go unreported.

Cameroonian lawyers have argued that because the law was imposed by the former president and was never approved by parliament, its application violates Cameroon's 1996 constitution, which states that only parliament can legislate with regard to "the definition of felonies and misdemeanours and the institution of penalties of all kinds."³ However, courts have provided no response to motions that two lawyers filed in several of the recent homosexuality cases that challenge homosexuality prosecutions on the grounds that the law itself is unconstitutional.⁴

A Homophobic Environment

Law enforcement officials, prosecutors, and judges are undoubtedly influenced in their application of article 347 bis by the pervasive homophobic climate in Cameroon.

Newspapers regularly publish sensational stories about alleged homosexuals.⁵ Prominent religious figures have also denounced homosexuality, with the archbishop of Yaoundé in

³ Law No. 96-06 of 18 January 1996 to amend the Constitution of 2 June 1972, Constitution of the Republic of Cameroon, art. 26 (6). Cameroon is a bilingual state, and there are official versions of the constitution in both English and French. In the English version of this report, we rely on the English version of the Constitution; whereas in the French version of the report, we rely on the French version of the constitution.

⁴ Human Rights Watch interview with Michel Togué, New York, January 8, 2012, "L'avocate camerounaise Alice Nkom se livre sur Yagg," *Bonaberi.com*, April 22, 2012, http://www.bonaberi.com/ar,L_avocate_Cameroonaise_alice_nkom_se_livre_sur_yagg,7709.html (accessed January 14, 2013).

⁵ In 2006, a newspaper published a list of Cameroon's "Top 50 Homosexuals." The list was subsequently printed or referenced in at least 34 news articles in 19 publications. It included prominent politicians and other public figures. President Biya called on the media to demonstrate greater respect for people's private lives. However, while there have been no further incidents of the same scale, the media continues to publish sensational stories about alleged gays and lesbians. Human Rights Watch interviews, Yaoundé and Douala, October 2012; see also Alternatives-Cameroun, "*Projet Atteintes aux bonnes moeurs*" (*Projet 347 bis*), 2006, p. 3.

December 2012 referring to same-sex marriage as a “crime against humanity.”⁶ Ordinary citizens at times express virulent hatred toward lesbian, gay, bisexual, and transgender (LGBT) people, although other members of the community are more tolerant. When a vigilante mob violently attacked participants at a meeting on May 17, 2012, organized by three organizations providing services to LGBT people in Yaoundé, an activist from one of the organizations told CAMFAIDS and Human Rights Watch, “Women in the neighborhood came and tried to get the guys to stop beating people. The guys said, ‘They’re homosexual, we need to eliminate them.’”⁷

In this context, the individual biases of law enforcement officers may at times contribute to the arbitrary nature of arrests under article 347 bis. Alternatives-Cameroun has observed cases in which low-level police and gendarmes arrest people because of their own biases, without regard for the law. Even at the highest levels, officials indicate a lack of understanding of the law. The chief of the Cameroon police, for instance, told CAMFAIDS and Human Rights Watch, “Organizations here are promoting homosexuality. They [gays] aren’t recognized; they don’t have the right to have meetings.”⁸

However, there is no law on the books prohibiting LGBT people from holding meetings. The police chief cited the Bible to justify the existing law against homosexuality, stating, “God said ‘Go forth and multiply.’ It’s not between two men or two women.”⁹ Homophobic law enforcement and judicial officials are not held accountable when they abuse the law with impunity; none have been disciplined or prosecuted for abusing alleged LGBT people.

A Victimless “Crime”

“Homosexuality” is one of the few crimes in Cameroon’s penal code that, in most cases, has no victim.¹⁰ Ironically, this means that suspects’ rights are even more circumscribed

⁶ “Cameroon archbishop calls same-sex marriage crime against humanity,” Reuters, December 25, 2012, <http://www.reuters.com/article/2012/12/25/us-cameroon-homosexuality-idUSBRE8BO05O20121225> (accessed January 14, 2012).

⁷ CAMFAIDS and Human Rights Watch interview with a representative of Humanity First, Yaoundé, October 13, 2012.

⁸ CAMFAIDS and Human Rights Watch interview with Martin Mbarga Nguélé, Cameroon’s Chief of Police (*Délégué Général de la Sûreté Nationale*), Yaoundé, October 17, 2012.

⁹ *Ibid.*

¹⁰ Neither the Penal Code nor the Criminal Procedure Code defines “victim.” The Ministry of Justice, in its 2010 and 2011 human rights reports, lists large numbers of “victims” of homosexuality, but in most of the cases we studied, there was no evident victim and no civil party on the record. The Ministry of Justice has not yet replied to a query sent by Human Rights Watch in October 2012 regarding the definition of “victim” for the purposes of these reports. Email correspondence from Human Rights Watch to Helen Galega, Director of Human Rights at the Ministry of Justice, October 31, 2012.

than in other criminal cases. This irony stems from Section 62 of the Criminal Procedure Code, which states that charges will be discontinued based on “the withdrawal of the complaint or the civil claim by the civil party who lodged the complaint in respect of a simple offence or a misdemeanor.”¹¹ Homosexuality is a misdemeanor, but persons suspected of homosexuality almost never benefit from the withdrawal of charges. In only two of the ten case studies documented below is there a “civil party” on the record; in other cases, prosecution was at the initiative of the state.

Police Chief Martin Mbarga Nguélé told CAMFAIDS and Human Rights Watch that the victim in homosexuality cases is “society.” He did not explain in what way society suffered as a result of private, consensual same-sex conduct.

Inadequate Legal Framework for Handling Rape, Sexual Assault, and Offenses against Minors

In a few cases, “homosexuality” charges are applied in cases of rape or sexual assault between persons of the same sex, including sex with minors below the age of consent. Rape and sexual assault are serious crimes and should be prosecuted. However, gender-neutral laws, which do not differentiate between perpetrators who are of the same sex or opposite sex of their victims, are the most appropriate way to deal with such crimes.

One serious gap in Cameroonian law is that article 296 of the penal code, which criminalizes rape, only applies to female victims.¹² The limited definition of rape may lead some law enforcement officials to believe that the best way to address rape between persons of the same sex is to charge the perpetrator with “homosexuality” under article 347 bis. This legal lacuna has the unfortunate result that consensual and non-consensual homosexual acts become conflated in the eyes of law enforcement officials, the judiciary, and, by extension, the broader public.

Not only does this result in persons being prosecuted for consensual conduct, it also means that where there is rape, perpetrators are given differential treatment depending on whether their victim is male or female. For those who rape female victims, under the “rape”

¹¹ Law No. 2005 of 27 July 2005 on the Criminal Procedure Code (subsequently referred to as “Criminal Procedure Code”), Section 62(h).

¹² Penal Code, art. 296: “Whoever by force or moral ascendancy compels any female whether above or below the age of puberty to have sexual intercourse with him shall be punished with imprisonment for from five to ten years.”

law, the penalty is five to ten years. But for those who rape men, if they are prosecuted under the “homosexuality” law, the penalty is lighter: six months to five years.

Some sexual assault cases that do not amount to rape are prosecuted under article 295 of the penal code, which criminalizes “private indecency” and is gender-neutral.¹³ It provides for up to four years’ imprisonment.

Laws on offenses against children are also constructed in a gender-neutral manner. In Cameroon, the legal age of majority is 21 years. Cameroonian criminal law, in defining offenses against children, uses three gradients: several different laws address crimes against children under 16 years, children under 18 years, and children under 21 years.

Article 346 criminalizes “indecent offense against a minor of less than 16 years.”¹⁴ Sexual relations with a person under 16 years are punishable by 10 to 15 years in prison. In other words, children under 16, of either sex, are considered unable to consent.¹⁵ The article is gender-neutral, as is appropriate from the standpoint of international law: it would punish perpetrators of the same sex of the victim and the opposite sex of the victim equally.

Article 346 further sets forth that rape of a minor under 16 years is punishable by 15 to 25 years in prison. It is unclear whether “rape” in this context, following the logic of article 296, only applies to female victims, or whether it is intended to be gender-neutral.

Article 347 punishes “[I]ndecent offense against a minor of 16 to 21 years.” It states that if the offenses detailed in articles 295, 296, or 347 bis – sexual assault (“private indecency”), rape, or homosexuality – are committed against a minor of 16 to 21 years, the penalties provided for under the given articles are doubled. Thus, consensual sexual intercourse between an adult and a person of the *opposite* sex between 16 and 21 years is permissible

¹³ Penal Code, section 295, “Private Indecency,” states as follows: “ (1) Whoever in any place, notwithstanding that it may not be open to the public, commits an indecent act in the presence of any person of either sex and without his consent shall be punished with imprisonment for from fifteen days to two years or with fine of from ten thousand to one hundred thousand francs, or with both such imprisonment and fine. (2) The punishment shall be doubled where the offence is accompanied by assault.

¹⁴ Penal Code, section 346, “Indecency to child under sixteen” states as follows: 1) Whoever commits an indecent act in the presence of a child under the age of sixteen shall be punished with imprisonment for from two to five years and with fine of from twenty thousand to two hundred thousand francs. 2) The penalty shall be doubled where the offence is accompanied by assault or where the offender is one of the persons described in section 298. 3) The penalty shall be imprisonment for from ten to fifteen years where the offender has sexual intercourse with the victim, notwithstanding his or her consent. 4) In case of rape, the imprisonment shall be from fifteen to twenty-five years, or for life where the offender is one of the persons described by section 298.

¹⁵ The law does not clarify whether the punishment applies if both persons engaged in sex are minors.

under the law; but consensual sexual intercourse between an adult and a person of the *same sex* between 16 and 21 years is criminalized on two levels.

None of the cases described in this report involve sexual conduct between adults and minors of under 16 years. However, several cases involve consensual same-sex conduct between adults and minors between 16 and 21 years. International law provides no strict guidance on the age of legal majority for sexual consent; however, what is clear is that provisions on sexual crimes should not afford differential treatment on the basis of whether or not the perpetrator and the victim are the same gender.

To resolve these inconsistencies, Cameroon should amend its rape law to apply equally to men and women, and ensure that legislation on rape or sexual assault of children applies equally to boys and girls. Article 347 provides reasonable protections against rape and sexual assault for children between 16 and 21 years, but it should not be used to reinforce punishments for consensual same-sex conduct.

Law Enforcement Structures and Criminal Procedure in Cameroon

Both the police and the gendarmerie in Cameroon carry out basic law enforcement functions, including arresting suspects and conducting initial investigations into a crime. Police report to the Delegation General of National Security (*Délégation Général de la Sûreté Nationale*), which is part of the presidency. Gendarmes report to the Ministry of Defense. All gendarmes have the status of “judicial police officer,” which enables them to investigate and interrogate suspects.

Suspects can only be held in police or gendarmerie custody for 48 hours, and if they are not caught in *flagrant délit*—in the act of a crime—they cannot be held in custody at all without the authorization of a prosecutor. After 48 hours, suspects must be officially charged with a crime before the Parquet (the prosecutor’s office). They can then be released unconditionally with the charges dropped, if the prosecutor does not find sufficient evidence against them; released on bail, or “provisionally,” pending trial; or remanded in pre-trial detention. Pre-trial detention is to be the exception, used only in exceptional circumstances, such as when the defendant does not have a fixed address or

cannot provide any surety.¹⁶

When a defendant is held in pre-trial detention, the case must proceed to trial within one year. If a defendant is convicted before a High Court (*Tribunal de Grande Instance*), the defendant or her lawyer may appeal before a Court of Appeal.

