

THE FORGOTTEN RIGHTS OF THE KUMBA PRISON POPULATION

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GLOBAL CONSCIENCE INITIATIVE *SPECIAL REPORT ON THE KUMBA PRINCIPAL PRISON, CAMEROON*

REPORT SUMMARY

This report examines the illegal conduct of the Kumba Principal Prison that led to the death of three inmates under the care of the Kumba prison administration on August 18, 2008. To date, the administration and its principals have not been held responsible for their actions. It further calls for an evaluation of the current prison practice in accordance to international norms, and under the recommendations of the United Nations Human Rights Council, *Universal Peer Review* conducted in February 2009. Above all, it calls for the strengthening and comprehensive review of the existing policies and the accountability mechanism consistent with the rules and regulations set forth by domestic laws and International Human Rights Treaties.

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GLOBAL CONSCIENCE INITIATIVE
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TABLE OF CONTENTS

FOREWARD

INTRODUCTION

1. EVIDENTIARY BASIS FOR IMMEDIATE INTERVENTION BY PROPER AUTHORITIES

1.1. MISCONDUCT RISING TO THE LEVEL OF CRIMINALITY

- 1.1.1. *Death As Direct Cause of Excessive & Unjustifiable Use of Force*
- 1.1.2. *Evidence of Torture by Prison Administration*
- 1.1.3. *Other General Misconduct And Concerns*

1.2. FAILURE TO ADHERE TO NATIONAL PRISON POLICY

- 1.2.1. *Deficiency of Food Provisions Below Standards*
- 1.2.2. *Improper Medical Care Below Standards*
- 1.2.3. *Denial of Fundamental Access to Justice*

2. LEGAL OBLIGATIONS UNDER NATIONAL AND INTERNATIONAL LAW

2.1. DENIAL OF FUNDAMENTAL RIGHTS

- 2.1.1. *The Right To Be Free From Illegal Arrest or Detention Under the Cameroon Constitution, Article 3 of the UDHR, and Article 9 of the ICCPR*
- 2.1.2. *Denial of Due Process Rights: Fair Hearing and To Be Presumed Innocent*
 - 2.1.2.1. *The Right to a Fair Hearing Under the Cameroon Constitution; Article 10 of the UDHR; and Article 7(1)(d) of the ACHPR*
 - 2.1.2.2. *The Right to Be Presumed Innocent Under the Cameroon Constitution; Article 11(1) of the UDHR; and Article 7(1)(b) of the ACHPR*

2.2. THE RIGHT TO LIFE, PHYSICAL AND MORAL INTEGRITY

- 2.2.1. *Under the Cameroon Constitution; Articles 55, 56 of the UN Charter; Article 3 of the UDHR; Article 5(b) of the ICERD; Article 4 of the ACHPR; Article 7 of the ICCPR; and Articles 1(1), 2(2), and 2(3) of the UNCAT*
- 2.2.2. *Under Cameroon Law: Sections 84; 89; 132(a); 278; 280; and, 283 of the Cameroonian Penal Code*
- 2.2.3. *Denial of Rights Under Administrative Law*

2.3. THE RIGHT TO ADEQUATE STANDARDS OF LIVING CONDITIONS WHILE IN DETENTION

- 2.3.1. *Right to Medical Care in Article 25 of the UDHR; Article 16 of the ACHPR; Articles 30(2), 31, 32(1), 33(2), and 34 of the Special Statute of the Body of Functions of the Penitentiary Administration (1992)*
- 2.3.2. *The Right to Adequate Food Under Article of ICESCR; and Article 29 of the Special Statute of the Body of Functions of the Penitentiary Administration (1992)*

3. EXAMINATION ILLEGAL PRACTICES AND LACK OF POLICY PROCEDURES

4. CONCLUSION AND RECOMMENDATIONS

- 4.1. RECOMMENDATIONS FOR THE MINISTRY OF JUSTICE
- 4.2. RECOMMENDATIONS FOR THE SENIOR STATE COUNSEL

ANNEX 1: TESTIMONIES AND ACCOUNTS

ANNEX 2: INTERNAL RECORDS

FOREWARD

When I was asked to write a foreword message for this report, our colleagues had given me strict instructions to use affirmative but neutral language in the hope I portray the exact circumstances of Cameroon's Kumba Principal Prison. Yet, how can one do that without being divorced from one's own emotions under such situation – and the truth is we cannot. We understand that incarceration puts limits on an individual's movement, but it does not forfeit one's rights to the inalienable dignity of person(s). Nor does it justify subjection to cruel and deplorable treatments and torture – these rights are neither transferable nor mutable. The August 18th Incident at the Kumba Prison reflects the disproportionate treatments and unjustifiable use of any legal or practical scope of force. The actions taken before and after the incident causes such immense concern, that we are compelled to bring it to the light.

In the intervening contemplation, I am mindful of Guantanamo Bay where detainees were subject to indignities with the support of the U.S. Government (whether by silence or by conduct). An unmatched society with the belief for the rule of law, revoltingly and absolutely in derogation of international and domestic laws. How could this happen?

Guantanamo Bay serves as a stark but grave reminder that without courage to speak up, we run afoul of the same conduct that plagues the very fabric of human decency and governmental legitimacy. The incident is an illustration of the arbitrariness, coupled with the notion of vulnerability of a community that has been grossly forgotten, and as mentioned previously, their rights are not forfeited because of their change in title. If Cameroon, with its current state of affairs, is in danger of the same failures then we must address it both in policy and in law.

With this in mind, this report was carefully examined by an international team, scrutinizing all the facts based on extensive analysis and first hand accounts of those who are subject to these treatments – noting the factual discussions that rises to the level of criminal liabilities under Cameroon laws and applicable Human Rights Treaties. It further analyzes some of the policy considerations that proved to be problematic due to the lack of adherence and accountability of the prison institutions both locally and nationally. These discussions successfully intermingle the inadequacy of law and/or policy safeguards that lead to malfeasance by those who are charged with the duty of care for such population. Global Conscience Initiative believes that these two practices are not mutually exclusive, but together can be a hazard or be used for positive change.

Above all, we call for those in elected capacity to affirmatively and deliberately intervene to end these practices because of the exigency of the circumstances. Without true and careful review, it poses a significant impediment, and direct breach of Cameroon laws. This unique opportunity offers a genuine chance to make a positive change in the way we see ourselves as Cameroonians, and the way we view justice.

In closing, I am reminded of the maxim, 'injustice to one, is injustice to all.' Let this opportunity be the contrary, that 'justice to one, is justice to all!' Let this opportunity be our compulsion for this basic but indispensable decency.

Yours With Great Urgency,

Samba Churchill – CEO
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INTRODUCTION

“No one truly knows a nation until one has been inside its jails. A nation should not be judged by how it treats its highest citizens, but its lowest ones.”

- Nelson Mandela, 1994

Africa comprises 53 countries, containing approximately 3,000 prisons and 1 million prisoners. And while African prisons hold just over 10% of the world’s prison population, the prison population in Africa has been rising over the last few years¹, lending new importance to the study of these institutions and the human rights concerns associated with them. Human rights abuses are common in African prisons, and there are often significant disparities between the legal obligations assumed by African states and the reality of both the conditions in prisons and treatment of prisoners in those states. Overall, conditions of detention in Africa are often abhorrent to international human rights standards due to an insufficient allocation of state resources and corruption leading to inadequate food and healthcare, lack of access to justice, inefficient administration and training, and severe overcrowding. Cameroon, the subject of this report, at least exhibits all of these deficiencies in prisoners’ rights, and in terms of overcrowding, is the second worst in the world with a prisoner to bed rate of 296.3%.²

There are currently 72 prisons in Cameroon, which are divided into three main categories: central prisons, located in the capital city of each province; principal prisons, which are linked to magistrates courts accommodating all categories including pre-trial prisoners; and, secondary prisons that only accommodate sentenced prisoners and are scattered throughout the country. As its name suggests, the Kumba Principal Prison is of the second type, and is located in the city of Kumba in the Southwest Region of Cameroon, an Anglophone region that applies the common law-based Penal Code.

Global Conscience Initiative (GCI) is a non-governmental organization, created and existing under the laws of Cameroon, that is active in protecting and promoting human rights in Kumba. The organisation has been investigating human rights in the Kumba Principal Prison since its inception and has conducted interviews with multiple prisoners, while visiting the prison on a regular basis during periods of access. The first time GCI received access to the prison was in January 2008, during which time GCI was in the position to only interview a few detainees. The information presented in this report is based solely on what GCI obtained from investigations and interviews inside the prison between January 22nd and April 24th of 2009, and investigations outside the prison between January 22nd and July 1st of 2009.

During the first period indicated, GCI had access to the prison and was able to meet with pre-trial and convicted detainees during formal and informal interviews. The interviews were conducted in three waves, the first occurring from January 22nd until January 24th of 2009,³ and second and third overlapping from January 26th until April 24th.⁴ Questions asked to detainees fall into two categories: legal status and prison conditions. The second stage involved informal interviews with prison officials and prisoners concerning the testimony gathered during the first stage. GCI again held formal interviews during the third stage,

¹ Sarkin, Jeremy. “An overview of human rights in prisons worldwide.” Human Rights in African Prisons. Human Sciences Research Council: Athens, OH, USA (2008), 1.

² Id at 14.

³ ANNEX Z for interview questions used from January 22 – 24, 2009.

⁴ Annex X for interview questions used from January 26 onwards. A number of informal interviews were also carried out during this second stage.

basing these on the first questionnaire with additional questions concerning health, internal prison discipline, and circumstances of arrest. Other information was obtained informally during discussions with detainees, pre-trial and convicted, as well as prison officials. Information will be noted with their respective sources.

Prior to April 24th, GCI was in the position to move around the prison compound and make first hand observations. Through these observations, GCI was able to get an impression of the situation and structure inside the cells. In every cell, there is internal discipline instituted in the form of an internal government, consisting of a president, chief justice and state counsel, among other positions⁵. The aim of this internal government is to maintain order and hierarchy between the prisoners; working in conjunction with the prison administration.

After the 24th of April however, GCI had limited access to the prison, which restricted the means of investigation to interviews with released and ex-prisoners, other informants and so-called 'domestics'. A domestic is a convicted prisoner who is in the position to leave the prison during the day. In exchange for this privilege, the prisoner works without receiving payment from employers who requested this form of assistance from the prison administration. The administration has the authority to deny or consent to this request, which indicates that the acquiring of this privilege is completely at the discretion of the administration.

The aim of this report is to elucidate on the prison conditions and the manner in which detainees are treated in the Kumba Principal Prison. The information GCI is presenting is based on several formal and informal interviews with pre-trial detainees, domestics, released prisoners and prison staff. Also, GCI makes use of personal observations made inside the prison regarding prison conditions, as well as descriptions of incidents in the prison witnessed by GCI.

The first section of the report will present the evidence GCI has gathered which includes the practice of torture, deplorable food rations, lack of health care and access to justice. In the second section the legal framework concerning relevant human rights norms will be elaborated. In this section, international and national human rights laws will be discussed, as well as the internal policies and legal framework within the prison. The evidence will then be discussed in light of the previously examined human rights laws resulting in conclusions as to the extent to which human rights are violated in the Kumba Principal Prison.

The aim of this report is not to criticize the government or authorities of Cameroon or to advocate an upheaval of the Cameroonian justice system. GCI understands that every government must operate under unique budgetary and societal constraints which cannot be altered at the mere whim of an outside party. Rather, GCI's endeavours are intended to alert the establishment as to the conditions and illegal actions within the Kumba Principal Prison and urge the individual authorities responsible for the efficient and just administration of the state, regional, and local prison system to fulfil their legal responsibilities by investigating the deplorable conditions and mistreatment of prisoners within the Kumba facility and take steps to improve the former, and to remove and punish the individuals responsible for the latter.

1. EVIDENTIARY BASIS FOR PROPER AUTHORITIES TO INTERVENE

⁵ The internal government is taken very seriously in every cell, and the positions the inmates receive have actual tasks and responsibilities attached to them. The existing positions in the government are: president, vice president, chairman, secretary, chief justice, state council, technical advisor, treasurer, reverent pastor, doctor, cell cleaner, sanitary and an extensive police force.

1.1. MISCONDUCT RISING TO THE LEVEL OF CRIMINALITY

1.1.1. *Death As Direct Cause of Excessive & Unjustifiable Use of Force*

A number of detainees referred to a particular confrontation on August 18th 2008 between government forces and those awaiting trial at Kumba Principal Prison, whereby approximately two dozen detainees were tortured. As a direct result of the torture they received, two relatively healthy pre-trial detainees, **Mungob Denis** and **Achedu Nixon**, died. These torturous acts also hastened the death of a third pre-trial detainee, **Adamu Ibrahim**, who ostensibly suffered from an untreated abdominal illness. Twenty-one others sustained life-threatening injuries, received no treatment, yet survived.

Events prior to August 18th 2008

In the months prior to August 18th 2008, the “awaiting trial cell” housed nearly three hundred detainees in an area less than 18 x 20 meters.⁶ The poor conditions, in addition to maltreatment by prison staff, led the pre-trial detainees to issue repeated written and verbal complaints to the prison administration concerning the following:

1. The poor quality and quantity of food for which there is a budget
2. Lack of medical facilities and drugs for which there is a budget
3. Refusal to escort awaiting trials to court hearings for lack of transport fare, causing lengthy periods of pre-trial detention
4. Warders’ overzealous use of physical violence and intimidation against inmates
5. Coercion of visitors to give warders money, in addition to toilet paper and soap, in order to communicate with detainees
6. Lack of water available inside awaiting trial cell⁷
7. Refusing awaiting trials adequate opportunity for fresh air, sunlight and physical activity

Detainees claim the prison administration responded to their complaints with anger or indifference. When no improvements arrived, tension built between staff and detainees.

Events on the day of August 18th 2008

⁶ GCI did not obtain the August 2008 estimation of awaiting trials from the prison records department, but from discussions with detainees present at that time. An August 22, 2009 formal interview with released pre-trial detainee Fon Vitalis stated that the awaiting trial cell housed between 200 and 300 persons previously. He stated that after August 2008, some pre-trial detainees have been redistributed among the convicted cells to reduce the awaiting trial cell population to about 180 persons. From January 2009 onward, GCI noted the awaiting trial cell’s population to remain under 200, while the total pre-trial population among all the prison cells fluctuated well above 200 persons. For example, on March 30th 2009, GCI noted the prison records stating the total pre-trial population being 220, but a prison official claimed that only between 170 and 180 prisoners were housed in the awaiting trial cell. This is consistent with GCI’s observations and prisoner testimony.

