MEMORANDUM

DATE: May 14, 2014
TO: Interested Parties
FROM: ABA Center for Human Rights
RE: Cameroon’s obligation to protect the rights of freedom of expression, association, and assembly

I. INTRODUCTION

Cameroon has committed itself to the preservation of human rights within its jurisdiction, including the rights to freedom of expression, association, and assembly. In addition to constitutional provisions, Cameroon has entered into international human rights treaties which require it to ensure the realization of universal human rights within its borders. At the same time, Cameroonian law prohibits defamation and undeclared gatherings and imposes criminal liability for the same. Defamation laws necessarily restrict expression and it is therefore of the utmost importance that the laws, as written and as applied, meet strict standards governing permissible regulation of speech. Similarly, laws imposing strict regulations and prior authorization requirements on public gatherings necessarily restrict freedom of association and assembly. It is of paramount importance that the laws of Cameroon which limit these fundamental rights be judiciously, and narrowly, applied to ensure compliance with its international treaty obligations and to realize Cameroon’s stated commitment to human rights.

1 The American Bar Association (ABA) Center for Human Rights submits this memorandum as an objective, legally supported and truthful examination based on the case materials and information at hand. The views expressed in this memorandum have not been approved by the ABA House of Delegates or Board of Governors and should not be construed as representing ABA policy.
The American Bar Association (ABA) Center for Human Rights (the Center) has prepared this memorandum on the law as part of its ongoing obligation to promote the rule of law and realization of human rights.

II. SUMMARY OF THE CASE

Mr. Nasako Besingi is the director of Struggle to Economise Future Environment (SEFE), a non-governmental organization dedicated to protecting the environment and local communities. According to press reports, since 2009, SEFE and several other local and international non-governmental organizations have been protesting the alleged razing of traditional lands, and rainforest, in the Southwest Province of Cameroon for the creation of a 20,000 hectare oil palm plantation by SG Sustainable Oils Cameroon PLC (SGSOC), a fully owned subsidiary of U.S. agribusiness Herakles Farms. Originally proposed at 73,000 hectares, the actual land granted to Herakles was 20,000 hectares, with local reporters citing public outcry in response to the awareness campaigns of SEFE and others as the cause for the smaller grant.

Since beginning their activities, Mr. Besingi and other activists and organizations have documented several cases of apparent harassment by local government officials and local Herakles officials. In August 2012, Nasako Besingi released a report online detailing a trip he had taken to speak with different villages and chiefs in the region. In that report, he described incidents with local employees of Herakles Farm, including a roadside attack. He stated that he knew the employees by name and that they left only upon the appearance of French journalists who were following the SEFE group as part of a documentary on the local movement. He concluded that report by stating, “I think that Herakles is looking for a way to eliminate me and our supporters who are against this plantation.”

Shortly after the attack, Mr. Besingi filed a criminal complaint against his attackers. According to available information, to date, there has been no investigation into the attack nor have charges been brought against any of those named by Mr. Besingi. Instead, on December 31, 2013, Mr. Besingi’s attorney. The ABA Center for Human Rights has not independently verified all facts reported, nor can it take a position on whether a defense of truth is available to Mr. Besingi.

2 The summary of the facts is drawn from the summons, from credible third party reports, and from correspondence with Mr. Besingi’s attorney. The ABA Center for Human Rights has not independently verified all facts reported, nor can it take a position on whether a defense of truth is available to Mr. Besingi.

3 Cameroon activist takes on land grabber from Wall Street, now faces imprisonment, GRAIN (Nov. 13, 2013), http://www.grain.org/article/entries/4827-cameroon-activist-takes-on-land-grabber-from-wall-street-now-faces-imprisonment (quoting Besingi: "I first heard about the plans for a plantation in our area from a government agent back in 2009," he says. "I was shocked. I told him, 'But there are no available lands in our area.'); see also Cameroon Activists on Trial for Peaceful Protest against Wallstreet Landgrabber, OAKLAND INSTITUTE http://www.oaklandinstitute.org/cameroon-activists-trial-peaceful-protest-against-wall-street-land-grabber (last visited May 20, 2014).


5 See, e.g., id. (describing the current case against Besingi as well as prior incidents involving Besingi and his fellow advocates).


7 Id.

8 Id. at 2.
Besingi was summoned to answer charges instigated by Herakles Farms of “publishing false news via the internet” in violation of §§ 240(1) and 305(1) of the Cameroonian penal code. These charges are punishable by up to six months imprisonment and up to $4,000 in fines.9

On the same day that Mr. Besingi was summoned to answer the criminal defamation complaint, he was summoned to answer two counts of organizing and holding “undeclared public meetings,” in violation of § 9(1)(a) of law no. 90/55 and §§ 231 and 96 of Cameroon’s penal code.10 As in the defamation case, the underlying alleged crimes had occurred more than a year prior to the summons. The first of these alleged meetings occurred on approximately July 7, 2012 and the second occurred on approximately November 14, 2012.11 The summons does not give any additional information about the alleged meetings.

