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Ignoring Human Rights for Homosexuals: Gross Violations of International Obligations in Cameroon

Erica Nordberg

American University Washington College of Law

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**IGNORING HUMAN RIGHTS FOR HOMOSEXUALS:
GROSS VIOLATIONS OF INTERNATIONAL
OBLIGATIONS IN CAMEROON**

ERICA NORDBERG*

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* JD Candidate, May 2013, American University, Washington College of Law; B.S. Political Science, 2009, Northeastern University. To my Note and Comment Editor, Ed Tracy, thank you for your invaluable guidance and feedback. To my friends and my family, you are an incredible support system. Thank you for your constant encouragement, interest, and support in everything I do. I love you very much!

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I. INTRODUCTION

Jean-Claude Roger Mbede (“Mbede”) currently sits in a Cameroonian prison where he likely faces overcrowding, abuse, and unsanitary conditions¹ after being sentenced to three years for the criminal act of “being homosexual.”² Police used an intercepted text message from Mbede to a male acquaintance as the basis to arrest Mbede for homosexuality under Cameroon’s Article 347 bis³ (“Article 347”).⁴ Article 347 of Cameroon’s Penal

1. See Integrated Reg'l Info. Networks, *Cameroon: "Inhuman" Conditions, Denial of Justice for Detainees*, REFworld (Aug. 26, 2009), <http://www.unhcr.org/refworld/docid/4a978400c.html> (citing several issues with Cameroon prisons, including: overcrowding, high inmate death rate, lack of medical care, shortage of bathroom facilities, insufficient food, and overall dilapidation).

2. See generally *Cameroon: 'Sodomy' Law Violates Basic Rights*, HUMAN RIGHTS WATCH (May 17, 2011), <http://www.hrw.org/en/news/2011/05/17/cameroon-sodomy-law-violates-basic-rights> [hereinafter *Cameroon: Sodomy*] (documenting the recent arrest and conviction of Jean-Claude Roger Mbede and describing the difficulties faced by homosexuals in Cameroonian prisons).

3. See L'article 347 bis du Code Pénal du Cameroun (Cameroon), available at <http://www.glapn.org/sodomylaws/world/Cameroon/Cameroon.htm> (displaying the French text of Article 347 and Article 347 bis), translated in EDDIE BRUCE-JONES & LUCAS PAOLI ITABORAHY, INT'L LESBIAN, GAY, BISEXUAL, TRANS AND INTERSEX ASS'N, STATE-SPONSORED HOMOPHOBIA: A WORLD SURVEY OF LAWS CRIMINALISING SAME-SEX SEXUAL ACTS BETWEEN CONSENTING ADULTS 21 (2011), available at http://old.ilga.org/Statehomophobia/ILGA_State_Sponsored_Homophobia_2011.pdf (providing the French text and an English translation of Article 347 bis, which criminalizes homosexual acts and subjects offenders to doubled penalties when the act is against a minor).

4. See *Cameroon: Sodomy*, supra note 2 (reporting that Mbede was held in custody for seven days before being charged, in violation of Cameroonian law

Code forbids sexual relations between persons of the same sex and punishes violators with a fine and potential jail time.⁵ Men and women are often harassed, abused, arrested, and even killed when suspected of being homosexual in Cameroon.⁶ The Cameroonian government, law enforcement, and even average citizens commit these acts with impunity, while Article 347 ensures that the *victims* of these attacks are the ones being prosecuted.⁷

Article 347's continued existence leads to specific violations of international law and basic human rights guaranteed by the International Covenant on Civil and Political Rights ("ICCPR");⁸ in particular, freedom of expression, freedom from arbitrary arrest and detention, and freedom from invasions of privacy.⁹ The recent arrest and conviction of Mbede, an alleged homosexual, illustrates Cameroon's disregard for these international human rights obligations.¹⁰ This Comment will use the Mbede case to analyze how anti-homosexuality laws, particularly Article 347, violate these specific provisions of the ICCPR.

Part II of this Comment will examine international trends regarding increased rights for homosexuals and highlight the international attention directed at Cameroon's criminalization of homosexuality.¹¹ Part II will also provide a brief description of

that mandates a forty-eight hour limit on holding a person prior to charging them with a crime).

5. See BRUCE-JONES & ITABORAHY, *supra* note 3, at 21 (remarking that violators are punished by a fine of 20,000 to 200,000 francs, imprisonment of six months to five years, and that the penalties are doubled if committed with a minor between sixteen and twenty-one years of age).

6. See discussion, *infra* Part II.B (discussing the treatment faced by homosexuals in Cameroon).

7. See discussion, *infra* Part II.B (describing how the intense animosity towards homosexuality in Cameroon causes people from all sectors of society to react harshly towards those they believe to be homosexual).

8. International Covenant on Civil and Political Rights, 999 U.N.T.S. 171, Dec. 16, 1966 [hereinafter ICCPR].

9. See ICCPR, *supra* note 8, arts. 9, 17, 19.

10. See discussion, *infra* Part II.C (identifying Cameroon's obligations as a party to the ICCPR).

11. See discussion, *infra* Part II.A (describing the status of rights for homosexuals around the world, a recent United Nations resolution involving homosexuals' human rights, and international responses to the Mbede case from interested non-governmental organizations).

Article 347, how it is enforced, and its effects on Cameroonian culture.¹² Part II will then define Cameroon's international legal obligations to guarantee fundamental human rights under the ICCPR, highlighting Articles 9, 17, and 19.¹³ Part II will also discuss relevant international human rights jurisprudence that has addressed arbitrary arrest and detention, freedom of privacy, and freedom of expression.¹⁴ Lastly, Part II will detail the Mbede case, which will serve as the background against which the remainder of the Comment is set.¹⁵

Part III of this Comment will demonstrate how enforcement of Article 347 promotes arbitrary arrest and detention, in violation of Article 9 of the ICCPR.¹⁶ Additionally, Part III will show that Article 347 leads to invasions of the privacy individuals are guaranteed under Article 17 of the ICCPR.¹⁷ Lastly, Part III will argue that criminalizing homosexual acts prohibits freedom of expression of one's sexual identity in violation of Article 19 of the ICCPR.¹⁸ Part III will prove these violations by Cameroon through comparing the Mbede case to United Nations Human Rights Committee ("HRC") decisions, United Nations Working Group on Arbitrary Detention ("WGAD") opinions, and the domestic legal opinions of other States that identified violations of Articles 9, 17, and 19 of the ICCPR.¹⁹

12. See discussion, *infra* Part II.B (illustrating the treatment of Cameroon's homosexuals and the culturally accepted, and arguably corrupt, ways that Article 347 is enforced).

13. See discussion, *infra* Part II.C (discussing how Cameroon's Constitution binds the State to the ICCPR and places treaties above domestic law).

14. See discussion, *infra* Part II.D (highlighting an HRC decision based on Article 17 of the ICCPR, a South African Constitutional Court decision based on Articles 17 and 19 of the ICCPR, and two United Nations Working Group on Arbitrary Detention decisions regarding Article 9 of the ICCPR).

15. See discussion, *infra* Part II.E.

16. See discussion, *infra* Part III.B (analyzing the methods for enforcing Article 347 through the guidelines established by the United Nations Working Group on Arbitrary Detention).

17. See discussion, *infra* Part III.A (applying the standard established in *Toonen v. Australia* and finding that anti-sodomy laws inherently violate individuals' privacy).

18. See discussion, *infra* Part III.C (emphasizing the principle established in South Africa that prohibiting homosexual relations in effect infringes on the way homosexuals express their sexual identities).

19. See discussion, *infra* Part III. But see ANTHONY AUST, HANDBOOK OF

Finally, Part IV of this Comment will recommend that Cameroon repeal Article 347 altogether to ensure its citizens' basic human rights.²⁰ Part IV will then provide a method for generating increased pressure on Cameroon by suggesting that Mbede file an individual urgent complaint with the Human Rights Committee seeking release from prison and financial compensation.²¹ Part IV will conclude by proposing that Cameroon implement a plan, preferably through repeal of Article 347, to re-educate Cameroonian citizens about homosexuality and prosecute those who infringe on the human rights of homosexuals.²²

II. BACKGROUND

A. THE INTERNATIONAL TREND TOWARD CIVIL RIGHTS FOR HOMOSEXUALS

As support for homosexual rights continues to grow around the world,²³ Cameroon will find it hard to defend its

INTERNATIONAL LAW 3-4 (2005) (noting the debate surrounding whether international law has any binding effect, particularly in light of the absence of an international police force).

20. See discussion, *infra* Part IV.A (describing the positive effects of decriminalizing homosexual acts and providing guidance on how to do so).

21. See discussion, *infra* Part IV.B.

22. See discussion, *infra* Part IV.C (providing a plan that will initiate the process of changing the dangerous anti-homosexual culture in Cameroon).

