

Cameroon, People with Disabilities Caught in Crisis

INTRODUCTORY TEXT: Based on the report of Human Rights Watch on the conflict in Cameroon's Anglophone region and a resolution adopted by the UN Security Council on the protection of civilians in armed conflicts, this case discusses the status, treatment and protection of persons with disabilities during armed conflicts.

Case prepared by Mr. Marishet Mohammed Hamza, LL.M student at the Geneva Academy of International Human Rights Law and Human Rights, under the supervision of Professor Marco Sassòli and Mr. Pavle Kilibarda, researcher and teaching assistant, both at the University of Geneva.

N.B. As per the disclaimer, neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

A. HRW, Cameroon: People with Disabilities Caught in Crisis

[Source: Human Rights Watch, 'Cameroon: People with Disabilities Caught in Crisis', 5 August 2019, available at: <https://www.hrw.org/news/2019/08/05/cameroon-people-disabilities-caught-crisis>]

[...]

[1] Over the past three years, Cameroon's Anglophone regions have been embroiled in a cycle of deadly violence that has claimed an estimated 2,000 lives and uprooted almost half a million people from their homes. People with disabilities have faced attack and abuse by belligerents, often because they are unable to flee.

[...]

[2] The crisis in the Anglophone regions began in late 2016, when teachers, lawyers, and activists, who had long complained of their regions' perceived marginalization by the central government, took to the streets to demand more recognition of their political, social, and cultural rights. The ruthless response of the government forces, [...] escalated the crisis. Since then, numerous separatist groups have emerged calling for the independence of the Anglophone regions and embracing the armed struggle. Government forces and armed separatists have both been responsible for serious human rights abuses.

[3] Between January and May 2019, Human Rights Watch interviewed 48 people with disabilities living in the Anglophone regions, their family members, representatives of UN agencies, and national and international humanitarian organizations to investigate how the crisis in the North-West and South-West regions has disproportionately affected people with disabilities.

[4] People with disabilities [...] have been among those killed, violently assaulted, or kidnapped by government forces and armed separatists. Soldiers from the Rapid Intervention Battalion [the elite unit of the Cameroonian army] killed a 43-year-old man with hearing and intellectual disabilities in the village of Ntamru, North-West region, on May 5, when he did not answer their questions. "He was shot in the head and the chest," a witness told Human Rights Watch.

[...]

[5] A 41-year-old man with a physical disability said he lost his wheelchair after soldiers burned his home in Kumbo, North-West region, on December 3, 2018: "My house was razed. I was lucky I could escape thanks to a friend who carried me. But I lost everything, including my wheelchair, and now I have no means to move myself around independently."

[6] During some attacks, people with mobility difficulties could not flee with their families. A 27-year-old woman, with paralysis in her left leg as a result of childhood polio, said she remained alone in her village, Esu, North-West region, in March 2018: "Following three days of clashes and non-stop gunfire, my parents fled and left me home alone. I sought refuge in a nearby house, but the neighbors left too. My family thought it was safer for me to remain and hide, instead [of] to carry me and run. But I felt really scared."

[...]

[7] The UN secretary-general said in this year's report [i.e., 2019] on the protection of civilians that the Security Council should ensure effective protection and assistance for people with disabilities. And on June 20, the Security Council adopted a resolution, calling on UN member states and parties to armed conflict to protect people with disabilities in conflict situations and to ensure they have access to justice, basic services, and unimpeded and inclusive humanitarian assistance.

[...]

Attacks on People with Disabilities

[8] Since the beginning of the crisis in late 2016, Human Rights Watch has documented at least 20 cases in which government forces killed people with disabilities as they struggled to flee attacks, or because they were left behind. Human Rights Watch has also reported on cases of people with disabilities attacked or kidnapped by armed separatists.

[9] A 27-year-old man with intellectual disabilities was shot dead at a gas station by gendarmes in Ndu, North-West region, on December 24, 2018. “He was walking, the gendarmes stopped him and started talking to him,” a witness said. “Since he was always laughing each time a person spoke to him, he started laughing at the gendarmes, and they got angry. They shot him and drove off. He was shot in the head and the chest; he died instantly.”

[...]

[10] Soldiers raided the home of a 28-year-old woman with a physical disability in Meluf village, North-West region, in December 2018. She told Human Rights Watch that about 15 soldiers broke into her home, took her phone and medications, and ordered her at gunpoint to remove her artificial leg: “They watched me crawling and laughed. They asked me where the Amba [separatists] lived and I replied that I didn’t know. Since they seized my medication, I have been ill.”

[11] People with disabilities have also been abused at checkpoints controlled by the security forces or at roadblocks manned by separatists. Often, they are traveling because they have been displaced by violence. After the military burned the home of a 41-year-old man with a physical disability in Kumbo, North-West region, in December 2018, a soldier stopped the taxi in which he was riding at a checkpoint in Jakiri, North-West region, on January 19, 2019, and beat him:

I had to get out of the car by crawling with my hands, then a soldier hit me badly with his gun on my right arm. The soldier said that I was escaping because I am a collaborator of the Amba [Separatists].