III. RELEVANT INTERNATIONAL STANDARDS

The Constitution of Cameroon explicitly affirms the State’s commitment to guaranteeing freedoms of expression, association, and assembly as part of its commitment to basic rights guaranteed under international law.12 In addition, Cameroon is a state party to the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples’ Rights (African Charter), both of which protect these rights.13 Pursuant to the principle articulated in Article 26 of the Vienna Convention on the Law of Treaties of 1969, states parties are required to give effect to the obligations under international treaties which they have ratified in good faith. These international treaty obligations are accordingly binding on Cameroon and on all branches of government (executive, legislative and judicial) as well as on other public or governmental authorities, at whatever level, national, regional or local.14 Therefore, Cameroon’s civil and criminal provisions concerning defamation and unlawful gatherings must be applied in a manner consistent with Cameroon’s international obligation to protect these fundamental freedoms.

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11 Id.

12 The Constitution of the Republic of Cameroon’s Preamble explicitly affirms its:

“... attachment to the fundamental freedoms enshrined in the Universal Declaration of Human Rights, the Charter of the United Nations, and the African Charter on Human and People’s Rights, and all duly ratified international conventions relating thereto, in particular, to the following principles: the freedom of communication, of expression ... shall be guaranteed under the conditions fixed by law.” CONST. OF THE REPUBLIC OF CAMEROON pmbl. (2008).


A. Criminal defamation charges violate the right to freedom of expression under international law.

The right to freedom of expression is central to protecting human dignity and to ensuring a robust and thriving democracy. This right is enshrined in Article 9 of the African Charter on Human and Peoples’ Rights (African Charter)\(^ {15}\) and in Article 19 of the International Covenant on Civil and Political Rights (ICCPR).\(^ {16}\) Under these treaties, a restriction on freedom of expression must meet the following three requirements: it must be prescribed by law, necessary to meet a legitimate state interest, and proportionate to achieve that interest.\(^ {17}\) Although international law recognizes the protection of the rights and reputations of others as a legitimate aim, criminal penalties are generally considered disproportionate to the State’s interest in protecting the rights and reputations of others.\(^ {18}\)

1. Restrictions on freedom of expression must be prescribed by law, meet a legitimate state interest, and be the least intrusive means to fulfil that purpose.

Article 9 of the African Convention states that individuals have the right to freedom of expression “within the law.”\(^ {19}\) The African Commission on Human Rights (African Commission) has explained that such legally imposed restrictions must (1) “be founded in a legitimate state interest;” (2) “the evils of limitations of rights must be strictly proportionate with and absolutely necessary for the advantages which are to be obtained;” and (3) cannot “have as a consequence that the right itself becomes illusory.”\(^ {20}\) State interests that the African Commission has considered legitimate under the first prong are “the rights of others, collective security, morality and common interest.”\(^ {21}\)

\(^{15}\)African Charter, supra note 13, art. 9.

\(^{16}\)ICCPR, supra note 13, art. 19.

\(^{17}\)See Keun-Tae Kim v. Republic of Korea, U.N. Human Rights Committee, 4 Jan. 1999, ¶ 12.2, U.N. Doc. CCPR/C/64/D/574/1994, (Stating that restrictions to the freedom of expression under Article 19 must be prescribed by law, address one of the listed legitimate purposes, and be necessary to achieve a legitimate purpose); see also U.N. Human Rights Committee (HRC), General Comment No. 34, Article 19, Freedoms of Opinion and Expression, 12 Sept. 2011, ¶ 22, U.N. Doc. CCPR/C/GC/34, (stating restrictions must “conform to the strict tests of necessity and proportionality”) [hereinafter UNHRC General Comment No. 34]; See also Media Rights Agenda v. Nigeria, Comm. Nos. 105/93, 128/94, 130/94 and 152/96, Afr. Comm’n H.P.R., ¶ 69 (2000) (stating that restrictions on the freedom of expression under Article 9 must be for a legitimate purpose and must be necessary and proportionate).

\(^{18}\)See UNHRC General Comment No. 34, supra note 17, at ¶ 47.


\(^{20}\)Media Rights Agenda v. Nigeria, supra note 17, at ¶¶ 69-70; See also Good v. Rep. of Botswana, Comm. No. 313/05, Afr. Comm’n H.P.R., ¶ 187 (2010) (stating that restrictions under Article 9 must be “clearly provided by law,” “serve a legitimate interest, and be necessary in a democratic society”).

