

**071505435 [2007] RRTA 249 (12 October 2007)**

**DECISION RECORD**

**RRT CASE NUMBER:** 071505435

**DIAC REFERENCE(S):** CLF2007/41022

**COUNTRY OF REFERENCE:** Cameroon

**TRIBUNAL MEMBER:** Michael Cooke

**DATE DECISION SIGNED:** 12 October 2007

**PLACE OF DECISION:** Sydney

**DECISION:** The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

**STATEMENT OF DECISION AND REASONS  
APPLICATION FOR REVIEW**

This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).

The applicant, who claims to be a citizen of Cameroon, arrived in Australia and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa. The delegate decided to refuse to grant the visa and notified the applicant of the decision and her review rights by letter.

The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.

The applicant applied to the Tribunal on for review of the delegate's decision.

The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

**RELEVANT LAW**

Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for

the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.

Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol Relating to the Status of Refugees (together, the Refugees Convention, or the Convention).

Further criteria for the grant of a Protection (Class XA) visa are set out in Parts 785 and 866 of Schedule 2 to the Migration Regulations 1994.

#### Definition of 'refugee'

Australia is a party to the Refugees Convention and generally speaking, has protection obligations to people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:

to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.

The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* [1989] HCA 62; (1989) 169 CLR 379, *Applicant A v MIEA* [1997] HCA 4; (1997) 190 CLR 225, *MIEA v Guo* [1997] HCA 22; (1997) 191 CLR 559, *Chen Shi Hai v MIMA* [2000] HCA 19; (2000) 201 CLR 293, *MIMA v Haji Ibrahim* [2000] HCA 55; (2000) 204 CLR 1, *MIMA v Khawar* [2002] HCA 14; (2002) 210 CLR 1, *MIMA v Respondents S152/2003* [2004] HCA 18; (2004) 222 CLR 1 and *Applicant S v MIMA* [2004] HCA 25; (2004) 217 CLR 387.

Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.

There are four key elements to the Convention definition. First, an applicant must be outside his or her country.

Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve "serious harm" to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression "serious harm" includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant's capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be

enough that the government has failed or is unable to protect the applicant from persecution.

Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.

Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase “for reasons of” serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.

Fourth, an applicant’s fear of persecution for a Convention reason must be a “well-founded” fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a “well-founded fear” of persecution under the Convention if they have genuine fear founded upon a “real chance” of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A “real chance” is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.

In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence.

Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

## **CLAIMS AND EVIDENCE**

The Tribunal has before it the Department’s file relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.

The Department summarised the applicant’s situation as follows:

The applicant travelled on a Cameroon passport issued by the Cameroon authorities in Year 3.

The applicant lodged an offshore application for a visa in Year 4, and this visa was granted in Year 4. The applicant arrived in Australia on this visa in Year 5. She

applied for an extension of this visa and this was granted, extending her visa end date. The applicant lodged an application for a Protection visa (PV) in Year 5. The applicant was interviewed by the delegate in relation to her Protection visa application.

The applicant made the following claims as summarised by the delegate:

- The applicant left Cameroon to undertake studies in a peaceful atmosphere away from Cameroon;
- The applicant joined the Political Party Organisation in Year 1, and supported the Political Organisation by assisting in awareness campaigns about the organisation and in the distribution of sensitisation materials and t-shirts;
- The applicant's parents and other adult relatives in the family are also Political Organisation members;
- The applicant's relative was questioned about her Political Party Organisation involvement on one occasion in Year 3 when she was given a convocation to attend the police station for questioning, however she was not charged with any offence;
- The applicant was questioned by security agents/police on two occasions, in relation to her Political Party Organisation activities;
- The applicant was first questioned in Year 2 after being stopped at a roadblock during her return journey to her residence after having attended a demonstration relating to the independence day celebrated by Cameroon;
- The applicant was one of the few people in a taxi that was stopped by security agents at a roadblock and who were all questioned about their activities;
- The applicant was questioned about her Political Party Organisation involvement because the agents found her Political Party Organisation membership card in her possession, and she was slapped on the face and kicked and told to sit down and wait, after which she was taken with others to the police station where she was again questioned and hit;
- The applicant's Political Party Organisation card was torn up, and she was told she could leave;
- A year later in Year 3 the applicant was with a group of several other Political Party Organisation members at a meeting at the house of a leading member when police arrived to raid the house;
- The participants were all able to evade arrest by fleeing through the windows, and the applicant's attendance at this meeting remains unknown to the authorities;
- The applicant lodged an application for a visa to study in Australia in Year 4 with the Department's office in Country A;
- The applicant travelled to Country B in Year 4 to undertake medical examinations in relation to her Australian visa application, afterwards returning to Cameroon;
- The applicant was granted a visa to study in Australia in Year 4;
- The applicant was stopped on a second occasion at a roadblock in Year 5 when returning to Town A, and the bus on which she was travelling was stopped by gendarmes and all passengers were individually checked;

- The applicant was carrying some books about the Political Party Organisation struggle and tracts referring to the Political Party Organisation and its goals, and these were taken from the applicant, and she was given a convocation to attend the police station a few days later in Year 5;
- The applicant, however, had already arranged her journey to Australia and she left the country at the beginning of Year 5;
- The authorities visited her parents' house on two occasions in Year 5 asking for the applicant because of her non-appearance at the police station, and they were told she had gone overseas to study;
- The applicant fears that if she were to return to Cameroon, she may be arrested and imprisoned by the authorities because she is a Political Party Organisation activist.

The applicant provided a letter from a leading Cameroonian separatist leader

[Organisation name]

MOTTO: [deleted]

[address of the Council deleted]

[Reference number deleted] 2007

TO WHOM IT MAY CONCERN:

TESTIMONY OF [Applicant name deleted]

[The applicant], holder of [Political Party Organisation] Membership Card No. [deleted] was born on [date] at [name of hospital and area] in Cameroon. She is the daughter of [name of the parents].

[The applicant] joined the [Political Party Organisation] in the Year [deleted]. She was a very active participant during sensitization and educational meetings and she had been arrested, tortured and detained, since then she has been a target on the wanted list of the regime.

Faced with this challenge to their inalienable right to freedom and dignity, Cameroonians under the banner of the [Political Party Organisation] have been fighting for the restoration of their self-identity, nationhood and sovereign independence as granted by the UN in 1961. But because our territory is very rich in natural resources the oil exported is from Southern Cameroons and Southern Cameroons accounts for 70% of the GDP. La Republique du Cameroun had annexed our country and is exploiting our natural resources for her exclusive development.

Any person opposed to the oppressive regime is a target of persecution so has it been with [The applicant].

Any assistance that can be given her will be highly appreciated as this is in conformity with International norms in the defence of Human Rights, human dignity and the building of a common humanity.

On the premise that a threat to justice anywhere is a threat to peace and security everywhere, on behalf of the [Political Party Organisation] and Five Million Cameroonians, we appeal to you and other progressive forces to support the right to self-determination of Cameroonians under the [Political Party Organisation]. This is the only means by which we can end the growing exodus of Cameroonian Youths to foreign lands.

We appeal to any individual, organization or Nation that can be of any legitimate assistance to the bearer, the applicant; to kindly do so in the fear of the Lord and in defence of the right to any person facing persecution to seek protection and security anywhere in the world.

[Name deleted] National Chairman, [Political Party Organisation]

The applicant also provided country information to the Department and other documents pertinent to here case. Included in this submission were the following documents:

- A copy of a Cameroons National Council membership card dated [date];
- A copy of a birth certificate in the name of the applicant;
- A copy of the applicant's passport biodata and her [type of] visa;
- A copy of a Convocation Invitation from the Gendarmerie National of the Republic de Cameroun dated [date].

The Tribunal is aware of country information retrieved by officers of the Tribunal in regard to persecution of Cameroonians by the Republic of Cameroun Government and which was obtained for the purposes of a previous case and the Tribunal now replicates this information.

In this submission the applicant agreed to the Tribunal attempting to contact [Person Z], the Chairman of the [Political Party Organisation] to verify the contents of the letter forwarded to the Tribunal.