⁷ In February 2009, GCI spoke to detainees who were residents of awaiting trial cell during August 2008. They stated that the water delivery system has since been repaired; moreover, their own detainee-led government was responsible for this improvement. As the prison administration would not finance the utility repairs, detainees collected taxes among themselves to fund the matter.

On August 18th, about midday, a warder attempted to transfer two new prisoners awaiting trial to a different ward. This other ward is considered by all prisoners to be the most comfortable at Kumba prison, as it contains less than twenty prisoners for a space perhaps 20 x 5 meters. By comparison, other similarly sized wards house 40 – 70 prisoners. Detainees also confirmed that residency in this ward is granted by the superintendent personally, often for a bribe. Two detainees estimated this bribe to be between 15,000 and 25,000 CFA.⁸ Detainees witnessing the events of August 18th claim these two pre-trial detainees had paid the aforementioned transfer bribe. The warder carrying out the transfer asked for the bed sheets belonging to one of those to be transferred as well. As one of the new detainees was the “*mbindi*” of **Achedu Nixon**, he refused to give them⁹.

When **Achedu Nixon** questioned the prison administration’s conduct, detainees say they witnessed the warder carrying out the transfer grab **Nixon** and hit his face so hard as to cause him to collapse. The altercation caused a general uproar in the awaiting trial cell, as more prisoners yelled complaints against the administration. In further protest to the transfer, **Nixon** and **Mungob Denis** refused to obey further orders from warders. Apparently, a warder then attempted to remove **Nixon** from the cell, ostensibly to punish him further, while at the door to the awaiting trial cell other detainees struggled to keep **Nixon** inside. Other detainees claim that **Nixon** and **Denis** were attempting to force open the door to allow the awaiting trial population to leave the cell for fresh air and natural light.¹⁰

During this struggle, the door of the cell was forced off its hinges. At this point the prison administration alleges that the detainees were attempting to escape from the prison. Detainees all confirmed to GCI that this was not the case; in fact, they claim their detainee-led government placed upturned beds in place of the door, from within the cell, to ensure no one would escape.¹¹ The pre-trial detainees then stated their intention to strike and demanded to see the Senior Divisional Officer of Kumba-Meme concerning their grievances.

By this time, the Kumba gendarmes, police, and warders had gathered at the prison under the impression given by the prison administration that an escape attempt was underway. The Senior Divisional Officer, an official appointed by the central government in Yaoundé for each administrative division, also arrived. He demanded those awaiting trial send out five

⁸ GCI received a manuscript from one convicted detainee, who did not consent to being named, who is a resident of this preferred cell and was also present before and during events on August 18th. He describes in detail the bribes to the prison administration required for transfer to improved housing. He also states, and GCI’s observations within this cell corroborate, that the population of his cell is less than 20 detainees, which contrasts sharply with GCI’s first hand observations in all other cells.

⁹ *Mbindis* are a class of persons within the internal organization of the awaiting trial cell. As *mbindi* means something small or young, all recently imprisoned detainees receive this title. Almost every new prisoner is paired with a more veteran detainee, who mentors him in the rules and life of the awaiting trial cell. Detainees described this relationship as either helpful or exploitive, depending on the demeanour of both the *mbindi* and the mentor. Furthermore, as *mbindis* perform chores and other tasks for or in cooperation with their mentor, detainees often arrange to have more than one *mbindi* by persuading or paying the government of the cell for this luxury. **Achedu Nixon** resisted the warder’s effort to remove his *mbindi*, thus he refused to cooperate.

¹⁰ GCI received prisoner testimonies which emphasized either the problem with the *mbindi* or a desire for “yard time” as the reason for the altercation. Achedu Nixon is consistently named as a central player in the initial stages of the incident. An interview dated April 22, 2009 with Fon Vitalis cites the role of Nixon’s *mbindi* explicitly, whereas other verbal accounts from detainees simply said Nixon and Denis were upset over prison conditions. One undated, written account from a released pre-trial detainee who did not consent to GCI using his name stated that, “On 18 August, one [prison warder] came in the [awaiting trial] cell without putting on his uniform and which [meant] he was not in work that day and he was just hitting one inmate by name Ashindu Nickson [sic].” Furthermore, this detainee had very noticeable scars from torture he claimed to have received on August 18th; he permitted GCI to record photographs of his scars.

¹¹ GCI spoke with the prisoner who was provost of awaiting trial cell on August 18th, and he verified repeatedly that he and his government ordered the bed placed before the door, blocking entry or exit, and denied any intention of escaping.

representatives to speak with him. The detainees refused, claiming that more or even all of them should come out since they suspected they would face punishment. The Divisional Officer refused, continuing to demand only five representatives, and gave the awaiting trial cell thirty minutes to produce these individuals. Still afraid, no detainees came out.¹²

After the thirty minutes expired, the forces outside began throwing canisters of teargas into the awaiting trial cell. Detainees estimate at least thirty canisters were thrown inside the cell.¹³ This caused severe coughing, and for some, loss of consciousness. Several detainees climbed up to kick open the roofing to release some teargas. These individuals were shot at by the government forces outside, and detainees claim one pre-trial prisoner was shot in the arm. The others climbed down or fell back inside. Unable to bear the fumes, the detainees dismantled their barricade and fled the cell into the prison yard, where they were grabbed and beaten by the combined forces. Detainees assert that the Divisional Officer stated they should be “severely punished,” but did not order or authorize any punishment besides the beatings.¹⁴ The unrest suppressed, the prison administration resettled the entire awaiting trial population among the other wards for convicted prisoners. Order clearly restored, the Divisional Officer, gendarmes, police, and army forces departed the prison, leaving only the penitentiary staff and its administration.

At this time, in the early evening of August 18th, detainees allege that the prison superintendent called for a welder. **Ayounda William**, a welder who was himself serving a sentence at the prison, admitted to GCI that the superintendent personally called for him, requesting he weld chains onto the strikers. **William** claims he refused, but alleges that another welder from town, **Eta Johnson**, agreed to the task instead. **Eta Johnson** denies any role, however.¹⁵ The detainees and witnesses state in any case that this welder was not a staff member and he was disguised before them; however, most of the torture victims claim to know his physical appearance. One detainee alleged that it was in fact **Ayounda William** who both welded and removed the shackles.

Under the orders and observation of the prison administration, twenty-four detainees were then subjected to torture via the fusing of chains around their ankles, and for a minority of the victims, their wrists as well. These detainees were unable to resist prison staff, weakened as they were after the earlier beatings in the yard, and the intense heat of the welding machine and fused metal severely burned the victims’ skin, in some cases down to the bone. [Images of these contusions can be found in the Appendix] Victims claim the superintendent’s aim was to punish them for the following: failing to control their fellow prisoners; refusing prison staffs’ orders; attempting escape.

¹² Interviews with Fon Vitalis and written documents GCI received from two detainees—one a released pre-trial and the other convicted—clearly describe the fear of punishment behind their decision to send no delegates outside. Fon Vitalis elaborated on a July 4, 2009 interview that him and the other awaiting trials believed all or none should come out to prevent abuse.

¹³ All complainants agreed that teargas canisters were thrown inside awaiting trial cell. One describes the number as “uncountable,” while two others estimate over thirty. The size of these teargas canisters is unknown.

¹⁴ Two prison officials also informed GCI that the Divisional Officer authorized the detainees be “severely punished” for attempting escape. GCI received four complaints from victims that claim the combined forces oversaw the use of teargas and beatings; however, once order was restored, the Divisional Officer and all non-penitentiary forces left, after which time the prison administration oversaw the welding abuse.

¹⁵ This is a difficult subject for the complainants, who refused to name the welder in their written complaints. In conversations with GCI, three complainants stated their certainty that Ayounda William removed the chains; however, these three agreed that a different individual welded the chains. GCI approached Ayounda William who admitted his role in removing the chains and also repairing the door of the awaiting trial cell. He claimed the superintendent personally called for him to weld the shackles—a request he claims he refused. Eta Johnson’s name was given to GCI by Ayounha William.

However, this extra punishment appears to have been meted out not only to those within the high ranks within the internal cell government, but also to those against whom staff had personal vendetta.¹⁶ The three deceased detainees—**Mungob Denis**, **Achedu Nixon**, and **Adamou Ibrahim**—were among the twenty-four subjected to these horrific acts of torture.

Events following August 18th 2008

During the week immediately following August 18th 2008, the prison administration ensured that the tortured detainees were beaten multiple times each day, and denied both visits and communication with family, and prompt or adequate medical attention. Apparently some, but not all of the tortured detainees were administered an anti-tetanus injection, which was administered by a fellow prisoner, but no medical personnel from outside the prison attended to victims.¹⁷ Witnesses and fellow victims testify that torture victim **Mungob Denis** did not receive this injection. In addition, warders also beat the twenty-three victims each day with stout wooden sticks and kicks, aiming specifically for detainees' joints, welding wounds, and chest. One surviving victim recalled that warders trampled on his shackles and open wounds.

Mungob Denis, as well as pre-trial detainee **Achedu Nixon**, died within two weeks. Other prisoners state that **Denis** died with chains still welded around his wrists and ankles, which were removed from his remains before his family claimed the body. They also claim that **Nixon's** death occurred during the night while he was left outside in the prison yard, exposed to the elements. The third deceased, **Adamu Ibrahim**, died at the prison in the succeeding months, even though his wife gave money for his hospital admittance. She claims that although the money was accepted by a prison official, her husband was never escorted to the hospital. In short, the prison administration actively obstructed the delivery of timely, appropriate medical attention for the injured detainees following August 18th.¹⁸

In addition to not being allowed to see the victims or bring them food or medical supplies, the families testify that they received no information from the prison administration in the week after August 18th. The prison administration also made no official effort to inform families of the deaths. Off-duty warders or informal messengers unaffiliated with the prison delivered the news verbally to the deceased detainees' families. However, relatives stated that they were uninformed about why they were refused access, and thus had no knowledge of their detained relatives' imperilled condition.¹⁹

The welded shackles remained around most victims' burned limbs for between four and fourteen days. Most detainees' accounts state four or five days passed before the victims were released from chains. By the time the prison administration brought the welder **Ayounda William** to the prison to cut the shackles, the prisoners and victims recall how the open wounds had become swollen and had begun to envelop the shackles.²⁰ While the removal did not involve further burning, witnesses state that bits of the victims' flesh were torn off during the process and recall that the victims smelled like rotting flesh and that maggots had to be

¹⁶ In early February 2009, just prior to his escape from a local hospital where he was receiving treatment for his burns, a detainee stated in conversation to GCI that he was selected for welding due to a previous unrelated escape attempt.

¹⁷ In an interview with Fon Vitalis dated July 4, 2009, he claims a convicted prisoner who had purportedly trained as a medical doctor prior to his incarceration administered the injections. He further states that no other qualified medical personnel attended to the victims.

¹⁸ Eight written complaints against the prison administration state the obstruction of medical care. One wrote that he was denied any serious treatment for six or seven months, while three wrote they received no care until eight months later. They do not state who provided the care at this later date. Two out of the three families of the deceased victims wrote that they were denied the opportunity to bring medical care, much less convince the prison staff to escort the victims to a better healthcare facility.

¹⁹ Two families mention this explicitly in their complaints.

²⁰ Ashu Oliver complaint dated April 19th 2009. Also, Fon Vitalis verified this in interviews on April 22nd and July 4th, 2009.

picked out of their wounds by other detainees.²¹ Detainees claim, however, that **Mungob Denis'** chains were not cut from his legs or wrists, and that he died shackled.

At this point, the victims' were finally allowed visitors who could bring food and medical care. However, none of the tortured detainees were ever permitted to go to the hospital in the weeks and even several months after August 18th. Victims' families and friends could only bring treatment and medication to the prison. Furthermore, no care was given outside the confines of the prison, as evidenced by the complete lack of medical documents/certificates existing from the days immediately following August 18th 2008.

Testimony from Detainees

Concerning August 18th, **Fon Vitalis Ndasi**, a recently released detainee, gave the following written description concerning the event and the way he was treated while awaiting trial²²:

“On August 18th, when the warders attempted to harass a detainee, we awaiting trials chose to spontaneously strike. At this juncture, the Superintendent of prisons, Mr. Thierry Joel Fopa, alleged that we were attempting to escape. He called in military forces who joined the warders in suffocating us with teargas. I am still feeling respiratory effects from the excessive amount of teargas thrown inside our cell, ‘C Ward.’ Furthermore, the Superintendent brought in a welder to chain twenty-three detainees. Two prisoners soon died days after receiving this form of abuse. The rest of us detainees were indiscriminately beaten and many still suffer from the effects of this maltreatment.”

Tita Paul stated that he was one of the detainees selected for welded chains on his ankles, according to the orders of the prison superintendent. He testified:

“As a consequence of the occurrence of the incidence (on the 18th of August) I was ushered to an ordeal of torture, whereby I was manacled and placed on shackles, by using a weltering [sic] machine, ordered by the Superintendent.”

A similar statement was made by another detainee in the awaiting trial section, who did not consent to publishing his name in this report. In his written account about the happenings on the 18th of August he indicated that the prison administration

“(…) applied corporeal punishment on me (…) inflicting serious injuries on me, by using a weltering machine to put me on fetters (stocks and handcuffs) resulting to burns and serious injuries, which almost paralyzed me and led to severe scars on both my legs.”

He further stated that the prison administration made no effort to acquire medication to assist him of his dreadful situation.

A detailed statement dated April 21st 2009 given by **Ashu Oliver** to GCI, reported on the inhuman treatment of the prisoners, the welding practices, as well as other forms of torture occurring inside the prison. He states: *“Inmates are beaten with battle sticks, machetes or iron rods. At times, prison wards used their hands and feet to box and kick prisoners as if they are in a battle field.”* He also recounts how his hands and legs were burned by welding chains close to his skin. He mentions that other individuals also experienced this appalling maltreatment, resulting in the death of three pre-trial detainees who were obstructed from

²¹ Fon Vitalis interview dated April 22nd, 2009. The provost of awaiting trial in August 2008, who did not consent to his named being used, also recalled the stench of his welding wounds in conversation with GCI.

²² Statement dated May 21st, 2009.

receiving medical care. **Enoh Lovette Tabi**,²³ **Joko Joel**,²⁴ and **Mbah Fonghang Jude**²⁵ each gave comparable statements regarding their victimization by the prison administration on August 18th.

All of the prisoners interviewed about this subject indicated to have undergone a great deal of suffering as a result of the welding of chains to their limbs, followed by daily beatings. When asked if the welding was used frequently at the prison, detainees answered negatively and signified that similar treatment has not occurred since the 18th of August 2008. This was, however, not true for beatings and the denial of medical care, which the prisoners claim to have experienced on several occasions before and after the events of August 18th.

