

Homosexuality as a crime in Cameroon

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Abstract

It is universally recognized that homosexuality is criminalized in Cameroon. Meanwhile, most human rights lawyers who defend the cause of homosexuals in Cameroon as well as other international organizations go ahead to say that the punishment for homosexual orientation does not only violate international human rights but also violates the Cameroonian law on homosexuality itself. To them, Article 347 bis of the Cameroon Penal Code which punishes homosexuality is limited to same-sex intercourse and not extended to sexual orientation as a whole. Cameroonian authorities on their part have charged persons with homosexuality without any proof of such same-sex intercourse. In this article, we operate a close look at the content of the law on homosexuality in Cameroon, as well as the content of the word homosexuality itself in order to see the extent to which homosexuality is punished in Cameroon. We arrive at the conclusion that Article 347 bis though seemingly limited to punishing same-sex intercourse is a purposeful act by Cameroonian legislature to punish homosexual orientation and not just same sex intercourse. That the struggle of human rights defenders to ensure respect for the rights of homosexuals by promoting the respect for Article 347 bis will continue to yield little success due to disparities in its interpretations.

Keywords: Homosexuality, Crime, Sexual-orientation, Cameroon

Introduction

Prelude to the core of this paper, we will like to talk about our biases. As of the date of writing this piece, neither of us self-identify as homosexual. We grew up as part of religions which preach against homosexuality. In addition, we are both products of a Cameroonian society that promotes hetero-normativity. For this reason, we might not be able to show enough sensitivity to the issue since we find ourselves in a dominant position given the societal context. Meanwhile, the statement of our biases acts as a safeguard towards objectivity. It gives us consciousness on the necessity to do distancing between self and work. In doing so, we strive to back our claims and assertions always with facts.

The term homosexuality has been given different definitions over time and space.

At the simplest and most obvious level, homosexuality, a word of Greek and Latin origin, coined by medical experts to diagnose the phenomenon and use of medical dictionaries for the first time in 1859, implies a sexual attraction only to people of the same sex as oneself (Nforbin, 2014, 74).

Some authors have proceeded to make a distinction between gays (homosexual men) and lesbians (homosexual women). For the purpose of this piece, such a distinction shall not be of material importance. "A bisexual on the other hand is one who is sexually attracted to both men and women" (Nforbin opcit).

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For the purpose of this paper, the term homosexual shall be used to describe a person who is sexually attracted to a person of the same sex, or who is attracted to both persons of the same sex and persons of the opposite sex. This implies that there is not going to be a distinction between homosexuals in the limited sense of the word and bisexuals. The reason is that this far, we have not seen a distinction either in Cameroonian legal texts or in terms of treatment between homosexuals in the strict sense of the word and bisexuals. In fact some of the people charged with homosexuality in Cameroon are in open intimate partner relationship with persons of the opposite sex. According to a narrative posted by erasing 76 crimes online on September 25th 2012³, Samuel Gervais Akam was charged with homosexuality in spite of the fact that he was married to a woman.

According to Atabong (2012, p 49), the 1910 second edition of Blacks Law Dictionary defines a crime as “

An act committed or omitted, in violation of a public law, either forbidding or commanding it; a breach or violation of some public rights or duty due to a whole community, considered as a community in its social aggregate capacity, as distinguished from a civil injury.

“Criminalization connotes the process by which behaviors and individuals are transformed into crimes and criminals respectively”. (Atabong, 2012, p50).

Many articles and writings on homosexuality in Cameroon start by asserting that homosexuality is a crime in Cameroon, and that this criminalization is a violation of the human rights of homosexual people. This is done not only by students like Nzomo (2013) and University professors like Nforbin (2014) but also by practitioners like barrister Atabong (2012). However, they give very little explanation as to why they think that homosexuality is a crime in Cameroon given that although the word homosexuality exists in the Cameroon Penal Code, there is not a phrase stating that homosexuality is punished. Rather, there is a statement according to which same sex intercourse is punished.

In this paper, operate a critical look at the provision of the criminal law which has been interpreted to criminalize homosexuality in Cameroon in order to determine why it is believed that this particular provision criminalized homosexuality. In the end, we shall be able to tell if as per this law, all of homosexuality is criminalized or just some aspects of it. Is it therefore a crime to be a homosexual in Cameroon? Who is a homosexual within the meaning of the Cameroonian criminal law? Answering these questions will give an understanding as to the extent to which Cameroonian Criminal Law in its formulation is homophobic.

