

DECRIMINALISING SAME-SEX CONDUCT IN CAMEROON

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DECLARATION

I, Gaelle Tchouta, do hereby declare that the work contained in this mini-dissertation is entirely my own work, except where it is attributed to other authors or sources. This work has not been submitted for a degree at any other university.

Signed.....

Date.....

EPIGRAPH

“Indeed, to believe in human rights is to believe in equality: equal rights for all people, regardless of who they are or where they are from.”

Ms.NavanethemPillay
United Nations High Commissioner for Human Rights

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No one walks alone on this journey of life. Every single step I took towards the achievement of this mini-dissertation research, there have been some people walking beside me, supporting, guiding and cheering me on. I would like to express my gratitude to those exceptional ones who made this work possible.

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ABSTRACT

In Cameroon, as in many other African countries, there is a law prohibiting same-sex relationships. The relevant provision, Article 347*bis* of the Cameroonian Penal Code (Law No 65-LF-24 of 12 November and Law No 67-LF-1 of 12 June 1967), states as follows: “Whoever has sexual relations with a person of the same-sex shall be punished with imprisonment for from six months to five years and fine from 20 000 to 200 000 francs.”

This study assesses the law criminalizing same-sex relationships in Cameroon as being discriminatory and encouraging a homophobic society and as contributing to the stigmatization and marginalization of lesbian, gay, bisexual and transgender (LGBT) people. Both State and non-State actors in Cameroon do not accept the practice of homosexuality due to the conservative nature of traditional cultural values and religious beliefs. Consequently, presumed LGBT people are frequently harassed, persecuted and arbitrarily arrested on suspicion of their sexual identity. Moreover, the rejection and denial of LGBT people make them live in fear and hiding. It also exposes them to the greatest risk of HIV infection.

It is argued in this study that the criminalisation of consensual same-sex conducts violates the rights to privacy, equality, fair trial, human dignity and the principle of non-discrimination enshrined in the Cameroon Constitution and the various international human rights instruments that Cameroon has ratified. It also deprives LGBT people of their rights to education and health merely on the basis of them being who they are.

The finding from this study indicates that the law alone is not enough to make a social change. Perspective and inputs from other disciplines such as Sociology, Anthropology, Psychology and Science of Education need to enhance the arguments for the decriminalisation of same-sex conduct. This study also shows the harmful impact that the law criminalising same-sex behaviour has on LGBT people as well as the society as a whole. Thus, it is very important for the Cameroonian government to take the first step towards decriminalisation of same-sex relationships in order to respect its obligation to respect, promote, protect and fulfil everyone’s human rights without distinction of any, according to its international commitments and

agreements. The government should also take a great and dynamic initiative regarding the educational aspect because education is a vital key for significant progress and change.

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Acronyms and abbreviations

ACHPR	African Charter on Human and Peoples' Rights
ADHEFO	<i>Association Camerounaise pour la Défense de l'homosexualité</i>
AIDS	Acquired Immunodeficiency Syndrome
AU	African Union
AUC	African Union Commission
CPDM	Cameroon People's Democratic Movement
EU	European Union
HIV	Human Immunodeficiency Virus
HRW	Human Rights Watch
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IGLHRC	International Gay and Lesbian Human Rights Committee
LGBT	lesbians, gays, bisexuals and transgender
MSM	men who have sex with men
NGO	Non-governmental Organisation
UDHR	Universal Declaration of Human Rights
UN	United Nations
WSW	women who have sex with women

Chapter 1: Introduction

1.1 Background and justification of the study

Cameroon is situated in the Central African sub-region. The Constitution of 1996 embodies the country's multiparty character, dominated by the ruling party, CPDM (Cameroon People's Democratic Movement) and more than 200 other political parties. The Constitution resulted from the revision of the 1972 Constitution and makes Cameroon a State with executive, legislative and judiciary powers clearly defined and separated. In its preamble, the Constitution of Cameroon, while guaranteeing to each individual inalienable and sacred rights ensuring protection of minorities, pledges its commitment to the fundamental freedoms enshrined in the Universal Declaration of Human Rights (UDHR) and all related international conventions duly ratified by Cameroon.

Many African leaders, such as Presidents Daniel arap Moi (the previous President of Kenya) and Robert Mugabe (Zimbabwe), continue to condemn same-sex acts by providing the punishment of homosexuality in their legislations including Cameroon. Former President Moi said that same-sex practices are “un-African and against both the Bible and the Koran.”¹ The Minister of Justice in Cameroon joined these leaders when he cited Article 29(7) of the African Charter on Human and Peoples' Rights by claiming that, “by virtue of African culture, homosexuality is not a value accepted in the Cameroonian society.”² For many in the Cameroonian society, sexual acts between same-sex partners are a perversion and a practice against African culture, social ethics and norms. They also perceive homosexuality as a “means of social and economic ascension; a form of sorcery, witchcraft, and demoniac activity; a form of corruption; and distinctly not a part of African culture.”³

¹ See information on website of *Africa: Sexual Orientation under the African Charter on Human and Peoples' Rights* (2010) available at: <http://www.pambazuka.org/en/category/features/68953>, accessed: 3 February 2011).

² Minister of Justice, Cameroon 'Doc 2603/CD05/022/PPE/DDHCI/MJ' (2006) on file with author.

³ M J. King, 'Homosexuality in Cameroon's Public Sphere: Rejecting Homosexuality as Protest against the Other', vol.2, No.2 P.7, WIIRD.

“Freedom and security of each individual and the protection of minorities”⁴ are some of the fundamental rights embodied in the Constitution promulgated in Cameroon (18 January 1996). Although enshrined by the supreme law of the country, protection of minorities is the main discrepancy highlighted between the Constitution and the Penal Code. Article 347*bis* of this Code states as follows: “Whoever has sexual relations with a person of the same sex shall be punished with imprisonment for from six months to five years and fine from 20 000 to 200 000 francs”⁵

African societies in general, and the Cameroonian society in particular have always had a fairly settled view on sexuality as practiced by sexual minorities, clearly indicating that such practices are “against nature” and violate the values through which sexuality in the way of African is defined in view of procreation. Even the African Charter on Human and Peoples’ Rights “does not make any reference to gays, lesbians, or the issue of sexual orientation”.⁶ The Cameroonian society does not accept homosexuality and prejudice against sexual minorities is deeply entrenched, especially within government circles. Thus, any practice that comes within this framework falls into a “deviance, perversion or ritual practices of esoteric circles believed to come from the West.”⁷ The values upheld by the traditional African society supported and promoted by religious circles, hold that sexual practices by individuals of the same sex are a desecration of natural laws as handed down by God. Religious leaders criticize homosexuality and conceive it as a sin against God, nature and African values as well. On 25 December 2005, in his homily, Archbishop Tonye Bakot for example, denounced homosexuality by saying:

I must say that homosexuality is a conspiracy against the family and marriage. Do not accept it from us. We expose our youth to the grave moral perversion because of the power of money, for a job,

⁴Preamble of the Cameroon Constitution (1996).

⁵Penal code of Cameroon, p.303.

⁶ R Murray & F Viljoen ‘Towards non-discrimination on the basis of sexual orientation: The normative basis and procedural possibilities before the African Commission on Human and Peoples’ Rights’ (2007) 29 *Human Rights Quarterly* 88.

⁷ C Gueboquo ‘La question homosexuelle en Afrique. Le cas du Cameroun’ (2006) *L’harmattan* p.71

entrance in to high school. We force our youth to homosexuality that we want to legalize. Homosexuality is a perversion against nature that we must all fight.⁸

Therefore, the realities of modern Cameroonian society, at least in some proportion and by keeping any measure otherwise tend to show a sharp break between the ‘African’ sexuality that respects the natural laws, in terms of procreation as the founding principle, and sexuality for pleasure. Thus, affirming and practicing one’s sexual orientation in Cameroon is against the law. Even worse, the law by condemning the practice of homosexual acts intrudes into people's lives and makes public the acts belonging to the private sphere. When it comes to sexual orientation in Cameroon, where same-sex acts are punishable by five years’ imprisonment, it is safest to live in hiding especially since the “Top 50 list” of homosexuals was published in many newspapers denouncing homosexuality, thus leading to the further persecution of perceived homosexuals. From the publication of the said list in 2006, the debate on homosexuality was raised and discussed throughout the country like, never before. The President of the Republic, Paul Biya, said the following in an interview about the newspaper publications of the list of presumed homosexuals:

It is not acceptable that based on uncontrolled rumour, we allow, as was recently the case, speculation on the virtues and vices of others. This breaches their rights to privacy and their reputation.⁹

The issue of homosexuality has goaded hatred and discrimination against gays and lesbians on the African continent including Cameroon. Thus, for African nations, decriminalising same-sex conducts would be contrary to African ethics. According to the recent incident on the question of homosexuality in Cameroon, this study seeks to examine the abuses and discrimination against same-sex relationships generated from homophobic attacks and the protection of lesbian, gay, bisexual and transgender (LGBT) persons by international human rights laws.

1.2 Problem statement

⁸ V T Backet ‘Archbishop of Yaoundé in homily on 25 December 2005’ Available at: <http://www.mia-culture.com/article-299-Arrestation.au.Cameroun.de.citoyens.homosexuels.html>(accessed: 8 January 2011).

⁹ See Human Rights Watch ‘Criminalizing Identities. Rights Abuses in Cameroon based on Sexual Orientation and gender Identity’ (2010) p.12.

Sexual minorities in Africa remain a notion very hard to understand and to bear in peoples' minds. In Cameroon, the society treats LGBT persons with contempt; their rights are violated and they are unlawfully arrested. "When a man wears earrings, someone says that he is a homosexual and he is arrested. I do not agree with it."¹⁰ The police arrest lesbians and gays on their presumed identity or only on the report of a friend or family member. People presumed to be homosexuals are arbitrarily arrested under Article 347*bis* of Penal Code, without any explanation or warrant. Once in prison, they are insulted, ill-treated, threatened and beaten up. Thus, being homosexual in Cameroon implies that one can be severely punished, and even ostracised from society. However, in accordance to the constitutional texts which, guarantee individuals' rights and liberties, Article 347*bis* of the Penal Code contravene the Constitution. The Constitution is the supreme law and all the other laws must comply with it. How therefore, does the Cameroonian government deal with the unconstitutionality of this article of the Penal Code which violates sexual minorities' rights what is the Cameroonian government doing in order to eradicate this unconstitutionality and conform to international human rights as well?

1.3 Research questions

The main research question is: whether Article 347*bis* of the Cameroonian Penal Code needs to be repealed? This question leads to the following sub questions:

- 1) What is the current situation on criminalising same-sex practice in Cameroon?
- 2) What are the legal and non-legal arguments for the decriminalisation of same-sex conduct in Cameroon?
- 3) What is the contribution of other disciplines to the process of decriminalisation of same-sex practices?

1.4 Objectives of the study

The issue of homosexuality is presently making headlines in Cameroon. Lesbians and gays are still victims of discrimination and their lives are threatened. The government is strict and inflexible towards them and even disapproved European Union (EU) grant to Non-governmental

¹⁰ See the interview of Alice N, lawyer and founder of the Association for the Defence of Homosexuals (ADHEFO) available at <http://www.camer.be> (accessed: 18 January 2011).

Organisations (NGOs) in order to combat discrimination against minority sex groups. There is a great debate and controversy on whether the Cameroonian government should maintain the fact that same-sex conduct is a criminal act in its Penal Code. The purpose of this study is a contribution to the debate on the amendment of Article 347*bis* of the Penal Code and argues for the decriminalisation of same-sex conduct.

1.5 Significance of the study

The analysis of this study targets the abuses, violence, and discrimination against lesbians, gays and bisexuals. The work will show that criminalising same-sex acts goes against international human rights law. It would also emphasise that depriving sexual minorities of their rights withdraws the fact that they are human beings and all the fundamental rights inherent to them. In addition, marginalising homosexuals implies many harmful consequences on the psychological, sociological, and educational plan. The study intends to make the society and government aware in a view to enhance the overall protection and fulfilment of human rights and fundamental freedoms of sexual minorities in Cameroon and Africa alike

1.6 Definition of technical terms

Decriminalisation: The repeal or amendment (undoing) of statutes which made certain acts criminal, so that those acts no longer are crimes or subject of prosecution.¹¹

Same-sex conduct: is the fact for two persons of the same sexual orientation to have a sexual relationship.

Sexual orientation: According to the American Psychological Association, sexual orientation refers to a person's sense of “personal and social identity based on those attractions, behaviours expressing them, and membership in a community of others who share them.”¹²

Sexual minorities: it is a group whose sexual identity, orientation, or practices differ from the majority of the surrounding society. In this context, sexual minorities refer to lesbians, gays, bisexuals and transgender people.

¹¹<http://legal.dictionaty.thefreedictionary.com/decriminalization> (accessed: 1 March 2011).

¹²American Psychological Association ‘Sexuality, what is sexual orientation?’ Available at: <http://www.apa.org/topics/orientation.html#whatis> (accessed: 25 January 2011).

Homosexuality: According to Freeman, “homosexuality has to do with sexual attraction of same sex. *Homosexual acts* can be performed by heterosexual (like in prison) as well as homosexual (those who have an attraction to people of the same sex).”¹³

Lesbian: A lesbian is a woman whose sexual orientation is to women.

Gay: A gay is a homosexual person, especially a man. This term is used to describe men and women attracted to people of the same sex.

Gender identity: It is an individual’s self-conception as being male or female, as distinguished from actual biological sex.

Bisexual: is someone who is sexually attracted to both sexes.

A Transgender person is someone whose personal idea of gender does not correlate with his or her assigned gender role.

1.7 Preliminary literature review

The rights of sexual minorities fall into specific rights in the sense where their rights remain outside African laws. The concept of homosexuality is a kind of ‘weird’ notion for most African scholars. This justifies low number of scholarly works done on rights of sexual orientation in the African context and worse when it comes to the case of Cameroon.

However, there are a few useful works pertaining to Africa such as the work of Murray and Viljoen. They analyse the rights of sexual minorities’ using the African Charter on Human and Peoples’ rights (ACHPR) and many mechanisms provided by the African Commission to protect the rights of homosexuals.¹⁴

Talking about Cameroon, Charles Gueboguo’s work highlights the modern form of homosexuality in Cameroon from a social and moderate point of view.¹⁵ Micah J. King’s follows Gueboguo, and examines the emergence of homosexuality into Cameroon’s public sphere.