Fleeing Violence

[12] People are often forced to flee areas when violence starts. For people with disabilities, especially those with mobility and visual impairments, fleeing attacks often puts them at higher risk than others fleeing.

[...]

[13] A 24-year-old blind student traveled without any support to Bamenda, about 100 kilometers, from his

house in Meluf, North-West region, on December 3, 2018, when soldiers burned his house. He said:

Not only did I lose everything, including my school certificates, but I had to escape by myself, because I am orphan. I was very scared during the journey, because I can't see around me, I can't see the danger coming.

[...]

[14] A key challenge in escaping for people with disabilities was the absence of assistive devices such as wheelchairs, sticks, or crutches, which were lost in the chaos, destroyed, or looted.

[...]

Homes Burned

[15] Security forces, including soldiers, members of the Rapid Intervention Battalion, and gendarmes, destroyed and looted hundreds of homes across the Anglophone regions. People with disabilities often lost everything, their accessible homes, assistive devices, and their livelihoods.

[...]

[16] A 37-year-old woman with mobility difficulties said that her home was burned when armed separatists clashed with the security forces in her village, Etoko, South-West region, in July 2018:

The separatists ran toward my house and the army chased them there. The soldiers broke into my place and set it on fire. I escaped into the forest where I spent two days with no food, lying on the ground and covering my head out of fear. I lost my house and the stick I used to walk with.

[...]

Accessing Aid for Internally Displaced People

[17] Life for internally displaced people is difficult, and displaced people with disabilities face additional difficulties in getting assistance and meeting their basic needs such as for food, sanitation, and health care.

[18] Only 9 of the 45 people with disabilities interviewed had humanitarian assistance. In all these cases but one, aid was distributed by local charities in urban centers. Displaced people taking shelter in isolated areas have little to no access to aid because of security issues.

[...]

[19] Needs of people with disabilities affected by the crisis are significant and can be very specific but are not always integrated in humanitarian planning. A protection officer working for an international nongovernmental group in the South-West region said that while there is some assistance for people with disabilities there are no specific programs to respond to their needs and in particular there are not enough services like rehabilitation, assistive devices, and accessible information available. [...]

[...]

Access to Health Care

[20] Access to health care has been disrupted in the Anglophone regions. The UN Office for the Coordination of Humanitarian Affairs estimates that 40 percent of health facilities in both the North-West and South-West regions are not operational. Human Rights Watch has documented numerous attacks against medical facilities and health workers since December 2018. According to Médecins Sans Frontières, 61 healthcare facilities and 39 medical professionals have been attacked since May 2018, depriving people of access to medical care, often when they need it the most.

[...]

B. Security Council, Resolution 2475 (2019)

[Source: UN Security Council, Resolution 2475 (2019), Adopted by the Security Council at its 8556th meeting, on 20 June 2019, UN Doc. S/RES/2475(2019), available at: <https://www.un.org/securitycouncil/content/resolutions-adopted-security-council-2019>]

[1] The Security Council,

[2] Reiterating its primary responsibility for the maintenance of international peace and security, and in this connection, expressing its commitment to address the disproportionate impact of armed conflict and related humanitarian crises on persons with disabilities,

[3] Expressing serious concern regarding the disproportionate impact that armed conflict has on persons with disabilities, including abandonment, violence, and lack of access to basic services, stressing the protection and assistance needs of all affected civilian populations, and emphasizing the need to consider the particular needs of persons with disabilities in humanitarian response,

[4] Recalling the Geneva Conventions of 1949 and the Additional Protocols thereto of 1977, as applicable,

[5] Recalling the Convention on the Rights of Persons with Disabilities, in particular Article 11 on situations of risk and humanitarian emergencies,

[...]

[9] Recognising the particular barriers faced by persons with disabilities in accessing justice, including access to effective remedies and, as appropriate, reparation, in relation to violations of international humanitarian law,

[...]

1. Urges all parties to armed conflict to take measures, in accordance with applicable international law obligations to protect civilians, including those with disabilities, and to prevent violence and abuses against civilians in situations of armed conflict [...]

2. Emphasizes the need for States to end impunity for criminal acts against civilians, including those with disabilities, and to ensure that such persons have access to justice and effective remedies and, as appropriate, reparation;

3. Calls upon all parties to armed conflict to allow and facilitate safe, timely and unimpeded humanitarian access to all people in need of assistance;

[...]

8. Urges Member States to take all appropriate measures to eliminate discrimination and marginalization of persons on the basis of disability in situations of armed conflict, particularly those who face multiple and intersecting forms of discrimination;

[...]

C. Convention on the Rights of Persons with Disabilities (CRPD)

[Source: 'Convention on the Rights of Persons with Disabilities', 2006, available at: <https://www.ohchr.org/en/hrbodies/crpd/pages/conventionrightspersonswithdisabilities.aspx>]

[...]