Special protections apply to minors in the criminal justice system. Children between 14 and 18 years should not be arrested in the absence of a preliminary inquiry.¹⁷ They must be separated from adults in custody.¹⁸ The criminal procedure code provides that, “Measures of custody of a minor shall be taken in the best interest of the minor, and may be cancelled or changed at any time.”¹⁹ Further, children between 14 and 18 who are convicted of crimes should benefit from consideration of mitigating circumstances in the sentencing phase.

Anti-Homosexuality Laws and International Law

This report focuses largely on due process violations and other human rights violations committed in Cameroon in the process of arresting and prosecuting people for consensual same-sex conduct. The magnitude of the abuses makes urgent the call for an end to arrests under article 347 bis.

¹⁶ Criminal Procedure Code, section 117: “At the close of the investigations, the suspect who has no known residence or who cannot fulfil any of the conditions referred to in section 246 (g) shall be arrested and taken before the State Council if there is strong corroborative evidence against him. A suspect who has a known residence or who fulfils one of the conditions provided for in section 246 (g) shall be released on bail;” Section 224 (1): “Any person lawfully remanded in custody may be granted bail on condition that he fulfills one of the conditions referred to in section 246 (g), in particular to ensure his appearance either before the judicial police or any judicial authority;” Section 246 (g): “in order to ensure his appearance he shall: - either deposit a sum of money, the amount and conditions of payment of which shall be fixed by the Examining Magistrate, taking into consideration the resources of the defendant; or provide one or more sureties in accordance with the provisions of sections 224 and following.”

¹⁷ Criminal Procedure Code, section 700: “(1) A preliminary inquiry shall be compulsory for a felony or a misdemeanour committed by minors aged less than eighteen (18) years. (2) Where a minor aged less than eighteen (18) years is accused of committing a felony or misdemeanour, preliminary inquiry shall be carried out in accordance with the rules of ordinary law subject to the provisions of this part: (3) Except in the case of a simple offence, an infant shall not be prosecuted by direct summons. (4) The State Council or the Examining Magistrate shall inform the parents, guardian or custodian of the infant that proceedings have been instituted against the minor.”

¹⁸ Penal Code, section 29.

¹⁹ Criminal Procedure Code, section 702(3).

However, even if Cameroon's own criminal laws and procedure were respected fully in the enforcement of article 347 bis, the article itself would still contravene international human rights law.

The African Charter on Human and People's Rights guarantees every individual the right to equal protection before the law and non-discrimination. The African Commission on Human and Peoples' Rights, the body charged with monitoring states parties' compliance with the African Charter, has said that equal protection extends to sexual orientation. It has also stated that the principle of non-discrimination, including on the ground of sexual orientation, is the foundation for the enjoyment of all human rights:

Together with equality before the law and equal protection of the law, the principle of non-discrimination provided under Article 2 of the Charter provides the foundation for the enjoyment of all human rights.... The aim of this principle is to ensure equality of treatment for individuals irrespective of nationality, sex, racial or ethnic origin, political opinion, religion or belief, disability, age or sexual orientation.²⁰

The International Covenant on Civil and Political Rights (ICCPR), to which Cameroon is a state party, provides for equal protection, non-discrimination, and the right to privacy.²¹ On this basis, the UN Human Rights Committee has ruled that criminalization of consensual same-sex conduct between adults violates the ICCPR.²²

²⁰ African Commission on Human and People's Rights, *Zimbabwe Human Rights NGO Forum v. Zimbabwe*, sec. 169, Judgment of May 2006, AHRLR 128 (ACHPR 2006).

²¹ International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, acceded to by Cameroon on June 27, 1984.

²² *Toonen v. Australia*, 50th Sess., Communication No. 488/1992, U.N. Doc CCPR/C/50/D/488/1992, April, 14, 1994, sec. 8.7.

III. Case Studies

In October 2012, Cameroonian Police Chief Martin Mbarga Nguélé met with CAMFAIDS and Human Rights Watch and explained how article 347 bis is intended to be enforced. He stated, “We’re not going to arrest people in their room. It’s when they’re doing something publicly that poses a threat to our society.”²³ Numerous case studies, below, prove otherwise.

Still more worrying, particularly in the Cameroonian context in which serious crimes, such as human trafficking and international drug smuggling, often go unresolved, law enforcement officials appear to put significant effort into devising strategies to entrap people who are suspected of homosexuality—even when there is no clear evidence that these persons have committed any crime.²⁴

In three cases documented here, men, or their family members, filed complaints with law enforcement officials after receiving unwelcome attention from other men. If such attention rose to the level of harassment under Cameroonian law, it would be of legitimate concern to law enforcement officials. However, none of the “victims” in question filed harassment complaints, nor did they file complaints regarding actual or attempted rape or sexual assault. Rather, they were simply irritated by the fact that they were receiving unwanted attention from a man (an everyday source of irritation to many women in Cameroon and elsewhere, which generally does not, however, result in criminal investigations).

In all three cases, law enforcement officials conspired with the “victims” to entrap the suspects, by encouraging the “victims” to make dates with their alleged suitors. Law enforcement officials then pounced, accusing suspects of “attempted homosexuality,” often when there was no clear evidence to suggest the accused had any intention of engaging in sexual conduct.

²³ CAMFAIDS and Human Rights Watch interview with Martin Mbarga Nguélé, *Délégué Général de la Sûreté Nationale* (chief of the Cameroonian police), Yaoundé, October 17, 2012.

²⁴ U.S. Department of State, “Trafficking in Persons Report, 2012,” <http://www.state.gov/documents/organization/192594.pdf> (accessed November 25, 2012); Divine Ntaryike, “Central Africa New Drug Transit Hub: Interpol,” AP, <http://bigstory.ap.org/article/central-africa-new-drug-transit-hub-interpol> (accessed November 25, 2012).

Cases That Have Been Finalized

Case Study 1: Jonas K., Franky D., and Hilaire N.

On the night of July 26, 2011, police from the Mobile Intervention Group of Yaoundé stopped a vehicle that was “zigzagging” in the street. The police found three people inside the car. Two of them, Jonas K. and Franky D., are transgender. They identify as women and were dressed in women’s clothing.

According to the police report, when police approached the vehicle, which had pulled over, the individuals were “groping” each other’s genitals. One of them, Hilaire N., offered the police 20,000 CFA francs (approximately \$40); by his account, this was at the request of the police officers. The three were detained for homosexuality and attempted bribery.

They were held in police custody at the Central Regional Division of the Judicial Police beyond the prescribed 48-hour limit. Police denied them the right to contact their families. According to Jonas K.:

We spent one week at the commissariat. We had no visits and couldn’t call our parents. Our parents didn’t know where we were until we got here [to Kondengui Prison].²⁵

Both Jonas K. and Franky D. confessed to “groping” in the vehicle on the night of the arrest and said they had engaged in homosexual conduct in the past, but subsequently retracted their confessions, stating that they confessed under duress.²⁶

Hilaire N. was released on bail on August 2.²⁷ He subsequently fled and did not appear for further hearings. On August 23, 2011, the High Court of Yaoundé-Ekounou rejected a motion submitted by lawyers Alice Nkom and Michel Togué requesting that Jonas and Franky be released on bail.²⁸

²⁵ CAMFAIDS and Human Rights Watch interview with Jonas K., Yaoundé, October 19, 2012.

²⁶ Central Appeals Court, High Court of Yaoundé-Ekounou, Judgment of November 22, 2011, No. 1892/COR, on file with ADEFHO.

²⁷ Central Appeals Court, High Court of Yaoundé-Ekounou, Dossier No. 11 FD 1347, “Ordre de Mise en Liberté,” on file with ADEFHO.

²⁸ Central Appeals Court, High Court of Yaoundé-Ekounou, Judgment of August 23, 2011, No. 1427/bis/ADD/COR, on file with ADEFHO.

The trial took place on November 22, 2011. Franky D. and Jonas K. pled not guilty, but the court dismissed their claim that their initial confessions were made under duress.²⁹ The court ruling also puts forth that “[Hilaire N.] also admits that he practices homosexuality”—although none of the police documents in the court file contain evidence suggesting that he confessed to homosexuality. Hilaire N. had told the police that he believed he was with two young women.³⁰

In a decision rendered on the same day, the court convicted the three accused, including Hilaire N., who was tried in absentia, of homosexuality.³¹ In violation of Cameroonian law, the court did not provide the opportunity to plead extenuating circumstances, which the defense had prepared to plead.³² All three were sentenced to five years in prison, plus fines of 200,000 CFA (approximately \$400) each.³³

The accused’s lawyers filed an appeal the following day. Their submission argued that the judge’s comportment violated the obligation of impartiality and neutrality, which requires judges to “do justice to all without rancor.”³⁴ They submitted:

The High Court judge did not hide his partiality, let alone his homophobia, taking the accused to task over their taste in beverages, their way of dressing, and concluding that a “normal man doesn’t wear skirts, doesn’t drink Bailey’s whiskey, and doesn’t wear a weave.”³⁵

The defense further submitted that article 347 bis violates the Cameroonian constitution; that the defendants were illegally held in police custody without authorization of the Legal Department, which is only permissible in cases of *flagrant délit*; that the law against

²⁹Central Appeals Court, High Court of Yaoundé-Ekounou, Judgment of November 22, 2011, No. 1892/COR, “Notes d’Audience,” on file with ADEFHO.

³⁰ Letter from the Chief of the Central Regional Division of the Judicial Police to the Prosecutor of the Republic at the High Court of Yaoundé-Ekounou, date illegible, on file with AFEFHO.

³¹ Human Rights Watch generally opposes trials in absentia due to the challenges they pose in ensuring a fair trial, a right that is protected under article 14 of the ICCPR.

³² “Cameroun: Trois homes condamnés à cinq ans de prison pour l’homosexualité à Yaoundé,” *Jeune Afrique*, November 23, 2011, <http://www.jeuneafrique.com/Article/ARTJAWEB20111123163941/> (accessed November 9, 2012).

³³ Central Appeals Court, High Court of Yaoundé-Ekounou, Judgment of November 22, 2011, No. 1892/COR, on file with ADEFHO.

³⁴ Décret no. 95/048 du 8 Mars 1995 portant statut de la magistrature, on file with ADEFHO.

³⁵ “Memoire d’Appel,” submitted by Michel Togué to the President of the Central Appeals Court of Yaoundé, December 20, 2011, on file with ADEFHO.

homosexuality applies exclusively to “penetration by the male sexual organ of the anus of another man, which is evidently not the case here;” and that their clients were held in police custody for four days before being charged, in violation of the 48-hour limit.³⁶

The Central Appeals Court heard the appeal on July 20, 2012. On January 7, 2013, after numerous delays, it overturned the conviction of Jonas K. and Franky D. They were released after a year-and-a-half in Kondengui Prison. Human rights advocates in Cameroon and abroad celebrated the decision, although the court has not yet released its reasoning, which may provide a positive precedent in pursuing other appeals.³⁷

Case Study 2: E.A. and F.M.

On March 23, 2010, gendarmes caught two men, E.A. and F.M., fighting in the road. The gendarmes interrogated both men. According to the gendarmerie report, F.M. said they had engaged in sex in exchange for money, and had subsequently had a dispute regarding payment. E.A. stated that F.M. had tried to seduce him, but that he had refused.

Gendarmes arrested both men, justifying the arrest by stating that “the investigation carried out allowed [us] to collect evidence against the interested parties providing serious and consistent grounds to suspect that they committed or attempted to commit the crime of homosexuality.”³⁸ They detained the men on the basis of *flagrant délit*, although the two men were not caught in the act of having sex.