This study also reviews the report of Human Rights Watch: ‘Cameroon-Criminalising Identities- Rights Abuses in Cameroon based on Sexual Orientation and Gender Identity’ with the collaboration of a few NGOs.

¹³<http://answers.yahoo.com/question/index?qid=20091214114222AAA6myd> (accessed: 10 February 2011).

¹⁴As (n 6 above).

¹⁵ (n 7 above).

Therefore, violations of the rights of sexual minorities result from the non- recognition of their rights. Government should be more aware of the fact that they are also human beings and deserve enjoying all the rights entitled to everyone. They should also be protected from homophobic attacks and their rights should be recognised.

1.8 Methodology

Diverse information, newspapers and literature based on broad research pertaining to sexual minority rights in Cameroon will mainly guide the study in this work.

1.9 Delineations and limitations of the study

This study is limited to Cameroon. I have chosen this country because the issue of homosexuality is still unresolved. The Cameroonian society rejects sexual minorities and arrests them with the authority of Article 347*bis* of the Penal Code. Thus, most of the LGBT persons living in Cameroon cannot express themselves and live in hiding and fear.

However, this study faces a lot of limitations because of a weak and poor literature related to the question of homosexuality in Cameroon, which is still a taboo and unintelligible. The scholars are few on the subject.

1.10 Overview of Chapters

The study consists of five chapters.

Chapter 1: This chapter is the introductory part and encompasses the preceding section of this work.

Chapter 2: This chapter highlights the legal position on criminalising same-sex conduct in Cameroon. Reference will be made to the Penal Code, legislation and other laws (Question1).

Chapter 3: It examines the different perspectives to decriminalise same-sex relationships by analysing the legal and non-legal arguments (Question 2).

Chapter 4: This chapter examines the need to adopt a multi-disciplinary approach towards decriminalising same-sex conduct (Question 3).

Chapter 5: It is about conclusions and recommendations.

1.11 Assumptions underlying the study

My starting point on this research is based on the assumption that the State of Cameroon must make an effort to secure and ensure the rights of sexual minorities by implementing the fundamental rights of human beings under international human rights law. It must also review Article 347*bis* of its Penal Code on homosexuality and make people aware of the existence and acceptance of homosexuals.

Chapter 2: Legal position on criminalising same-sex conduct in Cameroon

2.1 Introduction

Many countries in Africa still retain criminal laws prohibiting sexual practices between persons of the same sex.¹⁶ There are few countries on the continent, however, which have taken progressive steps in the protection of sexual minority groups including the decriminalisation of same-sex sexual relations. For instance, South Africa's Constitution explicitly provides for protection against discrimination based on sexual orientation.¹⁷ This idea was pronounced in the South African Constitutional Court decision of *National Coalition for Gay & Lesbian Equality v Minister of Home Affairs and others*.¹⁸ Prior to this judgment, the South African government did not recognise the human rights of LGBT persons and therefore, they were unfairly discriminated against.¹⁹ As a result, at the dawn of the new constitutional dispensation of South Africa (1996), the rights of sexual minorities had to be restored in order to maintain equality amongst all members of this society irrespective of their sexual orientation.

In Cameroon, since the publication of the list of Top 50²⁰ personalities presumed to be homosexuals, the question of homosexuality has become one of burning importance. The press is negatively shaping public opinion on the issue and encouraging homophobia. In this chapter, the analysis highlights (1) homosexuality in the Cameroonian Penal Code and (2) the current position of criminalising same-sex relationships.

¹⁶ C Gueboguo "Mobilisation transnationales des communautés homosexuelles en Afrique Une affaire à suivre" (2008) *Anthropologie et Sociétés*, vol. 32, no hors-série P.87.

¹⁷ See Section 9(3) of the Constitution of the Republic of South Africa "The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth."

¹⁸ *National Coalition for Gay and Lesbian Equality and Others v Minister of Home Affairs and Others* (CCT10/99) [1999] ZACC 17; 2000 (2) SA 1; 2000 (1) BCLR 39 (2 December 1999)

¹⁹ 'Gay rights in South Africa' available at: <http://www.queerlife.co.za/test/gay-opinions/31-opinions/3931-gay-rights-in-south-africa.html> (accessed: 6 August 2012)

²⁰ "Le top 50 des homosexuels présumés du Cameroun" (2006) *L'Anecdote*, No. 254, January 24, p. 3-6, "Les pédés de la république", (2006) *La Météo*, No. 67

2.2 Homosexuality in the Cameroonian Penal Code

This section will analyse (1) the legal context of Article 347*bis* and (2) the justification of criminalisation of same-sex acts in Cameroon.

2.2.1 Legal analysis of Article 347*bis* of the Penal Code of Cameroon

After Cameroon's independency in 1960, a Referendum on 20th May 1972 is initiated by the former President of the Republic of Cameroon Ahmadou Ahidjo in favour to reunite the two States of Cameroon (Anglophone and francophone) in one State called Unitarian State. In following the initiative of this referendum, the constitution of 2 June 1972 is adopted. The 1972 Constitution ignored the existing Constitution of 1 September 1961. It was not a revision of the 1961 Constitution, but the writing of a new Constitution.²¹ This new Constitution gives the full power to the President of the Republic. Maurice Kamto affirms that "the Constitution of 2 June 1972 appears to be the work of an original constituent power, acting *ex nihilo* and not that of a constituent power drawing his competency from the existing 1961 Constitution."²² The President Ahmadou Ahidjo had a revolutionary power because he operated a "coup d'état civil in 1972"²³ in order to make inefficient the legal aspect of the 1961 Constitution.

In 1972, the multiparty system was prohibited and only one political party called Cameroon National Union (CNU) existed. There were no respect of human rights, no respect of freedom of expression and no real democracy. With his discretionary power, the President Ahidjo took series of repressive measures under ordinances such as ordinance related judiciary²⁴ and Ordinance on the amendment of certain provisions of the Penal Code²⁵ which were so severe. Article 1 of the Ordinance no 72/17 of 28 September 1972 on the Repression of Crimes states as follows: "in all cases referred to in Articles 247, 253, 294, 318, 320, 321, 324, 346, 347 and 347*bis* of the Penal Code, the suspect must be brought before the prosecutor who will bring the suspect before the trial court by way of *flagrante delicto* or for summary trial."

²¹ P F Nkot, " Le référendum du 20 mai 1972 au Cameroun : analyse de quelques tendances de la doctrine " in Les Cahiers de droit, vol. 40, n° 3, 1999, p. 665-690, p.676 available at <http://www.erudit.org/revue/cd/1999/v40/n3/043565ar.pdf> (accessed 11 November 2012).

²² As above p.677

²³ P F Nkot (n 21 above) p.684

²⁴ See Ordinance No. 72/4 of 26 August 1972 on judicial organization of Cameroon.

²⁵ See Ordinance No 72-16 of 28 September 1972 on the modification of the Penal Code.

The former President Ahmadou Ahidjo was Muslim and the Koran forbids same-sex acts, maybe that is the reason why, because of his own personal convictions and with his full power he had, he adopted article 347*bis* by decree under the Ordinance no 72-16 of 28 September 1972.

Therefore, article 347*bis* of the Penal Code prohibiting same-sex conducts originated from Ordinance No 72-16 of 28 September 1972 is not legal referring to Law No 65-LF-24 of 12 November 1965 and Law No 67-LF-1 of 12 June 1967. This Article does not stem from the Legislative as it was supposed to, but from the discretionary power of the President Ahidjo. However, Part IV: Article 26 of the Constitution of Cameroon (1996) gives a large power to the Parliament in terms of vote of the law and also clarifies the principle of separation of powers between the Executive and the Legislature. Thus, Article 347*bis* was not voted by the Parliament.

Article 347*bis* of the Cameroonian Penal Code provides as follows: “Whoever has sexual relations with a person of the same-sex shall be punished with imprisonment for from six months to five years and fine from 20 000 to 200 000 francs.”²⁶ This anti-gay legislation also stipulates that if one of the persons involved is between 16 and 21 years old, the penalty must be doubled.²⁷ Homosexuality in itself is not a criminal act, what is criminal is the act that persons of the same-sex involve themselves in. The practice of homosexuality is neither tolerated nor accepted in mainstream Cameroonian society because it is considered as a “moral stigma of colonial perversion.”²⁸ Men having sex with men (MSM) and women having sex with women (WSW) are arrested and jailed under Article 347*bis* of the Penal Code. The case of “Yaoundé 11” is a relevant example of how homosexual activity is not tolerated in Cameroon:²⁹

11 men were arrested at a bar frequented by gays and lesbians in Yaoundé. While in prison, the detainees faced harsh conditions and homophobic attacks from fellow prisoners. At their trial in June 2006, nine of

²⁶ Article 347*bis* of the Cameroon Penal Code

²⁷ Article 347(1) of the Penal Code titled: *Indecency to minor between sixteen and twenty one* “For any offence under sections 295, 296 and 347a of this code committed against a person over sixteen and under twenty-one years of age, the penalty shall be doubled.”

²⁸ O Tchouaffe ‘Homosexuality and the politics of sex, respectability and power in postcolonial Cameroon’ available at <http://www.africanstudies.uct.ac.za/postamble/vol2-2/homosexuality.pdf> (accessed: 6 June 2011) p.6.

²⁹ International Gay & Lesbian Human Rights Commission ‘Cameroon: Justice subverted as seven men convicted on sodomy charges’ Available at: [www.iglhrc.org>Home>TakeAction>NewsfromOurPartners](http://www.iglhrc.org/Home>TakeAction>NewsfromOurPartners) (accessed: 6 June 2011).

the men were found guilty of ‘sodomy’ and sentenced to ten months jail term. One of the men, Alim Mongoche, died of AIDS-related complications shortly after his conviction, exacerbated by the harsh conditions of detention.³⁰

There was no evidence and no witnesses to prove that the nine men sentenced under Article 347*bis* were caught while engaging in same-sex acts. Even with the lack of evidence, the prosecutor refused to release them and said the men would be retried.³¹ The application of article 347*bis* raises anti-homosexual sentiments and homophobia, and also infringes on the rights and freedoms enshrined in the Constitution of Cameroon (1996). Nearly 200 people are arbitrarily arrested in Cameroon every year and dragged to court on their perceived sexual orientation.³² Gays and lesbians in Cameroon live in danger and fear.

2.2.2 Justification of the criminalisation of same-sex acts under the Cameroonian Penal Code

Most often, the Cameroonian government cites morality, traditional values and the protection of children to justify the criminalisation of LGBT persons. This section examines the explanation for the criminalisation and offences against presumed homosexuals in Cameroon. Cameroon is a conservative society and it has been said that “homosexual relationships are undermining national morals and integrity and that they are also, incompatible with so-called African values.”³³ The Cameroonian government justifies the criminalisation of same-sex intercourse in order to respect, preserve and protect African culture and traditions. Hence, in a letter to International Gay and Lesbian Human Rights Committee (IGLHRC), the Minister of Justice in Cameroon, Mr. Amadou Ali, justified the detention of the nine men in Yaoundé as ensuring “that positive African cultural values are preserved and by virtue of African culture, homosexuality is

³⁰ ‘UN defends rights of sexual minorities in Cameroon’ Available at: <http://www.thefreelibrary.com/UN+defends+rights+of+sexual+minorities+in+Cameroon.-a0160874505> (accessed 16 May 2011).

³¹ A Nkom ‘Government refuses to release nine men discharged on homosexuality charges’ (2006) Available at: <http://ilga.org/ilga/en/article/786> (accessed: 17 June 2011).

³² See ‘Cameroun: ces homos que l’on hait’ Available at: <http://ilga.org/ilga/fr/article/mZ4oMZH1dz> (accessed: 17 May 2011).

³³ (n23 above) 4.

not a value accepted in the Cameroonian society.”³⁴ In this letter, the Minister of Justice advocated and enforced the application and implementation of Article 347*bis*.

In Cameroon, human rights defenders, organisations and activists advocating for the protection of lesbian, gay, bisexual, and transgender (LGBT) rights are under threat. “They have been arrested, detained and have suffered injury because of their affiliation to LGBT organisations.”³⁵ They are harassed by both State and non-State actors because according to them, defenders of LGBT rights encourage and support homosexual practice in the country which goes against traditional culture. In 2006, a well-known gay and lesbian lawyer in Cameroon, Alice Nkom, paid a visit to her clients in jail. While she was taking pictures of them, she was arrested and locked up without any proof that she violated a law. After speaking to the Attorney-General, she was released a few hours later.³⁶ She was also received threats of attack with regards to the European Union (EU) grant she received to carry out advocacy related activities for LGBT communities in Cameroon. On 4 January 2011,³⁷ in response to this grant, the Minister of External Relations, Henri Eyebe Ayissi, summoned the EU representative and said that the people of Cameroon are neither prepared nor willing to go towards the development of same-sex practice relationships in their territory.³⁸ This statement from the Minister of External Relation reiterates the official position of Cameroonian cultural conservatives justifying the criminalisation of homosexual practices.

Religion and morality have frequently been used to justify discrimination, violence and abuse towards LGBT people. The realities of modern Cameroonian society tend to show a clear

³⁴ ‘Cameroon: Justice Subverted as Seven Men Convicted on Sodomy Charges’ (2006) Available at: <http://www.iglhrc.org/cgi-bin/iowa/article/pressroom/pressrelease/273.html> (accessed: 23 March 2011)

³⁵ M Mburu, M Tabengwa & K Vance ‘Human rights and traditional values: Exploring the intersections, challenges, and opportunities’ From the International Conference on African Same-Sex Sexualities and Gender, Diversity, Practices, Identities and Communities’ (2011) P.14 Source: ARC. Available at: www.awid.org/.../Africa-Human-Rights-and-Traditional-Values-Exploring-the-Intersections-Challenges-and-Opportunities (accessed: 15 June 2011).

³⁶ C Van der Westhuizen ‘Fighting for gay rights in Cameroon’ (2009) Interviews with Alice Nkom, Available at: <http://www.postnewsline.com/2009/alice-kom-fighting-for-gay-rights-in-Cameroon.html> (accessed: 18 March 2011).

³⁷ www.ambafrance-cm.org/spip.php?article1522 (accessed: 24 March 2011).

