

0808262 [2010] RRTA 233 (17 March 2010)

DECISION RECORD

RRT CASE NUMBER: 0808262

DIAC REFERENCE(S): CLF2008/123353

COUNTRY OF REFERENCE: Cameroon

TRIBUNAL MEMBER: Linda Kirk

DATE: 17 March 2010

PLACE OF DECISION: Melbourne

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

1. 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).
2. The applicant, who claims to be a citizen of Cameroon, arrived in Australia [in] July 2008 and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa [in] August 2008. The delegate decided to refuse to grant the visa [in] November 2008 and notified the applicant of the decision and his review rights by letter dated [on the same date].
3. 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.
4. The applicant applied to the Tribunal [in] December 2008 for review of the delegate's decision.
5. 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

6. 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.
7. 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 the 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).
8. Further criteria for the grant of a Protection (Class XA) visa are set out in Part 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

9. 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:

owing 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.

10. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.
11. 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.
12. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
13. 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.
14. 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.
15. 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.
16. 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.
17. 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.

18. 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

19. 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.

Protection Visa Application

20. The applicant is a [age deleted: s.431(2)] male who was born in Douala, Cameroon on [date deleted: s.431(2)] In his application form he claimed that he was of Bamileke ethnicity and of Christian-Protestant religion. He claimed that he was engaged and stated that in his tribe he was considered to be married because he had paid a dowry to his fiancée's parents. He departed Cameroon [in] July 2008 and came to Australia on a visitor visa [in] July 2008, having travelled in transit through Ethiopia and Thailand. He stated that he had lived at an address in Douala from birth until September 2006 and had then lived at another address in Douala from September 2006 until March 2008. He claimed to have completed 17 years of schooling in Cameroon from 1986 to 2003 and to have also obtained trade qualifications in [occupation deleted: s.431(2)] in 2003 and in 2006. He claimed that he had worked as a [occupation deleted: s.431(2)] [in] Douala from August 2003 to March 2008 and then to have worked as a [occupation deleted: s.431(2)] teacher from March 2008 to July 2008.
21. In his application for protection the applicant stated that he had a well founded fear of persecution in Cameroon because of his political opinion and he feared arrest, detention and torture in Cameroon. He claimed that he feared harm from the authorities in Cameroon because of his political opinion and political involvement. He did not believe he would gain protection from the authorities in Cameroon if he returned to that country because he feared persecution from those authorities. He stated that he would provide a detailed statement at a latter date.
22. In a statutory declaration made [in] September 2008 the applicant claimed that he became a member of the Social Democratic Front (SDF) in Cameroon in 2000, a few months before the death of his father. He claimed that his father had also been a member of the SDF, and the applicant had been exposed to political issues in Cameroon through his father's involvement. He recalled attending a demonstration after what he described as being rigged presidential elections in 1992. When his father fell ill and could not continue in the SDF the applicant felt a responsibility to join the SDF himself and had dreams of becoming a leader to fight against the Government. He claimed that he joined the Soboum subsection of the SDF in his local district and would attend meetings of his local cell of around 150 members. He stated that not all members were active but around 70 would attend each meeting. There were 10 leaders at the meetings but everyone got the chance to participate.
23. The applicant claimed that he had also joined [Group A] which was a socio-political organisation that supported the work of a human rights and democracy activist named Mboua Massock. He claimed that he was responsible for external relations in this group and would

liaise with other youth circles to organise social or employment activities and would also meet with Mboua Massock to support his political struggle.

24. The applicant claimed that Cameroon was a dictatorship without human rights and that you could not express your political opinion without being surveilled and harassed by the police or the authorities. He claimed that his political party protested against the President, against changes to the Constitution and against high levels of unemployment. He claimed he was the only member of his family who worked and his income had to support his mother, his siblings and his fiancée. He participated in demonstrations and marches organised by the SDF and had been harassed by police during these demonstrations, but had not been discouraged from his political participation. He claimed he would be arrested when riding his motorbike and would be taken to the police station where he would be assaulted.
25. The applicant claimed that he was arrested by police in the lead up to the presidential elections in 2004 when he had organised an illegal meeting against the President and the Government. He claimed that 10 people from the municipality had come to tell his group they could not hold their meeting and a fight started when they knocked over some chairs. The police came and arrested the applicant and two others from his group. He claimed they were whipped by the police using belts, had their shoes taken off, were tortured and had their knees put in boiling sand. He stated that they were released that night after some SDF comrades negotiated their release, and he added that he thought they had paid a bribe to secure release.
26. The applicant claimed that around 2005 he was at a public meeting at [Location A] The police came and there was a confrontation that turned into a fight, and he was taken to the police station with a dozen others. He claimed that they were beaten and tortured but were again released that night after SDF colleagues negotiated their release.
27. The applicant claimed that he had been tortured many times but never as badly as [in] February 2008 in Douala, where a meeting had been organised by the regional president of the SDF. This meeting was to protest proposed changes to the Constitution and consisted of a march and a public demonstration. A group of police surged at the demonstrators and when the group refused to move, the police fired at them and the group started throwing stones at the police. One member of the group was killed and this intensified the battle. After two hours, the police forced the group into military trucks. The applicant was in a truck with around 50 people and they were taken to an abandoned house around 15 kilometres outside Douala, where the police took all of their details. He claimed that at this house he was severely beaten and tortured and that he saw a number of people killed because they tried to fight back. There were 20 policemen with bullet proof vests and guns guarding the house, but two days later many of them left to attend a large riot in town leaving only 6 remaining to guard the captives. This provided an opportunity to escape so the group got together and ran into the bush. He ran all night through the bush with around 20 others and he eventually made his way to his mother's house. His mother was angry that he had been involved in politics.
28. The applicant claimed that [on a date in] February 2008 he went out to buy bread and many locals came up to him asking how he had escaped and also asking about the whereabouts of their family members who had been arrested with him. The applicant claimed that he was not worried that the police would come looking for him because in Cameroon many people were detained then released after demonstrations, so he stayed at his mother's house and avoided the riots that were going on in Cameroon at the time. After two weeks he felt things were calmer and did not believe the police would arrest him so he returned home and started working again.

29. The applicant claimed that around 5 days after he returned home to live with his fiancée, the police came to his house looking for him. He told his fiancée to tell them that she had not seen him and he then went through a hole in the ceiling into his neighbour's place. The neighbour helped him to leave through the back gate and he found a place to hide between two houses, where he stayed all night. The next day he called his fiancée on the mobile phone and met her in the park. She claimed that the police had forced their way into the house and had taken her away where she was severely beaten and tortured. She claimed to him that she had provided the police with the addresses of his family home, his work address and the details of friends he visited regularly. He claimed that his fiancée had also told him that she was pregnant, and then left to go to her parents' house. The applicant went to a church to pray and then found [Reverend 1] who gave him a room in the Priory. The applicant called his mother and told her how serious his situation was.
30. The applicant claimed that because he could not go to work he started to assist the local children, teaching them [a trade] in a centre within the church grounds. He claimed that whilst he was staying in the church the police had gone twice to his fiancée's workplace, had taken her to the station asking about his whereabouts and had beaten her. He claimed that the police also went to his mother's house to search for him.
31. The applicant claimed that the priest told him about World Youth Day (WYD) being held in Australia and the applicant proposed to hold some concerts and special events to raise funds to pay for parishioners to attend this event. The group registered their name on the WYD website and the priest used the applicant's name for registration purposes. The applicant told the priest that a visa to Australia would help him to escape his problems and he also approached a local businessman, [Mr A], to help him. His mother brought his belongings and some money to the church. The priest and [Mr A] then organised his visa and travel arrangements.
32. The applicant claimed that whilst he was hiding at the church, he was in contact with his fiancée by telephone but did not see her or tell her where he was because he did not want to put her life at risk. His mother knew where he was because she would go to church every Sunday. He was taken to the airport by [Mr A] in a car with the priest, the applicant's mother and his sister. His fiancée saw him at the airport to say goodbye. The applicant was able to go through passport control without any problems. He stated that the immigration officials were different to the police and because he was not high profile, he did not think his name would necessarily be at the airport as the police would not think he had money to go overseas. He claimed that in Africa, information systems were not very well developed so if you were not high profile you would not be picked up at the airport.
33. Since arriving in Australia the applicant claimed that the police had taken his fiancée for interrogation and had beaten her so severely that she had a miscarriage. They had later warned her that they would continue to harass her until she told them where the applicant was.
34. The applicant claimed that if he returned to Cameroon he feared that he would be imprisoned and tortured because of his political opinion and if he was imprisoned he was not certain he would come out alive, which was why he was seeking a protection visa.
35. The applicant's representative provided the Department with photocopies of the following documents:

- The applicant's SDF membership card from 2003 stating that he had been a member since 2000.
- A membership card for [Group A].
- A copy of the applicant's birth certificate and certificate of authenticity (written in French).
- The applicant's results from [a trade] Qualification Test dated [in] November 2007.
- Two documents written in French from [Employer 1] titled "Certificat de Travail" and dated [in] June 2004 and [in] August 2004 respectively.
- Two documents written in French from [Employer 1] titled "Contrat de Travail" and dated [in] October 2003 and [in] May 2004 respectively.
- A document written in French from the "Office of Baccalaureat du Cameroon" dated [in] August 2003 and titled "Releve de Notes".

Delegate's Decision

36. In a decision dated [in] November 2008, the delegate did not accept that the applicant had a real chance of facing persecutory treatment if he returns to Cameroon now or within the reasonably foreseeable future.
37. The delegate did not accept that the applicant would be specifically targeted by the Cameroonian authorities on return because of his previous involvement with the SDF and/or his participation in the February 2008 demonstration.
38. The delegate found that had the applicant been of adverse interest to the Cameroonian authorities as claimed he would not have been able to obtain his passport in March 2007 and to legally depart Cameroon for Australia in July 2008 without any hindrance.
39. The delegate found that the applicant is no more than an ordinary SDF member who had led a normal, ordinary working life in Cameroon.