**call with [Person Z] the Chairman of the [Political Party Organisation]**

2007, after several unsuccessful attempts, the Manager of the Tribunal's Country Research and Library Section made contact by telephone with [Person Z]. The Manager reported: "I am confident that the person to whom I spoke was who he said he was. He was definitive, unambiguous, articulate and clear in his speech. I identified myself and indicated the purpose of the telephone call, which was to seek confirmation that he had signed an undated letter presented to the Tribunal by the applicant and, in an open-ended way, to ascertain the likely level of interest in the applicant should he return to Cameroon...With respect to the letter itself, [Person Z] confirmed he had signed the letter referred to but could not be certain of the date on which he had signed it. He agreed that it appeared likely it was in 2005 with references to events in 2004, for example. Some letters were intentionally undated in order to minimise any link between the presence of the organisation to a location at particular times. I asked [Person z] why he believed that the authorities would still be interested in (the applicant) after his absence from the country - i.e. in South Africa and Australia – for two years. He was completely unequivocal in his reply that every

[Political Party Organisation] activist is in the records. It was the right of the Cameroonians to continue to fight for their beliefs and independent freedom. On his return (the applicant) would not be safe. He would be pursued and like other activists would be at certain risk of being harassed, beaten or even killed...”

### **Country Information**

The following information is from the United States, Department of State Country Report on Human Rights Practices in Cameroon in 2006 which was released on 6 March 2007 (<http://www.state.gov/g/drl/rls/hrrpt/2006/78723.htm>- Accessed 3 May 2007):

Cameroon, with a population of approximately 17.3 million, is a republic dominated by a strong presidency. Despite the country's multiparty system of government, the Cameroon People's Democratic Movement (CPDM) has remained in power since it was created in 1985. In October 2004 CPDM leader Paul Biya won re-election as president. The election was flawed by irregularities, particularly in the voter registration process, but observers believed the election results represented the will of the voters. The president retains the power to control legislation or to rule by decree. He has used his legislative control to change the constitution and extend the term lengths of the presidency. Although civilian authorities generally maintained effective control of the security forces, security forces sometimes acted independently of government authority.

The government's human rights record remained poor, and it continued to commit numerous human rights abuses. Security forces committed numerous unlawful killings; they regularly engaged in torture, beatings, and other abuses, particularly of detainees and prisoners. Impunity was a problem in the security forces. Prison conditions were harsh and life-threatening. **Authorities arbitrarily arrested and detained Anglophone citizens advocating secession, local human rights monitors and activists, and other citizens.** The law provides for the arrest of homosexuals and persons not carrying identification cards. There were reports of prolonged and sometimes incommunicado pretrial detention and infringement on citizens' privacy rights. The government restricted citizens' freedoms of speech, press, assembly, association, and harassed journalists. The government also impeded citizens' freedom of movement. The public perceived government corruption to be a serious problem. Societal violence and discrimination against women; trafficking in persons, primarily children; discrimination against indigenous Pygmies and ethnic minorities; and discrimination against homosexuals were problems. The government restricted worker rights and the activities of independent labor organizations, and child labor, slavery, and forced labor, including forced child labor, were reported to be problems...

#### c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The constitution and law prohibit such practices; however, there were credible reports that security forces continued to torture, beat, and otherwise abuse prisoners and detainees. In the majority of cases of torture or abuse, the government rarely investigated or punished any of the officials involved; however, in at least one case during the year, gendarmerie officers accused of torturing a citizen to death in 2005 were detained and investigated. During the year there were no reports that persons in

police and gendarmerie custody died as a result of torture. There were reports that security forces detained persons at specific sites where they tortured and beat detainees. Security forces also reportedly subjected women, children, and elderly persons to abuse.

**Numerous international human rights organizations and some prison personnel reported that torture was widespread; however, most reports did not identify the victim because of fear of government retaliation against either the victim or the victim's family. Most victims did not report torture for fear of government reprisal or because of ignorance of, or lack of confidence in, the judicial system.**

In Douala's New Bell Prison and other nonmaximum security penal detention centers, prison guards inflicted beatings, and prisoners were reportedly chained or at times flogged in their cells. Authorities administered beatings in temporary holding cells within police or gendarme facilities. Two forms of physical abuse commonly reported by male detainees were the "bastonnade," where authorities beat the victim on the soles of the feet, and the "balancoire," during which authorities hung victims from a rod with their hands tied behind their backs and beat them, often on the genitals. Security forces reportedly continued to subject prisoners and detainees to degrading treatment, including stripping them, confining them in severely overcrowded cells, denying them access to toilets or other sanitation facilities, and beating detainees to extract confessions or information about alleged criminals. Pretrial detainees reported that they were sometimes required, under threat of abuse, to pay "cell fees," a bribe paid to prison guards to prevent further abuse.

#### d. Arbitrary Arrest or Detention

The constitution and law prohibit arbitrary arrest and detention; however, security forces continued to arrest and detain citizens arbitrarily.

#### Role of the Police and Security Apparatus

The national police, the National Intelligence Service (DGRE), the gendarmerie, the Ministry of Territorial Administration, the army's military security department, the army, the minister of defense, and, to a lesser extent, the Presidential Guard are responsible for internal security; the national police and gendarmerie have primary responsibility for law enforcement. The Ministry of Defense, including the gendarmerie, national police, and DGRE, are under an office of the presidency, resulting in strong presidential control of security forces. The national police includes the public security force, judicial police, territorial security forces, and frontier police. In rural areas, where there is little or no police presence, the primary law enforcement body is the gendarmerie.

**Citizens viewed police as ineffective, which frequently resulted in mob "justice" It was widely believed that individuals paid bribes to law enforcement and the judiciary to secure their freedom. Police officers and members of the gendarmerie were widely viewed as corrupt officials who frequently and arbitrarily arrested and detained citizens.** Police demanded bribes at checkpoints, and influential citizens reportedly paid police to make arrests or abuse individuals involved in personal disputes. Private disputes, such as feuds between business



partners, frequently resulted in one party making allegations of impropriety or homosexuality about the other and involving the security forces.

According to Transparency International's 2005 Global Corruption Barometer, citizens viewed the police as extremely corrupt. Impunity remained a problem but was less severe than in previous years. Insufficient funding and inadequate training contributed to a lack of professionalism in the national police. The Center Province purchased 150 police vehicles to improve police effectiveness.

### Arrest and Detention

...The law provides for the right to judicial review of the legality of detention only in the country's two anglophone provinces, and this provision was respected in practice. In the francophone provinces, French legal tradition applies, precluding judicial authorities from acting on a case until the authority that ordered the detention turns the case over to a prosecutor. In practice these processes took between 15 days to a month...Persons taken into detention frequently were denied access to both legal counsel and family members. The law permits release on bail only in the anglophone provinces; bail was granted infrequently.

Police and gendarmes often arrested persons on spurious charges on Fridays at mid-day or in the afternoon. While the law in the anglophone provinces provides for judicial review of an arrest within 24 hours, the courts did not convene on weekends, so individuals arrested on a Friday typically remained in detention until Monday at the earliest. Police and gendarmes made such "Friday arrests" after accepting bribes from persons who had private grievances. There were no known cases of policemen or gendarmes being sanctioned or punished for this practice.

Security forces and government authorities reportedly continued to arbitrarily arrest and detain persons, often holding them for prolonged periods without charges or trial and, at times, incommunicado.

There were reports of political detainees, including Anglophone citizens advocating secession, local human rights monitors or activists, journalists, and other critics of the government

During the year security forces pre-emptively arrested approximately 70 leaders, members, and supporters of the Southern Cameroons National Council (SCNC), an Anglophone secessionist group

There were no developments in the 2005 trial of three SCNC members charged with disturbing the public order.

### Political Prisoners

During the year authorities continued to hold two groups of prisoners who could be considered political prisoners.

**There were no developments in the case of 15 members of the secessionist group SCNC serving long prison sentences following their 1999 convictions in military**

**trials. Their trials and convictions did not meet international or national legal standards; Amnesty International and other international human rights NGOs criticized the trials as unfair. In addition the military tribunal admitted into evidence confessions that were credibly alleged in court to have been exacted under torture.**

The prisoners maintained they were political prisoners convicted for supporting a political belief; however, the government claimed they were imprisoned for acts of violence against government offices and officers. The government permitted access to the prisoners on a regular basis by international humanitarian organizations.

