

Alternative Report Concerning Cameroon

For Consideration by the

Committee on the Rights of the Child, 75th Session

Submitted by

Center for Family and Human Rights (C-Fam)

April 14, 2017

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INTRODUCTION

This alternative report is submitted by the Center for Family and Human Rights (C-Fam)¹, a New York based organization that researches and publishes on international law and policy accredited with the United Nations' Economic and Social Council.

C-Fam welcomes the opportunity to participate in the dialogue between Cameroon (henceforth “The State Party”) and the Committee on the Rights of the Child (henceforth “the committee”), particularly since the Convention on the Rights of the Child (henceforth “the Convention”) does not foresee any civil society participation, or other non-governmental involvement, in the reporting process of State Parties to the committee established in article 44 and 45 of the Convention.

As a matter of law State Parties fulfill their obligation to report under article 44 once their reports are submitted to the committee. C-Fam notes the decision of the State party to engage the committee beyond what the Convention foresees and welcomes the opportunity created by the committee for this submission and the decision of the State Party to allow civil society participation in this dialogue.

Because of its specific nature and competence C-Fam wishes to highlight some of the elements included in the committee's document titled “list of issues” (UNDOC: CRC/C/CMR/Q/3-5) and developments in the State Party pertaining to the protection of the child before birth and protection of the family in line with the obligations contained in the convention.

Our interpretation of the treaty is guided by the Vienna Convention on the Law of Treaties (VCLT)—the most authoritative interpretative canon of international law, widely considered a part of customary international law. According to the VCLT (Article 31) treaties must be interpreted in “good faith” according to the “ordinary” meaning of the terms of the treaty as they were understood at the time the treaty was negotiated and its overall “object and purpose.” We also interpret the Convention so that the obligations it contains, where possible, are consistent with the obligations of the State Party in other human rights treaties and the Universal Declaration of Human Rights.

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SUMMARY

The State Report (UNDOC: CRC/C/CMR/3-5) documents the valid efforts of the State Party to progressively implement the Convention, despite limited resources. The legislative and judicial actions undertaken by the State Party evidence its commitment to protect the rights of the child.

Despite the many challenges the State Party faces in progressively realizing its obligations under the Convention, the efforts of the State Party to protect the family and the rights of the child before birth are highly commendable.

The Convention affirms the family as “the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children.” It also affirms that it “should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,” and that “the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding” (CRC, Preamble).

The State Party should also be commended for including procured abortion as a punishable crime in articles 337 and 338 of the Penal Code, consistent with the Convention’s explicit recognition of the rights of the child not only after birth, but also before birth.

The Convention underlines that “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth” (CRC, Preamble).

The “list of issues” document prepared by the committee includes references to controversial social policies that are not required by the Convention, and that if implemented may actually place the rights of the child in jeopardy. Specifically, the document urges the State Party to initiate laws and policies to eliminate discrimination against “lesbian, gay, bisexual, transsexual and intersex children.”

It should be noted that there is no single accepted scientific or legal understanding for how a person should be included in these categories, and that social science data indicates that individuals who subjectively self-identify with one of these categories in their childhood and youth often grow out of it and no longer self-identify in the same category later in life. Considering this, the State Party should be cautious about pigeonholing children early in life.

The state party should also bear in mind that certain sexual behaviors expose children to immediate and long-term risks to their health and wellbeing. Individuals who engage in the conduct and lifestyle associated with the categories enumerated in the “list of issues” document tend to experience exponentially higher rates of depression, suicide, alcohol and drug abuse, as well other socially debilitating conditions.

We ask the committee encourage implementation of the convention in a way that is consistent with the obligations enshrined in the Convention.

I. THE FAMILY

1. The Family and Children in International Law.

The Universal Declaration of Human Rights (UDHR) defines the family as “the natural and fundamental group unit of society” and declares that it is “entitled to protection by society and the State” (UDHR 16). International law further establishes that the family is formed through the union of a man and a woman who exercise their fundamental human right to freely “marry and found a family,” and who are entitled to equal rights in the context of marriage and family relations (UDHR 16).