Other Material

40. The Tribunal also had access to the applicant's application for a tourist visa to visit Australia in relation to WYD. The visitor application form lists the applicant's employment as a [trade] instructor at a youth training centre in Soboum Parish. In answer to a question "how long have you been employed by this employer/business" the figure "2004" is listed under the term "years" and the figure "8" is listed under "months". The typeset parts of the form are written in both English and French.
41. Together with the tourist visa application form the applicant submitted a number of documents including his registration of his personal details on the WYD website. This document indicates that it was printed [in] November 2007.

Application for Review

42. The applicant was represented in relation to the review by his registered migration agent.

43. In a statutory declaration dated [in] February 2009 the applicant stated that although the SDF was legal in Cameroon the Government did not accept them and did not allow them to demonstrate. He claimed that he was not scared simply because he was an SDF member but was scared because of his involvement in the incident [in] February 2008, and claimed that he was at risk of serious harm. He claimed that he had witnessed police killing people in front of him and that he was not supposed to escape alive on that day because they wanted to kill him. He feared that because he had seen these things the Government will see him as a threat to them. He had also witnessed the police kill people at the demonstration as well as the time when he was in the bush and was escaping. He claimed that the Government will want to punish anyone who they think was involved in this and because he was there and escaped he would be seen as a target.
44. The applicant claimed that in March 2008 the Government was picking up anyone from the streets and they disappeared without charge or trial. He feared this would happen to him as well because the Government had already tried to find him and had assaulted his fiancée a number of times, causing her to miscarry their baby. He claimed that at some point in time he would be found by the police and the Government in Cameroon as he could not avoid coming into contact with the authorities at some point and he would then be finished because of his political background and because he was involved in, and witnessed things during the incident [in] February 2008.
45. The applicant claimed that in Cameroon people were threatened and there was no freedom of expression or association. A television station had been closed down for showing footage of police beating protestors, which demonstrated how the Government cracked down and controlled anything or anyone that was against them. He claimed that he wanted the Tribunal to know that he faced a real risk not because he was a big leader of the SDF but because he will be implicated in the killings of the police in the demonstrations and because he witnessed the police killing demonstrators.
46. In a submission dated [in] February 2009 the applicant's representative summarised the applicant's claims and provided arguments and country information in support of the applicant's claims. The Tribunal has read and considered this submission prior to making its decision in this matter. In addition to the claims made by the applicant, the representative claimed that the applicant would also have a well founded fear of persecution if he returned to Cameroon because of his status as a failed asylum seeker. The representative provided some country information in relation to the treatment of such failed asylum seekers in Cameroon and referred to some recent Tribunal decisions in relation to this matter.
47. In a letter dated [in] February 2009, [Ms B], Counselling Program Manager/Psychologist, discussed her assessment and counselling services with the applicant from September 2008 to the date of the letter. She stated that the applicant initially presented with moderate to severe depressive features, mood swings and generalised anxiety. She claimed that he had become suicidal when he received his decision from the Department but had since recovered after receiving treatment and medication, although he would need to continue with medium term psychiatric treatment. She restated some of the claimed experiences of the applicant in Cameroon but did not make any diagnosis in relation to the applicant.

Tribunal Hearing

48. The applicant initially appeared before the Tribunal [in] February 2009 to give evidence and present arguments. The applicant desired that several witnesses give witness evidence on his

behalf from Cameroon, but the applicant's representative submitted that the scheduled time of the hearing, 11am, was not convenient for these witnesses due to the time difference between Melbourne and Cameroon. It was therefore agreed to adjourn the hearing to [another date in] February 2009 at 2pm to allow the applicant to give evidence and present arguments, as well as allowing the proposed witnesses to give oral evidence to the Tribunal by telephone from Cameroon.

49. The applicant then appeared before the Tribunal [in] February 2009 to give evidence and present arguments. The applicant's representative, [name deleted: s.431(2)] also attended the hearing. The witnesses, [Reverend 1], [Witness 1] and [Mr A], also gave oral evidence to the Tribunal by telephone from Cameroon. Despite several attempts the Tribunal was unable to contact the proposed witness, [Witness 2], on the telephone number provided by the applicant. The Tribunal hearing was conducted with the assistance of an interpreter in the French and English languages.
50. The applicant's representative provided the following documents:
 - Signed copy of psychological report by [Ms B] dated [in] February 2009;
 - Scanned copy of SDF membership card for [Witness 1];
 - Copy of Amnesty International Report "Cameroon: Impunity Underpins Persistent Abuse" January 2009.

Evidence of the Applicant

51. At the hearing, the applicant confirmed his personal details and stated that he came to Australia [in] July 2008 because he was afraid and because he had problems in Cameroon. When asked what his problems in Cameroon were, he stated that he had been arrested by the police and after his arrest he had tried to escape. He claimed that he sought refuge after this escape with a [Reverend 1] who let him stay in his church and told him about the opportunity to go to Australia as a refugee.
52. The applicant claimed that he had been arrested in Cameroon [in] February 2008 after participating in a demonstration organised by the principal opposition party in that country. The applicant claimed that he was a member of that party and that in Cameroon it was not permitted to engage in political demonstrations. He stated that the demonstration he was involved in was protesting against the President's attempts to change the constitution so that he could get re-elected. He claimed that during this demonstration he was arrested together with a group of other protesters and was taken to the bush. He claimed that he escaped from the bush after his arrest and was taken in by the pastor.
53. The applicant claimed that he obtained his visa to come to Australia in order to participate in World Youth Day (WYD) which was held in Sydney in July 2008. He stated that he did attend this gathering in Sydney. The applicant stated that he first found out about WYD when the pastor told him about it. He confirmed that he found out about this event after the demonstration in February 2008 and repeated that he was certain he found out about it after February 2008. He stated that he could not remember exactly when he had lodged his application to come to Australia but claimed that it was sometime around March 2008 or April 2008. He stated that he also officially registered to participate in WYD around the same

time. He confirmed that he had not registered in any way to attend WYD at any time prior to the demonstration in Cameroon in February 2008.

54. The applicant claimed that when he applied to come to Australia he was working as a [tradesman] in a [type deleted: s.431(2)] workshop in Cameroon. When asked if he was still working at this workshop around March/April 2008, he stated that he was not working there at the time because he was having difficulties at the time. He stated that he did not have a job around March/April 2008 and he had been embraced by the pastor and the church community so he would assist the children living in the church's shelter by teaching them how to [perform his trade]. He stated that these children were abandoned children who were being protected by the church and claimed that he was not paid for this work. When asked if he had ever been paid to work for the church, he stated that anything he did for the church was in a voluntary capacity only.
55. The Tribunal pointed out to the applicant that in his application for protection he had stated that he had been employed at the church's centre from March 2008 to July 2008 and that he had been paid 20,000 Cameroonian Francs per month for this work. The applicant stated that he did not receive a salary but the pastor would give him some money to help him with food and other expenses. He claimed that it was not really a job for him to earn money.
56. The applicant claimed that he had worked at [workplace deleted: s.431(2)] for around 4 years until March 2008. He claimed that he stopped working there around the time the police started to look for him after he had escaped from custody, which was around the time he sought refuge with the pastor.
57. The applicant stated that if he returned to Cameroon now or in the reasonably foreseeable future he feared that he would be arrested and thrown into jail because of his participation in the demonstrations in Cameroon in February 2008. He claimed that there had been deaths during these demonstrations after clashes between the police and demonstrators.
58. The applicant confirmed his claims that he had started the process to come to Australia for WYD after his participation in the demonstrations in February 2008. He also confirmed that at the time of these demonstrations he had been working at [workplace deleted: s.431(2)].
59. At this point in the hearing, pursuant to section 424AA, the Tribunal stated to the applicant that there were significant differences between some of his answers at the hearing and the information he had provided in relation to his visa application to come to Australia for WYD. The Tribunal pointed out that these differences or contradictions were in relation to when he had actually worked at the church training centre and in relation to when he had actually registered his interest in participating in WYD. The Tribunal pointed out that the contradictory evidence over time may be a reason for affirming the decision under review.
60. The Tribunal stated to the applicant that in his visa application form to come to Australia for WYD he had stated that he was employed at the church training centre. In the part of the application form where it asked how long he had been employed there, the figures "2004 08" were written. The Tribunal stated that although not directly responsive to the question asked, this answer strongly indicated that the applicant was claiming he had been employed by the centre from August 2004 onwards. The Tribunal stated that this would directly contradict the applicant's claims at the hearing that he had only worked at this centre from March 2008 onwards and that his employment was only on a voluntary basis.