The men were convicted on May 14, 2010. They had no legal representation at trial. By the time their case came to the attention of ADEFHO, the time limit for filing an appeal had passed. The men served out their sentences and were released in late 2010.

³⁶ Alice Nkom, Michel Togué, and Saskia Ditishein, Central Appeals Court, Audience correctionnelle du 20 juillet 2012, Yaoundé, “Conclusions,” on file with ADEFHO.

³⁷ See, for instance, Stéphane Koche, “Affaire Franky et Jonas - Analyse de la décision de non-culpabilité,” <http://www.youtube.com/watch?v=loEAXOuFmN8> (accessed January 15, 2012). Koche points out that the same court that overturned Kimié and Franky D.’s conviction, the Central Appeals Court, also upheld the conviction of Roger M. a month before.

³⁸ Gendarmerie Nationale, Première Région, Légion du Centre, Groupement de Grie Ter, Compagnie Yaoundé II, Brigade de Melen, Procès Verbal No. 220/2010 du 24/03/2010, “Enquête de Flagrance : Bordereau d’envoi de procédure,” on file with ADEFHO.

Case Study 3: Jean Jacques E., Stéphane M., and John V.

On March 26, 2010, Douala police arrested Jean-Jacques E., Stéphane M., and John V. (an Australian citizen). John V. had arrived the previous day on a business trip, and had taken a room at the Hotel Méridien, where Jean-Jacques E., a friend for several years, joined him.

The next day, Stéphane arrived at the Hotel Méridien to meet John and Jean-Jacques for lunch. When Stéphane asked for John at the reception, he was quizzed by a receptionist: “Who is John to you?”³⁹ Stéphane waited in the lobby, but when his friends arrived, they were immediately intercepted by two men who introduced themselves as “immigration police inspectors” and instructed them to come to the immigration office.

Stéphane was separated from his friends and interrogated by an immigration agent about his relationship with Vasek. The agent refused Stéphane’s requests to call his sister and a lawyer. When Stéphane denied having engaged in homosexual conduct with John, the agent threatened him:

You keep playing the tough guy, you don’t want to say anything, but we know what you do with the white man. If you don’t talk, we’ll keep you here all weekend and no one will know where you are and I’ll see if you don’t talk on Monday.

Stéphane had a doctor’s appointment that afternoon to have the dressings changed on a wound. He told Human Rights Watch,

I had been operated on two weeks before, and I was supposed to go to the hospital at 3 pm that day [to change] the dressings. I explained this to them. They told me that if I didn’t confess, I didn’t have any right to the dressings. They deprived me of the dressings, and also my medication.⁴⁰

³⁹ Stéphane M., “Histoire de mon incarcération,” on file with ADEFHO.

⁴⁰ Human Rights Watch interview with Stéphane M., location withheld, January 24, 2013.

When Stéphane continued to insist, explaining that he had recently been operated on for hemorrhoids, the inspector reportedly said, “You see what you’re telling me, it’s faggots who have operations on the anus, you’re a faggot.”⁴¹

After hours of interrogation by immigration officials, the men were taken to a judicial police commissioner and interrogated once more. Police statements show that all three men denied engaging in homosexual conduct, but John V. allegedly admitted to having once “cuddled” Jean-Jacques E. in a hotel in South Africa, “several years ago,” while Jean-Jacques E., interrogated separately, said he had kissed John V. in South Africa in 2008.⁴² Stéphane continued to deny the charges⁴³ Cuddling and kissing are not crimes under Cameroonian law, all the less so when they take place outside Cameroon. On the basis of these statements, however, Police Commissioner Aloys Emmanuel Olgane concluded:

Based on the above, the crime of homosexual practices by [John V., Jean-Jacques E., and Stéphane M.] is substantiated by their statements.⁴⁴

The police placed the three men in a holding cell. Stéphane was denied access to a doctor to change the dressings on his wound until three days later.⁴⁵ On Monday, March 29, the men were taken to the Parquet (prosecutor’s office), where they were released on bail.

On June 7, 2010, Alice Nkom, their lawyer, filed a motion arguing for the nullification of the charges as a result of due process violations. She argued there was no basis for her clients’ arrest and detention in police custody; that the law does not permit immigration agents to “substitute themselves for judicial police officers in order to carry our arrests without a warrant or complaint;” and that the immigration police submitted a document according to which they were turning over John V., alone, to the judicial police, with no corresponding paper trail concerning Jean Jacques E. and Stéphane M.’s arrest. She also submitted that

⁴¹ Stéphane M., “Histoire de mon incarcération,” on file with ADEFHO.

⁴² Letter from Aloys Emmanuel Olgane, Chief of the Regional Division of Judicial Police of the Littoral at Douala, to the Prosecutor of the Republic at the Tribunal of First Instance of Douala-Bonanjio, No. 203 DGSN/DRSNL/DRPJL/SP, March 29, 2010.

⁴³ Human Rights Watch interview with Stéphane M., location withheld, January 24, 2013.

⁴⁴ Letter from Aloys Emmanuel Olgane, Chief of the Regional Division of Judicial Police of the Littoral at Douala, to the Prosecutor of the Republic at the Tribunal of First Instance of Douala-Bonanjio, No. 203 DGSN/DRSNL/DRPJL/SP, March 29, 2010.

⁴⁵ Stéphane M., “Histoire de mon incarcération,” on file with ADEFHO.

article 347 bis violates the constitution.⁴⁶ The court never responded to these motions, in violation of article 382(4) of the Criminal Procedure Code.⁴⁷

The men were tried in their absence on March 7, 2011. All three men had fled Cameroon by the time of the trial, and were therefore not represented. The outcome of the trial is unknown.

Cases with Pending Appeals Following Convictions

Case Study 4: Marc-Henri B. and Bruno E.

Marc-Henri B. and Bruno E. were arrested, along with a housemate, Clement N., on September 26, 2010, after a fourth housemate, Emmanuel M., was accused of stealing a laptop from the woman from whom all four men were renting rooms.

Marc-Henri B. and Bruno E. are still puzzled by the trajectory that led from a case concerning a stolen laptop to charges of homosexuality. According to the two men, Emmanuel M. had been arrested several days earlier on theft charges. Gendarmes appeared at their house on September 26, and said they were conducting a search related to Emmanuel M.'s arrest. The men welcomed the gendarmes into the house, believing they had nothing to hide. But the attitude of the gendarmes was confrontational from the beginning.⁴⁸

Marc-Henri B. recounted to CAMFAIDS and Human Rights Watch his surprise at the turn of events that led to him being arrested, along with Bruno E. and Clement N. As he recalled:

It started with a story of a laptop, and became a story of homosexuality. The same night, we were locked up.

When the gendarmes came ... they said they had come about the laptop and that if they found any drugs, they would arrest everyone. They didn't find anything [drugs], but told us to come with them for more information. They had no warrant. They were four gendarmes from the SED [the Defense Ministry, *le Secrétariat d'Etat à la defense*]. We followed them to the post.

⁴⁶ Motion submitted by Alice Nkom, June 7, 2010, on file with ADEFHO.

⁴⁷ Letter from Alice Nkom to the President of the Tribunal of First Instance, Douala-Bonanjio, March 9, 2011, on file with ADEFHO. The relevant sections states: "[The court] shall, by a separate decision, rule on any objection taken on grounds of public policy." Criminal Procedure Code, section 382(4).

⁴⁸ CAMFAIDS and Human Rights Watch interview with Marc-Henri B., Douala, October 15, 2012.

They asked us questions. They had found condoms and lubricant in the house, that's why they asked us to come with them. Each of us was taken into a different office. They asked, "'*Glisse entre mecs*' ['slide between guys'], what's that?" I said "I don't know anything about it. I live in the house, but the condoms and lubricants aren't mine."⁴⁹

They asked me, "Since when have you been homosexual?" I asked, "Why are you asking me questions like that?" ... I refused to respond to the questions.... They accused us of going out with ministers [of the government]. They asked, "What's the name of the minister that you go out with?" I haven't gone out with ministers... They took us into custody.⁵⁰

Records from the gendarmerie's preliminary investigation allege that when Emmanuel M. was searched upon arrest, he was found with "condoms and lubricant labeled '*glisse entre mecs*' ('*slide between guys*') with mention of 'GAY for homosexual use,'" and that Emmanuel M. told them he got the condoms and lubricant from his housemates.⁵¹ This led the gendarmes to request authorization from the prosecutor of the republic to investigate "suspicions of homosexual practices" by Marc-Henri B., Bruno E., and Clement N.

As Marc-Henri B. recounted, the three men were detained at the Brigade du Lac, apparently on the basis of the discovery of condoms and lubricant, and were quizzed about their alleged homosexual conduct. The statements (*procès-verbaux*), taken by Captain Dieudonné Donfack and Marshal Yougouda Sambo, show that among the questions put to Marc-Henri B. figured the query, "What homosexual network do you belong to?" Bruno E. was also asked about his membership in a "gay network."⁵² Both Marc-Henri B. and Bruno E. refused to sign the statements taken by the gendarmes, documents that allege that the two men admitted to engaging in homosexual conduct in the past.

After over a week in custody, on October 4, Marc-Henri B., Bruno E., and Clement N. were taken to a military doctor, Annie Ngabala, for anal examinations. Ngabala's report states

⁴⁹ Bruno E. told CAMFAIDS and Human Rights Watch these items had been left behind by friends who had visited recently.

⁵⁰ CAMFAIDS and Human Rights Watch interview with Marc-Henri B., Douala, October 15, 2012.

⁵¹ Gendarmerie Nationale, Premier Région, Légion du Centre, Groupement de Gendarmerie Territoriale de Yaoundé, Compagnie de Yaoundé I, P.V. No. 315 du 05/10/2010, *Enquête Préliminaire; Procès-Verbal de Synthèse*.

⁵² Ibid.

that one of the men “seemed normal” but that “the digital rectal examination reveals a rectal cavity, which leaves nevertheless a doubt regarding sexorectal activity;” that another had anal lesions and “rectal hollowness, which suggests frequent and longstanding sexorectal activity;” and that a third had “a few fleshy bumps and a hollowness, indeed suggesting sexual activity but of moderate degree.”⁵³

Despite Dr. Ngabala’s detailed descriptions of the men’s anal cavities, Marc-Henri B. and Bruno E. say that the anal exams never took place. According to Marc-Henri B.,

She didn’t touch me, she just looked at me. She asked me questions, ‘Why do you do that? You’re destroying yourself.’ Then they took us back to the gendarmerie.⁵⁴

By this time, the legal limit for pre-charge detention—48 hours in Cameroon—had long passed. Perhaps anxious to produce evidence to justify the arrest, the investigator, Yougouda, slapped Marc-Henri B. several times, Marc-Henri B. told CAMFAIDS and Human Rights Watch. Both men said that gendarmes asked them for bribes in exchange for their release, which they did not pay. Clement N. was released, for unknown reasons.

On October 5, Marc-Henri B., Bruno E. and Emmanuel M. were taken to the Parquet. There, Emmanuel M. was released.⁵⁵ The prosecution found that the gendarmerie file lacked sufficient evidence to incriminate any of the men. However, rather than ordering their release, the prosecutor ordered that Marc-Henri B. and Bruno E. be returned to custody and that the file be returned to the gendarmes for further “information.” The two men were placed in custody at the police commissariat for a night, then returned to the gendarmerie brigade.⁵⁶

On October 7, the two men were taken to Kondengui Prison. The prosecutor signed a provisional detention warrant, in violation of Cameroon’s Criminal Procedure Code, which states that prosecutors can only sign such a warrant “in case of *flagrant délit*.” In other

⁵³ Ministère de la Défense, Gendarmerie Nationale, Direction Centrale de la Coordination, Direction Technique et Logistique, Service Santé Gendarmerie, “Rapport,” Yaoundé, October 4, 2010; on file with ADEFHO.