The International Convention on Civil and Political Rights (ICCPR 23), the International Convention on Economic, Social, and Cultural Rights (ICESCR 10.1) reflect the UDHR verbatim in their provisions. These provisions may not have been intended as a formal definition of the family when originally drafted, even though they come critically close to it. Nevertheless, in light of their constant use and repetition from 1948 to 2006 across multiple human rights treaties, including the Convention presently at issue, they must be regarded at the very least as a functional definition of the family, and a binding one nonetheless.

The Convention on the Rights of the Child explicitly defines “the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children.” It continues by asserting that it “should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community (CRC, Preamble).” The same Preamble continues by recognizing that “family environment” is what a child needs for the “full and harmonious development of his personality.”

These provisions are the best expression of the underlying justification for the singular protections to which the family is entitled in international law.

The importance of the family for the growth and well-being of children was also the underlying reason for the special protections it is afforded under international law in the Declaration and Programme of Action of the 1993 World Conference on Human Rights, which stressed that “the child for the full and harmonious development of his or her personality should grow up in a family environment which accordingly merits broader protection” (A/CONF.157/23, paragraph 21).

Several other core obligations of states towards the family in international law are also well established, including the obligation to create an environment conducive to family formation and stability (CRC 18, 23, 27); the protection of the right of the child to know and be cared for by her/his parents; and the related rights of the child to a cultural and religious identity (CRC 2, 3, 5, especially 7, 8, 9, 10, 18, 27); and the prior right of parents to educate their children in accordance with their convictions (CRC 2, 3, 5, 14, 20, 29, 30).

2. Protection of the Family in the State Party Report

Consistent with these obligations, the State Party reports having taken multiple steps, in a variety of fields, to protect the family, as well as to help it fulfil its crucial role for the upbringing and wellbeing of children.

As reported by the State Party “The family is considered to be the ideal place for the protection of children.” (CRC/C/CMR/3-5, V). The State Party Report details actions undertaken to protect the family, including with regard to the “family environment (V, 1),” “recovery of maintenance

allowance for the child (V, 2),” “children deprived of a family environment (V, 3),” “adoption (V, 4),” “child abuse and abandonment (V, 5).”

The State Party further mentions important efforts to “increase support” to families, also by setting up a fund for education of children from the poorest families (CRC/C/CMR/3-5, V, 1, 92).

The State Party described efforts to help children deprived of their family by making sure that, whenever possible, they can be accommodated in another family unit (CRC/C/CMR/3-5, V, 3, 98).

The State party created a premarital, marital, and family education programme to comprehensively address both abuse and abandonment and education tools for parents and special education programmes on the responsibilities of parents (CRC/C/CMR/3-5, V, 5, 106, 110), as well as policies to foster inter-generational solidarity (CRC/C/CMR/3-5, V, 5, 112).

In the field of disability, the State Party helps the family taking care of the child, by contributing to “cover the expenses for education and initial vocational training,” by granting “scholarships to children of disabled parents (CRC/C/CMR/3-5, VI, 1, 114),” and by promoting “educative talks with parents of children with disabilities,” to help them fulfill their role.

When addressing the issue of street children, the State Party acknowledges that the fight against the street children phenomenon needs parents’ and family’s awareness of their own responsibilities (CRC/C/CMR/3-5, VII, 3, 192). In addition, while recognizing its difficulties in finding financial and material resources to tackle the issue, it mentions that it would curb these difficulties first by pursuing “actions geared towards promoting the return of street children to families”, and by intensifying education for the family (CRC/C/CMR/3-5, VII, 3, 193).