GCI has less written testimony regarding other forms of torture at the prison; however, **Ashu Oliver** wrote on how his legs were constantly chained together for about nine months²⁶:

“This administrator has chained my legs on three different occasions for a period of about six months and above each. And this present chain I’m bearing on my legs happened on the 18th August 2008...I have written several letters to the prison administrator to beg him to remove the chain on my legs but he has refused [sic].”

Testimony by the Victim’s Families

These allegations are further supported by interviews GCI held with family members of the detainees who died after the events in August 2008. Specifically, the widow of deceased detainee **Adamou Ibrahim**, who was too afraid to give her name, stated that the prison administration initially denied her access to her husband after the August unrest. Prior to August 2008, her husband had apparently suffered from chronic abdominal pain, which the prison administration reportedly refused to treat and was surely aggravated by his August 18th torture. Though she was finally permitted to visit him, she was unable to persuade the prison staff to take her seriously ill husband to the hospital.

Ibrahim’s wife also expressed anger over 10,000 CAF (about \$20 US) she gave to a prison official for her husband’s hospital bed deposit, which she claims was not used for this purpose and never returned to her. She also brought medication to the prison that she purchased herself, but could not say whether he received it or not. According to his widow, **Ibrahim** died in prison in December 2008, as a result of the injuries he obtained from the chains and his untreated illness. After his death his body was given to his widow and his brother, who both indicated to remember his swollen feet and obvious scars from burns on his legs, as well as signs of extensive beatings and rashes on his body.

The father of **Mungob Denis, Mungob Christopher**, stated the following in his complaint to the legal department of Kumba-Meme²⁷:

“[it] was in August of last year, 2008, that I was informed by a member of the prisons authority that my son, MUNGLOB DENIS, had died while on detention at Kumba Principal Prison. On the 23rd August 2008, I came to the prison to collect the body. I saw countless lacerations, burns, and wounds covering every limb of his remains. Specifically, there was a severe cut on his head, and equally serious cuts on his wrists and legs near the ankles. I also noticed serious wounds on his chest, legs, and in short, each section of his body. The prison administration gave no explanation as to how Denis died, and I was not able to arrange an autopsy or medical examination at

²³ Statement dated May 14th, 2009.

²⁴ Statement dated April 23rd, 2009.

²⁵ Statement dated April 23rd, 2009.

²⁶ Statement dated April 19th 2009.

²⁷ Statement dated May 16th 2009.

that time. Sir, it was only later that I learned that my son Denis died as a result of severe beatings, after an incident on 18th August 2008.”

Edong Chrispo Achedu, the father of deceased pre-trial detainee **Achedu Nixon Edong**, stated that the prison administration never informed him of the torture treatment his son experienced, nor of **Nixon’s** death a few days after receiving welded chains on August 18th.²⁸ **Chrispo** said that he received information about the death of his son from a source not employed by Kumba prison. He stated that he was never contacted by the prison administration to collect **Nixon’s** remains. He believes he was denied the opportunity to save his son’s life, since he was never informed about his son’s serious condition as a result of his extensive injuries between August 18th and his death on August 26th.

1.1.2. Evidence of Torture and Other Forms of Cruel, Inhumane, Degrading Treatments

In the course of interviews and observational research in Kumba Principal Prison, GCI discovered further evidence of several types of torture practices frequently employed as punishment at the Kumba Principal Prison. In the course of numerous informal, unobserved interviews occurring at the prison infirmary, detainees testified that their ankles are occasionally chained together for committing infractions, according to the discretion of the prison administration. However, the chain links or shackles are usually secured with a lock and key. This form of restraint permits the individual to walk and move, but with significant limitations. The ankle shackles are linked with less than one foot of chain between them; running or stretching of the legs is not possible. Individuals are unable, for example, to remove clothing from below their waist, such as pants or undergarments.

Detainees explained that they must either find creative means, such as cutting apart garments and sewing button closures where they can be removed despite the connected shackles, to remove these items during showers, or endure wet clothes for hours after bathing. In February and March 2009, GCI witnessed and spoke with two detainees, one pre-trial and the other convicted, who claimed to be in chains constantly since August 2008.²⁹ One female detainee alleged that she was chained for several months at the ankles for criticizing the prison staff.³⁰

GCI also witnessed and received repeated testimony from detainees that prison staffs force prisoners to kneel with bare skin on the rough ground and walk on their knees. This is considered punishment for minor offences of prison regulations, such as quarrelling. In February 2009, GCI observed four detainees, at least one of whom was pre-trial, walk on their knees for approximately ten or fifteen minutes. The ground of the prison yard where this occurs is roughly packed dirt. Many of the interviewed pre-trial detainees confirmed this form of punishment.³¹

Floggings were frequently mentioned by detainees and GCI witnessed this on several occasions in January, February, and March 2009. One of two instruments was observed: a short, thick wooden baton; knotted cable of thick rubber. Both warders and detainees holding high rank within internal discipline were seen to use the knotted cable; however, only warders employed the use of the wooden sticks.³² GCI observed the rubber used as a control method when a large group of detainees was gathered for a purpose, for example chores or when civil society groups held events (e.g., church service) in the prison yard. Detainees testified, though, that these rubbers were used to flog detainees for infractions within cells. Specific

²⁸ Statement dated May 19th, 2009.

²⁹ One of these is complainant Ashu Oliver, in statement dated April 19th, 2009.

³⁰ Informal conversation in February 2009. Male detainees also verified this to GCI.

³¹ Nine pre-trial interviewees cite this form of punishment.

³² Derived from GCI’s own observations from January until April 2009.

numbers of flog lashes are assigned to particular offences, such as theft, fighting, or homosexual acts.³³

GCI observed the wooden stick used three times. The first was in January 2009, when a detainee was beaten on the lower legs and feet for several minutes. The prison officials present laughed during this beating. Another three detainees were beaten repeatedly on their heads for approximately one minute with the wooden stick as they crouched against a wall. GCI inquired about the offence during this episode and was told they stole from other prisoners. Lastly, one warder hit a detainee on the head in the prison yard with his wood baton.

Prisoners also referred to a punishment named “the mud pit,” where detainees were thrown and beaten. The prison yard being mostly packed dirt, the members of the prison staff create a muddy patch by saturating a particular spot with water. The victim is then beaten with the wooden stick, thrown into the mud, and subjected to further floggings.³⁴ Other detainees are compelled to fill buckets with mud and dump it over the victim. Several prisoners assert that female and male prisoners alike endure this treatment. One prisoner recalled a specific instance where a female detainee was forced to lay on her back in the mucky pool and receive buckets of mud between her legs.³⁵

1.1.3. Other General Misconduct And Concerns

In a less substantiated area of inquiry, GCI spoke to a number of sources—warders and prisoners alike—who offered allegations of sexual misconduct by the prison administration. Specifically, GCI spoke with many prisoners who accused one warder and the prison superintendent of sexual abuse of female detainees. Both were alleged to have continuous relationships with two female inmates in particular. Aborted pregnancies were rumoured to result from these illicit affairs. One prison warder also spoke to GCI concerning the subject and said he heard accusations but did not know whether they were true. GCI received conflicting testimony from detainees concerning their own ability to meet female detainees for sexual acts. Some stated that it was impossible, while others claimed that male detainees could bribe the on-duty warders between 1,000 and 20,000 CFA to meet the women for sex.³⁶

1.2. FAILURE TO ADHERE TO NATIONAL PRISON POLICY

The evidence collected by GCI in the course of its investigations strongly suggests that although a penitentiary budget exists to provide food, medical care, and ancillary services associated with prisoners’ access to justice, such as transportations to and from hearings and use of telephones to contact prospective counsel, these basic requirements and services are not afforded to the detainees at the Kumba Principal Prison. In addition to the likelihood that these funds are being extorted by the Prison’s administration, the individual members of the Prison administration are actively extracting remuneration from detainees and their families in return for extending these basic rights, thereby undermining the authority of the central government and placing Cameroon in violation of its international human rights obligations.

1.2.1. Deficiency of Food Provisions Below Standards

³³ This is part of the internal discipline system. Floggings are administered by detainees to other detainees, with the knowledge of prison staff.

³⁴ Interview with Fon Vitalis dated April 22nd, 2009.

³⁵ Informal interview in March 2009 with former provost of awaiting trial cell.

³⁶ Two interviewees claimed sex was not only possible between prison staff and female detainees, but between male and female detainees. However, GCI received a written document from a prisoner not wishing to be named that it was impossible for prisoners of opposite sexes to meet for sexual affairs.

Kumba prison is a production prison and has a farm on its territory where convicted prisoners are compelled to labour. The foodstuffs grown are meant to supplement detainees' feeding. However, GCI believes that the products acquired from the prison farm are diverted, since several sources and GCI's observations of the poor food ration indicate that they are not being used to feed detainees.³⁷

During formal and informal interviews, GCI asked detainees to indicate the number of times they were given food daily, as well as the content and portion. The prisoners, none of whom agreed to have his or her name published in this report, testified that their rations were small, once-daily, unvaried, and of low nutritional value.³⁸ GCI also received several written, signed complaints against the prison administration from pre-trial and recently released detainees, who did consent to use these as evidence.

The combined interviews and detainee testimony indicate that the prisoners received one meal a day of unvarying content: *fufu and soup* (consisting of cocoyam leaves and water). During the weekend, they generally received a small meal of *cornchaff* (mixed corn and beans) on Saturday and plain rice on Sunday. Those who indicated that they ate enough were in the exceptional position to purchase additional food brought in from outside the prison by detainees with permission to leave the prison during the daytime.

This evidence points to a quantity and quality of food that is insufficient and wholly lacking in nutritional value, mostly because the meals were the same every day and important nutritional categories, such as vegetables or protein, were not added to the food in sufficient amounts. All detainees stated that the quantity of food given to them was far from sufficient and that they experienced feelings of hunger every day of their imprisonment. However, additional nutrition would not be provided to them when they complained about the quantity or quality of the meal. Detainees stated that the water access in the prison was acceptable since there was water consistently on tap within the awaiting trial cell. However, one detainee stated that he was a member of the internal government of the awaiting trial cell when the water pipes providing water in the cell stopped working. He stated that the prison administration did not repair them. Instead, the internal government of the cell collected money among the pre-trial detainees to finance the reparations necessary.

Evidence suggests that misappropriation of the government budget is a considerable problem and responsible for the feeding situation. Although GCI had no access to the financial records of Kumba prison, two prison officials were asked about the budget and both provided similar figures. For feeding, 9.5 million CFA is provided annually from Yaoundé. Every five months, the Kumba prison receives 4 million CFA for the purchase and preparation of food. During the final two months left in the year, it receives 1.5 million CFA. A number of prison officers and

³⁷ This remains speculative. GCI spoke with prisoners who laboured on the prison farm and received conflicting answers as to where the foodstuffs are sold or used. The unvaried, poor quality and quantity of food, however, suggests that it is not in fact used to feed detainees. If the produce is sold, GCI did not observe evidence during three months that the profits ever contributed to purchasing items for food preparation. In fact, two prisoners admitted in conversation that they received instructions from prison staff to harvest cocoyam leaves illegally from private farms, and that the superintendent was aware.

³⁸ Answers recorded during the first wave contradict answers received after January 24, 2009. The initial interviews were held under unfavourable conditions, as a high-ranked prison officer monitored the conversations at all times, and this had a substantial influence on the answers given by the detainees. This became clear during later interviews without this prison official present, which resulted in considerably different answers. Even though one member of the prison staff attended these interviews, the official was often absent and detainees appeared more at ease. Furthermore, several detainees indicated that they lied during the first interviews, intimidated by threats of punishment for unflattering statements about the prison. GCI therefore relies on the information obtained during the second and third series of interviews, since they are more likely to resemble the factual situation in the prison.

warders also remarked to GCI that the feeding was insufficient and inexcusable in light of the budget and their experiences at other Cameroonian penitentiaries. Based on the interviews and testimony to GCI regarding food rations, it is highly unlikely that these sums are being used solely for the provision of food.

1.2.2. *Improper Medical Care Below Standards*

From January 28th until April 7th 2009, GCI observed the activities of the prison infirmary, interviewed prison guards and officers, and held informal interviews with detainee-patients whenever possible. Formal interviews in the infirmary were discreet and conversational in nature. Convicted and pre-trial detainees were interviewed at the prison, while recently released detainees³⁹ provided information on the state of health and treatment at Kumba Principal Prison.

Insufficient Medical Facilities

Fon Vitalis, a former detainee, said he was instructed by the prison staff to contact his family to pay for his treatment in March 2009. Another recently released detainee, who did not wish to be named, stated that he was consulted at the infirmary in February at which time he received treatment for an infection only due to charitable donations of antibiotics. His medical needs were not provided or paid for by the prison administration. Dozens of other detainees at the prison confirmed the absence of drugs repeatedly in conversation.⁴⁰

Pre-trial detainee **Ashu Oliver** wrote to GCI in his complaint⁴¹: “In Kumba prison when you are seriously sick and you don’t have any family relatives or friends around to take responsibility for your treatment just know that if you are not lucky you will surely die. It [is] so because in this prison there are just no drugs to treat prisoners.”

GCI’s observations on January 28th and 29th 2009, noted that the infirmary possessed only expired latex gloves which were never used while conducting physical examinations of detainees. Sterilization of forceps, scissors, and other medical instruments was done with alcohol and fire. Between January 28th and early March 2009, syringes were donated by charity only. GCI observed once on February 12th the attempted use of a non-sterile syringe, which had punctured and drawn blood from another individual.

Furthermore, the April 21st, 2009 written testimony provided by detainee **Ashu Oliver** also mentions the absence of appropriate equipment:

“When you are sick and your family member or friend happen to sponsor your treatment and you are not taken out of the prison to better health center just know that your life is still in danger because here in Kumba prison the prison nurse (commonly called doctor) prescribe medicine to patients out of [guesswork] since as there are no medical instruments or apparatus to conduct a medical test or examining the patient properly to know exactly what he or she is sick of before prescribing drugs for his or her treatment [sic].”

³⁹ Some of whom were imprisoned at the start of GCI’s investigation.

⁴⁰ Ten pre-trial interviewees explicitly mention they suffer from untreated illness, as the prison lacks adequate medical supplies and they could not afford to purchase treatment themselves. Four more interviews after the first round in January mention they suffer from poor health but did not state whether they were receiving treatment or not.