\(^{21}\)Media Rights Agenda v. Nigeria, supra note 6, at ¶ 68. The African Commission has noted that while the grounds of limitation to freedom of expression are not expressly provided for by the African Charter, as they are in the other international and regional human rights treaties, “the phrase ‘within the law’ under Article 9(2) provides a leeway to cautiously fit in legitimate and justifiable individual, collective and national interests as grounds of limitation.” Kenneth Good v. Rep. of Botswana, supra note 20, at ¶ 188. The African Commission has also held that the phrase
The ICCPR applies a substantially similar test for restrictions on freedom of expression as those imposed by the African Charter - such restrictions are only permissible if prescribed by law, necessary to meet a legitimate state interest and proportional to achieving that interest. The legitimate purposes listed in Article 19(3) are the rights or reputations of others and protection of national security, public order, public health or morals.

However, defamation claims only serve a legitimate purpose with regards to maliciously false statements. Truthful statements, statements made in good faith and expressions of opinion by definition do not constitute defamation and may not be criminalized as such.

2. Criminal sanctions are a disproportionate restriction on the right to freedom of expression under international law.

Criminal penalties are the most severe restriction that may be imposed by law and therefore necessarily have a greater chilling effect than civil penalties. In its General Comment Number 34, the United Nations Human Rights Committee (UNHRC), the body charged with authoritative interpretation and enforcement of the ICCPR, emphasized that “restrictive measures must conform to the principle of proportionality; they must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve their protective function; [and] they must be proportionate to the interest to be protected...” Citing proportionality concerns, the UNHRC has strongly urged State Parties to repeal their defamation laws, noting that criminal sanctions are not proportionate to the state’s interest and are not “the least intrusive instrument” that could provide protection for the reputation of others. Where defamation remains an offense, “the application of the criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty.” As a restriction on freedom of expression, imprisonment is per se disproportionate to the State’s interest in protecting the reputations of others.

Similarly, the African Commission has called on State Parties to the African Charter to repeal their criminal defamation laws, stating that “criminal defamation laws constitute a serious interference with freedom of expression.” In its Resolution on Repealing Criminal Defamation Laws in Africa, the African Commission commended those States which had already repealed their criminal defamation laws and called upon all other State Parties to “repeal criminal

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22 See Keun-Tae Kim v. Rep. of Korea, supra note 17, at ¶ 12.2; ICCPR, supra note 13, art. 19; see also UNHRC General Comment No. 34, supra note 17, at ¶ 34.
23 ICCPR, supra note 13, art. 19(3).
24 See, e.g., HRC General Comment No. 34, supra note 17, ¶ 47 (“All such laws, in particular penal defamation laws, should include such defences as the defence of truth and they should not be applied with regard to those forms of expressions that are not, of their nature, subject to verification. At least with regard to comments about public figures, consideration should be given to avoiding penalizing or otherwise rendering unlawful untrue statements that have been published in error but without malice.”)
25 Id.
26 Id.
27 Id.
defamation laws or insult laws which impede freedom of speech, and to adhere to the provisions
of freedom of expression, articulated in the African Charter, the Declaration, and other regional
and international instruments.”29 To date, a number of State Parties to the African Charter --
including Ghana, Kenya, Liberia, Niger, and Uganda -- have repealed or committed to repealing
their criminal defamation laws.30

B. Cameroon has an obligation under international to investigate reported violence and to
ensure that individuals, alone and in association with others, are able to exercise,
promote, and protect fundamental human rights.

In late 2012, Mr. Besingi filed a criminal complaint detailing the same attack he described in his
allegedly defamatory report. According to available information, to date, there has been no
investigation into the attack. Article 4 of the African Charter requires States to ensure that no
one may be arbitrarily deprived of the right to respect for his integrity of person, while Article 7
requires States to ensure all persons have the right and ability to appeal to appropriate
government bodies any violations of their fundamental rights. Similarly, the ICCPR requires
State parties, including Cameroon, to provide an effective remedy for violations of the Covenant
(Article 2), including certain violations committed by non-state actors, particularly those
involving acts of violence.31

The UNHRC discusses this right to an effective remedy in General Comment 31:

15. Article 2, paragraph 3, requires that in addition to effective protection of
Covenant rights States Parties must ensure that individuals also have accessible and
effective remedies to vindicate those rights. . . . A failure by a State Party to
investigate allegations of violations could in and of itself give rise to a separate
breach of the Covenant. Cessation of an ongoing violation is an essential element of
the right to an effective remedy.32

In addition, Article 9 of the United Nations Declaration on Human Rights Defenders explicitly
states that “everyone has the right, individually and in association with others, to benefit from an