61. The applicant asked for the opportunity to explain. He claimed that before he went to the pastor to seek protection he would do this work in his spare time but not to earn money. He stated that he would work at the [workplace deleted: s.431(2)] and in his spare time he would help out at the church training centre.
62. The Tribunal stated to the applicant that the question on the visa application form clearly asked about employment rather than what he did in his spare time. The applicant responded that his understanding of employment was that you got paid. On the basis of his claimed understanding, the Tribunal stated that it would be illogical for the applicant to list his work at the centre as employment as he clearly had stated to the Tribunal that it was voluntary work and he had not been paid for it. The applicant responded that it was voluntary before he sought refuge from the pastor but after that time he would receive gifts and money as he was staying at the pastor's house.
63. The Tribunal pointed out to the applicant that together with his visa application form he had submitted to the Department his internet registration form for WYD. This internet registration form for WYD was clearly dated [on a date in] November 2007 at the bottom of the form and this date clearly predated the events of February 2008. The Tribunal stated that this evidence directly contradicted the applicant's claims at the hearing that he had only found out about WYD and had only registered for WYD after February 2008.
64. The applicant responded by stating that he did not understand what was happening because it was only after he went to the pastor that he found out about WYD. The Tribunal provided a copy of the relevant document to the applicant and the representative.
65. The Tribunal stated to the applicant that the registration form for WYD was clearly dated [in] November 2007 and that the contradictory evidence the applicant had provided at the hearing about his registration for WYD would tend to indicate that the entirety of his claims for protection had been fabricated and that the applicant had never suffered any of the problems he claims to have suffered in Cameroon.
66. The applicant responded that he was telling the truth and that he only found out about WYD after he went to seek refuge with the pastor, which was after the demonstrations of February 2008. The Tribunal asked the applicant why it should accept this claim given that the registration form indicated the reverse was true. The applicant responded that he was not in a situation to play with his safety and that what he was now saying was absolutely true.
67. The Tribunal stated to the applicant and the representative that the sequence of events was critical to the applicant's claims and that the contradictory evidence before the Tribunal about this sequence of events cast doubts on the entirety of the applicant's claims, including his claimed membership of the SDF. The Tribunal offered the applicant and the representative a natural justice break, which they accepted.
68. After this break, the applicant stated that he was a little confused because what he was saying at the hearing was the truth about his life and he did not want to do anything to jeopardise his life. He claimed that he was confused about the date on the registration document. When asked why he was confused, the applicant stated that he was confused because what he was telling the Tribunal did not correspond with the date of the document. The Tribunal pointed out that it was this lack of correlation that was causing it concern in relation to the applicant's claims. He responded that he did not know what to say.

69. The representative stated that she had no explanation for the date on the form. She stated that the applicant had consistently claimed that he had applied to attend WYD after February 2008 so it was not something that could be explained. She suggested that the pastor, in his evidence, may be able to clarify matters. The Tribunal agreed with the representative that it would provide her with 14 days after the hearing for any further submissions in relation to the date on the document or any other matters.
70. The applicant then stated to the Tribunal that the denomination of his church in Cameroon was Evangelist. When asked why an Evangelist would attend WYD, which was a Catholic event, he stated that he attended because it was an international event and his pastor had told him it was open to everyone to attend. The Tribunal stated that many Evangelist churches were heavily and openly critical of the Pope and the Catholic Church and asked the applicant why a member of such church would attend an event that was focused almost exclusively on the Catholic Church and on the attendance of the Pope. He responded that everyone believed in the same God and used the same Bible. He claimed that many Catholics would attend events at his church in Cameroon and that he found there was an affinity between the churches.

Evidence of [Reverend 1]

71. The witness, [Reverend 1], stated that he was the pastor at the applicant's local church and claimed to know the applicant since childhood. He stated that the applicant had been sought by the police after a general strike and demonstrations in Cameroon. He claimed the police had traced the applicant to his family home so the applicant sought refuge at the church [around] March 2008. He claimed that the applicant stayed at the church for around 5 months and started to help with the abandoned children who lived within the church. The Tribunal asked the witness if the applicant had ever worked with these children in the church's centre at any time before the applicant sought refuge in the church in March 2008. The witness replied "not in my parish".
72. The witness stated that it was decided that the applicant would come to Australia after the pastor received information about WYD in May 2008. He claimed he discussed it with the applicant after he received the information in May 2008 and added that another person also was considered for the trip but this person eventually did not go.
73. The witness confirmed that he registered the applicant for attendance at WYD and stated that he did this on his computer at the parish. He claimed that he made this registration on his computer around May 2008 or June 2008. He stated that it was either at the end of May 2008 or at the beginning of June 2008.
74. The representative stated that she had no questions or issues that she wanted to be raised with this witness.

Evidence of [Witness 1]

75. The witness [Witness 1], stated that he was the president of a local branch of the SDF in Cameroon and claimed that the applicant was a member of this branch or cell. He stated that the applicant had been a member since 2000 and claimed that the applicant had been in charge of organising material "needed for the reunion" When asked what reunion he was referring to, the witness stated that as an example [in] February 2008 there had been problems because of too much repression.

76. The Tribunal pointed out to the witness that his evidence was extremely vague and he had not answered the Tribunal's question about what reunion he had been referring to. The witness responded that they had many problems because of inflation and rising prices.
77. The Tribunal asked the witness what it was he wanted to say about the applicant. The witness responded that after [a date in] February 2008 he lost sight of the applicant. When asked what happened to the applicant after this time, the witness stated that the repression was of a very high level and families were still living in fear because some people had seen military personnel shooting people. He stated that prices were rising in the country as well.
78. The Tribunal stated that the evidence of the witness appeared to be vague, general and not responsive to the Tribunal's questions, which would make its evidentiary value very limited. The representative stated that the telephone line was difficult and that from her experience as a French speaker she found the accent of the witness to be heavy. The representative stated that she would prefer to deal with this witness by written statement rather than by continuing to take evidence at the hearing. The Tribunal agreed with this course of action.

Evidence of [Mr A]

79. The witness, [Mr A], stated that the applicant was the son of one of his friends who has passed away. He claimed that he had heard the applicant had some problems with police because of events at a demonstration and he had to seek refuge with the pastor. The witness stated that he knew of these problems only because the pastor had told him about them after the event. The witness claimed that he helped pay for the applicant's trip to Australia. He stated that he did this in June 2008.
80. Despite a number of attempts, the Tribunal was unable to contact the proposed witness, [Witness 3], on the telephone number provided by the applicant.
81. The Tribunal then stated to the applicant that it has some concerns, pursuant to section 424AA in relation to the conflicts between the applicant's evidence at the hearing and the pastor's witness evidence at the hearing about when he had done voluntary work for the church centre for abandoned children. The applicant confirmed his earlier claim that he had worked with the abandoned children at the church centre from 2004 onwards. The applicant was asked why, if this was true, the pastor had stated in his own witness evidence that the applicant had never worked in the pastor's parish with the children before March 2008. The applicant responded by saying that the pastor was busy so he may have forgotten. When the Tribunal pointed out to the applicant that the question to the pastor was clear and direct as was the pastor's response, the applicant stated that he would confirm his own claims and did not know why the pastor said what he had said.
82. The Tribunal stated to the applicant that the contradictory evidence at the hearing between him and the pastor on this matter raised serious credibility issues relating to all of the applicant's claims about working at this church centre. The applicant stated that he had problems too because he did not understand why the pastor had forgotten. The Tribunal asked the applicant if it was possible that the answer he provided at the hearing about doing volunteer work since 2004 had been concocted to cover up the failings in his claims over time about when he had worked at the [workplace deleted: s.431(2)] and when he had worked at the church centre. The applicant responded that this was not the case and claimed that he had been doing the work at the centre on a voluntary basis. He claimed he could not understand why the pastor had stated that the applicant had not worked there prior to March 2008.

83. The representative stated that in her opinion the corroborating evidence from the witnesses at the hearing generally supported the applicant's claims and only the documents were a problem. She stated that she would provide a further submission within two weeks.
84. The representative also stated that there was conflicting country information about what would happen to the applicant if he returned to Cameroon from Australia as a failed asylum seeker. The Tribunal stated that based on the country information before it, including that from the representative, it appeared that the applicant may be questioned on arrival in Cameroon but that if he was found not to have an adverse police profile in Cameroon there appeared to be no risk that he would be detained or harmed in any other way simply because he was a failed asylum seeker. The Tribunal agreed that if the applicant did have an adverse police profile then there was a real risk that he would be detained after routine questioning upon arrival at the airport. The representative stated that she was in general agreement with that assessment.

Post-Hearing Correspondence

85. In a submission dated [in] March 2009, the applicant's representative addressed issues raised at the hearing. Attached to the submission were the following documents:
- Record of conversation with [Reverend 1] dated [in] February 2009;
 - Copy of email by [Reverend 1] dated [in] February 2009 and certified translation;
 - Statutory declaration of [Mr D], Information Systems Analyst dated [in] March 2009.
86. In her submission, the applicant's representative argued that there was no inconsistency between the evidence given by [Reverend 1] at the hearing in relation to the applicant's work at the Centre for Youth and the information provided by the applicant about his employment in his visa application. She argued that [Reverend 1] was not directly asked whether the applicant had *voluntarily* worked at the youth centre prior to March 2008. Had he been asked, [Reverend 1] would have confirmed that the applicant had worked at the youth centre in a voluntary capacity since August 2004, which is consistent with the applicant's claims in his visa application.
87. In relation to the date at the bottom of the World Youth registration page which was included with the applicant's visa application, the applicant's representative argued that this date cannot be relied on as accurate for reason that the date on computers can readily be changed and will re-set in the event of a power outage. Accordingly, she argued that the applicant's credibility should not be impugned on the basis of one document on which the date is unreliable and that this document should not form the basis for rejecting the whole of the applicant's claims in relation to his fears of persecution on return to Cameroon.
88. [In] July 2009 the Tribunal wrote to the applicant advising him that the Tribunal Member was no longer available to review his case and that another Tribunal Member will complete the review.

INDEPENDENT COUNTRY INFORMATION

89. The Tribunal has had regard to independent country information relating to the political and human rights situation in Cameroon, as set out below.

Human Rights in Cameroon

90. The following information comes from the US Department of State's Country reports on Human Rights Practices for 2008 (Washington DC, 2009):

Cameroon, with a population of approximately 18 million, is a republic dominated by a strong presidency. The country has a multiparty system of government, but the Cameroon People's Democratic Movement (CPDM) has remained in power since it was created in 1985. The president retains the power to control legislation or to rule by decree. In 2004 CPDM leader Paul Biya won re-election as president, a position he has held since 1982. The election was flawed by irregularities, particularly in the voter registration process, but observers concluded that the election results represented the will of the voters. The July 2007 legislative and municipal elections had significant deficiencies in the electoral process, including barriers to registration and inadequate safeguards against fraudulent voting, according to international and domestic observers. 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 human rights abuses, particularly following widespread February riots to protest increased food and fuel costs. Security forces committed numerous unlawful killings. Security forces also engaged in torture, beatings, and other abuses, particularly of detainees and prisoners. Prison conditions were harsh and life threatening. Authorities arrested and detained Anglophone citizens advocating secession, local human rights monitors and activists, persons not carrying government-issued identity cards, and other citizens. There were incidents of prolonged and sometimes incommunicado pre-trial detention and infringement on citizens' privacy rights. The government restricted citizens' freedoms of speech, press, assembly, and association, and harassed journalists. The government also impeded citizens' freedom of movement. Other problems included widespread official corruption; societal violence and discrimination against women; female genital mutilation (FGM); trafficking in persons, primarily children; and discrimination against pygmies, ethnic minorities, indigenous people, and homosexuals.