⁴¹ Statement dated April 21, 2009

The absence of sufficient medical supplies and drugs is also mentioned in written statements by **Enoh Lovette Tabi**,⁴² **Joko Joel**,⁴³ **Mbah Fonghang Jude**⁴⁴ and others who did not consent to be named.

Related to the lack of diagnostic equipment, GCI never observed new detainees being submitted to any medical screening upon arrival. When asked about this issue, the superintendent told GCI that his prison lacked a sufficient budget to purchase equipment for this task. Furthermore, medical personnel were frequently unavailable at the prison, delaying consultations. Consequently, detainees taken into remand with pre-existing medical conditions are often not treated within an appropriate period. On April 1st 2009, a pre-trial detainee died, ostensibly of tetanus,⁴⁵ less than a week after arriving at the Kumba prison, covered in open wounds. No medical examination of the detainee's condition occurred until four days after his admittance. Rather, the prison administration simply called the detainee's family to come and pay for his treatment.

A prison official stated during the interview on January 28th that the infirmary received insufficient funds from the administration at Kumba prison to purchase necessary items. He presented an excerpt from the prison's medical department report to the Ministry of Penitentiary Administration in Yaoundé, requesting the following: a scale for weight, sterilizing equipment, a thermometer, and non-specific medication. The official claimed that the prison received only the thermometer.⁴⁶

In terms of its healthcare budget, GCI's sources within the prison's staff revealed that Kumba Principal Prison receives 800,000 CFA every three months, or four times per year. However, GCI observed significantly less funds used to attend to health problems and treatment regimens. When asked who was responsible for the absence of adequate funding, these individuals directly implicated the Kumba prison administration. While none of GCI's informants wished to be identified, their testimony indicates that extortion by the prison administration may be directly responsible for the lack of adequate medical facilities and provisions at the Kumba Principal Prison, a deficit which is certainly a causal factor in the deaths of several inmates.⁴⁷

Obstructed or Sub-Standard Medical Attention

Ashu Oliver writes rhetorically in his complaint dated April 21st:

“The question we are asking is that why is the prison administration refusing [sic] to take serious patients out of prison to a better hospital for treatment other than allowing them to die in prison...In fact to conclude the lack of drugs and health facilities together with the lack of concern by the prison administration causes many inmates to [die].”

He also mentioned how “guesswork” is used to diagnose and prescribe treatment. GCI independently noted that consultations in the infirmary with individual detainees were typically brief and observed the same medication and dosages being prescribed to multiple detainees without prison staff ever conducting examination to their illness.

⁴² Statement dated May 14th, 2009.

⁴³ Statement dated April 23rd, 2009.

⁴⁴ Statement dated April 23rd, 2009.

⁴⁵ GCI is unaware of an autopsy; however, prison staff and detainees claim the deceased prisoner arrived with many lacerations and soon became immobile due to locked muscles.

⁴⁶ Informal interview dated January 28th, 2009.

⁴⁷ Three prison officials in particular, independent of one another, stated to GCI that their experiences at other Cameroonian prisons, where feeding and healthcare were better, suggested that Kumba prison's administration was not using government funds correctly. All three were very strict about speaking off the record, claiming that it was taboo for them to dissent against the administration even when they disagreed with its conduct.

The noted absence of drugs is at times alleviated by charitable donations. However, some of these donations consist of expired drugs that were distributed by the prison administration, which did not find this problematic. In fact, a prison official stated to GCI that expired drugs were still usable until six months after the expiration date.⁴⁸ For example, a Cameroonian non-profit organization donated “Extra Strength Tylenol” tablets and “Zicam Cough Max Nighttime Cough Spray” in March of 2009. The latter’s expiration date was printed on the packaging as July 2008, but GCI witnessed the drug being dispensed to detainees in mid-March, even after ascertaining that the prison staff were aware of the drugs expired status.

Ashu Oliver confirmed this reality in his April 21st complaint against the prison administration:

“And if you are lucky that any other drug is added on to this paracetamol, just know that it is an expired drug. We really wonder if the prison administration care to know the harm this expired drug causes to the lives of inmates in the prison [sic].”

Based on GCI’s observations, the infirmary facility itself is operated in a completely unprofessional manner as well. In the first place, the primary medical practitioner employed by the prison is not an actual medical doctor, but rather a nurse. Moreover, GCI also witnessed a fist-sized rock thrown at a prisoner who annoyed prison staff by continually asking for attention through the infirmary doorway. Another prison official was observed by GCI slapping a prisoner diagnosed with tuberculosis for missing a dose when the detainee neglected to inform the prison medical personnel in advance that he needed more medication.

In addition to **Ashu Oliver’s** testimony, several other detainees who did not consent to their names being used, also testified to the poor quality of healthcare available at the prison infirmary and indicated that they are often denied better medical attention at the hospital. GCI did not observe preventative or early intervention care at any occasion at the prison. Furthermore, it appeared to GCI that cases must be advanced, or at least seen as critical to the prison administration to merit the scheduling of a guarded escort to the hospital. One detainee testified in a formal interview that the prison staff will not attend to health conditions until they appear “serious.”

Every detainee asked specifically about the August 18th torture testified that those burned with a welding machine were never taken to the hospital, and their families were actively denied access for almost one week after the abuse. The families of tortured and consequently deceased detainees **Mungob Denis** and **Achedu Nixon Edong** said they were never informed of their sons’ critical conditions by the prison administration. The father of Denis, **Mungob Christopher** states in his complaint against the prison administration⁴⁹:

“There was no sign of injury to Denis when his small sister brought food to him on the 15th August. However, we the family were not permitted by the prisons authority to bring food or visit Denis from the 19th August until we received news of his death on the 23rd August. We attempted to bring food and see him twice between the 18th and 23rd August, but were refused each time. I was unaware that Denis was seriously ill, in need of medical attention. I and my family were given no opportunity to intervene to give assistance to my son, who died shortly thereafter.”

Several released pre-trial detainees interviewed at the GCI office, of whom only **Fon Vitalis** consented to the use of his name, claimed that the tortured pre-trial detainees were given an injection of which they were told it was for tetanus; however, these interviewed detainees also claimed that the injection was not administered to all two dozen tortured detainees, with **Mungob Denis** among those who did not receive it.

⁴⁸ The drugs had been expired for 8 months when GCI observed their distribution.

⁴⁹ Statement dated May 16th, 2009.

Denial or Disclosure of Confidential Information

GCI never observed the prison officials asking the detainees who came to the infirmary whether they wished the GCI observer to leave during consultation. Moreover, the staff frequently demanded that male detainees strip while in the presence of a female GCI observer. On January 28th, when GCI asked about patient confidentiality, the prison administration stated that detainees did not have a right to privacy while under their custody.

On March 7th, 2009, GCI witnessed how the prison superintendent obtained a detainee's HIV test results, without the knowledge or participation of the patient's medical doctor at the district hospital, or hospital HIV counselling nurse. Additionally, he revealed the HIV status to a GCI observer and stated to GCI that he would not reveal the status to the detainee. GCI was also present when the superintendent disclosed the HIV status to other prison officials, again without the detainee's knowledge or consent. The superintendent informed GCI that he would arrange for the detainee to receive antiretroviral treatment. The superintendent also stated that he would never inform the detainee why or for how he required medication, or ask whether the detainee desired to take treatment.

1.2.3. Denial of Fundamental Access to Justice

During the interviews, detainees were also asked about various situations applicable to their overall access to justice, specifically: access to legal aid and representation; the presumption of their innocence; and access to information and communication. In terms of access to legal aid and representation (i.e., access to a lawyer, possibility of bail, appearances before court, and the number of adjournments), the majority of interviewed prisoners indicated that they had received insufficient or no legal aid during their imprisonment in the awaiting trial cell.

During formal interviews conducted by GCI in March 2009, prisoners indicated that they had been detained for various periods, some of which exceeded the maximum statutory limit for their alleged crimes:

Prisoners	Duration	Date
Prisoner # 1	5 months	October 2008 – March 2009
Prisoner # 2	12 months	March 2008 – March 2009
Prisoner # 3	12 months	February 2009 – March 2009
Prisoner # 4	12 months	March 2008 – March 2009
Prisoner # 5	5 months	October 2008 – March 2009
Prisoner # 6	18 months	August 2007 – March 2009
Prisoner # 7	6 months	September 2008 – March 2009
Prisoner # 8	17 months	October 2007 – March 2009
Prisoner # 9	54 months	September 2004 – March 2009
Prisoner # 10	12 months	March 2008 – March 2009
Prisoner # 11	4 months	November 2008 – March 2009
Prisoner # 12	4 months	November 2008 – March 2009

Six of the interviewed prisoners were granted bail, although none of them were in the position to meet the conditions of their bail. In five of the twelve above cases, the detainee had the opportunity to consult a lawyer. The others claimed to lack adequate financial means to make a single phone call to a lawyer, much less to hire one. Half of the cases had appeared before court once or more, yet every one of these six detainees saw his or her cases adjourned each time they appeared in court. Additionally, all prisoners indicated that they had to pay for the taxi ride to the courthouse. If they did not have the money to pay the taxi fare, they were not able to attend their hearings.

In regard to their presumption of innocence, specifically their treatment and conditions of detainment in comparison to convicted detainees, the awaiting trial detainees universally claimed to experience harsher conditions than convicted prisoners. Although the awaiting trial ward was built to house approximately 50-70 persons, there were approximately 170 detainees sharing this space at the time of GCI's investigation. Detainees claimed that previously almost 300 persons awaited trial in this cell.⁵⁰ Most detainees stated in interviews that they shared their sleeping space with at least one other person. Detainees claim to usually lack a mattress or bed sheets. Testimony and firsthand observations reveal that those with no bunk sleep on mattresses, sheets or plastic bags spread on the cell floor. The cells for convicts are generally not as overcrowded as the awaiting trial cell; in most cases, prisoners have a bed, albeit usually shared, and more personal space.⁵¹

According to information gained during formal and informal interviews, pre-trial detainees have the opportunity to exercise once per week. The prison administration grants them "yard time" every Monday morning from around 8am until 10am. Interviewees all confirmed this detail; however, they also stated that if poor weather and prison understaffing has led to two or more consecutive weeks without "yard time." Furthermore, pre-trial detainees indicate in statements concerning the attitude of the prison administration towards them, that they are considered deserving of punishment. **Ashu Oliver** writes in one complaint⁵²:

"We have been reporting this series of problems disturbing us to the prison administrator time and again but instead the administrator will threaten us and reply that prison is hell and not our home."

By comparison, convicted prisoners are allowed time in the yard every weekday from around 10am until 4pm, weather and staff permitting.

The third topic concerning the access to justice relates to the pre-trial detainees' access to information and communication with the outside world. Several detainees stated that they could not afford to call their lawyer and, therefore, were not in the position to make inquiries about the status of their cases. In order to contact a lawyer the detainees needed a phone, which can not be freely accessed. Several warders have been cited by prisoners as occasionally permitting detainees to use their personal mobile phones in exchange for payment. Through this means, prisoners may contact their family and legal representation.

Other detainees claimed their families were unaware of their imprisonment and could not provide them any assistance; financial, medical, legal or nutritional. This situation is often aggravated by the remoteness of the areas in which some detainees' families live. Furthermore, they often possess no means of timely communication.⁵³ It should be emphasized that Kumba Principal Prison receives detainees from across several administrative divisions, meaning that prisoners' families can live a considerable distance from the prison.⁵⁴

⁵⁰ A number of pre-trial detainees are now spread throughout the convicted cells, which despite contradicting national and international penal regulations serves to relieve the overcrowding of the awaiting trial cell.

⁵¹ In the female ward there are 10 beds for 11 women. Pre-trial female prisoners share the same space with convicted women; however, they inhabit a separate section with a small area for cooking and movement. Generally, they experience better hygienic conditions than the men.

⁵² Statement dated April 19th, 2009.

⁵³ At times these remote relatives only means of communicating is through hand-delivered letter via informal messengers, which can take weeks.

⁵⁴ A number of detainees, for example, are from the division around Ekondo Titi, which is a journey of almost two hours.

Prisoners stated that, in order to visit a detainee or bring him or her food, their family and friends need to present the wardens with one roll of toilet paper and one bar of soap, in addition to various other arbitrary demands. GCI witnessed that, without this “cadeau” for the guards, visitors will not be allowed to see their imprisoned relative. In some occasions the guards asked for an extra payment from the families to see their detainee.⁵⁵ GCI observed in March one detainee’s relatives driven from the prison by the superintendent since they refused to give the items and raised their voices to the warders.

Furthermore, during all three stages of interviews many of the detainees could not give any specifics for the reason of their imprisonment. This was a result of inadequate information given to them and the fact that in some cases the procedures were not explained to them. Moreover, detainees were poorly informed of their impending court date, also leading to poor coordination between legal counsel and detainees.

In the interest of maintaining control of its penitentiary system and fulfilling its international human rights obligations, it is incumbent on the government of Cameroon to corroborate GCI’s findings by launching an immediate investigation into the conditions and treatment of prisoners in the Kumba Principal Prison. Only by undertaking such an inquiry and disciplining those individual members of the Prison’s administration responsible for these pervasive and excessive instances of corruption and abuse can Cameroon prove its dedication to the preservation of human rights to the international community.

2. LEGAL OBLIGATIONS UNDER NATIONAL AND INTERNATIONAL LAW

In January of 2008, GCI commenced an investigation into the overall conditions within the Kumba Principal Prison, which yielded a plethora of evidence indicating a criminal lack of compliance by the prison administration to the applicable tenets of international law incorporated into the Cameroonian constitution, numerous Cameroonian domestic statutes, and the Cameroon Penitentiary Administration’s guidelines relating to the treatment of prisoners. The investigation consisted of formal and informal interviews, which initially took place with the consent and assistance of the prison administration, but only informally, with released and ex-prisoners and ‘domestics,’ once access was restricted in April. In the course of GCI’s investigation, it uncovered disturbing evidence of illegal detention and lack of due process, and numerous other violations of human rights constituting torture and cruel, inhuman and degrading treatment, leading to death in some cases.

Each of these violations represents an infringement of the inalienable rights found in the preamble to the Cameroonian Constitution, which specifically incorporates the fundamental freedoms found in the Universal Declaration of Human Rights (UDHR), the Charter of the United Nations, and the African Charter on Human and Peoples’ Rights (ACHPR), and all duly ratified international conventions relating, in particular, to the following principles: “no person may be prosecuted, arrested or detained except in cases and according to the manner determined by law; the law shall ensure the right of every person to a fair hearing before the courts; every accused person is presumed innocent until found guilty during a hearing conducted in strict compliance with the

⁵⁵ Ashu Oliver statement dated April 21, 2009.

rights of defense; and every person has a right to life, to physical and moral integrity and to humane treatment in all circumstances. Under no circumstances shall any person be subjected to torture or to cruel, inhumane, or degrading treatment.”