⁵⁴ CAMFAIDS and Human Rights Watch interview with Marc-Henri B., Douala, October 15, 2012.

⁵⁵ The gendarmerie “Preliminary Investigation” document provides no explanation for his release, nor for the decision not to charge Emmanuel M. with homosexuality.

⁵⁶ CAMFAIDS and Human Rights Watch interviews, Yaoundé, October 13, 2012.

cases, a judge must authorize pretrial detention. Nkom submitted a motion contesting the legality of the pre-trial detention, but the court dismissed the motion.⁵⁷

The trial took place on December 24, 2010. On January 28, 2011, a judge convicted both men of “homosexuality” and sentenced Marc-Henri B. and Bruno E. to six months in prison and a fine of 39,300 CFA francs (\$78.60). In announcing the verdict, the judge did not read the full judgment, and did not explain the grounds on which the two men were convicted, according to their lawyer, Michel Togué. He explained, “The law says the judge has to read the entire judgment, but normally they just read the court’s disposition—as in this case. I don’t know if the condoms were considered as evidence.”

Bruno E. believes the judge knew the charges had no basis, but was under pressure to convict:

The court annulled everything, but sentenced me to six months. Maybe because this case was talked about a lot. There was pressure on them. The judge wanted to protect herself; she didn’t want to take a risk.⁵⁸

On February 15, 2011, Togué submitted a motion to appeal the verdict. But an appeals hearing has never been scheduled, and astonishingly, nearly two years later, there is still no written judgment available.⁵⁹

Marc-Henri B. and Bruno E. were released on April 7, 2011.

When CAMFAIDS and Human Rights Watch expressed concern about this case to Cameroon’s Police Chief Martin Mbarga Nguélé—pointing out that such arrests, by setting a precedent for the use of condoms and lubricant as evidence of criminal activity, might have a chilling effect on HIV/AIDS prevention work among men who have sex with men—Mbarga Nguélé told them, “We have important problems to resolve in Africa. Condoms is not one of them.”⁶⁰

⁵⁷ Alice Nkom, “Note de Plaidoirie,” submitted to the High Court of Yaoundé-Administrative Center on October 21, 2010. See the Criminal Procedure Code, section 12.

⁵⁸ CAMFAIDS and Human Rights Watch interview with Bruno E., Yaoundé, October 13, 2012.

⁵⁹ CAMFAIDS and Human Rights Watch interview with Michel Togué, Yaoundé, October 18, 2012.

⁶⁰ CAMFAIDS and Human Rights Watch interview with Martin Mbarga Nguélé, *Délégué Général de la Sûreté Nationale*, Yaoundé, October 17, 2012.

Case Study 5: Roger M.

Roger M. was arrested on March 2, 2011, based on several text messages that he sent to C.F. The first message confessed his “desire to sleep with a man”; a second message proposed that Roger and C.F. talk about Roger’s feelings, and a third message declared, “I’ve fallen in love with you.”

C.F. complained to the gendarmerie, and arranged with them that he would invite Roger M. to his home so that gendarmes could arrest Roger. At this point, according to Roger’s lawyer, Michel Togu , there was no evidence that any crime under Cameroonian law had been committed, in that none of these messages to C.F. constituted evidence of actual or attempted homosexual conduct.⁶¹ Nonetheless, gendarmes went to C.F.’s home that evening and arrested Roger, without a warrant.

Roger was taken into custody, where he says he was beaten. He recalled:

I spent seven days at the brigade. I didn’t have access to a lawyer. I had no possibility to call my friends. No one knew where I was. They called me all the time to interrogate me, and I refused.

I was beaten on the third day, after refusing to talk on the first and the second day. Then they didn’t call me until the 7th day.

The interrogator... called his friend, a gendarme, to beat me. The gendarme punched me in the mouth. He kept hitting me, tore my shirt. They threw away my shoes. When I went to the Parquet, I was barefoot, like a bandit.⁶²

According to the gendarme’s report, Roger had confessed to having engaged in sexual relations with three men in the past.⁶³ All three men were summoned for questioning; only one, J.T., complied. He denied engaging in sexual relations with Roger. The gendarmes’ “statement of investigation” charges Roger with homosexuality on the basis that he had engaged in homosexual conduct with J.T. and two others; the following page of the same document,

⁶¹ Email communication from Michel Togu  to Human Rights Watch, January 15, 2013.

⁶² ADEFHO, CAMFAIDS, and Human Rights Watch interview with Roger M., Yaound , October 12, 2012.

⁶³ Gendarmerie Nationale, Direction de l’Emploi et des Structures, Service Central des Recherches Judiciaires, P.V. No. 114 du 02.03.2011, “Enqu te Pr liminaire” on file with ADEFHO.

however, states the gendarmes' contradictory finding that J.T. did *not* engage in sexual relations with Roger. J.T. was not arrested. The other two "suspects" were never interrogated.⁶⁴

Roger was also charged with "attempted homosexuality" on the basis that he "attempted to have sexual relations with" C.F. The gendarmes' statement of investigation claims that "The acts of [Roger M.] were not accomplished only due to circumstances beyond his control, including the reticence of [C.F.]," without providing any basis for the supposition that Roger's intention was to engage in homosexual conduct.⁶⁵

On March 7, three days beyond the legal limit for pre-charge detention, the gendarmerie addressed a letter to the prosecutor requesting authorization to hold Roger M. for an additional 96 hours "to continue the investigations."⁶⁶ He was finally taken before the Parquet on March 9. He recalled, "Everyone in the courtroom started to cry out and insult me—even the judge, Mr. Dairou, and the prosecutor."⁶⁷

The trial took place the following day. Roger had no legal representation. His text messages, along with emails in his inbox, were presented as evidence. He recalled, "They didn't ask me questions. When I stood up to go to the bar [to take the stand] it was just shouts and insults."⁶⁸

Roger M. was convicted on April 28, 2011, and sentenced to three years in Kondengui Prison. Lawyer Michel Togué, who learned of Roger's case at his sentencing hearing, took up Roger's defense and appealed the verdict on May 3, challenging the evidentiary basis of the conviction; he argued that "the High Court judge based his decision on SMSs alone, absent any attempt to commit a crime, the petitioner being guilty of nothing but sending messages."⁶⁹

Indeed, the judgment reveals that the only basis for his conviction was the text messages, along with Roger's own alleged confession that he had "engaged in sexual relations with

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ Letter from the *Lieutenant-Colonel Chargé d'Études à la Direction Centrale de la Coopération et Chef du Service Central des Recherches Judiciaires à la Gendarmerie Nationale* to the prosecutor of the High Court of Yaoundé-Administrative Center, March 7, 2012, on file with ADEFHO.

⁶⁷ ADEFHO, CAMFAIDS, and Human Rights Watch interview with Roger M., Yaoundé, October 12, 2012.

⁶⁸ Ibid.

⁶⁹ Memoire d'Appel, submitted to the Central Appeals Court, Yaoundé, by Michel Togué, May 16, 2011.

several men.”⁷⁰ The court claimed that an email found in Roger’s account constituted additional proof of his homosexuality, but prosecutors had provided no evidence regarding the identity of the sender.⁷¹ A confession alone cannot serve as the basis of a conviction, according to the Ministry of Justice.⁷²

Togu  also filed a motion requesting that Roger, a university student pursuing a masters’ degree, be released on bail during the duration of the appeals process in order to continue his studies. The motion was granted on July 16, 2012, and Roger was provisionally released while his appeal was pending. However, on December 17, the Central Appeals Court upheld Roger’s conviction. Sources in Cameroon say that Roger is currently in hiding. His lawyers have filed an appeal at the Supreme Court.

Cases Pending Before Trial Court or Pending Appeals into Preliminary Matters

Case Study 6: L.I.

On August 28, 2010, a municipal official in Kribi reported to the External Intelligence (*Direction g n rale de la recherche ext rieure*, DGRE) office that her younger brother, M.B., was being “harassed” by L.I., a village chief, who had “made a declaration of love” toward him. Over the next few days, the officer reported that L.I. was calling her brother “regularly” and that he had offered her brother money in exchange for sex.

Although M.B. never filed a harassment complaint, the intelligence officers decided to trap L.I. They told M.B. to make a date with L.I. and to keep them informed.

On August 31, intelligence agents followed M.B. and L.I. to the designated location, an isolated beach in an area called Nziou, and surrounded the area. According to the DGRE report,

Once at the place, Mr. I ... undressed and wanted to commit the act when agents from the DGRE Liaison Office emerged from their hiding place and overpowered the aforementioned, whom they then took, completely naked, to the Liaison Office at the request of the Chief of that office.... After a few

⁷⁰ Central Appeals Court, High Court of Yaound , Centre Administratif, No. du Jugement 318/CO du 28 avril 2011

⁷¹ A copy of the email is on file with ADEFHO.

⁷² Ministry of Justice, *Report by the Ministry of Justice on Human Rights in Cameroon in 2005*: “Confessions shall not only be made voluntarily, but the court shall ascertain veracity of their contents.”

photos were taken by the Company Commandant, Mr. I... was authorized to get dressed. Other photos were also taken at the operation stage at Nziou.

The intelligence officials then turned L.I. over to the custody of the Kribi Gendarmerie Company.⁷³ A report from the gendarmerie confirms that L.I. was forced to walk naked from the beach to the intelligence office.⁷⁴

Gendarmes charged L.I. with “public indecency” and “attempted homosexuality.”⁷⁵

There are numerous due process violations in this case, including the fact that External intelligence officials have no mandate to investigate common crimes, and the intelligence official’s treatment of L.I.—forcing him to walk naked from the beach to the DGRE office—constitutes degrading treatment under the Convention against Torture, to which Cameroon is a state party.⁷⁶

L.I. reported to his lawyer that DGRE agents forced him to undress, and that they beat him during the arrest. His case file includes a medical report signed by Dr. Pierre Ngue Ngue, dated September 2, 2010, which states that he was treated for bruising on the upper lip; according to the report, “The patient says he was beaten by two men on 31/08/10 at around 9 p.m.”⁷⁷

The charges brought against L.I. are questionable. “Private indecency” against an adult is only applicable when the other party does not consent, but no act took place to which M.B. did not consent. M.B.’s own statement indicates that he *asked* L.I. to undress, and then

⁷³ Letter from Gwogon Guillaume, Police Commissioner, DGRE, to the Prosecutor of Tribunals at Kribi, No. 0152/L/BL/KBI, November 19, 2010, on file with ADEFHO.

⁷⁴ Ministère de la Défense, Gendarmerie Nationale, Première Région, Légion du Sud, Compagnie de Kribi, P.V. o. 103/10 du 01/09/10, “Enquête de Flagrance : Procès-Verbal de Transport, Constations et Mesures Prises,” on file with ADEFHO.

⁷⁵ Article 263 of the Penal Code states, “Whoever publicly offends against decency shall be punished with imprisonment from 15 days to two years or a fine of 10,000 to 100,000 francs or with both imprisonment and a fine.”