**Because it advocates succession the government considered the SCNC an illegal organization and refused to register it as a political organization...**

#### b. Freedom of Peaceful Assembly and Association

On November 29, the Buea anti-riot police shot and killed two students, Ufeanei Ivo Abiandong and Bennett Moma Kenyufon, **while dispersing a demonstration at the University of Buea. The students were protesting those admitted to the faculty of medicine because the protesters believed the minister of higher education had tampered with the names on the admission's list. An investigation was ongoing at year's end.**

#### Freedom of Association

The conditions for government recognition of a political party, a prerequisite for many political activities, precluded peaceful advocacy of secession. While more than 180 political parties, together with a large and growing number of civic associations, operated legally, **the government continued to refuse to register the SCNC as a political party and harassed and arrested its leaders and members**

#### Elections and political participation

The government considered one unregistered Anglophone political group, the SCNC, illegal, because it advocated secession from the country and authorities refused to register it as a political organization. **During the year security forces pre-emptively arrested approximately 70 leaders, members, and supporters of the SCNC; such arrests were conducted to prevent persons from participating in political meetings.**

On numerous occasions throughout the year, authorities refused to grant the SCNC permission to hold rallies and meetings. **Security forces disrupted SCNC meetings, including in private residences, arresting SCNC activists and releasing them a couple of days later.** For example, on April 27, gendarmes arrested 65 SCNC activists in Oku, in the Northwest Province, while they were holding a meeting in a private residence. They were not charged and were released four days later. On May 7, the Bamenda police broke up Hitler Mbinglo Humphrey's press conference in the Musang-Rendez-vous neighborhood, arresting Mbinglo Humphrey and three others. The police subsequently arrested 17 other activists who protested the arrest of their leaders. They were released after a brief detention.

In August SDF Chairman Fru Ndi was accused of being responsible for violence that resulted in the death (see section 1.a.).

On September 16, gendarmes from the Bamenda gendarmerie legion in the Northwest Province arrested five SCNC activists in their office: Fidelis Tchenkwo, Emmanuel Enu, Prescilla Khan, Elvis Bandzeka, and Cletus She. They were released after a brief detention. The SCNC claimed that the arrests were to prevent the activists from preparing and holding a meeting of the "Northern Zone."

On September 19, the Prefect of Mezam Division in the Northwest Province signed an order banning all public meetings, rallies, or gatherings of more than four persons and prohibiting access to electronic media for any SCNC official or sympathizer.

On October 1, security forces arrested and detained some activists in the Northwest and Southwest provinces for activities such as raising an SCNC flag in a public market place. They were released after a few days' detention.

On October 1, the Bamenda police blocked access to radio and television stations, put the houses of SCNC officials and activists under surveillance, and searched the houses of some SCNC leaders, including Chief Ayamba Ette, the SCNC chairman, Nfor Ngalla Nfor, the vice president, and Binlo Hitler, the president of the Northern Zone.

In advance of the annual celebration of Southern Cameroon "independence" on October 1, the government engaged in a campaign of closing down SCNC rallies and meetings.

There were no developments in the 2005 arrests of three SCNC members charged with disturbing the public order.

The government also continued to hold some SCNC activists in temporary detention pending trials.

#### National/Racial/Ethnic Minorities

...Natives of the Northwest and Southwest provinces tended to support the opposition party SDF and consequently suffered disproportionately from human rights abuses committed by the government and its security forces. The Anglophone community was underrepresented in the public sector. Although citizens in certain francophone areas--the East, Far North, North, and Adamawa provinces--voiced similar complaints about under-representation and government neglect, Anglophones said they generally believed that they had not received a fair share of public sector goods and services within their two provinces. Some residents of the Anglophone region sought greater freedom, equality of opportunity, and better government by regaining regional autonomy rather than through national political reform and have formed several quasi-political organizations in pursuit of their goals.

The United Kingdom's Home Office Report on Cameroon, released on 9 March 2007, ([http://www.homeoffice.gov.uk/rds/country\\_reports.html#countries](http://www.homeoffice.gov.uk/rds/country_reports.html#countries) - Accessed 3 May 2007) Describes the SCNC and names Chief Ete Otun Ayamba as its Chairman:

## **Southern Cameroons National Council (SCNC)**

A separatist movement established in 1995 to campaign for the establishment of an independent republic in Anglophone Cameroon. It proclaimed the establishment of a 'Federal Republic of Southern Cameroon' in December 1999, and in April 2000 named a judge, Frederick Ebong Alobwede, as president of the self-styled republic. Chairman: Chief Ette Otun Ayamba

The same report expands further on the SCNC and the Social Democratic Front (SDF) and the secessionist Anglophone movement in the body of its report:

17.07 President Biya has not been able to contain the increasingly vociferous calls for secession from Anglophone Cameroon. Over the last decades, political marginalisation and discrimination have grown stronger with pro-secessionist movements such as the Southern Cameroons National Council (SCNC) and the Southern National Youth League (SCYL) demanding greater regional autonomy. The simmering conflict was contained briefly following the 1999 crackdown, but activists used the platform of the 40-year unification celebrations in October 2001 to hold peaceful demonstrations in protest against their marginalisation in national politics and to demand greater political rights. Biya again used strong-arm tactics in suppressing the protests, to which Amnesty International responded, urging authorities to respect rights of freedom and expression.

17.08 The SCNC, a separatist movement, was established in 1995 to campaign for the establishment of an independent republic in Anglophone Cameroon. The SCNC proclaimed the establishment of a 'Federal Republic of Southern Cameroon' in December 1999, and in April 2000 named Frederick Ebong Alobwede as the president of the self-styled republic.

17.09 The SCNC say that many of its members are harassed, followed and occasionally beaten by Government security forces, because of their alliance. Members and their families are denied societal privileges, such as schooling and jobs. They are suppressed by the Government and offered bribes to keep quiet about their objectives. Their movements are restricted because they fear for their lives and are constantly being watched by the authorities.

17.15 Thirteen out of 40 SCNC militants arrested on 20 January when armed troops swooped on them at a Bamenda press conference have been transferred to the Central Prison there, to await trial.

17.16 A conference scheduled for April 2007 in Texas, USA, aiming to unite the various factions of the Southern Cameroons National Council, was announced by Justice Frederick Ebong. Justice Ebong, a retired magistrate, leads one of the SCNC factions that seized the Government-owned CRTV radio in Buea on 30 December 1999, and declared the independence of the Southern Cameroons territory from the rest of Cameroon.

17.17 The Social Democratic Front (SDF) has issued a statement rejecting the bill to set up ELECAM. In a statement issued on 15 December the SDF highlights three

deficiencies in the bill. Their principal dispute is that the President appoints and dismisses members of the electoral board, and the Ministry of Territorial Administration and the National Elections Observatory (NEO) are still empowered to organise all elections while waiting for ELECAM to be progressively implemented.

The *Voice of America* in an broadcast by Naomi Schwarz titled 'Cameroon English-speaking independence group members jailed' reports on the arrest of 20 SCNC leaders in January 2007 and provides a useful background to the secessionist aims of the SCNC( : [http:// www.voanews.com/english/2007-03-05-voa29.cfm](http://www.voanews.com/english/2007-03-05-voa29.cfm), accessed 3 May 2007):

In Cameroon, about 20 members of the Anglophone pro-independence group, the Southern Cameroon National Council, have been imprisoned for more than a month without being charged. The group, which says the English-speaking minority is marginalized in Cameroon, has been banned by the government. Naomi Schwarz has more from VOA's regional bureau in Dakar.

In a letter smuggled out of prison and e-mailed to VOA, jailed Southern Cameroon National Council leader Nfor Ngala Nfor says he would welcome a charge of "secession." It carries either a life sentence or a death penalty.

The group is known by its acronym SCNC.

Nfor wrote, "I will see the charge of 'secession' as a Christmas gift to the SCNC and Southern Cameroonians as a whole. The onus will be on the Republic of Cameroon to prove by what instrument of international law it has extended its sovereignty westward."

He says his trial, if it ever happens, would mean the government would have to prove that Cameroon is legally a unified state.

The government has banned the SCNC and says any meeting of the group is illegal and grounds for arrest.

