



# Global Conscience Initiative

Member of the Coalition for the International Criminal Court

*Salus populi suprema lex – The welfare of the people is the supreme law*

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May 20,

2009

**The Secretary,  
African Commission on Human & Peoples' Rights  
98 Kairaba Avenue, P.O Box 437 Banjul,  
The Gambia**

**Dear Madam Secretary,**

## **Re: Application for Seizure**

**Global Conscience Initiative Cameroon  
Vs.  
Republic of Cameroon  
State**

**Complainant  
Respondent**

Take Notice that pursuant to Articles 55 and 56 of the African Charter on Human and Peoples' Rights (the Charter) as read with Rule 102 of the Rules of Procedure of the African Commission on Human and Peoples Rights (the Commission) this petition is submitted as an initiation of a Communication against the Respondent State herein. Further Take Notice that at the next (Extra) Ordinary Session of the African Commission on Human and Peoples' Rights, the Complainant herein shall by this application, notice whereof is hereby given, urge the Commission to make an order on the seizure of this instant communication.

2. This Communication is brought against the Republic of Cameroon, a state-party to the Charter.
3. The Communication is instituted by *Global Conscience Initiative* (GCI) an NGO based at Krammer Avenue, Opposite the High Court of Meme Division; P.O Box 269 Kumba; South West Region of Cameroon. Telephone number +237 3335 4065; Fax: +237 3335 4009; [www.gcicameroon.org](http://www.gcicameroon.org)
4. For the purposes of its diligent prosecution, this Communication is being represented by:

Barrister NKEA ALEAMBOG EMMANUEL

LEGAL OFFICER

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**5.** The Complainant submits that pursuant to Article 56(7) of the Charter they have not submitted this same complaint before any other international settlement mechanism.

## **II. Brief Facts**

**6.** Cameroon like most countries in West and Central Africa witnessed a "food crisis" by the close of 2007. As a result the cost of living soared and life became very difficult for an average Cameroonian. In addition to this the Head of State, H.E President Paul Biya while addressing the nation on the 31 December 2007 also made known his commitment to have the constitution of the country reviewed by removing presidential term limits. By this revision, President Biya who was to retire in 2011 after serving his last 7 year term in office would again be eligible to stand for re-election as president of the country.

**7.** Angered by the developments contained in the foregoing paragraph Cameroonians engaged on a nation wide massive street demonstrations from the 25 - 29 February 2008.

**8.** In response to the demonstrations, the government deployed combat ready troops to the streets of Cameroon to quell down the demonstrations. Unarmed civilians were shot dead with live bullets; while some died on the spot, others subsequently died of their bullet wounds in hospitals. Yet others were forced by the military to jump/fall into the River Wouri and later drowned. In all, investigations confirm that 139 persons were killed as a direct result of the military reprisals.

**9.** In addition to the shooting and killing of several unarmed protesters with live bullets, the military also conducted itself in ways that violate basic human rights norms. For example, on February 27, 2008, as hundreds of protesters from the Bonaberi neighbourhood in Douala, Littoral Region of Cameroon were marching to Bonanjo, the administrative headquarters of the Region to present their grievances to the Governor, government forces had them quarantined on the Bonaberi Bridge over the River Wouri by blocking both sides of the bridge. The protesters were then subjected to aerial and ground attacks by the troops who hurled teargas at them. Many jumped or fell into the river in desperation and at least 20 of them are known to have drowned.

**10.** In response to the demonstrations, the Head of State, H.E President Paul Biya addressed the nation in a live TV broadcast on 27 of February 2008. In this address the President did not show remorse for the killings nor did he outline how those who were responsible for the killings will be brought to justice. Instead the President blamed opposition parties for trying to topple him and then promised severe punishment for all those who took part in the demonstrations.

**11.** On the 10 of March 2008, Mr. Marafa Hamidou Yaya, Minister of State in charge of Territorial Administration and Decentralization of Cameroon, gave a press conference with regards to the

demonstrations and the casualty recorded. While highlighting that 40 people had been killed during the four (4) days protest, the Minister like the President of the Republic also did not show remorse for the killings nor did he condemn and/or outline how those responsible for the killings will be made to face justice. Instead, the Minister only condemned the demonstrations, the damage on public property and the loss of reputation by the country known for its peace.