⁷⁶ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), adopted December 10, 1984, G.A. res. 39/46, annex, 39 U.N.GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987, acceded to by Cameroon on December 19, 1986, art. 16. According to the Special Rapporteur on Torture, “Acts aimed at humiliating the victim constitute degrading treatment or punishment even where severe pain has not been inflicted.” UN Commission on Human Rights, Civil and Political Rights, Including The Questions of Torture And Detention Torture and other cruel, inhuman or degrading treatment Report of the Special Rapporteur on the question of torture, Manfred Nowak , 23 December 2005, E/CN.4/2006/6, available at: <http://www.unhcr.org/refworld/docid/441181ed6.html> (accessed November 25, 2012).

⁷⁷ Medical report signed by Dr. Pierre Ngue Ngue, dated September 2, 2010, and stamped by the Gendarmerie; on file with ADEFHO.

partially undressed himself; clearly, none of this was without consent.⁷⁸ L.I., on his part, claims he was forced to undress by intelligence agents. According to Togué, “attempted homosexuality” would only be a valid charge if prosecutors could prove that the gendarmerie report states that L.I. “had the firm intention to have sex” “with M.B., but the report does not put forward evidence to this effect.⁷⁹

L.I.’s lawyer, Alice Nkom, submitted a motion calling for dismissal of the case due to the unconstitutionality of article 347 bis. The tribunal ruled on January 18, 2011, that it was not competent to judge the constitutionality of the article. Nkom appealed this decision, but was unable to engage fully with his appeal, as the case was transferred to the Appeals Court of Ebolowa, far from Douala. A hearing in the case was scheduled in Ebolowa for March 19, 2013.

Case Study 7: Samuel A. and A.N.

Samuel A., an adult, and A.N., a minor of 16 years, were arrested on June 25, 2012, by police from the Mobile Intervention Group No. 2 of Littoral, Douala.

According to police records, Samuel A. and A.N. met on an internet site and made a date to meet at Samuel’s house. After engaging in sex, A.N. allegedly asked for money from Samuel, who refused to pay him, but agreed to give A.N. his laptop as a form of collateral for subsequent payment. A.N. left the house with the laptop. Samuel then chased A.N. into the street, accusing him of theft. A crowd gathered and attempted to lynch A.N., but police arrived and extracted him. When they realized that the altercation “was rooted in a dispute between a homosexual couple,” they arrested both Samuel and A.N. Police then searched the laptop, and stated that they found photos of Samuel engaged in homosexual conduct.⁸⁰

Samuel A. and A.N. were both detained in police custody for eight days, beyond the legal limit of 48 hours. According to Samuel, he was beaten by police:

⁷⁸ M.B.’s statement reads: “When we arrived, he asked me to undress. I refused, asking that he undress first. He undressed and was completely naked, and then I took off my pants, remaining in my underpants.” Ministère de la Défense, Gendarmerie Nationale, Première Région, Légion du Sud, Compagnie de Kribi, P.V. No. 103/10 du 01/09/2010, “Enquête de Flagrance : Procès-Verbal d’Audition de Victime,” on file with ADEFHO.

⁷⁹ Ibid.

⁸⁰ Letter from the Ibrahima Iya, Chief of the Regional Division of Judicial Police of Littoral, Douala, to the Prosecutor of the Republic at the Tribunal of First Instance at Douala, Bonanjo, July 6, 2012, on file with ADEFHO.

At the commissariat I was beaten by the police, with billy clubs and belts. They beat me because they saw the photos. They interrogated me and asked how I started that, and who I go out with. I told them I wanted to see a lawyer. They didn't listen.

I was kept in police custody for days... I was kept naked, in a cell with others. I slept on the ground naked.⁸¹

During this time, Samuel A. was not allowed contact with his family.⁸²

On July 2, Samuel A. and A.N. were taken to the Parquet. Both were charged with homosexuality, and Samuel was charged with "offense against a minor." They were transferred to Douala's New Bell Prison. Following an application from his lawyer, Michel Togu , Samuel was released on bail on November 6.⁸³ Samuel said A.N., whom researchers were unable to reach, was released some time earlier. Charges against both Samuel and A.N. are still pending at this writing.

Because A.N. is a minor of 16 years, Samuel was charged with two separate crimes: offense against a minor and homosexuality. Homosexuality with minors between the ages of 16 and 21 is punished with double the prison terms for homosexuality with persons above this age.⁸⁴ Therefore, Samuel faces up to ten years, double the time in prison as he would for having sex with an adult male. Adults who engage in consensual sexual relations with minors between 16 and 21 years of the *opposite* sex face no criminal penalties, a contradiction that highlights the discriminatory nature of Cameroon's laws.

While Samuel was in prison, his wife died as a result of a motorcycle accident. He was not allowed out of prison to attend her funeral.⁸⁵

⁸¹ CAMFAIDS and Human Rights Watch interview with Samuel A., Douala, October 15, 2012.

⁸² Samuel A., "Restitution des faits," on file with CAMFAIDS and Human Rights Watch.

⁸³ Eric O. Lembembe, "Cameroun: [Samuel A.] a  t  lib r  provisoirement," *Erasing 76 Crimes*, November 10, 2012, <http://76crimes.com/2002/11/10/cameroun-samuel-gervais-akam-a-ete-libere-provisoirement/> (accessed November 25, 2012).

⁸⁴ Penal Code, section 347(1): "For any offence under section 295, 296 and 347 (a) of this Code committed against a person over sixteen and under twenty-one years of age, the penalty shall be doubled."

⁸⁵ Human Rights Watch interview with Samuel A., Douala, January 31, 2013.

Case Study 8: Esther B. and Martine A.

On February 9, 2012, a man named Philémon A. reported to the gendarmerie that a woman had come to his workplace the previous day and told him to keep his wife, Léonie D., away from the woman’s “husband,” Esther. Philémon A. filed a complaint against “Esther and others” for defamation and homosexuality.⁸⁶ The same day, Philémon, accompanied by a gendarme, came to the house which Martine A. – the woman who had allegedly visited Philémon’s workplace – shared with Esther B. The gendarme had two blank summonses. He asked for the two women’s IDs and filled in their names in the summonses, which required them to report to the brigade the following morning.

Gendarmes questioned all three women the next day. Léonie D. claimed Martine A. had defamed her by telling her husband that she was sleeping with a woman. According to records of their interrogations, Léonie was asked about whether she had engaged in homosexual conduct with Esther, and denied it. Esther allegedly confessed to engaging in homosexual relationships with both women.

Gendarmerie captain Jean-Claude Zé Mvélé placed all three women in custody on suspicion of homosexuality.⁸⁷ Their detention was in violation of the Criminal Procedure Code, as it was not authorized by a prosecutor.⁸⁸

The women were taken before the prosecutor on February 14, 2012, two days beyond the legal limit. The prosecutor released Léonie D., stating that at this point, only Martine A. and Esther B. were charged with homosexuality. They were also charged with defamation. A memo from the gendarmerie to the prosecutor states that for Djuila, there was “insufficient evidence.”⁸⁹ Martine and Esther were released on bail and told to return to court on February 16. At the hearing, both women pled guilty to homosexuality charges.

⁸⁶Ministère de la Défense, Gendarmerie Nationale, Première Région, Légion su Sud, Compagnie d’Ambam, PV Np. 019/211 du 4 octobre 2011 [sic], “Enquête de Flagrance : Procès-Verbal de Notification de la Garde à Vue,” on file with ADEFHO.

⁸⁷Ibid.

⁸⁸ The detention warrants are falsely labeled as “Enquête de Flagrance”—the only case in which police may hold suspects in custody without a prosecutor’s authorization—but the women were not caught in *flagrant délit* engaged in homosexual acts. Criminal Procedure Code, article 118.

⁸⁹ Letter from Captain Jean-Claude Zé Mvélé to the Prosecutor of the Republic, Tribunal of Grand Instance of Ambam, N.067/LS/CIE/AMB/2, February 13, 2012, on file with ADEFHO.

In March 2012, Martine and Esther’s lawyer, Alice Nkom, introduced a motion to nullify the procedure, on the basis of due process violations committed during their arrest and time in custody. The court rejected the motion. Nkom then appealed before the Southern Appeals Court. At time of writing the appeal had not yet been heard. The two women remained free on bail, with charges still pending against them.

Case Study 9: Joseph O., Séraphin N., N.N., and E.L.

In August 2011, Joseph O. was arrested after B.Z., an adult male, reported him to the gendarmerie, claiming Joseph O. had made advances toward him. Gendarmes conspired with B.Z. to “surprise” Joseph O. at his home on August 16, 2011, “at the moment that he attempted to have sexual relations with [B.Z.],” according to court records.⁹⁰

The gendarmes arrived with no arrest warrant or search warrant. However, the court report also states that they nonetheless entered and searched Joseph O.’s home, seizing “several objects that left no doubt about the aforementioned’ s homosexual activities.” These objects included condoms and lubricant, described by the court as “lubricant for the anus” and “homosexual male condoms”—hasty conclusions given that condoms and lubricant are used by both heterosexual and homosexual couples.⁹¹

The home is inviolate, according to Cameroon’s constitution, and as noted above, Cameroon’s police chief has stated that the law against homosexuality cannot be applied to individuals who engage in consensual homosexual behavior in the privacy of their homes. However, that is precisely what gendarmes attempted to do in this case. B.Z. was at Joseph O.’s home of his own volition, and there is no evidence in the legal records that Joseph O. attempted to engage in nonconsensual sexual conduct with B.Z.

Joseph O. was arrested and taken into custody at the Gendarmerie Brigade of Yaoundé I. The next day, his relative, Séraphin N., visited the brigade to attempt to see him. Séraphin N. was accompanied by N.N., a 17-year-old orphan and street boy whom Joseph O. had taken into his home, offering him work at a construction site. They were both arrested as

⁹⁰Tribunal de Grande Instance du Mfoundi, “Ordonnance de Non-Lieu Partiel et de Renvoi Devant le Tribunal de Grande Instance du Mfoundi à Yaoundé,” 20 July 2012, on file with ADEFHO.

⁹¹Ibid.

well, on suspicion of same-sex conduct. Gendarmes then searched Séraphin N.'s house and arrested another 17-year-old boy they found there, E.L., on the same charges.⁹²

The four were held in custody at the brigade from August 16 to August 26, well beyond the legal limit of 48 hours prescribed by law. Joseph O. and one of the minors were subjected to anal examinations by a military doctor.⁹³

Joseph O. and Séraphin N. were initially charged with homosexuality and “indecent offense against a minor under 16 years followed by sexual relations,” although law enforcement officials later found that neither of the boys was under 16 years and removed this charge. Joseph O. was also charged with “offense against a minor of 16 to 21 years.” N.N. and E.L., both minors, were charged with homosexuality.⁹⁴

Nkom and Togué, representing all the defendants, filed a motion to nullify the case based on due process violations including the violation of the inviolability of the home and the ill-treatment of the defendants in custody, including anal examinations and harsh interrogation methods.⁹⁵

The High Court of Mfoundi ruled on July 20, 2012 that there was no unlawful violation of the inviolability of the home and that a search warrant was not required because the gendarmes had “elaborated a strategy aiming to surprise the aforementioned in *flagrant délit* of homosexuality.” It argued that no search warrant is needed when someone is trapped in *flagrant délit*. But when the gendarmes arrived at Joseph O.'s home he was not engaged in homosexual conduct.⁹⁶

⁹² CAMFAIDS and Human Rights Watch interview with N.N., location withheld, October 14, 2012.

⁹³ CAMFAIDS and Human Rights Watch interview with N.N., location withheld, October 14, 2012, and with Alice Nkom, Douala, October 15, 2012.