³⁸ See Letter to His Excellency Paul Biya, ‘Cameroon government must cease prosecution of LGBT human rights defenders’ Available at: <http://www.iglhrc.org> (accessed: 24 March 2011).

distinction between ‘African’ sexual practice that respects the natural laws where procreation is the founding principle, and where sexual practice is used for pleasure. Therefore, same-sex intercourse is perceived as “perversion and demeaning the dignity of man in order to turn him away from normal sexual relations (-heterosexual union) which serves a main goal of procreation.”³⁹ Religious morals perceive sexuality as a gift from God with the sole purpose of procreation in order to build a family because it is God’s commandment.⁴⁰ The EU support of pro-homosexual organisations has led to major resentment from the religious sector. Bishop Joseph Akonga Essomba noted that:

The Bishops, having heard the granting of a large donation of money by the European Union to associations of homosexuals in Cameroon express their disapproval and outrageousness. They reaffirmed the traditional doctrine of the church: God is love and He wants man and woman to live this love. This love might be expressed in a couple of man and woman united in marriage. The Bishops urge the faithful Christians and all men of good will to remain faithful to this commitment which grooms the human being.⁴¹

Therefore, according to the Bible and religious leaders, same-sex sexual conduct is evil, anti-godly and a sin.⁴² LGBT persons frequently face persecution, ostracism and condemnation from religious fundamentalists. Mbaru *et al* states as follows: “Christian and Islamic movements are vehemently opposed to, and often reject known LGBT people from their congregations.”⁴³ Religious people find the LGBT lifestyle immoral and identify such people with evil.⁴⁴ The Cameroonian society does not support homosexuals because people think ‘homosexuality is unnatural and against the African culture, religion and values.’⁴⁵ The Catholic Church is

³⁹ J M Essomba, “L’évolution des pratiques sexuelles au Cameroun.” Available at: www.vepik.de/Projekte/homosexualitat-work.pdf (accessed: 21 March 2011).

⁴⁰ Genesis 2: 24: “...a man will leave his father and mother and be united to his wife, and they will become one flesh.” According to Christians, the thought of this verse is a man should be united to a woman not to another man.

⁴¹ A Essogo, ‘Cameroun: Les évêques s’indigent contre l’appui de l’UE a des organisations d’homosexuels’ *Cameroon Tribune* Available at : <http://www.camer.be> (accessed: 18 January 2011)

⁴² Leviticus 18, cites unlawful sexual relations and among them same-sex sexual acts. Verse 22 of this chapter says: “Do not lie with a man as one lies with a woman; that is detestable.”

⁴³ (n 35 above) 13.

⁴⁴ M J Kalamar ‘Exploring the factors affecting HIV prevention interventions for Men who have Sex with Men (MSM) in Cameroon: A case study of Alternatives-Cameroon, an NGO based in the city of Douala’ (2009) *Master’s Thesis, University of KwaZulu-Natal*, 15.

⁴⁵ O Tchouaffe (n 28 above) 6.

dominant in Cameroon. The Archbishop of Yaoundé investigated the outbreak of homophobia in 2006, after the publication of the list of fifty presumed homosexuals.⁴⁶ In his homily, he said that homosexuality must not be accepted because it is a conspiracy against the family and marriage.⁴⁷ From a religious point-of-view, homosexual practices are intolerable and homosexuals are excommunicated from churches and not allowed among the Christian community.

The protection of children is another alibi of criminalising same-sex conduct in Cameroon. In order to ensure the effectiveness of protection of children, the Penal Code of Cameroon condemns same-sex conduct as “public indecency” as stated in Article 295 and “indecency with minor” in Article 347 of the same Code.⁴⁸ It is commonly said that children growing in the community become affected by the events happening in that community.⁴⁹ According to research on the issue of a child raised by homosexual couples, most people feel that if a child raised by a homosexual couple or who grows up in a homosexual environment, he or she will become gay or practice the activities of homosexuals.⁵⁰ It is believed that the example of adults should be imitated by the young ones. It is believed that young people tend to imitate the example of people who are more advanced in age. In an interview conducted by Tchakam and Njaboue (activists), a homosexual is quoted to have said: “when his brother knew he was gay, he stopped talking to him and forbade him from seeing his children because he could make them gay.”⁵¹ The Cameroonian society believes children are easily influenced by what they are taught and what they see. Therefore, according to Article 347(2) of the Penal Code, if a parent is an offender,⁵²

⁴⁶M J Kalamar (n 44 above).

⁴⁷ See V T Backet ‘Archbishop of Yaoundé in homily on 25 December 2005’ Available at: <http://www.mia-culture.com/article-299-Arrestation.au.Cameroun.de.citoyens.homosexuels.html> (accessed: 8 January 2011).

⁴⁸ Article 347 of Cameroon Penal Code: “(1) For any offence under sections 295, 296 and 347a of this code committed against a person over sixteen and under twenty-one of age, the penalty is 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.”

⁴⁹ Interview with many persons regarding my research on decriminalising same sex conduct in Cameroon

⁵⁰ “Cameroon: Decriminalize Same-Sex Acts” available at http://www.asylumlaw.org/docs/sexualminorities/Cameroon_HRW081910.pdf (accessed 21 March 2011)

⁵¹ S Tchakam, ‘Un quotidien difficile’ available at: <http://www.slateafrique.com/2093/cameroun-homosexuels-homophobie-religion-justice> (accessed: 21 March 2011).

⁵² In Cameroon homosexuality is associated to ‘public indecency’ and ‘indecency with minor’

the court must deprive and disqualify him or her from being a guardian.⁵³ It is not only the State that can deprive a presumed homosexual from his or her child. The family can also do so. “A thirty-four-year-old by name Laure, upon realising she was lesbian; had her three children taken away from her by her family.”⁵⁴

Homosexuality in Cameroon is not tolerated and presumed homosexuals live in fear and insecurity in the country as they face discrimination at all levels. In schools and universities, youths drop out of school as a result of bullying at the hands of students and teachers.⁵⁵ After expelling twelve students from high school on the grounds of their sexual orientation, the head of the school went on a media campaign to encourage all principals to eradicate homosexuality.⁵⁶ In addition, Jean-Claude Roger Mbede,⁵⁷ a Master’s degree student in Philosophy of Education at the University of Central Africa in Yaoundé, dropped out of school and his studies and abandoned his career plans frustrated because he was arrested and jailed under Article 347*bis* for being gay.

Cameroonian authorities are uncompromising with respect to the question of homosexuality. They are willing to maintain Article 347*bis* of the Penal Code, which criminalises same-sex intercourse as an offence. The Minister of Justice is preparing the Penal Code reform but still maintains homosexuality as a misdemeanour.⁵⁸

2.3 Current position of the criminalisation of same-sex relationships

2.3.1 Enforcement of Article 347*bis* of the Penal Code

⁵³ Article 347(2) of the Cameroonian Penal Code

⁵⁴ Human Rights Watch ‘Criminalising Identities Rights abuses in Cameroon based on Sexual Orientation and Gender Identity’, November 4, 2010, p.42 available at: www.hrw.org/en/node/93872/section/5

⁵⁵ M Tabengwa ‘Being Tolerant is African, Too!’ available at <http://www.hrw.org/news/2012/04/17/being-tolerant-african-too> (accessed: 6 August 2012).

⁵⁶ Interview with Alice Nkom available at <http://www.afrika.no/Detailed/17998.html> (accessed 30 March 2011).

⁵⁷ E O. Lembembe ‘Gay in Cameroon: after beatings in prison, rejection at home’ available at: <http://76crimes.com/2012/07/21/gay-in-cameroon-after-beatings-in-prison-rejection-at-home/> (accessed 6: August 2012).

⁵⁸ S Tchakam, ‘Amalgames et avancées’ <http://www.slateafrique.com/2093/cameroun-homosexuels-homophobie-religion-justice> (accessed: 31 March 2011).

Homosexual activity is illegal under Article 347*bis* of the Penal Code of Cameroon and punishable by six months to five years in jail for anyone who is caught having sex with someone of the same sex and a fine of up to 200 000francs. Cameroonian authorities use this anti-homosexual provision to prosecute people based on their presumed homosexuality. The case of Yaoundé 11, where eleven men were arrested on suspicion of sodomy in violation of Article 347*bis* of the Penal Code is an example of the application of this anti-homosexual provision.⁵⁹ Researchers have shown that most arrests are done without a warrant and no proof or indication of same-sex sexual relationships.⁶⁰ In an interview with Alice Nkom, lawyer of gay men and lesbian rights in Cameroon, she stated as follows:

In none of the cases of homosexuality which I have defended was the person ever caught in *flagrante delicto*. I raise this concern every time but the judges never respond.⁶¹

However, Article 347*bis* of the Penal Code, Law No 72-16 of 28 September 1972 requires the parties to be caught in the act of homosexuality. Nevertheless, the police arrest on suspicion of homosexuality alone and the courts uphold those arrests.⁶² Therefore, according to the Criminal Procedure Code of the Republic of Cameroon, “searches and seizures shall be carried out by judicial police officers who possess search warrants.”⁶³ The exception of this statement is only “in case of a felony or a misdemeanour committed *flagrante delicto*.”⁶⁴ Most often, sexual activities are carried out in privacy notwithstanding if they are heterosexuals or homosexuals. Although, the provisions of section 93(1) of the Criminal Procedure Code abound, people are still arbitrarily detained on the grounds of their presumed homosexuality under Article 347*bis*. In spite of the lack of evidence presented, judges continue to apply and enforce this law. In a

⁵⁹ See International Gay & Lesbian Human Rights Commission, ‘Cameroon: Justice Subverted as seven Men Convicted on Sodomy Charges’ Available at [www.iglhrc.org>Home>TakeAction>NewsfromOurPartners](http://www.iglhrc.org/Home/NewsfromOurPartners) (accessed: 6 June 2011).

⁶⁰ Human Rights Watch (n 54 above).

⁶¹ A Nkom, ‘Fighting for Gay Rights in Cameroon’ available at <http://www.postnewsline.com/2009/06/alice-kom-fighting-for-gay-rights.html> (accessed: 18 March 2011).

⁶² See University of Toronto, Faculty of Law ‘Cameroon: Country report for use in refugee claims based on persecution relating to sexual orientation and gender identity.’ (2009) Available at: www.utorontoihrp.com/index.php/sogi.../13-Cameroon-report-2010 (accessed: 7 June 2011).

⁶³ Section 93(1) of the Criminal Procedure Code.

⁶⁴ As above.

Human Rights Watch (HRW) report, a judge said that he did not see any problem with the expansive way Article 347*bis* is implemented.

We are in Africa, and our traditions are also against homosexuality. General opinion is against homosexuality. It is an offence in the Penal Code and so I judge it. If this is against international conventions then we must change the law. This is up to the legislator, not to us as judges. Until the law changes, we will continue to apply it.⁶⁵

This implies that, as long as the law criminalising sexual activity between same-sex partners still exists, judges will apply and enforce the law. On 19 October 2012, two Cameroonians, Jonas Singa Kumie and Franky Djome, were jailed for “appearing feminine”. The judge found them guilty of “homosexual behavior” and his decision was based on their speech, clothing and drinking preferences, reportedly their consumption of Baileys, an Irish whiskey and cream liqueur.⁶⁶ Also, last year, a Cameroonian court sentenced two young men to five years in prison for “being homosexual”. The Court relied on subjective assumptions that would not pass as evidence in most courts of law. They were found guilty not because of what they did, but because of how they dressed.⁶⁷

People still face criminal sanctions based on their sexual orientation and gender identity. The existence of criminal law on sexual activity between persons of the same sex exposes LGBT individuals to the risk of arrest, detention and even torture, the threat of harassment and physical attack. Most often, police arrest and detain people on suspicion or on the basis of their presumed sexual identity, even though there is no particular act proving their crime. Amnesty International in its report (2009), ‘Cameroon: *Persecution based on actual or imputed sexual orientation*’⁶⁸ highlights many cases of prosecution falling under Article 437*bis* of the Cameroonian Penal

⁶⁵ See Interview with Magistrate Vieux Eyikie ‘Criminalising Identities Rights abuses in Cameroon based on Sexual Orientation and Gender Identity’ (2009), Human Rights Watch p.19. Available at: www.hrw.org/en/mode/93872/section/5 (accessed: 4 November 2010).

⁶⁶ T Reid-Smith, ‘Gays jailed by Cameroon for five years for drinking Baileys await appeal’ available at <http://www.gaystarnews.com/article/%E2%80%98gays%E2%80%99-jailed-cameroon-five-years-drinking-baileys-await-appeal191012> (accessed: 5 November 2011.)

⁶⁷ As above

⁶⁸ Amnesty International, ‘Cameroon: Persecution based on actual or imputed sexual orientation’ available at http://www.amnesty.nl/documenten/schrijfnetwerken/0409_mailing_LGBT_achtergr.rtf (accessed 7 April 2011).

Code. The police arrested six men in July 2006 with the allegation that they were practicing same-sex sexual relations. No reason was given for their arrest. They were brought before the court and the prosecutor underlined the fact that they were in violation of Article 344, 346 and 347 of the Cameroonian Penal Code which incriminates public indecency especially with minors.⁶⁹ Criminalising sexual relationships between members of the same sex perpetuates stigma and encourages homophobia, intolerance and violence against LGBTI persons.

2.3.2 Attitude of Cameroonian society towards homosexuality in general

Homosexuality is viewed in Cameroon as “a choice that goes against cultural norms, religious morals and human nature.”⁷⁰ Criminalisation of homosexuality is strongly enshrined in the Cameroonian criminal law. Gay and lesbian people face persecution and violence from all spheres of society including their families, the police and the church. “Homosexuality is regarded as abhorrent, and anyone who is discovered to be homosexual is likely to be expelled from his or her community.”⁷¹ Alleged homosexuals are not only hunted by the police but, by the population as well.

LGBT people are vulnerable to attack by neighbours and acquaintances who suspect them of same-sex interest. All parties know that if the attack is reported, the victim could be arrested under article 347bis.⁷²

In 2005, in Yaoundé, Frank Abega murdered his classmate Jean-Alex Ndikumana alleging that the latter boy wanted to flirt with him.⁷³ “Elsewhere, boys were expelled from school because they were suspected of ‘unnatural’ practices.”⁷⁴ The Cameroonian society believes that being homosexual is abnormal and homosexual activity is “a pathology, a state of mental deficiency, a

⁶⁹As above.

⁷⁰M J Kalamar (n 44 above) 15.

⁷¹(n 54 above) 7.

⁷²Human Rights Watch (n 48 above) 39.

⁷³ ‘Un élève égorge son camarade’ *Mutations* available at: www.cameroon-info.net/cmi_show_news.php?id=17087 (accessed: 19 April 2011).