Nfor, along with about 20 other SCNC members, have been in prison for more than a month. They have not yet been charged with a crime, but a hearing to bring charges is scheduled again soon. Several hearings have been postponed because witnesses for the prosecution have been absent.

After World War One, the French and British divided up the rule of the then-German colony of Kamerun. At independence, the British provinces had the choice to join Nigeria or French-speaking Cameroon. Southern Cameroon chose to join the Republic of Cameroon as a separate state.

In 1972, in a public referendum, Cameroonians voted to become a single, unified state.

Since then, English-speaking Cameroonians have felt increasingly marginalized.

Tanyi Joseph Mbi is a lawyer for the jailed SCNC members. He says English-speaking areas are less developed. "We do not have roads," he said. "We do not have petrol. It is more expensive in Southern Cameroon than in the Republic of Cameroon." Mbi says even if the courts bring secession charges, they will have to prove that the SCNC members actually committed a crime. "The court has a duty to prove to the entire community that these members have taken steps to secede. Because secession is not just by word of mouth, it is by action," he said.

A researcher for London-based Amnesty International, Godfrey Byaruhanga, says the detention represents an abuse of the right to free speech. "They have not advocated nor have they used violence against the state," he said. "And, hence, we are certainly very concerned that the government of Cameroon continues to detain people who only are agitating, making their views known publicly without any recourse to violence." "The government surely should allow them to express their views even if those views are not necessarily in concert with those of the government," he continued. He says the founding charter of the African Union says borders must remain as at independence. It is under this statute, he says, that the government rejects Southern Cameroonians' drive for independence.

A related report by the *Unrepresented Nations and People's Organisation* in an article titled 'Southern Cameroons: Hearings Delayed Yet Again' (<http://www.unpo.org/article.php?id=6337>, accessed 3 May 2007) reports that the detained SCNC members arrested who continue to be held without charge:

The Hague, 07 March 2007 – More than a month since their initial arrest on 20 January 2007 Southern Cameroons National Council (SCNC) representatives are still held in detention in Bamenda central prison. UNPO considers the case a clear violation of obligations mandated by international humanitarian law, including the right to due legal process.

Reports indicate 500 activists gathered on 27 February 2007 to witness the then twice-rescheduled hearings of these representatives, however all visitors were again barred from the courtroom. Human rights activists and journalists also present to document the hearing were purportedly also removed from the courtroom.

The SCNC representatives to be addressed at these hearings are: UNPO Member Representative Nfor Ngala Nfor (54), Mbinglo H. Humphrey (65), Tantoh Simon Nshukwi (65), Achu Nji David (56), Stephen Kongnso (45), Dzeni Augustine Shieyntum (36), Henry Lamnyam (35), Lucas Ngwa Che (57), Nguemu Clement Atanga (60), Mongo Steven (43), and Mbi Ann Rita (60). [pictured left]

All were arrested at a SCNC press conference held in Bamenda, Southern Cameroons on 20 January 2007 and were subsequently transferred to Bamenda central prison. Since their arrest, these individuals have been detained while not having been formally charged with any crime.

In 2002 *Amnesty International* was calling for the release of SCNC activists in an alert titled 'Cameroon: Detention without charge/Fear of torture or ill-treatment, seven human rights activists'

(<http://web.amnesty.org/library/Index/ENGAFR170072002?open&of=ENG-CMR> – Accessed 3 May 2007)

Amnesty International is concerned for the safety of Albert Mukong, a human rights activist and former executive director of the Human Rights Defence Group (HRDG), and six members of Southern Cameroon National Council (SCNC). They are detained without charge at Mamfe Gendarmerie station, South West province. They are at risk of being tortured or ill-treated.

Albert Mukong may have been arrested for speaking out about the right to self-determination of the Anglophone provinces and acting as an adviser to the SCNC, which campaigns for self-determination for the English-speaking minority in Cameroon. Amnesty International considers Albert Mukong a possible prisoner of conscience.

Agbor Nfaw Joseph, Enow John Enow, Tabe Daniel Agbor, Tambe Atem Valery and Ojong Samuel Ndip, all of whom are members of the SCNC, were arrested on 27 September. They were taken to Mamfe Gendarmerie station, where they are still being held. Amnesty International fears that they were arrested solely for their peaceful political activities. Albert Mukong, together with Pa Ayamba and Nfor N. Nfor, two of the main leaders of SCNC, were arrested on 28 September by the gendarmerie at Ayukaba in South West Province. Nfor N. Nfor was subsequently released, apparently because his poor health deteriorated. Albert Mukong and Pa Ayamba are currently also being held in Mamfe Gendarmerie station.

Under Cameroonian law, detainees should be referred to a judicial authority to be either charged or released within 72 hours of arrest. No charges have yet been brought against any of the above-mentioned detainees. Political detainees and criminal suspects in Cameroon are routinely tortured or ill-treated. The conditions of detention in police stations, gendarmerie detention centres and prisons are extremely harsh. Severe overcrowding, poor hygiene and ventilation, inadequate food and medical care results in a high mortality rate amongst detainees.

### Background Information

The SCNC advocates increased autonomy for Cameroon's English-speaking minority and supports independence for the English-speaking North-West and South-West Provinces. In 1972, federal state institutions were replaced by a unitary state in which the French-speaking community is predominant. Every year, early in October, the SCNC calls for protests against the unification in October 1961 of the English-speaking provinces of South West and North West to the other eight Francophone provinces of Cameroon. The authorities attributed armed attacks in March 1997 in North West province to the SCNC and the affiliated Southern Cameroon Youth League (SCYL). Ten people, including three gendarmes, died during these attacks. At least ten people arrested in connection with the attacks died as a result of torture and ill-treatment at the time of their arrest or subsequent lack of medical care in detention. In October 1999, 36 alleged SCNC supporters were convicted, after an unfair and politically-motivated trial before a military tribunal in the capital, Yaoundé, of offences relating to the attacks in North-West Province. Three were sentenced to life

imprisonment and the others to prison terms of up to 20 years. Eighteen remain imprisoned at the Central Prison, known as Nkondengui prison, in Yaoundé.

Journalist Chris Mbunwe of *All Africa* reported, in an article titled, 'Cameroon: SCNC Chairman arrested' of 27 October 2005 of the arrest of Chief Ayamba, the National Chairman of SCNC and the man who wrote a letter documenting the applicant and her political activities:(<http://www.afrika.no/Detailed/10722.html> - Accessed 3 May 2007)

Police in Mamfe, Wednesday, October 26, arrested and detained the 82-year-old Chairman of one of the factions of the Southern Cameroons National Council, SCNC, Chief Ayamba Ete Otun. In a letter addressed to Marino Busdachin, the General Secretary of the Un-Represented Peoples Organisation, UNPO, at The Hague.

Nfor Ngala Nfor, Ayamba's Vice, said Chief Ayamba was arrested as he went to the detention camp in Mamfe to protest against the inhumane treatment meted to some 40 SCNC members, arrested and detained since October 22.

While calling on the UNPO Secretary General to mount international pressure on the government of Cameroon to cause the release of Ayamba, Nfor Nfor said he has, "instructed the population to stay put in front of the office where Chief Ayamba is being held by the police." Nfor Nfor, who doubles as the Chair of the UNPO Foreign Affairs Commission, said Chief Ayamba's rights as a traditional ruler have been abused.

In an earlier press release signed on October 24, Nfor Nfor said the 40 SCNC activists arrested in Besongabang, were holding a meeting to review the celebration of the 44th independence anniversary celebration of Southern Cameroons in Manyu.

The release stated that the meeting was to install the executive of, and celebrate the creation of the Besongabang precinct. Unfortunately, Nfor Nfor stated in the release, "The Yaounde occupational forces invaded, arrested, brutalised and detained these patriots and stripped them naked as if they were 15th Century African slaves bound for the West Indies." He condemned the "barbarism with which these Southern Cameroonians were being detained incommunicado and are refused food." Even the SCNC lawyers, according to the release, have been barred from intervening in the matter.

The applicant appeared before the Tribunal in [Year 5] to give evidence and present arguments. The Tribunal also received oral evidence from Person Y, a friend of the applicant and Australian citizen who is originally a Cameroonian.