There were no reports that the government or its agents committed politically motivated killings; however, throughout the year security forces continued to commit unlawful killings. There were more of such reports than in the previous year and the government rarely prosecuted officers responsible for using excessive force. The rise of unlawful killings by security forces was mainly attributable to the armed forces' reaction to the violent unrest that gripped Douala and dozens of other cities, sparked by a combination of political and economic frustrations. The government reported at least three unlawful security force killings during the year.

During the February riots, which spread to 31 localities including Yaounde and Douala, and the subsequent government crackdown, security forces shot and killed demonstrators and rioters. While the government reported 40 persons killed, nongovernmental organizations (NGOs) such as La Maison des Droits de l'Homme, stated that security forces killed over 100 persons.

The constitution and law prohibit such practices; however, there were credible reports that security forces tortured, beat, and otherwise abused prisoners and detainees, including demonstrators and a human rights worker arrested during the February riots. The government rarely investigated or punished any of the officials involved.

In a March 5 interview with La Nouvelle Expression newspaper, barrister Joseph Lavoisier Tsapy, a lawyer in West Region and a member of the Liberty and Human Rights League, described the treatment that security forces inflicted on individuals arrested during the February riots. Security forces repeatedly stripped, beat, and dumped detainees into ashes

from burned tires and broken glass, resulting in numerous injuries. At year's end the Liberty and Human Rights League and other human rights organizations, in association with the parents and families of the victims, were still compiling information for a formal complaint.

Numerous international human rights organizations and some prison personnel reported that torture was widespread, but most reports did not identify the victims for fear of government retaliation 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 also administered beatings in temporary holding cells within police or gendarmerie facilities.

Security forces reportedly subjected 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 them to extract confessions or information about alleged criminals. Pretrial detainees reported that prison guards sometimes required them, under threat of abuse, to pay "cell fees," a bribe paid to prison guards to prevent further abuse.

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

Police were ineffective, poorly trained, underpaid, and corrupt. Impunity was a problem.

Individuals reportedly paid bribes to police and the judiciary to secure their freedom. Police demanded bribes at checkpoints, and influential citizens reportedly paid police to make arrests or abuse individuals involved in personal disputes. Citizens viewed police as ineffective, which frequently resulted in mob justice.

Arrest and Detention

The law requires police to obtain an arrest warrant except when a person is caught in the act of committing a crime; however, police often did not respect this right in practice. The law provides that detainees must be brought promptly before a magistrate; however, this frequently did not occur. Police legally may detain a person in connection with a common crime for up to 24 hours and may renew the detention three times before bringing charges; however, police occasionally exceeded these detention periods. The law permits detention without charge by administrative authorities such as governors and senior divisional officers for renewable periods of 15 days. The law also provides for access to counsel and family members; however, detainees were frequently denied access to both legal counsel and family members. The law permits bail, allows citizens the right to appeal, and provides the right to sue for unlawful arrest, but these rights were seldom exercised.

During the February riots security forces arrested 1,671 persons around the country according to March figures released by the Ministry of Justice. NGOs claimed the number was higher and reported that security forces arrested scores of onlookers not directly involved in demonstrations or rioting.

On May 20, President Biya granted amnesty to hundreds of persons convicted for their participation in the February riots as well as other detainees, including 74 demonstrators in Douala, 61 in Yaounde, and 36 in Bamenda. The presidential pardons did not release those detainees whose appeals were still pending at year's end. In May the superintendents of the Yaounde and Douala prisons stated that, despite their presidential amnesty, hundreds of prisoners would remain in jail until their court fees and damages were paid.

The constitution and law provide for an independent civil judiciary; however, the judiciary remained subject to executive influence, and corruption and inefficiency remained serious problems.

The constitution and law prohibit such actions; however, these rights were subject to the "higher interests of the state," and there were credible reports that police and gendarmes harassed citizens, conducted searches without warrants, and opened or seized mail with impunity. The government continued to keep some opposition activists and dissidents under surveillance. Police sometimes detained family members and neighbors of criminal suspects.

Although there were no legal restrictions on academic freedom, state security informants reportedly operated on university campuses. Professors said that participation in opposition political parties or public discussion of politics critical of the government could adversely affect their professional opportunities and advancement.

Freedom of Assembly

The law provides for freedom of assembly; however, the government restricted this right in practice, particularly during and after the February demonstrations and riots.

The law requires organizers of public meetings, demonstrations, or processions to notify officials in advance but does not require prior government approval of public assemblies and does not authorize the government to suppress public assemblies that it has not approved in advance. However, officials routinely asserted that the law implicitly authorizes the government to grant or deny permission for public assembly. Consequently, the government often did not grant permits for assemblies organized by persons or groups critical of the government and used force to suppress public assemblies for which it had not issued permits.

Security forces forcibly disrupted the demonstrations, meetings, and rallies of citizens, trade unions, and groups of political activists throughout the year; demonstrators were injured, arrested, and killed.

On December 10, police forces confronted a group who had gathered in front of the Yaounde headquarters of l'Association Citoyenne de Defense des Interets (ACDIC). They arrested ADCIC President Bernard Njonga and at least a dozen other individuals. Police injured Theophile Nono and he required medical attention due to a head laceration. The police justified their actions by stating that ADCIC had not received approval for a gathering and that the gathering blocked a public street. Njonga was released on bail and was scheduled to appear in court in on charges of disturbing public order and conducting an unauthorized rally the following month.

The law provides for freedom of association, but the government limited this right in practice.

The conditions for government recognition of political parties, NGOs, or associations are arduous, interminable, and unevenly enforced. The process forced most associations to operate in uncertainty, in which their activities were tolerated but not formally approved.

Foreign travel is generally respected. However, there was at least one case of foreign travel restriction.

The law provides citizens with the right to change their government peacefully; however, President Biya's and the CPDM party controlled the political process, including the judiciary and agencies responsible for the conduct and oversight of elections. Electoral intimidation, manipulation, and fraud limited the ability of citizens to exercise this right in past elections. In April the National Assembly passed a constitutional amendment that removed presidential term limits and added provisions for presidential immunity. While considerable national discussion of the proposal ensued, the National Assembly ultimately passed the revisions in a manner that allowed no debate and underscored the CPDM's unfettered control of all government branches. Neither the electorate nor their elected representatives had an opportunity to affect the outcome of the constitutional exercise.

Elections and Political Participation

In July 2007 legislative elections, observers witnessed poor supervision at the polling stations and lax application of the electoral law. An unnecessarily complex registration process effectively disenfranchised some voters. The government failed to implement some electoral improvements it had previously committed. For example, despite repeated public assurances, the government was unable to provide indelible ink--an internationally recognized safeguard against multiple voting--to many polling stations. Despite efforts to computerize voter registration, the lists still included numerous errors.

In 2004 President Biya, who has controlled the government since 1982, was reelected with approximately 70 percent of the vote in an election widely viewed as more free and fair than previous elections. Although the election was poorly managed and marred by irregularities, in particular in the voting registration process, most international observers agreed that it reflected the will of the voters. The Commonwealth Observer Group, however, maintained that the election lacked credibility.

There were more than 180 registered political parties in the country. Fewer than 10, however, had significant levels of support, and only five had seats in the National Assembly. The ruling CPDM held an absolute majority in the National Assembly; opposition parties included the SDF, based in the anglophone regions and some major cities. The largest of the other opposition parties were the National Union for Democracy and Progress, the Cameroon Democratic Union, and the Union of the Peoples of Cameroon.

91. In its 2007 'Freedom in the World' Report, Freedom House made similar observations:

Cameroon is not an electoral democracy. Rampant voter intimidation, manipulation, and fraud have marked both presidential and legislative elections. Cameroon's centralized government is dominated by a strong presidency. The president is not required to consult the National Assembly, and the judiciary is subordinate to the Ministry of Justice. The Supreme Court may review the constitutionality of a law only at the president's request. President Paul Biya's current seven-year term will end in 2011. International observers reported that the 2004 presidential poll lacked credibility but reflected the will of the voting population.

The unicameral National Assembly has 180 seats, 149 of which are held by the ruling CPDM. Members are elected by direct popular vote to serve five-year terms, although the president

has the authority to either lengthen or shorten the term of the legislature. Legislative elections last held in 2002 were characterized by significant irregularities, and the next elections are scheduled for 2007. Cameroon's constitution calls for an upper chamber for the legislature, to be called a Senate, but it has yet to be established. A mandated Constitutional Court exists in name only.

There are more than 180 recognized political parties in Cameroon, although Biya's CPDM and the Anglophone-led SDF are dominant and the hundreds of smaller political and civic organizations have little effect on public policy or government decision-making processes. The Anglophone-Francophone linguistic distinction constitutes the country's most potent political division. At least one Anglophone group, the Southern Cameroons National Council (SCNC), advocates secession from the country.

Cameroon was ranked 138 out of 163 countries surveyed in Transparency International's (TI) 2006 Corruption Perceptions Index. According to TI, government corruption is rife within the judiciary, police, customs service, and educational sector.