⁹⁴ Tribunal de Grande Instance du Mfoundi, “Ordonnance de Non-Lieu Partiel et de Renvoi Devant le Tribunal de Grande Instance du Mfoundi à Yaoundé,” 20 July 2012, on file with ADEFHO.

⁹⁵ They also argued that the law's status as an ordinance put in place by the former president rendered it unconstitutional. However, the court ruled that the ordinance was not unconstitutional because the previous constitution of 1972 permitted the president to sign ordinances that had the force of law. Nkom and Togué further argued that the legal limit for pre-charge detention had been surpassed; the court granted that this was the case, but argued that this did not invalidate the procedure. Tribunal de Grande Instance du Mfoundi, “Ordonnance de Non-Lieu Partiel et de Renvoi Devant le Tribunal de Grande Instance du Mfoundi à Yaoundé,” 20 July 2012, on file with ADEFHO.

⁹⁶ Ibid.

The court further ruled that the anal examination of Joseph O. did not constitute ill-treatment, and that “there is no evidence in the proceedings that the accused were not given enough time to rest between interrogations.”⁹⁷

The judge ordered that the case should proceed to trial as far as charges against Joseph O., Séraphin N., and N.N. were concerned, but that there was no evidence against E.L.⁹⁸ N.N. allegedly confessed during interrogation to engaging in homosexual conduct with Joseph O., according to court records. The sole evidence against Séraphin N. was a claim by one of his co-defendants that he had engaged in homosexual conduct with a third party, who was not a minor.

N.N. was released on bail on July 18, 2012.⁹⁹ E.L. was released definitively. At time of writing, Joseph O. and Séraphin N. remained in Kondengui prison awaiting trial.

Case Study 10: E.F., G.M., L.N., and R.X.

On December 26, 2011, a group of young men in Kumba, a small town in Southwest Region, went to a friend’s house after spending the evening drinking. Another group of young men from the neighborhood came to spy on them through the window. L.N., one young man who was present at the house that night, said he believed the neighbors were spying because they suspected the house’s tenant, who was not present during the incident, was homosexual.

The neighbors knocked on the door. When L.N. and his friends answered, the neighbors claimed they had seen two people kissing, and demanded money in exchange for not reporting them. L.N. and his friends did not have money, so the neighbors forcibly took a gas canister from the house, saying they would hold it as collateral in exchange for future payment.

The next day, L.N. alerted K.X., the friend in whose house the incident had occurred. K.X. suggested they confront the neighbors to get back the gas canister. When they arrived, a group of men locked them in a room in K.X.’s house, and “about 20” of them then entered, according to L.N., while others waited outside:

⁹⁷ibid.

⁹⁸ Séraphin N., however, was cleared on charges of “indecent offenses a minor;” only the homosexuality charges remained.

⁹⁹ High Court of Mfoundi, “Ordonnance de Mise en Liberté,” on file with ADEFHO.

They started asking questions, “Was anything going on in that room that night?” One of the guys with us, R.X., was 17. They started beating him, and he had to confess. They beat me and R.X. They accused me of spearheading that and corrupting the other ones.... Blood was all over my body.

L.N.’s older brother and a friend then came to the house to intervene, and L.N. went home with them. R.X. also went home. L.N. recounted:

When he got home, his sister’s husband also beat him. He had heard an incident had happened and that we were all involved. He didn’t know [before] that we were gay.

R.X.’s brother-in-law then called the police, who took him away, along with a neighbor who apparently was also suspected of being gay. Early that same morning, at about 1 a.m., police also arrested L.N., along with his brother’s friend, as they sat in the veranda of his house. L.N. recalled,

At 1 a.m. I heard people barging into my corridor. It was the police. They had no warrant. They did not tell us why we were being arrested. We were taken to the station. They took our statements. I said there was not such a thing taking place that day. We were sent into the cell.... We stayed in the cell for two weeks.

So one fateful day in the morning, the police took us to see the State Counsel and told him that we were so-called gays. He asked us questions – the same questions [that the police had asked]. I continued denying.... The State Counsel said he was supposed to send us to prison.

We were taken back to the cell. After three days the police took us to Kumba General Hospital. A male doctor did anal exams on all of us. They did not tell us the results.¹⁰⁰

¹⁰⁰ Alternative-Cameroun, ADEFHO, CAMFAIDS, and Human Rights Watch interview with L.N., Kumba, October 16, 2012.

G.M., one of the four men arrested, said that when he was questioned, “The investigator and [police] commissioner said, ‘If you don’t sign [the *procès-verbal*, or statement], we’re going to beat you.’ We all signed the PV. I didn’t read it – my head was just scattered.”¹⁰¹

In their treatment of R.X., the police violated Cameroonian and international law protecting minors, specifically the provision of Cameroonian law that a minor between 14 and 18 years should not be held in custody without a preliminary inquiry, and the provision that decisions on whether to hold a child in custody should be in the child’s best interest.¹⁰²

L.N. and his friends were then taken to Kumba prison, where they were tortured by prison warders (see Section III, below). After a week in prison, on January 20, 2012, a Kumba-based lawyer, Walter Atoh, learned of the case and successfully pled before a magistrate to have the four released on bail. At time of writing, the case was still open, but the accused had not been summoned for further court hearings and Atoh hoped to have the case dismissed.¹⁰³

Cases of Arrests and Summonses Not Resulting in Prosecutions

In other cases investigated by the four organizations, law enforcement officials summoned or arrested persons suspected of homosexuality, but did not ultimately file charges against them. These cases nonetheless reveal how article 347 bis is systematically abused.

Corruption and Extortion Rackets

People accused of homosexuality pay exorbitant sums of money to both law enforcement agents and private profiteers to avoid arrest on homosexuality charges, or to secure their release once arrested.¹⁰⁴

¹⁰¹ Alternatives-Cameroun, ADEFHO, CAMFAIDS, and Human Rights Watch interview with G.M., Kumba, October 16, 2012.

¹⁰² The Convention on the Rights of the Child (CRC) states that “The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.” Convention on the Rights of the Child (CRC), adopted November 20, 1989, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force September 2, 1990, ratified by Cameroon on January 11, 1993, art. 37.

¹⁰³ Human Rights Watch interview with Walter Atoh, February 1, 2013.

¹⁰⁴ Although this report focuses on cases in the last five years, some earlier cases, which seem not to have been reported in published reports, are worth noting due to the severity of the violation. For instance, Harold F, arrested in 2006, told Human Rights Watch that the mother of his boyfriend, who came from a wealthy, well-connected family, paid 1,200,000 CFA (approximately \$2,400) to secure the release of Harold and his boyfriend. CAMFAIDS and Human Rights Watch interview with Harold F., Yaoundé, October 12, 2012.

In August and September 2011, on at least three occasions, a Yaoundé scam artist posed as a gay man on social networking sites in order to make dates with gay men, and then turned them in to the authorities. In two cases, the victims were forced to pay bribes, which were shared between the security forces and the scam artist. CAMFAIDS collected complaints from various individuals who were victims of the same scam artist; they found he was working with security agents, including gendarmes based at the Nlongkak, Etoudi, and Melen Brigades, and police at the commissariat of the 10th arrondissement in Bastos.

Extortion of suspected gays in Cameroon can be a successful money-making enterprise, given the poisonous combination of pervasive corruption and the intense social stigma associated with homosexuality.¹⁰⁵ Victims, whether actually gay or not, are likely to pay bribes in exchange for their freedom. Knowing ones' rights and having legal representation are key forms of protection, to which not all Cameroonians have access. Eric O. told CAMFAIDS and Human Rights Watch how he narrowly escaped prosecution after a scammer called Ekobo chatted with him on online, called him twice, and then arranged a meeting:

I met him near the Commissariat of the 10th arrondissement, in Bastos. First he asked for [compensation for] the phone units that he spent to call me. He said I should pay him in beer. I told him that I had not responded to him right away because on the Internet people are not serious and there are scammers.

When Eric tried to leave, Ekobo grabbed his shirt and began to pull him, saying he was in the Marines.

We were in front of the commissariat and he pulled me inside. We arrived in the lobby. He started to say, "Look, here's another!" I grabbed my telephone to try to call someone. A police officer grabbed my telephone from me. I said, 'You're arresting me on what basis?'

The second assistant police commissioner came and took my ID card and said "Bring him into the office." He wanted to intimidate me, and asked,

¹⁰⁵Such cases are extremely common in Cameroon; Alternatives-Cameroun found, in preliminary research on extortion, that a large proportion of LGBT people had paid a bribe on at least one occasion to keep their sexual orientation from being publicly disclosed. International Gay & Lesbian Human Rights Commission, "Nowhere to Turn," 2011. <http://www.iglhrc.org/binary-data/ATTACHMENT/file/000/000/484-1.pdf> (accessed October 4, 2012).

“Are you homosexual?” I said no. He said, “Weren’t you at the central market yesterday?” I said no. Ekobo had claimed that [another man] and I ambushed him in the central market, and that we took his laptop. He also said [the other man] had made advances and sexually harassed him. I said, “I’ve never seen this guy before.”

Eric O. spent the night at the police commissariat. The next day, he called a lawyer who came to the commissariat and told police they had no basis to hold Eric O. After several hours of interrogation, the investigator agreed to release Eric O., who told CAMFAIDS and Human Rights Watch that had he not insisted on his rights or known a lawyer to call, he might be in prison today or have had to pay a bribe for his freedom.¹⁰⁶

Alec S. told Human Rights Watch that his friend, Joseph P., was arrested by gendarmes in Limbe after being set up by a man with whom he had made a date. Gendarmes from the Rapid Intervention Battalion (*Bataillon d’intervention rapide*, BIR) showed up at the house and found Joseph P. naked. They took snapshots of him and took him into custody. Alec received news of the arrest and went to the brigade in Bota quarter. He recounted,

I went ... to try to release him. We talked to them. They said it’s a crime, homosexuality is not accepted in Cameroon, and that they had photos.... The investigator asked for 100,000 [\$200]. We raised 70,000 [\$140]. We gave it to him and he released [my friend].¹⁰⁷

Male sex workers are particularly vulnerable to extortion from law enforcement officials. Sex work is criminalized in Cameroon and police frequently round up both male and female sex workers, but according to Aids Acodev, an organization that represents sex workers of both sexes, men tend to be treated more harshly by the authorities.¹⁰⁸ One male sex worker told Human Rights Watch that in mid-2010, police burst into a room at a guesthouse and forced him and his male client to pay them 800,000 CFA francs [\$1,600].

¹⁰⁶ CAMFAIDS and Human Rights Watch interview, Yaoundé, October 13, 2012.

¹⁰⁷ Human Rights Watch interview with Alec S., Limbe, October 16, 2012.

¹⁰⁸ Human Rights Watch interview with a representative of Aids Acodev, Douala, February 2, 2013.

Extortion not only involves direct demands for money. In February 2012, a young man was turned in to the police in Douala's 12th arrondissement by a man he had agreed to meet after chatting on the internet. In exchange for his release, police forced him to give interviews to three television channels in which he falsely claimed that Alternatives-Cameroun had "recruited" him into homosexuality. After this incident, Alternatives-Cameroun temporarily suspended its work due to public outcry against the organization.

Law as Pretext for Suppressing Freedom of Association

It is not always clear whether law enforcement officials' harassment of LGBT people is due to ignorance about the law or willful misinterpretation. But whatever their cause, such behavior has a chilling effect on freedom of association and expression among lesbian, gay, bisexual, and transgender people.