Criminalization of homosexuality Cameroon

In Cameroon, many arrests and prosecutions have been carried out on grounds such as “homosexuality”, “homosexual practice” or “same-sex intercourse”. For example, Nordberg, (2012, p450) states that a man arrested in 2009 was charged with “homosexuality” and not for “engaging in sexual act”. According to Human Rights Watch report, Guilty by Association (2013, p19), in the case of EA and FM, the accused were arrested for attempting to commit the “crime of homosexuality”. Jonas K, Franky D, and Hilaire N, were also arrested and prosecuted for “attempted bribery and homosexuality” (opcit, p18). In the case of Mark Henri B and Bruno E, they were both convicted for “homosexuality” (opcit, p 25). In many other cases, people in Cameroon are simply charged with same sex intercourse or homosexual practice as in the case of Jean Jacques E, Stephane M, and John V (Human Rights Watch,2013, p 20).

Whatever the charge, be it homosexuality, same sex-intercourse, homosexuality practice; the offence has been seen to be punished by Article 347 bis of the Cameroon Penal Code of 1967. This article states that;

“Whosoever has sexual relations with a person of the same sex shall be punished with imprisonment for six months to five years and a fine of 20000 to 200000 francs CFA”. This article seems to punish the act of sexual intercourse between persons of the same sex and not the identity or sexual orientation of people. It is for this reason that authors like Nordberg(2012) and international human rights organizations like Human Rights Watch have not only criticized Cameroon for criminalizing same sex intercourse, but also for wrongfully charging people with homosexuality.

³ <http://76crimes.com/2012/09/25/in-his-cell-in-cameroon-awaiting-trial-for-homosexuality/>

Human Rights Watch (2010, p16) states the example of Herve Bony as a glaring case of arrest for identify as a homosexual and not for the sexual act which is punished by Article 347 bis of the Cameroon Penal Code. Another example is the case of Jean Claude Mbede who was arrested and convicted for arranging a meeting with a supposed homosexual partner by phone⁴.

Scholarly writings continue to state that it is same sex intercourse that is punished according to Cameroon Penal Code, and human rights lawyers and defenders have continued to insist that a reading of Article 347 bis means that there must be proof of sexual intercourse by the accused. Meanwhile, Cameroon keeps prosecuting people for suspected homosexual orientation without any proof of intercourse. There have even been examples of situations where people are prosecuted for drinking Baileys, considered a feminine drink, and for acting feminine⁵. Coming back to the question as to whether homosexuality is a crime in Cameroon, we have to look closely at the definition of homosexuality, not just in the way it is stated in the Penal Code but at the way it is applied by comparing it to broader definitions given by scientists. This enables us to determine whether by criminalizing same sex intercourse Article 347 equals criminalize homosexuality as a whole. This will aid in understanding whether same sex intercourse is equal to, or is part of, or is completely separate from homosexuality.

Defining homosexuality in Cameroon

Many authors in many instances have made mention of the fact that Article 347 of the Cameroon Penal Code criminalizes homosexuality without necessarily stating the content of the word homosexuality in the Cameroonian context. They do not do any explaining of how or why they view the criminalization of the act as the criminalization of a whole gender identity or sexual orientation. Does this mean that homosexuality is equal to same sex intercourse? In order to determine whether homosexuality is criminalized in Cameroon, we have decided to look at the content of the word homosexuality as it is used in the Cameroonian context. We borrow from the analysis of Randall L. Sell (2007) in an article titled "Defining and Measuring Sexual Orientation for Research". In this article, he talks of the origins and evolution of the term "sexual orientation" which as he shows, was in many instances first defined in terms of homosexuality, and then later in terms of both homosexuality and heterosexuality. He also shows evolution in terms of the components of the terms sexual orientation and homosexuality. In this work, we are not interested in sexual orientation as a whole but in homosexual orientation in particular.

The term homosexuality can find its origins from Ulrich's publications on sexual orientation classification (Sell, 2007, p256). Mayne, a follower of Ulrich went ahead to define what an Ulrich (homosexual) is. He defined homosexuals as men for whom "desire for the female sex may exist concurrently" with desire for the male sex (Sell, 2007 p357). Mayne's definition of homosexuality was clearly male centered as it did not envisage the possibility for the existence of female homosexuals. On the other hand, he included bisexual men in his definition. Meanwhile, Sell (2007 p 358) mentions Westphal's German definition which is limited to "men who have sexual desires to male individuals exclusively". According to Sell (2007, p 358) sexual orientation (including homosexuality) "generally comprises one or both of two components: a psychological component and a behavioral component". Article 347 bis of the Cameroon Penal Code does have elements of Mayne's definition in the sense that it includes the possibility of bisexuals being considered as homosexuals. Meanwhile contrary to Mayne and Westphal's view that homosexuality is limited to persons of masculine sex only, it could also refer to persons of female.