These principles represent both positive and negative rights held by all human beings. In the prison context, positive rights entail an obligation of the State and/or prison administration to provide a specific service or requirement such as food or medical treatment, or an ancillary service or requirement without which a right would be undermined, such as access to a telephone to acquire counsel or transportation to a hearing. Negative rights amount to an obligation of the State and/or prison administration to refrain from committing a certain act that is abhorrent to human rights, such as torture or other cruel, inhumane or degrading treatment or illegal detention.

Where these rights constitute an obligation of the State, undertaken as a signatory of the aforementioned international instruments, it is bound by international law to ensure those rights to all of its citizens, including those under its custody for actual or alleged criminal activity. In the case of those rights constituting an obligation or duty on the part of the prison administration, its individual members are bound by the constitution and domestic statutes of Cameroon, and in some cases, administrative guidelines, to ensure that those rights are afforded to the prisoners they are duty-bound to protect. The State also has a further obligation to ensure that its agents fulfill their legal duties, and to remove and prosecute those who fail to do so. As argued in the following discussion, most of the rights found by GCI to have been violated in the Kumba Principal Prison entail accountability on the part of both the State and State actors (i.e., the individual members of the prison administration).

2.1. DENIAL OF FUNDAMENTAL RIGHTS

2.1.1. *The Right To Be Free From Illegal Arrest or Detention Under the Cameroon Constitution; Article 3 of the UDHR; and Article 9 of the ICCPR*

The preamble to the Cameroonian Constitution states that: “[f]reedom and Security shall be guaranteed to each individual, subject to respect for the rights of others and the higher interests of the State; No person may be prosecuted, arrested or detained except in cases and according to the manner determined by law.” This right conforms to Article 3 of the UDHR, which provides that “[e]veryone has the right to life, liberty and security of person,” Article 9 of the International Covenant on Civil and Political Rights (ICCPR), and Article 6 of the ACHPR, which states that “[e]very individual shall have the right to liberty and security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.”

Individual freedom is, and has traditionally been, protected by Cameroonian domestic statutes pertaining to judicial procedures restricting individual freedom, especially custody awaiting trial. For instance, the former “Code d’Instruction Criminelle” (CIC) stated that remand in custody commenced with the arrest of a suspect following the issuance of the warrant by a competent magistrate. The Court processes for preventive detention included: a remand warrant (section 61) and warrant of arrest (section 94). However, it did not fix the maximum period for custody awaiting trial.

While the current Penal Code (the Code) fails to correct this shortcoming, Section 53 states that:

- (1) Where the offender has been in custody awaiting trial, the duration of such custody shall be wholly deducted from the computation of a sentence of loss of liberty.
- (2) Where the offender, after having been in custody awaiting trial is sentenced to a fine only, the Court may relieve him wholly or in part of the said fine.”

Where the period of custody exceeds the duration of the sentence, the offender is immediately released. However, the Code is silent, both in this case or the case of acquittal, of compensation except to the limited extent provided by subsection 2.

Due to the problems associated with custody awaiting trial, bail was the rule and remand in custody awaiting trial was the exception under the Criminal Procedure Ordinance (CPO). In substance, sections 118 and 119 of the CPO provided that any suspect may be granted bail. Furthermore, when bail is not granted by the courts, a warrant shall be issued for remand of the suspect. In practice, as the CPO does not make provision for compensation for illegal detention, the courts often grant bail.⁵⁶

The Criminal Procedure Code (CPC), which came into force on 27 July 2005, provides that remand in custody shall be an exceptional measure ordered in case of a misdemeanor or a felony, depending on the gravity of the offence committed by the suspect. Moreover, the Examining Magistrate shall withdraw the remand warrant or grant the suspect self bail if, after a period of twelve months in case of a misdemeanor or eighteen months in case of a felony, he has not closed the preliminary inquiry (section 226 to 233).⁵⁷ A person with a known place of abode shall not be remanded in custody except in the case of a felony where there is strong corroborative evidence against him or when the needs of public order so require (section 218 CPC).⁵⁸

Despite these statutory guarantees, the evidence gathered by GCI during its third set of interviews of March 2009 suggests that many of the prisoners in the awaiting trial section (C Cell) had been in custody for well over the statutory time limit, even for suspected felons. Specifically, 6 of the 12 prisoners interviewed had been in custody for over a year or more, one for 54 months. While six of the interviewed prisoners were granted bail, none of them were able to meet the conditions of their bail, and only five had the opportunity to consult a lawyer. The others claimed that they lacked the financial means to call a lawyer, much less to hire one. Many of the prisoners indicated that they also lacked money to pay for taxi fare to the courthouse, for which they are responsible, further limiting their access to justice. Furthermore, only half of the detainees had appeared in court, and all six saw their cases adjourned at least once, causing further delays, sometimes for years.

It is an oft cited legal tenet that “justice delayed is justice denied.” This principle is supported by Cameroonian law, which places the responsibility to control and punish violations of individual freedoms directly on the shoulders of its judicial officers. For

⁵⁶ Report by the Ministry of Justice on the State of Human Rights in Cameroon in 2005, 59.

⁵⁷ *Id.*

⁵⁸ *Id.* at 60.

instance, Circular No.2848/CD/9276/DAJS of 23 May 1990 by the Minister of Justice, Keeper of the Seals reminds and instructs State Counsels to carry out weekly visits to all Police and Gendarmerie cells in their respective jurisdictions and to systematically release illegally detained suspects.

The law also provides for strict sanctions and redress for cases of illegal detention. Specifically, the Code states that any person who violates individual freedoms may be prosecuted for oppression (section 140) and false arrest (section 291). Furthermore, the trial court may award damages to victims who file civil actions (*see eg., The People vs. the Lamido of Tcheboa*). Moreover, Section 236 of the Criminal Procedure Code states that:

- (1) Any person who has been illegally detained may, when the proceedings end in a no-case ruling or an acquittal which has become final, obtain compensation if he proves that he has actually suffered injury of a particularly serious nature as a result of such detention.
- (2) Illegal detention within the context in subsection (1) above shall mean:
 - (a) Detention by the Judicial Police Officer in disrespect of the provisions of sections 119 to 126 of this Code;
 - (b) Detention by the State Counsel or the Examining Magistrate in disrespect of the provisions of sections 218 to 235, 258 and 262 of this Code.
- (3) The compensation shall be paid by the State which may recover same from the Judicial Police Officer, the State Counsel or the Examining Magistrate at fault”.

In sum, Cameroonian law prohibits extended custody awaiting trial beyond clearly defined statutory limits, such as evidenced by the GCI investigation of the awaiting trial section of the Kumba Principal Prison. It is the duty of the Senior State Counsel not only to release these illegally detained prisoners, but also to punish those prison officials responsible for their illegitimate detention and compensate the victims. Failure to do so constitutes a breach of individual freedom protected under international law and incorporated by the Cameroonian constitution, as well as a breach of numerous Cameroonian domestic statutory provisions.

2.1.2. Denial of Due Process Rights: Fair Hearing and To Be Presumed Innocent

Due process of law is the principle that the government must respect the legal rights owed to a person according to law. It encompasses the rights of the accused to both a fair hearing and to be presumed innocent, safeguards guaranteed under both international and national law. However, these rights are being consistently undermined in the Kumba Principal Prison as a result of procedural deficiencies within the penitentiary system at large, as well as the failure of the Kumba Prison administration afford detainees the basic services it is obligated to provide.

2.1.2.1. *The Right to a Fair Hearing Under the Cameroon Constitution; Article 10 of the UDHR; and Article 7(1)(d) of the ACHPR*

Among those fundamental freedoms guaranteed in the preamble to the Cameroonian Constitution is that “the law shall ensure the right of every person to a fair hearing before the courts...” This is an inalienable right found in Article 10 of the UDHR, which states that “[e]veryone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him. Further, Article 7(1)(d) of the ACHPR specifies that the individual right to have one’s cause heard includes “the right to be tried within a reasonable time by an impartial court or tribunal.”

As discussed in the previous section, many of the pre-trial detainees in the Kumba Principal Prison have been, or presumably are being, held beyond the statutorily defined time limits for custody without bail, constituting a clear violation of their right to have their case adjudicated ‘within a reasonable time.’ This systemic shortcoming is worsened by the inaction of members of the prison administration. Specifically, interviewed detainees claim that they are indigent and, therefore, not afforded the opportunity to make phone calls, to contact or procure legal services, or even acquire transportation to their hearing. Moreover, many of the detainees indicated that not only were they not informed of when their court date occurred, they did not even know the reason for their imprisonment. Together, these procedural deficiencies amount to a gross violation of the rights of accused detainees to a fair hearing.

While the illegal detention of prisoners beyond statutorily defined limits amounts to an error within the system, which is the duty of the Senior State Counsel to remedy, the inability of the prison administration to provide basic services comprises a procedural defect of which both the state and the individual members of the administration are accountable. Generally, it is clear that the state has a responsibility to provide funding for these services, whether the detainees are indigent or not. However, where such a budget exists, it is the duty of the prison administration to see to it that it is properly allocated.

The Superintendent and the prison warders are employed by the prison administration and, therefore, are public servants for the purposes of Section 131 of the Code.⁵⁹ As such, it is the duty of the prison’s administration to lawfully fulfill their responsibility to the State by properly utilizing public funds for the purposes they are intended. Under Section 148 of the code, “[a]ny public servant...who, having been lawfully required, refrains from performance of any duty of his office, shall be punished with imprisonment for from three months to two years”. Similarly, under Section 141, “[a]ny public servant...who demands any fee, due, duty or tax which is not due, or any material benefit otherwise than on payment of the proper price, shall be punished with imprisonment from two to ten years and with fine from twenty thousand to two thousand francs.”

Assuming that such a budget exists, the failure of prison employees to provide detainees with transportation to court or the ability to call for legal representation

⁵⁹ “For the purposes of any criminal law, a public servant shall include...any employee or official of the State or...Prison Administration...” (Law No. 77-23 of 6 December 1977).

amounts to refusal of service, while the wardens' admitted demands for payment in return for these services constitutes an undue demand. Even if the prison administration is not intentionally extorting the funding earmarked for these services, their persistent neglect to provide them in a timely manner is a violation of Section 151(1) of the Code, which provides that "[a]ny public servant whose persistent obstruction or neglect is the cause of procrastination, delay or confusion, or who persistently refrains from performing any duty of his office, shall be punished with imprisonment for from one to three months and with fine from two thousand to twenty-five thousand francs."

The right to a fair hearing is a basic human right guaranteed by numerous international instruments and incorporated into the Cameroonian constitution. As such, it is the responsibility of the state to provide funding to ensure the procedural safeguards ancillary to this right. Moreover, where such funding has been allocated, it is the further responsibility of the State to ensure that such financing is being dutifully and timely put to its intended use and to punish those public servants who have failed in that duty to the full extent of the law.

2.1.2.2. The Right to Be Presumed Innocent Under the Cameroon Constitution; Article 11(1) of the UDHR; and Article 7(1)(b) of the ACHPR

The Preamble to the Constitution further states that "every accused person is presumed innocent until found guilty during a hearing conducted in strict compliance with the rights of defense..." This guarantee stems from the comparable right found in Article 11(1) of the UDHR, which ensures that "[e]veryone charged with a penal offense has the right to be presumed innocent until proven guilty according to law in a public trial at which he has had all the guarantees necessary for his defense," and is constituent with Article 7(1)(b) of the ACHPR.

While not directly violated within the Kumba Principal Prison, this right is severely undermined by the protracted pre-trial custody of accused detainees, as well as the fact that prisoners awaiting trial are subjected to harsher conditions than the convicted prisoners. Specifically, their cell is more crowded and lacking basic sleeping materials, while the cells for convicts are roomier with beds and more personal space. Moreover, the pre-trial detainees are given less opportunity to exercise, but are subjected to identical punishments and otherwise treated as convicts for all intensive purposes.

Overall, the interviewed pre-trial detainees claim that they are afforded none of the benefits of being convicted of their alleged crimes and being transferred to one of the associated post-conviction cells, but yet face similar costs of incarceration during their indefinite pretrial period. This illogical combination of unequal separation and indiscriminate treatment constitutes a clear violation of the presumption of innocence proscribed by international law and incorporated into the Cameroonian Constitution, as well as a flagrant disregard for the procedural safeguards necessary to effectively ensure it.

Based on the evidence gathered by GCI in the course of its investigations, it is abundantly clear that due process of law is not being respected by the procedures and policies practiced in the Kumba Principal Prison. Specifically, the right of prisoners

to a fair hearing is undermined because awaiting trial detainees are often held without bail beyond the statutorily defined limits, often without knowledge of the reasons for their imprisonment. The individual members of the prison administration often exacerbate these shortcomings by failing to provide ancillary services they are duty-bound to afford, such as transportation to and from trial, or by extorting remuneration from detainees and their families for extending such services. Moreover, the right to be presumed innocent is subverted by the treatment and conditions experienced by awaiting trial detainees, both of which are harsher than those faced by convicts.

2.2. THE RIGHT TO LIFE, PHYSICAL AND MORAL INTEGRITY

2.2.1. *Under the Cameroon Constitution; Articles 55, 56 of the UN Charter; Article 3 of the UDHR; Article 5(b) of the ICERD; Article 4 of the ACHPR; Article 7 of the ICCPR; and Articles 1(1), 2(2), and 2(3) of the UNCAT*

The preamble to the Cameroonian Constitution further provides that “[e]very person has a right to life, to physical and moral integrity and to human treatment in all circumstances. Under no circumstances shall any person be subjected to torture, to cruel, inhuman or degrading treatment”. This guarantee is also protected in various international Instruments that have been incorporated into Cameroonian law by the constitution: the UN Charter Articles 55/56 and UDHR Article 3 each state that “[e]veryone has the right to life, liberty and security of person.” Article 5(b) of the International Convention on the Elimination of all Forms of Racial Discrimination and Article 6 of the ICCPR equally protect the right to life, physical and moral integrity, while Article 4 of the ACHPR states that “[h]uman beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one shall be arbitrarily deprived of this right.”