23. See, e.g., Ban Ki-moon, Sec'y Gen., United Nations, Remarks at Human Rights Day Event: Ending Violence and Criminal Sanctions Based on Sexual Orientation and Gender Identity (Dec. 10, 2010), available at <http://www.un.org/sg/statements/?nid=4992>

(explaining that the UN rejects discrimination based on sexual orientation and gender identity and promising to work towards decriminalization of homosexuality internationally); Holy See Delegation, Statement of the Holy See Delegation at the 63rd Session of the General Assembly of the United Nations on the Declaration on Human Rights, Sexual Orientation and Gender Identity (Dec. 18, 2008), available at [http://www.vatican.va/roman_curia/secretariat_state/2008/documents/rc_seg-st_20081218_statement-](http://www.vatican.va/roman_curia/secretariat_state/2008/documents/rc_seg-st_20081218_statement-sexualorientation_en.html)

[sexualorientation_en.html](http://www.vatican.va/roman_curia/secretariat_state/2008/documents/rc_seg-st_20081218_statement-sexualorientation_en.html) (stating that The Holy See advocates against "unjust discrimination towards homosexual persons . . . and urges States to do away with criminal penalties against them"); BRUCE-JONES & ITABORAHY, *supra* note 3, at 12-13, 15-16 (exhibiting that seven countries now Constitutionally prohibit discrimination based on sexual orientation, fifty-four

criminalization of homosexual acts. Since 1967, the Western world has witnessed the decriminalization in many states of sodomy between consenting adults in private in many states.²⁴ Moreover, the United Nations recently passed the *Resolution on Sexual Orientation and Gender Identity*²⁵ in June 2011.²⁶

Given this increased awareness of issues homosexuals face across the globe, it is not surprising that Article 347 and Mbede's conviction have garnered international attention.²⁷ For example, in July 2010, the Supreme Court of the United Kingdom granted asylum to a homosexual Cameroonian man because of the risk he

prohibit employment discrimination based on sexual orientation, ten provide marriage rights to same sex couples, twelve offer similar marriage rights to same sex couples, and thirteen allow adoption by same sex couples).

24. See, e.g., *Nat'l Coal. for Gay & Lesbian Equal. v. Minister of Justice* 1998 (12) BCLR 1517 (CC) at paras. 45-52 (S. Afr.) (providing a comprehensive list of states that have already decriminalized sodomy in the context of changing "legal attitudes towards sexual orientation," including the United Kingdom, Ireland, Canada, Australia and New Zealand); see also *Lawrence v. Texas*, 539 U.S. 558, 578-79 (2003) (finding sodomy laws in the United States unconstitutional on the basis that criminalizing the consensual act of sodomy violates citizens' liberty rights under the Due Process Clause).

25. Human Rights Council Res. 17/19, Rep. of the Human Rights Council, 17th Sess., U.N. Doc. A/HRC/RES/17/19 (June 17, 2011).

26. SEE JILL DOUGHERTY, *U.N. Council Passes Gay Rights Resolution*, CNN World (JUNE 17, 2011), http://articles.cnn.com/2011-06-17/world/un.lgbt.rights_1_gay-rights-human-rights-gay-pride-event?_s=PM:WORLD (noting that the resolution will commission a report on issues faced by homosexuals and emphasizing the United States' support of the resolution, which it called a "historic step"). But see Council Establishes Mandate on Cote d'Ivoire, Adopts Protocol to Child Rights Treaty, Requests Study on Discrimination and Sexual Orientation, Human Rights Council (JUNE 17, 2011), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11167&LangID=E> (listing Cameroon as a state that opposed the resolution, along with eighteen others; the resolution passed with twenty-three votes supporting, nineteen opposing, and three abstaining).

27. See, e.g., *Cameroonian Man Jailed for Homosexuality*, AMNESTY INT'L (June 3, 2011), <http://www.amnesty.org/en/library/asset/AFR17/003/2011/en/5b51f930-5735-49c0-a690-f9e72a90c419/afr170032011en.pdf> (advocating for the release of Mbede based on violations of Mbede's rights); see also *Cameroon: Sodomy*, *supra* note 2 (stating that Alternatives-Cameroun, Association pour la Defense de l'Homosexualité, and Human Rights Watch sent a letter to Cameroon's leaders claiming that Mbede is a victim of gross violations of his human rights).

faced within his own country.²⁸ Additionally, the European Union has decided to aid homosexual activist groups in Cameroon.²⁹ Alternatives-Cameroun submitted a petition seeking decriminalization with more than 1,500 signatures to the Cameroonian National Assembly in November 2009, but the petition has yet to be discussed.³⁰

Responding to the Mbede case specifically, Human Rights Watch, in collaboration with two other NGOs, sent a letter to Cameroon's President condemning Mbede's arrest and conviction.³¹ Additionally, Amnesty International has published an "Urgent Action" notice³² calling for Mbede's release.³³

28. See U.N. Human Rights Comm., 99th Sess., 2725th mtg. at 8, U.N. Doc. CCPR/C/SR.2725 (Apr. 15, 2011) [hereinafter HRC 99th Sess.] (responding to the Fourth Periodic Report of Cameroon, HRC member Pérez Sánchez-Cerro expressed concern that it was widely acknowledged that homosexuals were commonly arrested and detained based solely on third-party testimony and that Article 347 carries stiff penalties).

29. See PAUL CANNING, *Cameroon Protests EU's Support for Cameroonian LGBT, France Urged to Defend*, LGBT ASYLUM NEWS (Dan Littaeur trans., Jan. 17, 2011), <http://madikazemi.blogspot.com/2011/01/cameroon-protests-eus-support-for.html> [hereinafter Canning, *Cameroon Protests*] (reporting that the EU is funding the 'Project for Assistance and Guidance to Sexual Minorities,' which is backed by several groups).

30. See ALTERNATIVES CAMEROUN ET AL., *CRIMINALIZING IDENTITIES: RIGHTS ABUSES IN CAMEROON BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY 7* (2010), available at http://www.hrw.org/sites/default/files/reports/cameroon1010_web.pdf [hereinafter *CRIMINALIZING IDENTITIES*] (providing an overview of the plight of homosexuals under Cameroonian laws and offering recommendations for Cameroon to bring its laws within international human rights norms).

31. Letter from Boris Dittrich et al., Advocacy Director, Lesbian, Gay, Bisexual, and Transgender Rights Program, to Hon. Amadou Ali et al., Minister of Justice, Ministry of Justice (May 17, 2011), available at <http://www.hrw.org/news/2011/05/17/appeal-camerouns-top-leaders-overturn-conviction-roger-jean-claude-mbede> (urging Cameroonian Vice Prime Minister and Minister of Justice to review Article 347 on the grounds that it violates basic human rights, and requesting the General Delegate of Security and Secretary of State for Defense to stop arrests under Article 347).

32. *A Rapid Response to Human Rights Threats Worldwide*, Amnesty Int'l, <http://www.amnestyusa.org/our-work/campaigns/individuals-at-risk/urgent-action-network> (last visited Mar. 6, 2012) (providing that Amnesty International's Urgent Action Network responds to "situations involving prisoners of conscience, detainees, and other individuals whose human rights are being imminently threatened" by communicating with government officials in attempts to end the human rights violations).

B. ARTICLE 347 AND ITS RECENT ENFORCEMENT³⁴

Article 347 forbids sexual relations between members of the same sex and punishes violators with a fine of 20,000 to 200,000 francs as well as possible imprisonment of six months to five years.³⁵ The existence of Article 347 continues to foster dangerous social norms in Cameroon by providing justification for the ill treatment of homosexuals.

Considered an offense against the family, homosexual relations were criminalized under Article 347 of Cameroon's Criminal Code in 1972.³⁶ A decree by former Cameroonian President Ahmadou Ahidjo put the law into effect without the usual review by the National Assembly.³⁷

33. See *Cameroonian Man Jailed*, *supra* note 27 (urging individuals to personally write to Cameroon's President and Deputy Prime Minister and ask them to appeal Mbede's conviction).

34. It should be noted that there is no official English Translation of Cameroon's Article 347. Every reference to Article 347 throughout this Comment will reference an English translation that has been accepted by English speaking NGOs and activists, such as Human Rights Watch. See BRUCE-JONES & ITABORAHY, *supra* note 2, at 21 (citing HRW's translation of Article 347).

35. See BRUCE-JONES & ITABORAHY, *supra* note 3, at 21; see also CRIMINALIZING IDENTITIES, *supra* note 30, at 10 (clarifying that Article 347 prohibits "sexual relations with a person of the same sex," and thus does not differentiate between men and women).

36. See GENDER EMPOWERMENT & DEV. ET AL., CAMEROON: NGO REPORT ON THE IMPLEMENTATION OF THE ICCPR (REPLIES TO THE LIST OF ISSUES CCPR/C/CMR/Q4) 12 (Jockum Hildén et al. eds., 2010), available at http://www2.ohchr.org/English/bodies/hrc/docs/ngos/GeED_Cameroon_HRC99.pdf (explaining that Article 347 is located in Chapter V, Part III of Book I of the Penal Code, devoted to offenses "against the child and the family," which also include abortion, assault on a pregnant woman, infanticide, prostitution, forced marriage, bigamy, incest, and adultery); see also CRIMINALIZING IDENTITIES, *supra* note 30, at 2 (noting that despite being introduced in 1972, there was very little information available on its enforcement until 2005).

37. See CRIMINALIZING IDENTITIES, *supra* note 30, at 10 (emphasizing the President's desire to punish those who engaged in homosexual acts); see also ALTERNATIVES CAMEROUN ET AL., THE STATUS OF LESBIAN, GAY, BISEXUAL AND TRANSGENDER RIGHTS IN CAMEROON 5 (2010), available at <http://www.ighrc.org/binary-data/ATTACHMENT/file/000/000/558-1.pdf> [hereinafter STATUS OF LGBT RIGHTS] (adding that Alice Nkom, a homosexual rights activist and prominent Cameroonian lawyer, argues that Article 347 is unconstitutional because it was not passed through the legislature);

There are no records as to how Article 347 was enforced for the first thirty years of its existence, but in May 2005, publicized enforcement of the law began with a mass arrest.³⁸ On May 21, 2005, Cameroonian police arrested thirty-two people in a nightclub in Cameroon's capital city Yaoundé purely on suspicion that homosexuals frequented the club.³⁹ Media coverage of this mass arrest initiated the culture of paranoia that has led to increased harassment of presumed homosexuals, kindled by the sentiments of the media, public officials, and even religious leaders.⁴⁰ After the May 2005 arrests, Cameroon's Minister of Justice and Vice Prime Minister justified Article 347's continued enforcement on moral grounds.⁴¹

The media has continued to promote anti-homosexual ideals, painting homosexuality as a menace to society. One media outlet referred to Cameroon as a "homocracy," blaming "rich, power-hungry homosexuals" for taking over the state.⁴² Newspapers also published articles accusing specific people of being

Background Note: Cameroon, BUREAU OF AFR. AFFAIRS, U.S. DEP'T OF STATE (Jan. 1, 2012), <http://www.state.gov/r/pa/ei/bgn/26431.htm> (explaining that the 1972 Constitution—later amended in 1996 and 2008—provided for "a strong central government dominated by the executive," and the National Assembly is a 180 member body that convenes in session three times a year).