Some definitions of homosexuality take into consideration the psychological component only. Examples of the definitions of homosexuality that take into consideration only psychological components are as Sell (opcit) says Mayne's definition ofurning and Benkert's definition of homosexuality. They use the words "sexual passion" and "urge". As seen in Randall (opcit), Ellis only speaks of the psychological component of the term homosexuality when he talks of "sexual instinct", but extends the concept to cover both males and females by talking of "sexual instinct turned by inborn constitutional abnormality toward persons of the same sex". According Randall (2007, p 359), Krafft-Ebing insists that the sole determining factor for homosexuality is the psychological and not the behavioral component. Sell (opcit) cites Krafft-Ebing who states that "the determining factor here is the perverse feelings for the same sex; not proof of sexual acts with the same sex. These two phenomena must not be confounded with each other".

⁴ <http://www.france24.com/en/20140114-gay-cameroon-family-sequestered-roger-jean-claude-mb%C3%A9b%C3%A9-alice-nkom>

⁵ <http://www.mirror.co.uk/news/world-news/man-caught-drinking-baileys-irish-4263468>

Other definitions of the term homosexuality only consider the behavioral component. Sell (2007, p359) cites the example of Stedman's Medical Dictionary which says that it is "sexual behavior, including sexual congress, between individuals of the same sex, especially past puberty". The use of sexual behavior to determine homosexuality is that which has been favored by many researchers.

Both the psychological and behavioral elements are considered by other authors. Some link the two components with the conjunction "and", while others link with "or". When linked with the conjunction "and", it supposes that for there to be homosexuality, both elements must be present. Sell (2007, p359) brings out the definition given by Francoeur et al as "the occurrence and existence of sexual attraction, interest and genitally intimate activity between an individual and other members of the same gender". The use of the conjunction "or" implies that any or both of the elements suffice for homosexuality to exist. If we can extract from Weinrich's definition given by Sell (2007, 359), we would say homosexuality is "a genital act or a long term sexueroetic status".

If we were to apply the different definitions of homosexuality as cited by Sell (2007) to the Cameroonian context in a literary manner, we would be tempted to think that homosexuality is criminalized in Cameroon only within two definitions:

- The definition that only considers the behavioral component and not the psychological component as given by the Stedman's medical dictionary (Sell, opcit), and
- The definition that considers both the behavioral and psychological component when linked with the conjunction "and, as per Francoeur et al (Sell, opcit).

However, a look at the application of the law in Cameroon shows that the intention was not to punish only the act of same sex intercourse. The intention was to punish homosexuality as an orientation which includes a psychological state. That is why there are many instances where people are charged with homosexuality and not same sex intercourse as written in the Penal Code, where people are arrested and prosecuted homosexuality without proof of sexual intercourse. It is our belief that the words of Article ... were clearly selected. Since psychological state is hard to prove, the sexual act was going to serve as the ultimate proof for homosexuality in Cameroon.

Conclusion

In conclusion, the writing of Article 347 of the Cameroon Penal Code was an intentional effort to criminalize homosexuality beyond same sex intercourse. The aim was and is to punish homosexuality as a psychological state, or as a combination of psychological and behavioral factor. Since psychological state is hard to prove, the sexual act was brought in to serve as an element of proof. It is easier to use the sexual behavior to determine the psychological state, than to use the psychological state to determine the sexual behavior of a person. This, we can deduce from Rendall's (2007) explanation as to why researchers prefer to use sexual behavior as the defining factor for determining homosexuality, and not the psychological state. By putting the title of Article 347, the intention was to punish homosexuality as a psychological state; that is sexual orientation and sexual identity. Then by stating that persons who undergo same sex intercourse shall be punished, the intention was to use same sex intercourse as a behavioral standard of proof for homosexuality as an identity and a sexual orientation.

Therefore researchers, homosexual rights activists and other persons who say that Cameroon penalizes homosexuality do so rightly. So, if we were to judge the level of homophobia of a law, not by looking at the punishment provided but by measuring the extent of the crime punished, we would say that Article 347 of the Cameroon Penal Code is even more homophobic than it has been interpreted to be. Nfobin (2014, p90) talking about the punishment for homosexuality in Cameroon states that this homophobic law is the severest in Central Africa. The real struggle for any person who seeks to defend the rights of homosexual people should not be to ensure the "correct" interpretation and application of this article (since it is not mistakenly that it is interpreted in the larger sense of sexual orientation) but its complete abolition.

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