⁷⁴ P Geschiere ‘Homosexuality in Cameroon: Identity and persecution’ available at: <http://www.hivos.net/Hivos-Knowledge-Programme/Themes/Urgency-Required/Articles/Homosexuality-in-Cameroon-Peter-Geschiere> (accessed: on 19 April 2011).

perversion, a deviance which contributes to social malfunctioning and chaos,”⁷⁵ and “a form of cultural and sexual capital necessary to acquire into colonial circles run by whites of low morality.”⁷⁶ Research has shown that appearance matters.⁷⁷ If a girl dresses like a boy or plays football, she is perceived as a lesbian, conversely if a boy wears tight jeans or earrings, he is perceived to be gay. Hence, they are subjected to verbal aggression because of their gender identity. Homosexuality is stigmatised and denied by the Cameroonian society. Those perceived as homosexuals are marginalised, blackmailed and even denied the right to housing. “The owner of the house [that I rented] told me I had to leave because I was a “homo.” I never returned to the neighbourhood.”⁷⁸ The law is commonly cited to threaten and blackmail people who pass as homosexuals. They live in constant fear of arrest or being brought to the police station by the neighbourhood so they hide. Therefore, “opposition to homosexuality is often embedded in tradition, religion and culture.”⁷⁹ Negative attitudes towards homosexuality in Cameroon are commonly based on the law criminalising same-sex sexual acts and also strong religious traditions and beliefs. Although homophobia is not legitimised in Cameroon, government seems to encourage it by way of failing to fully implement the protection of LGBT persons from homophobia. Hate crimes and hate speech are still common towards homosexual persons.

However, the issue of same-sex relationships is still a controversial issue in African context. LGBT people are shunned and discriminated against. Even in countries that have no specific law criminalising same-sex conduct such as Burkina Faso, still discriminate against them. Authorities detain suspects under a variety of laws including indecency, vagrancy and debauchery.⁸⁰ In South Africa, even though sexual acts between persons of the same sex are legalised, lesbians and gays are still victims of “corrective rape” in order for them to become heterosexual, which is seen as

⁷⁵M J Kalamar (n 44 above) 14.

⁷⁶O Tchouaffe (n 28 above) 6.

⁷⁷Human Rights Watch (n 54 above) 37.

⁷⁸As above.

⁷⁹H B Stiftung ‘Perspectives: Political analysis and commentary from Africa struggle for equality: Sexual orientation, gender identity and human rights in Africa’ p.3.

⁸⁰J Nana “You have human rights unless you are gay...” Available at: <http://www.arasa.info> (accessed: on 07 March 2011).

“normal.” “The term “corrective rape” has its roots in South Africa and is used when men rape lesbians in order to “convert” them to heterosexuality.”⁸¹

⁸¹ S Malmberg, ‘Healing from hate-crime in an unsafe and exposed position Black lesbian women in South Africa’ available at esh.diva-portal.org/smash/get/diva2:559231/FULLTEXT01 (accessed : 06 November 2012)

Chapter 3: Arguments for the decriminalisation of same-sex practices in Cameroon

LGBT persons are discriminated against and suffer from extortion and persecution by law enforcement officials in Cameroon. Homophobia still occurs in the Cameroonian society, particularly because of the law criminalising same-sex sexual relationships. The police continue to arrest and prosecute people based on their actual or perceived homosexual activities. This chapter focuses on analysing (1) the legal arguments and (2) the non-legal arguments for decriminalising same-sex practices in the Cameroonian context.

3.1 Legal arguments for the decriminalisation of same-sex conduct

This section discusses the different legal arguments to decriminalise same-sex acts in Cameroon at three levels: national, regional and international.

3.1.1 National laws

The 1996 Constitution of the Republic of Cameroon is the supreme law of the nation and every other law must be consistent with it. It guarantees non-discrimination, fair trial, right to privacy and protection of minorities.⁸² In this section, I am going to show that Article 347*bis* of the Cameroonian Penal Code was not lawfully adopted and that it does not apply according to the principles enshrined in the Constitution.

a) Article 347*bis* obviously is no law at all, as it was not properly adopted

Article 347*bis* of the Penal Code was enacted by the former President Ahmadou Ahidjo using his full power by presidential decree in 1972 without the usual review of the National Assembly. However, Article 26 of the Constitution clearly expresses and delineates power only to the Parliament to pass Bills.⁸³ Therefore, not having passed through Parliament, this article of the Penal Code that condemns same-sex conduct is “unconstitutional” because it was not adopted by the Legislature. Therefore, it is not considered as a law that should be applied. In addition,

⁸²Preamble of the 1996 Cameroon Constitution.

⁸³ Article 26(1) of Cameroon Constitution: “Bills shall be passed by Parliament.”

Article 26(6) assigns to the Parliament “the definition of felonies and misdemeanours and the institution of penalties of all kinds, criminal procedure, civil procedure, measures of execution and amnesty.”⁸⁴ Thus, with respect to the principle of the separation of powers based on democracy, the executive should not interfere with the scope reserved to the legislative. Referring to the Constitution, one can affirm that Article 347*bis* is not a law of the Republic of Cameroon because it infringes the democratic principles such as separation of powers stated in the Constitution. The latter only gives special power to the President of the Republic to provide a law by decree when it is a circumstance of state of emergency.⁸⁵

b) Article 347*bis* violates the right to fair trial

In its Preamble, the Constitution guarantees the right of everyone to fair trial and hearing before the courts. In addition, every accused person is presumed innocent until he or she is found guilty during a hearing. In the new Criminal Procedure Code, any arrest, search or seizure cannot be made without the issuance of a warrant by a judge. The exception is the case of *flagrante delicto* of a crime and offense, among which is the practice of same sex relationship.

A felony or misdemeanour flagrant crime or offense that is currently committed or has just been committed... There is also a felony or misdemeanour if: after the commission of the offense, the person is being prosecuted by public outcry. In a very short time of the commission of the offense, the suspect is found in possession of an object or a trace where this index suggests that he participated in the crime or offense.⁸⁶

In Cameroon, most arrests are regularly based on mere denunciation and cases of *flagrante delicto* are rare. When the police arrests and detains people on their presumed identity or simple denunciation without any evidence under Article 347*bis*, they violate not only the Constitution that guarantees the rights and freedoms of everyone without distinction as to race, sex or religion, the right of fair trial but also the Criminal Procedure Code that forbids arrest without proof. As recently as 28 December 2011, four alleged homosexuals were arrested in Kumba

⁸⁴Article 26(6) of Cameroon Constitution.

⁸⁵Article 9 of the Constitution.

⁸⁶Criminal Procedure code n°2005/007, Article 103, Paragraph 1, 2.a and 2.b.

(Cameroon) for homosexuality.⁸⁷ After drinking beer, the four students (Gideon 23, Leonard 24, Kelvin 30, and Raphael 22 years old respectively) decided to spend the night at their friend's place. On their way, a boy from the neighbourhood asked them for money but they did not give him like they usually did. While they were sleeping, the boy alerted the whole neighbourhood that there are gays in a house. The crowd beat up the four students. They succeeded to escape from the hostile and angry crowd. Raphael's brother-in-law brought him to the police and denounced him to be a gay. Afterwards, the police arrested his three friends. They spent eleven days in police custody where they were beaten tortured and went through anal examination to determine if they had anal intercourse. They are currently in the Kumba prison awaiting their trial.

c) Article 347bis violates the right to privacy

Most often, judges condemn people arbitrarily arrested under Article 347bis based on denunciation or confession because it is very difficult to prove homosexual acts. *Flagrante delicto* in most of the cases asserted is rare. Sexual acts are private and inherent to every human being. The 1996 Cameroonian Constitution guarantees and ensures the right of privacy in the Preamble. Homosexual and heterosexual acts both fall in the domain of privacy and the right to privacy as enshrined in the Constitution. Therefore, sexual intercourse is an intimate act done in an enclosed place, judges should not apply the law in the sense that it is private and the right to privacy shall be respected and protected as stated in the Constitution.

d) Article 347bis violates the guarantee against torture, cruel treatment

The 1996 Constitution guarantees to everyone “a right to life, to physical and moral integrity and to human treatment in all circumstances. Under no circumstances shall any person be subjected to torture, to cruel, inhumane or degrading treatment.”⁸⁸ However, in the case of the four students mentioned above who were arrested of the alleged homosexuality, they have been tortured, beaten and inhumanly treated when they were submitted to anal examination. Their

⁸⁷ ‘Cameroon-Kumba: Four Persons Arrested for Homosexuality’ Available at: <http://www.sidado.org/actions-et-activites/cameroon-kumba-4-persons-arrested-for-homosexuality.html> (accessed: 16 May 2012).

⁸⁸The Preamble of the 1996 Cameroon Constitution.

rights to physical and moral integrity have been violated under Article 347*bis* contrarily to the Constitution. Many violations of human rights occur because of the application of Article 347*bis* and consequently go against the principles of the Constitution. This is the reason why the Cameroonian government should repeal this Article 347*bis* of the Penal Code which criminalises same-sex conduct.

e) Article 347*bis* violates the guarantee of non-discrimination

Concisely, there is no doubt that the application of Article 347*bis* is against the Constitution. However, it should be noted that the Constitution, from which the legislation derives its authority, also clearly states that the rights of all individuals, irrespective of their race, religion, or gender must be respected. It is to be understood that once the needs and aspirations of a group of people acknowledged by the Constitution are undermined by way of side-lining these individuals, then a foundation for conflict has been laid. To avoid such anarchy in the future, it would be wise to respect the dictates of the Constitution and let everyone in the country live in harmony with one another without discrimination. The violation of human rights in a country is always the source of jeopardy in the relationship between individuals and the State. Therefore, if the violation of human rights is avoided, it would be a good means of avoiding tension between the people and subsequently, avoidance of uprisings that happen as a result of failure to acknowledge the rights of certain individuals based on their sexual orientation.

3.1.2 Regional laws

Cameroon is a member of the African Union (AU) and has ratified various instruments such as the African Charter on Human and Peoples' Rights (ACHPR). The Cameroonian government is therefore bound by the ACHPR and has, by ratifying, the obligation to promote and protect human rights set forth in the Charter. In this section, I will show the different provisions stated in the African Charter that protect the rights of every individual and urge the States party to promote human rights such as non-discrimination, right to equality before the law and right to dignity.

Article 2 of the ACHPR provides the principle of non-discrimination and entitles every individual to “the enjoyment of the rights and freedoms without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.” However, the African Charter “does not make any reference to gays, lesbians or the issue of sexual orientation.”⁸⁹ Because the Charter is silent on the issue of sexual orientation, it does not follow that States are allowed to discriminate against people on the basis of their sexual orientation. The expression “every individual” is entitled to the rights mentioned in the Charter proves that everyone has the right to fully enjoy the rights provided for by the Charter. Therefore, the provisions of the Charter guarantee rights to ‘every individual’ without distinction of any kind.

Even though this article does not explicitly mention sexual orientation, it aims to protect and guarantee the rights of sexual minorities as well. The phrases ‘such as’ and ‘other status’ clearly show that the list of grounds for non-discrimination is not exhaustive.”⁹⁰ The provision ‘other status’ broadens the list of the principle of non-discrimination and might include other aspects such as sexual orientation. Regarding Article 2 of the Charter, the African Commission held in *Institute for Human Rights and Development in Africa v Republic of Angola* that: “Rights under the African Charter are to be enjoyed by all, without distinction.”⁹¹ Cameroonian authorities violate this provision of the Charter by arbitrarily arresting people on their perceived sexual orientation.

Article 3 of the Charter states that: “Every individual shall be equal before the law and shall be entitled to equal protection of the law.” In *Zimbabwe NGO Forum v Zimbabwe*, the African Commission on Human and Peoples’ Rights reiterated the principle of non-discrimination, which goes together with the right to equality, by holding as follows:

⁸⁹ See R Murray & F Viljoen, ‘Towards non-discrimination on the basis of sexual orientation: The normative basis and procedural possibilities before the African Commission on Human and Peoples’ Rights and the African Union’ (2007) 29 *Human Rights Quarterly* 1, 88

⁹⁰ ‘Africa: Sexual Orientation Under the African Charter on Human and Peoples’ Rights’ 25 November 2010 available at <http://allafrica.com> (accessed 18 July 2011)

⁹¹ *Institute for Human Rights and Development in Africa v Angola* (2008) AHRLR 43 (ACHPR 2008) Communication 292/2004 decided at the 43rd ordinary session, May, 2008, 24th Activity Report, paragraph 80

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. As Shestack has observed, equality and non-discrimination ‘are central to the human rights movement’. 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.⁹²

Human rights belong and apply to all regardless of any kind of status. Everyone is entitled to equal protection before the law. The law criminalising same-sex conduct in Cameroon treats people with distinction and inequality based on their sexual orientation. Article 19 of the same Charter states: “All peoples shall be equal; they shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another.” *Heteronormativity*, a concept that considers heterosexuality as ‘normal’ behaviour, should not be allowed to lead to the oppression or violation of the rights of LGBT persons.

When the Cameroonian government unlawfully arrests those presumed to be homosexuals, beat them up in custody and force them to undergo anal examinations, they violate Article 5 of the Charter. This article provides the right to dignity inherent to every individual and the prohibition of cruel, inhuman and degrading treatment. In *International Pen and others v Nigeria*, the African Commission on Human and Peoples’ Rights noted as follows:

Article 5 prohibits not only torture, but also cruel, inhuman or degrading treatment. This includes not only actions which cause serious physical or psychological suffering, but which humiliate the individual or force him or her to act against his will or conscience.⁹³

The right to the respect of dignity provided by the Charter is closely related to the right to privacy even though the Charter does not expressly refer to this right as “privacy.” To refer to Steave Nemande, one of the activists of LGBT rights in Cameroon, “whether it is heterosexual or

⁹² *Zimbabwe Human Rights NGO Forum v Zimbabwe* (2006) AHRLR 128 (ACHPR 2006) Communication 245/2002, Decided at the 39th ordinary session, May 2006, 21st Activity Report, paragraph 169.

⁹³ *International Pen and others v Nigeria*, Communication Nos 137/94, 139/94, 154/96 and 161/97 (1998) paragraph 79.

homosexual, sexual intercourse takes place in an intimate environment between two persons.”⁹⁴ It is important to uphold the respect for the private space of everyone. The Cameroonian police do not have the mandate to invade peoples’ homes or bedrooms without any warrant or power of attorney.