Article 2 – Definitions

For the purposes of the present Convention:

[...]

"Reasonable accommodation" means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms;

[...]

Article 5 – Equality and non-discrimination

[...]

3. In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided.

4. Specific measures which are necessary to accelerate or achieve de facto equality of persons with disabilities shall not be considered discrimination under the terms of the present Convention.

[...]

Article 9 – Accessibility

1. To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, inter alia:

(a) Buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces;

(b) Information, communications and other services, including electronic services and emergency services.

2. [...]

Article 11 – Situations of risk and humanitarian emergencies

States Parties shall take, in accordance with their obligations under international law, including international humanitarian law and international human rights law, all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters.

[...]

Article 15 – Freedom from torture or cruel, inhuman, or degrading treatment or punishment

1. [...]

2. States Parties shall take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment.

Article 16 – Freedom from exploitation, violence, and abuse

1. States Parties shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects.

2. [...]

Article 20 – Personal mobility

States Parties shall take effective measures to ensure personal mobility with the greatest possible independence for persons with disabilities, including by:

(a) Facilitating the personal mobility of persons with disabilities in the manner and at the time of their choice, and at affordable cost;

(b) Facilitating access by persons with disabilities to quality mobility aids, devices, assistive technologies and forms of live assistance and intermediaries, including by making them available at affordable cost;

(c) [...]

Discussion

I. Classification of the situation and applicable law

1. (*Document A, paras [2], [4], [6], [10] and [16]*): Based on the information in these paragraphs, how would you qualify the situation in Cameroon? Is there an armed conflict ongoing between government forces and the separatists? Has the threshold of a non-international conflict (NIAC) been met? What further information would be relevant to determine the applicability of IHL? (GC I - IV, Art. 3; P II, Art. 1)2. (*Document C, Art. 11*) Apart from IHL, does IHRL apply to the situation in Cameroon? Do human rights continue to apply in armed conflict situations? What is their relationship with IHL in such situations? What about the rights of persons with disabilities?

II. Persons with disabilities

3. (*Document B, paras [4], 1 and 8*) Does IHL provide specific protection for persons with disabilities during armed conflict? (GC I - IV, Art. 3; GC III, Arts 16, 30 and 110; GC IV, Arts 13, 16, 17 and 132; P I, Arts 8 (a) and 75 (1); P II, Art. 4 (1); CIHL, Rule 88)4. (*Documents B and C*) What are the advantages and disadvantages of considering persons with disabilities for IHL purposes as wounded and sick? Is their main need medical? Is such an approach compatible with CRPD? Are parties to armed conflict obliged to reasonably accommodate their conduct to the rights and needs of persons with disabilities? Including armed groups? How could such an obligation to make reasonable accommodation be derived from IHL? Would treating persons with and without disabilities equally respect or violate the prohibition of adverse distinction? (GC I - IV, Art. 3; GC I, Art. 12 (2); GC II, Art. 12 (2); GC III, Art. 16; GC IV, Arts 13 and 27 (3); P I, Arts 8 (a), 9, 69, 70 and 75; P II, Arts 2, 4, 18 (2); CIHL, Rules 55 and 88)5. (*Document C*) Which rules of the CRPD reproduced in Document C cannot be derived from IHL?

III. Attacks on persons with disabilities

6. (*Document A, paras [4] and [9]*) Does the alleged killing of a person with hearing and intellectual disability in the village of Ntamru violate IHL? What about the alleged killing at Ndu? If your answer is yes, what are the IHL obligations the government forces have violated? Would your analysis be different if the person had not had a disability? (GC I - IV, Art. 3; P II, Art.4 (2) (a); CIHL, Rule 89)7. (*Document A, paras [10] and [11]*) Does the humiliating treatment of persons with disabilities by soldiers and security personnel constitute a violation of IHL? (GC I - IV, Art. 3; P II, Art. 4 (2) (a & e); CIHL, Rule 90)8. (*Document A, paras [12]-[16] and Document B, para. 2*) In your opinion, should parties to a conflict take further precautionary measures in light of the possible impact of hostilities on persons with disabilities? (CIHL, Rule 20)

IV. Humanitarian Relief

9. (*Document A, Paras [17] - [19] and Document B, paras [3] and 3*) Do the parties to the conflict have an

IHL obligation to provide or assist the provision of humanitarian relief services for the displaced persons with disabilities in the South-West region? Under IHL, would persons with disabilities be entitled to get priority during humanitarian relief efforts? (CIHL, Rule 55)

V. Access to justice

10. (*Document A, para. [7] and Document B, paras [6], 1 and 2*) Does Cameroon have an obligation, under IHL, to investigate and prosecute the attacks against persons with disabilities as documented in the case? Based on the UNSC Resolution? Does this also include an obligation to make reparations for violations of IHL? (CIHL, Rule 150 and 158)