3. Social Science on Protection of the Family

The self-evident truth of the benefit of the family to its individual members and society at large enshrined in international law is validated by the best available social science and research, making use of the most reliable data and widest possible samples.²

Children thrive in intact families formed by the marriage of a man and a woman. It is the place where individuals learn both love and responsibility. No other structure or institution is able to deliver the same quality outcomes for children as the family composed of a man and a woman in a stable and enduring relationship.³

When children are not brought up by their biological parents in a stable family environment, as for example in unmarried, cohabiting, and same-sex households, they are more likely to experience school failure, lower levels of education, behavioral problems, drug use, and loneliness, among other negative outcomes, as well as physical, sexual, and emotional abuse.⁴

² For more on the topic see: The Family Articles, available online at: <https://civilsocietyforthefamily.org/>

³ Regnerus M., “How different are the adult children of parents who have same-sex relationships? Findings from the New Family Structures Study”. Soc Sci Res. 2012 Jul;41(4):752-70. Findings of this research are also observable at the website: <http://www.familystructurestudies.com>.

⁴ Ibid. Regnerus, M.; *see also* Sullins, Donald Paul, Emotional Problems among Children with Same-Sex Parents: Difference by Definition (January 25, 2015). British Journal of Education, Society and Behavioural Science 7(2):99-120, 2015. Available at SSRN: <http://ssrn.com/abstract=2500537>; and Sullins, Donald Paul, Child Attention-Deficit Hyperactivity Disorder (ADHD) in Same-Sex Parent Families in the United States: Prevalence and Comorbidities (January 21, 2015). British Journal of Medicine & Medical Research 6(10): 987-998, 2015, Article no. BJMMR.2015.275, ISSN: 2231-061. Available at SSRN: <http://ssrn.com/abstract=2558745>.

The benefits of the family for individuals and communities are repeated across borders and all segments of society regardless of social and economic status, including among minorities⁵.

Entering marriage and founding a family is associated with better physical and mental health, emotional wellbeing, less criminality and substance abuse, and longer life expectancies for both men and women. It is also positively correlated with lower infant mortality. Moreover, research shows that healthy families formed by the union of a man and a woman result in more healthy families. While individuals who do not experience the benefits of being raised by their mother and father can rise above their circumstances, children born in families that stay together are more likely to form their own family.⁶

The family is essential in combating poverty and creating economic opportunity. A landmark Harvard study shows the best predictor of social mobility in the United States is the family. The most consistent factor in the ability of individuals to emerge from poverty and climb the social ladder is living in areas where families stay together⁷.

As for the shortcomings, due to lack of funds and resources, the international community should help the State Party continue along this road.

II. THE RIGHTS OF THE CHILD BEFORE BIRTH

The State Party protects the life of children in the womb from procured abortion by punishing abortion in Article 337 of its Penal Code, as well as assault on pregnant women in Article 338. In no case is abortion considered a right. Abortion is merely not criminally punishable in cases where it is carried out where it is necessary to preserve the mother from a “grave danger to her health” or in cases of rape.

Protection of the right to life of the child in the womb of his/her mother is consistent with the Convention, and is the necessary premise for the protection of all other rights of the child. The Convention on the Rights of the Child explicitly protects the rights of the child before birth.

In its Preamble, the Convention explicitly affirms that “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth.” According to the Vienna Convention on the Law of Treaties (VCLT), the preamble of a treaty provides necessary interpretive context for all the provisions of a treaty.

The Convention, moreover, does not exclude the child before birth from its definition of the child: “For the purposes of this Convention, a child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier (CRC, Article 1).”

⁵ See: Fernando Pliego Carrasco, *Tipos de familia y bienestar de niños y adultos: El debate cultural del siglo XXI en 13 países democráticos*, Universidad Nacional Autónoma de México, Instituto de Investigaciones Sociales 2013. Findings of this research are also observable at the website: <http://www.tiposdefamilia.com/libro>.

⁶ See Wilcox et. al, *Why Marriage Matters, Thirty Conclusions from the Social Sciences*, Institute for American Values New York, 2011, available at: http://www.breakingthespiralofsilence.com/downloads/why_marriage_matters.pdf.