The freedom from torture is also protected in by Article 7 of the ICCPR, which states that “[no] one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation”.⁶⁰ However, the strongest protection is found in the Convention on Torture or Cruel, Inhuman or Degrading Punishment or Treatment of 1984 (CAT). Article 1(1) defines torture as:

“...any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”

As this definition indicates, there are several elements to the concept of torture: (1) severe pain or suffering, which can be physical or mental; (2) that it is intentionally

⁶⁰ It should, however, be noted that the international protection of Human Rights has adopted the idea of diplomatic immunity which should water down the provisions of art.45.

inflicted; (3) for a specific purpose such as punishment; (4) by the order, or with the consent, of a public official.

The welding of chains on to the arms and legs of the 23 awaiting trial detainees on August 18th of 2008 constitutes an act of torture under the CAT definition. First, the testimony of the detainees as to the pain experienced both during and after the ordeal, and as a result of the subsequent beatings, along with visual confirmation of the severe scarring by GCI, indicates that each of the victims experienced extreme physical suffering. Second, the act was intentionally inflicted, as evidenced by prison authority's summoning of an unidentified welder to the prison specifically for the purpose of welding the shackles onto the detainees. Third, the act was clearly intended as a punishment for the detainees strike against the poor conditions at the Kumba Principal Prison. Finally, the act was perpetrated by the order of the prison's superintendent Mr. Thierry Joel Fopa (Superintendent). As all of the definitional elements are satisfied, it is clear that the August 18 actions by the prison authority amount to an act of torture.

Article 2 (2) of the CAT further provides that “[n]o exceptional circumstance whatsoever, whether a state of war or a threat of war, internal political instability or any other public exception, may be invoked as a justification of torture”. The prison authority alleges that the excessive amount of teargas thrown into the awaiting trial prisoner's cell and the subsequent welding of chains and shackles onto the arms and legs of the already subdued detainees was the result of the prison authority's effort to prevent an attempted escape by the prisoners of ‘C Ward’. This argument is clearly erroneous simply because military forces and gendarmes had already arrived and had been subsequently dismissed by the time the punishment was carried out. However, even if the prison authority had legitimate fears that the prisoner's strike constituted an escape attempt, Article 2(2) of CAT clearly obviates any torture defense based on exceptional circumstances such as a prison escape attempt.

Based on the CAT definition of torture, criminal liability for perpetrating an act of torture falls not only with the Superintendent, but also with the individual warders who carried out punishment, as well as with the as yet unidentified welder who soldered the shackles and chains onto the detainees. Under Article 2(3), an “order from a superior officer or a public authority may not be invoked as a justification of torture”⁶¹ Therefore, the warders and the welder have no defense of “just following orders”. The lack of such a defense is well established in international human rights law and has precedence in the findings of the Nuremburg Military Tribunal. Therefore, all of the individuals associated with the August 18th events are guilty of torture under international law.

2.2.2. Under Cameroon Law: Sections 84; 89; 132(a); 278; 280; and, 283 of the Cameroonian Penal Code

⁶¹ As per a judgment delivered by the Supreme Court of Cameroon that, “state agents or civil servants cannot invoke orders from their superiors as justification or excuse; similarly, an accused may not invoke the orders of his employer to justify an offence, where such facts are established, they do not absolve the accused and personal acts are not expunged unless it was a case of force majeure” (Judgment No. 4 of 7 October 1969)

In terms of domestic criminal liability for the acts of torture perpetrated by prison authorities of August 18th 2008, Law No. 97/009 of 10 January 1999 to amend and supplement certain provisions of the Penal Code, Code includes the insertion of a section 132(a), wherein the Code adopts in its entirety both the definition of, and limitation of defenses to, torture from Article 1 of the CAT. Section 132(a) reads as follows:

- (1) Where torture results in the unintentional death of the victim, it shall be punished with life imprisonment.
- (2) Where, as a result of torture, the victim is permanently deprived of the use of the whole or any part of a limb, organ or sense, the punishment shall be for from ten to twenty years.
- (3) Where torture results in illness or industrial disablement of more than 30 days, the punishment shall be imprisonment for from 5 (five) to 10 (ten) years and a fine of from 100,000 to 1,000,000 francs.
- (4) Where torture results in illness or industrial disablement of up to 30 days or in mental or moral pain and suffering, the punishment shall be imprisonment for from 2 (two) to 5 (five) years and a fine of from 50,000 to 200,000 francs.

For the purpose of this section:

- (a) “Torture” shall, within the context of this Code, mean any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the investigation of a public official or with his express or tacit consent on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or putting pressure on him or a third person, or for any other motive based on any form of discrimination whatsoever.
- (b) Torture shall not include pain or suffering arising from, inherent in, or incidental to lawful sanctions.
- (c) Exceptional circumstances such as a state of war, internal political instability or any other public emergency may not be invoked as a justification of torture.
- (d) The orders of a superior or a public authority may not be invoked as a justification of torture.
- (e) The conditions provided for under Section 10(1) of this Code shall not apply to torture”.

The Superintendent, the prison warders, and the unidentified warders are criminally liable for the disabling of effects of the August 18 acts of torture on 23 prisoners, and should face the statutory sanctions specified under section 132(a)(3) for their involvement. Furthermore, the same individuals are responsible for the subsequent unintentional deaths of three of the torture victims as a result of the prison authority’s

withholding of medical treatment following the incident, and therefore, should face imprisonment for life, as per section 132(a)(1).

Aside from the aforementioned domestic torture statute, the Code also contains numerous domestic provisions protecting the right to life, and physical and moral integrity. For instance, “whoever by force or interference unintentionally causes another’s death shall be punished with imprisonment for life” (section 278) and “whoever by force or interference causes intentionally or unintentionally to another any sickness or inability to work lasting more than eight days and up to thirty days shall be punished with imprisonment for from six days to two years and with a fine of from five thousand to fifty thousand francs or with both such imprisonment and fine” (section 280). Even if the actions of the prison authority are found not to constitute torture under the applicable international and domestic definitions, the individual perpetrators face severe criminal liability under these sections.

Under Cameroonian statutory law, criminal liability may be triggered not only for actions but also for an omission of action where a duty exists. Therefore, all of the individual members of the prison authority, even those warders who did not take part in the crimes perpetrated August 18th face criminal sanctions under section 283 of the Code, which specifies that “[w]hoever fails to render assistance to any person in danger of death or grievous harm, whether by his own endeavors or by calling for help, where such assistance involves no risk to himself or to any other person, shall be punished with imprisonment for from one month to three years or with fine of from twenty thousand to one million francs, or with both such imprisonment and fine.” All of the warders present at the Kumba Principal Prison are guilty of failure to assist under Cameroonian law.

Moreover, the members of the prison authority who perpetrated the acts of torture upon the 23 detainees on August 18, 2008 have no legal defense for their crimes under domestic law. The right to physical integrity refers to the prohibition to cause injury or scars on any person save in cases of self-defense and provocation. Section 84 of the Code on lawful defense states:

- (1) No criminal responsibility shall arise from an act dictated by the immediate necessity of defense of the person acting, or of any other person, or of any right of himself or of any other, against unlawful infringement: Provided that the means of defense be proportionate to the seriousness of the infringement threatened.
- (2) Intentional killing shall be proportionate to an attack causing a reasonable apprehension of death, of grievous harm as defined by this Code, of rape or sodomy.

The elements of the crime are as follows: (a) the infringement must be unlawful; (b) the defense must be dictated by an immediate necessity; and (c) there must be a reasonable proportion between the defense and the infringement. While the prison authority will likely claim that their actions were the result of a lawful defense of their persons during an unlawful escape attempt, this argument must necessarily fail. First, there is no evidence that there was a prison attempt and a prisoner’s strike against poor prison conditions does not rise to the level of an unlawful infringement.

Second, the commentary to section 84 of the Code specifies that “[i]f there is time to apply to the authorities for defense against the infringement, without any adverse consequence from the delay, there is no right to defend oneself.” On August 18th, both military forces and gendarmes were called to the Kumba Principal Prison to assist in suppressing an alleged escape attempt by the awaiting trial detainees of the C Ward, meaning that the prison authority clearly had sufficient time to apply to the authorities for assistance. Moreover, the authorities military and gendarmes had already been dismissed and order restored by the time the welding of the shackles and chains onto the bodies of the prisoners and subsequent beatings took place. Therefore, any argument of self-defense is moot.

Finally, even if one could accept that the acts perpetrated upon the awaiting trial detainees truly constituted defensive acts, section 84 specifies that there must be a reasonable proportion between the defense and the infringement. Even if the prison authorities can demonstrate that they had a well-founded fear of harm at the hands of the detainees, there is absolutely no evidence that any infringement took place at all, much less one which warranted the severe punishments doled out long after the alleged escape attempt was under control. The comments to section 84 specify indicate that each case should be weighed on the merits. In this case, a reasonable finder of fact will surely find the actions of the prison authority to be excessive, in which case the defense is entirely inapplicable (comment to section 84).⁶²

The status of the Superintendent and other individual members of the prison authority as public servants actually aggravate their responsibility for the acts of torture perpetrated upon the Kumba Principal Prison detainees on August 18th, 2008. Book II, Chapter III of the Code is devoted to offenses which only public servants can commit, and also to special aggravations for offenses which, when committed by a public servant, have an enhanced gravity. Specifically, Section 131 defines a *public servant* as “...any judicial or legal officer, any law official, any employee or official of the State or of any other body corporate governed by the by public law, or of a corporation or semi-public corporation, of a law official, any Armed Forces or Gendarmerie, any employee of the National Security or *Prison Administration* [emphasis added] and any person charged, whether continuously or occasionally with any public duty, mission or task, while acting in the discharge of his office or in relation to the said office.” Section 132(1) aggravates the offenses for public servants as such by providing that “...[a]ny public servant who uses force to any person shall be punished, where no heavier punishment is provided, with imprisonment for from six months to five years.”

Moreover, as stated in Section 89(1) of the Code, “[s]ubject to any special penalties provided for or misdemeanors committed by public servants, the fact of being a public servant established or otherwise shall aggravate the responsibility of any such person guilty of any other felony or misdemeanor against which it is his duty to guard or take action”. Subsection (2) of Section 89 enhances the maximum penalty for such individuals. The commentary to this section clarifies that the enhancement is only applicable to an offense committed by a public servant whose duty it is at the moment of commission to guard or take action against it.

⁶² A proportionate reaction is also a necessary element of section 85 of the Code, which merely diminishes responsibility in cases of provocation, making that defense unavailable for the prison authority as well.

The Code includes the examples of a policeman who commits a theft, the customs officer who indulges in smuggling, as well as those situations where the public servant is an accessory, where it specifically mentions the case of an prison warder who helps commission an escape, in which case the warder would incur the same penalty as the escaping prisoner, yet doubled under this section. By analogy, the prison warder who fails in his duty to protect those individuals whom he has been sworn to guard is just as liable as one in the previous example, and should incur double the penalty of those other individual members of the prison authority who perpetrated the August 18th acts on the person of these wards of the state.

2.2.3. *Denial of Rights Under Administrative Law*

Due to the influence of French civil law and the lack of uniform reporting of cases, the precedential influence of case law is limited in Cameroon. However, the Cameroonian Penitentiary Administration (CPA)⁶³ does have a system in place to monitor human rights violations in Cameroonian prisons, which has been used to discipline prison personnel in the past. Specifically, any penitentiary staff found guilty of torturing or maltreating detainees shall be punished under the provisions of Order No. 080 of 16 May 1983 to lay down the disciplinary system in force. Sanctions range from detention to delay in promotion, without prejudice to criminal proceedings.

The Report by the Ministry of Justice on the State of Human Rights in Cameroon (the Report) mentioned the following cases:

- By Service Note No. 27-NS-REG-PC-BFM of 5 September 1999, the Superintendent of the Bafoussam Central Prison sanctioned a senior prison warder with 72 hours of detention for “ill-treating a detainee.”
- By Service Note No. 46-NS-REG-DBC of 7 June 1999, the same Superintendent sanctioned a prison warder with 3 days for “cruelty to a detainee.”
- By Service Note No. 38-s-PCY-SAF-BP of 22 April 1997, the Superintendent of the Yaoundé Central Prison sanctioned a senior prison warder with 3 days detention in a cell for “senseless brutality on a detainee.”
- By Service Note No. 17-PCY-SAF-BP of February 1998, the same Superintendent sanctioned a prison warder with 12 hours in detention for “abuse of authority and violence on a detainee.”

In his speech on 8 December 2005 during the graduation ceremony of students at the National School of Penitentiary Administration, Buea, the Secretary of State at the Ministry of Justice in charge of Penitentiary Administration reaffirmed the administration’s commitment to preventing human rights violations in Cameroonian prisons when he reminded them that “it should be noted that nowadays the protection of the rights of detainees is a major priority because the international community has given the respect of Human Rights a universal dimension”. It certainly appears that the policy has been effective: during the judicial year 2004-2005, various disciplinary

⁶³ Attached to the Ministry of Justice by Decree No. 2004-320 of 8 December 2004 to organize the Government. A Secretary of State assists the Minister in charge of Justice in Managing the Administration. (Report by the Ministry of Justice on the State of Human Rights in Cameroon in 2005, 33).

sanctions were meted out by the Prison Superintendents on some of their collaborators for infringing on life, physical and moral integrity or deeds which violate these values (*See*, Ministry of Justice Report, 34-35)⁶⁴.

Moreover, suspects of cruelty that resulted in more tragic consequences were charged before competent courts⁶⁵ as the following cases illustrate:

- **Mr Mboke Nane**, Superintendent of the Kribi Prison arraigned before the High Court of the Ocean Division on an indictment for assault occasioning death, failure to provide assistance and torture. He was convicted for torture on a detainee and sentenced to 5 years imprisonment on 25 June 2004⁶⁶;
- Senior Prison Administrator **Bikoro Aimé Parfait** was sentenced to 3 years imprisonment and suspended for 4 years by the High Court in Mvila. In the same matter, the court sentenced Chief Warders **Awah Luc**, **Mbazoua** and **Tsimi Biloa** to 3 years imprisonment suspended for 3 years each for assault occasioning the death of a detainee in Ebolowa Central Prison⁶⁷;
- At the time of release of the Ministry of Justice Report, judicial proceedings were pending against retired Warder **Onana Eloundou** for abuse of authority on a detainee.

Clearly, there are more than sufficient international, domestic and administrative avenues available to prosecute the perpetrators of the August 18th atrocities. What is needed is a desire on the part of judicial authorities to see these violators of basic human rights brought to justice.

2.3. THE RIGHT TO ADEQUATE STANDARDS OF LIVING CONDITIONS WHILE IN DETENTION

The numerous international instruments that have been incorporated into the Cameroonian Constitution ensure that an adequate standard of living is a basic right for all human beings and, therefore, protect the right all humans have to adequate food and to be free from hunger, as well as the right to receive medical treatment. Specifically, Article 25 of the UDHR provides that “[e]veryone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care...”