There are no legal guarantees on free speech in Cameroon, though there are dozens of private radio stations and several hundred independent newspapers that publish on an irregular basis. The government tightly controls both broadcast and print media, and tough criminal libel laws have in the past, though not recently, been used to silence regime critics. In 2006, an editor of a privately owned weekly was detained by military security for several days and only released after drafting a letter apologizing to President Biya and the defense minister for reporting on detailed corruption and mismanagement in the armed forces. Self-censorship among broadcast and print journalists is common, partly in response to instances of security forces arresting, detaining, physically abusing, threatening, and otherwise harassing journalists. The government has not attempted to restrict or monitor internet communication, however.

Freedom of religion is generally respected. Although there are no legal restrictions on academic freedom, state security informants reportedly operate on university campuses, and many professors fear that participation in opposition political parties could harm their careers.

Security forces regularly restrict freedom of assembly and limit freedom of association by members of nongovernmental organizations and political parties, often through the use of violence. Meetings of members of the banned SNSC are routinely disrupted. Trade union formation is permitted, but is subject to numerous restrictions. Workers have the right to strike but only after arbitration, and the government maintains the right to overturn final decisions made in this process.

The courts are highly subject to political influence and corruption. The executive branch controls the judiciary and appoints provincial and local administrators. Military tribunals may exercise jurisdiction over civilians in cases involving civil unrest or organized armed violence. Various intelligence agencies operate with impunity, and opposition activists are often held without charge or disappear while in custody. Indefinite pretrial detention under extremely harsh conditions is permitted either after a warrant is issued or in order to "combat banditry." Torture and ill-treatment of prisoners and detainees are routine, and inmates routinely die in prison. Amnesty International called for an investigation into reports that dozens of extrajudicial executions were carried out in 2002 as part of an anticrime campaign. Despite repeated requests, the Cameroonian government has never granted entry to Amnesty International's representatives. In the north, traditional chiefs known as *lamibee* control their own private militias, courts, and prisons, which are used against the regime's political opponents.

(http://www.freedomhouse.org/inc/content/pubs/fiw/inc_country_detail.cfm?year=2007&country=7149&pf>

92. Amnesty International's 2009 report on Cameroon includes information about the events in late February 2008:

The security forces routinely used excessive and unnecessary lethal force and no investigations were carried out into unlawful killings by members of the security forces.

In late February, the security forces killed as many as 100 people when repressing violent protests across the country. Some people were apparently shot in the head at point-blank range. In Douala, some were reported to have drowned after being forced to jump into the Wouri river under fire. Many people with gunshot wounds were denied medical care and some died as a result.

On 29 June, dozens of prisoners escaped from New Bell prison in Douala. Fifteen were reportedly shot dead by prison guards and other security forces in the ensuing manhunt. The next day René Mireille Bouyam, who lived beside the prison, was shot and fatally wounded when a prisoner was found hiding in his house. The prisoner was also shot dead.

Political opponents of the government were arbitrarily arrested and detained. Those targeted included members of the Social Democratic Front (SDF), the main opposition party, and the Southern Cameroons National Council (SCNC) – a group supporting independence for anglophone provinces.

At least 20 SCNC members, including Fidelis Chinkwo Ndeh, were arrested in Bamenda on 10 February and at least seven were arrested the following day. At the end of the year, nearly 40 members of the SCNC were awaiting trial on charges ranging from wearing SCNC T-shirts to agitating for secession.

At least 23 members of the main faction of the SDF were detained without trial for more than two and a half years, accused of killing Grégoire Diboulé, a member of a dissident SDF faction, in May 2006. In November, the High Court in Yaoundé ordered the unconditional release of one of the detainees and the provisional release of the others. The leader of the SDF, John Ni Fru Ndi, was also charged with the killing but had not been detained by the end of the year.

More than 1,500 people arrested during the February protests were brought to trial unusually swiftly, with little or no time to prepare their defence. Many of the defendants had no legal counsel, while others were denied time to consult their lawyers. The trials were summary in nature. Hundreds of defendants were sentenced to between three months and two years in prison. Despite a presidential amnesty in June, hundreds remained in prison at the end of the year, either because they had appealed or because they could not afford to pay court-imposed fines.

(<http://report2009.amnesty.org/en/regions/africa/cameroon>> - accessed 29 September 2009).

93. These observations about human rights abuses in Cameroon are echoed in other authoritative reports. For example, the *Observatory for the Protection of Human Rights Defenders 2009 Annual Report on Cameroon* noted:

These tensions highlighted the problems in the country, including the lack of democracy and good governance. Corruption, impunity, obstacles posed to civil society participation in public life, and recurrent human rights violations, including economic and social rights such as access to

natural resources, public services, labour, health, education, housing, etc., remain commonplace. In this context, human rights defenders continued to be threatened throughout 2008.

Social Democratic Front (SDF)

94. Available information indicates that the SDF is the leading opposition political party in Cameroon and that membership is not illegal. Nonetheless, the most recent US Department of State (USDOS) report on human rights practices in Cameroon states that individuals in the North West and south west regions of Cameroon, as a result of their tendency to support the SDF, “suffered disproportionately from human rights abuses committed by the government and its security forces”.

(US Department of State 2009, *Country Reports on Human Rights Practices 2008 – Cameroon*, 25 February, Section 2.b).

95. A January 2009 report on Cameroon by Amnesty International states that many SDF members have been arrested and detained after being accused of supporting secession. However, the report also states that “although government suspicions against the SDF have persisted, there have been far fewer detentions of its members in recent years” Reports indicate recent incidences in which SDF supporters and members have been mistreated by government authorities. The USDOS has reported that SDF protestors were attacked by security forces while demonstrating in February 2008.

Amnesty International 2009, *Cameroon: Impunity Underpins Persistent Abuse*, January, pp 8 -9 <http://www.amnesty.org/en/library/asset/AFR17/001/2009/en/126d20cd-de59-11dd-b660-fb1f16ee4622/afr170012009en.pdf> – Accessed 15 September 2009; UK Home Office 2009, *Operational Guidance Note – Cameroon*, 1 June, Section 3.6 <http://www.ind.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/cameroon.pdf?view=Binary> – Accessed 14 September 2009).

96. The most recent USDOS report on human rights practises in Cameroon provides the following information of the treatment of SDF members and supporters:

On February 26, during a visit to the Yaounde Kondengui Central Prison, Divine Chemuta Banda, chairman of the National Commission on Human Rights and Freedoms (NCHRF), learned that many of the SDF militants incarcerated in 2006 in connection with the death of Gregoire Diboule had been treated inhumanely and denied medical care.

...The law provides for freedom of assembly; however, the government restricted this right in practice, particularly during and after the February demonstrations and riots.

...On February 13, in the Bessengue neighborhood the Douala GMI disrupted an SDF march to protest against constitutional reform. The police used water cannon, trucks, and tear gas to disperse demonstrators in addition to beatings with rubber batons.

During the February riots, which spread to 31 localities including Yaounde and Douala, and the subsequent government crackdown, security forces shot and killed demonstrators and rioters. While the government reported 40 persons killed, NGOs such as La Maison des Droits de l’Homme claimed that security forces killed over 100 persons...

..Natives of the North West and South West regions 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 Adamaoua Regions--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 regions. 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

(US Department of State 2009, *Country Reports on Human Rights Practices 2008 – Cameroon*, 25 February, Section 2.b).

97. In January 2009 Amnesty International published a report titled *Cameroon: Impunity Underpins Persistent Abuse*. The report provides the following information on the situation for SDF members in Cameroon and the detention of 23 SDF members without trial from May 2006 until November 2008:

The Social Democratic Front (SDF) is the leading opposition political party in Cameroon. It draws most of its support from the predominantly Anglophone South-West Province and North-West Province. The government has invariably accused the SDF of being separatist, like the SCNC. As a result, many members of the SDF have been arrested and detained after being accused of supporting secession for the two provinces.

Although government suspicions against the SDF have persisted, there have been far fewer detentions of its members in recent years. However, a dispute between two rival factions of the SDF culminated in the arrest and long-term detention without trial of at least 23 members of the main faction of the party, who were accused of killing Grégoire Diboulé, a prominent member of the dissident faction, on 26 May 2006. Those arrested, who were held without trial until November 2008, include retired army colonel James Chi Ngafor who was not present when Grégoire Diboulé died.

... When they appeared in court on 5 November 2008, the High Court in Yaoundé ordered the provisional release of 20 of the 21 detainees because they had been unlawfully detained far in excess of the period allowed by the Cameroonian Code of Penal Procedure.

... According to Article 221 of the Cameroonian Code of Penal Procedure, pre-trial detention should not exceed six months, unless it is prolonged for up to six months with legal justification by an examining magistrate. These detainees should not have been held beyond May 2007 without trial.

(Amnesty International 2009, *Cameroon: Impunity Underpins Persistent Abuse*, January, pp 8-9 <http://www.amnesty.org/en/library/asset/AFR17/001/2009/en/126d20cd-de59-11dd-b660-fb1f16ee4622/af170012009en.pdf> – Accessed 15 September 2009).

98. The above Amnesty International report also states that in April 2008 Pierre Roger Lambo Sandjo, an SDF supporter, was arrested for singing songs critical of the President's proposed amendments to the constitution. According to the report Sandjo was charged with damage caused by a protest in February 2008 and sentenced to three years imprisonment. The report states that:

Musicians and political activists, Pierre Roger Lambo Sandjo (also known as Lapiro de Mbanga and Joe de Vinci Kameni (also known as Joe La Conscience) were arrested in March and April 2008, respectively, after singing songs that were critical of President Biya's move to amend the Constitution to abolish the limit on the time he may remain in power.