⁷ See Chetty, Raj and Hendren, Nathaniel and Kline, Patrick and Saez, Emmanuel, *Where is the Land of Opportunity? The Geography of Intergenerational Mobility in the United States*, January 2014. NBER Working Paper No. w19843. Findings of this research are also observable at the website: <http://www.equality-of-opportunity.org>.

Consistent with the Preamble, Article 1 of the Convention should be interpreted with the widest possible application and can only be read in a way that welcomes and supports all forms of protection of the child before birth.

It must be noted that the drafters of the Convention rejected the wording proposed in Article 1 of the 1979 Draft Convention on the Rights of the Child that defined when the protections of the Convention applied “from the moment of his birth.” Other aspects of that legislative history prove that the definition applies to the child before birth too⁸.

Significantly, the representative of Italy signaled that the rule regarding the protection of life before birth could be considered as *jus cogens* since it formed part of the common conscience of members of the international community.⁹

Nothing in the language of Article 6 of the Convention—on the right to life—suggests that the child before birth shall be excluded by this definition and be denied the protections that the right entails. “1. States Parties recognize that every child has the inherent right to life. 2. States Parties shall ensure to the maximum extent possible the survival and development of the child.”

On the contrary, precisely because the Convention does not exclude children in the womb from its protections, some signatories felt the need to make reservations on this point, not to outlaw termination of pregnancy in their countries.¹⁰

Additionally, Article 24 of the Convention, on the right to health of the child provides that states should “ensure appropriate pre-natal and post-natal health care for mothers.” Pre-natal care is also considered a component of the child’s right to health.

Experts in international law and health reject claims that abortion is a human right under any circumstance.¹¹ This is the case of the expert document “The San Jose’ Articles” which describes actions by UN entities to present abortion as a right as unlawful and ultra vires.¹²

III. DISCRIMINATION

⁸ For more see: Rita Joseph, *Human Rights and the Unborn Child*, 2009.

⁹ Discussion and adoption by the Working Group (1980), paras. 30-31 from E/CN.4/L.154.

¹⁰ Such reservations were made by Luxemburg, France, Tunisia, and the United Kingdom. See: UNDOC: CRC/C/2/Rev.3, 11 July 1994.

¹¹ See, *ibid.* 8; See also Stefano Gennarini, *The Diffusion of Sexual and Reproductive Rights through the UN Human Rights Framework*, in Aleksander Stepkowski (ed.) *Protection of Human Life in Its Early Stage*, Peter Lang Edition 2014.

¹² “San José Articles. Abortion and the Unborn Child in International Law”. The first five articles are especially relevant in this context: “As a matter of scientific fact a new human life begins at conception.” (Article 1); “Each human life is a continuum that begins at conception and advances in stages until death. Science gives different names to these stages, including zygote, blastocyst, embryo, fetus, infant, child, adolescent and adult. This does not change the scientific consensus that at all points of development each individual is a living member of the human species.” (Article 2); “From conception each unborn child is by nature a human being.” (Article 3); “All human beings, as members of the human family, are entitled to recognition of their inherent dignity and to protection of their inalienable human rights. This is recognized in the Universal Declaration of Human Rights, the International Convention on Civil and Political Rights, and other international instruments.” (Article 4). Finally, “There exists no right to abortion under international law, either by way of treaty obligation or under customary international law. No United Nations treaty can accurately be cited as establishing or recognizing a right to abortion.” (Article 5). Each article is accompanied by an explanatory footnote. The articles and footnotes are available in their entirety at: <http://sanjosearticles.com/>

In the “list of issues” document, the committee requested information on “legislative and practical measures ... to eliminate discrimination against ... lesbian, gay, bisexual, transsexual and intersex children.” (CRC/C/CMR/Q/3-5, I, 3).

The State Party evinces important instances of protection of children from many forms of unjust discrimination in its Report in a way that is commensurate with its resources and the progressive realization of the rights enshrined in the Convention, for example the State Party enacted Law No. 2010/002 on the promotion and protection of persons with disabilities (CRC/C/CMR/3-5, VI, 1, 114).