A summary of the evidence given at the hearing is as follows:

- The Tribunal asked the applicant whether she actually ever worked as a employee of the hospital. She said she was still studying at the college. The applicant said she decided to complete her training in Australia.
- The Tribunal asked her why she wanted to come to Australia. She said she wanted to study in freedom and pursue her healing profession. She could



not concentrate as she was so traumatized and in hiding from the secret police and wanted to live and practise her profession as a free citizen.

- The applicant said she joined the Political Party Organisation when she was at high school. The Tribunal asked her about her life as a political activity in the Political Party Organisation. She said she was aware that being involved in politics in the Cameroon would involve problems but not to the extent that she found.

- The Tribunal referred to the applicant's evidence to the Department regarding her claimed persecution. The Tribunal observed the applicant said she had been subjected to physical and emotional torture and this had happened in the past. She had seen degrading torture including her own occurrence in Year 2 when she was arrested at a roadblock. At that time she was young and she was at the School.

- She said she already became an activist when she was still a teenager at high school. There was an incident in Year 3 in Town A when the secret police intervened a sensitizing meeting in a Political Party Organisation member's house. The gendarmes infiltrated the meeting and people were beaten up.

- She was asked what had happened on that occasion. She said she was able to escape at the cost of a twisted ankle by fleeing through a window to the bush. The Tribunal asked her how this was possible when it was sensitization meeting in a Political Party Organisation member's house. She said the secret police secreted themselves in meetings in civilian clothes to prevent the meeting on that day as that was the foundation day of this Political Party Organisation. She agreed that - after the convocation letter remained unanswered - the police had come round to her house after her. She said this was true.

- The Tribunal then gave out information derived from Tribunal country information on the legal process and eventual outcome of a convocation letter invitation. The applicant agreed she had left the country. The Tribunal asked the applicant to outline her movements on particular day in Year 5.

- She said she went to the airport with her relatives. She had a passport and visa. The Tribunal asked her to explain what happened. She said she was waiting outside while one of her relatives facilitated a bribe to an official. She then flew to Country C and then to Country D and then to Australia. She flew on Country C Airways and then Country D airlines to Australia.

- The Tribunal then proposed a recreation the departure scenario at Town B airport which is in the Francophone area of Cameroon. She said she was outside the baggage area on the street. Her relative took her baggage and passport and approached an official and bribed him to allow her free transit inside to the departure gate. She claimed that she was running late and then when she embarked the plane left almost immediately. The applicant claimed that she had incriminating Political Party Organisation documents in her main bag. She said she realized later that this was a very stupid thing to do. If her relative had not bribed the official she would have been arrested and detained.

- The Tribunal asked the applicant how she went to the medical examination in Country B. The Tribunal observes she had not attempted to seek refugee status in Country B. She said she did not have any idea about the UN in Country B and if she had known that she would have stayed. She said

her trip to Country B was horrible because she went by ship to Country B via Town C to Town D by night to avoid checkpoints.

- The Tribunal asked her why she did not go by plane and went by ship. She went in a boat and then took a bus to Town E. She only had an entry visa and had to leave quickly. The boat was overloaded and there was police and it was raining and she was very wet and shabby. She then did the examination and then returned the same way. She did this all in the space of 48 hours and slept on the street in Town E. She said she should have gone to the UN because the trip to get the medical clearance for the visa was all too hard.

- The Tribunal then referred to her claims about the difficulty in returning to Cameroon as she was a committed activist for the Political Party Organisation and determined to continue sensitizing people despite her arrest, detention, torture and harassment and continue the fight for the freedom of the Anglophone part of Cameroon. The Tribunal asked the applicant whether she had been detained. She said she had been in Year 5 for a few hours. The applicant stated that she was then given a convocation letter in Year 5 after being stopped at a police check point and found with leaflets. The applicant said that the information in the Decision Record was wrong.

- The applicant said she pleaded with the police to let her go as it was getting dark. After abusing her and telling her she would spend her life in jail she after bribed them with CFA 20,000 (AUD1= CFA400) which was a lot of money and they let her go.

- The Tribunal asked her why she had so much money. She said she was moving around and her relatives were giving her money for when she went to Australia. She then took a taxi to town as it was late. The convocation invitation was given to her parents.

- The Tribunal asked her what her parents had said to the gendarmes. She said her parents told them she was unavailable overseas. She did not know if they followed the 3 convocation invitation requirement as the gendarmes basically did what they wanted and what the local Police Commissioner wanted to do to with the subject person.

- The Tribunal then asked her to comment on the delegate's conclusion that she had a very low profile in the Political Party Organisation. The Tribunal asked her whether she was an important person. She said it was true she was not a high profile member. The applicant said she had been a very active person in the youth wing of the Political Party Organisation. She said she had not organized protest and demonstrations. She was not a spokesperson and only carried leaflets around. She did not have any contact with high officials and when they had meetings to get youths to be sensitized she used her study times for Party requirements.

- The Tribunal asked her whether her family had been targeted and harassed. She said her mother had been arrested once whilst she had been caught twice and had escaped at other times. Her uncles had been beaten and detained for days at times. The gendarmes had visited her family home at various times and had not found her there despite the fact that she had left. She suggested that they thought that her parents were lying. The Tribunal asked her when the gendarmes had found out that she was gone. She said she was not sure that they had found out yet that she was gone.

- The Tribunal asked her whether the secret police had gone to the airport to check whether she had left. She said that Cameroon did not keep records. She did not know if they had gone to the airport or not.
- The Tribunal asked her whether the Cameroonian authorities had ever issued her with an arrest warrant. She said they had not done so and not to her parents - only a convocation notice.
- The Tribunal then revisited the applicant's trip to Country B. The Tribunal asked the applicant why she did not simply go the airport and catch a plane there and back. The Tribunal asked her why she had to use such an extraordinary way to get to Country B. She said she did not have money for the flight and was frightened to use the international airport. The Tribunal asked her why. She did not know how the authorities got there information and she was a Political Party Organisation member and did not want trouble and wanted to go and come back to "hiding". She said they struggled to get her to Australia.
- The Tribunal then asked about her Political Party Organisation membership card. She said the date on the card was her joining date and an official of the Party gave her the card. The card was dated Year 2 but the Year 1 date was the initial enrolment date.
- The Tribunal then referred to the testimonial letter from Person Z. The Tribunal referred to problems in Cameroon with fraudulent documents. The Tribunal referred to country information about Political Party Organisation officials using membership cards for crucial source of funding for the Party. The Tribunal asked her why it should believe her document as genuine. The applicant said the Tribunal should believe her. She had read some information in Australia about Cameroon and Political Party Organisation and the articles gave conflicting information. Her document was real and she then became emotional and begged the Tribunal to believe her and that she was not sure of her security if she returned to Cameroon. The Tribunal reinforced its responsibility to put this country information to the applicant and to give her the opportunity at review to discuss it.
- The Tribunal then referred to country information stating that many asylum seekers had returned to Cameroon without being harassed. The Tribunal cited reported claims by the Political Party Organisation that asylum seekers were "routinely detained" on arrival at Town B and when they were asked to prove the claim they had no evidence to present.
- The Tribunal invited the applicant to comment on the information and rebut it. She said that it was illegal to be a Political Party Organisation member and because of the convocation which she did not attend and because she was in Australia and "she was running and did not succeed" that she would be put in prison with their woeful conditions and people often died there.
- The Tribunal then summarised the applicant's claims as she had outlined them in the hearing so far. She agreed with the summary and she said they would think that "she wanted to escape from there and did not succeed".
- The Tribunal then spoke to Person Y. He said he had lived in Australia for 11 years but did his academic qualification research in Cameroon. His experience was as a researcher and as an Australian and former Cameroonian he found the Cameroons very terrifying and the applicant was speaking the truth. He said he was an Anglophone who came from an area near the applicant. He said that life was very difficult for Cameroonians and

particularly those who are Political Party Organisation members. They clamped down on Political Party Organisation members severely and “you did not have to be a high profile member to be clamped down on”. He said he was a supporter of the Political Party Organisation and before he came to Australia he was a Political Party Organisation activist whilst at university.

- The Tribunal asked the applicant when he last visited Cameroon. He said he was there in Year 4. The Tribunal then suggested to the witness that it would like him to recreate (as it had done with the applicant regarding her day at the airport) the day in his life on arrival in Cameroon in Year 4. He said he arrived at Town B via Countries 5 and 6 via [name of airline].