38. See CRIMINALIZING IDENTITIES, *supra* note 30, at 10 (adding that this arrest ignited public reaction in the form of "official speeches, press accounts, and religious sermons" against homosexuals that have since continued).

39. See *id.* at 17 (quoting one of the men who was arrested who said, "We thought it was a usual ID check. Policemen came to the nightclub . . . On our way to the police station, the police officers insulted us and they beat us with batons on our heads and bodies. They kept saying they were going to burn us for being dirty pédés [faggots]. They took us to the police station . . . and told us they were looking for the head of a network of homosexuals in Cameroon.").

40. See, e.g., *id.* at 10-11 (quoting Monsignor Victor Tonyé Bakot, the Catholic Archbishop of Yaoundé, who used his 2005 Christmas homily to denounce homosexuality, calling it a "perversion").

41. See *id.* at 10 (referencing a letter from Amadou Ali, Prime Minister and Minister of Justice, to IGLHRC, January 23, 2006, stating that "positive African values must be preserved . . . [and] homosexuality is not a value accepted in Cameroonian society").

42. See *id.* at 11 (noting that the newspaper *L'Anecdote* created the word "homocracy" to exaggerate the presence and effect of homosexuals on the Cameroonian culture).

homosexual.⁴³ With so many accused homosexuals branded by the media, arrests under Article 347 continued.⁴⁴

Taught to fear and oppose homosexuality, citizens take the law into their own hands and report those they suspect of being homosexual. For instance, in June 2006, a grandmother reported her own granddaughter and three other women whom she suspected were lesbians.⁴⁵ Treatment of homosexuals and alleged homosexuals has also become increasingly violent. In December 2005, a high school student killed a classmate, claiming the boy flirted with him.⁴⁶ The law has even become a tool of corruption.⁴⁷ For example, three police officers raided a nightclub known to be popular amongst homosexuals and demanded that the manager pay them or else they would arrest his patrons.⁴⁸ Law enforcement officers in Cameroon are known to commit human rights abuses, such as the arbitrary arrest of "citizens advocating secession, local human rights monitors and activists, [and] persons not carrying government-issued identity

43. *See id.* (referencing an article that published "The Top 50 Presumed Homosexuals in Cameroon").

44. *See id.* at 4 (providing that between July and August 2007, police detained eleven men suspected of homosexual conduct, and as recently as March 2010, three men were arrested for talking in a hotel lobby); *see also* GENDER EMPOWERMENT & DEV. ET AL., *supra* note 36, at 15 (noting in May 2008, police "arrested two young women on suspicion of committing lesbian sexual acts," adding that "[w]hile in custody, the police reportedly forced the two women to denounce four others as their 'accomplices'").

45. *See* CRIMINALIZING IDENTITIES, *supra* note 30, at 4 (reporting that all four women were arrested and sentenced to three years probation); *see also id.* at 2 (noting that all parts of society in Cameroon seem to encourage the belief that homosexuality is evil).

46. *See id.* at 10, n.11 (adding that this student, Franck Abega, was only kept in a mental health unit for four years, and the broad national and international media coverage sparked an "impassioned national conversation" in Cameroon).

47. *See id.* at 12 (explaining that since 2005, police have used Article 347 as a reason to arrest non-public Cameroonian citizens including "university students, small-scale craftsmen, skilled laborers, unskilled workers in hotels and restaurants, and the unemployed").

48. *See* STATUS OF LGBT RIGHTS, *supra* note 37, at 13 (noting that despite having received money from the manager the police ultimately still detained three patrons and took them to police headquarters where they were forced to undergo an anal inspection).

cards”⁴⁹ Article 347 provides an opportunity for even more unnecessary arrests.

People who are arrested under Article 347 are often held without charge for more than forty-eight hours, which is longer than allowed by Cameroonian law.⁵⁰ They are frequently denied bail and are detained with the convicted population for months before trial where they are often abused and treated inhumanely.⁵¹ People arrested under Article 347 can even be convicted and sentenced without sufficient evidence that the person actually engaged in the illegal homosexual behavior.⁵²

Additionally, enforcement of Article 347 requires law enforcement to invade the privacy of suspected homosexuals because the acts that are criminalized cannot be proven without a witness, which breaches the standard of reasonable, legal invasions of privacy established in previous human rights

49. See U.S. Dep’t of State, Bureau of Democracy, Human Rights, & Labor, 2010 Human Rights Report: Cameroon 1 (Apr. 8, 2011), available at <http://www.state.gov/documents/organization/160112.pdf> [hereinafter Human Rights Report] (delineating a list of human rights abuses the State Department has identified as occurring in Cameroon).

50. See *Cameroon: Sodomy*, *supra* note 2 (explaining that Mbede was held for seven days, exceeding the forty-eight hour limit imposed by Cameroonian law); see also CRIMINALIZING IDENTITIES, *supra* note 30, at 3 (relaying that even when detainees under article 347 are issued charges they are routinely denied bail and are forced to wait in pre-trial detention with convicted inmates for months until trial takes place); Criminal Procedure Code of 2005 § 119(2) (Cameroon), in OFFICIAL GAZETTE OF REP. OF CAMEROON (2005) (“The time allowed for remand in custody shall not exceed forty-eight (48) hours, renewable once.”).

51. See CRIMINALIZING IDENTITIES, *supra* note 30, at 3 (describing how prosecutors have perpetuated the harsh treatment of alleged homosexuals even when the judge has dismissed the charges by immediately charging the same individual before he is released from custody so he is forced to remain in a detention facility until the second hearing); *Cameroon: Sodomy*, *supra* note 2 (discussing the treatment of prisoners to include threats to prisoners’ physical safety, beatings, torture, sexual abuse, and verbal insults; this is exacerbated by the fact that prison authorities often notify other inmates of the alleged sexual orientation of those arrested under Article 347).

52. See CRIMINALIZING IDENTITIES, *supra* note 30, at 3; *Cameroon: Sodomy*, *supra* note 1 (quoting Yves Yomb of Alternatives-Cameroun who said that Cameroon’s criminal justice system is failing to uphold basic human rights, allowing third-party testimony to serve as evidence, and enforcing Article 347 with impunity).

cases.⁵³ Article 347 has also led homosexuals to live in secrecy, forced to suppress their identities. For example, in 2009, a man was arrested and charged not for something he had done, engaging in sexual acts, but for his identity as a homosexual.⁵⁴ During the man's trial, the judge called the charge "homosexuality," not "engaging in sexual acts" which is what the law actually criminalizes.⁵⁵ This made it apparent that the application of the law now criminalizes identity and expression, not purely homosexual acts.⁵⁶

C. CAMEROON'S OBLIGATIONS UNDER THE ICCPR

Cameroon's Constitution affirms its "attachment to the fundamental freedoms enshrined in the Universal Declaration of Human Rights[,] . . . the African Charter on Human and Peoples' Rights, and all duly ratified international conventions . . ." ⁵⁷ Further, Article 45 of Cameroon's Constitution states that treaties and international agreements override conflicting domestic laws.⁵⁸

53. Cf. H.R.C. Comm'n No. 488/1992, ¶ 10, U.N. Doc. CCPR/C/50/D/488/1992 (Apr. 4, 1994) [hereinafter *Toonen v. Australia*] (holding that the Tasmanian law prohibiting homosexual acts was a violation of the individual's privacy under the International Covenant on Civil and Political Rights); see also CRIMINALIZING IDENTITIES, *supra* note 30, at 47-48 (describing many of the lengths homosexuals go to, even at home, to protect themselves for fear of persecution).

54. See CRIMINALIZING IDENTITIES, *supra* note 30, at 16.

55. See *id.* (describing the second arrest of a Cameroonian named Herve who had previously been arrested for what law enforcement referred to as "homosexuality" with no evidence of engaging in homosexual acts beyond suspicion of his identity as a homosexual).

56. See *id.* (stating that Herve "[violated Article 347] by his very identity, not by his behavior"); cf. *Nat'l Coal. for Gay & Lesbian Equal. v. Minister of Justice* 1998 (12) BCLR 1517 (CC) at para. 127 (S. Afr.) (providing that homosexual acts are a form of expression, stating, "[i]n the case of gays, history and experience teach us that the scarring comes not from poverty or powerlessness, but from invisibility. It is the tainting of desire, it is the attribution of perversity and shame to spontaneous bodily affection, *it is the prohibition of the expression of love*, it is the denial of full moral citizenship in society because you are what you are, that impinges on the dignity and self-worth of a group.") (emphasis added).

57. CAMEROON CONST. pmbl.

58. See CAMEROON CONST. art. 45 (stating, "[d]uly approved or ratified treaties and international agreements shall, following their publication,

On June 27, 1984, Cameroon acceded to the ICCPR, a multilateral treaty adopted by the United Nations General Assembly intended to protect civil and political human rights.⁵⁹ At the same time, Cameroon acceded to the ICCPR's First Optional Protocol, which created The Human Rights Committee ("HRC") to monitor the implementation of the rights defined in the treaty.⁶⁰

As a party that indicated no reservations when it acceded to the ICCPR, Cameroon is obliged to abide by all of its articles.⁶¹ These articles include protections against arbitrary arrest and

override national laws, provided the other party implements the said treaty or agreement"); *see also*

RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 321 cmt. a (stating that the principle of *pacta sunt servanda* includes "the implication that international obligations survive restrictions imposed by domestic law"); BLACK'S LAW DICTIONARY 1217 (Bryan A. Garner ed., 9th ed., West) (2009) (defining *pacta sunt servanda* as "[t]he rule that agreements and stipulations, esp. those contained in treaties, must be observed").