3.1.3 International law

Article 45 of the Cameroonian Constitution states the following: “ duly approved or ratified treaties and international agreements shall, following their publication, override national laws, provided the other party implements the said treaty or agreement.”⁹⁵ Thus, according to Article 45, international law is supreme and must prevail before national laws. Therefore, in order to respect and implement international treaties, Cameroon cannot apply a domestic law that is contrary to the former. The State of Cameroon should respect the international laws it has ratified in a hierarchical order. According to the principle of legality of texts, the judge is not allowed to enforce a law and impose a penalty if the text is inconsistent with higher legal standards. Therefore, Article 347*bis* lacks legal basis and is an irregular text that does not conform to international laws, conventions and treaties and consequently violates the principle of legality. In conformity with international law, Article 347*bis* of the Penal Code should not be applied because it restricts individual liberties of LGBT persons. In this section, I am going to highlight the principles of international laws that Article 347*bis* does not comply with: non-discrimination, right to privacy and right not to be subjected to torture.

Cameroon is bound by international human rights law and acceded to the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights. Furthermore, the Constitution of Cameroon in its Preamble affirms its “attachment to the fundamental freedoms enshrined in the Universal Declaration of Human Rights (UDHR), the Charter of the United Nations and all duly ratified international

⁹⁴ Alternatives Cameroun ‘The Status of Lesbian, Gay, Bisexual and Transgender Rights in Cameroon’ (2010) *Centre for Human Rights, University of Pretoria, Global Rights and International Gay and Lesbian Human Rights Commission*, p.6

⁹⁵Article 45 of Cameroon Constitution (1996).

conventions.”⁹⁶ By applying Article 347*bis*, the Cameroonian government deprives presumed homosexuals of their freedom and violates basic rights such as non-discrimination and right to equality.

The principle of non-discrimination is provided for by Article 2 of the UDHR: “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”, Article 2(1) of the ICCPR: “Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” and Article 2(2) of the ICESCR: “The States Party to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

The right to equality is provided for by Article 26 of the ICCPR: “All persons are equal before the law and are entitled without any discrimination to equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any grounds such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” Though the ICCPR does not include “sexual orientation” among the list enumerated, the list is broad and unlimited. The United Nations (UN) Committee on Economic, Social and Cultural explained the concept “other status” as follows:

The nature of discrimination varies according to context and evolves over time. A flexible approach to the ground of “other status” is thus needed to capture other forms of differential treatment that cannot be reasonably and objectively justified and are of a comparable nature to the expressly recognized grounds in Article 2(2). These additional grounds are commonly recognized when they reflect the experience of social groups that are vulnerable and have suffered and continue to suffer marginalization.⁹⁷

⁹⁶ See Preamble of the Constitution of Cameroon, 1996.

⁹⁷ Committee on Economic, Social and Cultural Rights ‘General Comment No.20, E/C.12/GC/20’ (2009) , para27

The same UN Committee mentioned that “other status” as recognised in Article 2(2) of the ICESCR includes “sexual orientation and gender identity.”⁹⁸ Discrimination on the ground of sexual orientation is prohibited under international law and law criminalising same-sex conduct is a form of discrimination that is prohibited as well.

In the 1994 case of *Toonen v Australia*,⁹⁹ the author Nicholas Toonen, an activist for the promotion of the rights of homosexuals in Tasmania, brought a communication to the Human Rights Committee challenging two provisions of the Tasmanian Criminal Code (sections 122(a) and (c) and 123) which criminalised various forms of sexual contact between males including all forms of sexual contact between homosexual consenting adult men in private. The Human Rights Committee stated as follows:

Sexual orientation may be considered an ‘other status’ for the purposes of article 26. The reference to ‘sex’ in articles 2(1), and 26 of the Covenant should be taken as ‘including sexual orientation,’ and found that criminalization of same-sex conduct constitutes discrimination on the basis of sexual orientation and a violation of these articles.¹⁰⁰

The law criminalising same-sex conduct in Cameroon also violates the right to privacy as stated by Article 12 of the UDHR: “No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, or to attacks upon his honour and reputation. Everyone has the right to protection by the law against such interference or attacks.” Article 17(1) of the ICCPR also states: “No one shall be subjected to arbitrary or unlawful interference with his privacy, family, or correspondence, nor to unlawful attacks on his honour and reputation.” In *Toonen v Australia*,¹⁰¹ the Human Rights Committee found that the Tasmanian Penal Code was not consistent with the obligations of Australia not to interfere with the right to privacy under the ICCPR. The committee held that “it is undisputed that adult consensual sexual activity in private is covered by the concept of privacy.”

⁹⁸As above.

⁹⁹ See Communication No. 488/1992

¹⁰⁰*Toonen v. Australia*, Communication No. 488/1992, UN. Doc CCPR/C/50/D/488/1992 (1994) para 8.7.

¹⁰¹ See Communication No. 488/1992, UN. Doc CCPR/C/50/D/488/1992 (1994), para 8.2

Cameroon has also ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its optional Protocol. Its Constitution also, states that no one shall be victim of torture.¹⁰² However, there is a discrepancy between government's (domestic) law and its engagement with international human rights law and the practice (However, there is a discrepancy in the practice of domestic law and its engagement with international human rights law.) Presumed homosexuals continue to be arbitrarily arrested and detained in police custody where they are beaten, tortured and inhumanly treated by putting them through anal examination to verify whether they have had same-sex intercourse. A notable example, is the case of the four students mentioned above who were arrested in the Cameroonian town of Kumba.

Cameroon is held to comply with the international human rights instruments it has ratified. Therefore, it has the obligation to promote and protect these rights. As the Vienna Declaration and Programme of Action on the World Conference on Human Rights states: "Human rights and fundamental freedoms are the first birth right of all human beings; their protection and promotion is the responsibility of governments."¹⁰³ The Cameroonian government, therefore, has a responsibility to protect and promote fundamental rights and freedoms of everyone regardless of whether they are heterosexuals or homosexuals. A law which criminalises sexual conduct between partners of the same-sex renders LGBT persons criminals on the grounds of their sexual orientation. One can assume that the Cameroonian government's application of Article 347*bis* is in total breach of its duty to protect everyone and in flagrant violation of international treaties. It is to be affirmed that people in a country should enjoy human rights for the mere reason of being human beings, regardless of their sexual orientation, gender and race, and religious denomination. Therefore, the Cameroonian government needs to apply inclusive and integrative measures towards accommodating homosexuals rather than treating them like a rejected faction. This is because Cameroon by ratifying the various regional and international treaties, the government has pledged to respect these human rights. In summary, decriminalising Article 347*bis* would therefore give the government the capacity to uphold these rights exhaustively.

¹⁰²As above 89.

¹⁰³ See United Nations Assembly General A/CONF.157/23, 12 July 1993, The Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights on 25 July 1993 para.1

3.2 Non-legal arguments for the decriminalisation of same-sex conduct

3.2.1 Decriminalising Article 347bis of the Cameroonian Penal Code as a contribution to promoting the right to health and HIV prevention

In this section, I will first highlight the instruments relating to the right to health that Cameroon has ratified even though, to an extent, it includes legal arguments. However, it is important to enumerate these instruments ratified by Cameroon before showing how Article 347bis endangers certain persons' health.

a) Article 347bis violates the right to health

Article 347bis is a discriminatory law in the sense that it violates the right to health enshrined in the ICESCR and the ACHPR. The State of Cameroon has endorsed international and regional instruments. Article 12 of the ICESCR guarantees “the right to everyone to the enjoyment of the highest attainable standard of physical and mental health.” Further, General Comment No. 14 on the right to health under Article 12 requires State parties the ‘core obligations’ to respect, protect and promote the right to health. The obligation to “respect”¹⁰⁴ requires States to refrain from denying or limiting the enjoyment of the right to health regardless of any kind of discrimination. The obligation to “protect”¹⁰⁵ encompasses the duty of States to take measures ensuring equal access to health care and health-related services. Finally, the obligation to “fulfil”¹⁰⁶ requires States to adopt legislative measures in order to fully promote implement and realise the right to health. In addition, Article 16 of the ACHPR guarantees the right to health: “Every individual shall have the right to enjoy the best attainable state of physical and mental health. States parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.” However, regarding the obligations of State parties and the responsibility to respect, protect and fulfil the right to health, Cameroon is yet to promote and implement what it agreed to and ratified.

¹⁰⁴ General Comment No. 14 (2000), The right to the highest attainable standard of health: 2000/08/11 E/C.12/2000/4, paragraph 34.

¹⁰⁵ General Comment No. 14 para.35

¹⁰⁶ As above 104.

In Cameroon gay people are stigmatised and Article 347*bis* encourages this stigmatisation. They are denied access to health care. There is the case of a young gay named Olivier whom the hospital refused to provide treatment for because of his gay status. He had to hide the cause of his infection before he could get some self-medication from the pharmacy.¹⁰⁷

b) Article 347*bis* as an impediment to HIV prevention

The law criminalising same-sex conduct has a harmful impact on HIV prevention. This law exposes men who have sex with other men (MSM) to the highest risk of contracting HIV amongst the population because they are the minority and vulnerable. “MSM appear to still bear the heaviest burden of infection and illness.”¹⁰⁸ They do not have access to healthcare services because of their sexual orientation. Because of stigmatisation, MSM live in secret and fear. Consequently, they have both male and female partners, in order to “cover-up – a partner of the opposite sex in a sham relationship, where the other person in the relationship is not aware of their sexual orientation.”¹⁰⁹ Their “cover-up” partner is to avoid being discovered or arrested for being homosexual. This disguise could be “a bridge for HIV transmission to their female partners and the general population.”¹¹⁰ Homosexuals do not have access to HIV prevention medication, treatment and health care services because they are undermined, despised and frightened that their sexual orientation will be exposed and they will be subjected to prosecution. Criminalisation of same-sex intercourse promotes the spread of HIV because gays and lesbians avoid suspicion and marginalisation.

In the Human Rights Watch report, a lesbian explained how it is difficult to use a condom with her husband: “you have to have sex with your husband without a condom to avoid suspicion and then you have sex with another woman on the side.”¹¹¹ In Cameroon, people arrested because of their presumed sexual orientation, once in custody, are denied condoms. “The State prohibits the distribution of condoms in prisons though HIV prevalence in detention centres is high, male

¹⁰⁷ ‘Une peur quotidienne’ available at: <http://sidado.org> (accessed: 28 May 2012).

¹⁰⁸ M.J Kalamar (n 44 above) 2.

¹⁰⁹ Human Rights Watch (n 48 above) 47.

¹¹⁰ M J Kalamar (n 44 above) 18.

¹¹¹ Human Rights Watch (n 54 above) 48.

prisoners may engage in homosexual sex and rape within prisons is common.”¹¹² The denial of condom distribution in prisons is justified by the wish to promote abstinence and discourage homosexual activity. In HRW report on Cameroon, a doctor was interviewed regarding the provision of condoms to prisoners. He explained to researchers as follows:

In Cameroonian prisons, there are conjugal visits, so there is no need to give out condoms. If you give condoms to prisoners, you will encourage sodomy. The law prohibits homosexuality, and I can't, as a man of law, go against it, so I cannot give out condoms to encourage homosexuality. It is also common for women to have sexual relationships, but we cannot do anything about it.¹¹³

The Cameroonian government has not yet undertaken any action or measures to prevent the spread of HIV infection amongst people having same-sex acts. However, it is known that rape and sex between men occurs most frequently in prisons, despite Cameroonian officials denying the fact that same-sex intercourse occurs between detainees. In the case of the Yaoundé 11 in 2005,¹¹⁴ Alim Mongoche was arrested under Article 347*bis* and put in jail for nine months. He was ill with AIDS. While in prison, he received no treatment. After his release, he died from AIDS related complications. Criminalisation of same-sex conduct between consenting adults constitutes a barrier to the effective implementation of preventing HIV in prisons and adequate health care for prisoners living with HIV. Steave Nemande, the Chairperson of Alternatives-Cameroun, an NGO based in Cameroon which promotes the recognition of the rights of LGBT persons, affirmed as follows:

The exclusion of persons engaged in sexual relations with persons of the same sex from HIV services constitutes a threat not only to the members of this group but also to the national response to HIV more generally.¹¹⁵

¹¹²As above 5.

¹¹³As above 54.

¹¹⁴http://www.huffingtonpost.com/juliana-cano-nieto/guarded-lives-in-cameroon_b_665619.html
(accessed: 1 August 2011).

¹¹⁵ See Alternatives-Cameroun and PRODHOP, ‘Why should Cameroon abolish the criminalisation of consensual sexual relations between persons of the same sex?’ p 5.

When Cameroon criminalises same-sex practices between consenting adults, it enforces stigmatisation and marginalisation of LGBT persons and jeopardises their right to health regarding HIV related prevention as well as the rest of the population. Anti-homosexuality law enforces harassment, violence, abuse, discrimination, arrest and prosecution. As a result of this law vilifying sexual minorities, LGBT people fear to express their sexuality and thus live in secrecy and denial.

3.2.2 Thinking outside the box: tolerance and diversity amongst peoples in the same community

Religion, culture and morality are the accepted principles on which most States and governments base their arguments against homosexuality. This shows the degree to which their thoughts are centred towards a certain direction, restricting them from thinking out of the box. However, with respect to the fact that no one in the society shares the same view of morality, religion and culture, this therefore imposes the need to be more liberal and diverse towards other members of the society with regard to homosexuality.

Diversity in Cameroon is a non-disputable fact. There is a wide variety of religions, ethnic tribes, cultures and codes of moral conduct. The government of Cameroon has the responsibility to bring everyone to a common understanding of the existence of diversity in the society. This could be done through the decriminalisation of same-sex conduct in order that Article 347*bis* of the Penal Code can be reviewed, amended and repealed. In Cameroon, a great number of statistics have shown that more arrests of gay people are based on their presumed homosexuality and under Article 347*bis*. Abolishing this article would go a long way to discourage and stop arbitrary arrests, contempt, violence and abuse directed towards homosexuals. It is true that decriminalising the article would protect gay and lesbian people, but it is not a guarantee that this would put an end to homophobic attacks. This could be seen more in the statement below: “Decriminalisation may not end homophobia but taking the laws away will have a difference to people whose daily lives are interrupted and live in fear of being ousted and blackmailed.”¹¹⁶ In

¹¹⁶H B Stiftung (n 79above) 6.

other words, decriminalisation of same-sex conduct is not yet the solution to stop discrimination against gays and lesbians, but rather acts as a starting point for more integration.