However, although it is a generally accepted principle of international law that socioeconomic rights are justiciable, commentators disagree as to the applicability of these same guarantees in the context of prisoners’ rights. Moreover, an “adequate” standard of living is a subjective concept and there is little or no Cameroonian domestic law to clarify what criterion to judge that adequacy against. Therefore, it is

⁶⁴ Source: Department of Penitentiary Administration

⁶⁵ Report by the Ministry of Justice on the State of Human Rights in Cameroon in 2005, 36.

⁶⁶ (Following an appeal by all parties, the South Court of Appeal, in a judgment of 12 May 2005, reduced Mr. Nane’s prison term to 2 years.) Report by the Ministry of Justice on the State of Human Rights in Cameroon in 2005, pg. 36.

⁶⁷ *Id.*

also useful to examine those standards set by the Penitentiary Administration itself, of which the Kumba Principal Prison consistently fails to meet.

2.3.1. Right to Medical Care in Article 25 of the UDHR; Article 16 of the ACHPR; Articles 30(2), 31, 32(1), 33(2), and 34 of the Special Statute of the Body of Functions of the Penitentiary Administration (1992)

In addition to the guarantee of an adequate standard of living provided in Article 25 of the UDHR, Article 16 of the ACHPR further states that “[e]very individual shall have the right to enjoy the best attainable state of physical and mental health.” This constitutes a higher standard whose justiciability under international law, though not without question, is nonetheless supported by domestic statutory law.

The severe overcrowding of the awaiting trial cell witnessed by GCI amounts to a clear breach of Article 30(2) of the Special Statute of the Body of Functions of the Penitentiary Administration (Law no. 92/054 of 27 March 1992) (“The Statute”), which guarantees that “[a] furnished bed... should be provided to detainees,” while “...beddings having been used by a detainee, is disinfected before utilization by another.” As this provision implies, each detainee should be provided with a bed of his own, rather than being forced to share with another prisoner(s), and the failure of the State to provide a sufficient budget to allocate extra funds for the construction of additional facilities constitutes a violation of basic human rights, which should be rectified as soon as is feasible.

The sub-standard medical care at the Kumba Principal Prison also violates numerous Articles in the Statute. Specifically, Article 32(1) provides that “[e]ach submitted detainee is subject at the moment of his or her incarceration to a medical visit,” though GCI never observed new detainees being submitted to such a medical screening upon arrival. Moreover, Article 33(2) states that “[s]ick detainees are entitled to a medical visit,” while numerous interviewed detainees testified that seriously ill patients were consistently prevented from seeking professional medical treatment at the hospital, a failure which may have led to the death of three inmates following the acts perpetrated on August 18th.

GCI also witnessed a sub-standard quality of medical facilities, equipment, and procedures at the Kumba Principal Prison. In particular, the infirmary possessed only expired latex gloves, which were rarely used, the sterilization of forceps, scissors, and other medical instruments was done with alcohol and fire, and the prison personnel consistently gave expired medication to prisoners. While the Superintendent claimed that the prison lacked a sufficient budget to purchase equipment, another prison official stated in his January 28th interview that the infirmary received insufficient funds from the administration to purchase the necessary items, implying that the funds allocated by the State for medical equipment are being extorted by individual members of the prison administration.

Assuming that this is occurring, such extortion violates the duties of the prison administration outlined in Article 31 of the Statute, which states that “[t]he upkeep of detainees is assured by a fixed allocation given to every prison by the Minister in charge of Penitentiary Administration. This allocation provides in principle to all, the expenses of upkeep, alimentation, clothing, bedding and lighting according to each case during the term, semester, or year.” Not only has GCI observed a shocking lack

of these basic provisions in the course of its investigation, but it was the prisoners' protests over the non-allocation of these services that triggered the tragic events of August 18, 2008. Moreover, as public servants, members of the prison authority who misallocate funds, are subject to criminal liability under the Code for oppression (Section 140), refusal of service (Section 148), and persistent neglect (Section 151), as expressed in the previous section.

Where misconduct has occurred, Article 34 of the Statute provides a process by which the Penitentiary Administration should be informed: "(1) The medical authority in a territory who is competent is supposed to visit and inspect the local penitentiary during every term. He/she can demand that the detainees be presented to them; (2) This authority addresses a report to the minister in charge of Penitentiary Administration notifying the minister of all observations thought important on the hygiene and health of the detainees."

However, judging from consistently lacking medical care at the Kumba Principal Prison throughout the period of GCI's research implies that the medical authority charged with this duty of is either unwilling or unable to perform his/her statutory responsibility of inspecting and reporting on the medical facilities within the prison. Therefore, a full-scale investigation into the conditions within the prison as they pertain to medical care is necessary in order to determine whether the substandard care is a result of budgetary deficiencies, in which case a reallocation of funds is needed in order for the State to fulfill its responsibilities under international and administrative law, or the result of graft, in which case it is the duty of the Senior State Counsel to punish the perpetrators to the full extent of the law.

2.3.2. *The Right to Adequate Food Under Article of ICESCR; and Article 29 of the Special Statute of the Body of Functions of the Penitentiary Administration (1992)*

The International Covenant on Economic, Social and Cultural Rights (ICESCR) contains the right to food in Article 11, and it is further elaborated in General Comment 12 of the ICESCR:

"(...) the right to adequate food is realized when every man, woman and child, alone or community with others, have physical and economic access at all times to adequate food or means its procurement." All members of the ICESCR have promised to "recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food (...) and the continuous improvement of living conditions."

Furthermore, the African Union emphasizes the right to food indirectly when reaffirming their intention to honour and promote the Universal Declaration of Human Rights.

The Special Rapporteur on the Right to Food has defined the right to food in the following manner: "[T]he right to adequate food is a human right, inherent in all people, to have regular, permanent and unrestricted access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of people to which the consumer belongs, and

which ensures a physical and mental, individual and collective fulfilling and dignified life free of fear.”⁶⁸ The right to adequate food is even more extensive than the right to be free from hunger, since the latter one only implies that people have a right not to starve to death, whereas the former specifies a certain standard as to the food given.

The right to food for prisoners is also separately emphasized in the Standard Minimum Rules for the Treatment of Prisoners, which was adopted by the first UN Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955. In 1957 and 1977 these rules were approved in resolutions of the Economic and Social Council. Article 20 explicitly states that prisoners should be provided with food by the administration. This food must have nutritional value adequate for health and strength, and must be of wholesome quality and well-prepared. Even though these rules are not legally binding, they do have impact on the formation of international law and the international vision concerning the treatment of people in detention.

As previously discussed, the justiciability of the aforementioned international law guarantees of socioeconomic rights is questionable in the context of prison administration. Moreover, there are no applicable domestic procedural provisions in the CPO or the Code to fill in the gaps left by international law. However, the prison administration is bound by the Statute, which specifies the minimum standards of nutrition and medical care to be provided to each detainee. In terms of the right to food and the procedures relating to feeding and nutrition, Article 29(1) of the Statute provides that “[p]risoners have rights to a daily allowance. This allowance should be balanced and sufficient in order to avoid detainees all default or slackness in nutrition and to give them energy essential or indispensable to their health and also in the execution of works assigned to them.”

Based on the interviews of detainees at the Kumba Principal Prison conducted by GCI, it is clear that both the quality and quantity of food provided to the prisoners is insufficient under the standards set forth under Article 29. The interviewed detainees indicated that they received no more than one meal per day and with limited nutritional value. Specifically, they attested that it contained no protein, fruit or dairy products and cocoyam leaves as the only vegetable. Detainees further indicated that they experienced feelings of hunger on multiple occasions signifying a severe shortage of provisions during their imprisonment, which they could only supplement by paying additional sums to the prison administration or by having their family members bring them additional rations.

It is unconscionable that Cameroonian prisoners should be subjected to systematic starvation, especially since the Kumba Principal Prison is a labour facility where the detainees are compelled to work on a farm. The shameful irony is that the prison administration fails to provide the detainees with the requisite nutrition to nourish themselves while undertaking labour on a farm where their very efforts are meant to result in supplementary foodstuffs for their own consumption. Since the prisoners themselves obviously aren’t benefiting from the agricultural process taking place at the prison farm, the natural question from an outside perspective then becomes, who is?

The very existence of the farm implies a budgetary allowance intended to supplement the prisoners’ diet. The failure of the prison administration to provide the food to the

⁶⁸ UN Special Rapporteur on the Right to Food in 2002

prisoners that it has been entrusted by the State to supply constitutes a criminal dereliction in their duty as public servants. Specifically, the members of the prison administration are liable for numerous infractions under the provisions of the Code, including the following:

The prison administration's failure to protect the prisoners' right to food under Article 29(1) of the Statute amounts to oppression under Section 140(1) of the Code, which provides that "[a]ny public servant who takes advantage of his position to infringe any private right or interest shall be punished with imprisonment for from three months to one year, or with fine of from five thousand to fifty thousand francs, or with both such imprisonment and fine." Moreover, its obvious extortion of the foodstuffs allotted to the prisoners further violates Section 140(2), which states that "[w]here the offence is committed with intent to procure for the offender or for another any gain of any kind, the imprisonment shall be for from three months to three years, and the fine of from fifty thousand to one million francs."

In addition, the demands by members of the prison administration for payment in return for the allowance already owed to the prisoners represents an undue demand, which is prohibited by Section 142, which makes clear that "[a]ny public servant... who demands any fee, due, duty or tax which is not due, or any material benefit otherwise than on payment of the proper price, shall be punished with imprisonment for from two to ten years and with fine of from twenty thousand to two million francs."

Finally, the systematic denial of basic provisions to the prisoners of the Kumba Principal Prisons is a violation of the prohibition against persistent neglect in Section 151(1) of the Code, which provides that "[a]ny public servant whose persistent obstruction or neglect is the cause of procrastination, delay or confusion, or who persistently refrains from performing any duty of his office, shall be punished with imprisonment for from one to three months and with fine from two thousand to four thousand francs."

Through their corruption and graft, the individual members of the prison administration at the Kumba Principal Prison have not only failed in their statutory duty to provide sufficient provisions to the detainees, for which they are criminally liable under the domestic statutory guidelines for prison administration, but have violated human rights of the prisoners in their custody under international law. It incumbent on the Senior State Counsel to take action to rectify the situation by launching an investigation and prosecuting the responsible members of the prison administration to the full extent of the law in order to set a precedent that, whether or not socioeconomic rights are justiciable under international law provisions, the domestic statutes of Cameroon pertaining to such rights will be zealously enforced.

3. EXAMINATION ILLEGAL PRACTICES AND LACK PROPER POLICY PROCEDURES

In the following discussion, the aforementioned evidence of the Kumba Principal Prison administration's non-compliance with international norms, national laws, and administrative guidelines protecting the rights of prisoners to life and physical and moral integrity, an adequate standard of living, and access to justice will be analyzed

and evaluated on the basis of Cameroon's public policy interests, and in light of the state of prisoners' rights throughout Africa. GCI will also recommend specific actions that should be undertaken by various government entities to ameliorate the overall conditions in the Kumba Principal Prison, and the treatment of the pre-trial detainees remanded to custody therein, in order to bring Cameroon in line with its international obligations.

Overall, the violations of human rights being perpetrated and tolerated within the Kumba Principal Prison are representative of the systemic failures existing throughout the Cameroonian prison system and throughout Africa as a whole, and are a direct result of a lack of oversight, transparency and universality of practice. As such, a continental approach to the resolution of these human rights abuses is necessary. The protection and amelioration of human rights in African prisons is the responsibility of the African Commission on Human and Peoples' Rights (the Commission), which is tasked with examining prisons and making recommendations to states to improve the status of human rights on the continent.

One of the Commission's most important contributions, however, has been the Special Rapporteur on Prisons and Conditions of Detention in Africa (Special Rapporteur), which was established in 1996 pursuant to Article 45(1)(a) of the ACHPR (which grants the Commission the power to undertake research and studies on the status of human rights in Africa in an effort to promote those rights) in an effort to combat the poor conditions in Africa's prisons. The Special Rapporteur is entrusted by the Commission to examine the condition of prisons in member states and protect the person's in detention in those institutions, as well as to suggest appropriate solutions and ways to improve the situation therein. The Special Rapporteur also assesses national laws to ensure that they are in compliance with international standards and the African Charter.

According to the Commission's report to the Government of Cameroon on the visit of the Special Rapporteur from September 2nd to 15th of 2002, the pitiable conditions observed by GCI in the Kumba Principal Prison are mirrored in prisons throughout Cameroon. Specifically, the report estimates a country-wide overcrowding rate of 450%, which in turn had "adverse effects on the prisons and their populations, namely, on rehabilitation programmes the government might wish to introduce, creation of unsafe conditions of detention (in terms of lack of beds, blankets, bathrooms, etc.), nurturing promiscuity and transmission of diseases; difficulty in keeping the premises clean; difficult working conditions for the staff, and lack of exercise where space is limited, etc."⁶⁹

According to Cameroon authorities, this increase in prison population was not attributable to an increase in criminality, but rather to "a concurrence of factors including: lack of access to justice, a very slow judiciary, too many persons awaiting trial due to unchecked application of remand, lack of an effective parole system, and inefficiency to undertake a speedy investigation of cases."⁷⁰ As a means of reducing overcrowding, the Special Rapporteur suggested "a wider application of such measures as mediation, suspended sentences, probation, reduction of sentences,

⁶⁹ "Prisons in Cameroon: Report of the Special Rapporteur on Prisons and Conditions of Detention in Africa." The African Commission on Human and Peoples' Rights. (from 2 to 15 September, 2002), 12.

⁷⁰ *Id* at 13.

partial release, community service, and amnesty.”⁷¹ The responsibility for the implementation of these procedural mechanisms falls squarely on the State, whose obligation it is to ensure that the right of prisoners to due process is not being contravened as a result of a sluggish justice system.