59. *See Status of Treaties*, U.N. TREATY COLLECTION, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en (last visited Mar. 8, 2012) (providing the dates that states acceded to the ICCPR and the First Optional Protocol); *see also* OFFICE OF THE U.N. HIGH COMM'R FOR HUMAN RIGHTS, CIVIL AND POLITICAL RIGHTS: THE HUMAN RIGHTS COMMITTEE, FACT SHEET NO. 15 3 (2005), *available at* <http://www.ohchr.org/Documents/Publications/FactSheet15rev.1en.pdf> [hereinafter HRC FACT SHEET] (stating that the ICCPR was adopted in 1966 by the United Nations General Assembly and it "formally entered into force on March 23, 1976"; as of June 2004, 117 additional States have ratified the Covenant, bringing the current total to 152 States parties).

60. *See* HRC FACT SHEET, *supra* note 59, at 10, 14 (explaining that the First Optional Protocol also created a system by which the HRC can receive complaints by individuals and render opinions on alleged violations of human rights under the ICCPR).

61. *See* Annebeth Rosenboom, Chief, Treaty Section, U.N. Office of Legal Affairs, Presentation at the Capacity-building Workshop on Treaty Law and Practice and the Domestic Implementation of Treaty Obligations: Reservations and Declarations in Multilateral Treaties (October 13-17, 2009) (stating that reservations "enable a State to participate in a treaty in which it would not be able to participate due to an unacceptable provision or provisions" and defining reservations to a treaty as "[u]nilateral statements, however phrased or named, purporting to exclude or modify the legal effect of certain provisions of a treaty in their application to the reserving State"); *see also* *Status of Treaties*, *supra* note 59 (listing the reservations taken by different members with Cameroon taking none).

detention in Article 9,⁶² interference with privacy, family, home, or correspondence in Article 17,⁶³ and the suppression of free expression in Article 19.⁶⁴

D. INTERNATIONAL ANTI-HOMOSEXUALITY
AND RELATED HUMAN RIGHTS JURISPRUDENCE

The following cases involve several international bodies that have found alleged violations of Articles 9, 17, and 19 of the ICCPR, including the HRC, WGAD, and domestic courts of various nations.

1. *Toonen v. Australia*

In *Toonen v. Australia*, an Australian citizen claimed that he was a victim of violations of Article 17 of the ICCPR.⁶⁵ Toonen was a citizen of Tasmania, the only Australian state that still criminalized sodomy.⁶⁶ The Tasmanian Criminal Code punished all forms of sexual contact between consenting adult men in private.⁶⁷ Toonen claimed that the laws allowed police to interfere in a person's privacy on mere suspicion of homosexuality, which is beyond the reasonable standard allowed for by the ICCPR.⁶⁸ Australia did not condone Tasmania's law, but conceded that Article 17 allows for limited infringement on people's privacy when reasonable.⁶⁹ The HRC, however, did not

62. ICCPR, *supra* note 8, art. 9

63. *Id.* art. 17.

64. *Id.* art. 19.

65. *See Toonen v. Australia*, *supra* note 53, ¶ 3.1 (citing violations of Articles 2 and 26 of the ICCPR as well, which provide for equal protection under the law).

66. *See id.* ¶ 8.6 (acknowledging that criminal laws regarding homosexual activity existed in other Australian states in the past, but noting that they have all been repealed, and adding that in three Australian states it is actually illegal to discriminate on the basis of homosexuality).

67. *See Criminal Code Act 1924* (Tas.) ss 122, 123 (Austl.) (forbidding sexual intercourse "against the order of nature" or "indecent assaults" between males whether in public or private).

68. *See Toonen v. Australia*, *supra* note 53, ¶¶ 3.1(a), 6.4 (explaining that based on the *travaux préparatoire* of article 17 of ICCPR the reasonableness standard requires an assessment of whether the invasion of privacy was "based on reasonable and objective criteria and which are proportional to the purpose for which they are adopted").

69. *See id.* ¶ 6.6 (stating that "domestic social mores" may be considered

find that forbidding homosexual behavior was a reasonable moral ground, nor did it find that criminalizing homosexual acts was a reasonable method of preventing the spread of HIV/AIDS.⁷⁰ Based on these conclusions, the HRC held that the Tasmanian laws criminalizing homosexual behavior did not pass the reasonableness test.⁷¹

2. National Coalition for Gay and Lesbian Equality v. Minister of Justice

In 1998, South Africa's Constitutional Court was asked to decide whether criminalizing homosexual acts violated constitutional rights.⁷² The court held that criminalization of sodomy in private between consenting men limited the right of equality for homosexuals because it forbade one of the ways in which they express their sexual orientation, in direct violation of human rights guaranteed by Article 19 of the ICCPR.⁷³ The court further emphasized that the laws may also infringe on homosexuals' rights to privacy.⁷⁴

3. Puis Njawé v. Cameroon

In Cameroon, the WGAD⁷⁵ found that the arrest of Puis Njawé was arbitrary because he was arrested for behavior that is

when determining reasonableness).

70. *See id.* ¶ 8.5 (citing the Australian government's observation that criminalization actually impeded public health programs "by driving underground many of the people at risk of infection" and hindering educational programs).

71. *See id.* ¶¶ 8.5, 10 (noting that "the criminalization of homosexual practices cannot be considered a reasonable means or proportionate measure to achieve the aim of preventing the spread of AIDS/HIV").

72. *See Nat'l Coal. for Gay & Lesbian Equal. v. Minister of Justice* 1998 (12) BCLR 1517 (CC) at para. 9 (S. Afr.).

73. *See id.* ¶ 36 (adding that the harms caused by the anti-sodomy laws seriously affected homosexuals' ability to achieve self-identification).

74. *See id.* ¶ 46 (affirming the decision in *Toonen v. Australia* that laws criminalizing sexual activity between men violate the privacy provision, or Article 17, of the ICCPR).

75. *See* U.N. Working Group on Arbitrary Detention, Op. No. 31/1998, U.N. Doc. E/CN.4/2000/4/Add.1, at 24, ¶ 1 (1998) [hereinafter *Njawé v. Cameroon*] (providing that "[t]he Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights" and reserves the right to render an opinion on whether deprivation of liberty was arbitrary).

protected by freedom of expression under Article 19 of the ICCPR.⁷⁶ The WGAD identified three categories of arbitrary arrest and detention, including Category I, which forbids detention when it “cannot be justified on any legal basis.”⁷⁷ In Njawé’s case, the WGAD examined a charge alleging that Njawé published false information in a Cameroonian newspaper that questioned the health of Cameroon’s president.⁷⁸ In January 1998, Njawé was sentenced to a year in jail and fined 300,000 CFA francs.⁷⁹ Though the President eventually pardoned Njawé in December 2008, the WGAD held that Njawé had been a victim of violations of Article 19 of the ICCPR, a Category II article under which a deprivation of liberty is arbitrary.⁸⁰

4. *François Ayissi et al. v. Cameroon*

The WGAD issued another opinion on August 31, 2006 finding that the arrest of eleven suspected Cameroonian homosexuals was arbitrary under WGAD Category II.⁸¹ Cameroonian law enforcement officers arrested the eleven named plaintiffs and six others in a nightclub, without a warrant.⁸² The arrestees were held for thirteen days and were then transferred to Kondengui

76. *See id.* ¶ 9 (holding that Njawé’s arrest was arbitrary because “it was contrary to the provisions of Articles 9 and 19 of the [ICCPR]”).

77. *See id.* ¶ 3 (explaining that a lack of a legal basis could include “continued detention after the sentence has been served or despite an applicable amnesty act;” adding that Category II identifies the deprivation of liberty as arbitrary when it is the result of a judgment or sentence that arose out of the individual’s exercise of the rights or freedoms afforded by the ICCPR, and Category III regards detention as arbitrary when the international standards relating to a fair trial have been ignored).

78. *See id.* ¶ 4 (adding that publishing false information is an offense punishable under Article 13 of Cameroon’s Penal Code).

79. *See id.* (explaining that Njawé was originally sentenced to two years and 500,000 CFA francs, but the Court of Appeal reduced the sentence after affirming his conviction).

80. *See id.* ¶ 9 (providing that arrests stemming from free expression, protected by Article 19 of the ICCPR, are therefore arbitrary under Article 9).

81. *See* U.N. Working Group on Arbitrary Detention, Op. No. 22/2006, U.N. Doc. A/HRC/4/40/Add.1, at 91, ¶¶ 19-20 (2006) [hereinafter *Ayissi v. Cameroon*] (holding that the deprivation of liberty was arbitrary because the law under which the eleven persons were arrested contravenes Articles 17 and 26 of the ICCPR following *Toonen*).

82. *See id.* ¶ 7 (noting that the ground for arrest was that the night club was known to be frequented by homosexuals).

central prison when they were eventually charged under Article 347.⁸³ After postponing the initial trial slated for March 17, 2006, the judge eventually found the defendants not guilty, but, instead of releasing them, decided to return the defendants to detention until June 26, 2006.⁸⁴ One of the plaintiffs, Mr. Alim Mongoche, died a week after being released due to the conditions in the prison where he was held for over a year.⁸⁵

E. THE ARREST AND CONVICTION OF JEAN-CLAUDE ROGER MBEDE IN CAMEROON

A recent application of Article 347 involved the arrest of Jean-Claude Roger Mbede.⁸⁶ Mbede was arrested after arranging to meet with a male friend through text message.⁸⁷ When Mbede arrived at the location the man had designated, police were there to arrest him.⁸⁸ Mbede admitted to being a homosexual while in

83. See *id.* ¶¶ 6, 8 (establishing that the suspected homosexuals were held longer than forty-eight hours before being charged).