The existence of gay people in a common community with heterosexuals does not pose a threat to one another. It is simply about the respect of one another as human beings and not of sexual orientation. The only difference is that they are not attracted to the opposite sex, but it does not mean that the law should discriminate against them and deny them the full enjoyment of the fundamental rights such as freedom of expression, right to life, liberty and so on.

Gay people are normal people and should be entitled to think and live like a normal person without having to experience insults and dislike from other persons because they are just as normal as everyone else except their sexual orientation.¹¹⁷

Homosexuals are not a threat to the community because they do not harm anybody in their activities. They only want their self-esteem and recognition by the society like normal human beings. Homosexuality is not a crime and people should stop categorising homosexuals as criminals. Homosexuality is simply a natural phenomenon.¹¹⁸

Most often, the Cameroon government justifies the criminalisation of same-sex conduct by claiming “that positive African cultural values must be preserved and by virtue of African culture”¹¹⁹ and referring to Article 29(7) of the ACHPR. Articles 29(7)¹²⁰ and 17(3)¹²¹ of the African Charter go together and provide for ‘positive African cultural values’ impose on the State to promote and protect peoples’ rights. Moreover, this Article 29(7) mentions the term ‘tolerance’ in order to urge members of the society to be tolerant and accept diversity of any kind

¹¹⁷ E S Mer ‘Should gay people be more accepted in Society’ Available at: <http://skolarbete.nu/skolarbete/should-gay-people-be-more-accepted-in-society> p.1 (accessed: 5 August 2011).

¹¹⁸ Da Rong Ma, “Why should we accept and respect homosexuality” Available at: http://www.religioustolerance.org/hom_intro.htm p.3 (accessed: 5 August 2011).

¹¹⁹ Human Rights Watch (n 49 above) 10.

¹²⁰ Article 29(7) of the ACHPR: “To preserve and strengthen positive African cultural values in his relations with other members of the society, in the spirit of tolerance, dialogue and consultation and, in general, to contribute to the promotion of the moral well-being of society.”

¹²¹ Article 17(3) of the Charter: “The promotion and protection of the morals and traditional values recognised by the community shall be the duty of the state.”

in the view to promote and achieve a united society. The African Union Commission (AUC) Strategic Plan 2009-2012, “seeks to promote existing and agreed values across the continent. These values include good governance, democracy, and respect for human rights, accountability and transparency.”¹²² Also, “in multilingual, multi-ethnic, and multi-religious States, which are predominant in Africa (for instance Cameroon), tolerance and accommodation of divergence and minorities should be of paramount importance.”¹²³ The Cameroonian government should be tolerant towards LGBT persons by repealing the law criminalising same-sex conduct. The police should refrain from killing and arbitrarily arresting people on their presumed sexual orientation. Culture should not be used as an excuse to violate or negate certain people’s rights. In addition, during the tenth session of the Human Rights Council on the Independent Expert in the field of cultural rights, it was affirmed that “no one may cite cultural diversity to infringe upon human rights guaranteed by international law, nor to limit their scope.”¹²⁴ Culture, tradition and religion might not be alleged to violate or limit human rights of LGBT persons. As human beings, they have the right to fully enjoy all human rights.

In this regard, the Cameroonian government should sensitise the society to learn how to accept and respect everyone irrespective of his or her sexual orientation and how to be tolerant towards each other. We should keep in mind that not everyone is alike. We are all different and diverse and have to accept one another just the way we are, for the society to be more harmonised and united.

Gay people should be accepted in their various communities with regards to religious tolerance as well, even though it seems incomprehensible to the majority because even the government uses religion as a defence to criminalise same-sex sexual relationship. It is understood that Christian religion epitomised by the Bible is against homosexuality as established in the case of Sodom and Gomorrah.¹²⁵ However, in the same Bible, there is a defence for not looking on other human beings with contempt or judge them. This has been elaborated in the case of the woman,

¹²² M Mburu, M Tabengwa & K Vance (n 35 above) 10.

¹²³ R Murray & F Viljoen (n 89 above) 94.

¹²⁴ Human Rights Council Resolution 10/23. Independent expert in the field of cultural rights at para.4.

¹²⁵ The Holy Bible ‘Genesis 19: 24-25.’

who committed adultery¹²⁶ and was due to be stoned to death by her community. When the community approached Jesus with the matter, he demanded that anybody who has never sinned should throw the first stone at the woman. This position adopted by Jesus summarily brought a solution to the problem, since everyone left when they heard this statement and of course, the woman was set free. From this analogy, we are required not to judge but to leave the judgement and condemnation to God alone. Also, the Bible should not be used as a weapon to kill and torture people to death. The Bible teaches that to love one another is the most important commandment.¹²⁷ Therefore, religion is meant to unite, accept, love and embrace instead of hate, kill and bring division amongst people living in the same community and society. As a result, Archbishop Desmond Tutu reiterated that: “LGBT persons too are children of God. They are part of the human family and part of God’s family.”¹²⁸

3.3 Conclusion

From the legal arguments for the decriminalisation of same-sex relationship, at the national level, the law outlawing same-sex conduct is seen as an ‘unconstitutional’ law because it was enacted by presidential decree and not by a legislation or act of Parliament. It also infringes the principle of non-discrimination guaranteed in the Constitution. By still maintaining Article 347*bis*, the government of Cameroon disrespects its commitment towards regional and international standards, although it has the obligation to respect, protect, promote and fulfil the fundamental rights of everyone without distinction of any nature.

In addition, criminalising same-sex conduct has a serious impact on the health of LGBT people and exposes them to high risk of contracting HIV. Decriminalising homosexual acts will allow for everyone the opportunity to fully enjoy his or her right to health. The condemnation of homosexual behaviour is deeply based on religious belief and traditional values. The government of Cameroon and a majority of those against homosexuality justify the law criminalising same-sex conduct and intrusion into the private lives of individuals by quoting religious standards and

¹²⁶ The Holy Bible ‘John 8: 1-11’

¹²⁷ The Holy Bible ‘Matthew 22:39’

¹²⁸ Desmond Tutu Video message for United Nations Panel: ‘Ending violence and criminal sanctions based on sexual orientation and gender identity’ (2007) Geneva

preservation of African culture. However, there should be a distinct separation between religion and government and the former should not be intertwined with State or political issues. Thomas Jefferson clearly established the “separation of church and State” in 1802 when replying to a letter from the Danbury Baptist Association of Connecticut:

Believing with you that religion is a matter which lies solely between man and his God, that he owes account to none other for his faith or his worship, that the legislative powers of government reach actions only, and not opinions, I contemplate with sovereign reverence that act of the whole American people which declared that their legislature would ‘make no law respecting an establishment of religion, or prohibiting the free exercise thereof,’ thus building a wall of separation between Church and State.¹²⁹

The government should not use or base its argument on religious belief or traditional values to create or interpret the law. In addition, religion should have limits in solving political affairs. The State is seen as a secular institution in order to respect and protect human rights of people. By criminalising same-sex conduct based on religious standards or African values, the Cameroonian government violates its commitment with international standards and the Constitution that guarantees fundamental human rights for everyone.

¹²⁹ D Barton, ‘The separation of church and state’ available at: <http://www.wallbuilders.com/libissuesarticles.asp?id=123> (accessed: 21 May 2012).

Chapter 4: The need to adopt a multi-disciplinary approach towards decriminalising same-sex conduct

4.1 Introduction

In the previous chapter, it has been argued that Article 347*bis* outlawing same-sex conduct in Cameroon is unconstitutional. This provision infringes on the principle of non-discrimination guaranteed in the Cameroonian Constitution as well as regional and international law. Despite the institutionalisation and legalisation of human rights in many instruments (treaties, constitutions, conventions) and the existence of many enforcement mechanisms (commissions, committees and courts) to protect, respect and implement human rights, violations continue to take place in the form of rape, killings, arbitrary arrests, genocide and so on. The adoption of the Universal Declaration on Human Rights and the existence of various legal instruments have not stopped human rights violation. In this sense, Viljoen submits that: ‘There is a huge gap between the rights we proclaim to have and the rights that are protected under law - be that under international or national law.’¹³⁰

This gap confirms that a legal approach alone is insufficient to effectively realise and promote human rights. Focusing on the law alone is not enough to tackle and implement human rights problems. This is why Freedman observes as follows: ‘Law will continue to have an important part to play in the field of human rights, but human rights cannot live by law alone.’¹³¹ Apart from the legal aspect, what are the other aspects that can contribute to the realisation of human rights?

In order to have a holistic approach to human rights and understand the scope of this field, one needs to refer to other disciplines. Why should one want to bring a multi-disciplinary approach to the consideration of decriminalising same-sex relations? The need to adopt a multi-disciplinary perspective towards decriminalising same-sex conduct is called for because criminalising private

¹³⁰ F Viljoen, ‘Disciplinary beyondness: A background to the conference and collection of papers’ in ‘*Beyond The Law: Multi-Disciplinary Perspectives On Human Rights*’ F Viljoen (ed), (2012) *PULP* p.xv.

¹³¹ M Freeman, ‘On the interactions between law and social science in the understanding and implementation of human rights’ in ‘*Beyond The Law Multi-Disciplinary Perspectives On Human Rights*’ F Viljoen (ed), p.3, *PULP*.

consensual sexual acts between adults of same-sex has serious effects, not only on LGBT persons but on the society as a whole. It is necessary to bring the understandings of social sciences into the consideration of decriminalising same-sex conduct so as to make sense of the question why society still shuns homosexual acts and violates gay and lesbian rights. “Social scientists seek to explain why human rights have been respected or violated.”¹³² The importance of social sciences such as sociology and anthropology in this study seeks to extend the understanding of human rights by demonstrating their contribution to the practice of human rights. It is also to have a general comprehension of human rights, because the law seeks to regulate society.¹³³ It is true that the application of these disciplines is not completely satisfactory, but it is important to allow them to enter into a conversation with human rights law to gain a better understanding and implementation of human rights.

In this chapter, I first of all illustrate how (1) sociology, (2) anthropology, (3) psychology, and (4) education, can specially contribute to the process of decriminalising of same-sex relations.

4.2 Sociology

The American Sociological Association defines sociology as follows:

The study of society, a social science involving the study of the social lives of people, groups, and societies, the study of our behaviour as social beings, covering everything from the analysis of short contacts between anonymous individuals on the street to the study of global social processes, the scientific study of social aggregations, the entities through which humans move throughout their lives, an overarching unification of all studies of humankind, including history, psychology, and economics.¹³⁴

Sociology deals with society and helps us to better understand human behaviour and social changes. Therefore, to address certain human rights matters one needs to refer to some information provided by Sociology which influences the status of human rights in society. For instance, in a country such as Cameroon, being gay is still a crime and alleged homosexuals are

¹³² M Freeman, *Human rights An interdisciplinary approach* (2011) (2nd Ed) Polity Press 91.

¹³³ Freeman (n above) 4.

¹³⁴ <http://www.asanet.org/sociology.cfm> (accessed 30 May 2012).

attacked and arbitrarily arrested because the Cameroonian society is still conservative with the majority of its population holding on to Christian beliefs and traditional values.

The Cameroonian society is dominated by Catholicism, which is highly dogmatic on the issue of homosexuality and condemns homosexual acts. The Catholic Church gives overriding value to the family and the tradition, encouraging marriage between a man and a woman which is God's will.¹³⁵ Thus, communities are influenced by what is preached by Priests and Bishops. Therefore, homophobia stems from Christian leaders and consequently, society has become homophobic. In this sense, Mbaru *et al* observes that "LGBTIs also face frequent condemnation and anti-political campaigns from religious organisations."¹³⁶ In Cameroon, appearances matter:¹³⁷ when a man has a feminist tendency (wears ear-rings, tight jeans, braids) it is enough for him to be targeted as "gay" person. Similarly, when a girl dresses as a man she is seen as "lesbian". "Verbal insults are common for those who look different."¹³⁸ Criminalisation of same-sex conduct is embedded in Cameroonian law and a majority of Cameroonians refuse the existence of homosexuality and see it as an illness. The Cameroon government on the other hand, seems to encourage homophobia when it continuously retains article 347*bis* criminalising same-sex relationships. Preserving Article 347*bis* encourages society to be homophobic and further support people in their hostility towards LBGT people.

In a speech delivered by UN, Secretary General, Ban Ki-moon on 7 March 2012 at the United Nations Human Rights Council in Geneva, he urged countries around the world to decriminalise same-sex relationships, end discrimination against LGBT people,¹³⁹ and respect the principle of non-discrimination and the right to privacy stated by the UDHR. In spite of the UN Secretary General's call, Cameroon still upholds regulations outlawing same-sex conduct. It is only by looking at the society that homophobic attacks and the rationale for the law may be understood. Decriminalisation might not be an ultimate solution to end discrimination against homosexuals,

¹³⁵ Archbishop TonyeBakot (n 8 above).

¹³⁶ M Mburu, M Tabengwa & K Vance (n 35 above) 13.

¹³⁷ Human Rights Watch (n 54 above).

¹³⁸ As above

¹³⁹ http://www.huffingtonpost.com/joseph-huffhannon/ban-ki-moon-lgbt-rights-speech_b_1372745.html (accessed: 30 May 2012).

but it is essential in order to ensure that presumed homosexuals are not constantly harassed and arbitrarily arrested by mere accusation and on the grounds of unconstitutional law such as Article 347*bis* of the Cameroonian Penal Code.

Decriminalising may not end homophobia but taking the laws away will make a difference to people whose daily lives are interrupted and live in fear of being ousted and blackmailed.¹⁴⁰

The Cameroonian government, first needs to decriminalise the law and then, launch a campaign process of public awareness and sensitisation for the acceptance of LGBT people. With the power which is inherent in every State, the government should institutionalise human rights according to the societal structure and also draft laws in order to protect, respect and give access to everyone to have full enjoyment without discrimination against any. Freeman stated as follows: “The need to protect vulnerable human beings by social institutions” is the sociological explanation of the concept of human rights.¹⁴¹ Thus, human right laws are set to respect, protect, promote and fulfil people’s rights in order to avoid abuses of these rights.

The significance of a sociological perspective to the topic covered in this mini-dissertation is that human rights are seen as social facts and the practice of these rights are encrusted in daily life. Insights from the social sciences can be used to make human rights interventions more effective and to promote the abolishment of Article 347*bis* of the Cameroonian Penal Code in addition to influencing the acceptance of homosexuality by the society. Sociology also plays an important role in the practice of human rights because it permits a clear comprehension and analysis of social structures. Institutionalising human rights through social construction strengthens the protection, respect, promotion of these rights and might impact on traditional values and cultures.