The Special Rapporteur also evaluated the food provided by the prison administration in Cameroonian prisons, and found the menu to be “poor and the quality inadequate.”⁷² Moreover, the report revealed an acute shortage of medical personnel and relevant drugs to treat prisoners, embezzlement of medical supplies by prison authorities, and delays in transferring sick prisoners to the hospital, often due to a lack of transportation.⁷³ Finally, as was the case at the Kumba Principal Prison, the Special Rapporteur’s investigation of prisons throughout Cameroon also uncovered evidence of irregular prisoner contact with the outside world,⁷⁴ a general lack of leisure, exercise, work, access to education and related activities,⁷⁵ punishment in the form of chaining and solitary confinement, often applied arbitrarily and without distinction between those awaiting trial and those convicted,⁷⁶ inconvenient and potentially perilous complaint mechanisms,⁷⁷ numerous instances of inmate beating and torture, intimidation and verbal abuse, denial of services, tribalism and/or favouritism, and extortion on the part of the prison staff,⁷⁸ and a widespread lack of access to legal assistance and justice.⁷⁹

The evidence obtained by GCI in the course of its investigation of the conditions and treatment of prisoners in the Kumba Principal Prison corroborates the findings of the Special Rapporteur that the basic rights of the detainees are being universally breached within the walls of the Cameroon’s prisons. As previously discussed, the lack of adequate resources is a major cause of the perpetuation of numerous deficiencies in prison conditions throughout Africa, and appears to be a major contributing factor in most of the specific insufficiencies discovered by GCI in the course of its investigation as well.

Specifically, GCI alleges that the misallocation of budgetary resources has contributed significantly to the inadequate quantity and quality of food provided to prisoners, as well as the substandard access the medical care. Moreover, the siphoning of budgetary resources to provide for transportation to court and communication with prospective legal counsel undermines prisoners’ right of access to justice. These acts of extortion by public authorities constitute criminal actions that foster an environment conducive to further violations of human rights. Most notably, the acts of torture perpetrated by the Kumba Principal Prison’s administration were perpetrated as a means of punishing the awaiting trial detainees who were protesting the very conditions that the government resources should be allocated to improve.

Culpability for these crimes extends beyond the individual members of the prison administration, however. Rather, responsibility for the failure to provide basic

⁷¹ Id.

⁷² Id at 15.

⁷³ Id at 19-21.

⁷⁴ Id at 15.

⁷⁵ Id at 16.

⁷⁶ Id at 17.

⁷⁷ Id at 18.

⁷⁸ Id.

⁷⁹ Id at 21.

services and protect the rights of prisoners is incumbent not only on the Penitentiary Administration, but also the Cameroonian government as a whole. These breaches of human rights are symptomatic of endemic shortcomings within both the justice system itself and the overall administration and policies of the State.

The gravest infringements of international law are, of course, the acts of torture perpetrated on August 18th of 2008, and the consequential denial of the right to life of the victims. Torture constitutes a violation of international customary law so grave that the right to be free from torture is considered *jus cogens*, a right that cannot be derogated by anyone under any circumstance. Criminal liability lies first and foremost with the administration of the Kumba Principal Prison. Specifically, the superintendent, who both ordered the torture and also denied medical care to the dying torture victims, is personally culpable, as are the individual wardens who carried out his orders to torture the detainees, and are therefore equally accountable.

However, responsibility does not end with the members of the prison staff who actually committed the acts, but also extends to the government of Cameroon, at whose behest, and under whose custody and care, the victims were detained. As public servants, the individual members of the prison administration carry out their duties as representatives of the state and can be assumed to be acting with the realm of the government's consent. Since the Cameroonian government is responsible for all the prisoners under its care, the government can also be held accountable for whatever maltreatment the prisoners receive at the hands of its agents while in detention. In international context, Cameroon cannot feign innocence in the face of these crimes as the violations have been carried out by its servants acting as its representatives. Therefore, the State has a duty to investigate and prosecute the individuals responsible.

Liability for the other violations of human rights in the Kumba Principal Prison is no more straightforward. The infringement of the right to food and the ancillary right to be free from hunger, for instance, are most likely not violations perpetrated directly by the central government, especially where there is a sufficient budget for food for prisons. However, the fact remains that the detainees of Kumba Principal Prison are malnourished and receive a deficient amount of food on a daily basis. The administration claims that the budget is inadequate to supply food for the prisoners. However, although it cannot confirm as such, GCI suspects that the funds allocated to the prison are ample, especially since the Kumba Principal Prison is a farm prison where the prisoner's labours are meant to supplement their diet, and that the shortage exists because of embezzlement somewhere along the chain of distribution.

In part, the same can be said for the lack of medical care in the prison. The administration has claimed more than once that the budget is not sufficient to obtain the necessary medical supplies, and here too, the lack of financial means for this might not be the fault of the prison administration. However, when the prison administration actively denied prisoners in need of medical care permission to go to a hospital, even though a relative of the detainee was financing it, the administration committed a breach of its duty for which it must be held accountable. This behaviour cannot be tolerated by the State, which has allocated a budget for this purpose and therefore has a fiscal incentive to ensure that it is being put to its intended use.

Finally, the State has an obligation to ensure the individual freedom and right to due process of those individuals in its custody. Based on the evidence gathered by GCI in the course of its investigation, both of these rights are being flagrantly contravened as a result of the existing policies and practices at the Kumba Principal Prison. Specifically, numerous detainees in the awaiting trial cell are being subjected to extended periods of custody well beyond the statutorily proscribed limits. It is the duty of the Senior State Counsel to conduct regular inspections of the prison in order to determine the status of the awaiting trial detainees, release on bail those being held beyond the statutory parameters, and punish those individual members of the prison administration responsible for their illegally extended detention (i.e., by not faithfully monitoring and reporting on their status). A failure to do so constitutes a clear breach of national law and prison administrative policy.

Similarly, legal responsibility for the failure to protect the right of prisoners to due process lies both with the State and the individual members of the prison administration. The right to a fair hearing is guaranteed under international and national law. However, this right is being severely undermined by the fact that many of the awaiting trial detainees are unable to communicate with potential counsel or receive transportation to their hearings, if they are even informed of when those hearings are to take place. If no budget exists for these services, the State is duty-bound under international and national law to immediately apportion available funds for their provision. Where a budget exists, however, it is the responsibility of the individual members of the prison administration to faithfully distribute those funds for the purposed allocated, while the State has an obligation to monitor the chain of distribution in order to ensure their prompt and proper delivery.

The right to be presumed innocent until proven guilty is also being undermined by the protracted periods of detention that awaiting trial detainees are being subjected to, and also by the deplorable conditions existing in the awaiting trial cells and the treatment of the awaiting trial detainees, both of which are significantly worse than those experienced by the convicted prisoners. Once again, this is a budgetary issue, which must be addressed by the State in order to ensure that funds exist to expand and improve the awaiting trial cells and the supervision and services provided to the awaiting trial detainees. Responsibility for modernizing the procedures and policies relating to treatment of awaiting trial detainees falls squarely on the Penitentiary Administration, however, which has been entrusted by the State to manage the prisons in such a manner as to ensure the procedural safeguards assured the prisoners under international and national law.

By addressing the budgetary and procedural deficiencies plaguing its prison system, the government of Cameroon has an opportunity not only to close the gap between its international legal obligations and the reality of the human rights conditions in its prisons, but also to distinguish itself from other African states on the basis of its human rights record and the strength of its administrative systems. Such a distinction can only serve to improve Cameroon's standing as a progressive West African nation, and make it a more attractive location for international diplomatic partners and agents of foreign direct investment. Moreover, addressing these issues will only serve to streamline administrative efficiency within the Cameroonian government and ensure that its limited economic resources are being applied to the programs for which they were allocated

4. CONCLUSION AND RECOMMENDATIONS

GCI spent two months investigating the human rights situation in Kumba Principal Prison. The focus has been on numerous areas of human rights, such as the right to life, the right to food, health care, freedom from torture and access to justice. The information was obtained during interviews with pre-trial detainees of the prison as well as with prisoners of other sections of the prison, ex-prisoners, and with the families of deceased detainees. The results of the investigation revealed shocking non-compliance with national and international human rights law. Within Kumba Principal Prison, there is a lack of sufficient nutrition, health care has in some cases been actively denied and the prisoners have experienced extreme torture during which chains were welded to their ankles and/or wrists, resulting in the death of three inmates. Essentially, in all the areas under investigation violations of the human rights of prisoners were disclosed indicating the overall living conditions in Kumba Principal Prison to be inhumane.

Cameroon is not only violating its own national laws with this unacceptable situation, but also a great number of international laws and regulations concerning the treatment of prisoners. GCI expresses its deep concerns about this situation and urges the Cameroonian government, as well as the international society, to end these deplorable practices that are disrespectful to the human rights of prisoners. GCI sincerely hopes that the government of Cameroon will further investigate the matters presented in this report and not let these grave violations against human rights go unpunished. By bringing the administration of Kumba Prison before a competent court, Cameroon can emphasize again its respect for human rights and its willingness to honour them in Cameroonian law and practice.

4.1. RECOMMENDATIONS FOR THE MINISTRY OF JUSTICE

The responsibility to confront and resolve the numerous human rights crises plaguing the Kumba Principal Prison, and punish the individual parties responsible for their continuation is shared by three levels of authorities within the Cameroonian government: The Ministry of Justice, the Senior State Counsel, and the Penitentiary Administration. As the organ of the Cameroonian government responsible for the overall administration of the justice system in Cameroon, the Ministry of Justice has a duty to ensure Cameroon's adherence to the human rights embedded in the international instruments of which it is a signatory. Based on GCI's investigation, the Ministry's responsibilities to its prisoners fall into two main categories: (1) the allocation and provision of resources, and (2) the supervision of lower authorities to ensure their compliance with their respective duties to the State.

In order to achieve the first of these tasks, the Ministry must first and foremost undertake an audit of the fiscal allotments provided to the Penitentiary Administration, and to each and every other individual prison facility, in order to ensure that a budget exists for the services which it is obligated to provide under international law. These essential requirements include the following: sufficient food and medical supplies and treatment necessary to support an adequate standard of living; transportation to the hospital where treatment at the prison facility is inadequate; transportation to hearings and communication with prospective counsel, requisite to the right to access to justice; facilities equipped to separate awaiting trial

detainees from convicted detainees in order to protect the presumption of innocence of the former; and, a separate bed for each detainee in an effort to combat the serious overcrowding in Cameroon's prisons.

While GCI is aware that each State operates within unique budgetary constraints, GCI urges the Ministry to further endeavour to allocate resources for the following: a national monitoring mechanism to facilitate greater oversight of the prison system; the improvement of prison facilities; increased wages and training for prison personnel, including human rights education; and finally, in a further effort to combat prison crowding, develop and institute a system of non-custodial measures and alternative sentencing techniques including, but not limited to, community service, and the payment of fines and compensation rather than incarceration. In its efforts to facilitate these budgetary modifications, the Ministry will likely find it necessary to advocate a more humanitarian approach to the distribution of scarce resources to combat the societal belief that prison should be punitive rather than rehabilitative.

Because the reallocation of resources is futile where those resources disappear before they reach their intended target, the Ministry must take steps to ensure that funds allotted for these services are being used for their intended purpose. In order to achieve this goal, however, it will likely be necessary for the Ministry to undertake an investigation into instances of corruption within the prison system and prosecute any guilty parties to the full extent of the law. This will have the ancillary advantageous effect not only of protecting the financial interests of the State, but also of discouraging corruption in all sectors of government.

Most importantly, as a representative of the State of Cameroon, the Ministry of Justice has a duty to oversee the investigation of alleged acts of torture within the Kumba Principal Prison in order to ensure that the accused members of the prison administration are removed and relieved of duty during the inquiry, and that guilty parties are prosecuted in accordance with, and to the full extent of, the law afterwards. Anything less would constitute a failure of Cameroon to abide by its international obligations and will undoubtedly harm its reputation for the protection of human rights in the eyes of the international community. Rather, if it wishes to preserve and even improve its status as a nation conscious of basic human rights, Cameroon must not only do justice, but must also give the appearance of doing it. The best means for the state to facilitate this is to increase transparency within the prison system by increasing access to prisons by NGOs and members of the media.

4.2. RECOMMENDATIONS TO THE SENIOR STATE COUNSEL

While the Ministry of Justice has a duty to ensure that the State, and its associated State parties, is complying with its international legal obligations, it is the responsibility of the Senior State Counsel to ensure that the rights of prisoners under national law are being respected by the individual members of the prison administration. Specifically, the Senior State Counsel has a statutory duty to protect the individual freedom of prisoners by routinely visiting the Kumba Principal Prison in order to ensure that awaiting trial detainees are not being held beyond the statutorily defined limits for custody without bail, and immediately releasing those who are. Ideally, he should also discipline those individual members of the prison administration responsible for the failure to notify him of the prisoner's illegal status. In order to ease his burden in this regard by simultaneously relieving overcrowding in

the prison itself, the Senior State Counsel would be well served to explore and initiate various non-custodial forms of incarceration and alternative sentencing.

The Senior State Counsel has a further duty to protect the right to life of the prisoners by launching a local investigation into the acts of torture perpetrated by the Kumba prison administration on August 18th of 2008, removing the individuals under investigation from their positions and relieving them of their duties during the inquiry, and prosecuting those found guilty of criminal wrongdoing to the full extent of the law. A similar investigation should also be undertaken, and prosecutions sought, for alleged acts of corruption committed by members of the Kumba Principal Prison administration and other local authorities. As a relatively new magistrate in the Southwest Province, the Senior State Counsel has a unique opportunity to use the forthcoming prosecutions to enhance his burgeoning career by solidifying his reputation as a righteous and proficient jurist whose integrity is beyond reproach.

Finally, the responsibility for improving conditions and treatment of prisoners in the Kumba Principal Prison by revising penitentiary policy falls with the Penitentiary Administration, whose members must undertake the amendment of prison guidelines in order to facilitate the following changes: provide a counselor in permanent employment in each prison facility to assist prisoners; improve training of prison personnel; provide a complaint mechanism for prisoners; ensure unfettered authorized communication and visitation between prisoners and their families; develop procedures and policies to ensure that custody for awaiting trial detainees does not exceed the statutorily proscribed limits; modify penitentiary guidelines to improve conditions and treatment of prisoners, and eliminate chaining as a form of punishment; and, improve oversight in order to ensure staff compliance with penitentiary guidelines, and prevent corruption.

By effectuating GCI's recommendations, the State of Cameroon, and its judicial and administrative authorities, has an opportunity to make a strong statement both to its own citizens and to the world writ large that neither corruption nor violations of human rights will be tolerated. In a country that has received negative attention in the past because of its widespread corruption and previous allegations of torture, it would be a powerful political and legal signal to the international community that Cameroon strongly condemns infringements of prisoners' rights. Furthermore, as a developing country, Cameroon could benefit tremendously from international aid and foreign direct investment, both of which are often contingent on the recipient country's respect for human rights and other international standards. By improving the conditions in its prisons and punishing individuals responsible for violations of human rights and the embezzlement of government funds, Cameroon will not only improve the efficiency and effectiveness of its administration, but also delineate itself as a progressive African state where aid and investments are secure and all people are treated with dignity and respect.