12. According to Minister Marafa Hamidou Yaya, the dead toll after the demonstrations are as follows: In the Centre Province including Yaounde 2 (two) deaths, including that of a Police Inspector; Littoral Province, 30 (thirty) deaths' 26 (twenty-six) in Douala, 1 (one) in Mbanga, 1 (one) in Penja and 2 (two) in Loum; In the North-West, 5 (five) deaths, 4 (four) in Bamenda and 1 (one) in Santa in the Mezam Division; In the West Province, 2 (two) deaths, 1 (one) in Bafoussam and the other in Dschang; and South-West Province, 1 (one) death in Muea on the outskirts of Buea.

13. Proper investigations by eye witnesses and NGOs based in Cameroon now confirm that in all; at least 139 persons are known to have been killed by government forces. The statistics are as follows: Douala - 100, Kumba - 7, Loum - 7, Bamenda - 6, Limbe - 5, Bafoussam - 4, Mbanga - 2, Bafang - 2, Buea - 2, Njombe/Penja - 2, Muea - 1 and Dschang - 1.

### **III. Outline of Charter Violations**

**14.** The Complainant submits that the Respondent State has violated Articles 1, 4 and 5 of the Charter. Depositions in support of these violations are made below. The complaint shall provide a more detail and comprehensive review of the Commission's jurisprudence along with other international and comparative opinions in due course.

**15. Article 4:** The right to life is a non-derogable right under international human rights law. Article 4 of the Charter guarantees and protects this right. A state is not permitted to derogate from this right even in times of emergencies. In **Communications 64/92, 68/92, 78/92 (Joint) [Amnesty International & another Vs. Malawi, paragraph 6.]**, the Commission held that:

***"...shooting by Police Officers are a violation of this right."***

**16. Article 5:** The Charter abjures any inhuman or degrading treatment or punishment. The right from torture has also attained the status of *jus cogen* under international human rights law. The blockade by troops of protesters at the Bonaberi Bridge over the River Wouri and the subsequent aerial and ground attacks using tear gas is an inhuman and degrading treatment. This form of torture falls squarely within the prohibitive instincts of Article 5 of the Charter. In conjunction with

Article 1 of the African Charter, it is the responsibility of States not only to recognize these rights, but also to undertake measures to give effect to them [**Comm. No 211/98 Legal Resource Foundation Vs. Zambia paragraph 62**].

#### **IV. Limitation and Derogation from Charter Rights**

**17.** International human rights law applies in peace and war, in ordinary periods as well as in emergencies. However, there are provisions in human rights law instruments which: (a) limit the scope of the protected human rights; and (b) provide for suspension of/derogation from certain rights in time of public emergencies.

**18.** The African Charter does not contain any clause which explicitly allows or adjures derogation from Charter Rights. Thus, there is a dilemma as to the intentions of the Charter with regards to derogation. However, by virtue of Article 60 of the Charter the Commission is required to draw inspiration from international best practices in the area of international human rights law.

**19.** Derogation from Charter Rights is acceptable under international human rights law under certain circumstances. By limitation clauses, States are permitted to lawfully restrict the free exercise of human rights in order to protect public health, public safety and morals, to restore order, and to protect fundamental rights and freedoms of others. Examples of such provisions are Article 15 of the European Convention on Human Rights and Article 4(1) of the International Convention on Civil and Political Rights.

Article 4(1) of the ICCPR states: "in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin".

**20.** The Respondent State may therefore argue that the mass upheavals and destruction of public property which accompanied the February 2008 uprising in Cameroon necessitated a state of emergency which is a justification for derogation under international human rights law.

**21.** Such a contention should not be allowed to stand and the reasons for this are three fold:

**First**, a state of emergency is a prerequisite for derogation under international human rights law. A state of emergency in Cameroon is regulated by Article 9 of the Constitution which states that:

***(1) The President of the Republic may, where circumstances so warrant, declare by decree a state of emergency which shall confer upon him such special powers as may be provided for by law.***

***(2) In the event of a serious threat to the nation's territorial integrity or to its existence, its independence or institutions, the President of the Republic may declare a state of siege by decree and take any measures as he may deem necessary. He shall inform the Nation of his decision by message.***

We contend that in the instant case, none of the procedures under Article 9 of the Constitution was followed by the President of Cameroon. Accordingly, we argue that there was no legal basis for the derogation of Charter Rights under the circumstance.

**Second**, jurisprudence from the Commission, in **Communication 74/92 Commission Nationale des Droits de L'home et des Libertes V. Chad**, paragraph 21, sustains that:

***"...the African Charter, unlike other international human rights instruments, does not allow for states-parties to derogate from their treaty obligations during emergency situations. Thus, even a civil war ... can not be used as an excuse by the state violating or permitting the violation of rights in the African Charter"***

This decision was upheld by the Commission in **Communications 54/91, 61/91, 98/93, 164/97, 210/98 (Joint) Malawi African Association et al. V. Mauritania**, paragraph 84. We urge the Commission to reiterate and uphold this view in the present Communication.