4.3 Anthropology

Anthropology is defined as ‘the scientific study of the origin and behavior of man including the development of societies and cultures.’¹⁴² From the definition of anthropology, it appears that

¹⁴⁰H B Stiftung (n 79 above) 6.

¹⁴¹Freeman, Human Rights: An interdisciplinary approach (2002).

¹⁴²<http://urbanlegends.about.com/od/glossary/g/anthropology.htm> (accessed 9 June 2012).

this discipline is more concerned about the study of human beings' behavior and cultural diversity. The need to apply an anthropological approach in this section is because Anthropology is all about culture. Most of the time, law and culture are at opposite ends. The Cameroonian Constitution guarantees non-discrimination, but Article 347*bis* of the Penal Code discriminates against LGBT people by denying them the enjoyment of their fundamental human rights. LGBT people are discriminated against because not only is society clung to culture but the government also justifies the criminalisation of same-sex conduct by alleging the conservation of African culture. That is the reason why again, recently, on Friday 20 July 2012, the hearing appeal of two young Cameroonians, Jonas Singa Kumie and Franky Djome, 20 and 19 years old respectively, was held in Yaoundé. The two were accused of having sex together and were sentenced since November 2011 to five years' imprisonment under Article 347*bis*.¹⁴³ However, the question that concerns us here is: How can culture be changed?

“All cultures change through time. No culture is static.”¹⁴⁴ Culture is the reflection of what people value and tend to conserve and preserve. Most cultures constitute a barrier to respecting peoples' rights. For example, the rights of LGBT persons are not accepted in most African countries, including Cameroon. They still criminalise same-sex relationships under the auspices of preservation of African values and morality. Anthropology also deals with, and accepts as one of its premises the notion of cultural diversity. A further question may be posed: how can anthropologists intervene in the changing of culture in order to promote the respect for human rights?

Anthropologists study and understand cultures. They are able to better understand particular or local cultures. For example, why a society such as the Cameroonian society does not accept homosexual practice and discriminates against LGBT persons? When there is a gap in a culture or when a culture is discriminatory, anthropologists by their teaching may assist in the process of aligning a local culture with a modern and global culture. Anthropologists may make significant

¹⁴³ ‘Le calvaire de deux homosexuels au Cameroun’ by Camille Bordenet available at http://www.lemonde.fr/afrique/article/2012/07/20/le-calvaire-de-deux-jeunes-homosexuels-au-cameroun_1736012_3212.html#xtor=AL-32280515 (accessed 20 July 2012).

¹⁴⁴ ‘Culture Change: Overview’ available at: http://anthro.palomar.edu/change/change_1.htm (accessed 30 June 2012).

contributions to improving the application of human rights principles and the decriminalisation of same-sex conduct by directing, educating and informing towards aspects of the identity of members of the society. “Anthropologists study how and where human rights concepts are produced, how human rights ideas circulate, and how they affect everyday lives and actions.”¹⁴⁵ They are also able “to throw light on the ‘culture gap’ between international human rights and local ways of life.”¹⁴⁶ Anthropologists can show how the idea of universal rights can be set in local contexts. They can through diffusion (education and information) help governments to respect their commitments by enabling them to better understand cultural ties that hinder them from respecting and protecting LGBT rights.

The acceptance of universal human rights in a society can overthrow a local culture and this may become completely merged into international standards. The impact of anthropology is very important in terms of advocating and promoting the practice of human rights through culture at the local level. This discipline goes beyond the law by analysing and studying cultural diversity and values. Thus, anthropologists could address violations of gay rights by sensitisation, organising forums and teaching the community about social change relating to human rights. Downing asserted that “anthropology could contribute to the understanding of human rights and cultural diversity by showing how conceptions of rights functioned in different cultures incorporated external ideas.”¹⁴⁷

Culture is what a society or community has in its mind and holds as its values. However, it can change with the course of time and anthropologists and scholars could influence culture and make human rights practices more successful by providing a good understanding of the link between human rights laws and cultural contexts. “Anthropologists can help the cause of human rights by clarifying the relation between international human rights law and particular

¹⁴⁵ M Freeman, “On the interactions between law and social science in the understanding and implementation of human rights” in *Beyond The Law Multi-Disciplinary Perspectives On Human Rights*’ F Viljoen (Ed) *PULP* p 11.

¹⁴⁶ As above.

¹⁴⁷ Downing (1988) in Freeman, *Human Rights: An interdisciplinary approach* (2002) p.92.

cultures.”¹⁴⁸ For instance, anthropologists through their teaching can help in the repeal of Article 347bis and make the society change their homophobic views towards homosexuals.

4.4 Psychological effects on criminalising same-sex conduct

What is psychology? How does criminalising same-sex relationship affect LGBT people? These questions will be answered in order to understand the impact of human rights violations. According to Wilhelm Wundt, psychology is defined as follows:

Psychology is both an applied and academic field that studies the human mind and behaviour. Research in psychology seeks to understand and explain thought, emotion, and behaviour. Applications of psychology include mental health treatment, performance enhancement, self-help, ergonomics, and many other areas affecting health and daily life.¹⁴⁹

In this section, I aim to show the negative impacts of homophobia and the possible solution in order to end homophobia. Before that, I begin by defining the concept of homophobia.

Homophobia is defined as the fear and hatred of people who love and who are sexually attracted to those of the same sex, which includes prejudice and acts of discrimination resulting from that fear and hatred.¹⁵⁰

Marginalising people on the basis of their sexual orientation or perceived homosexuality affects not only LGBT persons, but also heterosexuals. Homophobia distresses gay people, mostly young persons; it makes them disown their sexuality and forces them to hide their sexuality for fear of prejudice and homophobic attacks. At the same time, homophobia also dehumanizes the heterosexual reputation. “Homophobic conditioning compromises the integrity of heterosexual people by pressuring them to treat others badly, actions contrary to their basic humanity.”¹⁵¹

¹⁴⁸ E Messer, in Freeman, *Human Rights: An interdisciplinary approach* (2002) p.93.

¹⁴⁹ <http://psychology.about.com/od/profilesofmajorthinkers/p/wundtprofile.htm> (accessed: 1 June 2012).

¹⁵⁰ ‘How homophobia hurts the college fraternity’ Available at: http://www.slu.edu/organizations/safezone/downloads/reading_greek.pdf (accessed: 5 June 2012).

¹⁵¹ ‘Fact and Information Sheet About: Some of the Effects of Homophobia’ From: *Homophobia: How We All Pay the Price*, ed Warren J. Blumenfeld (Boston: Beacon Press, 1992). Available at http://www.jmu.edu/safezone/wm_library/Homophobia%20Fact%20Sheet.pdf (accessed 5 June 2012).

Homosexual people are more exposed to high risk of emotional problems such as: suicide, depression, anxiety and mental health. These psychological effects are exacerbated when their very identity or conduct arising from the essence of their identity, is criminalised, as is the case with Article 347*bis*. Michael Benibgui shows that, “compared to their heterosexual peers, suicide rates are up to 14 times among lesbian, gay, and bisexual high school and college students.”¹⁵² In Cameroon, homosexuals live in fear and anxiety. Arbitrary arrests of gay people are massive and based on denunciation without proof. Homophobia is deep-rooted in Cameroon. Societal homophobia is likely to persist because the government plans to increase the sentence for homosexuality acts from five (5) to fifteen (15) years if it is an aggravating circumstance.¹⁵³ How do gay people live in Cameroon? In the following section I will reflect on some of the psychological experiences of young LGBT people in Cameroon.

*Daily Fear*¹⁵⁴

The following statements are short extracts from young Cameroonian gay men who face the stress of being persecuted because of their sexual orientation. Consequently, they hide their homosexuality because of homophobic abuses and the law criminalising same-sex relationships. Adonis, 27 year-old gay man, stated as follows:

I have been rejected by all because of my homosexuality. I have even been ex-communicated from my church in 2008. I made a suicide attempt. Fortunately, I met Alice Nkom, the lawyer defender of gay rights and I became an activist. Many of my friends fled the country because of the law banning same-sex conduct.¹⁵⁵

Olivier, 26 year-old student, had the following to say:

I am a lawbreaker because I do not do what the law requires. Maybe someday I will also be arrested. I am afraid that it happens, but I try to live as much as possible in hiding. Recently, I had health problems, an

¹⁵² ‘Psychological impacts of homophobia’ Sciences Daily (Feb.2 2011) Available at: <http://www.sciencedaily.com/releases/2011/02/110202114957.htm> (accessed: 5 June 2012).

¹⁵³ ‘Espoirs et angoisses des homosexuels au Cameroun’ available at: <http://sidado.org> (accessed : 28 May 2012).

¹⁵⁴ ‘Une peur quotidienne’ available at: <http://sidado.org> (accessed: 28 May 2012).

¹⁵⁵ As above.

infection. I had to hide the causes from the hospital and I was refused to be treated. I referred to the pharmacy.¹⁵⁶

Young LGBT people who experience homophobia most often have symptoms of depression and self-destruction as reflected in the cases above. In the case of Adonis, it is extreme distress, loneliness and rejection that pushed him to have suicidal thoughts. Homophobia pressurises young people to deny their sexual orientation to become heterosexuals and plunges them into a life of stress and trauma. In the case of Olivier, he tries to live in hiding out of fear of being arrested. Homophobia is one of the causes of the spread of sexual transmitted infections. For instance, in the case of Olivier, the hospital refused to provide him treatment because he hid the cause of his infection and instead got some self-medication from the pharmacy. One is not sure that the medication from the pharmacy was adequate because he did not do any examination to diagnose what exactly he was suffering from. Marginalisation on the grounds of supposed homosexuality has disastrous effects on the psychology and personality of young LGBT persons. It makes them feel abnormal and different from others. They are ashamed of being who they are. They fear, lack confidence and have a low self-esteem.

Homophobia works to punish at a deep individual level to create psychological distress; it shames the self and requires a young person to deal with being positioned, because of their sexual desire, as dirty and disgusting.¹⁵⁷

The effort made to change somebody's sexual orientation could be harmful; it could lead to depression and suicidal trends. Homophobia hurts not only homosexuals, but also heterosexuals. Homophobia harms the family, the community and the society. A family is the place that favours blossoming, harmony and where one feels in security. However, most often by fear of what the neighbourhood would say, families expose or denounce one of its members perceived as gay. Even many friendships and brotherhoods are broken because those who are heterosexuals fear to be perceived as homosexuals. That is why Shane Windmeyer and Pamela Freeman wrote:

¹⁵⁶As above.

¹⁵⁷ E Mcdermott *et al* 'Avoiding shame: young LGBT people, homophobia and self-destructive behaviours' (2008) 10 *Culture, Health & Sexuality* 8 815–829 Available at: <http://hivdatf.files.wordpress.com/2011/03/avoiding-shame-young-lgbt-people-homophobia-and-self-destructive-behaviours.pdf> (accessed: 6 June 2012).

“Homophobia jeopardises brotherhood by inhibiting close, intimate friendships among fraternity men and their ability to show affection toward other men for fear of being perceived as gay.”¹⁵⁸ Josiane, a 32 years old Cameroonian soccer player, stated as follows:

Few years ago when my mother asked if the rumours on my homosexuality is true, I said yes. She became sick and all the family treated me as a witch. Children were not supposed to approach me for fear of being contaminated. I moved out of the house.¹⁵⁹

Homophobia breaks up families, sisterhoods, brotherhoods, renders people homeless, and leads to mental disorder and instability. Homophobic feelings and attacks lead people to infringe on each other's rights in many ways such as hate crimes, discrimination and hate speech. It constitutes a violation of human rights in the sense that it affects people, especially the younger people, makes them suffer from depression and self-harm. What therefore, can be done to stop homophobia and to reduce the rate of suicide and depression as a result of sexual orientation?

Human rights are violated because many people are not fully aware of their basic rights. The lack of awareness, information and education constitutes a serious handicap to the practice of human rights. If human rights violations are diffused through the media, whether print or electronic, societies and communities will be transformed. The media plays a significant role in the construction of the society and has the power to influence the latter. However, information provided or reported by the media should be accurate, objective and accountable. The important role of the media is to create awareness, educate and inform by giving fair analysis. Through the media people can change their minds and a homophobic society can become a haemophilic society. For example, in the case of violence against LGBT people, by reporting the effects that homophobia has on LGBT persons as well as heterosexuals and denouncing the cases of abuse, depression and suicide, people will be aware of what is going on and might change their attitude towards LGBT people. The media, through programmes on a specific topic such as violence

¹⁵⁸S L. Windmeyer & P W. Freeman, ‘How Homophobia Hurts the College Fraternity Out on Fraternity Row’ Alyson Publications, (1998) available at <http://spectrum.case.edu/docs/HowHomophobiaHurtsGreekLife.pdf> (accessed 7 June 2012).

¹⁵⁹ ‘De l’optimisme malgré tout’ Available at: <http://sidado.org> (accessed: 28 May 2012).

against LGBT people and human rights, can educate people about their human rights, empower them and help them to understand others' 'rights. By so doing, people can change. The media can be very helpful in eradicating homophobia in a society and in promoting human rights practices.

Media is a bridge between the governing bodies and general public. It is a powerful and flexible tool that influences the public to a great extent. Media is voice of the voiceless and a great force in building the nation.¹⁶⁰

To tackle human rights issues and promote the decriminalisation of Article 347*bis* in particular, the media aspect needs to be taken into account. Through the media, society could better understand the psychological effects of homophobia, how criminalization harms society and might be willing to easily understand and accept the process of decriminalisation. The media plays an important role because it influences everyone's life and makes people in a society to interact with and understand each other through education.

4.5 Education as a contribution to decriminalisation of same same-conduct

In this section I aim to show how the right to education and human rights education are very important in the realisation of human rights and can also contribute to decriminalising same-sex behaviour. Education is the key to progress. Nelson Mandela defined education as the great engine of personal development.¹⁶¹ Human rights education can be defined as the teaching of human rights. Amnesty International defines it as follows:

Human rights education is a deliberate, participatory practice aimed at empowering individuals, groups and communities through fostering knowledge, skills and attitudes consistent with internationally recognized human rights principles.¹⁶²

¹⁶⁰ In Profile Daily 'What are the negative and positive effects of media on society?' available at: http://www.inprofiledaily.com/index.php?option=com_content&view=article&id=1276:what-are-the-negative-and-positive-effects-of-media-on-society&catid=40:speaking-out&Itemid=75 (accessed: 4 July 2012).