84. See *id.* ¶¶ 9-12 (adding that “[t]he Office of the Public Prosecutor refused to order their release,” believing that the detainees must be retried).

85. See *id.* ¶ 13; cf. HUMAN RIGHTS REPORT, *supra* note 49, at 4—5 (describing deficiencies in Cameroonian prisons’ health care and sanitation, adding that in 2008, “the National Commission on Human Rights and Freedoms (NCHRF) reported that the daily food allocation per prisoner was less than 100 CFA francs (approximately 20 cents)” and prisoners’ families had to provide them with food); Int’l Comm. of the Red Cross [ICRC], *Annual Report 2010*, at 229 (2011), available at <http://www.icrc.org/eng/assets/files/annual-report/current/icrc-annual-report-2010-yaounde.pdf> (reporting that ICRC legal experts give regular advice to prison authorities in Cameroon in an effort to bring their prison system in line with international standards).

86. See *Cameroon: Sodomy*, *supra* note 2 (reporting that on March 2, 2011, Article 347 was enforced against a Cameroonian citizen suspected of being homosexual).

87. See *id.* (explaining that the only “evidence” of Mbede’s sexuality was the content of a text message which was an arrangement to meet with a male acquaintance).

88. Note that reports differ as to whether this male was a friend or a man who was part of the police ambush. See *id.* (describing the man as an “acquaintance” who was “in the company of policemen” when Mbede arrived, without further detail); see also *Cameroonian Man Jailed for Homosexuality*, *supra* note 27 (referring to the man as an “acquaintance” as well, but adding that the acquaintance had shown the text message to police prior to the meeting); cf. Paul Canning, *In Cameroon, Entrapment Leads to Long Prison Sentence for Gay Man*, LGBT ASYLUM NEWS (May 8, 2011), available at <http://madikazemi.blogspot.com/2011/05/in-cameroon-entrapment-leads->

police custody but was still held illegally for seven days before being charged with a crime.⁸⁹ Mbede went before the Court of First Instance in Yaoundé three times and was sentenced on April 28, 2011 to three years in prison.⁹⁰ Mbede likely faces cruel and degrading treatment at Kondengui central prison where he is currently serving his three-year sentence.⁹¹

III. ANALYSIS

The arrest and conviction of Mbede for allegedly violating Article 347 illustrates the law's conflict with the international legal standards set forth in Articles 9, 17, and 19 of the ICCPR. Mbede was arbitrarily arrested and detained and also suffered an unreasonable infringement of his privacy by Cameroonian law enforcement.⁹² Further, Mbede represents one of many individuals in Cameroon who has been punished for allegedly freely expressing his sexual orientation.⁹³

A. ARTICLE 347 VIOLATES ARTICLE 17 OF THE ICCPR

to-long.html (calling the arrest of Mbede "entrapment" and referring to the man who received the text message simply as a man Mbede believed to be gay).

89. See *Cameroon: Sodomy*, *supra* note 2 (explaining that Cameroonian law prohibits detaining a person in custody for more than forty-eight hours without charging them with a crime; thus, Mbede's length of incarceration was over three times longer than Cameroonian law allows).

90. See *id.* (reporting that Mbede was convicted of homosexuality and attempted homosexuality).

91. See HUMAN RIGHTS REPORT, *supra* note 49, at 5 (describing Cameroon's prisons as "dilapidated" and corrupt with poor health care and sanitation where the number of inmates is four to five times the intended capacity; specifically providing that Kondengui Prison, originally built for approximately 1,000 inmates, held 3,964 inmates in May of 2009 according to statistics); *cf.* ICRC, *Annual Report 2010*, *supra* note 85, at 229 (explaining that ICRC legal experts gave Cameroonian prison authorities regular guidance on how to incorporate international legal standards).

92. See discussion *infra* Parts III.A-B (applying guidelines for arbitrary arrest and detention established by the WGAD to Article 347 enforcement, and specifically Mbede's arrest and detention, as well as applying the holding from *Toonen* to Mbede's case to establish that Article 347 infringes on privacy).

93. See discussion *infra* Part III.C. (establishing that homosexual acts are a form of expression and should therefore be protected under Article 19 of the ICCPR).

BY PROMOTING UNLAWFUL INTERFERENCE
WITH ALLEGED HOMOSEXUALS' PRIVACY

Article 347 promotes unlawful interference with the privacy of those suspected of being homosexual, therefore violating Article 17 of the ICCPR.

Article 17 of the ICCPR 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. Everyone has the right to the protection of the law against such interference or attacks."⁹⁴ Article 17 seeks to protect private matters that are "individual, personal, or confidential, or which are kept or removed from public observation."⁹⁵ Furthermore, Article 17 requires that correspondence "be delivered to the addressee without interception."⁹⁶

While Article 17 forbids arbitrary or unlawful interference with individuals' privacy, it does allow for reasonable or lawful interference when necessary.⁹⁷ States may enact reasonable, lawful legislation that necessitates interference with an individual's privacy as long as the legislation is also in line with the ICCPR.⁹⁸ It is the State's burden to prove that such legislation

94. ICCPR, *supra* note 8, art. 17.

95. *See Toonen v. Australia*, *supra* note 54, ¶ 6.2 (providing Australia's interpretation of the intent of Article 17); *see also* U.N. Human Rights Comm., CCPR General Comment No. 16: Article 17 (Right to Privacy), The Right to Respect of Privacy, Home and Correspondence, and Protection of Honour and Reputation, ¶¶ 8-10 (Apr. 8, 1988), <http://www.unhchr.ch/tbs/doc.nsf/%28Symbol%29/23378a8724595410c12563ed004aeecd> [hereinafter General Comment 16] (adding that Article 17 of the ICCPR protects the "integrity and confidentiality" of correspondence, prohibits physical searches that amount to harassment, and regulates the "gathering and holding of personal information").

96. *See* General Comment 16, *supra* note 95, ¶ 8.

97. *See id.* ¶ 3 (remarking that the prohibition of "unlawful" interference means that interference may occur if permitted by a law that complies with the ICCPR).

98. *See id.* ¶¶ 3-4 (envisaging that there may be specific instances where it would be necessary and lawful to interfere with an individual's privacy, leaving that option for states, but setting a high standard for such exceptions); *see also* HRC FACT SHEET, *supra* note 59, at 8 (stating that "Article[] 17 . . . expressly permit[s] some form of restriction or limitation. If a State party chooses to limit or restrict one of these rights within the limits prescribed, this is permissible and does not amount to a violation of the right in

is reasonable.⁹⁹

The HRC has determined that criminalization of homosexual practices is incompatible with Article 17 of the ICCPR.¹⁰⁰ The Australian state of Tasmania formerly criminalized homosexual acts, but when a Tasmanian citizen appealed to the HRC in *Toonen v. Australia*, the HRC held that the anti-sodomy laws constituted an unreasonable invasion of privacy inconsistent with Article 17 of the ICCPR.¹⁰¹

In determining that Tasmania's anti-sodomy laws constituted an unreasonable invasion of privacy, the HRC applied a test in which the interference had to be "proportional to the end sought and be necessary in the circumstances of any given case."¹⁰² Tasmanian authorities asserted that the "ends sought" were justified on moral and public health grounds, intended to prevent the spread of HIV/AIDS.¹⁰³ Additionally, Tasmanian officials argued that because Article 17 lacked specific limitation clauses

question.").

99. See HRC FACT SHEET, *supra* note 59, at 8 (emphasizing that when a State party's limitation on a right is challenged, the State must be able to demonstrate the limitation's "legality, necessity, reasonableness and legitimate purpose").

100. See *Toonen v. Australia*, *supra* note 53, ¶ 8.2 (finding that "adult consensual sexual activity in private is covered by the concept of 'privacy' . . ." and therefore Tasmania's laws criminalizing sodomy violate Toonen's privacy); see also *Nat'l Coal. for Gay & Lesbian Equal. v. Minister of Justice* 1998 (12) BCLR 1517 (CC) at para. 32 (S. Afr.) ("Privacy recognises that we all have a right to a sphere of private intimacy and autonomy which allows us to establish and nurture human relationships without interference from the outside community. The way in which we give expression to our sexuality is at the core of this area of private intimacy. If, in expressing our sexuality, we act consensually and without harming one another, invasion of that precinct will be a breach of our privacy.").

101. See *Toonen v. Australia*, *supra* note 53, ¶ 8.6 (finding that Tasmania's limitations on its citizens' privacy rights failed the reasonableness test because Tasmania was the only part of Australia that still criminalized homosexual acts, and the laws were not being enforced, suggesting that they were not "essential to the protection of morals").

102. See *id.* ¶ 8.3.

103. See *id.* ¶ 6.5 (noting that Australia rejected this argument from Tasmania because the criminalization of homosexual acts impedes the Australian National HIV/AIDS Strategy by obstructing public health programs that seek to promote safer sex).

regarding morals, such issues must be handled domestically.¹⁰⁴

The HRC responded that criminalizing homosexual acts is not a reasonable or proportional way to prevent the spread of HIV/AIDS.¹⁰⁵ The HRC also refuted the State's argument that moral issues are to be handled domestically, reasoning that if moral issues were purely domestic issues, the HRC would be barred from reviewing many human rights cases and unable to perform its duties.¹⁰⁶

As was the case in Tasmania, Cameroon unreasonably interferes with individuals' privacy through its enforcement of a law that criminalizes homosexual behavior. Toonen and Mbede were both subjected to domestic laws that criminalize homosexual acts.¹⁰⁷ Applying the reasonableness test that the HRC defined in *Toonen* also results in the determination that Article 347 is not a permissible limitation of Article 17 of the ICCPR.