... Sandjo, 51, is a member of the SDF. He was arrested on 9 April 2008 in Mbanga city and was brought to Nkongsamba High Court chained to Paul Eric Kingué, the mayor of Njombe

Penja, who was himself facing charges connected to the February 2008 protests. After he was transferred from the Mbanga central prison to Nkongsamba for trial, Sanjo's health is reported to have deteriorated due to poor sanitary conditions in the prison. According to his relatives, he developed chronic back pains and respiratory infections. He appeared before the court on 23 July and pleaded not guilty. On 24 September, the High Court found him guilty of "complicity in looting, destruction of property, arson, obstructing streets, degrading the public or classified property, and forming illegal gatherings". The court sentenced him to three years' imprisonment and ordered him to pay a total of 280 million CFA francs (approx US\$640,000) as compensation for damage caused to several private businesses and a government department whose property the court claimed he had caused to be destroyed. Human rights defenders in Cameroon told Amnesty International that Sanjo had not used or advocated violence, and that the sentence was government retaliation for his criticism. He appealed against the conviction and sentence. The appeal was still pending at the end of 2008 (Amnesty International 2009, *Cameroon: Impunity Underpins Persistent Abuse*, January, p.11

<http://www.amnesty.org/en/library/asset/AFR17/001/2009/en/126d20cd-de59-11dd-b660-fb1f16ee4622/afr170012009en.pdf> – Accessed 15 September 2009).

99. On 6 February 2009, *The Post Newsline* reported that the Cameroon government "has expressed reservation" regarding the 2009 report by Amnesty International. The report also contains advice from Godfred Byarohanga, a "guest on BBC Network Africa Studio" who is cited as stating that "if you are an opposition member or a journalist in Cameroon, life is probably tough for you. You could be arrested and put through a rigorous or an unfair trial; intimidated and even have death threats made against you". The report contains the following information:

The government of Cameroon has expressed reservation for the recently published report by Amnesty International (AI) on poor Human Rights situation in the country.

...However, Godfred Byarohanga, who was guest on BBC Network Africa Studio, Thursday, January 29, said: "If you are an opposition member or a journalist in Cameroon, life is probably tough for you. You could be arrested and put through a rigorous or an unfair trial; intimidated and even have death threats made against you."

..."Last February, more than 100 people were killed by the forces of law and order because they demonstrated against the high cost of living and government attempts that succeeded in changing the constitution to allow President Paul Biya to stand for another election in 2011," Byarohanga noted.

...Many times when the opposition or students demonstrate when it is their right to do so, they are arrested, beaten up and imprisoned.

For example, the report says, in 2006, more than 30 members of the Social Democratic Front, SDF, were arrested, beaten up and imprisoned. AI described Cameroon's prison conditions as horrific, overcrowded, lack of food, morbid toilet systems and so on.

"Very often, the detainees are reported to have died in custody because of lack of food, water and because of lack of sanitation and, of course, many are tortured in custody," Byarohanga opined.

Asked by BBC where he gets his evidence, Byarohanga says they have built up a network of contacts within Cameroon made up of human rights and civil society organisations. He says the groups give them information at their own personal risk and there are friends or relatives

of the people who are suffering human rights violations, who contact Amnesty International, which they verify

(Mbunwe, C. 2009 'Cameroon: Government Refutes Poor Human Rights Report', *The Post Newsline*, 6 February, All Africa.com website <http://allafrica.com/> – Accessed 15 September 2009).

100. *Amnesty International Annual Report 2009 – Cameroon* states that “political opponents of the government” including SDF members, have been arbitrarily arrested and detained. The report states that:

As part of a strategy to stifle opposition, the authorities perpetrated or condoned human rights violations including arbitrary arrests, unlawful detentions and restrictions on the rights to freedom of expression, association and assembly.

...Political opponents of the government were arbitrarily arrested and detained. Those targeted included members of the Social Democratic Front (SDF), the main opposition party, and the Southern Cameroon National Council (SCNC) – a group supporting independence for Anglophone provinces

(Amnesty International 2009, *Amnesty International Annual Report 2009 – Cameroon* <http://thereport.amnesty.org/en/regions/africa/cameroon> – Accessed 15 September 2009).

101. The June 2009 UK Home Office *Operational Guidance Note – Cameroon* includes SDF members in its examination of categories of claims. The operational guidance note provides the following information:

3.6.2 Treatment. The SDF was founded in early 1990 and gained legal recognition in March 1991. The SDF is the leading opposition political party and contested the legislative elections in 2007. John Fru Ndi, National Chairman of the SDF told the United Kingdom delegation of a fact finding mission to Cameroon in January 2004 that government officials and the police harassed and intimidated members of the SDF. According to John Fru Ndi, young people whose parents are members of the SDF in particular were harassed and intimidated by the Government. He further stated that many young SDF supporters were also stopped from obtaining jobs or starting up new businesses. Whilst stating that it was difficult for many young SDF supporters to live in Cameroon because of the harassment and intimidation, John Fru Ndi noted that this form of intimidation was not used against all SDF members.

In February 2008, the police in Douala disrupted marches organised by the SDF against constitutional reform. The police reportedly used water cannon, trucks, and tear gas to disperse demonstrators in addition to beatings with rubber batons. On one occasion, the police reportedly shot and killed a person when they attacked a crowd gathered for a SDF organised march. Amnesty International has also reported that in 2008 some members of the SDF were arbitrarily arrested and detained. SDF support comes mainly from Anglophones, especially from the North West Region, and from Bamilekes – people whose routes are in the West Region, but who are also numerous in Douala and other towns. They reportedly suffer disproportionately from human rights abuses committed by the Government and its security forces.

3.6.8 Conclusion. The SDF is the largest opposition party to play a major role in opposition political activity. It is a registered party and therefore being a member is not illegal. Whilst the police have disrupted some marches organised by the SDF and reportedly arrested and detained some members of the SDF, membership of, involvement in, or perceived involvement in the SDF at any level is not likely to amount to ill-treatment that

engages the UK's obligations under the 1951 Convention. The grant of asylum in such cases is therefore not likely to be appropriate. As stated in FK, however, some prominent and active opponents of the Government may, depending on their particular profile and circumstances, continue to be at risk. Therefore, the nature of the political activity and level of involvement with any political party, including the SDF, should be thoroughly investigated as the grant of asylum may be appropriate in some cases.

(UK Home Office 2009, *Operational Guidance Note – Cameroon*, 1 June, Section 3.6 <http://www.ind.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/cameroon.pdf?view=Binary> – Accessed 14 September 2009).

Departure from Cameroon

102. No recent information was found in the sources consulted as to whether a person in Cameroon subject to a warrant would be able to leave the country without being questioned by authorities.
103. A 2001 report by the Danish Immigration Service provided information from a “western diplomatic source” who described the lack of security checks at Douala airport for departing passengers. The source is cited as saying that even a “wanted criminal”, including those involved in the political opposition, would be able to depart Cameroon through the airport. The source is also cited as stating that wanted criminals may be able to use bribery in order to depart Cameroon. More recent reports found in the sources consulted indicate that there are “various checkpoints” at Nsimalen airport which detect visa fraud and that computer systems have been introduced at Yaounde-Nsimalen International Airport. However, these reports do not indicate whether security checks are being conducted into an individual’s criminal record upon departing Cameroon. In May 2007 DFAT provided advice that SCNC members have been attending international conferences outside of Cameroon.

Danish Immigration Service (undated), *Fact-finding mission to Cameroon 23/1-3/2 2001*, Section 8.1.1 <http://www.nyidanmark.dk/NR/rdonlyres/194F77BF-84FB-4CC4-A6AA-E053D9765F17/0/FactfindingmissiontoCameroon2001.pdf> – Accessed 14 June 2002 ; ‘Nsimalen Airport: Business Beehive’ 2005, *Cameroon Tribune*, 4 July, All Africa website <http://allafrica.com/> – Accessed 5 September 2007; Tataw, Emmanuel 2004, ‘Airport Security: Yaounde-Nsimalen Takes Lead’, *All Africa*, source: *Cameroon Tribune*, 27 February; DIAC Country Information Service 2007, *Country Information Report No. 07/42 – Cameroon: Southern Cameroons National Council (SCNC)*, (sourced from DFAT advice of 11 May 2007), 11 May, para. R.1 B).

104. A 2001 report by the Danish Immigration Service report titled *Fact-finding mission to Cameroon 23/1-3/2 2001* contains information on the lack of restrictions in departing Cameroon. The report contains the following information:

There are no legal restrictions on the freedom of movement in Cameroon, and there are no restrictions on leaving the country. A western diplomatic source reported that passport issue was hardly ever a problem in connection with departure from Cameroon, but that visas were more problematic. A person who wanted to leave had to be able to prove that he had funds to do so and could maintain himself during his stay abroad.

...A western diplomatic source said that there were no difficulties in leaving Cameroon. No thorough checks were made on departure from Douala airport.

The police did not possess an electronic database on wanted people. There was possibly a manual register of those connected with large-scale economic crimes.

Individual police might also know the names of wanted individuals. However, even a wanted criminal would be able to leave via the airport. This also applied to those who were active in the political opposition. The source knew of no cases of political activists being detained when trying to depart. There was no central electronic database of Cameroonian citizens.

Hilaire Kamga reported that the secret police (DGRE) had an electronic database of all the persons they wanted. However, in the airports there was only a manual register. He believed that if someone was wanted by the DGRE the airport police would be informed accordingly.

As an illustration of the weak airport controls, the diplomatic source above described an occasion where someone claiming to be a Cameroonian citizen had passed through passport control and through police and customs checks at the airport although he could not speak French, the main language of Cameroon. He also knew of cases where departing Cameroonians had been able to pass through several controls at the airport with false visas.

The same source said that generally it was very easy to bribe the police, e.g. at the airport, and wanted Cameroonians or those without valid visas would probably be able to bribe their way out.

It would not be possible for an agent to accompany someone leaving via the airport all the way through the controls to the plane itself. This applied to departures with Swiss Air, Air France and Sabena. An agent might be able to accompany the departing person onto the plane itself, in the case of departure with Cameroon Airlines. However, Cameroon Airlines' procedures had been tightened up since June 2000 when a new director of the company had been appointed. Nevertheless, it might still be possible to do it, since "everything is possible in Cameroon".