For example, A. M., a well-known women's football trainer and lesbian activist, used to bring together gay, lesbian, and bisexual friends at a Douala bar following weekly Sunday football matches. She was summoned to police in Douala because a local administrative official suspected her of "organizing homosexual parties," which the A2 commissioner said was illegal. A.M. said, "He said I should be careful, and that if he didn't know me, I'd be sent to prison." A.M. significantly altered her activities because of the warning.¹⁰⁹

¹⁰⁹ CAMFAIDS and Human Rights Watch interview with A.M., Douala, October 17, 2012.

IV. Torture and Ill-Treatment

In a significant number of cases investigated for this report, victims reported suffering torture or cruel, inhuman or degrading treatment at the hands of gendarmes, police, intelligence agents, or prison wardens. Because most homosexuality prosecutions in Cameroon depend on a confession, the risk of law enforcement officials resorting to torture or ill-treatment in order to extract confessions may be particularly acute.

Cameroon is a state party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Torture and ill-treatment, including beatings, also violate Section 30(4) of Cameroon's Criminal Procedure Code.¹¹⁰

The Ministry of Justice insists that "Cameroonian judicial officers annul proceedings where it is established that confessions were obtained through torture."¹¹¹ However, none of the proceedings on homosexuality charges were annulled on this basis.

Torture and Ill-Treatment by Gendarmes

The majority of torture or ill-treatment of alleged gays and lesbians that we documented was at the hands of gendarmes.

One of the minors arrested in Yaoundé said that when he was arrested by gendarmes and interrogated at the SED brigade, "The investigator beat me on the bottoms of the feet, 50 strokes with the back of a machete."¹¹² Another person arrested in Yaoundé also said he was beaten by gendarmes at the SED brigade, who punched him in the mouth, hit him repeatedly, tore his shirt, and threw away his shoes.¹¹³

¹¹⁰ "Criminal Procedure Code, Section 30(4): "No bodily or psychological harm shall be caused to the person arrested." Further, section 122 (2) reads, "The suspect shall not be subjected to any physical or mental constraints, or to torture, violence, threats or any pressure whatsoever, or to deceit, insidious manoeuvres, false proposals, prolonged questioning, hypnosis, the administration of drugs or to any other method which is likely to compromise or limit his freedom of action or decision, or his memory or sense of judgment."

¹¹¹ Ministry of Justice, Report by the Ministry of Justice on Human Rights in Cameroon in 2005.

¹¹² CAMFAIDS and Human Rights Watch interview, location withheld, October 2012.

¹¹³ ADEFHO, CAMFAIDS, and Human Rights Watch interview, Yaoundé, October 12, 2012.

Thierry O. said that he was arrested by gendarmes while walking with another man in the street in Douala in September 2011 and was accused of attempted homosexuality. He said he was taken to Bonanjo Gendarmerie Camp and was tied to a chair. Gendarmes beat him with the butts of their sub-machine guns, with belts, and with the flat side of a machete, including on the bottoms of the feet. He was left tied to the chair for about eight hours, he said. After he was transferred to the judicial police the next morning, where he was released for lack of evidence, Thierry could not walk for two weeks.¹¹⁴

Alec S. told Human Rights Watch about how gendarmes tortured his friend, Joseph P., in Limbe in 2011:

Around June, Joseph met a guy. They were close friends. Joseph told the guy he's gay and that he wanted to have a relationship. The guy said there was no problem and that they should go for a drink.

Later on the guy called four of his brothers. Two of them were in the military, from BIR [*Battalion d' Intervention Rapide*, Rapid Intervention Battalion]. They got Joseph at the bar. They took him to the army camp, Manawa Bay Military Camp in Limbe. He was stripped naked and tortured. He was molested for four hours. They beat him with an iron belt, asked him to swim in the gutter, and burned plastic bags on his chest.

He came home like that. When he came in he was well-tortured. The next morning I took him to the hospital. I asked him not to file a complaint, because there are no rights. We gays don't have any backup.¹¹⁵

Torture and Ill-Treatment by Police

The organizations documented two recent cases in which suspects were ill-treated by the police. As described in Section II, above, Samuel A. told Alternatives-Cameroun, CAMFAIDS and Human Rights Watch that when police arrested him, they beat him with clubs and belts and forced him to sleep naked on the floor.¹¹⁶

¹¹⁴ Human Rights Watch interview with Thierry O., Douala, January 31, 2013.

¹¹⁵ Human Rights Watch interview with Alec S., Limbe, October 16, 2012.

¹¹⁶ Alternatives-Cameroun, CAMFAIDS, and Human Rights Watch interview with Samuel A., Douala, October 17, 2012.

Jonas K. and Franky D. said that when they were arrested and interrogated, police beat them with clubs and subjected them to death threats. They also said that police filmed them on their mobile phones.¹¹⁷

Torture and Ill-Treatment by Intelligence Agents

The organizations documented one case of degrading treatment at the hands of intelligence agents, as described in Section II, above. Intelligence agents in Kribi, under orders from the Chief of the DGRE Liaison Office, forced a man to walk naked from the beach to the DGRE office. They also took nude pictures of him at both locations.

Torture and Ill-Treatment by Prison Personnel

The young men arrested on homosexuality charges in Kumba, described in Section II, were beaten by prison wardens. While this was not during interrogations or the investigation process, it raises concerns about the discriminatory attitudes of state officials toward suspected LGBT people. G. M. recounted,

In the prison we were tormented and beaten by the warders [prison guards]. We almost died. They beat us continuously for three days ... beating us on the buttocks and legs with a thick rubber tube that has wires inside.

They shaved our heads. The first night, we slept naked as continuous punishment. The second night, we refused. We were stubborn. The prisoners supported us and said they would riot if we didn't put on our clothes. The warders used five liters of water and made us lie down. They poured it in our mouths—five liters in each person. We almost died.

They made us sing a very funny song, which means, “We have sex through the anus” in pidgin.¹¹⁸

¹¹⁷ Human Rights Watch interview with Jonas K. and Franky D., Yaoundé, January 30, 2013.

¹¹⁸ Alternatives-Cameroun, ADEFHO, CAMFAIDS, and Human Rights Watch interview with G.M., Buea, October 16, 2012.

Anal Examinations

A number of men suspected of homosexuality were taken to medical professionals for forced anal exams. These exams allegedly prove whether someone has been anally penetrated. But even when the medical professionals conducting anal exams did not produce evidence of penetration, it did not help defendants in Cameroon. For instance, one young man told CAMFAIDS and Human Rights Watch:

The next morning they took me and [another detainee] to the hospital to see if we'd been penetrated. A woman put on gloves and put in her hand. She said I had not been penetrated. On my PV [statement], they had at first said that [my friend] fucked me, but because of this exam they then said I fucked [my friend].¹¹⁹

Anal examinations have no scientific value. According to one of the drafters of UN Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (otherwise known as the Istanbul Protocol), “forensic anal examinations have no value, whatsoever, in identifying consensual anal intercourse.”¹²⁰

The intrusive nature of the exam may show an intention to punish and/or humiliate the person examined. When state authorities carry out such acts, they may be considered to rise to the level of cruel and inhuman treatment, violating the International Covenant on Civil and Political Rights and the Convention Against Torture.

¹¹⁹ CAMFAIDS and Human Rights Watch interview, date and location withheld, October 2012.

¹²⁰ Human Rights Watch, *Cameroon – Criminalizing Identities*, November 2010, <http://www.hrw.org/sites/default/files/reports/cameroon1010web.pdf>, pp. 26-27.

V. Other Common Due Process Violations

Beyond torture and ill-treatment, defendants suspected of homosexuality confront a broad spectrum of due process violations. However, rarely did such violations in the cases examined, even when acknowledged by courts, result in prosecutions being discontinued or any other remedy.

Extended Stays in Custody Before Being Charged

Suspects accused of homosexuality routinely spent more time in the custody of security forces before being charged by a court than the 48 hours provided for by law.¹²¹

For instance, in Kumba, G.M., L.N., E. F. and R.X. (a child of 17 years old) were held in police custody for a full two weeks before being charged. Samuel A. and A.N. (a child of 16 years), arrested by police in Douala, were detained for eight days. In Yaoundé, gendarmes detained Marc-Henri B. and Bruno E. for at least nine days before being charged and transferred to prison. Roger M. was held for seven days. Esther B. and Martine A., arrested on homosexuality charges in Ambam, were detained at the Ambam Gendarmerie Company in February 2012 for four days.

Denial of Access to Counsel

Cameroon's Criminal Procedure Code guarantees the right to a lawyer, but several defendants interviewed who asked for a lawyer at the time of arrest were denied this right.¹²² For instance, Samuel A. explained, "They interrogated me and asked how I started that, and who I go out with. I told them I wanted to see a lawyer. They didn't listen."¹²³ Stéphane M., as described in Case Study 3 (Section II), was also denied the right to see a lawyer.

Law enforcement officials often became uncomfortable when defense lawyers came into the picture. Joseph M. heard in late 2011 that the police in Kumba, after arresting four other alleged gays, were looking for him on suspicion of homosexuality.

¹²¹ Criminal Procedure Code, section 119 (2).

¹²² Criminal Procedure Code, section 37, section 122 (3).

¹²³ Alternatives-Cameroun, CAMFAIDS, and Human Rights Watch interview with Samuel A., Douala, October 17, 2012.

I got information that police were looking for me.... I talked to a friend who is a lawyer. He said he would come with me. When we entered [the police station] they saw him. They asked if I knew why I was called. I said “No, I don’t know.”

The police officer started using intimidating words, “So you’ve got a lawyer?” The lawyer said, “Is it wrong for the citizen to have a lawyer?” The lawyer and the police had an exchange of words. The lawyer said, “If you have anything, send it to court and we’ll talk there.” We left. The next time I was in Kumba, we went to the office [police station]. We sat there with two police officers. It seems that whatever they planned to say and do, the presence of the lawyer was an obstruction.¹²⁴

Denial of Contact with Family

In addition to being denied the right to counsel, several detainees were also denied contact with their families, which is guaranteed by section 37 of the Criminal Procedure Code. Stéphane Maliédji said police in Douala refused to allow him to call his sister. Jonas K. said that during the week he was in police custody in Yaoundé, he was not permitted to inform his parents.¹²⁵

ADEFHO documented a case in 2012 in which the parents of a minor arrested for homosexuality had no idea of his whereabouts for two months. By the time he was released from prison, they had already conducted mourning rituals.

Biased Law Enforcement and Judicial Officials

In some cases, law enforcement officials’ own prejudices play a role in what they consider “evidence” of a crime. When Franky D. and Jonas K. were charged with homosexuality before a court in Yaoundé, the president of the tribunal asked Franky D. to explain why he was drinking Bailey’s, a liqueur, on the night of his arrest, and asserted that because Bailey’s is a “woman’s drink,” this proved that Franky D. was homosexual.¹²⁶ He also accused Franky D. and Jonas K. of “speaking like women.”¹²⁷

¹²⁴ Alternatives-Cameroun, ADEFHO, CAMFAIDS, and Human Rights Watch interview with Joseph M., Kumba, October 16, 2012.

¹²⁵ CAMFAIDS and Human Rights Watch interview with Jonas K., Yaoundé, October 19, 2012.

¹²⁶ CAMFAIDS trial observation, November 22, 2011; CAMFAIDS and Human Rights Watch interview with Michel Togué, Yaoundé, October 18, 2012.

¹²⁷ Human Rights Watch interview with Michel Togué, New York, January 8, 2012.