In *Toonen*, the HRC explained that any interference with privacy must be proportional to the end sought, and held that the interference with privacy was not proportional to the intent to reduce the spread of HIV/AIDS and promote social values.¹⁰⁸ Cameroon has provided the same justifications for Article 347's continued enforcement.¹⁰⁹ Cameroonian leaders do not believe

104. *See id.* ¶ 8.4.

105. *See id.* ¶ 8.5 (elaborating that such measures tend to exacerbate the spread of HIV/AIDS by hindering the progress of public health programs because they instill fear in homosexuals who then avoid the programs; moreover, there is no evidence that criminalization of homosexual behavior controls or limits the spread of HIV/AIDS).

106. *See id.* ¶ 8.6.

107. *Compare id.* ¶ 2.3 (providing the relevant sections of the Tasmanian Criminal Code, 122(a) and (c) and 123, which criminalize "unnatural sexual intercourse," "intercourse against nature," and "indecent practice between male persons," but only apply to men), *with* CRIMINALIZING IDENTITIES, *supra* note 30, at 10 n.9 (establishing that Article 347 criminalizes sexual relations between two people of the same sex, regardless of whether they are men or women).

108. *See Toonen v. Australia*, *supra* note 53, ¶ 8.5.

109. *See* HRC 99th Sess., *supra* note 28, ¶ 39 (questioning Cameroon's argument that the "criminalization of homosexuality helped to preserve and strengthen 'positive African cultural values,'" and is supported by article 29 of the Universal Declaration of Human Rights); *see also* Universal Declaration of Human Rights art. 29(2), G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec.

that homosexuality has a place in Cameroonian culture and defend Article 347 on the grounds that it protects the social values of Cameroon and that it is protected by Section 92(3) of Cameroon's Criminal Procedure Code, which allows for invasions of privacy in certain instances.¹¹⁰ Because the HRC established that such reasons for criminalizing homosexual acts were disproportional to the actual laws, Article 347 clearly violates Article 17 of the ICCPR.

Mbede's case provides additional insight into how Article 347 promotes unreasonable invasions of privacy because he was arrested based on a physical invasion of privacy, the interception of an electronic communication.¹¹¹ In *Toonen*, the HRC found the mere existence of anti-homosexuality laws in Tasmania to be an invasion of privacy, despite the lack of enforcement; the situation in Cameroon is even direr because Article 347 is fervently enforced.¹¹² The HRC has determined that invasions of privacy

10, 1948) [hereinafter UDHR] ("In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society."). *But see* UDHR, art. 29(3) ("These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.").

110. *See* Criminal Procedure Code of 2005 § 92(3) (Cameroon), in OFFICIAL GAZETTE OF REP. OF CAMEROON (2005) ("In cases of felonies and misdemeanours punishable with at least two (2) years of imprisonment, the judicial police officer may . . . in the course of the investigation: intercept, record or transcribe all correspondences sent by means of telecommunications [and] take any photographs at private premises."); *see also* HRC 99th Sess., *supra* note 27, at 45 (including the testimony of Mr. Nkou, a Cameroon official, who declared that homosexuality contradicted the customs and values of Cameroon's society). *But see* U.N. Human Rights Comm., *Fourth Periodic Review of States Parties: Cameroon*, ¶¶ 482-87, U.N. Doc. CCPR/C/CMR/4 (March 31, 2009) [hereinafter *Fourth Periodic Reports*] (providing an overview of Cameroonian laws enacted as part of an effort by Cameroon to implement Article 17 domestically).

111. *See Cameroon: Sodomy*, *supra* note 2 (explaining that Mbede was arrested based on a text message that had been intercepted and interpreted to mean he was attempting to engage in homosexual behavior); *see also* ICCPR, *supra* note 3, art. 17 (protecting personal privacy rights, including right to be free from arbitrary or unlawful interference in one's correspondence).

112. *Compare Toonen v. Australia*, *supra* note 53, ¶ 6.3 (noting that while the laws criminalizing homosexual acts had not been enforced since 1984, the risk to Toonen that they could be enforced at any point interfered with Toonen's

justified on the basis of preventing the spread of HIV/AIDS and fostering particular social values are unreasonable. Thus, Article 347, a law that promotes interception of correspondence, unwarranted entrance into homes, and other physical invasions of privacy on such grounds, is unreasonable.

B. ARTICLE 347 VIOLATES ARTICLE 9 OF THE ICCPR
BY PROMOTING ARBITRARY ARREST AND DETENTION

Mbede's arrest, an example of an Article 347 arrest, violated Article 9 of the ICCPR because Cameroonian police arbitrarily arrested Mbede on mere suspicion of homosexuality and detained him for a longer period of time than allowed by law.¹¹³ Additionally, Mbede's arrest can be considered arbitrary on the grounds that Article 347 is invalid under Article 17 of the ICCPR, and arrest under an invalid law is necessarily arbitrary.¹¹⁴

Article 9 of the ICCPR states, "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as established by law."¹¹⁵ Additionally, Article 9 provides, "Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him."¹¹⁶

While Article 347 does not violate Article 9 on its face, its enforcement promotes arbitrary arrest and deprivation of liberty that is not in accordance with law. The UN more comprehensively defines arbitrary in regards to Article 9 by explaining that "nobody should be arrested, detained or exiled where there is no likelihood that he or she committed an offence

privacy), *with Cameroon: Sodomy, supra* note 2 (illustrating the arbitrary detention, disregard for due process, and sentencing absent evidence that still occurs in Cameroon under Article 347, despite the outcry from international human rights organizations).

113. *See Cameroon: Sodomy, supra* note 2.

114. *See Ayissi v. Cameroon, supra* note 81, at 94 ¶¶ 19-22 (holding that the arrest of eleven men under Article 347 was arbitrary, specifically considering the fact that laws banning homosexual behavior violate Article 17 of the ICCPR).

115. ICCPR, *supra* note 8, art. 9.

116. *Id.*

or where there has been no proper legal process.”¹¹⁷ Mbede’s case illustrates such an arbitrary arrest because he was arrested on mere suspicion of homosexuality.¹¹⁸ There was no proof of Mbede’s committing homosexual acts, which is what Article 347 actually criminalizes.¹¹⁹ Police took Mbede into custody with no evidence that he had engaged in sexual relations with another male aside from their suspicion that he could be a homosexual based on his contact with another male.¹²⁰ Mbede was then detained for seven days before he was charged with a crime, which is three times the limit permitted by Cameroonian law.¹²¹

Article 9 also requires that a person arrested under a criminal law be “brought promptly before a judge or other officer authorized by law to exercise judicial power.”¹²² Mbede was not brought promptly before a judge or an authorized law enforcement officer. Such a detention falls into Category I of the situations the WGAD qualify as arbitrary.¹²³

Mbede’s arrest also violates Article 9 for the same reasons that the WGAD provided in *Ayissi*. In *Ayissi*, the WGAD found the Article 347 arrest and detention of eleven allegedly homosexual

117. See *Freedom from Arbitrary Arrest and Excile*, U.N. CYBER SCHOOLBUS, <http://www.un.org/cyberschoolbus/humanrights/declaration/9.asp> (last visited Mar. 8, 2012).

118. See *Cameroon: Sodomy*, *supra* note 2.

119. See *id.* (reporting that Mbede was arrested after merely sending a text message to a male friend and planning to meet him, making no mention of homosexual acts); see also BRUCE-JONES & ITABORAHY, *supra* note 2, at 21 (explaining that Article 347 only punishes sexual relations between persons of the same sex).

120. See *Cameroon: Sodomy*, *supra* note 2 (noting that Mbede admitted to being a homosexual while in custody, though there is no available information on how his confession was obtained).

121. See *id.*; Criminal Procedure Code of 2005 § 119(2) (Cameroon), in OFFICIAL GAZETTE OF REP. OF CAMEROON (2005).

122. ICCPR, *supra* note 8, art. 9; see U.N. Human Rights Comm., CCPR General Comment No. 8: Article 9 (Right to Liberty and Security of Persons), ¶ 2 (June 30, 1982), <http://www.unhchr.ch/tbs/doc.nsf/0/f4253f9572cd4700c12563ed00483bec> (clarifying that although “promptly” is more precisely defined by individual states, the HRC believes “promptly” means no more than a few days).

123. See *Njawé v. Cameroon*, *supra* note 75, ¶ 3 (stating that Category I encompasses arbitrary deprivations of liberty, “that cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act)”).

men to be arbitrary because laws criminalizing homosexual behavior inherently violate the rights to privacy.¹²⁴ Mbede and the eleven persons arrested in *Ayissi* were arrested for allegedly violating Article 347, a law that criminalizes homosexual behavior and therefore violates Article 17.¹²⁵

Mbede's case, an example of treatment of homosexual citizens in Cameroon, exhibits a victim of arbitrary arrest and detention in violation of the rights guaranteed to him in the ICCPR because he was arrested without any evidence that he had committed a crime, detained for longer than allowed by law, and convicted under a law that is invalid as violative of the ICCPR.¹²⁶ As Mbede's case illustrates, Article 347 promotes widespread arbitrary arrest and detention in Cameroon.

C. ARTICLE 347 VIOLATES ARTICLE 19 OF THE ICCPR BECAUSE IT DENIES CITIZENS OF CAMEROON THE FREEDOM OF EXPRESSION

Mbede and other alleged homosexual citizens of Cameroon are prohibited from freely expressing their identities in violation of Article 19 of the ICCPR. Article 19 states, "[e]veryone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."¹²⁷

124. See *Ayissi v. Cameroon*, *supra* note 81, ¶ 19 (explaining that the Working Group has adopted the HRC's holding in *Toonen*).

125. See *Cameroonian Men Detained for "Homosexuality"*, AMNESTY INT'L (Aug. 15, 2011), <http://www.unhcr.org/refworld/docid/4e4a05842.html> (positing that Mbede was arrested and "imprisoned solely because of his real or perceived sexual orientation" and noting that such arrests under Article 347 occur regularly).