However, the State Party does not offer special protections to children based on whether or not they subjectively self-identify as lesbian, gay, bisexual, transsexual or intersex.

1. The Convention, does not include or imply “lesbian, gay, bisexual, or transsexual” as a ground of non-discrimination.

Article 2 of the Convention explicitly protects the rights of each child, without discrimination based on “race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.”

The protection of “lesbian, gay, bisexual, transsexual and intersex children,” is a matter that is not addressed in the text of the Convention and was never contemplated by the framers of the Convention.

The same article 2 requires state parties to “take all appropriate measures to ensure that the child is protected against all forms of discrimination.” Again, no mention of lesbian, gay, bisexual, transsexual and intersex children is made, nor can it be implied in good faith.

State Parties to the Convention have no obligation to enact laws that give children any special benefits or protections based on their sexual preferences and behavior, or to sanction their feeling about their gender identity.

All children, like all human beings, possess the same fundamental rights by virtue of their inherent dignity and worth.¹³ This is true for both adults and children.

While no binding human rights instrument recognizes the categories of “sexual orientation and gender identity” as unjust grounds of discrimination, member states remain free to regulate sexual mores according to their values, morals, and traditions.

Individuals who subjectively self-identify as LGBT have no special additional human rights beyond those of other citizens by virtue of their perceived sexual orientation and gender identity or their sexual behavior.

To posit the self-identification of children or other individuals as lesbian, gay, bisexual, transsexual and intersex as a category of non-discrimination would require that subjective sexual preference and expression enjoy the same level of protection as freedom of religion in international law. This is simply not the case.

¹³ UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III), Preamble and Article 1.

International law does not protect unfettered sexual autonomy in the same way as it protects religious freedom. Sexual autonomy is only protected by international law in the context of the right to freely marry and found a family¹⁴ and the equal right of men and women to decide freely and responsibly on the number and spacing of children.¹⁵

Sovereign States are free to either permit homosexuality as a legitimate exercise of sexual autonomy as well as prohibit it on moral, health, or other grounds, as more than 70 countries do today, including The State Party. No international obligation exists in this regard.

There is no consensus among UN member states on the use of the term “sexual orientation and gender identity.” UN declarations and resolutions that mention these categories are all non-binding in nature, and have never been adopted on a consensual basis.

While treaty bodies, including this committee¹⁶, have stated their support for including “sexual orientation and gender identity” as categories of non-discrimination alongside race and religion they do not have the power to alter the obligations of State Parties under the Convention.

2. The problem of defining “LGBT children.”

Furthermore, the adoption of these terms and categories in relation to children is particularly troublesome.

Categorizing children according to a “sexual attraction” or behavior they may manifest raises serious concerns about the methods and “accuracy” of such determinations, and implies many grievous risks to the health and wellbeing of children.

There is no scientific basis for the notions of “sexual orientation and gender identity,” let alone one how it should apply to children.

Experts find there is no single clinical or scientific definition on what constitutes a person to be lesbian, gay, or bisexual. In 2016, a special report on sexuality and gender, resulting from a review of hundreds of scientific articles on lesbian, gay, bisexual, and transsexual (LGBT) health, which combined findings from the biological, psychological, and social sciences, found that there is no scientific support for the widespread notion that persons who experience same-sex attraction or gender dysphoria are “born that way.”¹⁷

The authors of the study highlighted how individuals who identify as LGBT, including those experiencing gender dysphoria, report that their perceived sexual orientation and gender identity can and often do change over time, and that biological and genetic factors are widely recognized as unable to account for sexual orientation and gender identity.

Even pro-LGBT groups do not define “sexual orientation and gender identity” in an objective and meaningful way. The American Psychological Association (APA), says sexual orientation and gender identity is a continuum of diverse factors like attraction, behavior, identity, and membership

¹⁴ UDHR 16, ICCPR 23 and 24, CESCR 10.

¹⁵ CEDAW 16.