**Third** under Article 4(2) of the ICCPR the right to life cannot be derogated.

## **V. Seizure**

**22. Locus Standi:** The Complainant contends that by virtue of its status as a Human Rights NGO registered and recognized by the laws of Cameroon, it is a competent party to institute an action against the Respondent State for human rights violations. A complainant need not be the victims, their families or person authorized by them [**Communication 25/89 Organization Mondial Contre la Torture et al. Vs. Zaire**]. The Complainant contends that it has the *locus standi* to institute this present Communication.

**23. Violation of Charter Rights:** The instant Communication discloses *ex-facie* the violation of recognized and protected Charter Rights.

**24. Respondent-State's Charter Obligations:** The Respondent State is a state-party to the Charter with obligations arising there from.

## **VI. Admissibility Requirements**

**25.** Although submission on admissibility is not required for the purposes of seizure of a Communication, the Complainant will however make a brief argument in view of the admissibility of this Communication. A detailed submission on admissibility will follow the Commission's decision on seizure.

**26. Exhaustion of Local Remedies:** The Complainant has not attempted the exhaustion of local remedies and does not intend to do so. Although the mechanisms of the African Commission are not processes of first instance, this rule must not be mechanically applied in all situations. The African Commission through its jurisprudence has established a series of exceptions to the exhaustion of local remedies rule. For the purposes of this instant Communication those which are relevant are the exceptions arising from the execution/deaths of the victims due to the violations complained of and the massive and serious violations recorded.

According to decisions of the Commission, the death of the victims of these violations forecloses the need for to exhaust local remedies [**Communications 137/94, 139/94, 154/96, 161/97 International PEN et al (joined) (on behalf of Ken Saro-Wiwa) Vs. Nigeria paragraph 77, Communication 223/98 Forum of Conscience Vs. Sierra Leone paragraph 15**]. Exhaustion of local remedies is not required where the victims of the violations were killed or executed. It is evident that no domestic remedy can give the complainants the satisfaction they seek. Even if such possibility had existed, the killing of the victims had completely foreclosed such a remedy.

**27.** Furthermore, the killing of 139 people in just 4 days constitutes a massive and serious violation of Charter Rights. There are multiple victims and the violations complained of are serious and widespread. Where these circumstances exist, as it does in the instant case, the Commission is of the view that, exhaustion of local remedies even if they exist be dispensed with [**Communication 25/89, 47/90, 56/91, 100/93 (joined) Free Legal Assistance Group et al Vs. Zaire paragraph 37**],[**Communication 27/89, 46/91, 49/91, 99/93 (joined) Organisation Mondial Contre la Torture et al Vs. Rwanda paragraph 18**], [**Communication 54/91, 61/91, 98/93, 164/97, and 210/98 (joined) Malawi African Association et al Vs. Islamic Republic of Mauritania paragraph 85**].

The media outings by the President and the Minister of State as detailed in paragraphs 10 and 11 here above suggests that the Respondent State had taken due notice of the violations. The

Commission has stated [**Communication 299/2005 Anuak Justice Council Vs. Ethiopia, paragraph 60**] that, in cases of serious violations, the State will be presumed to have notice of the violations within its territory and is expected to act accordingly to deal with whatever human rights violations there are. The pervasiveness of these violations dispenses with the requirement of exhaustion of local remedies, especially where the state took no steps to prevent or stop them. The Complainant submits that, the killing of 139 people by forces of the Respondent State falls within the precincts of this exception.

**28. Other Requirements:** The Complainant avers that all other requirements contained under Article 56 of the Charter have been fulfilled and urges the Commission to make a positive decision on the seizure of this Communication.

### **VII. Remedies Sought**

In view of the above the Complainant prays the Honorable Commission to make the following order (s) and remedies under the Charter;

- a) Hold the Respondent State in breach of the Article (s) of the Charter detailed above.
- b) Direct the Respondent State to make adequate compensation to the families of the victims.
- c) And make any other order or such further orders as the Honorable Commission may deem fit and proper to make in the circumstances.

29. For the reasons set out above, the Complainant respectfully request the Commission to be seized of this matter and that as earlier stated above, further submissions in support of this petition shall be forwarded in due course.

Yours Sincerely,

Barrister NKEA ALEAMBOG EMMANUEL

Of the Cameroon Bar & Supreme Court

Legal Officer

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