126. See *id.*; see also *Cameroon: Sodomy*, *supra* note 2.

127. ICCPR, *supra* note 8, art. 19; see U.N. Human Rights Comm., Draft General Comment No. 34: Article 19, ¶ 12 (Nov. 25, 2010), <http://www2.ohchr.org/english/bodies/hrc/comments.htm> [hereinafter General Comment No. 34] (stating that dress is also a protected means of expression); CRIMINALIZING IDENTITIES, *supra* note 30, at 37 (explaining that in Cameroon, wearing styles of clothing that are atypical for one's gender, such as tight jeans for men or baggy jeans for women, leads to an automatic perception that the person is homosexual); *cf.* STATUS OF LGBT RIGHTS, *supra* note 37, at 13 (reporting that three men were arrested at a club due to the officers' suspicion that they were homosexual, which the officers based purely on the men's attire).

Cameroon claims to promote and protect the freedom of expression, but still enforces Article 347, punishing alleged homosexuals for expressing their identities.¹²⁸

South Africa's Constitutional Court concluded that homosexual acts should be a protected means of expressing one's identity when it struck down laws prohibiting consensual sexual activities between men.¹²⁹ The Court held that sexual orientation was an element so crucial to self-definition that it should be protected.¹³⁰ Having determined that homosexual acts are a means of expressing sexual orientation, the Court invalidated South Africa's anti-sodomy laws because it found their purpose to be "the stamping out of these forms of gay erotic self-expression," which amounted to unfair discrimination.¹³¹

The Court backed up its assertion that the anti-sodomy laws had a discriminatory purpose by providing the following example: If a gay couple were at a social gathering, the men would break the law if they were to kiss each other, whereas

128. Compare *Fourth Periodic Reports*, *supra* note 110, ¶ 223 (citing Cameroon's representative, who explains "Cameroon considers the freedom of expression as a foundation on which the very existence of a society is based. It is indispensable for the formation of public opinion. It is also a condition sine qua non for the growth of political parties, trade unions, cultural associations and in general, those who wish to influence public opinion . . . The Preamble of the Cameroon Constitution states, 'freedom of communication, of expression, of the press . . . shall be guaranteed under the conditions fixed by law'"), with *STATUS OF LGBT RIGHTS*, *supra* note 37, at 13 (providing an example of arrests based on expression where three men were arrested because they were presumed to be homosexual based on their clothing).

129. See *Nat'l Coal. for Gay & Lesbian Equal. v. Minister of Justice* 1998 (12) BCLR 1517 (CC) at paras. 36-37 (S. Afr.) (ruling unanimously that the crime of sodomy and other related provisions of the criminal law were unconstitutional and reasoning that the criminalization of sodomy limited homosexuals' "right to equality in relation to sexual orientation" because it affected "one of the ways in which gays give expression to their sexual orientation").

130. See *id.* ¶ 36 (declaring that the criminalization of sodomy "affect[s] [a homosexual's] ability to achieve self-identification and self-fulfilment"); see also *id.* ¶ 20 (citing the *Shorter Oxford English Dictionary*, which defines "orientation" as "[a] person's (esp. political or psychological) attitude or adjustment in relation to circumstances, ideas, etc. . . .").

131. See *id.* ¶ 76 (remarking that the intended impact of the provision is, "flagrant, intense, demeaning and destructive of self-realisation, sexual expression and sexual orientation").

opposite-sex couples and lesbians who did the same thing would not.¹³² Additionally, the Court emphasized that the anti-sodomy laws were actually punishing people, not acts.¹³³

Unlike South Africa, Cameroon still deems sodomy a crime and defends it on the grounds of protecting public health and morals.¹³⁴ Cameroon may also try to justify Article 347 by arguing that it makes homosexual behavior, not homosexual identity, illegal.¹³⁵ However, like South Africa's laws, Cameroon's anti-sodomy law also serves to discriminate and punish people, not acts.

While Cameroon's anti-homosexuality law criminalizes homosexual acts between both genders and does not limit the location of the offense to public gatherings, the discriminatory example provided in the South African decision can be applied in Cameroon.¹³⁶ Under the Cameroonian law, when sexual acts are committed between members of the same sex, they are illegal, but when the same acts are committed between members of the opposite sex, they are legal.¹³⁷ The result of this unequal law is forbidding the sexual expression of certain people, and not

132. See *id.* ¶ 75 (stressing that this example alone, based on a law that only prohibited actions between two males, was enough to demonstrate the "absurdly discriminatory purpose" of the anti-sodomy laws).

133. See *id.* ¶ 108 (explaining that analysis should start by asking the question, "[W]hat is really being punished by the anti-sodomy laws[?]").

134. See HRC 99th Sess., *supra* note 28, ¶ 45 (providing the Cameroonian delegate's defense of Article 347 to the HRC that, "[h]omosexuality was contrary to the customs and values of Cameroonian society and its decriminalization could not be contemplated for the time being").

135. See BRUCE-JONES & ITABORAHY, *supra* note 3, at 21 (explaining that Article 347 only punishes sexual relations between persons of the same sex).

136. Compare CRIMINALIZING IDENTITIES, *supra* note 30, at 10 (establishing that Article 347 criminalizes sexual relations between two people of the same sex, regardless of whether they are men or women and regardless of where the act occurs), with *Nat'l Coal. for Gay & Lesbian Equal. v. Minister of Justice* 1998 (12) BCLR 1517 (CC) at para. 74 (S. Afr.) (providing the text of South Africa's anti-sodomy law, Section 20A of the 1957 Act, "(1) A male person who commits with another male person at a party any act which is calculated to stimulate sexual passion or to give sexual gratification, shall be guilty of an offence. (2) For the purposes of subsection (1) 'a party' means any occasion where more than two persons are present. (3) The provisions of subsection (1) do not derogate from the common law, any other provision of this Act or a provision of any other law.").

137. See BRUCE-JONES & ITABORAHY, *supra* note 23, at 21.

others. It follows that Cameroon's enforcement of Article 347, a law that criminalizes a private form of expression, violates Article 19 of the ICCPR and should be invalidated.

Article 347's violation of Article 19 of the ICCPR can also be examined from another angle. As discussed in the context of Article 17 of the ICCPR, states may infringe on the rights of individuals when reasonable and necessary, but limitations must be proportionate to obtain their intended results.¹³⁸ Cameroon has tried to justify Article 347 by claiming that homosexuality is not a positive value within Cameroonian society and that the state should have the right to criminalize it.¹³⁹ As discussed above, the HRC addressed the moral justification, explaining that morals differ widely from society to society and are "derive[d] from many social, philosophical and religious traditions; consequently, limitations . . . for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition."¹⁴⁰ Article 347 is based on one set of morals and has been promulgated by the government and media.¹⁴¹

Mbede's freedom of expression, as well as the freedom of expression of all other homosexual citizens of Cameroon, was and still is violated by the existence and enforcement of Article 347.

IV. RECOMMENDATIONS

A. CAMEROON SHOULD REPEAL ARTICLE 347

Cameroon can no longer defend its criminalization of

138. See ICCPR, *supra* note 8, art. 19(3) ("The exercise of the rights provided for . . . may [] be subject to certain restrictions, but these shall only be such as are provided by law and are necessary . . ."); General Comment No. 34, *supra* note 128, (noting that a State party's restrictions may not "put in jeopardy the right itself").

139. See CRIMINALIZING IDENTITIES, *supra* note 30, at 10 (noting that the Cameroonian Vice Prime Minister believes the enforcement of Article 347 is necessary to preserve "positive African cultural values. . .").

140. See General Comment No. 34, *supra* note 128, ¶ 32

141. See CRIMINALIZING IDENTITIES, *supra* note 30, at 10-12 (illustrating the media's role in fostering an anti-homosexual culture, explaining that after the May 2005 mass arrest, official speeches, press releases, and religious sermons against homosexuals became common).

homosexuality on the basis of public health, morals, or any other reason.¹⁴² Article 347 cannot be amended to become compatible with international law.¹⁴³ The only way to protect the human rights of homosexuals in Cameroon is to repeal Article 347 altogether.¹⁴⁴

Article 347 offends basic human rights in many ways, but most significantly by violating Articles 9, 17 and 19 of the ICCPR. Article 347 promotes arbitrary arrest and detention, resulting in dangerous imprisonment of people who do not share the typical characteristics of criminals.¹⁴⁵ Those who are suspected of being homosexual in Cameroon are commonly faced with invasions into their privacy by both law enforcement and common citizens.¹⁴⁶ Finally, the criminalization of sodomy forbids homosexuals from fully realizing their sexual identities.¹⁴⁷

Article 347 has provided the media and ordinary citizens with a reason to treat homosexuals inhumanely.¹⁴⁸ Cultural change

142. See discussion *supra* Part III.A (applying the determinations of the South African Constitutional Court and the HRC who each held that public health and morals were not justifiable reasons for implementing laws that criminalize homosexual behavior, and adding that such laws often act against these aims).

143. Note that Article 347 is as narrowly defined as it can be, technically criminalizing homosexual acts and not homosexuality. If the criminalization of homosexual acts is invalidated by the ICCPR, then Article 347 can only be repealed. See BRUCE-JONES & ITABORAHY, *supra* note 22, at 21.

144. See *Toonen v. Australia*, *supra* note 53, ¶¶ 10-11 (finding that an effective remedy required repealing the anti-sodomy laws).

145. See *Nat'l Coal. for Gay & Lesbian Equal. v. Minister of Justice* 1998 (12) BCLR 1517 (CC) at para. 108 (S. Afr.) (explaining how anti-sodomy laws are an anomaly because criminal acts are normally violent, dishonest, or treacherous, adding that "[i]n the case of male homosexuality however, the perceived deviance is punished simply because it is deviant" and not because of a proven harm).