¹⁶¹ <http://www.mydreamcourse.co.za/blog/2010/01/18/education-is-the-great-engine-of-personal-development/> (accessed: 13 June 2012)

¹⁶² 'Human Rights Education' available at: <http://www.amnesty.org/en/human-rights-education> (accessed: 13 June 2012).

Human rights education and the right to education are related concepts. One cannot talk about the teaching of human rights without mentioning the right to education, which is seen as a basic right according to the UDHR. Article 26(1) of the UDHR highlights the right to education as a fundamental human right which is general and must be available, while Article 26(2) perceives education as the core of human development:

Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.¹⁶³

Article 13 of the ICESCR provides for the right to education as an economic and social right and imposes the obligation on the state parties to ensure the full realisation of the right. This is reiterated by article 26 of the UDHR, which states:

The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.¹⁶⁴

Education helps people to develop their personal understanding in order to figure out the changes that can happen in the society or environment. It is very important for the development and understanding of human rights. It can be used as a tool to stop human rights violation and promote, protect and realise human rights. In this sense, Horn notes as follows:

¹⁶³ Article 26(2) UDHR

¹⁶⁴ Article 13(1) ICESCR

The ICESCR sees education as a process of developing the person to become a moral agent who accepts his/her own dignity, respects the rights of others, and has the ability to participate in a free society and contribute to peace.¹⁶⁵

By ratifying the international covenants, States party have the obligation to respect, promote and fulfill the right to education. In most African countries, however, many people are still not aware of their human rights due to a lack of education and development. “A lack of knowledge and information is still a barrier preventing African people from claiming and exercising their human rights.”¹⁶⁶ Most often, it is vulnerable people such as women, minorities, children whose rights are violated as well as those in need of human rights protection who do not know about their rights. They are hardly even aware of the existence of human rights and do not have access to them because governments often monopolises the power to control and rule over its people. For instance, in Cameroon, when people who are presumed to be gay are arrested, they do not know that they have to talk to their lawyers first or only talk in the presence of their lawyers. Most of them are arrested on mere denunciation by a person, without evidence. They are beaten, threatened in police custody and forced to confess that they are homosexuals.

In Cameroon, the criminalisation of same-sex relationship obstructs and deprives children and adolescents of their right to education. School administrators and teachers prevent alleged gay and lesbian students from learning. Some education authorities and schools discriminate against young people because of their sexual orientation or gender expression, sometimes leading to their being refused admission or expelled from school.¹⁶⁷ In schools and universities, the harassment and attacks targeting supposed young LGBT originate from classmates, teachers and sometimes schools administrators. Because of the failure of school administrators to provide protection to minority students, most of them are forced to abandon their studies. In March 2006, 12 young women in Cameroon were expelled from a college in Douala on the basis of their

¹⁶⁵ N Horn, “Human rights education in Africa” in A Bosl & J Diescho (eds) *Human Rights in Africa Legal Perspectives on their Protection and Promotion* p.55-56

¹⁶⁶ Horn (n 165 above) 60

¹⁶⁷ UNESCO & ECOSOC, ‘Right to education – scope and implementation’ available at: <http://unesdoc.unesco.org/images/0013/001331/133113e.pdf> (accessed: 15 June 2012).

alleged sexual orientation.¹⁶⁸ The girls were deprived of their right to education based on sexual orientation. There is also the case of Jean-Claude Mbede, cited above,¹⁶⁹ a Master's degree student in Humanities, who was arrested and sentenced to three years in prison on the grounds of acts of homosexuality. Due to his perceived sexual orientation, the young student's studies and career plans were frustrated. However, the 1996 Constitution of Cameroon guarantees the right to education to all, in addition to the fact that Cameroon has ratified the international agreements protecting and promoting the right to education. Despite the ratification, there is still discrimination against gay people and their right to education is deprived.

Education is both a human right in itself and an indispensable tool for realising other human rights and seen as an empowerment right.¹⁷⁰ Education is a very important fundamental right because it enables individuals to understand their rights and also to respect the rights of others. It can also be used as a tool to enforce, ensure and fulfill the practice of human rights. According to General Comment No. 13 of the ICESCR on the right to education, state parties should take appropriate measures to realise the right to education and avoid measures that hinder or prevent the enjoyment of this right. Governments also have the obligation to protect everyone in order to prevent third parties from interfering with the right to education.¹⁷¹

In order to avoid human rights abuses, everyone should have access to education without any form of discrimination. Human rights should be widely disseminated to members of society and the broader communities and all people should be educated on their human rights and made aware of their rights. Chitupila stated that:

In order to entrench human rights, encourage respect, promotion, protection and fulfillment of human rights. Promotion and advocacy must not start at university but as early as the pre-school level, and must

¹⁶⁸ Amnesty International, 'Cameroon: Pope should reiterate commitment to ending the criminalization of homosexuality' (2009). Available at: <http://www.asylumlaw.org/docs/sexualminorities/CameroonAI031809.pdf> (accessed: 13 June 2012).

¹⁶⁹ (n 167 above).

¹⁷⁰ International Covenant on Economic, Social and Cultural Rights 'General comment 13 on the right to education' para.1 Available at: http://www.unescobkk.org/fileadmin/user_upload/appeal/human_rights/Article_13_Right_to_Edu_Scope_and_Implication.pdf (accessed: 15 June 2012).

¹⁷¹ General Comment 13, para.47

also occur informally in order to include members of the population without an education, educated in a pre-human rights era or educated, but whose curriculum did not incorporate human rights.¹⁷²

Human rights education is an indispensable and significant factor not only for the development of the economy of a society but also for the implementation of human rights. Governments, civil societies and the mass media should work together in order to promote education because “education plays a vital role in the all-round development of the society.”¹⁷³ The Constitution of Cameroon guarantees non-discrimination and equality of all before the law. The government should refer to these principles and ensure that LGBT rights are respected because they are attacked and dishonoured by members of the society. It is obvious that decriminalisation is not an absolute solution to end homophobia. However, it will be better to decriminalise Article 347*bis* in order to overcome homophobic attacks, thus education might be the solution. Societies or communities need to be educated and sensitised on the need for tolerance and acceptance of one another and on the diversity of human beings.

4.6 Conclusion

The need to connect decriminalisation of same-sex conduct to a multi-disciplinary perspective is relevant and necessary to this work. By looking through the lenses of other disciplines, one understands the impact of criminalising same-sex relationships better and finds novel arguments and better strategies to ensure that some of the most prominent obstacles to the process of decriminalisation are overcome. Using and understanding human rights law as a strictly legal phenomenon to realise the best practice of human rights or to solve human rights abuses is insufficient and ineffective because the law faces some significant limitations. “An interdisciplinary approach to human rights is inevitable because human rights law alone will continue to be largely ineffective.”¹⁷⁴ As illustrated in this chapter, Sociology, Anthropology, Psychological and educational aspects and approaches are very important and helpful in the process of decriminalisation of same-sex practice.

¹⁷² C Chitupila “The right to education as a basis for human rights education: An interface between human rights and education” in F Viljoen (ed), *Beyond The Law Multi-Disciplinary Perspectives On Human Rights* (2012) PULP p.166.

¹⁷³ In *Profile Daily* (n 160 above).

¹⁷⁴ C Chitupila (n 172 above) 183.

Education and media constitute a huge contribution in the implementation of human rights in order to promote the decriminalisation of same-sex conduct. When individuals are educated on human rights and aware of their rights, it limits human rights abuses.

Human rights education can be used as a tool in the prevention of human rights violations and in strategies for the promotion and protection of human rights. Education on human rights is a way of preventing abuses in the long term.¹⁷⁵

Human rights education enables a society or a community to respect each other's rights and prevents human rights violations. Through the media, people are educated and informed. Media is a significant tool in eradicating violence and abuses.

¹⁷⁵As above 169.

Chapter 5: Conclusion and recommendations

5.1 Introduction

This study analyses the issue of LGBT people in Cameroon and the impact of the criminal law (Article 347*bis* of the Cameroonian Penal Code in particular) criminalising same-sex conduct. This provision arguably promotes fear and hatred of people who are in same-sex relationships. Central to this study is the general remark that LGBT people are discriminated against in most African countries and in Cameroon in particular, as well as the reality that the government seems to encourage homophobia. This study has shown that criminalising same-sex relationships has serious effects not only on gay people or perceived gay persons, but also on the society as a whole. It has also shown the need to adopt a multi-disciplinary perspective in order to better understand the obstacles to and to promote decriminalisation. What follows is a general conclusion and some recommendations based on the findings of the study.

5.2 Conclusions

Same-sex acts are not tolerated in Cameroon and are enshrined in the law. Article 347*bis* of the Penal Code punishes whoever has sexual acts with a person of the same sex. The Cameroonian government explains the application and enforcement of Article 347*bis* by citing “positive African cultural values.”¹⁷⁶ In addition, the preservation of religious values is one of the reasons for the advocacy and implementation of the law criminalising same-sex behaviours. No matter the religion, both Christians and Muslims are opposed to the practice of homosexuality. Consequently, organisations, human rights defenders and activists dealing with the issue of gay and lesbian rights are under threat. On this issue, Mbaru and others submit as follows:¹⁷⁷

The practice to deny NGOs legal status has been used by governments to restrict the formation of LGBTI movements and to stop the free flow of resources to such NGOs.

¹⁷⁶ (n 34 above).

¹⁷⁷ (n 35 above) 14.

Generally, most arrests are arbitrary and done without any evidence or warrant but rather only on the suspicion or denunciation by whomever. Perceived gays and lesbians in Cameroon are not only harassed by the government but also by most of the society.

However, from a legal perspective, Article 347*bis* needs to be repealed. It has been shown that this article is ‘unconstitutional’ because it infringes not only on the principles (of non-discrimination, fair trial and right to privacy) set in the Constitution but also, because the law was not voted by Parliament. In addition, by still maintaining the law criminalising same-sex conduct, the Cameroonian government does not comply with the various human rights instruments (ACHPR, UDHR, ICCPR and ICESCR) it has ratified. By ratifying these instruments, the Cameroonian government undertook to comply with its provisions and commitments to protect and promote everyone’s rights and should not justify criminalisation of same-sex relations by citing tradition and religion because they are most often incompatible with international human rights standards. On this issue Navi Pillay, the United Nations High Commissioner for Human Rights, at the nineteenth Human Rights Council panel on ending violence and discrimination against individuals based on their sexual orientation and gender identity in Geneva, on 7 March 2012, urged States as follows:

States are to commit to implementing the recommendations set out in this report – including measures to improve responses to incidents of homophobic violence, decriminalize consensual, same-sex relationships, enact laws prohibiting discrimination based on sexual orientation and gender identity, and institute public education programmes designed to combat negative stereotyping and tackle discriminatory attitudes in society.¹⁷⁸

From a non-legal argument perspective, the non-recognition of LGBT rights --and indeed, the criminalisation of same-sex relationships -- has a huge impact on the health of LGBT persons. LGBT people are excluded from sexual health provision and exposed to the higher risk of HIV infection because of their sexual orientation. They are also inclined to poor mental and physical health due to these exclusions. Criminalising same-sex intercourse also encourages homophobia,

¹⁷⁸ ‘The summary of discussion of the nineteenth Human Rights Council panel on ending violence and discrimination against individuals based on their sexual orientation and gender identity’ Available at: www.ohchr.org/Documents/Issues/Discrimination/SummaryHRC19Panel.doc(accessed: 9 July 2012).

hate speech and hate crime and increases stigmatization and abuses in the community. It deprives LGBT people of their human rights. “Even after they get out of jail, families and friends often reject them. They are denied education, jobs, even a place to live. Their lives are ruined.”¹⁷⁹

The institutionalisation of human rights and the existence of human rights law ensure the practice of human rights, but only to a very limited extent. In spite of the legalisation of human rights in constitutions and treaties by many countries, including Cameroon, human rights are still violated. However, laws really need to be respected, promoted and implemented. For a good understanding and practice of human rights, some relevant disciplines need to be taken into account. It has been shown that the contribution of social sciences, the psychological aspect, education and the media might be very useful and helpful for a good practice of human rights and consequently the decriminalisation of same-sex conduct. The educational aspect is the most relevant and vital key to overcome prejudice in the society. In the Cameroonian society education seriously needs to be embedded in the culture at every level of society. Through education, people become more comprehensive and tolerant towards each other on the issue of same-sex conduct. This might in turn cause the government to take the initiative to repeal Article 347*bis*. In addition, through education anthropologists can contribute in changing those conservative cultural practices in order to promote respect for human rights values.

5.3 Recommendations

The decriminalisation of same-sex conduct and the recognition of LGBT rights in Cameroon would require the following:

- (a) The Cameroonian government should repeal Article 347*bis* of the Penal Code which criminalises same-sex relationships because this provision encourages homophobia, violence and negative social attitudes towards perceived LGBT people.
- (b) The government should decriminalise consensual same-sex practice and should not justify discrimination against LGBT people on the grounds of tradition, culture and

¹⁷⁹ Human Rights Watch, ‘Cameroon : same-sex relations bring attacks, arrests’ ‘*Government Should Decriminalize Consensual Activity, Protect LGBT Rights*’ Available at: <http://www.hrw.org/en/news/2010/10/28/cameroon-same-sex-relations-bring-attacks-arrests> (accessed: 9 July 2012).

religion. The State of Cameroon should be seen as secular and as having the obligation to respect, protect and promote the rights of all individuals. Cameroon is also obliged to comply with the international and regional human rights instruments it has ratified.

- (c) The Cameroonian authorities should take immediate measures, pending the legal reform to end arbitrary arrests of perceived homosexuals and stop the harassment and persecution of presumed LGBT persons by the police and prison officers.
- (d) The government should reconsider the public health issue relating to LGBT people. It should provide treatment, care for all people regardless of sexual orientation and ensure the distribution of condoms in prisons in order to avoid the prevalence of HIV infection.
- (e) The State of Cameroon should take into account human rights education and training in order to sensitise the entire society (including the police, prison officers, judges, teachers and lecturers). It should interact and work together with the civil society (NGOs, activists and the media) in order to educate and inform people about issues of sexual orientation and the impact of discrimination based on sexual orientation and homophobic attitudes. It should also raise awareness through the media and education campaigns in order to combat homophobia at all levels of the community.

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