- The Tribunal asked him whether he was the subject of adverse attention. He said they checked his vaccination cards and then went through his immigration with an Australian passport and then to baggage claimed. He was asked whether he was asked any questions. He said he was asked what he was doing in Cameroon. He replied he was doing research. His was not questioned further. He insisted that he held an Australian passport.

- The Tribunal asked him whether any other passengers were the subject of adverse attention. He said he accompanied a person from Country 6 and this person was taken away by the gendarmes. He was apparently a failed asylum seeker and his family was outside waiting at the luggage area and “it filtered out to them what had happened” to this person.

- The Tribunal then juxtaposed his observations with oral evidence and claims made by the applicant. The Tribunal asked the witness to extrapolate on his observation. The witness said the detained person did not even get to the baggage area. He was immediately detained after his vaccination check and was detained at the immigration stage by plain clothes persons. He heard later that he was detained and he did not know what happened to him. A friend of his to whom he related the story said this friend was asked by people to assist them when relatives had been detained at the airport. He said the Government of Cameroon did want to its citizens denigrating the country and wanted to control the citizens and that was why they arrested failed asylum seekers. This information had been made available to diplomatic officials and authoritative persons. The witness confirmed that if the applicant was confirmed to be a Political Party Organisation member and returning asylum seeker she would be the type of person who would be detained at the airport and detained and possibly mistreated and raped and with his knowledge of HIV/AIDS he thought it was possible he could contract the disease.

- The Tribunal then asked the witness what would happen if the applicant arrived back in Cameroon and told the officials she had been out of the country in Australia and evidenced her Australian visa. What if they asked her what she was doing and she said “I have been [deleted] in Australia - can I go now”. The witness said that as a failed asylum seeker she would be arrested.

- The Tribunal asked the witness why the authorities would know that she was a failed asylum seeker. He said that if the applicant’s visa in Australia expired and she was deported it was highly likely that the authorities would know.

- The Tribunal suggested that even though the Cameroonian authorities were authoritarian and draconian - what would prevent the applicant entering

Cameroon as a simple returning student without being detained. The witness suggested she would be arrested for not attending the convocation.

- The applicant became emotional again and pleaded with the Tribunal to allow her to stay in Australia because she would go through a big trauma if she returned to Cameroon and the conditions under arrest were deplorable. The secret police could detain and kill people who had then disappeared. She did not want to be one of those persons. She did not want to die or waste her life and live in fear and hiding. She said she would be caught and detained and prison conditions were bad. She worried about arrest everyday.

## **FINDINGS AND REASONS**

In order to be a refugee under the Convention, it is necessary for the applicant to be outside of his country of nationality and for him to hold a well-founded fear of persecution for at least one of the five grounds listed in the Convention. The applicant claims to be a citizen of Cameroon and of no other country. She traveled to Australia on a valid passport of Cameroon and has made claims against no other country. Therefore, for the purposes of the Convention the Tribunal has assessed the applicant claims against Cameroon as his country of nationality.

The Tribunal accepts that the applicant is an Anglophone and that she and her family have been actively involved in the Political Party Organisation. The Tribunal accepts this based upon the applicant's consistent evidence, her knowledge of Cameroon politics and the country information cited above which supports her claims. The Tribunal also places great weight on the personal letter which supports her claims from the National Chairman of the Political Party Organisation. The Tribunal is aware that a Tribunal (previously constituted) has been able to speak with Person Z and satisfy itself that he is the National Chairman of the Political Party Organisation. The Tribunal is satisfied, furthermore, that the information contained in his letter regarding the applicant is accurate. The applicant has also furnished her Political Party Organisation membership card to the Department and a convocation invitation from the Cameroun Gendarmerie National requesting her to attend the Town A police station on [date in Year 5] with her Political Party Organisation documents to hand. Furthermore she has claimed that other evidence of violence and mistreatment to her person have occurred before

Given that the Tribunal accepts the applicant's claims about her involvement with, and support of, the Political Party Organisation the Tribunal notes that the United States Department of States report that:

Because it advocates succession the government considered this Political Party Organisation an illegal organization and refused to register it as a political organization...

And, therefore, finds that this active involvement is deemed illegal by the government and that such activity has directly led to the convocation letter issued to the applicant. The Tribunal also accepts that the applicant was an activist member from Year 1 of the Political Party Organisation along with family members which would have further brought her to the attention of the authorities. The Tribunal notes that country information supports that many Anglophones are members of the SDF and Political

Party Organisation and notes the following extract from the United States Department of State report:

...Natives of the Northwest and Southwest provinces tended to support the opposition party SDF and consequently suffered disproportionately from human rights abuses committed by the government and its security forces. The Anglophone community was underrepresented in the public sector... Anglophones said they generally believed that they had not received a fair share of public sector goods and services within their two provinces...

After discussing these issues and concerns at some considerable length with the applicant at the hearing and also noting the persuasive evidence of her friend, the Tribunal is satisfied that the applicant's claims of political persecution are valid. The Tribunal found the applicant's evidence to the Tribunal to be consistent and measured.

The Tribunal highlights the following information drawn from the United States Department of State report cited above about the role of the police and security apparatus with regard to its treatment of political opponents which is consistent with the applicant's account:

The government's human rights record remained poor, and it continued to commit numerous human rights abuses. Security forces committed numerous unlawful killings; they regularly engaged in torture, beatings, and other abuses, particularly of detainees and prisoners. Impunity was a problem in the security forces. Prison conditions were harsh and life-threatening. Authorities arbitrarily arrested and detained Anglophone citizens advocating secession, local human rights monitors and activists, and other citizens.

The Tribunal also takes note of the authoritative statement to a (previously constituted) Tribunal by Person Z (RRT [file number deleted]):

...asked [Person Z] why he believed that the authorities would still be interested in (the applicant) after his absence from the country - i.e. in South Africa and Australia – for two years. He was completely unequivocal in his reply that every [Political Party Organisation] activist is in the records.

The Tribunal notes also the eyewitness account of Person Y when he said:

...don't have to be high profile to be clamped down on"

He said that when he returned to Cameroon he saw other Cameroonians being checked out at the airport. A person who he claimed was a failed asylum seeker was taken away by plain clothes police and detained prior to his exit into the arrivals area. When Person Y went outside the relatives were still waiting for the person, who did not subsequently appear, and the family members (in his words) "were left wondering". The Tribunal believes that in view of the country information and eyewitness evidence that such a scenario could happen to the applicant were she to return to Cameroon as failed asylum seeker.

The applicant has failed to answer a convocation letter (and possibly others may have been issued by law in her absence) and her family has been questioned by gendarmes regarding her whereabouts. She has spent some time overseas already in Australia. The applicant has been of sufficient adverse interest to the police that she received a convocation letter for being encountered holding Political Party Organisation documents and propagandizing for that (illegal) party. The applicant has previously claimed to have been detained and mistreated by the gendarmes concerning her (illegal) political activities.

The Tribunal observes the finding of the delegate that the applicant did not have a very high profile in the Political Party Organisation and the applicant agreed with this in oral evidence. The delegate also adhered to the strict letter of Cameroonian law (as outlined in country information) that arrest and detention only follow a failure to attend three convocation invitations. This may be the strict letter of the law but the overall impression the Tribunal has of the Cameroonian justice and political system (from reliable and current country information) is that extra-judicial behavior is more common than not and no reliance could be made on any aspect of official Cameroonian law as being a safeguard of the liberty of Cameroonian citizens.

The applicant has strongly claimed (and her witness has confirmed) that were she to be forced to return to Cameroon she would be the victim of further persecution and could endanger her life. She has claimed to have already drawn the adverse attention of the Cameroonian authorities in the past. Recently, in early Year 5, she was the subject of a convocation invitation to which she did not respond as she had left for Australia prior to the invitation hearing date having secured an Australian [temporary] visa the previous year. The Tribunal has questioned the applicant extensively about any putative sanctions or persecution that she could face if she were to return to Cameroon as a failed asylum seeker. She has emphatically insisted that she will be the subject of serious persecution and possible incarceration were she to return and her witness has confirmed this after his observations of events on the day of his arrival in Cameroon in at the end of Year 4.