146. See discussion *supra* Part III.B (examining the enforcement of Article 347, establishing that it promotes unreasonable invasions into suspected homosexuals' privacy on the grounds that the intent of the law is not reasonable to justify restricting the human right to privacy).

147. See discussion *supra* Part III.C (analyzing how Article 347 violates freedom of expression by forbidding a form of expressing one's sexual identity and supporting the argument with the South African Court's assertion that sexual expression is a crucial element to one's self-identification).

148. See discussion *supra* Part II.B (elaborating on the inhumane treatment suspected homosexuals face in Cameroon due to the impunity enjoyed by citizens and law enforcement who abuse Article 347).

does not happen overnight, but repealing Article 347 would provide some immediate relief for homosexuals who would no longer have to fear being reported, arrested, or unlawfully detained.

B. MBEDE SHOULD FILE AN INDIVIDUAL, URGENT COMPLAINT WITH THE HRC

Cameroon has been urged to repeal Article 347 to no avail.¹⁴⁹ Additional weight is needed to pressure Cameroon to decriminalize homosexual acts, and a written communication from the HRC stating that Mbede's arrest and imprisonment were illegal under international law may serve this purpose. Individuals who allege that they have been victimized by violations of the ICCPR may file a complaint with the HRC against the State who violated the ICCPR if that State is a party to the Covenant and to the Optional Protocol.¹⁵⁰ If the Committee holds that there was a violation of any articles of the ICCPR, it will request that the State party remedy that violation to bring the State into compliance with its obligations under the ICCPR.¹⁵¹

Mbede is entitled to each remedy possible if the HRC finds that Article 347 violates Articles 9, 17, and 19. Mbede is specifically entitled to compensation under Article 9, which provides that "[a]nyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court . . . Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation."¹⁵²

149. See U.N. Human Rights Comm., Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant, Concluding Observations of the Human Rights Committee, 99th Sess., ¶ 12, U.N. Doc. CCPR/C/CMR/CO/4 (Aug. 4, 2010) (urging Cameroon to immediately decriminalize consensual homosexual acts).

150. See HRC FACT SHEET, *supra* note 59, at 25 (describing how the HRC protects individuals from state abuses and enables "individuals who claim that their rights and freedoms under the Covenant have been violated [to] call the State in question to account for its actions"). "As of early June 2004, 1,295 such complaints had been registered by the Committee . . ." *Id.*

151. See *id.* at 27 (describing that the remedies may be in the form of payment of compensation, the repeal or amendment of legislation, and/or the release of a detained person).

152. ICCPR, *supra* note 8, art. 9.

Mbede would also be entitled to release from his prison sentence. If Article 347 was invalidated under the ICCPR, the HRC would find Mbede's imprisonment moot and thus would likely recommend his release.¹⁵³ Additionally, the HRC has knowledge of the inhumane Cameroonian prison conditions, and sympathy for a man facing such danger would further encourage it to recommend that Mbede be released.¹⁵⁴

The Mbede controversy is current and on the forefront of several human rights NGOs such as Human Rights Watch, Amnesty International, International Gay and Lesbian Human Rights Commission, Alternatives Cameroon, and others.¹⁵⁵ HRC attention would have a significant impact on Cameroon and possibly other African states with similar anti-homosexuality laws.¹⁵⁶ International attention is already mounting,¹⁵⁷ and pressure from the United Nations alone has not yet been strong enough to convince Cameroon to repeal Article 347.¹⁵⁸ An official opinion devoted to this law specifically, based on a particular complaint filed by an individual who is facing life-threatening conditions in prison, is the strongest move that can be made.¹⁵⁹

153. See HRC FACT SHEET, *supra* note 59, at 27 (noting that potential remedies include monetary compensation, repeal or amendment of laws, and release from imprisonment).

154. See *Ayissi v. Cameroon*, *supra* note 81, ¶ 21 (establishing that a man the Working Group found had been inappropriately imprisoned ultimately died, apparently as a result of the prison conditions in Cameroon); see also HRC 99th Sess., *supra* note 28, ¶ 6 (reporting the International Committee of the Red Cross regularly visited and monitored Cameroon's prisons after its Periodic Report to the HRC in 1999 raised concerns).

155. See discussion *supra* Part II.A (discussing international responses to Mbede's arrest and conviction, including appeals made by Human Rights Watch and Amnesty International to Cameroonian leaders).

156. See generally Bruce-Jones & Itaborahy, *supra* note 22 (providing a list of the seventy-six States who still criminalize homosexual acts, including Algeria, Botswana, Egypt, Somalia, and Zimbabwe).

157. See discussion *supra* Part II.A (discussing the international movement towards embracing equal rights for homosexuals).

158. See HRC 99th Sess., *supra* note 28, ¶ 45 (explaining that the HRC had asked Cameroon to review its anti-sodomy law, but it maintained that "[h]omosexuality was contrary to the customs and values" of Cameroon and therefore would not be considered at the time).

159. See HRC FACT SHEET, *supra* note 59, at 29 ("One can readily identify numerous instances of an individual complaint leading to positive results for the individual concerned . . . Such cases have also led to changes in laws that

C. CAMEROON MUST TAKE STEPS TO REVERSE THE NEGATIVE
CULTURAL STIGMA ASSOCIATED WITH HOMOSEXUALITY

Cameroon has created a culture where hatred and fear of homosexuality is deeply rooted.¹⁶⁰ While repealing Article 347 is necessary to ensure homosexuals' human rights are protected, simply removing the law will not immediately change the way that homosexuals are regularly treated within Cameroonian society.¹⁶¹ The criminal and negative social stigma attached to homosexuality may linger, and Cameroon's leaders must actively work to reeducate its citizens and law enforcement. To protect homosexuals from harassment and discrimination, Cameroon must take steps to educate its citizens on homosexuality and create laws that punish those who discriminate against or abuse homosexuals.¹⁶²

Part of this initiative should also include increased HIV/AIDS healthcare education that is safe and accessible to all citizens, encouraging homosexuals who have avoided such education and treatment for HIV/AIDS due to fear of persecution.¹⁶³ Lastly, the

gave rise to a finding of violation of the Covenant.”).

160. See discussion *supra* Part II.B (discussing the current treatment of homosexuals in Cameroon due to the enforcement of Article 347).

161. See Owen Bowcott, *Cameroon Gay Rights Lawyer Warns of Rise in Homophobia*, THE GUARDIAN (Nov. 16, 2011), <http://www.guardian.co.uk/world/2011/nov/16/cameroon-gay-rights-lawyer-alice-khom> (discussing how ingrained homophobia is within Cameroonian society, specifically noting that “the Catholic archbishop made homosexuality part of his Christmas homily [in 2005], blaming it for youth unemployment”).

162. See CRIMINALIZING IDENTITIES, *supra* note 30, at 54 (recommending that UNAIDS and other UN agencies assist the Cameroonian government in initiating programs to reduce the stigma of homosexuality and HIV/AIDS); *cf.* *Toonen v. Australia*, *supra* note 65, ¶¶ 6.5, 8.5 (holding that “criminalization of homosexual practices cannot be considered a reasonable means or proportionate measure to achieve the aim of preventing the spread of HIV/AIDS,” adding that Australia has determined that statutes criminalizing homosexual behavior tend to have the opposite effect and impede public health programs meant to educate on HIV/AIDS); General Comment No. 34, *supra* note 128, ¶ 23 (establishing that states “should put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression”).

163. See *Toonen v. Australia*, *supra* note 53, ¶ 8.5 (explaining how criminalization of homosexuality actually impeded public health HIV/AIDS programs “by driving underground many of the people at the risk of

government must train judges and other law enforcement officials in Cameroon's international legal obligations so that international legal standards, especially human rights contained in the ICCPR, are protected under the justice system.¹⁶⁴

V. CONCLUSION

Cameroon availed itself to the obligations of the ICCPR and its enforcement by the HRC when it acceded to the human rights treaty and its first optional protocol. Cameroon granted international agreements additional power when the state put a provision in its constitution that places treaties above its own domestic laws when they contradict each other. Article 347 contradicts three of the most crucial human rights protected in the ICCPR: freedom from arbitrary arrest and detention, freedom from unnecessary invasions of privacy, and freedom of expression, and it is therefore invalidated by international law. As seen through the case of Mbede, Article 347 has led to the unjust imprisonment of Cameroonians arrested without sufficient evidence, confined in overcrowded, unsanitary prisons, and prohibited by law from exercising the basic human right of expressing their identities.

Because of these violations of its international obligations, Cameroon must take responsibility and repeal Article 347, ending its abusive enforcement. Moreover, Cameroon must reevaluate the way it treats alleged homosexuals socially and in the media, as this persecution, justified by the law for too long, forces homosexuals in Cameroon to live out their lives in secrecy and fear.

In stark contrast to Cameroon, many countries throughout the world are seeking to protect homosexuals from ill-treatment and discrimination, and many are even taking the commendable

infection"). See *generally* CRIMINALIZING IDENTITIES, *supra* note 30, at 33–35 (explaining that prisoners are only allowed to learn about sex education and condoms when they are released because the government of Cameroon fears educating prisoners and providing condoms would encourage sodomy).

164. See CRIMINALIZING IDENTITIES, *supra* note 30, at 51 (proposing that judges and prosecutors receive training on human rights standards to help end rulings based on prejudice).

action of granting equal marriage rights to homosexuals. With such a backdrop, the enforcement of Article 347 stands out as even more appalling. Hopefully with growing international attention and continued pressure from influential NGOs, Cameroon will review Article 347 and move in line with the ICCPR, serving as an example for the other seventy-five states that still criminalize homosexual acts. Until Article 347 is repealed, Cameroonian citizens face violent treatment, arbitrary arrest and detention, invasions of their privacy, and limitations on their freedom of expression.