Foreign (European) airlines had tightened pre-departure controls. Although 80% of all travellers could slip through the airport controls with a false passport and/or visa by use of bribery, effectively no-one would get through the final control by foreign police in the boarding lounge.

Over the last two years there had been a great increase in the number of Cameroonians leaving for Europe. Demand for visas to European countries had become significantly greater. The reason for this was that many Cameroonians wanted to improve their economic situation by living abroad. Young Cameroonians who wanted to leave to try to improve their economic situation were readily understood at all levels of Cameroonian society. This applied to their families, village, the police and the authorities in general.

Even wanted persons would be able to leave via the airport in Douala; it would also be possible to leave illegally via the land border with Nigeria. Border controls were not thorough, and even local people did not always know where the border ran. Illegal departure via the port in Douala would also be possible. The source had not experienced Cameroonians leaving for political reasons. This also applied to the large numbers of young Cameroonians who were constantly leaving.

Genevieve Faure produced a report drawn up by the British immigration attaché in Lagos, Nigeria during a working visit to Cameroon in May 2000. After inspecting departure procedures at Douala airport the attaché concluded that document checks in the airport were particularly inadequate and that if false passports or visas were identified this was more by luck than professional skill. The report also stated that it

was easy for non-passengers to accompany passengers right to the gate for departures with Cameroon airlines. The report concluded that “security is not a strong point at Douala airport and airside access can be achieved fairly easily”.

Anastasié Ongmbourne, airport police officer, Douala, said that a significant number of Cameroonian citizens left the country for Europe and the USA. A Cameroonian citizen could not leave without a visa for the country he wished to go to.

Airport controls had recently been improved as a result of an increase in the number of Cameroonians leaving on false documents.

The authorities were currently working on setting up an electronic database at the airport. The system was not yet operational as large-scale staff training was required. The aim was that the police at check points in the airport should have access to electronic databases of wanted people.

T. Asonganyi believed that the authorities at the airports had lists of wanted persons. He could not dismiss the possibility that people might be on such lists on political grounds. The editor of the Messenger also believed the police had list of wanted persons or of what he described as dangerous element

(Danish Immigration Service (undated), *Fact-finding mission to Cameroon 23/1-3/2 2001, Section 8.1.1* <http://www.nyidanmark.dk/NR/ronlyres/194F77BF-84FB-4CC4-A6AA-E053D9765F17/0/FactfindingmissiontoCameroon2001.pdf> – Accessed 14 June).

Failed Asylum Seekers

105. 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*).
106. 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).

107. In February 2005 *African Echo News* reported 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 (sic) (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 airports to track down individuals brought under such condition or bearing Home Office travel documents. Whilst their returned (sic) may be subjected to investigation those marked by the police as activist or perpetual opponents to the regime are immediately arrested, tortured and send (sic) 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 (sic) to prison after the required appearance before the state prosecutor - if need be. In some situation (sic) 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 (sic) 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, accessed 15 March 2010).

FINDINGS AND REASONS

Country of Nationality

108. On the basis of the applicant’s passport, a copy of which is included in the Departmental file, the delegate accepted and the Tribunal accepts that the applicant is a citizen of Cameroon and is outside his country of nationality. Accordingly, for the purposes of the Refugees

Convention, the Tribunal has assessed the applicant's claims against Cameroon as his country of nationality.

Assessment of Claims and Evidence

Credibility

109. The mere fact that a person claims fear of persecution for a particular reason does not establish either the genuineness of the asserted fear, that it is "well-founded", or that it is for the reason claimed. It remains for the applicant to satisfy the Tribunal that all of the statutory elements are made out: *MIEA v Guo & Anor* (1997) 191 CLR 559 at 596. Although the concept of onus of proof is not appropriate to administrative inquiries and decision-making (*Yao-Jing Li v MIMA* (1997) 74 FCR 275 at 288), the relevant facts of the individual case will have to be supplied by the applicant himself or herself, in as much detail as is necessary to enable the examiner to establish the relevant facts. A decision-maker is not required to make the applicant's case for him or her: *Prasad v MIEA* (1985) 6 FCR 155 at 169-70; *Luu & Anor v Renevier* (1989) 91 ALR 39 at 45. Nor is the Tribunal required to accept uncritically any and all the allegations made by an applicant: *Randhawa v MILGEA* (1994) 52 FCR 437 at 451.
110. The Tribunal found the applicant generally to be a credible witness, whose accounts of past events has been detailed and consistent, and in conformity with the independent evidence sourced by the Tribunal. His account of the circumstances leading to his departure from Cameroon, and the reasons for which he does not want to return were consistent with those presented in his statutory declarations in support of his protection visa application.
111. During the course of the hearing, the Tribunal identified a number of inconsistencies between the applicant's evidence and the information provided in his application for a tourist visa to come to Australia to participate in World Youth Day (WYD) The Tribunal advised the applicant that these inconsistencies reflected on his credibility and could undermine his claims for protection.
112. Following the hearing, the applicant's representative made a submission to the Tribunal addressing the inconsistencies and other matters raised by the Tribunal during the hearing. The Tribunal accepts the applicant's representative's submissions on the following matters:

Applicant's Work at the Centre for Youth

113. The Tribunal accepts that the applicant worked at the Centre in a voluntary capacity from August 2004 until March 2008.
114. In making this finding, the Tribunal relies on the record of conversation with and the email from [Reverend 1] dated [in] February 2009, provided to the Tribunal by the applicant's representative following the hearing. In this email, [Reverend 1] confirms that the applicant previously worked at the Centre on a voluntary basis training young people and that after he sought refuge at the Presbytery he was engaged as a staff member but was paid only a small sum (40,000 CFA Francs) for him to buy some clothes or personal effects.

World Youth Day Registration

115. The Tribunal accepts that the date [in] November 2007 printed on the bottom right-hand corner of the registration of the applicant on the World Youth Day website cannot be relied on as accurate.
116. In making this finding, the Tribunal relies on the Statutory Declaration of [Mr D], Information Systems Analyst, dated [in] March 2009, provided to the Tribunal by the applicant's representative following the hearing. In his Statutory Declaration [Mr D] states that the date printed on a document corresponds to the date on the computer which is often not accurate. Computer system time can be set manually and is easily adjusted.
117. The Tribunal also relies on the evidence of [Reverend 1] in his email and record of phone conversation in which he states that the computer used to register the applicant for World Youth Day is a second hand computer donated to the church. He states that whenever the computer is re-set following a power failure, the computer reverts to the date 2 November 1998. He further states that when he turned on the computer [in] February 2009, the date on the computer was [in] March 2012.
118. The Tribunal therefore accepts that the date [in] November 2007 printed on the bottom of the printed registration page cannot be relied on as an accurate record of the actual date on which the applicant registered on the World Youth Day website.

Assessment of Claims

Political Opinion

119. The applicant claims to fear persecution for his involvement with the Social Democratic Front (SDF) and his involvement in the demonstrations in February 2008. The Tribunal accepts that the essential and significant reason for the claimed fear is the Convention reason of political opinion, actual or implied.
120. The issue before the Tribunal is whether the applicant has a well-founded fear of persecution, that is, whether he has a genuine fear based on a real chance of persecution.
121. The applicant claims to have become a member of the SDF in 2000, a few months before the death of his father. He claims that his father had been a member of the SDF and that he had been exposed to political issues in Cameroon through his father's involvement. He recalls attending a demonstration after the elections in 1992. When his father became ill, the applicant felt a responsibility to join the SDF himself and he dreamed of becoming a leader to fight against the Government. He claims that he joined the Soboum subsection of the SDF in his local district and would attend meetings.
122. The Tribunal accepts that the applicant was an active member of the SDF from 2000. In making this finding, the Tribunal relies on the applicant's 2003 SDF membership card on the Department's file which states he has been a member of the SDF since 2000.
123. The Tribunal accepts that the applicant participated in demonstrations and marches organised by the SDF and that he was harassed by police during these demonstrations. The Tribunal further accepts that the applicant was arrested by police on two occasions: in the lead up to the presidential elections in 2004 and at a public meeting at [Location A] in 2005 and that he was assaulted and tortured by police and that he was released after some of his SDF comrades

paid a bribe. The Tribunal accepts the applicant's claims that [in] February 2008 he attended a march and public demonstration in Douala to protest proposed changes to the constitution and that the police fired at the group and one member of the group was killed. It accepts that the applicant was taken by police to an abandoned house outside Douala and beaten and tortured because he saw a number of people killed.

124. In making these findings, the Tribunal relies on the applicant's consistent evidence to the Department and the Tribunal and the country information cited above which supports his claims. His accounts of arrests, interrogations and beatings are all consistent with this country information.
125. The Tribunal accepts the applicant's claims that after he returned home to live with his fiancée, the police came to his house looking for him but that he escaped from the house. It further accepts that the next day met with his fiancée who told him that the police had forced their way into the house and had taken her away and she was severely beaten and tortured. The Tribunal also accepts that the applicant sought refuge with [Reverend 1] and that he subsequently learned about and was registered for WYD.
126. In making these findings, the Tribunal relies on the applicant's consistent evidence to the Department and the Tribunal and the evidence of [Reverend 1] given to the Tribunal that the applicant had been sought by the police after a general strike and demonstrations and that the police had traced the applicant to his family home leading him to seek refuge at the church. The Tribunal also relies on [Reverend 1]'s evidence that it was decided that the applicant would come to Australia after he received information about WYD in May 2008 and that he registered the applicant for attendance at WYD on his computer at the parish either at the end of May 2008 or at the beginning of June 2008
127. The Tribunal notes that the delegate found that had the applicant been of adverse interest to the Cameroonian authorities that he would not have been able to legally depart Cameroon for Australia without any hindrance.
128. The Tribunal has had regard to the country information referred to above, and accepts the applicant's evidence that he was able to pass through passport control at the airport without any problems. It notes that the country information indicates that there is a lack of security procedures at Douala airport and that officers are open to bribery.
129. The Tribunal accepts on the basis of the applicant's evidence before it that since he has been in Australia, the police have taken his fiancée for interrogation and beat her so severely that she had a miscarriage.
130. The Tribunal accepts that the applicant has been persecuted in the past and faces a real chance of persecution in the reasonably foreseeable future by the Government of Cameroon because of his political opinion and political activity.
131. The Tribunal accepts that the applicant fears being detained and tortured upon return to Cameroon. The Tribunal notes the delegate's finding that the applicant's activities as a SDF member were conducted at a very low and local level. The Tribunal accepts the applicant's evidence that despite the fact that he is not a leader of the SDF, the authorities would retain an interest in him because of his involvement in the February 2008 demonstrations. The Tribunal accepts that there would be a real chance of the applicant being arrested, detained or physically ill-treated were he to return to Cameroon.