However, it is not sufficient that a person be a member of a particular social group and also have a well-founded fear of persecution. The persecution must be feared for reasons of the person's membership of the particular social group. The applicant has claimed that on return to Cameroon she fears persecution because of her membership of this particular social group being Cameroonians who are active members of the Political Party Organisation and subsequently apply for asylum in Australia. The Tribunal has, therefore, examined available country information relating to the treatment of failed asylum seekers who are returned to Cameroon.

There is some conflicting information on the treatment of failed asylum seekers on return to Cameroon. Some information states that they are not arrested or harassed on return simply for being failed asylum seekers (ie, if they are not marked as opponents of the regime, not suspected of harming Cameroon's reputation abroad, and not returned in a manner to attract the authorities attention), while the other information comments that returnees may be detained on arrival and there is some possibility that they be ill-treated and even tortured.

In 2004, the UK Home Office Fact-Finding Mission to Cameroon quoted Jacques Franquin, a representative of United Nations High Commission for Refugees (UNHCR) based in Cameroon as having said that although many Cameroonian asylum seekers have been returned to Cameroon, he is not aware that anyone has been arrested or harassed on return. The Mission further commented that allegations have been made that some failed asylum seekers who have been forced to return to Cameroon have since disappeared, but there is no confirmation of this. It is possible that they may have been trying to seek asylum in another country (UK Home Office 2004, *Report of Fact-Finding Mission to Cameroon 17 – 25 January 2004*).

The Danish Immigration Service Fact-Finding Mission to Cameroon elaborates the issue further as follows:

A western diplomatic source believed that a rejected asylum applicant forcibly returned to Cameroon would not be at risk. He was not aware of the Cameroonian authorities detaining Cameroonian citizens who had been deported after their asylum applications had been rejected, simply because they had sought asylum abroad. He did not know of cases where a returned rejected asylum applicant had had problems with the authorities as a result of being deported. He pointed out that the authorities were not informed that people were rejected asylum applicants.

Gemuh Akuchu [of the National Commission for Human Rights and Freedoms (NCHRF)] confirmed that rejected asylum applicants who returned to Cameroon voluntarily were not at risk of being detained by the police on their return.

A rejected asylum applicant who was deported in handcuffs and was accompanied by a foreign policeman who handed him over to the Cameroonian authorities at the airport risked detention by the police. This would be to investigate his background. If the Cameroonian authorities were aware that he had sought asylum abroad he would be suspected of having discredited Cameroon. If the authorities merely found that he had sought asylum for economic reasons he would be released. The editor of the Messenger also believed that asylum applications abroad were seen as damaging Cameroon's image.

The same source reported that in December 2000 a returning Cameroonian had been detained by the airport police in Douala because he was on a list of wanted persons. No official reason was given for his arrest, but it was probably on political grounds. The returning Cameroonian had been active in an English-speaking Cameroonian group in the USA. He was released after 12 hours. Such detentions were short, usually a day or half a day.

Several sources said that there were cases of Cameroonians coming over the land border from Nigeria to avoid the risk connected with arriving at airports.

T. Asonganyi [Vice-Chairman, Secretary General of the Social Democratic Front (SDF)] reported that if the authorities knew that someone was a rejected asylum applicant they would arrest him as, by applying for asylum, he would be suspected of harming Cameroon's reputation abroad. He would also risk being ill-treated or even tortured.



Akuchu said that the forcible or accompanied deportation of a rejected asylum applicant would not cause problems if the authorities were not informed that the individual was a rejected asylum applicant. The best way to deport a rejected asylum applicant was for accompanying policemen to wear civilian clothes as though they were travelling with any other person.

None of the diplomatic sources consulted by the delegation were aware of any cases in which the return of rejected asylum applicants had led to serious problems for those involved. Several sources said that no such cases had been mentioned by Amnesty International or by human rights organisations in the relevant western countries. They took this as a sign that there were no cases of rejected asylum applicants having problems with the Cameroonian authorities because of their asylum applications.

One western diplomatic source reported that their local legal adviser had stated that there was no legislation in Cameroon providing for prosecution for seeking asylum abroad. However, in practice things could be very different. His country had known a number of cases of rejected Cameroonian asylum applicants marrying nationals while their asylum applications were pending. The rejected asylum applicants had then voluntarily gone home to Cameroon to wait for family reunification from there under existing rules. The source saw this as a sign that rejected Cameroonian asylum applicants were not persecuted when they returned home. If the contrary was the case, they would have been persecuted while they were in Cameroon waiting for their applications for family reunification to be processed. None of the individuals concerned had reported to the representation in Cameroon that they had been persecuted because of their asylum application abroad. The source added that rejected asylum applicants who returned voluntarily were not known to be such in Cameroon. The Cameroonian authorities would not be able to tell whether deported Cameroonians were rejected asylum applicants or had, for example, been deported because their visas had expired.

Another western diplomatic source reported that last year one European country returned nearly 200 people to Cameroon. They were escorted by police, and none of them had reported problems of a political nature in Cameroon. Some were rejected asylum applicants and others had committed minor crimes.

The same source commented that Cameroonians who had left on a false passport and been returned to Cameroon would not be punished as a result. Someone who tried to enter on a false passport would be able to do so without problems (Danish Immigration Service 2001, *Fact-Finding Mission Report on Cameroon 23/1-3/2 2001*, p 38).

In contrast to the assessment by the two government missions above, *African Echo News* reports relying on the Cameroon Human Rights Lawyers and Lawyers Without Borders that:

[...] deported asylum seekers and those ejected from UK and other European states for immigration offences are being tortured and imprisoned, suffering a severe breach of their human rights upon their return to Cameroon. This is based on a current independent enquiry undertaken at the police station in Douala and Yaounde airport,

the detective divisions and the Douala New Bell and Kondingui prisons respectively by the Cameroon Human Rights Lawyers and Lawyers without Borders (L.W.B).

It disclosed that torture is widely used to sanction returned fail asylum seekers whom the regime considered as opponents...

Returned asylum seekers in UK are usually deported with a home office travel document stating reasons for the returned. At times police accompany returnees and hand them to the Cameroon security at the airport.

According to human rights lawyers, a solid network of security has been mounted at airport to track down individuals brought under such condition or bearing Home Office travel documents. Whilst their returned may be subjected to investigation those marked by the police as activist or perpetual opponents to the regime are immediately arrested, tortured and send to prison without access to justice or proper examination of their case.

The findings confirmed that those deported from UK who the government considers as "SCNC" supporters are instantly detained and systematically send to prison after the required appearance before the state prosecutor - if need be. In some situations it takes longer to open a judicial enquiry for a case whose conclusion may take several years. Some detainees in remand wait more than ten years in prison without a judgement. Sometimes their dossiers are reported missing, (LWB) claimed. More than 400 inmates and failed asylum seekers were interviewed during this research in Douala and Yaounde airports and prisons respectively. Amongst them where returned detainees who had supported their asylum claim or immigration applications in UK with evidence that they were fleeing political persecution by the current regime. ('Plights of Returned Asylum Seekers to Cameroon' 2005, *African Echo News* 25 February 2005 ([http://www.africanecho.co.uk/africanechonews\\_25feb2005asylum.html](http://www.africanecho.co.uk/africanechonews_25feb2005asylum.html), accessed 20 June 2006).

In an attempt to reconcile the seemingly conflicting reports, another (previously constituted) Tribunal contacted Mr Njualement Columbus, author of the above article 'Plights of Returned Asylum Seekers to Cameroon' and received the following reply from him:

Cameroon has one of the worst human rights records in Africa. In assessing its human rights situation one has to examine the geo-political climate in the country especially the Anglophone- Francophone disputes which gave birth to the SCNC movement. It is widely believed that most asylum seekers from Britain are from Anglophone Cameroon (Southern Cameroon). Britain was the colonial master, this hugely account for the harsh treatment of returnees believed to be SCNC supporter (Columbus, Njualement 2006, *Reply to Country Information Request CMR30289*, 11 July).

Although this information appears to be somewhat contradictory, the Tribunal is required to determine whether the applicant has a well founded fear of persecution for the reasons that he has outlined. In determining if the applicant's fears are well founded the Tribunal must assess whether there is a real chance of persecution. A "real chance" is one that is not remote or insubstantial or a far-fetched possibility. A

person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 percent.