¹⁶ General Comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24) (UNDOC: CRC/C/GC/15).

¹⁷ Lawrence S. Mayer, M.B., M.S., Ph.D. and Paul R. McHugh, M.D., “Sexuality and Gender: Findings from the Biological, Psychological, and Social Sciences,” The New Atlantis, Fall 2016.

in a community and it recognizes that biology and genetics are unable to account for sexual orientation and gender identity.¹⁸

3. Protecting child health and wellbeing from harmful information and behavior

The committee implies that the party should take legislative and practical measures to eliminate discrimination against lesbian, gay, bisexual, and transsexual children, but does not specify what laws and policies might be appropriate in this context.

The committee appears to suggest that that the State should undertake efforts to validate the subjective self-identification of children as lesbian, gay, bisexual, and transsexual, and therefore also expose children to information that will enable them to make such a subjective self-determination, consistent with previous ideas expressed by the committee in its suggestions and general recommendations pursuant to article 45 of the Convention.

But these suggestions involve children's exposure to information about their sexuality for which they may not be prepared because of their immaturity. Such exposure, which could hardly be the product of the child's free and autonomous determination, may amount to sexual abuse and expose children to attitudes and behaviors that may inflict lasting negative consequences to their health and wellbeing.

The suggestion that children can be "transsexual" is especially troubling, since this might trigger the need to supply children with powerful drugs that will have lasting effects on their health.

The committee would do well to bear in mind, as the Preamble of the Convention states, that "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth."

Exposing children to misleading information and encouraging them to explore behaviors and choices that could have negative consequences on their health and wellbeing for the rest of their lives amounts to a form of child abuse within the meaning of articles 19 and 34 of the Convention.

Individuals who identify as lesbian, gay, bisexual, and transsexual suffer from exponentially higher rates of ill health from a host of sexually transmitted infections (STI) and other risks, including substance abuse, depression, and suicide.¹⁹ UN agencies and the development community more broadly, including USAID and UNAIDS, recognize the inherent risks of homosexual acts, and the homosexual lifestyle generally, but they fail to recommend that individuals change their behavior,²⁰ even though such behavior is not protected by international law and therefore cannot trump sovereign prerogatives.²¹

¹⁸ American Psychological Association, Sexual Orientation and Homosexuality: Answers to Your Questions for a Better Understanding, What Is Sexual Orientation?, <http://www.apa.org/topics/lgbt/orientation.pdf>

¹⁹ *ibid.* 17; O'Leary D, "The Syndemic of AIDS and STDS Among MSM", *Linacre Quarterly*, Volume 81, Issue 1 (February, 2014), pp. 12-37, available at: <http://www.maneyonline.com/doi/full/10.1179/2050854913Y.0000000015>; Beyrer, Chris, et al. "Global epidemiology of HIV infection in men who have sex with men." *The Lancet* 380.9839 (2012): 367-377, available at: <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3805037/>;

²⁰ *Implementing Comprehensive HIV and STI Programmes with Men Who Have Sex with Men, Practical Guidance for Collaborative Interventions* (September 2015), authored by UNFPA, The Global Forum on MSM and HIV, UNDP, UNAIDS, WHO, United States Agency for International Development, the US President's Emergency Plan for AIDS Relief, and the Bill & Melinda Gates Foundation, available at: <http://www.unfpa.org/publications/implementing-comprehensive-hiv-and-sti-programmes-men-who-have-sex-men#sthash.CUITAFmo.dpuf>.

²¹ United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI, Article 2.7 ("Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic

CONCLUSIONS

- 1. The State Party should be commended for adopting family-friendly laws and policies that protect the family as a means to realize the rights of the child.**
- 2. The State Party should be commended for protecting the right of the child before as well as after birth, and should be encouraged to adopt measures to help women avoid abortion even in cases where it is not publishable by law.**
- 3. The Committee should refrain from promoting the notion that the state should validate the subjective self-identification of children as lesbian, gay, bisexual, or transsexual.**

jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII”).