29 Id.
Information in Africa and Member of the African Commission on Human and Peoples’ Rights, Presented during the
54th Ordinary Session of the African Commission Human and Peoples’ Rights, 22 October - 5 November 2013,
31 ICCPR, supra note 13, art. 2(3).
32 UNHRC, General Comment No. 31, supra note 15, at ¶15, (emphasis added); see also Turdukan Zhumbaeva on
her own behalf and on behalf of her son, Tashkenbaj Moidunov, v. Kyrgyzstan, U.N. Human Rights Committee
that criminal investigation and consequential prosecution are necessary remedies for violations of human rights);
CCPR/C/100/D/1776/2008 (holding that allegations of torture or other mistreatment “must be investigated promptly,
thoroughly and impartially by competent authorities and appropriate action must be taken against those found
effective remedy and to be protected in the event of the violation of those rights.” 33 The Declaration on Human Rights Defenders goes on to explain that “everyone whose rights or freedoms are allegedly violated has the right, either in person or through legally authorized representation, to complain to and have that complaint promptly reviewed in a public hearing before an independent, impartial and competent judicial or other authority established by law and to obtain from such an authority a decision, in accordance with law, providing redress, including any compensation due, where there has been a violation of that person’s rights or freedoms, as well as enforcement of the eventual decision and award, all without undue delay.” 34

In this case, Mr. Besingi brought a complaint to the police alleging a violent attack in 2012. Yet, to date, it appears that there has been no investigation or criminal case opened. This apparent failure to conduct an investigation into the alleged attack may amount to a violation of Cameroon’s obligation under international law to ensure that Mr. Besingi has access to an effective remedy.

C. The summons to answer charges of organizing and attending unlawful assemblies may violate Mr. Besingi’s right to freedom of assembly and association under international law.

Mr. Besingi received a summons to answer for two charges of organizing and attending unlawful meetings on the same day he was summoned to answer the criminal defamation charges. The only factual allegations contained in the summons were the dates of the meetings. As a result, the Center is unable to analyze the allegations in any specificity. However, it is important to stress that restrictions on freedom of assembly and association are only permitted under narrow circumstances under international law.

Article 21 of the ICCPR and Article 11 of the African Charter guarantee the right of peaceful assembly while Article 22 of the ICCPR and Article 10 of the African Charter guarantee the right to freely associate with others. As is the case with freedom of expression, restrictions on these rights must be prescribed by law, necessary to fulfill a legitimate State interest such as national security or public safety, and proportionate to the interest pursued. 35

Article 231 of the 1967 Penal Code provides for imprisonment and a fine for organizers of unauthorized meetings, among other restrictions on the ability for citizens to gather. 36 As discussed in the section on freedom of expression, this imposing of the most severe form of restriction (criminal penalties) upon the exercise of basic rights is likely disproportionate to any legitimate State interest, except in the most extreme cases.

Further, any law requiring authorization from the government before the holding of a peaceful gathering or assembly is likely invalid. As noted by the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, “the exercise of fundamental freedoms should not be subject to previous authorization by the authorities.” 37 The Special Rapporteur has

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34 Id.
explained that States should require, at most, a prior notification procedure and that “[s]hould the organizers fail to notify the authorities, the assembly should not be dissolved automatically . . . and the organizers should not be subject to criminal sanctions, or administrative sanctions resulting in fines or imprisonment.”

IV. CONCLUSION

International law generally prohibits restrictions on freedoms of expression, association, and assembly unless they are prescribed by law, directed at a legitimate aim, and necessary in a democratic society. To be “necessary” in a democratic society, restrictions must be proportionate to their purported objective. Criminal penalties are the most severe restriction imposed by law and therefore must be reserved for only exceptional instances, such as incitement to violence. Criminal sanctions for an environmental advocate related to statements that were either truthful, made in good faith, or statements of opinion violate this obligation, as do criminal sanctions for failing to obtain prior authorization for peaceful gatherings.

36 See Penal Code of Cameroon, Section 231 (1967); see also Article 19, Freedom of Association and Assembly: Unions, NGOs, and Political Freedom in Sub Saharan Africa, 19 (March 2011) (“Any person who takes part in the organisation of a public meeting which has not been subject to a prior declaration, or makes a declaration which is intended to mislead the authorities about the conditions or purpose of the meeting, commits a criminal offence punishable under Section 231 of the Penal Code. Also punishable under the provision are those who convene a procession without filing a declaration, or after it has been legally prohibited, or make a false/incomplete declaration in order to conceal the conditions of a planned procession. The normal penalties range from fifteen days' to six months' imprisonment and fines of between 5,000 and 10,000 francs.”).
38 Id. at ¶29.