The information referred to above from the Danish Immigration Service Fact-Finding Mission to Cameroon indicates that in some cases Cameroonian officials may detain returning asylum seekers for questioning if they returned to Cameroon in handcuffs or accompanied by police. It is also noted in that report that ordinarily Cameroonian officials would not be able to determine whether a returnee is a failed asylum seeker or someone who has been deported for other reasons.

In the case of the applicant, as a member of a particular social group being Cameroonian members of the Political Party Organisation who subsequently apply for asylum in Australia, the question is whether she would be subject to detention, arrest or other harassment on arrival at Town B Airport, Cameroon. She has claimed to have a profile as a member of this particular social group as a low level activist “sensitizer” and propagandist for the Political Party Organisation movement. The Department has claimed that her low profile would not indicate that she would be a person of adverse interest to the Cameroonian authorities. On the information before the Tribunal, and particularly the information referred to above from the Danish Immigration Service Fact-Finding Mission to Cameroon, the Tribunal is unable to conclude that the possibility that the applicant would be detained and questioned by authorities upon her return to Cameroon is remote or far-fetched.

The Tribunal, therefore, accepts that if the applicant returned to Cameroon now or in the reasonably foreseeable future there is a real chance that she would be detained and questioned by Cameroonian authorities. The Tribunal finds that the reason why she would be detained and questioned is because of her membership of a particular social group being Cameroonian Political Party Organisation members who subsequently apply for asylum in Australia.

Given the Tribunal’s finding that there is a real chance that the applicant may be detained and questioned by Cameroon authorities upon return to Cameroon because of her membership of this particular social group, the Tribunal must, therefore, determine whether there is a real chance that she may suffer serious harm within the meaning of the Convention whilst in detention.

The latest report from the United States Department of State about human rights practices in Cameroon states clearly that the Cameroon “government's human rights record remained poor, and the government continued to commit numerous serious human rights abuses”. Amongst the human rights abuses and violations identified in that report are numerous unlawful killings by security forces; regular torture, beatings, and other abuses of persons, particularly detainees and prisoners, by security forces; impunity among the security forces; and harsh and life-threatening prison conditions. (US Department of State, *Country Reports on Human Rights Practices 2005 - Cameroon*, 8 March 2006)

The following comments from the same report highlight the arbitrary and capricious nature in which the Cameroonian security forces, including the police, operate and identify the regular use of torture as an interrogation method against detainees:

Unlike in the previous year, there were no reports that government agents committed politically motivated killings. However, throughout the year security forces continued to commit unlawful killings, including killings resulting from torture and the use of excessive force.

Prisoners died in custody during the year due to torture and abuse by security forces, harsh prison conditions, and inadequate medical treatment (see section 1.c.). For example on February 8, Emmanuel Moutombi, a banker, died after being tortured in the Bonanjo and Akwa-Nord gendarmerie offices of Douala. After police arrested Moutombi on embezzlement charges on January 17, gendarmes at the Bonanjo station tortured him. On January 20, after Moutombi continued to refuse to plead guilty, the Bonanjo gendarmes transferred him to Akwa-Nord, where gendarmes tortured him again. The following week, an investigating magistrate ordered Moutombi to be transferred to a hospital, where he died. On February 16, the minister of defense suspended the six officers allegedly involved in torturing Moutombi and ordered their arrest and transfer to Yaounde. The officers were: Barthelemy Munguen, Leon Tchapi, Jean-Claude Menanga Ahanda, Ndogmo, Pierre Likeng Ndjemba, and Desire Nti Essimi. On September 27, a military tribunal reclassified the charges against four of the officers. The hearing was postponed, and as of year's end, no new date had been set.

During the year police used excessive force, including deadly excessive force, on a number of occasions. There were numerous incidents where police beat and shot suspects, many of whom were fleeing the police. The government took more steps to investigate and prosecute officers who used excessive force than in previous years.

Some disappearances of persons who were in the custody of security forces in past years may be attributed to summary executions by security forces either in Douala or the northern regions; in these instances, bodies rarely were found, but the suspects were presumed dead.

### c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The law prohibits such practices; however, there were credible reports that security forces continued to regularly torture, beat, and otherwise abuse prisoners and detainees. In the majority of cases of torture or abuse, the government rarely investigated or punished any of the officials involved; however, in at least one case during the year, gendarmerie officers who tortured a citizen to death were detained and investigated (see section 1.a.). There were reports that security forces detained persons at specific sites where they tortured and beat detainees (see section 1.a.). Security forces also reportedly subjected women, children, and elderly persons to abuse. Numerous international human rights organizations and some prison personnel reported that torture was widespread; however, most reports did not identify the victim because of fear of government retaliation against either the victim or the victim's family. Most victims did not report torture for fear of government reprisal or because of ignorance of or lack of confidence in the judicial system.

In New Bell and other nonmaximum security penal detention centers, prison guards inflicted beatings, and prisoners were reportedly chained or at times flogged in their cells. Authorities often administered beatings in temporary holding cells within a

police or gendarme facility. Two forms of physical abuse commonly reported by male detainees were the "bastonnade," where authorities beat the victim on the soles of the feet, and the "balancoire," during which authorities hung victims from a rod with their hands tied behind their backs and beat them, often on the genitals.

Security forces continued to subject prisoners and detainees to degrading treatment, including stripping, confinement in severely overcrowded cells, and denial of access to toilets or other sanitation facilities. Police and gendarmes often beat detainees to extract confessions or information on alleged criminals. Pretrial detainees were sometimes required, under threat of abuse, to pay "cell fees," a bribe paid to prison guards to prevent further abuse.

During the year there were reports that persons in police and gendarmerie custody died as a result of torture (see section 1.a.). (US Department of State, *Country Reports on Human Rights Practices 2005 - Cameroon*, 8 March 2006)

This information clearly indicates that a person detained by security forces in Cameroon would be at some serious risk of being harmed and tortured whilst in detention. The nature and extent of such harm and torture clearly would amount to the type of serious harm that constitutes persecution for the purposes of the Convention. The Tribunal has found that there is a real chance that the applicant would be detained upon return to Cameroon and given the information about the treatment of detainees and prisoners by security forces in Cameroon, the Tribunal finds that if the applicant were to return to Cameroon now, or in the reasonably foreseeable future, there is a real chance that she would face persecution for her membership of a particular social group being Cameroonian Political Party Organisation members who subsequently applied for asylum in Australia.

As the applicant fears harm from the security forces in Cameroon, the issue of effective state protection is not relevant in this matter. Likewise, as these security forces operate across the whole of Cameroon and because the applicant's fears of detention arise from the moment she arrives at any Cameroonian port or airport, the issue of relocation within Cameroon is not relevant in this matter. There is no evidence before the Tribunal to indicate that the applicant has any legal right to enter and reside in any other country apart from Cameroon.

The Tribunal finds that this constitutes serious harm amounting to persecution. The Tribunal accepts that the applicant has been persecuted in the past and faces a real chance of persecution in the foreseeable future by the government of Cameroon and the officials of the ruling CPDM Party because of her political opinion and imputed political opinion derived from her active political engagement.

As the persecution which the applicant fears (should she return to Cameroon) is both authorized and perpetrated by the ruling government and its police and security forces, the Tribunal finds that no effective state protection in accordance with international standards would be afforded the applicant anywhere in Cameroon.

For the same reason the Tribunal does not consider that there is anywhere in Cameroon where the applicant could be safe from possible political persecution and,

therefore, there is nowhere in Cameroon where it would be reasonable in all the circumstances for her to relocate.

The Tribunal finds that the applicant, should she return to Cameroon now or in the reasonably foreseeable future, faces a real chance of serious harm on account of her political and imputed political opinion which engages a Convention nexus and that she, therefore, does have a well-founded fear of persecution for a Convention reason. The Tribunal finds that effective state protection is not available to the applicant in Cameroon and that she would be unable to relocate anywhere within Cameroon.

## **CONCLUSIONS**

The Tribunal is satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore, the applicant satisfies the criterion set out in s.36(2) for a protection visa.

## **DECISION**

The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.