132. The Tribunal has considered whether the harm which the applicant fears is serious harm to the applicant pursuant to section 91R of the Act. The applicant fears being detained or physically harmed which amounts to ‘serious harm’ pursuant to this provision, as it is a threat to life or liberty and significant physical harassment or ill-treatment. The applicant also fears being tortured or killed in detention. The persecution is directed against him by the authorities of Cameroon because of his membership of and involvement in the SDF which is the essential and significant reason for the harm (section 91R(1)(a)) and is systematic and discriminatory conduct pursuant to section 91R(1)(c). The Tribunal finds that there is a real chance of serious harm against the applicant (section 91R(1)(b)).
133. As the persecution which the applicant fears should he return to Cameroon is both authorised and perpetrated by the ruling government, 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.
134. 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 him to relocate.

Failed Asylum Seeker

135. The applicant also claimed that he has a well-founded fear of persecution due to his status as a failed asylum seeker if he returns to Cameroon.
136. The applicant claims that he may be persecuted in Cameroon for reason of his status as a member of the particular social group of ‘failed asylum seekers’. The applicant’s representative made written submissions in this respect, which include references to previous RRT cases which have considered the country information in relation to failed asylum seekers in Cameroon.
137. The leading recent Australian authority on the term ‘particular social group’ is *Applicant S v Minister for Immigration and Multicultural Affairs* (2004) 217 CLR 387 (‘*Applicant S*’). McHugh J in *Applicant S v MIMA* (2004) summarised the issue in broad terms:

To qualify as a particular social group, it is enough that objectively there is an identifiable group of persons with a social presence in a country, set apart from other members of that society, and united by a common characteristic, attribute, activity, belief, interest, goal, aim or principle.

138. In their majority joint judgment, Gleeson CJ, Gummow and Kirby JJ set out at paragraph [36] the correct approach to the question of whether a group falls within the scope of the term ‘particular social group’ for the purposes of the Convention:

Therefore, the determination of whether a group falls within the definition of “particular social group” in Art 1A(2) of the Convention can be summarised as follows. First, the group must be identifiable by a characteristic or attribute common to all members of the group. Secondly, the characteristic or attribute common to all members of the group cannot be the shared fear of persecution. Thirdly, the possession of that characteristic or attribute must distinguish the group from society at large. Borrowing the language of Dawson J in *Applicant A*, a group that fulfils the first two propositions, but not the third, is merely a “social group” and not a “particular social group” As this

Court has repeatedly emphasised, identifying accurately the “particular social group” alleged is vital for the accurate application of the applicable law to the case in hand.

139. Therefore whether a group is a ‘particular social group’ in a society will depend upon all of the evidence including relevant information regarding legal, social, cultural and religious norms in the country. 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 reason of the person’s membership of the particular social group.

140. The observation of Gummow J in *Applicant A v Minister for Immigration and Ethnic Affairs* (1997) 190 CLR 225, at 285 (citing with approval *Ram v MIEA & Anor* (1995) 57 FCR 565 at 569:

There must be a common unifying element binding the members together before there is a social group of that kind. When a member of a social group is being persecuted for reasons of membership of the group, he is being attacked, not for himself alone or for what he owns or has done, but by virtue of his being one of those jointly condemned in the eyes of their persecutors, so that it is a fitting use of language to say that it is ‘for reasons of’ his membership of that group.

141. Whether a posited group constitutes a particular social group is a mixed question of fact and law, depending both upon the satisfaction of the legal requirements as exemplified in *Applicant S*, but also upon whether the evidence in fact supports the existence of the group. As McHugh and Gummow JJ observed in *Minister for Immigration and Multicultural Affairs v Khawar* 210 CLR 1 at [81],

It was open to the Tribunal on the material before it to determine that there was a social group in Pakistan comprising, at its narrowest, married women living in a household which did not include a male blood relation to whom the woman might look for protection against violence by the members of the household.

142. In *Khawar* McHugh and Gummow JJ stated:

The membership of the potential social groups which have been mentioned earlier in these reasons would reflect the operation of cultural, social, religious and legal factors bearing upon the position of women in Pakistani society and upon their particular situation in family and other domestic relationships.

143. The Tribunal must first determine whether the particular social group put forward by the applicant’s representative meets the requisite legal preconditions identified in *Applicant S*, before considering whether the evidence actually supports the existence of the group in question. The Tribunal must then assess whether the persecution feared is for reason of the applicant’s membership of the particular social group or because of the motivation of the state in failing to provide adequate protection from the harm feared in accordance with international standards.

144. The particular social group is SDF members who are failed asylum seekers. The definition of this group meets the first test set out in *Applicant S* in that the group is “identifiable by a characteristic or attribute common to all members of the group.” All the members of the group are “united by a common characteristic, attribute, activity, belief, interest, goal, aim or principle” namely they unsuccessfully applied for asylum overseas and then returned to Cameroon.

145. The second part of the test requires that the characteristic or attribute common to all members of the group cannot be the shared fear of persecution. As Dawson J explained in *Applicant S* at 242:

[h]owever, one important limitation which is, I think, obvious is that the characteristic or element which unites the group cannot be a common fear of persecution. There is more than a hint of circularity in the view that a number of persons may be held to fear persecution by reason of membership of a particular social group where what is said to unite those persons into a particular social group is their common fear of persecution. A group thus defined does not have anything in common save fear of persecution, and allowing such a group to constitute a particular social group for the purposes of the Convention “completely reverses the statutory definition of Convention refugee in issue (wherein persecution must be driven by one of the enumerated grounds and not *vice versa*)”

146. The Tribunal accepts that the group as proposed by the applicant’s representative satisfies the second part of the test in *Applicant S* in that its membership is not defined by the persecution feared.
147. The third part of the test requires that “the possession of that characteristic or attribute must distinguish the group from society at large.” In *Applicant A*, Dawson, McHugh and Gummow JJ stated:

The adjoining of “social” to “group” suggests that the collection of persons must be of a social character, that is to say, the collection must be cognisable as a group in society such that its members share something which unites them and sets them apart from society at large.

148. For the claim that an individual’s fear of harm or mistreatment comes within the Convention ground of “membership of a particular social group” the particular social group must be cognisable or recognisable within the society. On the basis of the country information referred to above, the Tribunal accepts that failed asylum seekers are cognisable or recognisable within Cameroonian society.
149. In the case of the applicant, as a member of the particular social group members of SDF members who are failed asylum seekers, the question is whether he would be subject to detention, arrest or other harassment on arrival at Douala Airport, Cameroon He has claimed to have a profile as a low level activist and his involvement in the February 2008 riots.
150. The Tribunal notes that the country 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 are returned to Cameroon in handcuffs or accompanied by police. The report also notes 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.
151. The Tribunal finds that there is a likelihood that upon return to Cameroon the applicant would be identified by the authorities as a failed asylum seeker because his passport contains a tourist visa to Australia valid for a limited duration, and that he may be questioned as to why he had remained in Australia beyond the expiry of this visa.
152. The Tribunal also has had regard to the independent inquiry conducted by the Cameroon Human Rights Lawyers and Lawyers without Borders referred to above in the *African Echo*

News article dated 25 February 2005, which reports that individuals “marked by the police as activist or perpetual opponents to the regime are immediately arrested, tortured and sent to prison without access to justice or proper examination of their case.”

153. The Tribunal finds that there is a likelihood that following questioning by the authorities that the applicant would be identified as an opponent of the regime and arrested, tortured or sent to prison.
154. On the information before it, the Tribunal is unable to conclude that the possibility that the applicant would be detained and questioned by authorities upon his return to Cameroon is remote or far-fetched.
155. The Tribunal, therefore, accepts that if the applicant returned to Cameroon now or in the reasonably foreseeable future there is a real chance that he would be detained and questioned by Cameroonian authorities. The Tribunal finds that the reason why he would be detained and questioned is because of his membership of a particular social group being SDF members who are failed asylum seekers. The Tribunal therefore accepts that there is a real chance of serious harm for reasons of the applicant being a member of this particular social group.
156. The Tribunal finds that the applicant has no pre-existing, legally enforceable right to enter and reside in any other country as there is no information available to it to support such a right.
157. The Tribunal finds that the applicant, should he return to Cameroon now or in the reasonably foreseeable future, faces a real chance of serious harm on account of his political opinion and his membership of the particular social group of members of the SDF who are failed asylum seekers, which engages a Convention nexus and that he 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, that he would be unable to relocate anywhere within Cameroon and that he does not have an existing legally enforceable right to enter and reside in any other country.

CONCLUSIONS

158. 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)(a) for a protection visa.

DECISION

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

I certify that this decision contains no information which might identify the applicant or any relative or dependant of the applicant or that is the subject of a direction pursuant to section 440 of the *Migration Act 1958*

Sealing Officer: PRMHSE