The prosecutor in the case against Bruno E. and Marc-Henri B. told judges that by arresting them he had “dismantled a network of homosexuals,” reflecting biased assumptions about gay men.¹²⁸

One person who was prosecuted for homosexuality said that police officers referred to homosexuality as “sorcery” and “an abomination” during the interrogation, reflecting biases that could interfere with their ability to objectively examine the evidence.¹²⁹

Use of Confessions

A number of people arrested on the basis of homosexuality are tortured, as described above, or otherwise intimidated in order to extract confessions. Frequently, the “confessions” extracted from victims do not constitute admission of actual crimes, but rather, consist of simple admissions of homosexuality or vague recollections of previous homosexual acts. The required constitutive elements of a crime—in this case, information such as the identity of the second party, their actual gender, and whether or not the incident took place within the statute of limitations—are missing.

According to the Ministry of Justice, “Confessions shall not only be made voluntarily, but the court shall ascertain veracity of their contents.”¹³⁰ But in many cases discussed in this report, confessions were used in court without substantial corroborating evidence, including the case of Roger M.; the case of R.X., the minor arrested in Kumba; the case of Esther B. and Martine A.; and the case of Jonas K. and Franky D., who were ultimately acquitted on appeal.

Corruption

Several individuals wound up being prosecuted for homosexuality because they were unable to pay sizable bribes demanded by gendarmes or police. In one case, several arrested men spent over a week in custody at a gendarmerie brigade in Yaoundé. According to one of them, their family members came to “negotiate” their release with the commandant, bringing a total of 450,000 CFA (about \$900). They were about to be

¹²⁸ Human Rights Watch interview, Yaoundé, January 29, 2013.

¹²⁹ Human Rights Watch interview with Jonas K. and Franky D., Yaoundé, January 30, 2013.

¹³⁰ Ministry of Justice, *Report by the Ministry of Justice on Human Rights in Cameroon in 2005*, paragraph 486.

released when the captain—the commandant’s supervisor—became aware of the transaction and gave orders not to release the men.¹³¹

Another man held in the same case, interviewed separately, explained, “The investigators asked us for money, 500,000 CFA (\$1000). The commandant of the brigade asked us for this. He said if we didn’t pay we’d be taken to the Parquet.”¹³²

Those who paid bribes, such as Joseph P. in Limbe, whose friends paid 70,000 CFA to gendarmes (see Section II, above), were often released.

¹³¹ CAMFAIDS and Human Rights Watch interviews, Yaoundé, October 13, 2012.

¹³² CAMFAIDS and Human Rights Watch interview, Douala, October 15, 2012.

VI. Beyond “Guilty or Not Guilty:” Impacts of Cases on the Defendants

Even homosexuality cases that are dropped or result in acquittals can have longstanding implications for the defendants. Criminal charges have involuntarily “outed” many people in Cameroon, with devastating results, including expulsion from the family or community.

For example, when two alleged lesbians were arrested in Ambam in 2012, and held at the gendarmerie brigade for four days, Esther B. said,

Other detainees mocked us. They knew what we were accused of. People came constantly to the brigade to see us. It had been publicized on the radio.

Following their provisional release, Esther B. and Martine A. returned home, only to find that their landlady would no longer tolerate them in the room they rented. Esther moved into another room with a friend, who was then harassed for “keeping a lesbian in the room.” Esther stayed indoors most of the time. She recounted, “I went to the market one day and it was as if I was a thief—people threw rocks at me.”¹³³ Both women eventually moved to Yaoundé, where they could be relatively anonymous.

Roger M. told us, “Almost all of us, when we come out of prison, we’re rejected by our families and by society.” In his case, he explained:

The case has been in the media too much. It creates threats to me. Everyone is against me now in my family. They were not aware [of my sexual orientation] before. I studied to be a priest, and am still enrolled as one. I am not in contact with my family now except my aunt who is my *nourrice* [the woman who raised me]. She is supportive, but has problems with the rest of the family because of this.¹³⁴

¹³³ ADEFHO, CAMFAIDS, and Human Rights Watch interview with Esther B., Yaoundé, October 12, 2012.

¹³⁴ ADEFHO, CAMFAIDS, and Human Rights Watch interview with Roger M., Yaoundé, October 12, 2012.

G.M., arrested in December 2012 after two of his friends were seen kissing, lost his opportunity to study. He said,

My parents refused to sponsor me [for school fees] because of that. They said that I should just go and make my own living. They did not know before that I am gay.... I also have problems with my brother. He doesn't want to see me because of what happened.¹³⁵

Among those who spent time in prison on homosexuality charges, several of those who were interviewed for this report bore physical scars as a result of violence suffered in prison. Roger M. presents a small scar on his eyebrow. He told ADEFHO, CAMFAIDS, and Human Rights Watch:

I have this injury from a detainee in my cell who was very violent and said I had to leave his cell. He beat me several times. The last time, he tried to hit me in the head with a wooden stool. I dodged the blow and was struck on the forehead and eyebrow. I still remained in the same cell.

I was in prison for 17 months. During the whole time there was violence [against me].¹³⁶

One defendant was raped repeatedly in prison, causing both physical and emotional damage. He was also beaten so severely that a rib was fractured.¹³⁷ Prison guards made no attempt to stop the gang rape and assault, and no one was punished for it, highlighting another sad irony of Cameroon's law: people are convicted to prison time for consensual sexual conduct, but once in prison, convicts who are not considered "homosexual" can sexually victimize them with impunity.

Another defendant, released from prison in 2011 after serving out a sentence on homosexuality charges, now suffers from depression and from uncontrollable violent

¹³⁵ Human Rights Watch interview with G.M., Buea, October 16, 2012.

¹³⁶ ADEFHO, CAMFAIDS, and Human Rights Watch interview with Roger M., Yaoundé, October 12, 2012.

¹³⁷ CAMFAIDS and Human Rights Watch interview, Yaoundé, October 2012.

episodes. He is in counseling, but feels he cannot talk about his sexual orientation with his psychologist, creating what may be an additional barrier to recovery.¹³⁸

¹³⁸ CAMFAIDS and Human Rights Watch interview, Douala, October 2012.

VII. Threats to Defense Lawyers

As this report demonstrates, access to justice is elusive for many people charged with homosexuality. Recent threats against defense lawyers who have represented clients in homosexuality cases pose a new menace to the right to representation. These lawyers have received occasional, one-off threats in the past, but the systematic nature of the harassment in the last several months, combined with state inaction, raises serious concerns about the Cameroonian government's commitment to ensuring the right to defense.

Beginning on October 18, 2012, Alice Nkom and Michel Togu  received a series of anonymous threats by cell phone and email related to their work on several high-profile homosexuality cases. One text message to Togu  threatened his school-age children and warned him to stop defending persons accused of homosexuality. A subsequent email message to Togu  warned, "In this country there is no place for faggots and their defenders," and a third message threatened that if he did not stop "defending your faggot ideas," he would risk being "at the bedside of one of your dying children." The sender attached photos to one of those messages of Togu 's children leaving their school building.¹³⁹

An email message to Nkom stated, "If you don't stop, you'll see" and warned her, "This will be bloody;" it also included threats to Nkom's children. Another message, threatening her clients, warned "It only remains [to find] their houses... the neighborhoods are already in our hands."¹⁴⁰

Togu  filed a complaint with the Yaound  police, and Nkom filed a complaint with the prosecutors of the republic in Yaound  and Douala. However, while the threats subsided for several days, they increased in intensity in the lead-up to an appeals hearing for Roger M. on November 19. Togu 's wife also received phone calls threatening violence. At time of writing, the Cameroonian authorities had taken no action to publicly denounce the threats or to ensure protection for Togu  and Nkom. The lack of response to the complaints raised concerns about Cameroon's commitment to ensuring access to due process for all citizens.

¹³⁹ Email messages sent from "pasdepedesaucameroun@gmail.com" to Michel Togu , on file with Human Rights Watch.

¹⁴⁰ Email and SMS messages, on file with ADEFHO.

VIII. Conclusion

The numerous due process violations and other human rights violations affecting people accused of homosexual conduct in Cameroon require urgent attention. The Cameroonian government should recognize that the law is subject to widespread abuse.

There are deep contradictions between law enforcement officials' rhetoric—such as the claims that the law's only aim is to punish those who engage in public sex—and reality of article 347 bis in which innocent people are framed, spied upon by neighbors, subjected to extortion and bribery, beaten by police and gendarme, humiliated with flawed anal examinations, raped in custody, disowned by parents as a result of arrest, and emotionally scarred by traumatic encounters with law enforcement—all in the name of justice.

President Biya should end arrests under article 347 bis, release those who are currently in prison solely on the basis of article 347 bis, and take immediate steps toward changing the law.

Decriminalization of consensual same-sex conduct in Cameroon is a legal imperative, and a necessary step toward restoring rights and dignity to a section of Cameroon's population.

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Alternatives-Cameroun, ADEFHO, CAMFAIDS, and Human Rights Watch are grateful to the many victims of arrests and prosecutions in Cameroon who shared their stories with us.

Appendix: Ministry of Justice Statistics on Homosexuality Arrests

Year	Number of investigations	Number of prosecutions	Number of cases heard and determined	Number of convictions	Number of discharge/acquittals	“Victims”
2011	36	12 by judicial inquiries, 25 by trial courts	16	14	2	21 adult men; 8 children
2010	27	20	9	8	1	7 adult men; 12 children

(Source: Ministry of Justice Human Rights Reports, 2011 and 2012)

— *Indecency to minor between sixteen and twenty-one.*

(1) For any offence under sections 295, 296 and 347 a of this Code committed against a person over sixteen and under twenty-one years of age, the penalty shall be doubled.

(2) Upon conviction under this section, the Court may deprive the offender of parental power and disqualify him from being guardian or curator of any minor for the time prescribed by section 31 (4) of this Code.

Section 347. (Ordinance No. 72-16 of the 28th September 1972.)

— *Homosexuality.*

Whoever has sexual relations with a person of the same sex shall be punished with imprisonment for from six months to five years and a fine of from 20,000 to 200,000 francs.

Section 348. — *Drink.*

(1) Whoever

GUILTY BY ASSOCIATION

Human Rights Violations in the Enforcement of Cameroon's Anti-Homosexuality Law

Cameroon prosecutes people for consensual same-sex conduct more aggressively than almost any country in the world. Since 2010, Cameroonian prosecutors have brought charges against at least 28 people under article 347 bis of its penal code, which punishes anyone who has "sexual relations with a person of the same sex."

In most cases, the accused are convicted on the basis of little or no evidence. Investigators frequently rely on torture or ill-treatment to extract confessions. One man was convicted for sending a romantic text message to another man. Two others were convicted on the basis of the discovery of a bag of condoms and lubricant in their house. The lawyers who defend suspects in "homosexuality" cases have received death threats, and the government's failure to respond has compromised the right to defense.

This report is based on research conducted by Human Rights Watch and three Cameroonian organizations: Alternatives-Cameroun, Association for the Defense of Gays and Lesbians (ADEFHO), and the Cameroonian Foundation for AIDS (CAMFAIDS). It documents due process violations and other human rights violations committed in Cameroon in the process of arresting and prosecuting people for homosexual conduct. It recommends that Cameroon take immediate steps to decriminalize consensual same-sex conduct, in order to comply with international law, uphold its own constitution, and address the grave human rights violations that law enforcement officials commit in their efforts to enforce article 347 bis.

(above) Article 347 of Cameroon's penal code, which criminalizes consensual sex between adults.

(front cover) S. was arrested, charged with homosexual conduct, and denied access to a lawyer in 2010 after he met two male friends in a hotel lobby. His case is one of many that illustrates the due process and other human rights violations common to "homosexuality" prosecutions in Cameroon.

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